NATIONAL JUDICIAL ACADEMY

"COLLOQUIUM FOR LEGAL AID FUNCTIONARIES IN JUDICIAL SYSTEM"

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READING MATERIAL

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SESSION NO 1.

SCHEMES AND OBJECTIVES OF SLSA IN DIFFERENT STATES.

1. Grafting Faith: Legal Aid Services In India: By: *Rashmi Raman and Nisha Venkataraman*[1]

Legal Service is very essential in democracy, the Rule of Law without legal service is a judicial myth. Legal service includes Legal Aid, Legal Advice and Lok Adalat. The study relates to the provision of the Legal Service Authorities Act 1987, ADR techniques adopted by the Authorities. Gram-Nyalayas Act 2008 and Legal aid provision in other enactments.

Legal Services Authorities Act, 1987

The Indian Society has suffered from inequality on economic and social plane for centuries and now it is high time it needs to be removed by the constitutional process and perhaps the implementation of Directive Principles enshrined in Part IV of the Constitution would be right step in this direction. The Core issue of 'equal justice to all' and 'speedy justice' have been engaging the attention of the Bar, Bench and Law Reformers during the post-independence era and all efforts are being made to cure the malady of Law's delay and slow moving justice but unfortunately it still persists as a chronic disease. It has been generally agreed that the adversarial model of judicial adjudication has proved to be inadequate to meet the needs of the formalities of legal procedure. A number of laws and legislative enactments have been introduced to reform the judicial mechanism and eliminate law's delay ever since the passing of the Legal Services Authorities Act, 1987.Former Chief Justice of India Hon'ble Justice Anand, has once said that Indian Judiciary is suffering from "ABC" ailments: A - Accessibility of Justice shall be the same to all irrespective of their class, caste, creed , region and status either economic or social; but there are many speed breaker in this path. B – Backlog of cases in law courts is a major stumbling block to those who seek justice. C – The cost of litigation is casting an apprehension in the minds of the poor that justice delivery system is beyond their reach. To cure these diagnosed "ABC" disease in the judiciary The Legal Services Authorities Act 1987, has prescribed "Three Drug" combination of which can be named as "Three LAS i.e. Legal Aid, Legal Awareness and Lok Adalat. Under the spirit of 39-A of the constitution the Parliament enacted The Legal Services AuthoritiesAct1987. The Act was enacted to give a statutory base to legal aid programmes throughout the country on uniform patterns. This Act was finally enforced on 9th November 1995after certain amendments were introduced therein by the Amendment Act of 1994. Hon.Mr.Justice R.N.Mishra, the then Chief Justice of India played a key role in the enforcement of Act. It was amended by the Legal

[1] *At 3rd International Conference on Therapeutic Jurisprudence 7-9 June 2006, Perth, Western Australia*

Services Authorities (Amendment) Act) 1996 (1 of 1996) and Legal Services Authorities (Amendment) Act) 2002 (37 of 2002).

The object of the Act is threefold, to Constitute Legal Services Authorities, to provide free and competent legal Services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities and to organize Lok Adalats to secure that the operations of the legal system Promotes justice on a basic of equal opportunity. Section 2 defines various terms case, court, Legal Services, Central Authority, Supreme Court Legal Services Committee, State Authority, High Court Legal Services Committee, Scheme, District Authority, and Taluka Legal Services Committees and Lok Adalat**.**

Infrastructure of the Legal Services Organization the Act empowered the State to establish a Four Tier System of providing speedy and informal justice at the National, State, District and Taluk Levels. Accordingly, Legal Services Authorities prescribed the formation of a National Legal Services Authority (NALSA) the apex body regulating Legal Aid provision of the Act. Powers of NALSA are delegated to the State Legal Services Authority (SALSA) for implementation at the state level which delegates further to several groups. The Legal Aid movement is a combination of the services of the bench, the bar and other persons in the allied fields like legal education and, Social Action Groups including individuals and NGOs having presence starting from the grass-root, State Level to the Supreme Court.

NATIONAL LEGAL SERVICES AUTHORITY (NALSA) Composition and its functions: The Central Government Constitutes the National Legal Services Authority to supervise and regulate legal Services throughout the country. The Central Authority shall consists of the Chief Justice of India who is the Patron-in-Chief, to be nominated by the President, who shall be the executive Chairman, ex –officio members and nominated members. The Central Government in consultation with the Chief Justice of India appoints a person to be the Member Secretary of the Central Authority as the Executive Chairman of the Central Authority to exercise such powers and perform such duties under this Act. The powers and functions of the Member-Secretary, 6 *inter alia*, shall be-

(a) To work out modalities of the Legal Services Schemes and Programmes approved by the Central Authority and ensure their effective monitoring and implementation throughout the Country;

(b) To exercise the powers in respect of administrative, finance and budget matters as that of the Head of the Department in a Central Government ;

(c) To manage the properties, records and funds of the Central Authority;

(d) To maintain true and proper accounts of the Central Authority including checking and auditing in respect thereof periodically ;

(e) To prepare Annual Income and Expenditure Accounts and Balance Sheet of the Central Authority;

(f) To liaise with the social action groups and the State Legal Services Authorities;

(g) To maintain up-to-date and complete statistical information, including progress made in the implementation of various Legal Services Programmes from time to time;

(h) To process project proposals for financial assistance and issue Utilization Certificates thereof;

(i) To convene Meetings/Seminars and Workshops connected with Legal Services Programmes and preparation of Reports and follow-up action thereon;

(j) To produce video/documentary films, publicity material, literature and publications to inform general public about the various aspects of the Legal Services Programmes; and

(k) To perform such other functions as may be expedient for efficient functioning of the Central Authority.

All orders and decisions of the Central Authority shall be authenticated by the Member Secretary or any other officer of the Central Authority duly authorised by the Executive Chairman of that Authority.

LEGAL SERVICES

Nature of services provided include Payment of court fee, process fees and all other charges payable or incurred in connection with any legal proceedings; Providing Advocate in legal proceedings, Obtaining and supply of certified copies of orders and other documents in legal proceedings Preparation of appeal, paper book including printing and translation of documents in legal proceedings. Legal Services

Authorities after examining the eligibility criteria of an applicant and the existence of a prima facie case in his favour provide him counsel at State expense, pay the required Court Fee in the matter and bear all incidental expenses in connection with the case. The person to whom legal aid is provided is not called upon to spend anything on the litigation once it is supported by a Legal Services Authority.

NALSA also provides for preventive and strategic legal aid by undertaking legal awareness programmes and transforming villages into litigation free. The legal aid program adopted by NALSA include promoting of legal literacy, setting up of legal aid clinics in universities and law colleges, training of paralegals, and holding of legal aid camps and Lok Adalats. The National Legal Services Authority is implementing and monitoring legal aid programs in the country.

LEGAL AWARENESS CAMPAIGN.

NALSA issues Press Releases in almost all the leading newspapers in the country in English, Hindi and Regional Languages to convey to the public salient provisions of the Legal Services Authorities Act, the important schemes of Legal aid and the utility of Lok Adalats, so that people should know about the facilities being provided by Legal Services Authorities throughout the country.

Legal Services to Transgender People

Transgender people are generally treated as objects of ridicule and aversion. However, many forget that transgender people too are born as human beings and as citizens of India, entitled to all the rights conferred by law and also are entitled to the protection of the laws. NALSA felt that the first step in this regard is to create awareness amongst the other people about the rights of transgender to live with dignity as human beings and citizens.

SCHEMES OF LEGAL AID:

In a country where majority of the people still live below poverty line, where millions and millions have never gone to a school and the society still discriminates on the basis of sex, religion and caste , legal literacy and legal awareness is the only road which lead the suffering majority to the door of equality -social, economical and political. Legal Services functionaries therefore, have a very vital role to play so as to nourish and safeguard the constitutional goal of "equal justice for all". NALSA introduced numerous schemes and programmers to make legal Services effective and meaningful. It seeks for proper implementation of the schemes and programmers and has kept legal literacy and legal awareness at the top of the agenda.

PERMANENT AND LOK ADALAT SCHEME: A Permanent and Continuous

Lok Adalat Scheme has been formulated and implemented to establish Lok Adalats in all the districts of the country for disposal of pending matters as well as disputes at pre-litigative stages.Under this scheme, the Lok Adalats are now organized regularly at designated venues, even away from court complexes and the cases which remain unsettled are taken up in the next Lok Adalat. Lok Adalats have thus acquired permanency and continuity and are no more occasional.Establishing Permanent and Continuous Lok Adalats in all the Districts in the Departments,Statutory Authorities and Public Sector Undertakings for disposal of pending cases as well as disputes at pre-litigate stage.The Scheme Widens the network of Lok Adalat to Government Departments, Petitions pending before Women's Commissions, various Tribunals, Labour Courts, Industrial Tribunal and Tax Tribunals etc., setting-up Special Lok Adalats in all Family Courts.

Legal Aid Counsel Scheme: Legal Aid Counsel Scheme : For Appointment **of "Legal Aid Counsel**" in all the Courts of Magistrates in the country NALSA has initiated Legal Aid Counsel Scheme to provide meaningful legal assistance to undertrial prisoners who, on account of lack of resources or other disabilities, cannot engage a counsel to defend them. Now, Legal Aid Counsel have been attached to each Magisterial Court who provide assistance and defend a

person who is not able to engage a counsel, right from the stage he/she is produced in the court by the police.

Mediation Centres: NALSA has formulated a Counselling and Conciliation Scheme to encourage the settlement of disputes by way of negotiations and conciliation. Under this scheme, Counselling and Conciliation Centres are being set up in all the Districts of the country for guiding and motivating the migrants to resolve their disputes amicably. Such Centres have been set up in most of the Districts. NALSA is bound to promote all forms dispute settlement mechanisms. Accordingly, NALSA has taken steps for the setting up of Mediation Centres in all States. The Mediation and Conciliation Project Committee of the Supreme Court of India (MCPC) conducts training programmes on mediation for lawyers and judicial officers, in furtherance of the newly added Section 89 of the Code of Civil Procedure. A Scheme for The Project of Para-Legal Volunteers (Under the Plan of Action for the year 2009-2010) The Project of Para-Legal Volunteers is aimed at imparting legal awareness to volunteers selected from certain target groups who in turn act as harbingers of legal awareness and legal aid to all sections of people. The Volunteers are expected to act as intermediaries between the common people and Legal Services institutions and thereby removing barriers of access to justice. Initially, the volunteers are identified from the NSS units in Colleges, creditworthy NGOs and credible social organizations and Women Self Help Groups. In order to achieve the desired results and to mould the volunteers into full-fledged Para-Legal Volunteers, the following guidelines are formulated: It is a scheme for building up a group of volunteers from among the rural people to act as intermediates between the common people and legal Services institutions at Central, State, District and Taluka levels.`

Accreditation of NGOs of Voluntary Social Service Institutions **for legal Literacy and Legal Awareness campaign**:NALSA has formulated a scheme for accreditation of Voluntary Social Service Institutions to establish a nation wide network of voluntary agencies in order to spread legal literacy, legal awareness and publicity for legal Services throughout the nook and corner of the country. All the State legal Services Authorities have been urged to identify Social Service Institutions in all Districts and give them accreditation.

NATIONAL LEGAL SERVICES AUTHORITY (LEGAL SERVICES TO THE MENTALLY ILL PERSONS AND PERSONS WITH MENTAL

DISABILITIES) SCHEME,

2010India being a signatory to the UN Convention on the Rights of Persons with Disabilities (CRPD) 2008 to ensure effective access to justice for persons with disabilities on an equal basis with others. NALSA issued certain guidelines for the legal Services institutions to be followed while they deal with legal Services to the mentally ill and persons with mental disabilities. (1) The Legal Services Institutions shall keep in mind the fact that mental illness is

curable on proper medication and care.(2) To promote, protect and ensure the full and equal enjoyment of human rights and fundamental freedoms of the mentally ill persons.(3)To Respect for the inherent dignity of mentally ill persons - (4) No discrimination against mentally ill persons merely because of his state of mental health. (5) The right of mentally ill persons to get treatment (6)Legal Services during the proceedings for Reception Orders .

National Legal Services Authority (Legal Services to the Workers in the Unorganised Sector) Scheme, 2010]. On the basis of the report NALSA in association with the Ministry of Labour, Government of India had organised a National Level Conference for unorganized workers for social security enacted new law, 'Unorganized Workers' Social Security Act 2008'.and formulated scheme to render legal Services. In the Regional Conference of the State Legal Services Authorities of the Western Region organised by the National Legal Services Authority (NALSA) at Ahmedabad on 28-29 August, 2010, it was lay down that Legal Services Authorities can come to the help of the workers in the unorganised sector in the following manner: (1) Identifying the unorganised workers within the jurisdiction of each legal Services institution by conducting surveys. State Legal Services Authorities may take steps for conducting surveys for identifying unorganised workers and all other categories of workers included in Central Act 33 of 2008. Services of law students, NGOs and para-legal volunteers also can be availed of for conducting such surveys. Surveys can be conducted in a phased manner, gradually covering entire area within the jurisdiction of the legal Services institutions concerned.(2) The beneficiaries may be categorised into groups depending on the different welfare schemes of the State Government implemented through the Boards and Corporations (i.e. Construction Workers Welfare Board, Bidi Workers Welfare Board, Artisans Welfare Corporation etc). The survey should indicate whether the workers belonging to each category have made efforts to avail of the benefits of the scheme or scheme / legislation / programme of the government.

A Scheme for Legal Services to Disaster victims through Legal Services

Authorities. Legal Services to the people suffering from undeserved wants – Victims of natural or manmade disasters, ethnic violence, communal riots etc are people who become helpless for no fault of theirs. The need for legal Services was felt for the first time when the massive disaster of Tsunami occurred in the coastal areas of the Bay of Bengal and the Arabian Sea. The victims of disasters eventually come across with legal problems like death certificate for the missing persons, loss of vital documents like Title Deeds, Passports, and Licences etc. The promises and proclamations made by the visiting political executive and the administrators are quite often forgotten and do not reach the victims. Legal Services can play an effective role in resolving disputes and also for tackling the issues like adoption of orphaned children and rehabilitation of persons who become disabled due to the calamity.

The National Legal Literacy Mission (NLLM)

NALSA Constituted National Legal Literacy Mission its main object is to empower the poor and disadvantaged persons, particularly woman and children through legal literacy by making them aware of their rights; to lead them to live their life with dignity and to enjoy equality before law, to ensure justice and further facilitating them in this respect through free legal Services programmer available under the Legal Services Authorities Act ,1987.The biggest gap between the NLLM and its beneficiaries is lack of awareness of their rights and information about availability of the redresses machinery of legal aid by the beneficiaries under Section 12 of this Act in respect of each project and programme and to send copy of such reports to NALSA.

Sensitisation of judicial Officers in regard to Legal Services Schemes and Programmes In the Chief Justices' Conference held at New Delhi, a resolution was passed to say that in the service records of the Judicial officers, their interest in legal aid programmes should be reflected and all the High Courts should take steps for sensitizing the Judicial officers in regard to legal aid programmes and schemes. Once all the judicial officers in the country get properly sensitized in regard to the relevance and importance of legal aid schemes they shall themselves start caring for the poor, backward and weaker sections of the society who are not in a position to engage their own counsel and look after their legal causes.

Legal Awareness Programme Continuation of Micro Legal Literacy Projects in all States: State Legal Awareness Programmes in the States to be on the following laws : Maintenance and Welfare of Parents and Senior Citizens Act, 2007Gram Nyayalaya Act.,Protection of Women From Domestic Violence Act, 2005.,Persons with Disabilities (Equal Protection of Rights and Full Participation) Act.,National Trust Act.,Laws relating to Marriage. Labour Laws, Environmental Protection Laws.,Consumer Protection Laws.,Campaign against Female Infanticide.,Campaign against Human Trafficking, Conduct awareness programmes and seminars with the involvement of National Women's Commission, Ministry of Social Welfare, Ministry of Child Welfare and Development and Ministry of Rural Development.

Legal Aid Centre (s) in the Juvenile Justice Board Supreme Court in *Sampurna Behrua* v. *Union of India & Ors.* W.P. (C) No.473/2005) has directed the National Legal Services Authority to put in place Legal Aid Centres attached to the Juvenile Justice Board (s) in the State capitals. In the circumstance, the State Legal Services Authority is requested to establish Legal Aid Centre (s) attached to the Juvenile Justice Board (s) in the State/Union Territory Capitals immediately. The State Legal Services Authority may direct the District Legal Services Authority of the Capital District to establish Legal Aid Centre (s) in the Juvenile Justice Board (s) working the capital city.

Supreme Court Legal Services Committee: The Central Authority constitutes the Supreme Court Legal Services Committee for the purpose of providing necessary legal Services to the needy person in the cases before the Apex Court of India. The Committee consists of : (a) a

sitting judge of the Supreme Court who shall be the Chairman; and (b) such number of other Members ex-officio members.

Honorarium payable to Legal Services Advocate

The legal Services advocate shall be paid such honorarium as may be fixed by the Committee. No legal Services advocate to whom any case is assigned either or legal advice or for legal Services shall receive any fee or remuneration whether in cash or in kind or any other advantage, monetary or otherwise, from the aided person or from any other person on his behalf.

The legal Services advocate who has completed his assignment, shall submit a statement showing the honorarium due to him together with the report of the work done in connection with the legal proceeding conducted by him on behalf of the aided person, to the Secretary of the Committee, who shall, after due scrutiny sanction the fee and e honorarium wholly or partially. In case of any dispute on the quantum payable to the legal Services advocate, the matter shall be placed before the Chairman for decision.

Duties of aided person: A person seeking legal Services shall comply with any requisition or direction that may be made upon him by the Secretary of the

Committee or any of its members from the date the application for legal Services is made till he enjoys the legal Services granted to him. Every aided person or his representative shall attend the office of the Committee as and when required by the Committee or by the legal Services advocate rendering legal aid to him and shall furnish full and true information and shall make full disclosure to the legal Services advocate concerned and shall attend the court, as and when required, at his own expense.

Withdrawal of legal Services: Legal Services are revoked in the following cases:

1When applicant is found guilty of misrepresentation, fraud or using unfair means,

2. There is a gross change in the circumstances of the case,
3. If there is any misconduct or negligence on the part of aided person,
4. Non-cooperation with assigned lawyer,
5. Misuse of the legal Services

Provided that legal Services shall not be withdrawn without giving due notice thereof to the aided person or to his legal representatives in the event of his death, to show causes as to why the legal Services should not be withdrawn. (Regulation 18) (2) Where the legal Services are withdrawn on the grounds set out in clause (a) of sub-regulation (1) above, the Committee shall be entitled to recover from the aided person the amount of legal Services granted to him.

Mediation Centre: A Mediation Centre in the Supreme Court has been functioning under the aegis of the Committee. The cases found suitable for a negotiated settlement are referred by the Supreme Court, wherein mediation is conducted by the Advocate-Mediators of the Supreme Court.

Success rate of the legal aid cases also should be a component of the evaluation measures. To take necessary steps for ensuring commitment to the provisions in Part IV of the Constitution of India Achievement Till 31.03.2009 about 96.99 lakh people have benefited through legal aid and advice throughout the country in which about 13.83 lakh persons belonging to Scheduled Caste and 4.64 lakh people of Scheduled Tribe communities were beneficiaries. More than 10.22 lakh people were women and about 2.35 lakh people in custody were also benefited. About 7.25 lakh Lok Adalats have been held throughout the country in which more than 2.68 crore cases have been settled. In about 16.87 lakh Motor Accident Claim cases, more than Rs. 7593 crore has been awarded as compensation.

***GRAM NYAYALAYA*S ACT, 2008**

The Act provides for the establishment of *Gram Nyayalaya*s at the grass root level. The avowed Objective is to provide access to justice to the citizens at their door steps and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities. Applicable to the whole of India except the State of Jammu and Kashmir, the State of Nagaland, the State of Arunachal Pradesh, the State of Sikkim and to the tribal areas. *Gram Nyayalaya*s are aimed at providing inexpensive justice to people in rural areas at their doorsteps.

Under the Act, it is the responsibility of the respective State Governments to establish[1,] in consultation with its High Court, *Gram Nyayalaya*s at the panchayat level and Panchayat at intermediate level or a group of contiguous Panchayats at intermediate level in a district or where there is no Panchayat at intermediate level in any State, for a group of contiguous Panchayats;.and define their jurisdiction. Generally the headquarters[2] of every *Gram Nyayalaya* shall be located at the headquarters of the intermediate Panchayat in which the *Gram Nyayalaya* is established and these nyayalayas would be presided by an officer called *Nyayadhikari**, who would also be appointed by the State Government in consultation with the High Court.[3]"

The *Gram Nyayalaya* shall be a "Mobile Court" and shall exercise the powers of both Criminal and Civil Courts .the "Nyayadhikari shall periodically visit the villages falling under his jurisdiction and conduct trial or proceedings at any place [327]which he considers is in close proximity to the place where the parties ordinarily reside or where the whole or part of the cause

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[1] sec 3*of the Act

[2] sec 4 of the Act

[3] Sec5 The only qualification prescribed for being a Nyayadhikari is that "he is eligible to be appointed as a Judicial Magistrate of the first class .sec 6(2) state govt while appointing Nyayadhikari ,due representation be given to the members of the S.C ,S,T, Women and such other classes or committees . [327] Sec 9. &Sec 9(2) of the Act

of action had arisen." The State Government has been mandated to "extend all facilities to the *Gram Nyayalaya* including the provision of vehicles for holding mobile court by the Nyayadhikari while conducting trial or proceedings outside its headquarters." **Jurisdiction Powers and Authority of Gram Nyayalaya**

The *Gram Nyayalaya* shall try criminal cases, civil suits, claims or disputes which are specified in the First Schedule and the Second Schedule to the Act[1]; The Central Government as well as the State Governments have been given power to amend the First Schedule and the Second Schedule of the Act[2], as per their respective legislative competence. Gram Nyayalays may take cognizance of and offence on a complaint or police report and shall try all offences listed in the First Schedule to the Act.[3] These include offences under the Indian Penal Code, 1860, relating to criminal conspiracy, being paid to take part in unlawful assembly or unarmed riot, and knowingly furnishing false information to public servants, as well as offences under other central Acts. Gram Nyayalayas shall also try all offences under central acts where the maximum punishment is imprisonment up to one year (with or without a fine), is only a fine, or is a compoundable offence. The Second Schedule lists civil suits that shall fall under the purview of Gram Nyayalayas. These includes suits related to land, water, property, wages etc.,

The *Gram Nyayalaya* shall exercise the powers of a Civil Court[4] with certain modifications and shall follow the special procedure as provided in the Act. The judgment and order passed by the *Gram Nyayalaya* shall be deemed to be a decree and to avoid delay in its execution, the *Gram Nyayalaya* shall follow summary procedure for its execution. The *Gram Nyayalaya* shall not be bound by the rules of evidence provided in the Indian Evidence Act, 1872 but shall be guided by the principles of natural justice and subject to any rule made by the High Court;

Procedure and Appeals

The proceedings shall be in one of official languages of the state other than English as far as practicable. The Gram Nyayalayas shall process a case within 90 days from its institution and pronounce its judgment within one week from the last date of hearing. The parties may argue their own case or engage a lawyer or authorize another person to represent them. In civil disputes the Gram Nyayalayas shall not be bound by the procedure in code of Civil Procedure, 1908. The District Judge, in consultation with the District Magistrate, shall prepare a panel of people who

[1] Sec 11 of the Act

[2] Sec 14 of the Act

[3] Sec 12 of the Act

[4] The *Gram Nyayalaya* will have power to (*a*) enforce the attendance of any person and examine him on oath (*b*) compel the production of documents and material objects (*c*) issue commissions for the examination of witnesses or if the witness is unable to appear before it on account of physical incapacity; and(*d*) do such other things as may be prescribed.

can act as Conciliators, these shall be social workers at the village level with the required qualifications prescribed by the High court.

The state Government shall appoint one or more advocates in a Gram Nyayalaya to try to such disputes. **The State Legal Services Authority shall prepare a panel of advocates,[1] and at least two shall be assigned to each Gram Nyayalayas so that their services may be provided by the Government to the accused unable to engage an advocate.**

The *Gram Nyayalaya* shall follow summary procedure in criminal trial. The concept of 'plea bargaining' has also been extended to the *Gram Nyayalaya*s. Almost similar measures have been provided for determination of civil disputes. Appeals from the decisions of the *Gram Nyayalaya*s shall lie to the District and Sessions Court which is supposed to dispose of the appeal within six months. No further appeal From the District and Sessions Court is provided, leading to the culmination of the dispute. It has also been entrusted to the *Gram Nyayalaya* to make attempts "to assist, persuade and conciliate the parties in arriving at a settlement".

Legal Aid under Other Enactments

To Ensure social justice and to implement Rule of Law State enacted various legislations to protect civil, Human rights of weaker sections, consumers, mentally ill persons and also constituted Commission to create awareness as to legislations for the benefit of people of India.

Paribarik Mahila Lok Adalats.

The National Commission for Women evolved the concept of Paribarik Mahila Lok Adalat (PMLA). Marital disputes and other family disputes may be settled or compromised in the PMLA. Apart from pending cases, the dispute can also be resolved at the pre -litigation stage and the parties can avail themselves of the opportunity to resolve their disputes without aid of any lawyer. They do not need to incur any expenditure. In the year 1995 the first PMLA was organized and PMLAs have been organized throughout the country. 3 PMLAs have been organized by the State Women Commission in collaboration with the National Women Commission and the State Legal Services Authority. Paribarik Mahila Lok Adalat is the alternative forum where redressal will be available to the destitute wives or other family members within the shortest span of time. For making the PMLA more effective necessary amendments are to be made in the Legal Services Authorities Act. We demand speedy remedy to all disputes, specially the family disputes and if more and more PMLAs are organized, a new arena of delivering justice to the weaker section will be established.

LAW COMMISSION OF INDIA

Under the Chairmanship Dr. Justice AR. Lakshmanan the 18th Law Commission on the 5th day of August, 2009 suggested Reforms in The Judiciary in its 230 report. The Gram Nyayalayas Bill has been enacted to set up more trial courts at the intermediate Panchayat level. The welcome

[1] **Sec 21(3)of the Act.**

feature is that the procedures have been kept simple and flexible so that cases can be heard and disposed of within six months. It is also envisaged that these courts will be mobile, to achieve the goal of bringing justice to people's doorsteps. Training and orientation of the judiciary, especially in frontier areas of knowledge, like bio-genetics, IPR and cyber laws, need attention. The Constitutional promise of securing to all its citizens, justice, social, economic and political, as promised in the Preamble of the Constitution, cannot be realized, unless the three organs of the State i.e. legislature, executive and judiciary, join together to find ways and means for providing the Indian poor, equal access to its justice system. However, committee vied that not an inch of change can be brought about if the advocates do not work in accordance with the responsibility that is cast upon them by the Constitution. Every lawyer is vested with the responsibility to foster the rule of law and dominance of the Constitution. The Committee Suggested for Speedy Justice, Reduction in costs of litigation, Systematic running of the courts, Faith in the judicial system.The Alternative Disputes Resolution mechanism is intended to cover negotiation, mediation, conciliation and arbitration. The ICADR is a unique Centre in this country which makes a provision for prompting, teaching and research in the field of ADR and also for offering ADR services to parties not only in India but also to parties all over the world. The ADR is intended to cover almost all disputes, including commercial, civil, labour and family disputes in which parties are entitled to conclude a settlement and to be settled by ADR procedure Should the technique of conciliation through mediation fail to materialize, resort should be had to the process of arbitration under the Arbitration and Conciliation Act, 1996. This Act is largely based on UNCITRL Model Law and Rules. The UN propagated Model Law has many unique features over the conventional arbitration procedures. It minimizes the role of the courts. It assures to the parties a maximum amount of autonomy of getting their matter arbitrated the way they like. They may even authorize the arbitral tribunal to resolve their differences not necessarily on the basis of applicable laws, and rather on the basis of justice, equity and good conscience.

Even when the parties take resort to arbitration proceedings, they should be encouraged to make maximum use of the provisions of Section 30 of the Arbitration and Conciliation Act, 1996. This section enables the arbitral tribunal to use, with the agreement of the parties, mediation, conciliation or other procedures to bring about an agreed settlement. Further, the parties should be made aware of Section 28 of the same Act. This section enables the parties to ask the arbitral tribunal to decide their dispute ex acquo et bono or as amiable compsiteur. This enables the arbitrators to decide matters according to what they feel is the just and good solution. The advantage of this kind of procedure is that it becomes less litigious and also less adverse. It dispenses with the typical legalities approach in which there is generally a head-on confrontation. The counsels of the parties then start playing their more meaningful role as negotiators and mediators.

CONCLUSION

The original constitution did not contain any right or remedy to receive state aid by the indigenous citizens. State administration of justice intrinsically, aims none in the country suffers injustice on account of poverty, ignorance and some other disability. By 42nd Amendment to the constitution in 1976, not an enforceable legal right to a citizen but a directive addressed to the state under 39 A to ensure equal access to justice the government enacted Legal Services Authorities Act. Free legal aid has become aviary fashion. The act is administered through National, State, District and Taluka LSA authorities and committees. NALSA formulated various schemes, regulations plan of action to render free and competent legal Services. Under NALSA (free and competent legal Services) regulation 2010. Every legal Services institution shall have a front office manned by professional lawyers with assistance of PLV's. For amicable settlement and to decide pending matters at a pre-litigative stage the permanent Lok Adalat scheme was framed. To protect liberty of under trial prisoners the legal aid counsel scheme and other special schemes for mentally disabled for protection of human rights, separate legal cells for unorganized sectors, victims of disasters, sensitization of lawyers and judicial officers MPCL scheme were formulated in 2010. To protect the rights of child the role of LSA is noteworthy. Legal aid centres were attached to the juvenile justice Boards in all states to inform legal aid lawyers facilitating the juvenile in appeal cases.

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2. *Sampurna Behrua v. Union of India (2011) 9 SCC 801*

Facts: The Constitution of India lays the responsibility on the State to ensure that all the needs of children are met and that their basic human rights are fully protected. Other rights guaranteed by the Constitution, such as right to live with dignity, the right to fair trial and to free and compulsory primary education for children below the age of 14 are also violated due to the non-implementation of the said Act. The petition outlines a detailed study in twelve states of India that is Punjab, Bihar, Orissa, Madhya Pradesh, Uttar Pradesh, Rajasthan, West Bengal, Maharashtra, Manipur, Gujarat, Karnataka, and Uttaranchal.

Also there were complaints that in many districts Child Welfare Committees were not operational or functional and even Juvenile Justice Boards had not been constituted in the manner provided in the Act.

Issue: The petition has been filed seeking issue of appropriate directions to the Central Government as also to the Chief Secretaries and Director Generals of Police and other authorities of the respondent States to implement the Juvenile Justice (Care and Protection of Children) Act, 2000 in its true letter and spirit. The petition also highlights the provisions of the Act which have not been implemented despite number of years having elapsed in the process.

Directions in order dated 19.08.2011:

The court has requested the State Legal Services Authorities to coordinate with the respective Child Welfare Department of the States to ensure that the Juvenile Justice Boards and Child Welfare Committees are established and are functional with the required facilities.

Some recommendations were also put forth in order to ensure that the rights of juvenile offenders are not violated, and to rehabilitate the offenders. They are:

- That Police and government officials ensure the implementation of the JJ Act in the respondent states
- Officials who fail to implement the Act should face due punishment
- Mandatory institutions be set up, within the specified time frame
- To provide basic amenities in the homes to child offenders
- Respondent States to involve reputed NGOs in the implementation of the orders.

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3. *NLSA v. Union of India (2014) 5 SCC 438*

Issue: The petition had been filed in the Supreme Court of India seeking the recognition of the rights of Transgenders in the light of the traumatic experiences faced by the members of the TG community.

Petitioner's Arguments: It was submitted that every person of that community has a legal right to decide their sex orientation and to espouse and determine their identity. TGs are deprived of social and cultural participation and hence restricted access to education, health care and public places which deprives them of the Constitutional guarantee of equality before law and equal protection of laws. Further, it was also pointed out that the community also faces discrimination to contest election, right to vote, employment, to get licences etc. and, in effect, treated as an outcast and untouchable.

Non-recognition of the identity of transgender persons denies them equal protection of law, thereby leaving them extremely vulnerable to harassment, violence and sexual assault in public spaces, at home and in jail, also by the police. Sexual assault, including molestation, rape, forced anal and oral sex, gang rape and stripping is being committed with impunity and there are reliable statistics and materials to support such activities. It was also submitted that the State cannot discriminate them on the ground of gender, violating Articles 14 to 16 and 21 of the Constitution of India. They are thus deprived of many other rights also, which the other persons enjoy by the virtue of being Indian Citizens.

DIRECTIONS AND DECLARATIONS:

1. Hijras, Eunuchs, apart from binary gender, be treated as "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.

2. Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.
3. Centre and the State Governments directed to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.
4. Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.
5. Centre and State Governments should take steps to create public awareness so that TGs will feel that they are also part and parcel of the social life and be not treated as untouchables. Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.

SESSION NO 2

PROBLEMS FACED BY THE SLSA IN ACHEIVEING GOALS AND OBJECTIVES SET OUT IN VARIOUS SCHEMES

1. Study Conducted By "MARG"

EXECUTIVE SUMMARY

Purpose of the study this study is a needs assessment of the Legal Services Authorities in the states of Madhya Pradesh, Jharkhand, Bihar, Uttar Pradesh, Odisha, Rajasthan and Chhattisgarh. The question that immediately arises is: whose needs are being assessed? The answer is two-fold: (i) the needs of the LSAs themselves to fulfil their role as envisaged in the statute by which they have been set up, and subsequent vision statements, rules and notifications (ii) the needs of the communities the LSAs seek to serve: in terms of enforcement of rights and accessing legal remedies.

An important point of clarification is that this is not a report card, or any judgment on the quality of functioning of the LSAs. Such an exercise would have to be far more comprehensive. This study explores some of the obstacles in fulfilling the role of LSAs and how they may be overcome. The final chapter makes recommendations for better functioning of the LSAs.

The LSAs of the states mentioned above were studied in terms of three of their main functions: legal aid, legal awareness, Lok Adalats. Two districts in each state were selected for study on the following basis: the district in which the State Legal Services Authority (SLSA) is located; random selection of one of the more backward districts in the state. Two taluks/tehsils in each of these districts were selected on a random basis.

The Legal Services Authorities Act, 1987, (LSA Act), as well as various regulations and policy documents of the National Legal Services Authority (NALSA), the apex body of the LSAs, lay down the duties and processes of functioning of the LSAs. This study looks closely at these documents to understand what is expected from the LSAs. It then proceeds to look at how the LSAs are functioning in the selected areas. This has been done not with the purpose of evaluating the functioning, but rather to see how the functioning can be strengthened so that the LSAs are better able to meet the expectations as expressed in the LSA Act and other relevant documents. The ultimate objective of the study is to make recommendations to improve the functioning of the LSAs.

Methodology The study combines various methodological tools including desk review, interviews, questionnaires, focus group discussions, direct observation, and a national level study of best practices. A total of 180 lawyers, 15 Lok Adalat judges/members, 180 clients/beneficiaries, 16 Legal Services Authority officials, 45 officials of various state agencies (State Human Rights Commissions, State Commissions for Women, State Commissions for Protection of Child Rights, State Disability Commissioners, State Commissions for Scheduled

Castes/Scheduled Tribes, jail authorities, supervisors of women's homes/ children's homes) and 532 women from weaker sections of society were interviewed. Focus group discussions were held with over 109 NGOs and 40 LSA paralegals. 12 Lok Adalats and 10 legal awareness camps were directly observed and interviews (as indicated above) held.

The field research was conducted between September 2011 and February 2012. Subsequently, the data was collated and compiled and the report was validated at a national level meeting of State Legal Services Authorities held on October 31, 2012 in New Delhi. It is to be noted that in the period following the conclusion of the field study there has been a spurt in activities of the selected State Legal Services Authorities and encouraging progress shown by them.

The relevant laws on the basis of which this needs assessment has been conducted:

(i) Legal Aid the Legal Services Authorities Act, 1987

❖ Section 12 the LSA Act requires LSAs to give free legal aid to:

■ Members of Scheduled Castes

■ Members of Scheduled Tribes

■ Victims of trafficking in human beings or begar

■ Women

■ Children

■ Persons with disabilities

■ Persons under circumstances of undeserved want e.g. victims of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster

■ Industrial workmen

■ Persons in custody

■ Economically vulnerable person

❖ Section 8 of the LSA Act states that SLSAs should act in coordination with other governmental agencies, nongovernmental voluntary social service institutions, universities and other bodies engaged in the work of promoting the cause of legal services to the poor. Under NALSA's Quinquennial Vision Document of 2010, District Legal Services Authorities are expected to run legal aid clinics in jails. A strong base of paralegals all over the country should be developed to act as a bridge between the people and Legal Services Authorities.

The National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010, spells out the processes for legal aid. All LSAs shall have a front office to be managed by a panel lawyer and one or more paralegal volunteers available during office hours. Matters involving litigation should be forwarded to the Monitoring Committee comprising of the Member Secretary or Secretary of the LSA and other legal practitioners. LSAs should invite applications for empanelment of lawyers with at least 3 years of experience. While selecting the panel, the "competence, integrity, suitability and experience of such lawyers shall be taken into account."

Separate panels should be maintained for dealing with different types of cases e.g. civil, criminal, constitutional, environmental, labour, matrimonial disputes. This panel prepared should be re-constituted after a period of three years. Monitoring Committees at state, district and taluk levels will monitor progress of litigation in legal aid cases. These committees will comprise of the Chairperson, Member Secretary (or Secretary) and a lawyer to be nominated by the Patron-in-Chief of the LSA. The Monitoring Committee will maintain a register for legal aid cases to record the progress and end result.

(ii) Legal Awareness under Section 4(l) of the LSA Act the LSAs should spread legal awareness particularly among the weaker sections about their rights, entitlements and privileges.

NALSA's Quinquennial Vision Document of 2010 stresses the need for legal literacy and the importance of choosing good resource persons. The legal awareness sessions should be interactive. Feedback from the participants in the legal awareness camps should be collected and evaluated. District Legal Services Authorities should select the topic for legal literacy camps on the basis of the needs of the local people. The vision document says that each State Authority should become a "household word in the State".

(iii) Lok Adalat Section 19 of the LSA Act states that central, state, district, and taluk level Legal Services Authorities will be responsible for organizing Lok Adalats to facilitate settling of disputes through voluntary compromise between the parties. Section 20 of the Act refers to the conditions under which cases can be referred to Lok Adalats. Under Section 20 (4), in their efforts to arrive at a compromise between the parties, Lok Adalats should be guided by principles of justice, equity and fair play. If no compromise is arrived at between the parties, the matter is returned to the concerned court. In case a compromise is reached, an award is passed. The consent of the concerned court need not then be obtained. No appeal can be made against this award: the decision is final and binding.

After the amendment in 2002, provision has been made under Section 22B of the LSA Act to set up Permanent Lok Adalats for compulsory pre-litigative mechanism for conciliation and settlement of cases relating to public utility services. They deal with cases regarding public utility services like water, electricity, telephones, hospitals, etc. Where the parties are able to reach an agreement, an award is passed accordingly. In case parties fail to reach an agreement, the Permanent Lok Adalat decides the dispute on merit.

The National Legal Services Authority (Lok Adalats) Regulations, 2009, states that the LSA organizing the Lok Adalat should inform every party concerned well in time so as to afford adequate opportunity for preparation. Members of Lok Adalats (who preside over the proceedings) should ensure that the parties fully understand the terms of settlement (if one is reached), and that the terms of settlement are not unreasonable, illegal or unfair.

Best practices after seeking information from State Legal Services Authorities across India, Delhi and Haryana were selected as states with the largest number of good practices that might be replicated by other states.

Good practices in Delhi include:

(i) Its legal empowerment partnership with the Delhi Government's programme of setting up Gender Resource Centres (GRCs) (ii) Training programme of panel lawyers (iii) Paralegal training of community paralegals, student paralegals and jail inmates paralegals (iv) Internship Programme (v) Assistance to rape survivors (vi) Assistance in cases of missing children (vii)Video Conferencing in jail

Good practices followed by Haryana State Legal Services Authority include: (i) Toll free helpline (ii) Legal Aid Prosecution Counsel Scheme (for legal assistance to survivors of rape and other crimes against women and children) (iii) Student literacy mission (iv) Paralegal scheme (v) Management of website (vi) Legal aid clinics

KEY FINDINGS

General Findings (Applicable to all states)

Legal Aid

❖ From 2006 to 2010 the seven states together have provided legal aid in 144,881 cases to the various categories of persons mentioned in

Section 12 of the LSA Act. [Madhya Pradesh = 37,055; Jharkhand = 5,544; Bihar = 20,174; UP = 18,738; Odisha = 13,905; Rajasthan = 24,710; Chhattisgarh = 24,755].

❖ Legal aid lawyers o All the states have a functional panel of LSA lawyers. Lawyers are selected on the basis of their experience. There is no process for training of these lawyers on the rights based approach to legal aid or developments in law. There is no particular emphasis on empanelling lawyers from marginalised sections e.g. women, Dalits, persons with disabilities, etc. There is no central database available with LSAs showing progress of cases. The case is left to the panel lawyer to take care of entirely. There is no performance appraisal of lawyers. Once the case is passed on to the lawyer, there is no institutional follow up either with the lawyer or the client. There being no evaluation process, there are no identified criteria of evaluation. Many lawyers do not get their fees. Most lawyers get Rs. 500/per case, which they complain is insufficient.

❖ Legal aid clients o Feedback is not taken from clients on their experience with LSA lawyers. There is no system in place to inform clients of a complaints mechanism in case there is dissatisfaction with the services of lawyers.

❖ Paralegals o Many paralegals are not clear about their role, and have received no training. Paralegals range from law students, NGO workers, teachers and principals, anganwadi workers, etc. Lawyers are also being empanelled as paralegals. There is no training module for paralegals

with a clear articulation of the role of paralegals, their code of conduct, do's and don'ts. There is confusion among paralegals on remuneration. Some believe they will get nothing, while some are expecting Rs. 7,500 per month.

❖ Legal aid vis-à-vis Government Agencies, NGOs o Although the LSA Act directs SLSAs to work closely with government agencies and NGOs to "promote the cause of legal services to the poor" (which in this study is being construed to include other marginalised sections), many state agencies (e.g. State Disability Commissions, State Minority Commissions) requiring legal aid have not been proactively approached by the LSAs. NGOs also seem reluctant, perhaps due to lack of familiarity with the LSAs, and are instead spending money on private lawyers to deal with cases.

Legal Awareness

❖ Legal awareness camps are being held, but not in conformity with the guidelines in NALSA's vision document. Topics, dates and timings are decided without direct consultation with the target community. Sessions are not structured systematically and often too much is packed in too short a time. The sessions are always in lecture mode with little scope for interaction except questions at the end of the session. No feedback is taken from the participants. Resource persons are usually judicial officers and panel lawyers who do not receive any particular training to be resource persons.

❖ The general population is unaware of the LSAs. Nearly all the women from economically weaker sections who were interviewed had no idea about the function of LSAs and how they could approach them for help. Most of them had not even heard about the LSAs.

Lok Adalats

❖ From 2006 to 2010 the seven states together have settled 55, 90,080 cases in Lok Adalats. [Madhya Pradesh = 16,66,133; Jharkhand = 66,402; Bihar = 4,79,841; UP = 23,40,332; Odisha = 6,46,686; Rajasthan = 3,23,119; Chhattisgarh = 67,567]

❖ Clients and lawyers are by and large happy with the outcome of Lok Adalats.

Websites, Publications, Budgets, Physical Resources

❖ The 13th Finance Commission together with funds from NALSA have made funds available for various activities. However there is both underspending as well as insufficient amount for training of paralegals, setting up legal aid clinics, etc. One of the reasons for this mismatch is lack of expert assistance in accounts/financial management and budgeting. Understaffing has made it is difficult to carry out all required activities and manage large funds.

❖ The offices in taluk and district levels lack infrastructure e.g. computers, telephones, vehicles.

❖ The websites do not have the following: provision for e-filing, case tracking by legal aid clients, grievance mechanism. They are not designed to be accessible to persons with disabilities.

Information as required under Section 4 of the Right to Information Act is not fully provided e.g. powers and duties of officers and employees; description of procedure followed in the decision making process, including channels of supervision and accountability; directory of officers and employees; monthly remuneration received by officers and employees, including the system of compensation as provided in its regulations; budget allocated, indicating the particulars of all plans, proposed expenditures and reports on disbursements made; names, designations and other particulars of the Public Information Officers

❖ All the LSAs have legal literacy materials on various topics. Most are of a good standard. Some are difficult to understand due to the use of difficult words.

RECOMMENDATIONS

Based on the key findings, the following recommendations are made in the following areas of work of the legal services Authorities:

LEGAL AID

Development of a systematic empanelment process for lawyers:

This empanelment of lawyers should have a clearly identified selection criteria. The National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010, provide for choosing lawyers with "commitment to social justice". This needs to be highlighted in the selection process, and means developed to verify the same in candidates. As an organization dedicated to social justice and equity, preference should be given to certain categories of lawyers e.g. women, SC/ST, people with disabilities, etc.

As such the following may be kept in mind in the empanelment process:

❖ Transparent system for receiving applications for empanelment through advertising in the official language of the state in at least two newspapers with wide circulation in the state, as well as notices in court premises

❖ Potential panel lawyers to be interviewed by Member Secretaries and Chairpersons of LSAs

❖ Selection of lawyers on the following criteria:

Lawyers with minimum three years of experience, due regard given to additional years of experience. Preference to be given to lawyers with experience on cases affecting persons mentioned in Section 12 of the LSA Act (Members of Scheduled Castes/ Scheduled Tribes; victims of trafficking in human beings or begar; women; children; persons with disabilities; persons under circumstances of undeserved want e.g. victims of a mass disaster/ ethnic violence/ caste atrocity/ flood/ drought/earthquake/industrial disaster; industrial workmen; persons in custody; economically vulnerable persons) Lawyers with proven track record of commitment to social justice. This can be measured by experience in social justice issues e.g. pro bono assistance to marginalised, association with state agency/ NGO committed to social justice

❖ Preference to be given to lawyers from marginalised sections e.g. women, members of Scheduled Castes/ Scheduled Tribes, minorities, people with disability, etc.

❖ Process to be completed within 3 months

❖ New panel to be constituted every 3 years, with existing panel continuing till replaced by new one. Panel lawyers can be re-appointed subject to satisfactory performance. Monitoring and evaluation of lawyers:Monitoring and evaluation can be done through a combined process of case tracking and client feedback. This can be done by the following system:

❖ Setting up of Monitoring Committees (as stipulated in the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010) at state, district and taluk levels to monitor progress of litigation in legal aid cases. These committees will comprise of the Chairperson, Member Secretary (or Secretary) and a lawyer to be nominated by the Patron-in-Chief of the LSA.

❖ LSA lawyers should provide monthly reports on the status of their legal aid cases. Paralegals/lawyers managing front offices to daily update the register of cases in front offices. Paralegals should also send monthly updates on their activities. Payments to lawyers and paralegals should be made only on satisfactory reporting.

❖ The Monitoring Committee will maintain a register for legal aid cases to record the progress and end result. The Monitoring Committees should submit bi-monthly reports containing their assessment of the progress of the legal aid cases and the performance of the panel and retainer lawyers. These reports should be submitted to the Executive Chairman or Chairman of the Legal Services Authority. The District Legal Services Authorities and Taluk Legal Services Committees should submit copies of the bi-monthly reports of their Monitoring Committees to the Executive Chairman of the State Legal Services Authority. The State Legal Services Authorities should send consolidated half- yearly reports of the Monitoring Committees, indicating the success or failure of each of the legal aided cases, to the Central Authority (NALSA).

❖ Status of cases to be updated at least once a month on the LSA website.

❖ Clients approaching the LSA for legal aid should be specifically informed about where they can complain if they face problems from the lawyer. Information on the complaints mechanism should be visibly displayed in a prominent part of the front office/LSA office. Feedback should be taken from clients on their experience. Randomized cross-checking with clients and inspection of case records is recommended.

❖ Complaints received to be dealt with promptly by appropriate authorities.

❖ An annual assessment of lawyers and paralegals should be made on such criteria as number of cases with due regard to complexity of cases, time spent on LSA activities, feedback from clients/ peers.

Training of panel lawyers: Legal aid lawyers need training not only on developments in the law, but in attitudes towards marginalised sections. They need to be oriented towards social justice issues and the rights based approach to legal aid. A structured training of even two days in a year will suffice. Orientation training of a longer duration is recommended for newly appointed lawyers. The training session should include a refresher on developments in law with reference to the categories of persons mentioned in Section 12 of the LSA Act.

Regular payment of fees: Payment of dues to lawyers and paralegals as per rules should be settled on a monthly basis subject to receipt of status/activity reports. Complaints on non-receipt of dues should be made to the relevant LSA.

Legal aid clients Grievance redress mechanism: Persons seeking legal assistance should be informed about the scope of the legal aid being offered (e.g. categories of persons mentioned under Section 12 of the LSA Act as being entitled to free legal aid, paralegals and lawyers of the LSA are not to paid separate fees, procedure for filing complaints if a client is dissatisfied with quality of legal assistance provided). A leaflet can be prepared for the purpose and handed to each person who approaches the LSAs for assistance. Information on the complaints mechanism should be visibly displayed in a prominent part of the front office/LSA office.

Feedback: Clients should be approached after three months from date of their seeking legal aid and every 6 months thereafter for feedback on the assistance they have received from lawyers, paralegals. Paralegals Selection and training of paralegals: Paralegal volunteers are required to play a significant role both in providing legal assistance and in providing basic information on law. As they are likely to be the first point of contact between the public and the LSAs, the importance of selecting appropriate and suitable paralegals cannot be overemphasized. The role of the paralegals should be clearly articulated in terms of Do's and Don'ts. As spelt out in the NALSA vision statement, a paralegal is one who would not be in a strict sense giving legal advice to an individual but assist an individual in obtaining the services of NALSA and other Legal Services Authorities in case of necessity. Such a person would be expected to have some rudimentary knowledge of the basic rights of individuals, functioning of courts, functioning of Legal Services Authorities and the functioning of some of the organizations such as Municipal Corporations and District Administration. Paralegal training should include the following:

❖ Understanding the role and requirements of paralegal volunteers (NALSA vision of paralegals; Do's and Don'ts for paralegals)

❖ Standard operating procedures (documenting cases, client briefings, maintaining client confidentiality, proactive intervention in necessary cases)

❖ Common problems faced by paralegals and how to deal with them

❖ Key provisions of rights of marginalised sections, particularly those mentioned in Section 12 of the LSA Act

❖ Basic governance structures and redress mechanisms A comprehensive paralegal manual/handbook with these aspects as well as course content should be developed. In preparation of this, inputs should be taken from those with experience in the matter of paralegals e.g. NGOs, academics, paralegals themselves. Additionally, several organizations are working on paralegal development and there is a pool of trained paralegals who can be absorbed in the LSA cadre of paralegals. A test could be developed to verify their knowledge and suitability to function as LSA paralegals. Legal Aid vis-à-vis Government Agencies, NGOs Coordination with Government Agencies and NGOs: The LSAs should proactively approach various state agencies e.g.

❖ State Human Rights Commission

❖ State Commission for Women

❖ State Commission for Protection of Child Rights

❖ State Commission for Scheduled Castes/Scheduled Tribes

❖ State Commission for Minorities

❖ State Commission for Disability

❖ Jail Authorities

❖ Women's Home Authorities

❖ Children's Home Authorities

❖ NGOs working on the rights and welfare of the marginalised The LSAs can develop as the 'one stop shop' for legal aid and legal assistance for the marginalised and such organizations/agencies as represent them. This is also the direction the Supreme Court is taking in its directions involving the LSAs. Thus, in *Sampurna Behrua v. Union of India & Ors. [W.P.(C) No.473/2005]*, the Supreme Court directed the National Legal Services Authority to put in place Legal Aid Centres attached to the Juvenile Justice Board (s) in the State capitals where there is a high pendency. Legal awareness programmes could also be conducted in coordination with these organizations/agencies, thereby leading to better institutional linkages. The LSAs should be the natural referral point for institutions/ organizations dealing with the rights of the poor and the marginalised. NGOs working with these sections should be encouraged to approach the LSAs for legal aid. In case there is any doubt regarding the credentials of an NGO verification can always be done with the help of the police.

LEGAL AWARENESS

Spreading legal awareness at the community level has to meet the challenge of reaching an uninitiated audience in a limited frame of time and providing information on law in a way that can be easily understood and remembered. These camps should be carefully designed keeping in mind the following:

❖ Topics for the legal awareness camp should be decided in consultation with the local community. This also gets them involved in the process.

❖ The timings should be reasonable and at the convenience of the participants rather than the resource persons.

❖ Sessions should be structured systematically. Packing in too much information in too short a time leads to confusion rather than awareness. Resource persons should be encouraged to use films, role play and other interactive methods rather than only lectures.

❖ The role of resource persons should not automatically be thrust on LSA officials and panel lawyers. A pool of suitable resource persons should be developed. Resource persons should be selected on their knowledge of the subject as well as communication skills. If required, they can be trained on interactive techniques.

❖ Legal literacy materials on the issue should be invariably distributed among the participants for future reference.

❖ Feedback should be taken from the participants at each legal awareness camp. This can be done by feedback forms if the participants are adequately literate, or by oral recording. Suggestions should be taken from participants for improvement.

NALSA's Quinquennial Vision Document of 2010 aspires that LSAs should be a household name in each state. The general populace is largely unaware of the existence of LSAs, much less their functions and how to approach them. An effective publicity campaign involving mass media (especially radio and TV) should be launched to make people aware of the LSAs.

LOK ADALATS

Although Lok Adalats have been fairly effective in all the states, their efficacy can be enhanced by spreading awareness among the public on the usefulness of Lok Adalats. Meetings can also be held with lawyers and Bar Associations to reduce the reluctance among some lawyers to encourage their clients to settle matters in Lok Adalats. Lok Adalat members should be trained/briefed on the relevant provisions of the LSA Act and the provisions of the National Legal Services Authority (Lok Adalats) Regulations, 2009.

Websites, Publications, Budgets, Physical Resources

❖ An urgent need is enhancing the financial management and budgeting skills of the LSAs by a combination of training of staff as well as appointment of accounts staff/establishment of

accounts wings. ❖ Infrastructure in the offices particularly at the taluk and district levels needs to be developed with adequate numbers of computers, telephones, vehicles and particularly staff. A competent person/ consultant should be appointed to manage the website.

❖ LSA websites should have the following:

Calendar of activities o Contact details of lawyers and paralegals o Annual reports

a) LSA Act, Rules and Regulations
b) LSA Schemes o Legal literacy materials
c) Provision for e-filing of applications
d) Updated status of legal aid cases Complaints mechanism to register any grievance on-line

Web accessibility so that the website is disabled friendly: A set of globally accepted standards called WCAG – Web Content Accessibility Guidelines – has been established by WAI (Web Accessibility Initiative) which is part of W3C (World Wide Web Consortium). Following is a quick glance at some of the more important requirements for an accessible website:

§ Provide text alternatives for non-text content

§ Provide captions and other alternatives for multimedia

§ Create content that can be presented in different ways, including by assistive technologies, without losing meaning

§ Make it easier for users to see and hear content

§ Make all functionality available from a keyboard

§ Give users enough time to read and use content

§ Do not use content that causes seizures

§ Help users navigate and find content

§ Make text readable and understandable

§ Make content appear and operate in predictable ways

§ Help users avoid and correct mistakes

§ Maximize compatibility with current and future user tools (including assistive tools)

❖ Information as required under Section 4 of the Right to Information e.g.

Particulars of organization, functions and duties

Powers and duties of officers and employees

Description of procedure followed in the decision making process, including channels of supervision and accountability, Directory of officers and employees, Monthly remuneration received by officers and employees, including the system of compensation as provided in its regulations, Budget allocated to each of its agencies, indicating the particulars of all plans, proposed expenditures and reports on disbursements made, Names, designations and other particulars of the Public Information Officers, Legal literacy materials should be printed in

sufficient quantities for dissemination at legal awareness camps. Materials should be available on the rights of all categories mentioned in Section 12 of the LSA Act. For new materials, pre-testing should be done with marginalised sections and feedback taken on appropriateness, simplicity, etc. Materials should printed only after incorporating suggestions emerging from pre-testing. Films are an engaging method of spreading legal literacy. LSAs should explore making legal literacy films of 15-20 minutes each on the rights of the various marginalised sections as set out in Section 12 of the LSA Act.

SESSION NO 3

COMPENSATION TO THE VICTIM: ROLE OF SLSA

1. Restorative Justice and Victims: Right to Compensation: By: Haveripeth. Prakash D[1].

Abstract:

The proponents of the justice argue that punishment is society's customary response to crime; it neither meets the need of victim nor prevents re-offending. Restorative justice aims at encouraging offenders to take responsibility for the consequences of their actions, express repentance and repair the harm they have done. Restorative justice also emphasizes the reintegration of offenders into communities rather than their control through strategies of punishment and exclusion. Restorative justice is an evolving response to crimes that respect the dignity and equality of each person, builds understanding, and promotes social harmony. This process provides an opportunity for victims to obtain reparation, feel safer and seek closure, allow offenders to game insight into the cause and effects of their behaviour and take responsibility in a meaningful way, and enable communities to understand the underlying causes of crime. What required is a paradigm shift from punitive justice, to restorative justice, which will meet to the need for restitution or reparation of harm to the victims and prevail over demand for punishment. In the light of above, an attempt will be taken to analyse the position of the victim under criminal justice system and the existing law on the victim's right and compensation in India.

Introduction

Restorative justice revolves around the ideas that crime is, in essence, a violation of a person by another person (rather than a violation of legal rules); that in responding to a crime our primary concerns should be to make offenders aware of the harm they have caused, to get them to understand and meet their liability to repair such harm, and to ensure that further offences are prevented; that the form and amount of reparation from the offender to the victim and the measures to be taken to prevent remembers of their communities through constructive dialogue in an informal and consensual process; and that efforts should be made to improve the relationship between the offender and victim and to reintegrate the offender into the law-abiding community. The proponents of the restorative justice argue that punishment society's customary response to crime; neither meets the need of victim nor prevents reoffending. Restorative justice aims at encouraging offenders to take responsibility for the consequences-of their actions; express repentance and repair the harm they have done. Restorative justice. Also emphasizes the reintegration of offenders into communities rather than their control through strategies of punishment and exclusion. Restorative justice is an evolving response to crimes that respect the dignity and equality of each person, builds understanding, and promotes social harmony. It is now believed that many times the Victim induces or facilitates the commission of crime. There are certain offences in which the victim plays a very important role and the works towards the success of crime, e.g., abortion, prostitution. The study of victim-offender relationship is,

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therefore, considered necessary today for determining the question of guilt of the offender and for fixing up the nature and amount of penalty for the offender. This process provides an opportunity for victims to obtain reparation, feel safer and seek closure, allow offenders to gain insight into the cause and effects of their behavior and to take responsibility in a meaningful way, and enable communities to understand the underlying causes of crime. The priority of the criminal justice system should be resolving conflict between the offender and the victim therefore the aim should be to meet to i. victim's needs, ii. to convince the offender his responsibility of the crime and the loss/injury/harm caused by the crime and iii. his liability to repair the offender this process move stress is given to reconciling the offender with the victim and the community by voluntarily paying compensation for the harm caused. What required is a paradigm-shift from punitive justice to restorative justice, which will meet to the need for restitution or reparation of harm to the victims and prevail over demand for punishment. Only recently, society has woken up to the realization of victim's plight and related unfairness of the whole system. The idea of relief and compensation to victims is not a new one. Earlier too, our laws provided for compensation to the victims of accidents. In some cases, the law combined punishment of the offender with monetary satisfactions for the injured party as a means of foretelling enmity through counter-violence by the victim's kin. In the 1950s, an English reformer initiated a modern movement to bring the victim back into the justice equation. "Victim compensation" refers to payments made from state funds to victims of crime. Advocates of victim compensation have argued that since the state is responsible for protecting its citizens from crime, the failure to do so obligates the state to indemnify those who are victimized. The state is believed to be responsible to the victims because imprisonment prevents offenders from paying damages. The general welfare policy also is cited as justification for governmental assistance to the unfortunate victims of crime.

The Indian Law, as compensatory measures victims of crimes, is not in enough and this aspect needs to be reviewed by the legislature to frame or enact necessary law, so as to sufficiently compensate to victims of crimes and to provide safeguards to victims of crimes, besides compensating him in monetary terms. Stephen Schafer studied existing compensation schemes in 29 countries in 1958-59 and gave the following suggestions

i Compensation to victims of crime could be brought within the purview of criminal procedure and dealt with in the same criminal court which deals with the offence. ii. Compensation may be claimed by the victim but if he doesn't, the court should deal with it as part of its fundamental duties. iii. If the question of compensation leads to delay in the pronouncement of sentence, the court should pass a part sentence and may postpone its decision in relation to compensation. iv. Compensation should be fixed with reference to offender's economic and social position. v. Where the offender is not in a

position to compensate, the state must undertake its responsibilities. vi. The state should set up a compensation Fund with the aid of fine and other sources of revenue.

The U.N. Congress on Prevention of Crime and Treatment of Offender took up the cause and a contributed substantially in drafting a declaration of victim's right. It was placed on the agenda of the 7 U.N. Congress in Milan, August-September 1985. The U.N. General Assembly adopted the Basic Principles of Justice for Victims of Crime and Abuse of Power; this declaration is specifically concerned with societal response to the needs of the victim. The declaration deals with two focal areas: (a) victims of crime and (b) victims of abuse of power". The first category relates to conventional definition of crime and the declaration lays down norms for providing for i. standards for access to justice and fair treatment, ii. restitution from the 'offender, iii. compensation from the State and. iv legal assistance. The Declaration recognized the following rights of victim of crime i. Access to justice and fair treatment - This right includes access to the mechanisms of justice and to prompt redress, right to be informed of victim's rights, right to proper assistance throughout the legal process and right to protection of privacy and safety. ii. Restitution - including return of property of payment for the harm or loss suffered; where public officials or other agents have violated criminal laws, the victims should receive restitution from the State. iii. Compensation - when compensation is not fully available from the offender or other sources, State should provide financial compensation at least in violent crimes, resulting in bodily injury for which national funds should be established. iv. Assistance - victims should receive the necessary material, medical, psychological, and social assistance through governmental, voluntary and community' - based means. Police, justice, health, and social service personnel should receive training in this regard. The main objectives of this article are

i. To know the problems of victims, ii. To understand the offences against the victims, iii. To know the laws related to victims, iv. To understand the compensation of victims, v. To know the Rights of victims, vi. To know the remedies of victims

Laws Relating to Compensation

The provision relating to compensation to the victims of crime by the offender are contained in Section 357 of the Criminal Procedure Code, 1973 and Section 5 of the Probation of Offenders Act, 1959 and some other statues Section 5 of the Probation of Offenders Act empowers a trial court, in its discretion, to order for 'reasonable compensation' to any person for his loss or injury caused to him by the offender who is released under Section 3 or Section 4 of the Act. The power to compensate the victims of crime under Section 357 of the Criminal Procedure Code is not a new remedy provided under Criminal Procedure Code of 1973. Even Sections 545 and 546 of the Criminal Procedure Code, 1998 provided for compensating victims of crime. The Law Commission of. India noted in its Forty First Report (1969) our courts did not exercise their statutory powers under this section as freely and liberally as they could be desired. The Commission favored payment of compensation out of fine imposed on the offender.

Accordingly, With a view to give a substantive power to the trial court to this effect, it recommended insertion of a substantive provision for payment of compensation to the victim of crime.

Under Section 357(1) of .the Criminal Procedure Code the court has been empowered to order the payment of compensation to the victim of an offence out of the fine imposed on the accused person while passing an order of sentence of which fine forms a part. Clause (b) of sub-section (1) provides that for compensating the person who has himself suffered injury or loss when compensation is recoverable by a person in a civil court. Clause (c) contains a provision for compensating the heirs and dependents of the person who is victim of a homicide. Sub-section (3) of Section 357 of the Code, which was introduced for the first time in 1973, provides that when a court imposes a sentence of which fine does not form a part, it may direct the accused to pay compensation. Clauses (a) to (d) subsection (1) of Section 357 reproduce word for word clauses (a)(b), (bb), and (c) respectively of the old sub-section (1) of Section '545 with the only change that definite article 'The' has been inserted in clause (a) before the word 'expenses'. Section 357(3) runs: 'When a Court imposes a sentence of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced".

It is indeed a step forward in our criminal justice system and reflects the concerns of the legislature for the victims of crime who suffer loss or injury due to the act, neglect or default of the accused. The object of sub-section (3) of Section 357 is to empower the court to award compensation to the heirs and dependents for the loss resulted from the death of the victim of the crime. The compensation should be payable for any loss or injury, whether physical or pecuniary and the court shall give due regard to the nature of the injury, the manner of inflicting the same, the capacity of the accused to pay and other relevant factors. Thus, by the new Section, the jurisdiction of the criminal court has been extended to liberally order for compensating a victim of crime for his loss or injury even in those cases where fine dies not form a part of the sentence, which ordinarily lies in the domain of the civil court. The restorative and reparative theories that have developed in response to the plight of the victims of crime also underline the necessity of compensate the victims of crime. -Their Argument is that sentence should move away from punishment of offender towards restitution and reparation, aimed at restoring the harm done and calculated accordingly. Restorative theory encompasses the notion of reparation for the effects of the crime. It envisages less resort to custody, with onerous community based sanctions requiring offenders to work in order to compensate victims and also contemplating

support and counseling offenders to reintegrate them into community. Such theories therefore tend to act on a behavioral premise similar to rehabilitation, but their political premise is that compensation for victims should be recognized as more important than notice of just punishment on behalf of the state.

The Supreme Court of India observed plight of the rape victims in India and expressed serious concern and suggested that the defects in criminal laws be removed soon. The Court observed as follows in Delhi Domestic Working Women's Forum v. Union of India. "The defects in the present system are firstly, complainants are handled roughly and are not giving such attention as is warranted. The police, more often than not. Humiliate the victims. The victims have invariably found rape trials an experience. The experience of giving evidence in Court has been negative and destructive. The victims often say, they considered the ordeal to be even worse than the rape itself. Undoubtedly the Court proceedings added to and prolonged the psychological stress they had to suffer as a result of the rape itself."

In view of this, the Court laid down the following guidelines for trial of rape cases: i. The complainants of sexual assaults cases should be provided with legal representation. Such a person must be well acquainted with criminal justice. The victims advocate's role should not be only to explain to her the nature of proceedings, to prepare her for the case and to assist her in the police station and in Court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example, mind consulting or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represents her until the end of the case. ii. Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state at the police station the guidance and support of a lawyer at this stage would be of great help to her. iii. The police should be under a duty to inform the victim of her right to representation before any questions were asked of her and the police report should state that the victims was so informed. iv. A list of advocates willing to act in these cases should be kept at the police station for victims who did not have any particular lawyer in mind, or whose own lawyer was unavailable. v. The advocate shall be appointed by the Court on application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay advocates would be authorized to act at the police station before leave of the Court was sought or obtained. vi. In all rape trials anonymity, (name not to be disclosed), of the victim must be maintained, as far as necessary. vii. It is necessary, having regard to the directive principles contained under Art.38 (1) of the Constitution, to set Criminal Injuries Compensation Board. Rape victims frequently incur substantial loss. Some, for example, are too terrorized to continue in employment. Viii. Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries compensation Board whether or

not a conviction has taken place. The Board will take into account pain, suffering and shock as well as the loss of earnings due to pregnancy and childbirth if this accrued as result of rape.

The National Commission for Women should be asked to frame schemes for compensation and rehabilitation to ensure justice to victims of such crimes. The Union of India shall then examine and take necessary steps to implement them at the earliest. The Committee feels that the system must focus on justice to victims and has, thus, made the following recommendations, which include the rights of the victim to participate in cases involving serious crimes and to adequate compensation. The victim, and if he is dead, his legal representative shall have the right to be impleaded as a party in every criminal proceeding where the offence is punishable with 7 years imprisonment or more. In select cases notified by the appropriate government, with the Permission of the court an approved voluntary organization shall also have the right to impaled in court proceedings. The victim has a right to be represented by an advocate of his choice; provided that an advocate shall be provided at the cost of the State if the victim is not in a position to afford a lawyer. The victim's right to participate in criminal trial shall, inter alia, include:

i. To produce evidence, oral or documentary, with leave of the Court and/or to seek directions for production of such evidence. ii. To ask questions to the witnesses or to suggest to the court questions, which may be put to witnesses? Iii. To know the status of investigation and to move the court to issue directions for further investigation on certain matter or to a supervisory officer to ensure effective and proper investigation to assist in the search for truth. iv. To be heard in respect of the grant or cancellation of bail. v. To be heard whenever Prosecution seeks to withdraw and to offer to continue the prosecution. vi. To advance arguments after the Prosecution has submitted arguments. vii. To participate in negotiations leading to settlement of compoundable offences.

The victim shall have a right to prefer an appeal against any adverse order passed by the court acquitting the accused, convicting for a lesser offence, imposing inadequate sentence, or granting, inadequate compensation. Such appeal shall lie to the court to which an appeal ordinarily lies against the order of conviction of such court. Legal services to victims in select crimes may be extended to include psychiatric and medical help, interim compensation, and protection against secondary victimization. Victim compensation is a State obligation in all-serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be organized in a separate legislation by Parliament. The draft bill on the subject submitted to Government in 1995 by the Indian Society of Victim logy provides a tentative framework for consideration. The Victim Compensation Law will provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authority. The law should

provide for the scale of compensation in different offences for the guidance of the Court. It may specify offences in which compensation may not be granted and conditions under which it may be awarded or withdrawn. It is the considered view of the Committee that criminal justice administration will assume a new direction towards better and quicker justice once the rights of victims are recognized by law and restitution for loss of life, limb and property are provided for in the system. The cost for providing it is not exorbitant as sometimes made out to be. With increase in quantum of fine recovered.

Conclusion

The expanding universe of compassionate criminology must so respond realistically to the new challenge of human rights and social justice as to salvage, solace and resituate victims of crime and abuse of power by resorting to new methodologies of reparative, compensatory, preventive and other judicial remedies. The victims of crime must claim our attention. Injustice to him/her can be fully undone only by recitative justice, beyond punishment of the offender. The most important interest of the victims of crime is restitution, from the victim's point of view; restitution is beneficial because it helps to make whole the victim's crime related loss. The present laws in the absence of legal mandate to pass an order of restitution to the victim of crime in appropriate case only do lip service to them. Making a mandatory provision for compensating the victim of crime by offender *may* not solve all the problems of the victim of crime, because this provision also will suffer from the same disadvantage that the offender in most of the cases would be discharged or acquitted due to lack of evidence or other technicality in the procedure. As the provision merely emphasizes that the victim of crime be compensated only on conviction, it is not likely to be of real help. There is therefore an urgent need to establish a victim assistance and compensation board to provide assistance and compensation to the victim of crime. Therefore, it is high time that the government of India should come forward with a scheme/program to provide compensation and assistance to the victims of crime for their loss or injury. As we know the victims as well as the accused/offenders in most cases are necessarily poor, restitution alone cannot solve the problems of the victim of crime. Therefore, a consolidated victim welfare fund may be created on a statutory basis, the fund will be created from the total amount collected by the State as fine from the offenders/accused and also a suitable and matching grant should be provided by the State. A Board named, as victim Welfare *Board,* which will be *of* non-political composition, will administer the fund. The payment of compensation shall be left *to* the discretion of the Board and it may refuse payment where there has been undue delay in reporting *to* police about the occurrence and also where the victim contributed to the commission of the crime.

For too long the victim of crime have been forgotten and forsaken lots of the criminal justice system. If the victims come to regard their treatment as unfair, distorting of reality or little concerned with their own rights, feeling and interest or if the decisions are made which are felt to be unsatisfactory, it is possible that this Secondary Victimization" by the system may lead *to* disinterest and future non cooperation by the victim. When the victim chooses not to cooperate with the system, it will collapse. Therefore, there is a need for renewal of emphasis and enhanced sensitivity to the rights of the victim. Victim's right *to* assistance is *now* more acceptable in the developed countries. In India, though there are very limited legal provisions for compensation *to* the victims of crime by the offender, it received a very cold reception at the hands of judiciary. Hence, there is an urgent need for streamlining the system by legitimately including victim's rights and interests in the system. So also, the victim should be made "whole" with monetary recovery and support service.

In this context, it is pertinent *to note* that the Supreme *Court* in *State* of *Gujarat v. Honorable High Court* of *Gujarat*[10] directed the state governments to frame law *to* pay compensation *to* the victims of crime from the earning during their sentence period. Such compensation should either be paid directly to the victims or through common fund *to* be created *for* this purpose or any other feasible mode. Enacting a law on these lines will be in the fulfillment of the constitutional obligation of the State under Articles 39 (1) and 41 of the Constitution of India, which vouchsafe justice and equal protection of law. The new enactment will also be in accordance with U.N. Declaration *of* Basic Principles *of* Justice for Victims *of* Crime and U.N. Declaration of Basic Principles and Guidelines on the "Right *to* Reparation for victims *of* violation *of* Human Rights.

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2. *Laxmi v. Union of India (Supreme Court)(2014) SCC (4) 427*

FACTS: Laxmi, whose face and other body parts were disfigured in the acid attack, had a PIL in 2006. A minor then, Laxmi was attacked with acid by three men in New Delhi, as she had refused to marry one of them. She had filed a PIL seeking for the framing of a new law, or amendment to the existing criminal laws, for dealing with the offence, besides asking for compensation. She had also pleaded for a total ban on sale of acid, citing increasing number of incidents of such attacks on women across the country.

On 6.2.2013, a direction was given to the Home Secretary, Ministry of Home Affairs associating the Secretary, Ministry of Chemical & Fertilizers to convene a meeting of the Chief Secretaries/concerned Secretaries of the State Governments and the Administrators of the Union Territories, inter alia, to discuss the following aspects:

- Enactment of appropriate provision for effective regulation of sale of acid in the States/Union Territories
- Measures for the proper treatment, after care and rehabilitation of the victims of acid attack and needs of acid attack victims,
- Compensation payable to acid victims by the State/or creation of some separate fund for payment of compensation to the acid attack victims.

DECISION: In this case, the court directed that the acid attack victims shall be paid compensation of at least Rs. 3 lakhs by the concerned State Government/Union Territory as the after care and rehabilitation cost. Of this amount, a sum of Rs. 1 lakh shall be paid to such victim within 15 days of occurrence of such incident (or being brought to the notice of the State Government/Union Territory) to facilitate immediate medical attention and expenses in this regard. The balance sum of Rs. 2 lakhs shall be paid as expeditiously as may be possible and positively within two months thereafter.

The Chief Secretaries of the States and the Administrators of the Union Territories shall ensure compliance of the directions that have been issued in the judgement. Various other important orders have also been passed by the Court directing the authorities formed at various levels to carry out a specific task. One of them is the order issued by the Supreme Court on April 10, 2015, for the enactment and publicity of the Victim Compensation Scheme in concerned states so as to provide relief and rehabilitation to the victims.

REASONING: Section 357A came to inserted in the Code of Criminal Procedure, 1973 by Act 5 of 2009 w.e.f. 31.12.2009. Inter alia, this Section provides for preparation of a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

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3. *Ankush Shivaji Gaikwad v. State of Maharashtra AIR 2013 SC 2454 (Supreme Court)*

Facts: The appellant-Ankush Shivaji Gaikwad accompanied by Madhav Shivaji Gaikwad (accused No.2) and Shivaji Bhivaji Gaikwad (accused No.3) were walking past the field when there was a scuffle between the deceased and the accused persons in the course. On account of the injury inflicted upon him, the deceased fell to the ground. All the three accused persons ran away from the spot. The deceased was rushed to the hospital. But, the deceased eventually succumbed to his injuries. According to the doctor, the death was caused by the injury to the head. Appraisal of the evidence adduced by the prosecution led the trial Court to hold the appellant and his co-accused guilty for the offence of murder. A criminal appeal was preferred before the High Court of Bombay.

Issue: Whether any compensation be awarded against the Appellant and in favour of the bereaved family under Section 357 of the Code of Criminal Procedure, 1973

Decision: The benefit of Exception 4 to S. 300 was awarded to the appellant. The conviction by lower courts was under S. 302 and sentence of RI for life. But the Supreme Court altered to one under S. 304 Pt. II and was thus sentences to be imprisoned for a term of 5 years of Rigorous Imprisonment.

Reasoning: The sentence was altered on the basis of consideration of and determination of the nature of injury, weapon used, and part of body on which injury inflicted to the deceased.

Looking at S. 357 in this perspective it appears that the provision confers a power coupled with a duty on the Courts to apply its mind to the question of awarding compensation in every criminal case. The power to award compensation was intended to re-assure the victim that he or she is not forgotten in the criminal justice system. The occasion to consider the question of award of compensation would logically arise only after the Court records a conviction of the accused. Capacity of the accused to pay which constitutes an important aspect of any order under S. 357, Cr.P.C. would involve a certain enquiry albeit summary unless of course the facts as emerging in the course of the trial are so clear that the Court considers it unnecessary to do so.

It follows that unless S. 357 is read to confer an obligation on Courts to apply their mind to the question of compensation, it would defeat the very object behind the introduction of the provision. If application of mind is not considered mandatory, the entire provision would be rendered a dead letter. As S. 357, Cr.P.C., confers a duty on the Court to apply its mind to the question of compensation in every criminal case, it necessarily follows that Court must disclose that it has applied its mind to this question in every criminal case. Such an enquiry can precede an order on sentence to enable the Court to take a view, both on the question of sentence and compensation that it may in its wisdom decide to award to the victim or his/ her family.

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4. *Suresh & Anr vs State Of Haryana (Supreme Court) (2015) 2 SCC 227*

Facts: On 18th December, 2000, the deceased and his son deceased had been kidnapped and ransom was demanded for their release. Since, the family could not fulfil the demand and offer to pay rupees ten lacs was not accepted by the kidnappers. The police was not informed on account of the fear.

The disclosure statement of one person brought this fact to light that the two persons had been killed. After the required investigation, the accused were sent up for trial. The trial Court convicted and sentenced the appellants for kidnapping and murder and concealing evidence in conspiracy and by common intention. The decision was affirmed by the High Court. The court had asked the learned counsel for the parties to make their submissions as to applicability of S. 357 A of the Code of Criminal Procedure providing for compensation by the State to the victims of the crime.

Decision: appeal dismissed. Interim compensation of rupees ten lacs was ordered to be paid to the family, by the Haryana State Legal Services Authority within one month. If the funds are not available for the purpose with the said authority, the State of Haryana will make such funds available within one month and the Legal Services Authority will disburse the compensation within one month thereafter.

Reasoning: The object and purpose of the provision is to enable the Court to direct the State to pay compensation to the victim where the compensation under S. 357 was not adequate or where the case ended in acquittal or discharge and the victim was required to be rehabilitated. Under this provision, even if the accused is not tried but the victim needs to be rehabilitated, the victim may request the State or District Legal Services Authority to award him/her compensation.

The court also discussed the rights of the victims as recognized by the UN General Assembly in resolution titled "Declaration on Basic Principles of Justice for Victims and Abuse of Power, 1985". It contained the provisions on restitution and compensation. The court acknowledged the fact that 25 out of 29 State Governments have notified victim compensation schemes. The schemes specify maximum limit of compensation and subject to maximum limit, the discretion to decide the quantum has been left with the State/District legal authorities. Also that even though almost a period of five years has expired since the enactment of Section 357A, the award of compensation has not become a rule and interim compensation, which is very important, is not being granted by the Courts. Moreover, the upper limit of compensation fixed by some of the States is arbitrarily low and is not in keeping with the object of the legislation.

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5. *Suo Motu Writ Petition (Criminal) NO. 24 of 2014 AIR 2014 SC 2815*

Facts: The Supreme Court, based on the news item published in the Business and Financial News dated 23.01.2014 relating to the gang-rape of a 20 year old woman of Subalpur Village, in the State of West Bengal on the orders of community panchayat as punishment for having relationship with a man from a different community, by an order, took *suo motu* action and directed the District Judge in the area to inspect the place of occurrence and submit a report to the Supreme Court within a period of one week from that date.

On perusal of the report, it was found out that there was no information in the report as to the steps taken by the police against the persons concerned, directed the Chief Secretary, West Bengal to submit a detailed report in this regard within a period of two weeks. An amicus curiae was thereafter appointed, to assist the court in this matter.

Issue: Earlier, Section 357 ruled the field which was not mandatory in nature and only the offender can be directed to pay compensation to the victim under this Section. But, under the

new Section 357A, the onus is put on the District Legal Service Authority or State Legal Service Authority to determine the quantum of compensation in each case.

Decision : The court opined that the victim should be given a compensation of at least Rs. 5 lakhs for rehabilitation by the State. Respondent No. 1 (State of West Bengal through Chief Secretary) was directed to make a payment of Rs. 5 lakhs, in addition to the already sanctioned amount of Rs. 50,000, within one month. It was also clarified that according to Section 357B, the compensation payable by the State Government under Section 357A shall be in addition to the payment of fine to the victim under Section 326A or Section 376D of the IPC.

Reasoning: The decision in the case was entirely based on the scheme of S. 357A of Cr.p.c. that enshrines the procedure for compensation to the victims and the facts and circumstances of the case. The court highlighting the importance of the compensation to the victim stated that the obligation of the State does not extinguish on payment of compensation, rehabilitation of victim is also of paramount importance. The mental trauma that the victim suffers due to the commission of such heinous crime, rehabilitation becomes a must in each and every case.

SESSION NO 4
SELECTION AND TRAINING OF PAR-LEGAL VOLUNTEERS

1. Launching of Para Legal Training and Legal Aid Activities: Address by Hon'ble Mr. K.G. Balakrishnan, Chief Justice of India

Dr. M. Veerappa Moily (Union Minister for Law and Justice) Justice P. Sathasivam, Chief Justice H.L. Gokhale, Esteemed colleagues from the High Court of Madras, Mr. P. Michael Vetha Siromony (Director, RGNIYD) Prof. V.N. Rajasekharan Pillai (Vice-Chancellor, IGNOU) Prof. S. Sivakumar (Professor, ILI) And Ladies and Gentlemen, This is indeed a red-letter day since it marks the launch of a very ambitious programme to train young people as 'paralegals', who can then work to expand the reach of legal aid activities. In this regard, I would like to extend my best wishes and firm support to the Rajiv Gandhi National Institute of Youth Development which has taken the initiative to commence such a training programme.

Even though the Legal Services Authorities at the National, State and District levels are a relatively recent creation in our legal system, efforts to provide legal aid can indeed be traced back to the period of colonial rule. After the enactment of our Constitution, the justice-delivery system took on the mantle of promoting values such as 'equal protection before the law' and non-discrimination on grounds of identity or social status. It is of course a truism that we are still pursuing these objectives by way of sustained efforts to improve access to justice for the marginalized sections of society. We must constantly remind ourselves of the fact that a person's ability to access the judicial system is often seen as a function of social status and economic capacity. The failure to change this social reality can have long term costs for the country. Hence, it is the 'equality of opportunity' in the sense of improving access to independent and expeditious justice-delivery which should be the guiding principle.

The beginnings of the modern legal aid movement in India can be traced to the 1950s when efforts were made to ensure legal representation for indigent persons who were accused in criminal cases. These initiatives were led by State governments and were mostly dependent on the participation of practicing lawyers. However, the real impetus came with the publication of the 'National Juridicare Report' in 1978 which made several recommendations to give meaning to the constitutional command of ensuring legal aid for needy persons, as per Article 39A which had been inserted in 1976. This was followed by the establishment of the Committee for the Implementation of Legal Aid Schemes (CILAS) under the leadership of Justice P.N. Bhagwati. It was in pursuance of this body's recommendations that the concept of establishing Legal Services Authorities at the various levels found its way into legislation.

However, experiments with 'Lok Adalats' had already begun a few years before the enactment of the Legal Services Authorities Act. The first prominent Lok Adalats had been conducted in

Gujarat in the early 1980's and they were supervised by sitting judges as well as practitioners. With the establishment and growth of the Legal Services Authorities, the volume of cases being heard by Lok Adalats has been progressively increasing. For many categories of disputes, Lok Adalats provide a far more accessible forum where the interests of both parties can be accounted for instead of the 'winner takes all' orientation of civil litigation. Subsequent to the amendment of the Code of Civil Procedure (CPC) in 2002, Lok Adalats are also serving as one form of Court-Annexed ADR methods. In recent years, Lok Adalats are often the forum for hearing disputes related to matrimonial matters, petty property disputes, accident compensation claims and deficiencies in public services among others. While the consolidation of the Lok Adalat system does hold out the promise of inexpensive and informal dispute resolution, some doubts continue to linger in respect of their functioning.

It is quite evident that the Legal Services Authorities need institutional support as well as trained manpower to expand their reach. While budgetary allocations are always an important consideration, the most important requirement is that of attracting an adequate number of personnel who will be motivated enough to administer Lok Adalats, to provide legal advice and to conduct legal literacy programmes. The experience of the last few years has made it clear that relying on sitting and retired judges as well as practitioners by itself is not enough to expand the reach of the legal services movement. What is needed is a mass mobilization of individuals who may not have legal education, but the inclination as well as capability to serve as paralegals. We must recognise the fact that access to legal education is limited to a certain segment of the population and even amongst the pool of legal aid lawyers and law students, not everyone will be motivated enough to offer their services on a voluntary basis. After all legal aid programmes must respond to local needs which are best articulated by persons belonging to the very same communities. In this respect, a decision was taken to establish a committee which will oversee the training of paralegals and the delivery of legal aid services, with a special emphasis on improving legal literacy through grassroots activities. Justice P. Sathasivam has taken on the leadership of this Committee and their proposals and actions will be keenly examined by all those who care about improving access to justice in our society. At the same time, we must also remember that the overall objective of providing legal aid is not only that of ensuring access to remedies but also to prevent disputes in the future. One strategy for preventing disputes is to improve awareness about legal rights and remedies, so that individuals can safeguard their interests in the course of their routine lives. In this context, the NALSA as well as some of the State Authorities have launched programmes to spread awareness about the content of legislations such as the Mahatma Gandhi National Rural Employment Guarantee Act, the Maintenance and Welfare of Senior Citizens Act, the Unorganised Workers Social Security Act and the Protection of Women against Domestic Violence Act among others. This educative

dimension of the legal aid movement can deliver results only if there is meaningful collaboration between the Legal Services Authorities and local self-government institutions as well as Non-Governmental Organisations (NGO's) working in the rural areas.

The Legal Aid movement is indeed at the crossroads today. The agenda for improving access to justice is an important part of social policy. At one level, social distinctions based on caste, class, gender and ethnicity impede the ability of citizens to approach the judicial system. At the same time, the limited reach of the judicial system further creates the conditions for more inequality since the oppressed sections are unable to seek redress for their injuries and grievances. It is in recognition of these persistent problems that we must chart out our steps for strengthening the legal aid movement. I hope that the initiatives taken to train young persons as 'paralegals' will prove to be successful and also serve as a model which can be replicated all over the country. All stakeholders in the legal system should wholeheartedly support the deepening on the reach of the Legal Aid Services.

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2. NALSA's Revised Rules[1]

Introduction

During the year 2009 National Legal Services Authority (NALSA) brought out a scheme called the Para-Legal Volunteers Scheme which aimed at imparting legal training to volunteers selected from different walks of life so as to ensure legal aid reaching all sections of people through the process of Para-Legal Volunteers Scheme; ultimately removing the barriers into access to justice. The Para-Legal Volunteers (PLVs) are expected to act as intermediaries bridging the gap between the common people and the Legal Services Institutions to remove impediments in access to justice. Ultimately, the process aims at Legal Services Institutions reaching out to the people at their doorsteps rather than people approaching such Legal Services Institutions.

The western concept of 'Paralegals' cannot be totally adopted to Indian conditions having regard to illiteracy of large sections of the community: The hours of training as applicable to a regular academic course, cannot be adopted. It should be more like a bridge course conceptualised in a simple and need-based module. The PLVs have to be trained in the basics of different Laws which would be applicable at the grass-root level with reference to their day-to-day life, the subtle nuances employed in the working of a judicial system, and the functioning of various other stakeholders like the Police, officials from Social Welfare Department, Woman and Child Welfare Department and other departments dealing with different beneficial schemes of Central

[1] National Legal Services Authority

and State Governments including the protection officers involved with Domestic Violence and Juvenile Justice Acts.

With the basic knowledge in the laws and other available welfare measures and legislation, they would be able to assist their immediate neighbourhood; Those who are in need of such assistance, so that a person, who is not aware of such right is not only made to understand his rights, but also will be able to have access to measures involving implementation of such rights. PLVs are not only expected to impart awareness on laws and the legal system, but they must also be trained to counsel and amicably settle simple disputes between the parties at the source itself; which could save the trouble of the affected travelling all the way to the Legal Services Authority/ADR Centres. If the dispute is of such a nature, which cannot be resolved at the source with the assistance of PLVs, they could bring such parties to the ADR Centres, where, with the assistance of the Secretary in charge either it could be referred to Lok Adalat or Mediation Centre or Legal assistance could be provided for adjudication in a court of law; depending upon the nature of problem.

Though initially the NALSA Scheme of training of the PLVs included the legal fraternity of Advocates, Advocate community, later on experience revealed, the same to be unfeasible on account of conflict with the professional status of Advocates. The reality that marginalised people living in distant places will not have the benefit of lawyer PLVs also contributed to the practice being discontinued, and NALSA deciding that Advocates shall not be enlisted or engaged as PLVs.

The past experience gained from the working of the system after 2009 and also ground realities ascertained from the paralegals in the respective jurisdiction showed us that there has to be a re-look into the entire matter and who best could fit the role of a Para-Legal Volunteer. Initially, the training programme of PLVs was only for two-three days. Since the obligations of PLVs were vast in nature, it was felt, there has to be longer duration of training provided to the PLVs. At the same time, the training curriculum for PLVs adopted by NALSA cannot be such as to be training PLVs to become full-fledged lawyers. PLVs are not expected to conduct themselves as legal professionals. The aim of the training should concentrate on basic human qualities like compassion, empathy and a genuine concern and willingness to extend voluntary service without expectation of monetary gain from it. Then the line separating PLVs from professional lawyers should be zealously guarded.

MODALITIES

- Ideally every Taluk Legal Services Committee (TLSC) shall have a panel of PLVs; of a maximum number of 25 (50) on their roll at any given point of time. The District Legal Services Authority (DLSA) shall have 50 (100) active PLVs on their roll.
- PLVs shall be literate, preferably matriculate, with a capacity for overall comprehension.

- Preferably PLVs shall be selected from persons, who do not look up to the income they derive from their services as PLVs, but they should have a mind-set to assist the needy in the society coupled with the compassion, empathy and concern for the upliftment of marginalised and weaker sections of the society. They must have unflinching commitment towards the cause which should be translated into the work they undertake.

GROUPS from whom Para-Legal Volunteers can be selected

- Teachers (including retired teachers)
- Retired Government servants and senior citizens.
- M.S.W students and teachers.
- Anganwadi Workers.
- Doctors/Physicians.
- Students & Law Students (till they enroll as lawyers).
- Members of non-political, service oriented NGOs and Clubs.
- Members of Women Neighbourhood Groups, Maithri Sanghams and other Self Help Groups including of marginalized/vulnerable groups.
- Educated prisoners with good behaviour, serving long term sentences in prisons.
- Any other person whom the District Legal Services Authority or Taluk Legal Services Committee deems fit to be identified as PLVs.

Selection of PLVs - District Level

Selecting the PLVs shall be by a Committee chaired by the Chairman of the District Legal Services Authority. The Secretary shall be one of the Members of the Committee. The Committee shall consist in all of three members including the Chairman and the Secretary shall be one of the Members of the Committee. The third member, to be appointed at the discretion of the Chairman of the DLSA, shall be one capable of identifying suitable persons, who could be trained as PLVs. This selection process shall not be entrusted to any other body.

Selection of PLVs - Taluk Level

The Chairman of the District Legal Services Authority shall constitute a Committee consisting of the Chairman of DLSA, Member Secretary of DLSA and the Chairman of TLSC and a fourth person at the discretion of the Chairman of DLSA. The place of interview for Taluk Level PLVs shall be at the discretion of the Chairman of DLSA. The Member Secretary of DLSA shall co-ordinate with the selection process.

Empanelment process

Applications may be invited from the local residents by the respective DLSAs and TLSCs or Sub Divisional Legal Services Committee. There could be an advertisement, if required. Copies of either the advertisement or notice calling for applications could be sent to the offices of the Bar Association, Notice Board of the Court premises, Legal Services Authority Offices and District Panchayat Offices. The advertisement shall state the qualifications required for selection

as PLVs as stated above with last date for the receipt of applications at the office of DLSA. There shall be a column in the application, wherein the candidate has to express willingness or place of preference to work at either district-level or taluk-level or village-level. In the advertisement there shall be clear mentioning that the work of PLVs does not carry any salary, remuneration or wages except honorarium fixed by the DLSA from time to time.

Method of Selection

The Selection Committee is entitled to use its discretion and shortlist the number of candidates for interview depending upon the number of applications received. Preference shall be given to women while selecting PLVs. Representation from suitable applicants belonging to SC/ST, minority and other backward classes must be ensured.

Training of PLVs

Under the supervision of Chairman of DLSA, PLVs shall undergo training programme, totally under the control of the Member Secretary. The training shall be held at a convenient place subject to discretion of the Chairman of DLSA. The number of PLVs to be trained at any given point of time in a training programme shall not exceed 50. Wherever the State Judicial Academy has facilities for training, the same may be availed of. The expenses for the training shall be incurred by the Judicial Academy for providing such facility to be reimbursed by the State Government/DLSA concerned.

Trainers/Resource Persons

- In consultation with the State Legal Services Authority, the Chairman of DLSA shall identify the trainers for training the PLVs and other resource persons.
- Suitable persons from the members of the Bar with training skills shall be included in the list of resource persons.
- Others could include:
- NGOs associated with the activities of Legal Services Authority, i.e., persons, who are exposed to the nature of work of the Legal Services Authority.
- Master Trainers of mediation.
- Law Teachers from Law Colleges.
- Post-Graduate students of Law.
- Retired Professors of Law.
- Retired Judicial Officers.
- Revenue Officers.
- Officers from Social Welfare Department,.
- Public Prosecutors.
- Police Officers.
- Psychiatrists/Psychologists/Mental Health experts.

Nature of Training

Training that is to be provided to the PLVs would be in accordance with the curriculum prescribed by the NALSA and will be in the following formant:

(a) Orientation Programme.

(b) Basic training.

(c) Refresher course.

There shall be periodical refresher training in order to assess the quality of work turned out by the PLVs. The Legal Services Authorities need to assess the work of PLVs and assist them to identify the deficits and how to tackle the problems faced by the PLVs after their experience in the field. There shall be annual congregation of PLVs so as to facilitate an exchange of experience. There shall be district-wise half-yearly meetings of PLVs to resolve their doubts and facilitate the acquisition of knowledge and up gradation of their skills as per the module. PLVs shall create awareness among citizens of the benefits of settlement of pending cases through Lok Adalats including the fact that the parties are entitled to refund of court fee and that there shall be no appeal.

Topics for Training

A uniform training module for PLVs shall be prepared by NALSA which shall be applicable to the entire country and the module shall have a special emphasis on the conduct and behaviour of PLVs. The module so prepared shall be translated into regional languages.

Identity Cards

After completion of the training by the District Legal Services Authority, the PLVs may be subjected to a written and oral test before the PLVs are declared to have successfully completed the training. On being declared successful, they may be given identity cards bearing the emblem of the District Legal Services Authority. The identity card shall have (i) serial number; (ii) name and address of the PLV; (iii) contact number of the PLV; (iv) photograph of the PLV; (v) the date of issue and the period of validity of the identity card. It shall be clearly printed on the reverse side of the identity card that the loss of the identity card should be reported to the nearest Police Station as also its recovery. The identity card shall not be used for availing of travelling concession either in bus or in any mode of transport. It shall not be used for availing of any governmental benefits or loan by the holder of the card. The identity card shall not be used for availing of any other facilities, except for the purpose of identification of the person as PLV.

Validity of Identity Cards

The validity of the identity card shall be for a period of one year. A new card shall be issued to the PLV, if the Chairman, District Legal Services Authority finds him/her eligible to continue as PLVs for more than one year.

Mentors for PLVs

DLSA and TLSC shall maintain a panel of Mentors/Guides whom the PLVs could contact in case of any clarification or assistance in connection with the discharge of their duties as PLVs. There shall not be more than ten PLVs for one Mentor.

Monthly Reports

A monthly report of the existing PLVs, PLVs newly recruited and the training given to the PLVs shall be submitted by the DLSA to the SLSA. The SLSA shall submit a consolidated report of the details of the number of PLVs trained, the resource persons engaged, expenses incurred and the refresher courses, if any,

organised, pertaining to each month, to the National Legal Services Authority before 15th day of every month. NALSA shall cause the copies of such reports sent to the National Committee for Para-Legal Training and Legal Aid Activities set-up by the Chief Justice of India.

The SLSAs shall submit to the NALSA a consolidated District-wise report on the activities of the PLVs, specifically the number of persons attended and the nature of advice given and action taken.

Duties of Trained Para-Legal Volunteers

Para-Legal Volunteer shall educate people, especially those belonging to weaker sections of the society, to enable them to be aware of their right to live with human dignity, to enjoy all the constitutionally and statutorily guaranteed rights as also the duties and discharge of obligations as per law.

Para-Legal Volunteers shall make people aware of the nature of their disputes/issues/problems and inform them that they can approach the TLSC/DLSA/HCLSC/SLSA/SCLSC so as to resolve the dispute/issue/problems through these institutions.

Para-Legal Volunteers shall constantly keep a watch on transgressions of law or acts of injustice in their area of operation and bring them immediately to the notice of the TLSC through telephonic message or a written communication or in person to enable effective remedial action by the Committee. When the PLV receives information about the arrest of a person in the locality, the PLV shall visit the Police Station and ensure that the arrested person gets legal assistance, if necessary, through the nearest legal services institutions. The PLVs shall also ensure that the victims of crime also get proper care and attention. Efforts shall be made by the PLVs to secure compensation for the victims of crime under the provisions of Section 357-A Cr.P.C. PLVs shall, with proper authorization from the DLSA/TLSC visit jails, lock-ups, psychiatric hospitals, children's homes/observation homes and shall ascertain the legal service needs of the inmates and intimate the authorities concerned about any absence noticed of basic essential necessities with special emphasis on hygiene.

PLVs shall report violations of child rights, child labour, missing children and trafficking of girl children to the nearest legal services institutions or to the child welfare committee.

Para-Legal Volunteers shall assist the DLSA/TLSC for organizing legal awareness camps in their area of operation. Para-Legal Volunteers shall give information to the people of their locality about the legal services activities of SLSA/DLSA/TLSC/HCLSC/SCLSC and shall provide their addresses to the people so as to enable them to utilize the free services rendered by the above organizations to the eligible persons. Para-Legal Volunteers shall generate awareness amongst people about the benefits of settlement of disputes including pre-litigation stage through Lok Adalats, Conciliation, Mediation and Arbitration. Para-Legal Volunteers shall make people aware of the benefits of inexpensive settlement of disputes relating to Public Utility Services like P&T, Telephones, Electricity, Water Supply, Insurance and hospital services through Permanent Lok Adalat (PLA). Para-Legal Volunteers shall submit monthly reports of their activities to the DLSA/TLSC under whom they are working in the prescribed format. A diary to record the daily activities shall be maintained by each PLVs. The diary shall be printed and given to PLVs by the District Legal Services Authority. Such diary shall be verified and endorsed by the Secretary, DLSA or the Chairman, TLSC as the case may be. Para-Legal Volunteers shall see that publicity materials on legal services activities are exhibited at prominent places in their area of activity.

Expenses incurred by Para-Legal Volunteers

Reasonable expenses incurred by Para-Legal Volunteers e.g Bus/Train fare, Postage, Telephone charges etc., may be reimbursed by the TLSC/DLSA/SLSA, on production of proof. Travel expenses limited to the lowest classes by road/rail/steamer to the legal aid beneficiaries brought by the Para-Legal Volunteers also may be reimbursed at the discretion of the Chairman. The rate of daily honorarium payable to PLVs on the days of their engagement as such in metro-cities may be as determined by the SLSA. The PLVs are not entitled to any travel expenses when they use the transport provided by SLSA/DLSA/TLSC.

Para-Legal Volunteers to work in the 'Front Offices' of the DLSA/TLSCs.

The Secretary, DLSA or TLSC may depute one or more PLVs to operate the 'front offices' of the legal services institutions.

Para-Legal Volunteers to work in the 'Legal Aid Clinics' of the DLSA/TLSCs.

The Secretary, DLSA or TLSC may depute PLVs in the Legal Aid Clinics set up under the National Legal Services Authority (Legal Aid Clinics) Regulations, 2011. The PLVs engaged in the Legal Aid Clinics shall function in such clinics in accordance with the provisions of the aforesaid regulations.

Honorarium for the PLVs rendering services in the Legal Aid Clinics and Front Offices.

The State Legal Services Authority in consultation with the National Legal Services Authority may fix an honorarium for the PLVs engaged in the legal aid clinics. However, such honorarium

for those who have rendered services on any day shall not be less than Rs.250/- per day. The PLVs who bring legal aid applicants from the distant villages to the legal services institutions at the Taluk/District level and to the District ADR Centers shall also be eligible to receive honorarium for such day at the same rate. PLVs shall also be eligible for honorarium if on any particular day they assist persons in connection with the PLV work by accompanying such persons to various offices including Courts, however, subject to proof.

Para-Legal Volunteers to assist in the legal literacy classes and camps.

The PLVs in consultation with the nearest legal services institutions shall organise micro-legal literacy camps in the area of their operation by organising legal literacy classes for small groups of persons including labourers, women, children members of SC/ST etc. It shall be the duty of the PLVs to distribute information booklets and other publications of the Legal Services Authorities during the legal literacy classes.

Resolving local disputes through ADR mechanism.

The PLVs shall take efforts to bring the parties of the locality involved in disputes, to settlement, by using the machinery of Lok Adalat, Mediation or Conciliation at the District ADR Centers. If no District ADR Center has been set up in the District, the legal services institutions shall take steps for organising a suitable ADR mechanism like Lok Adalat, mediation, conciliation etc. in the village itself in coordination with the PLVs. The PLVs who bring such cases to the ADR process shall be entitled to receive the prescribed honorarium on the day when such proceedings are held.

Para-Legal Volunteers in Jails.

A few educated well-behaved prisoners serving long term sentences in the Central Prison and District Prisons may be identified for being trained as Para Legal Volunteers. Their services shall be available to the other prisoners in the jail including the under trial prisoners. The training of such PLVs may be conducted along with the other PLVs.

Payment.

They will be entitled to be paid as PLVs for the services rendered at the prescribed rate of honorarium payable to other PLVs.

Disqualifications of Para-Legal Volunteers and their removal.

- The PLVs shall be disqualified and removed from the
- panel if he/she:
- Fails to evince interest in the Scheme.
- Has been adjudged insolvent.
- Has been accused of an offence.
- Has become physically or mentally incapable of acting as PLVs.

- Has so abused his/her position or misconducted in any manner as to render his/her continuance prejudicial to the public interest.
- If she/he is an active political enthusiast of a political party. Any such Para-Legal Volunteer may be removed by the Chairman, District Legal Services Authority after suitable enquiry and intimation of the same should be sent to the State Legal Services Authority.

National level meetings of Para-Legal Volunteers.

The State Legal Services Authority may select suitable PLVs for attending the National Level programmes relating to PLVs to be organised by the National Legal Services Authority as the case may be. The State Legal Services Authority may recommend the names of PLVs who have given outstanding service for considering such PLVs for National awards to be instituted by the National Legal Services Authority.

The District Legal Services Authority to maintain a database of all Para-Legal Volunteers in the District.

The District Legal Services Authority shall maintain a directory of Para-Legal Volunteers and the same shall be updated periodically. The directory shall contain the details of the para-legal volunteers of District Authority and Taluk/Mandal/Sub-divisional Committees, their names, addresses, telephone/cell phone number, e-mail ID (if any), number and date of expiry of the identity card issued.

The State Legal Services Authority to maintain a database of all Para-Legal Volunteers in the State.

The State Legal Services Authority shall maintain a directory of Para-Legal Volunteers and the same shall be updated periodically. The directory shall contain the district wise details of the names of para-legal volunteers, their addresses, telephone/cell phone numbers, e-mail ID (if any), number and date of expiry of the identity card issued. The Legal Services Authorities to work in co-ordination with the National Committee for Para-Legal Training and Legal Aid Activities set up by the Chief Justice of India.

The State, District and Taluk level legal services institutions shall work in coordination with the National Committee for Para-Legal Training and Legal Aid Activities set up by the Chief Justice of India. The directions, if any, given by the Hon'ble Chairman of the National Committee for Para-Legal Training and Legal Aid Activities shall be binding on all legal services institutions in the country.

MODULE FOR THE ORIENTATION - INDUCTION - REFRESHER COURSES FOR PLV TRAINING

I. ORIENTATION COURSE

Immediately upon initial empanelment the PLVs shall be given a day's orientation course.

Course objectives:

The objective of the Orientation Programme is to provide an overview of the role of the PLVs and lay down the Code of Ethics that they will be required to be adhered to.

The Orientation Programme should include inter alia the following:

• Introductions and Ice-Breaking Session

• Purpose & Role of PLVs.

• Basic Structure of the Constitution - Preamble etc.

• Obligations of the State under the Constitution to the marginalised classes of society(Directive Principles of State Policy)

• Fundamental Rights (including Articles 14,15,16,19,21,22)

• Duties of a responsible citizen to the community (Fundamental Duties).

• Article 39 A and Legal Services Authorities Act, 1987 and NALSA Regulations.

• Do's and Don'ts for PLVs.

• Dress Code and Standards of behaviour.

• Materials

• Ethics.

II INDUCTION COURSE

The induction training will be for a period of four days and should cover the following topics:

• Basic listening, communication, observation skills and Drafting skills.

• Family Laws (Marriage Laws, Adoption, Maintenance, Custody and Guardianship, Judicial separation & Divorce).

• Property Laws (Inheritance, Transfers of immovable property, Registration, Revenue Laws).

• Criminal Laws (IPC & Cr.P.C {minimum required knowledge, especially, bail, arrest etc. S.357 A Cr.P.C., Rights of Prisoners under Jail Manual and Prisoner's Act etc}).

• Labour Laws (Minimum Wages Act 1948, Workmen's Compensation Act 1923, Unorganised Workers Welfare and Social Security Act 2008, The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, The Industrial Disputes Act, 1947 (Briefly), legal assistance under the NALSA Scheme (Legal Services to the Workers in the Unorganised Sector) Scheme, 2010.

• Gender Centric Laws/Women Laws - Equal Remuneration Act 1976, Maternity Benefit Act 1961, Protection of Women from Domestic Violence Act 2005, Medical Termination of Pregnancy Act 1971, Pre-Conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994, Sexual Harassment at Workplace, Important provisions of IPC - Sections 509, 354, 376,

304B, 366, 498A, 494, Dowry Prohibition Act, 1961.

• Laws relating to children - Juvenile Justice (Care and Protection of Children) Act, 2000, The Child Labour (Prohibition and Regulation) Act of 1986, Missing Children, The Factories Act 1948, Prohibition of Child Marriage Act, 2006.

• SC & ST (Prevention of Atrocities) Act, 1989 and The Protection of Civil Rights Act, 1955.

• Government orders and schemes promoting social welfare, including MNREGA, Social Security Schemes (pensions, antodaya, insurance etc), obtaining various certificates (such as caste, disability, birth, income etc), obtaining ration card, Aadhar card, National Population Register, Voter ID-card, etc, obtaining Passport.

• Visits to Govt. Offices, Courts, Police Stations, Prisons, Revenue Offices, DLSAs, TLSCs etc. Interaction with Protection Officers, CWCs/JJBs, appropriate authority under PCPNDT Act, 1994 etc.

ADVANCE TRAINING

After the PLVs have had field experience for three months it is important that an advanced training programme is conducted lasting for three days. The occasion should be utilized by the Chairpersons of the DLSAs to discuss the work done by the PLVs, the shortcomings generally noticed and their continuance. The Mentors should also participate in this programme for guiding the PLVs to resolve the problems faced by the PLVs in the discharge of their duties and public interaction. The Chairpersons of the DLSAs should also obtain feedback from the PLVs in order to remove administrative bottlenecks. During this training programme the PLVs should be introduced to Special laws which could include:

• Right to Information Act, 2005

• Motor Vehicles Act, 1988

• Mental Health Act, 1987 and legal assistance under the NALSA scheme Legal Services to the mentally iII Persons and Persons with Mental Disabilities) Scheme, 2010.

• Maintenance and Welfare of Parents and Senior Citizens
Act, 2007.

• Right to Education Act, 2009

• Alternate Dispute Resolution (S 89 C.P.C.)

• Basic skills in mediation and counselling

• Lok Adalat, including pre-litigation and its benefits.

• Plea-bargaining

• Rights of marginalised groups such as those living with HIV/AIDS, Disabled, trans genders etc.

• The Immoral Traffic (Prevention) Act, 1956 and issues relating to sex workers.

• Disaster Management and Legal assistance to victims of disaster under the NALSA Scheme - Legal Services to Disaster Victims through Legal Services Authorities.

• Environmental issues

• The Protection of Children from Sexual Offences Act, 2012.

Ideally, the SLSAs should by itself or through the DLSAs organize workshops at regular intervals on special topics which could be for a day or two. These should be need based, that is

to say, if on a review of the working of the PLVs, the SLSAs/DLSAs feel that certain subjects need to be revisited and discussed again or that in a given area certain issues exist which need to be addressed or tackled and which have not been dealt with by the prescribed course content, such topics and issues should be discussed in the one day/two days workshops.

Inter-District workshops should be organised by the SLSAs for a day to encourage experience sharing and introduction of better practices. Good work done could be recognised and appreciated and commendation certificates given on the occasion.

SESSION NO 5:

LEGAL LITERACY CAMPS AND THE COODINATION OF LAW COLLEGES.

1. A Study of Law School based Legal Service: UNDP Project[1]

Though Legal Aid is a necessary component of the compulsory practical papers for the LL.B. Course all over India as per the Bar Council of India Regulations; Legal Aid activity in most of the Law Colleges is carried out merely to ful-fill such requirement. Hence it lacks consistency, direction and purpose and is not implemented rigorously. Appropriate regulations and guidelines along with adequate financial resources must be made available to the Law Colleges so that they are effectively able to organize and maintain Legal Aid Clinics at the College level and thereby tap the vast human resource in India, namely the law students' knowledge pool.

By having effective and functional Legal Aid Clinics, two important objectives could be achieved. Access to Justice could be achieved by the appropriate use of the human resources available in the form of law students and appropriate use of this knowledge pool can greatly help in creating necessary legal awareness which is the first step for effective access to justice. The objective of access to justice is indeed a challenge to a country where wide disparity of incomes, rampant poverty and illiteracy exist as a bane in the economic and social development. This is specifically so in the seven States in which the project was undertaken as compared to other States in India.Secondly, the student involvement in Legal Aid activities enhances their learning experience resulting in sharpening of legal as well as inter-personal skills and also creates socially sensitized and relevant lawyers.

Law School based Legal Aid Clinics in addition to providing law students with real-life work experience and aid in developing legal awareness and skills, also helps in promoting and protecting legal and Constitutional rights, and has a potential of transforming the society. These Clinics in still the spirit of social justice and public service in law students and in turn are able to reach the unreached. Students working in the Clinics if properly supervised by a law faculty, have a dual benefit of learning lawyering skills and appreciating professional responsibility and on the other hand securing access to justice to the marginalized and disadvantaged groups. Students in Law Clinics would be exposed to poverty lawyering and in the process they would be able to understand the root causes of poverty which will enable them to innovate both legal and non-legal remedies.

Legal Aid Clinics unlike other initiatives require modest financial investment to start with. They can be quickly assimilated into most Law Colleges as there is a mandatory requirement of BCI that each College shall have one Clinic in the College. A venture of this sort which would result in bringing about access to justice to the rural and marginalized poor requires the various stake holders to undergo a paradigm shift in their policy and perspective towards an issue of this

[1] Project on Access to Justice:2011 by GOI, UNDP and V.M. Salgaocar Law College

nature. The Law Colleges as well as the regulatory authorities including the Government of India need to reframe and adopt a system of collaborative venture wherein the appropriate sharing of responsibility would result in better and effective functioning of this system. Therefore, the following suggestions are made for each of the stakeholders.

Policy Recommendations for Law Colleges:

Kinds of Clinics

Based on the location of the Clinics, they can be broadly divided into two categories, namely 'On Campus' and' Off–Campus' Clinics.

On-Campus Clinic: This type of Clinic is the easiest to establish. The College intending to start an on campus Clinic needs to identify the place for the Clinic to operate within the premises of the College. A room with minimum office furniture would be sufficient to start with. Computer, printer, stationery and such other requirements could be easily procured from the College itself, as the Clinic would be located within the campus.

Off- Campus Clinics: Any Clinic operating outside the campus of the college would be an Off campus Clinic or 'Community Clinic' as mostly the Off-campus Clinics are situated in the community where the Clinic intents to serve. Once the College decides the geographical area where they intent to provide Legal Aid, they need to explore the opportunity to set up the Clinic and identify a suitable venue for the same.

The venue needs to be easily accessible to the public. College may approach the local bodies/institutions like the Panchayat, Municipality, Schools, Temples, Churches, Courts, Clubs, and NGOs for a room to operate their Clinic. The Clinic's activities being for a social cause, the office space need to be free of cost as well as open at the time of functioning of the Clinic. In case of difficulty in obtaining such as pace, the College may seek the help of District Legal Services Authority.

Structure of the Clinic: For effective functioning, Clinics need a proper structure. Even though ten students in a Clinic would be ideal, keeping in mind the large number of students involved, the number of students in a Clinic may be extended to not more than 20. Each Clinic needs a student coordinator with an assistant coordinator. Each Clinic should be supervised and monitored by a faculty in-charge. A panel of lawyers either from the alumni or from the adjunct faculty needs to be established to help in addressing the cases that come before the Clinic. Further, the College should also form a Committee for Legal Aid. It may consist of representative from the management, faculty, students and the adjunct faculty. It would advise the Clinic on policy and finance.

Functional Timing: Timing of the Clinic need to be identified and such timing must be constant for the Clinic. In case of On-campus Clinics, the timing needs to be either before or after the class timings to ensure the attendance of the students. The days of the week when the Clinic would be functioning, should also be determined. The Clinic being in the College can operate

on any day. For Off-campus Clinics also, the timing needs to be constant and convenient for the public as well. Further, as it operates on others' premises, the timings should be fixed after considering the availability of space. Ideally, Off-campus Clinics should operate during the weekends, so that the community gets an opportunity to visit these Clinics. For example the Off-campus Clinics can work every Saturday evening or on Sundays. The Clinic needs to operate at least 2 to 3 hours. The timing and the days on which it operates need to be publicized and advertised on the Clinic premises.

Focus of the Clinic: Clinics need to have focus areas and should understand their limitations as well. Particularly the On-campus Clinics need to decide the types of services they can offer depending upon their resources. It is always better to focus on few services. Examples of focused areas are Consumer Clinic, Family Law Clinic, RTI Clinic, Legal Advice Clinic, Labour Law Clinic, Entitlement Clinic or Street Law Clinic (Legal Literacy Clinic). The Clinics can have referral services in case of any client approaching for services which are not offered by the Clinics. The Off-campus Clinics could have a need based (geographical) focus and they could also have referral services in case of any legal issues beyond their capacity.

Visibility of the Clinic: A well-directed advertising must be carried out before establishing the Clinic. Students may conduct door to door campaigning about the Clinic and its services. Advertisement may also be through news-papers, posters and distribution of leaflets.

Training the Students: Once the focus of the Clinic is decided then the faculty needs to identify educational objectives and the utility of the services to the community. Faculty is required to select carefully the learning experiences that are likely to be useful in attaining those objectives. The selected learning experiences must be properly organized for effective instruction. Care must be taken that the chosen program must be capable of providing adequate work for the students. The activity must be designed to involve the students in such a manner as to augment their professional responsibility.

The course content, guidelines regarding supervision and assessment need to be taken care of. The faculty should identify specific tasks for the students and these specific tasks should be justified and organized. While allotting the tasks, the faculty must consider the limitations of the students in undertaking such activities.

After selecting the clinical activity and before allotting the tasks to the students, the faculty must identify the educational goals of such activity and the same may be shared with the students. Anything which is made mandatory is looked upon with disdain. Therefore, convincing the student's about the objectives and goals of the activity would lead to better participation from the students.

For example, if the faculty selects Legal Literacy Camp as a Clinical activity, the faculty needs to identify the area of law, research on the existing law, prepare the information in simple vernacular language, identify target group and select the medium of imparting the information.

Students need to be informed about why such an activity was undertaken, what is expected from the students, what skills would the students gain by participating in such activity and how would it be

beneficial for the society. For example any activity on pre-trial preparation or alternative dispute resolution techniques would be beneficial if the students would be participating in Lok Adalats or conciliation proceedings. Similarly trial advocacy could impart litigation skills to the students.

To give such an experience to the students, basic Clinical activities which provide basic skills to the students need to be designed. For example, faculty should conduct basic activities such as client interviewing, counselling, negotiation and conciliation, Moot Courts, trial advocacy, pre-trial preparations and case analysis

Funding for the Clinic: Financial aid is one of the fundamental problems faced by most of the Legal Aid Clinics. Though the Legal Service Authorities are empowered to fund the Clinical activities, in reality very few Clinics get funding from them. Therefore, the faculty and students should conduct a brainstorming session to identify the possible donors. Each College should have a Finance Committee consisting of representatives from the faculty and the students for preparing budgetary allocation for the Legal Aid activities. Few suggestions for raising the funds are given below:

a. Colleges could charge apart of the fee as Legal Aid fee or membership fee for the Legal Aid Clinic.
b. Approach clubs like Lions Club and Rotary Club for contribution.
c. Approach NGOs having similar mission.
d. Approach Consumer Organizations and Corporates
e. Colleges could keep donation boxes for Clinical activities.
f. Approach alumni.
g. Approach Law Firms.
h. Approach philanthropic organizations.
i. Approach concerned Government Departments. For example for social welfare activities, Clinics can approach the Social Welfare Department. Labour Clinic can approach Labour Department and the like.
j. Organize some cultural activities for raising the funding.

Collaborations: Law School Clinics need to collaborate with all the stakeholders. Linkages can be developed with DLSA, Youth organizations, Clubs, NGOs, Government authorities, Local Government bodies and religious institutions. However, care must be taken to clearly lay down the responsibilities and tasks of the collaborators. Students should not be treated as a cheap labour carrying on the clerical work or merely organizing the programs.

Networking: Networking among the Law School Clinics is another aspect for strengthening the Legal Aid services by the Clinics. Networking would enable the Law School Clinics to adopt best practices and learn from the experiences of other Clinics. Networking with other stakeholders by sharing the information and resources would increase the reach of Legal Aid Clinics in meeting the legal requirements of community. In addition to using internet, list-serves,

face book and other social networking sites, bringing forth a journal exclusively publishing the methods and methodologies of Legal Aid activities of the Clinics, would be of great help. Students and faculty need a platform for sharing the ideas. Therefore, exchange programs between the faculties and students of different Law Schools would immensely help in creating better methods of Legal Aid Programs for the needy.

Need based Approach: While deciding to start a Clinic whether it be, on-campus or off-campus Clinic, the focus of the Clinic should be need based. Faculty and the students must conduct a social survey to find out the legal needs of the community they want to work for. After identification of legal needs the programs of the Clinic must be organized to address those needs. Even in case of legal literacy, the Clinics should have an idea what the community wants rather than going ahead with what Clinic is comfortable in offering as legal literacy. Following are a few suggested models to provide access to justice to the marginalized and at the same time improve the lawyering skills of the students. They are of course not exhaustive.

i. Legal Literacy Camps/Street Law Programs

In a country like India, where about 260 million people live below poverty line and some two-thirds of a population of more than a billion is dependent on agriculture, focus on legal literacy programs is[1] extremely important. Law Schools can play a major role in sensitizing the public about their legal rights and duties. Legal Literacy Campaigns are suitable programs which can be organized by the Law Schools in India. They require neither large financial resources nor special expertise. These programs help students in developing important organizational skills, research, oratory, public speaking and translation skills.

However, conducting Legal Literacy Programs by just confining to public talks is of no use. These programs need to be planned carefully. The condition precedent for the success of literacy programs is that it should be need based. The area for literacy must be identified after assessing the legal issues in the community. Before undertaking Legal Literacy Program, the Clinics must comprehend the following aspects:

a. Identify the target group
b. Identify their legal needs
c. Carefully choose the topic of legal literacy based on the needs
d. Faculty must make sure that the students know the complexities of the topics selected.
e. Students and the faculty should conduct proper research to comprehend the intricacies of the topic.
f. Make the students to identify the educational goals of the program.
g. Identify the outcome of the program.
h. Develop suitable teaching pedagogy and lesson plans.
i. Identify the venue, timing and number of visits required for completing the Literacy Program. Venue should be easily accessible and the timing must be suitable for the target group.
j. Identify the experts if necessary.

k. Prepare the Budget for conducting the program.

l. Form collaborations with other stakeholders in organizing the program

m. Few examples of target groups: Schools, Colleges, Mahila Mandals (Women's Groups), Anganwadis, Self-help groups, inmates of a prison, workers, trade unions, Public Information Officers of various State Authorities for RTI, school teachers for identifying and preventing child abuse, youth organizations, Lions and Rotary Clubs, consumer associations, and senior citizens associations.

ii. Free Legal Advise Clinics

Law Schools can also establish Free Legal Advice Clinics in schools. In the Clinic, the students and teachers can guide people in identifying their problems and make them aware of the remedies available to them. These services are invaluable not only because they save prospective clients' time and money but also because they can reduce unnecessary litigation. These Cells give ample opportunity to the students to learn interview techniques, fact finding and research skills. However, before undertaking this activity following aspects need to be considered; Students must be trained in client interviewing and counselling techniques.

a) Policy on maintaining the records must be formulated.

b) Personal information of the client's needs to be protected and the privacy of the client need to be safeguarded.

c) A panel of lawyers may be identified and students must have regular meetings with the panel.

d) Proper research should be conducted before giving the advice.

e) In case the problem involves legal issues beyond the expertise of the Clinic, client may be referred to the concerned experts.

iii. Legal Entitlement Programs

With a large number of families living below the poverty line in India, students can be trained to conduct legal research on welfare benefits floated under various Social Welfare Schemes by State and Federal Governments. Proper research on these beneficial provisions is more than a necessity to identify the beneficiaries and to see that these measures actually reach the needy. This kind of work develops a sense of social responsibility in students and exposes them to the plight of their country's poor. This program has the potential to impart several skills like fact investigation, research, legal analysis and interviewing skills to the students.

iv. Para Legal Services

Students can provide paralegal services such as drafting affidavits, assisting in registration of marriages, births and deaths, electoral rolls and filling out various forms. Law Schools can do this easily by associating with Local Self-governments, such as Panchayats (counties) and Municipalities. These kinds of services would help to develop several skills such as drafting,

research, interviewing and fact finding skills. At the same time paralegal services provide greater help to the public in securing their basic legal entitlements. Before undertaking such activity students must be trained in those areas. Clinics must have all the forms, applications and sample documents for undertaking such activity.

In case of Social Welfare Schemes, the students may conduct camps in a particular locality for one or two identified schemes. Before organizing the camp they should make a door to door campaign in the vicinity of the camp. On the day of the camp, the students should be divided into groups with specific task assigned to them. The students and faculty must carry sufficient applications, forms and other material required for such activity. Involving the Local Government and other organizations in this kind of activity would not only minimize the financial liability of the Clinic but also ensure the greater public participation.

v. Community Mediation/Open Forums

Another option for Law Schools is to adopt a village and encourage students to conduct a survey to identify the problems that the people in that particular village face. After identifying the problems, the students can approach the concerned authorities and arrange a public forum. Villagers can be duly informed about the program and can participate in the forum. People can meet the concerned officers on that particular day and can settle their grievances in public.

Students can be instrumental in the smooth functioning of the entire program and they can follow up the matter with the concerned officers. These kinds of programs are very effective in settling problems, as the officers after having given an assurance publicly, are less likely to retract from those promises. This kind of programs will help in developing skills of legal research, survey techniques, organizational skills, problem solving skills, drafting and communication skills.

vi. Theatre Art

Law Schools also can encourage and train the students in street plays, skits and public performances for legal literacy and to advertise the free Legal Aid available at their Colleges. Law Schools can take the help of various NGOs in training the students. Various issues such as untouchability, gender discrimination, and domestic violence, entitlements under various schemes, children rights and environmental issues can be the subjects for such plays. Students can even go to nearby schools and educate school children about the legal issues that concern them.

vii. Pro-bono representation in Quasi-Judicial Bodies

Even though students are debarred from representing clients in Courts, they may be encouraged to undertake cases in quasi-judicial bodies like Consumer Forum, Labour Commissioners, RTI Commission and Industrial Tribunals. In these Tribunals, the students can actually represent the client as the restriction on representing clients applies only to the regular Courts. It has a potential to offer all the skills required for a lawyers.

viii. Public Interest Lawyering/Litigation

Students can be encouraged to undertake legal research on issues of public importance, and the findings can be placed before the concerned officer (who is responsible for implementation) for effective implementation. In case of inaction by the Officer concerned, the students can approach either the High Court or the Supreme Court for redressal in the form of Public Interest Litigation. In all appropriate Public Interest Litigations, students can appear before the Court. In the process, they not only learn all the skills including advocacy but improve the quality of the human life.

ix. Law Reform

In India the system of legislation has unfortunately not been people centric but mostly party centric or politician centric. This is one of the reasons for the wide gap between aspirations and implementation of legislations. There is an urgent need to make the legislations need based and people centric so as to enable the legislations to reach the unreachable'.

Law students can play a pivotal role in filling the gaps in the legislation and its implementation. The availability of law students who are not partisan or party centred is a valuable resource to be used in law reforms. Law students through their Legal Aid Cells or otherwise could undertake research in various areas may be relating to the non-existence of a law or improper implementation of laws or even regarding the injustices perpetuated by law or perpetuated by the manner of implementation of law.

The students of the College, through and with the guidance of the faculty could undertake field research to ascertain the realities. Based on such research findings, the Colleges by themselves or in association with other Colleges or NGOs could undertake the exercise of framing legislations. Such draft legislations could form the basis of law reform in the country. The student participation in the research and thereafter in the formulation of the legislation will equip them with necessary skills and knowledge to enter the profession. The Bar Council, UGC, Universities and the Colleges could promote such activities by instituting awards, prizes or even publication of such research findings and draft legislations.

Policy Recommendations for Bar Council of India

Legal education was brought under the control of the Bar Council of India in 1961 by the Advocates Act, 1961. The BCI has time and again framed several rules prescribing minimum norms to establish and run the Law Colleges. These efforts resulted in enormous growth of Law Colleges throughout the length and breadth of the country. Thus legal education became more affordable and assessable.

Several of the factors which are capable of improving legal education and the profession, have been overlooked for a long time. Considerable efforts have been made for this purpose by the controlling bodies such as BCI and UGC, but these efforts have been mostly aimed at improving physical infrastructure so the Colleges and to some extent modernizing the curriculum content.

BCI being the primary controlling body of legal education, it should take lead in developing new teaching methodology and training manuals. In the year 2008, the BCI issued rules on “Standards of

Legal Education and Recognition of Degrees in Law" which prescribe Legal Aid Clinic as a mandatory requirement for recognition of the Law Colleges. Therefore, the BCI needs to frame a policy on Legal Aid Clinics in Law Colleges. Such a policy must incorporate the following:

a. Minimum amount needs to be allotted for the Clinic by College
b. Mandatory requirement of Clinical teacher to participate in training programs at least one in three years.
c. Identification of model Law School Clinics and prescribing exchange programs between Clinical faculties.
d. Establish training centres in five regions of the country.
e. AppointaCommitteeconsistingexpertCliniciansto preparemodelClinicManuals.
f. Generate training manuals and legal data base about the Clinics.
g. Bring a journal on Clinical Legal Education.
h. Accreditation of Clinics by BCI.
i. Support good practices financially.
j. Appeal to law firms for financial support to Clinical activities.
k. Create an award for best Law School based Clinical activity.

Funding

For an institution, any activity off the campus involves expenditure which has to be borne either by the institution or by the students themselves. If such expenses are to be borne by the students either on a day to day basis or based on activity, there will be a natural resistance by the students and if under compulsion most of the activities would remain for the record but in reality incomplete or undone.

If the burden is on the institution, it would have the collective impact of discouragement and ultimate evasion in carrying out such activity in Universities and Government aided institutions where there are many procedural and bureaucratic hurdles. In private institutions, the financial liability would discourage the management in promoting such activities. The Bar Council needs to stipulate on the above issue. The alternatives could be appropriate directives or regulations directing the Colleges to affect such additional levy from the students as fees and ensuring that such funds are kept apart for these specified activities. As an initiative, the Bar Council could also offer to fund such activities on a case to case basis based on appropriate proposals submitted by Colleges.

Policy Recommendations for Government of India

The Government of India, being the overall authority vested with the responsibility to ensure that the access to justice becomes a reality to the millions of Indians, particularly to the marginalized or 'reaching the un-reached' needs to plan and improvise systems and organization to achieve this objective. As an immediate step, the Government of India could direct the Legal

Service Authorities both at the national and state level to collaborate and function with the Law Colleges on a one to one basis rather than the Legal Service Authority considering them merely as the apex or superior body to regulate and direct Law School Clinics. There is also an urgent need to ensure that there is a system of financial support and funding of activities by the Legal Service Authority. Due demarcation is to be ensured in terms of funds available to Legal Aid Clinics of Law Colleges for carrying out certain defined programs focused on the local needs.

The above being the immediate and urgent need to ensure effective functioning of Legal Aid Clinics in Law Colleges, there is of course a fiduciary responsibility on the Government of India to lay down a comprehensive functional and organizational framework. A very pertinent finding of the study of Legal Aid Clinics is that these Clinics can and should take up greater responsibility and a larger role in fulfilling the mandate of access to justice.

The Government of India and the authorities concerned cannot evade or circumvent their responsibility to eliminate the above mentioned four shortcomings in the Indian socio political legal system. The Law Colleges through their Legal Aid Cells are capable of playing an effective role in eliminating the first and the most important shortcoming namely lack of awareness. Creating legal awareness about the laws which affect common people and the ways and means to redress their grievance, whenever their rights or interests are affected, will greatly enable their capacity to seek access to justice. This could be carried out by identification of areas and laws which require immediate attention and creating suitable machinery for propaganda to create public awareness through the medium of Legal Aid Cells.

A system of reward and recognition of the services of those who do pro bono work and are willing to help the indigent and the needy to secure justice should be introduced. For all promotions, nominations and appointments in administration of justice, greater credit should be given to those socially sensitive personnel who have and are willing to render pro-bono service and have associated with the Legal Aid Clinics in their activities in various capacities. There is a need to build up a system of credit to those who deserve and have contributed substantially towards providing access to justice to the un-reached citizens of the country.

The Father of the Nation has rightly remarked that in India there is enough to meet everyone's need but not anyone's greed. This applies rightly to the justice delivery system as well. What is required is proper distribution and allocation of funds by prioritizing access to justice. There is a need to ensure that those who are instrumental and who are involved in providing access to justice are not hindered by lack of funds. It is true that the primary responsibility to deal with a situation of ineffective or lack of access to justice is with the Government of India. The proclaimed objective of such a road map would be to provide access to justice to every citizen in every village or town in India.

The various governmental initiatives like National Rural Employment Guarantee Scheme, Social Security and Pension Scheme for the unorganized labourer, Group Insurance for every citizen are all

meant to create a new secular and egalitarian social order. The aim of the access to justice scheme should also be to bring in a news system of justice administration and adjudication of dispute. Keeping with the sentiments of the father of the nation, such transformation needs to necessarily begin at the gras-sroot level i.e. the village level. It should not be a top down model but vice-versa model.

The Government could think of a system of' Contributory Legal Insurance' to be set up in every village or Panchayat at with every member of the village enrolling themselves as a member of the Scheme. The system of contribution would call for allocation of specific funds from the Central Government, State Government and the local body in addition to specific contributions from individual citizens. The contribution from the citizen should be as minimal as possible in order to ensure comprehensive and total enrolment of all the residents of a particular local area. The funds so created should form the corpus for meeting the adjudication expenses of all the members of that area for a specified period so that every person irrespective of his social or economic status or the levels of literacy could easily seek redressal of their grievances so that no dispute remains unattended or unsolved.

As part of the scheme, every such village needs to enrol and set up a panel of lawyers preferably from the local area itself before whom every such dispute needs to be placed. The panel would then deliberate on the genuineness, importance, gravity, merits and demerits of the claimants and accordingly initiate mediation or conciliation. If mediation /conciliation are not possible, methods of arbitration of the dispute may be resorted to. Of course, in the rarest of cases where the situation justifies, the panel may need to take up adjudication as well. It is only when a claimant desires to act contrary to the advice of such a panel, that the claimant is left free to pursue his case.

The panel should have a system to determine the professional fees payable to the members of the panel who take up each such matter either as a lump sum amount or fee per sitting. The system of course would ensure that lawyers and others who have specific roles in the process are appropriately remunerated out of the funds. A system like this will certainly overcome the maladies existing with the present system of Legal Aid and appointment of pro bono lawyers. For a common man, whether poor or rich, the system would ensure same quality of legal service.

Students of the Law Colleges could assist the panel members for a nominal reward in their professional work which would become part of their practical training program. It is important that a scheme like this is initially implemented with the help of GOI and UNDP funding in specific villages in specified States. When a model of this nature functions effectively, it would be replicated in other villages. The scheme of implementation should be such that it would need a statutory backing and within a decade the whole country could be covered under the scheme.

GOI should implement the recommendations of National Knowledge Commission, particularly on modernizing Clinical courses and establishing four autonomous Centers for Advanced Legal Studies and Research. These Centers would serve as think tank for advising the Government on national and international issues. These Centers would also act as linkages between all Law Colleges and offer continuing legal education for the faculty.

Government should contemplate in making structural changes in Legal Services Authorities. The research team in its interaction with several Colleges found that Legal Services Authorities particularly at the District level have failed to establish effective collaborations with the Law College Clinics. Further, one of the function of Central Authority under section 4 (k) of Legal Services Authority Act is to develop, in consultation with the Bar Council of India, programs for Clinical Legal Education and promote guidance and supervise the establishment and working of Legal Services Clinics in Universities, Law Colleges and other institutions. However, both the BCI and the Authority has neither expertise nor human resources to carry on such function. Therefore, it is suggested that such a task be given to a body created by BCI in consultation with National Legal Services Authority.

It was observed during the in-depth study into the Clinics in seven States that involving the judges in administration of Legal Aid Programs had counter effect. There was a common feeling that for effective functioning of Legal Services Authorities, the administration of Legal Aid programs be best left to an independent member appointed fulltime. This suggestion also finds favour in the fact that most of the judges are unaware of the socio-legal needs of the community. Therefore, persons who are having experience at gross-root level should be appointed to administer the activities.

A closer look at Sec.12 of the Legal Service Authorities Act reveals that more than 60% of the population is entitled to free Legal Aid. As many of the categories mentioned in the section are too broad, it is suggested that this section may be suitably amended to include economic criteria for eligibility for free Legal Aid and same standard of elimination of creamy layer may be used for such purpose.

Government may bring suitable amendments to Advocates Act to enable the students of final year LL.B. and the faculty to represent the clients before the Court of Law. Bar Council of India may require bringing forth rules of practice for faculty and students. However, such representation could be allowed only for a pro bono litigation. Advocates Act enabling senior law students and Clinical law professors to represent indigent client in the Court would substantially increase access to justice to the poor. Justice Krishna Iyer in his Report of the Expert Committee on Legal Aid 1973, suggested an amendment to the Advocates Act in this regard. He proposed to add a provision after Section 33 in the Advocates Act which is as below:

Section33-A: Legal Aid by Teachers and Students:

Notwithstanding anything contained in the preceding section, the following categories of persons may appear in any Court or Tribunal on behalf of any indigent person, if the person on whose behalf an appearance is to be made has requested in writing to that effect:–

i. Teachers of a Law School which provides full time instruction for the professional LL.B. degree and which maintains a Legal Aid Clinic as part of its teaching programme where poor persons receive Legal Aid, advice and related services;

ii. Students of third year LL.B. class of Law School (fifth year of LL.B. in case of 5 years course) as aforesaid who are participating in the Clinics activities and who have been certified by the Dean / Principal of the Law School under rules made therefore by the Law School.

Provided such representation in the case of students shall be under the supervision of lawyers associated with the said Legal Aid Clinic and with the approval of the judge in whose Court the student appears.

Explanation–The supervising lawyer who shall be an Advocate under this Act is presumed under the last preceding provision to assume personal professional responsibility for the nature and quality of the students' legal services.

Specific directive should come from the Government to its departments, especially Rural Development and Social Welfare Departments to have collaborations with Law School Clinics for implementation of various poverty alleviation schemes.

Policy Recommendations for Legal Services Authority (LSA)

The role of LSA in assisting and collaborating with Law Schools is minimal. At the most the involvementoftheLSAislimitedtogivedirectionstotheLawSchoolstostartaClinicandaskthemto send the students for the Legal Literacy Camps. In few cases the students and the faculty were asked to observe the Lok Adalats. The potential of a Law School in reaching the community was either underestimated or ignored by LSA. Though poor quality of some of the Law Schools may justify such apathy, LSA could have assessed the potential of Law Schools and accordingly developed partnership and collaboration with the good Law Schools.

LSA needs to identify potential Law Schools based on the commitment of the students and the faculty, infrastructural facilities and geographical situation of the school. LSA with the help of Clinicians and the NGOs should train the students and the faculty of identified Law Schools to undertake the Legal Aid activities.

Full support and cooperation is required from LSA including funding. It was observed that not even 10% of Law Schools in the seven States received any financial aid from the concerned LSA of the State. It was learned that many LSAs failed to spend the money allotted to them. There are several instances where the money was in fact send back to NALSA. Therefore, LSA must prepare budgetary allocations to the identified Law Schools. However, LSA may insist on the Law Schools to submit the audited accounts and even LSA could itself send their personal to supervise the expenditure.

There is a need for a change in the mind-set of LSA. They need to accept that the law students and faculty are equal partners to LSA. Involvement of the students must not be confined to logistics arrangement.

As the Law Schools have a better reach to the community, designing and selecting the topic and the place for Legal Literacy Camps must be left to the school. LSA could use final year students in providing Legal Aid to the prisoners. Students can be grouped with the Legal Aid lawyer and organize a visit to the prisons, lock ups and other correctional homes. NALSA must involve the faculty and students in policy making particularly when it involves matters other than representation in Courts.

Para legal training could be entrusted to the identified Clinical faculty rather than left to the NALSA. Proper planning in identification of para legal required. Training the Trainers Program should focus on the potential trainer in a scientific manner rather than just condition who ever attends. For example in the Para Legal Training introduced by the NALSA, several advocates are enrolled. When they are already advocates there is no point in enrolling them as paralegals. Legal Aid must be an aid to the poor and not to the lawyers.

Further NALSA directions to Colleges and Schools other than Law Schools to start Legal Literacy Clubs would be counterproductive. When Law Colleges are struggling in offering Legal Aid and Legal Literacy, without any training one cannot expect that the other schools would be able to perform the same. Further, when NALSA could not monitor and supervise 900 Law Schools in India, it would not be in a position to monitor the quality of legal services by thousands of Colleges and Schools. Though, the project is ambitious such a move without sufficient human and financial resources would undermine the efforts of NALSA.

Therefore, NALSA should form a Committee for implementing legal literacy and such a Committee must consist of faculty, students and other stake holders. NALSA should also take the help of Clinical faculty who has been working with Legal Aid Clinics. The Clinical faculty could be appointed in LSA on deputation to oversee Legal Aid activities of the Law School based Clinics. Students must be encouraged to do internship with the LSA. NALSA must encourage research in the matters of Legal Aid and its delivery.

NALSA could direct the DLSA to have mandatory collaborations with the Law Schools after identifying the potential Law Schools for its activities and should conduct periodical meetings with the faculty and students. NALSA may also establish an award, State wise and Nation wise to rank the best Law School Clinics.

Policy Recommendations for University Grants Commission (UGC)

UGC not only has overall authority to regulate higher education in India but also gives various grants for improvement of higher education in various ways. Legal education in terms of faculty qualifications, service conditions, teaching hours etc…are all regulated by UGC despite the presence of BCI. Thus the UGC does have a direct bearing on the quality of legal education in the country. It could either by itself or in association with any other organization- Indian or foreign could formulate various Schemes of funding for specific Legal Aid initiatives by Law Colleges. After all, access to justice is also an equally important consideration for UGC, it being a body functioning under the Human Resource Ministry of GOI. UGC"s involvement will

greatly boost and support the Legal Aid Movement through Law Colleges in India. UGC may consider Legal Aid Clinic as a necessary condition for providing grants to Law Schools.

Policy Recommendations for National Human Rights Commission (NHRC)

Access to justice is certainly and intimately connected with the activities and concerns of NHRC. One area in which the expertise of NHRC could be made available is in training of faculty and students in Legal Aid work and secondly in the identification of areas or regions of the county which have greater dangers of human rights violations and provide special scheme to enable the Law Colleges to assist in ameliorating the situation in such areas through their services

Linkage and Networking

Networking is required for exchange of information or services among individuals, groups, or institutions for improvement and learning from others experiences. Networking and linkages between all stakeholders is a condition precedent for effective legal services. A concerted effort from all the stakeholders would improve access to justice to the poor. For networking with foreign Law School Clinics, technology can be used and it would be inexpensive. Networking helps in adopting best practices among the stakeholders and also in learning from each other.

The stakeholders are Law Schools, faculty, students, NGOs, Law Firms, LSA, Government, Bar Councils, Universities, Voluntary Organizations, UGC, Judiciary and the Community.

Methods of Networking:

1. Directory of Clinics and Clinical teachers
2. Publication of Newsletters and Journals
3. Annual Conferences/Workshops
4. Summer/Winter School Programs
5. Faculty and student Exchange Programs
6. Internships
7. Collaborative teaching
8. Collaborative writings
9. Websites
10. Emails
11. Phones
12. Blogs

Future Plans

This is the first ever study on Law Schools based Legal Aid in India. This project is a first step towards enhancing access to justice through Legal Aid Clinics in India. Merely identifying the status and problems of the Clinics in the seven States would serve no purpose unless a follow up program is undertaken to strengthen the Legal Aid Clinics. Therefore, there is a need for continuing this initiative in the following ways:

1. Conducting Training of Trainers Program in each State every year:
   The Law Colleges are unable to comprehend the concept of Legal Aid. Faculty designated for Legal Aid need training and the students need to be trained in several skills that are required for organizing legal aid activities. Hence, a Training of Trainers Program (TOT) needs to be organized in each State. These programs need to be designed and conducted by expert faculty in Clinical Methodology. A nodal agency which is actually involved in Legal Aid may be identified for conducting training programs for the faculty of Law Schools in the project States.
2. Identifying five potential Law Schools from each State to strengthen their Clinics. Total 35 faculties from the identified Law Schools from seven States should be trained in Legal Aid. Two week intensive training program should be conducted to train these faculty members. These trained faculty members would strengthen the Clinics in their respective Colleges. Within a year 25 Clinics in seven States would function.
3. This activity may be continued for five years and within five years there would be at least 25 Law Schools in each State with fully functional Clinics. The nodal agency would be monitoring the progress of the Clinics. A quarterly newsletter showcasing the activities carried by the selected Law School Clinics could be brought.
4. A proper networking would be developed among these Clinics and at the end of the year a Conference on Legal Aid Clinics should be organised. The purpose of this Conference is to involve students and faculty with other stake holders on a single platform to share the experiences and best practices among the Law Schools.
5. Identifying expert Clinical faculty to prepare Training Manuals on activities of Legal Aid.
6. Continue the same initiation in all other States.
7. Create a website for sharing the concerns and experiences.

Session No 6:
Role of NGOs

1. *Center for Legal Research and anr. V. State of Kerala (Supreme Court) AIR 1986 SC 1322*

Facts: Before the Legal Services Authorities Act, 1987, came into force, there was no statutory body for implementation of the policy of providing legal aid to the needy as envisaged in Article 39A. This duty was carried out by non-governmental and voluntary organisations apart from the Kerala State Legal Aid and Advice Board, a body constituted by the Government by executive orders. At the time, various voluntary and non-governmental organisations engaged in providing legal aid to the needy were not supported by the Government.

Moreover, by a letter, the Secretary to the Government, Law Department, Government of Kerala directed the District Collectors in the State to not render any assistance to voluntary organisations to conduct legal aid camps other than the Kerala State Legal Aid and Advice Board. Thus, some voluntary organisations approached the Supreme Court of India challenging the stand of the Government.

Issue: Whether voluntary organisations or social action groups engaged in the legal aid programme should be supported by the State Government and if so to what extent and under what conditions.

Decision: The assistance of voluntary agencies and social action groups must therefore be taken by the State for the purpose of operating the legal aid programme in its widest and most comprehensive sense, and this is an obligation which flows directly from Article 39Aof the Constitution. Further that, these voluntary organisation or social action group shall not be under the control or direction or supervision of the State Government or the State Legal Aid and Advice Board as these programmes should be totally free from any Government control.

Reasoning: The State Government has an obligation under Article 39A of the Constitution which is to set up a comprehensive and effective legal aid programme in order to ensure that the operation of the legal system promotes justice on the basis of equality.

But, no legal aid programme can succeed in reaching the people if its operation remains confined in the hands of the Administration. For such a programme to succeed, it must involve public participation. And, the best way to secure people's participation and involvement in the legal aid programme is to operate through voluntary organisations and social action groups. They know from their own experience as to what are the unmet legal needs of the people, what are the sources of exploitation and injustice to the under-privileged segments of society and what measures are necessary to be taken for the purpose of ending such exploitation and injustice and reaching social and distributive justice to them. The court

opined that organisations and social action groups must be encouraged and supported by the State in operating the legal aid programme.

Directions:

The State Government was also directed to extend its cooperation and support to the following categories of voluntary organisations and social action groups, in running the legal aid programme and organising legal aid camps and lok adalats or niti melas:

1) Voluntary organisations and social action groups which are recognised by the Committee for Implementing Legal Aid Schemes set up by the Government of India or whose programme or programmes are supported by way of grant or otherwise by the Government of India or the State Government or the Committee for Implementing Legal Aid Schemes or the State Legal Aid and Advice Board,

2) Voluntary organisations and social action groups which organise legal aid camps or lok adaltas or niti melas in conjunction with or with the support of the Committee for Implementing Legal Aid Schemes or the Kerala Stale Legal Aid and Advice Board.

3) Voluntary organisations and social action groups which are recognised by the State Government or the State Legal Aid and Advice Board on an application being made in that behalf.

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2. *Forum for Social Justice v. State of Kerala & Another (High Court of Kerala) ILR 2009 (4) Kerala 456*

Facts: In Pursuance of the guidelines and directions as given in the case of **Center For Legal Research And Anr. vs State Of Kerala,** the Government of Kerala framed guidelines regarding Governmental co-operation in respect of the legal aid activities of private organisations. The petitioner is one such private organisation engaged in the various legal aid programmes. They approached the Government for recognition as a voluntary organisation for rendering legal aid Pursuant thereto, the Government granted them recognition and extended support for conducting Legal Aid Clinics, and Neethimelas.

While matters stood thus, the parliament enacted the Legal Services Authorities Act, 1987, creating statutory bodies for the purpose of providing legal aid service to weaker sections of the society, as per which a National Legal Services Authority was constituted as an apex body under whom various State Legal Services Authorities were to function. The state authority (KELSA) constituted under the Legal Services Authorities Act, 1987, is also a respondent. When the

KELSA was constituted, the Government decided to cancel the accreditation granted by them to various voluntary organisations in the matter of rendering legal aid services. The petitioner, a voluntary organisation took up the matter with the Government, pursuant to which, the Government passed an order dated, wherein the Government held that on the advent of the Legal Services Authorities Act, 1987, the Government ceased to be the authority to give accreditation to voluntary organisations like the petitioner.

The petitioner again approached the Government for reconsideration of the matter, which was also rejected by the Government.

Petitioner's contention: Even after coming into force of the Legal Services Authorities Act, 1987, the rights conferred on voluntary organisations by the Supreme Court decision continues to be in force and therefore, the State Government is liable to continue giving assistance to voluntary organisations for providing legal service to the needy, which according to the petitioner is not in any way curtailed by the LSAA, 1987. The petitioner therefore submitted that the Government went wrong in abdicating their powers of recognising voluntary organisations for the purpose of rendering legal aid to the needy in accordance with guidelines framed by it.

Respondent's Contention: Once KELSA has been formed under the act, the authority in respect of legal services in the state vested absolutely with the KELSA, to the exclusion of the State Government regarding responsibilities hitherto exercised by the Government.

Decision: Appeal dismissed. It is in the best interest of the legal aid programmes in the State that every facet of the same is controlled by the National Legal Services Authority at the national level and the State Legal Services Authority at the state level. In fact that only has been recognised by the impugned orders.

Reasoning: Going by the scheme of the Act, the power of recognising voluntary and non-governmental organisations, for rendering legal services in the State, has been conferred on the authorities under the Act, which as far as State of Kerala is concerned is the KELSA. It is also in the fitness of things, since if two parallel authorities function for the same purpose, that would create confusion in the implementation of the provisions of the Act and would result in the legal said programmes itself ineffective.

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3. Safai Karamchari Andolan and Ors. v. Union of India (UOI) and Ors. 2014 (2) GLT 79, 2014

Facts: The Public Interest Litigation has been filed with respect to the inhuman practice of manually removing night soil which involves removal of human excrements from dry toilets with bare hands, brooms or metal scrappers; carrying excrements and baskets to dumping sites for disposal which is being carried out by manual scavengers. And they are considered as

untouchables by other mainstream castes and are thrown into a vortex of severe social and economic exploitation. The Safai Karamchari Andolan along with six other civil society organizations as well as seven individuals belonging to the community of manual scavengers filed the present writ petition on the ground that the continuation of the practice of manual scavenging as well as of dry latrines is illegal and unconstitutional since it violates the fundamental rights guaranteed under Articles 14, 17, 21 and 23 of the Constitution of India and the 1993 Act.

Issue: Whether the petitioners must be granted the reliefs sought for, on the account of the practice of manual scavenging and dry latrines being illegal and unconstitutional or not?

Decision: Relief granted. The Court directed all the State Governments and the Union Territories to fully implement the "The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013" and take appropriate action for non-implementation as well as violation of its provisions. Inasmuch as the Act 2013 occupies the entire field, the court also realized the need of further monitoring that would be required by itself. The court reiterated that the duty was cast on all the States and the Union Territories to fully implement and to take action against the violators. Henceforth, persons aggrieved are permitted to approach the authorities concerned at the first instance and thereafter the High Court having jurisdiction.

Reasoning: The National Commission for Safai Karamcharis- a statutory body, set up under the National Commission for Safai Karamcharis Act, 1993, in its 3rdand 4th Reports (combined) submitted to the Parliament, noted that the 1993 Act was not being implemented effectively and further noted that the estimated number of dry latrines in the country is 96 lakhs and the estimated number of manual scavengers identified is 5,77,228. It was further noted that manual scavengers were being employed in the military engineering works, the army, public sector undertakings, Indian Railways etc.

In 2003, a report was submitted by the Comptroller and Auditor General (CAG) which evaluated the 'National Scheme for Liberation and Rehabilitation of Scavengers and their Dependents'. The conclusion of the report was that this Scheme "has failed to achieve its objectives even after 10 years of implementation involving investment of more than Rs. 600 crores". It further pointed out that although funds were available for implementation of the Scheme, much of it were unspent or underutilized. The Committees set up for monitoring the Scheme were non-functional. It further noted that there was "lack of correspondence between 'liberation' and 'rehabilitation' and that "there was no evidence to suggest if those liberated were in fact rehabilitated". It concluded that "the most serious lapse in the conceptualization and operationalization of the Scheme was its failure to employ the law that prohibited the occupation... the law was rarely used".

4. Occupational Health and Safety Association v. Union of India and Ors. AIR 2014 SC 1469

Facts: The National Commission for Safai Karamcharis-a statutory body, set up under the National Commission for Safai Karamcharis Act, 1993, in its 3rdand 4th Reports (combined) submitted to the Parliament, noted that the 1993 Act was not being implemented effectively and further noted that the estimated number of dry latrines in the country is 96 lakhs and the estimated number of manual scavengers identified is 5, 77,228. Also, the manual scavengers were being employed in the army, public sector undertakings, Indian Railways etc. Though a lot of legislation for pollution control and environment conservation are in place, are in place, but there is a lack of proper health delivery system, evaluation of occupational health status of workers, their safety and protection cause serious occupational health hazards. The petition highlighted the serious diseases, the workers working in thermal plants had been suffering from over a period of years.

Relief sought: To issue a writ of mandamus or any other appropriate writ, order, or direction directing the Respondents-

- To frame guidelines with respect to occupational safety and health Regulations to be maintained by various industries;
- To appoint and constitute a committee for the monitoring of the working of thermal power plants in India and to keep check on the health and safety norms for the workers working in their power stations;
- To pay compensation to the workers who are victims of occupational health disorders and to frame a scheme of compensation for workers in cases of occupational health disorders;
- To notify the recommendations as contained in paragraph 35 of the Petition as guidelines to be followed by thermal power plant.

Issue: whether the relief sought by the petitioners can be granted or not as this is violative of Right to health i.e. right to live in a clean, hygienic and safe environment that is a right flowing from Article 21 of the workers.

Decision: High Courts in whose jurisdiction these power plants are situate, must examine whether CFTPPs are complying with safety standards and the rules and Regulations relating to the health of the employees working in various CFTPPs throughout the country and whether there is adequate and effective health delivery system in place and whether there is any evaluation of occupational health status of the workers. The High Court should also examine whether any effective medical treatment is meted out to them.

Reasoning: The decision of the court was based on the findings of Report of the Committee prepared by the National Institute of Occupational Health (NIOH) titled Environment, Health and Safety Issues in Coal Fired Thermal Power Plants of the year 2011.

Clean surroundings lead to healthy body and healthy mind. But, unfortunately, for eking a livelihood and for national interest, many employees work in dangerous, risky and unhygienic environment. Right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy, particularly Clauses (e) and (f) of Articles 39, 41 and42. Those Articles include protection of health and strength of workers and just and humane conditions of work. Those are minimum requirements which must exist to enable a person to live with human dignity. Every State has an obligation and duty to provide at least the minimum condition ensuring human dignity. But when workers are engaged in such hazardous and risky jobs, then the responsibility and duty on the State is double-fold. Occupational health and safety issues of CFTPPs are associated with thermal discharge, air and coal emission, fire hazards, explosion hazards etc. Dust emanates also contain free silica associated with silicosis, arsenic leading to skin and lung cancer, coal dust leading to black lung and the potential harmful substances. Necessity for constant supervision and to the drive to mitigate the harmful effects on the workers is of extreme importance.

SESSION NO 7:
ENGAGEMENT OF FULL-TIME TRAINED ADVOCATES BY THE SLSA

1. Gazette of India, Extraordinary, Part iii, Section 4 Ministry of Law & Justice; National Legal Services Authority

Notification

New Delhi, dated 9th September, 2010

No.L/61/10/NALSA. - ***In exercise of the powers conferred by section 29 of the Legal Services Authorities Act, 1987 (39 of 1987) and in pursuance of the provisions in section 4 of the Act to make available free and competent legal services to the persons entitled thereto under section 12 of the said Act, the Central Authority hereby makes the following regulations, namely: -***

1. Short title, extent and commencement. - (1) these regulations may be called the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010.

(2) They shall be applicable to Supreme Court Legal Services Committee, State Legal Services Authorities, High Court Legal Services Committees, District Legal Services Authorities and Taluk Legal Services Committees in India.

(3) They shall come into force from the date of their publication in the Official Gazette.

2. Definitions. – (1) In these regulations, unless the context otherwise requires,

(a) "Act" means the Legal Services Authorities Act, 1987 (39 of 1987);

(b) "Form" means a Form annexed to these Regulations;

(c) "front office" means a room in the Legal Services Institution where legal services are made available;

(d) "legal practitioner" shall have the meaning assigned to it in clause (i) of section 2 of the Advocates Act, 1961 (25 of 1961);

(e) "Legal Services Institution" means the Supreme Court Legal Services Committee, a State Legal Services Authority, the High Court Legal Services Committee, District Legal Services Authority or the Taluk Legal Services Committee, as the case may be;

(f) "Para-Legal Volunteer" means a para-legal volunteer trained as such by a Legal Services Institution;

(g) "Secretary" means the Secretary of the Legal Services Institution;

(h) "section" means the section of the Act;

(i) "State regulation" means regulation made by the State Authorities under the Act.

2. All other words and expressions used but not defined in these regulations shall have the same meanings assigned to them in the Act.

3. Application for legal services - (1) An application for legal services may be presented preferably in Form-I in the local language or English.

(2) The applicant may furnish a summary of his grievances for which he seeks legal services, in a separate sheet along with the application.

(3) An application, though not in Form-I, may also be entertained, if reasonably explains the facts to enable the applicant to seek legal services.

(4) If the applicant is illiterate or unable to give the application on his or her own, the Legal Services Institutions may make arrangement for helping the applicant to fill up the application form and to prepare a note of his or her grievances.

(5) Oral requests for legal services may also be entertained in the same manner as an application under sub-regulation (1) and (2).

(6) An applicant advised by the para-legal volunteers, legal aid clubs, legal aid clinics and voluntary social service institutions shall also be considered for free legal services.

(7) Requests received through e-mails and interactive on-line facility also may be considered for free legal services after verification of the identity of the applicant and on ensuring that he or she owns the authorship of the grievances projected.

4. Legal Services Institution to have a front office- (1) All Legal Services Institutions shall have a front office to be manned by a panel lawyer and one or more para-legal volunteers available during office hours.

(2) In the case of court based legal services, such lawyer shall after consideration of the application, forward the same to the Committee set up under regulation 7 and for other types of legal services, the panel lawyer in the front office may provide such legal services.

(3) The panel lawyer in the front office shall render services like drafting notices, sending replies to lawyers' notices and drafting applications, petitions etc.

(4) The panel lawyer in the front office may obtain secretarial assistance from the staff of the Legal Services Institutions.

(5) In case of urgent matters, the panel lawyer in the front office may in consultation with the Member-Secretary or Secretary of the Legal Services Institutions provide legal assistance of appropriate nature:

Provided that the Committee set up under regulation 7 may consider and approve the action taken by the panel lawyer in the front office.

5. Proof of entitlement of free legal services. -- (1) An affidavit of the applicant that he falls under the categories of persons entitled to free legal services under section 12 shall ordinarily be sufficient.

(2) The affidavit may be signed before a Judge, Magistrate, Notary Public, Advocate, Member of Parliament, Member of Legislative Assembly, elected representative of local bodies, Gazetted Officer, teacher of any school or college of Central Government, State Government or local bodies as the case may be.

(3) The affidavit may be prepared on plain paper and it shall bear the seal of the person attesting it.

6. Consequences of false or untrue details furnished by the applicant. The applicant shall be informed that if free legal services has been obtained by furnishing incorrect or false information or in a fraudulent manner, the legal services shall be stopped forthwith and that the expenses incurred by the Legal Services Institutions shall be recoverable from him or her.

7. Scrutiny and evaluation of the application for free legal services. - (1) There shall be a Committee to scrutinise and evaluate the application for legal services, to be constituted by the Legal Services Institution at the level of Taluk, District, State and above.

(2) The Committee shall be constituted by the Executive Chairman or Chairman of the Legal Services Institution and shall consist of, -

(i) the Member Secretary or Secretary of the Legal Services Institution as its Chairman and two members out of whom one may be a Judicial Officer preferably having working experience in the Legal Services Institution and;

(ii) a legal professional having at least fifteen years' standing at the Bar or Government pleader or Assistant Government Pleader or Public Prosecutor or Assistant Public Prosecutor, as the case may be.

(3) The tenure of the members of the Committee shall ordinarily be two years which may be further extended for a maximum period of one year and the Member Secretary or Secretary of the Legal Services Institution shall, however, continue as the ex-officio Chairman of the Committee.

(4) The Committee shall scrutinise and evaluate the application and decide whether the applicant is entitled to the legal services or not within a period of eight weeks from the date of receipt of the application.

(5) If the applicant is not covered under the categories mentioned in section 12, he or she shall be advised to seek assistance from any other body or person rendering free legal services either voluntarily or under any other scheme.

(6) The Legal Services Institution shall maintain a list of such agencies, institutions or persons who have expressed willingness to render free legal services.

(7) Any person aggrieved by the decision or order of the Committee, he or she may prefer appeal to the Executive Chairman or Chairman of the Legal Services Institution and the decision or order in appeal shall be final.

8. Selection of legal practitioners as panel lawyers- (1) Every Legal Services Institution shall invite applications from legal practitioners for their empanelment as panel lawyers and such applications shall be accompanied with proof of the professional experience with special reference to the type of cases which the applicant-legal practitioners may prefer to be entrusted with.

(2) The applications received under sub-regulation (1) shall be scrutinised and selection of the panel lawyers shall be made by the Executive Chairman or Chairman of the Legal Services Institution in consultation with the Attorney-General (for the Supreme Court), Advocate-General (for the High Court), District Attorney or Government Pleader (for the District and Taluk level) and the respective Presidents of the Bar Associations as the case may be.

(3) No legal practitioner having less than three years' experience at the Bar shall ordinarily be empanelled.

(4) While preparing the panel of lawyers the competence, integrity, suitability and experience of such lawyers shall be taken into account.

(5) The Executive Chairman or Chairman of the Legal Services Institution may maintain separate panels for dealing with different types of cases like, Civil, Criminal, Constitutional Law, Environmental Law, Labour Laws, Matrimonial disputes etc.

(6) The Chairman of the Legal Services Institution may, in consultation with the Executive Chairman of the State Legal Services Authority or National Legal Services Authority as the case may be prepare a list of legal practitioners from among the panel lawyers to be designated as Retainers.

(7) The Retainer lawyers shall be selected for a period fixed by the Executive Chairman on rotation basis or by any other method specified by the Executive Chairman.

(8) The strength of Retainer lawyers shall not exceed, -

(a) 20 in the Supreme Court Legal Services Committee;

(b) 15 in the High Court Legal Services Committee;

(c) 10 in the District Legal Authority;

(d) 5 in the Taluk Legal Services Committee.

(9) The honorarium payable to Retainer lawyer shall be–

(a) Rs.10,000 per month in the case of Supreme Court Legal Services Committee;

(b) Rs.7,500 per month in the case of High Court Legal Services Committee;

(c) Rs.5,000 per month in the case of District Legal Services Authority;

(d) Rs.3,000 per month in the case of the Taluk Legal Services Committee:

Provided that the honorarium specified in this sub-regulation is in addition to the honorarium or fee payable by the Legal Services Institution for each case entrusted to the Retainer lawyer.

(10) The panel lawyers designated as Retainers shall devote their time exclusively for legal aid work and shall be always available to deal with legal aid cases and to man the front office or consultation office in the respective Legal Services Institution.

(11) The panel prepared under sub-regulation (2) shall be re-constituted after a period of three years but the cases already entrusted to any panel lawyer shall not be withdrawn from him due to re-constitution of the panel.

(12) The Legal Services Institution shall be at liberty for withdrawing any case from a Retainer during any stage of the proceedings.

(13) If a panel lawyer is desirous of withdrawing from a case he shall state the reasons thereof to the Member-Secretary or the Secretary and the latter may permit the panel lawyer to do so.

(14) The panel lawyer shall not ask for or receive any fee, remuneration or any valuable consideration in any manner, from the person to whom he had rendered legal services under these regulations.

(15) If the panel lawyer engaged is not performing satisfactorily or has acted contrary to the object and spirit of the Act and these regulations, the Legal Services Institution shall take appropriate steps including withdrawal of the case from such lawyer and his removal from the panel.

9. Legal services by way of legal advice, consultation, drafting and conveyancing. - (1) The Executive Chairman or Chairman of the Legal Services Institution shall maintain a separate panel of senior lawyers, law firms, retired judicial officers, mediators, conciliators and law professors in the law universities or law colleges for providing legal advice and other legal services like drafting and conveyancing.

(2) The services of the legal aid clinics in the rural areas and in the law colleges and law universities shall also be made use of.

10. Monitoring Committee. - (1) Every Legal Services Institution shall set up a Monitoring Committee for close monitoring of the court based legal services rendered and the progress of the cases in legal aided matters.

(2) The Monitoring Committee at the level of the Supreme Court or the High Court, as the case may be, shall consist of, -

(i) the Chairman of the Supreme Court Legal Services Committee or Chairman of the High Court Legal Services Committee;

(ii) the Member-Secretary or Secretary of the Legal Services Institution;

(iii) a Senior Advocate to be nominated by the Patron-in-Chief of the Legal Services Institution.

(3) The Monitoring Committee for the District or Taluk Legal Services Institution shall be constituted by the Executive Chairman of the State Legal Services Authority and shall consist of, -

(i) the senior-most member of the Higher Judicial Services posted in the district concerned, as its Chairman;

(ii) the Member-Secretary or Secretary of the Legal Services Institution;

(iii) a legal practitioner having more than fifteen years' experience at the local Bar- to be nominated in consultation with the President of the local Bar Association:

Provided that if the Executive Chairman is satisfied that there is no person of any of the categories mentioned in this sub-regulation, he may constitute the Monitoring Committee with such other persons as he may deem proper.

11. Functions of the Monitoring Committee:

(1) Whenever legal services are provided to an applicant, the Member-Secretary or Secretary shall send the details in Form-II to the Monitoring Committee at the earliest.

(2) The Legal Services Institution shall provide adequate staff and infrastructure to the Monitoring Committee for maintaining the records of the day-to-day progress of the legal aided cases.

(3) The Legal Services Institution may request the Presiding Officer of the court to have access to the registers maintained by the court for ascertaining the progress of the cases.

(4) The Monitoring Committee shall maintain a register for legal aided cases for recording the day-to-day postings, progress of the case and the end result (success or failure) in respect of cases for which legal aid is allowed and the said register shall be scrutinised by the Chairman of the Committee every month.

(5) The Monitoring Committee shall keep a watch of the day-to-day proceedings of the court by calling for reports from the panel lawyers, within such time as may be determined by the Committee.

(6) If the progress of the case is not satisfactory, the Committee may advise the Legal Services Institution to take appropriate steps.

12. Monitoring Committee to submit bi-monthly reports. – (1) The Monitoring Committee shall submit bi-monthly reports containing its independent assessment on the progress of each and every legal aid case and the performance of the panel lawyer or Retainer lawyer, to the Executive Chairman or Chairman of the Legal Services Institution.

(2) After evaluating the reports by the Committee, the Executive Chairman or Chairman of the Legal Services Institution shall decide the course of action to be taken in each case.

(3) It shall be the duty of the Member-Secretary or Secretary of the Legal Services Institution to place the reports of the Monitoring Committee before the Executive Chairman or Chairman of the Legal Services Institution and to obtain orders.

13. Financial assistance. – (1) If a case for which legal aid has been granted requires additional expenditure like payment of court fee, the fee payable to the court appointed commissions, for summoning witnesses or documents, expenses for obtaining certified copies etc., the Legal Services Institution may take urgent steps for disbursement of the requisite amount on the advice of the panel lawyer or Monitoring Committee.

(2) In the case of appeal or revision the Legal Services Institution may bear the expenses for obtaining certified copies of the judgment and case records.

14. Payment of fee to the panel lawyers. -

(1) Panel lawyers shall be paid fee in accordance with the Schedule of fee, as approved under the State regulations.

(2) The State Legal Services Authority and other Legal Services Institution shall effect periodic revision of the honorarium to be paid to panel lawyers for the different types of services rendered by them in legal aid cases.

(3) As soon as the report of completion of the proceedings is received from the panel lawyer, the Legal Services Institution shall, without any delay, pay the fees and expenses payable to panel lawyer.

15. Special engagement of senior advocates in appropriate cases. – (1) If the Monitoring Committee or Executive Chairman or Chairman of the Legal Services Institution is of the opinion that services of senior advocate, though not included in the approved panel of lawyers, has to be provided in any particular case the Legal Services Institution may engage such senior advocate.

(2) Notwithstanding anything contained in the State regulations, the Executive Chairman or Chairmen of the Legal Services Institution may decide the honorarium for such senior advocate:

Provided that special engagement of senior advocates shall be only in cases of great public importance and for defending cases of very serious nature, affecting the life and liberty of the applicant.

16. Evaluation of the legal aid cases by the National Legal Services Authority and State Legal Services Authorities. – (1) The Supreme Court Legal Services Committee shall send copies of the bi-monthly reports of the Monitoring Committee of the Supreme Court Legal Services Committee to the Central Authority.

(2) The High Court Legal Services Committees, the State Legal Services Authorities shall submit copies of the bi-monthly reports of their Monitoring Committees to their Patron-in-Chief.

(3) The District Legal Services Authorities and Taluk Legal Services Committees shall submit copies of the bi-monthly reports of their Monitoring Committees to the Executive Chairman of the State Legal Services Authority.

(4) The State Legal Services Authorities shall also send consolidated half- yearly reports of the Monitoring Committees, indicating the success or failure of each of the legal aided cases, to the Central Authority.

(5) In appropriate cases, the Executive Chairman of the National Legal Services Authority may nominate and authorise the members of its Central Authority to supervise, monitor or advise the Legal Services Institution for effective and successful implementation of these regulations.

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2. Legal Services and the Legal Profession in India[1]

A. Overview of the Legal Profession

It is estimated that there are approximately 1.2 million registered lawyers in India, with about 60,000 to 80,000 new lawyers joining the profession every year. While this is similar to the absolute number of lawyers in the U.S., the per capita number of lawyers in India is around 10.2 for every 10,000 residents as compared to around 38.5 lawyers per 10,000 residents in the U.S. Most Indian lawyers work in litigation-related fields, with likely only around 5,000 to 10,000 corporate or transactional lawyers in India, including in-house lawyers. Approximately 1,000 lawyers work for national law firms consisting of around 200 lawyers each, with an estimated

[1] Study Conducted by: The Pro Bono Institute and Latham & Watkins

additional 1,000 lawyers working in mid-size firms, each consisting of 20 or more lawyers. The remaining lawyers consist of sole proprietorships and attorneys employed by smaller law firms. Indian lawyers are certainly not limited to Indian law firms and employers. There are various opportunities for Indian lawyers abroad, although the size of this market has been equally hard to pinpoint. At one top Indian law school, 3 out of 43 students applying for on-campus placements in 2012 were extended offers by foreign law firms. In general, Indian law graduates are able to benefit from their training in a common-law system (largely inherited from the British) and proficiency in English.

B. Structure of the Indian Judiciary

The highest court in the Indian judiciary is the Supreme Court of India (hereinafter the "Supreme Court"), followed by High Courts, which exercise both original and appellate jurisdiction, and lower or subordinate courts. There are a total of 21 High Courts representing 28 states and several union territories, since some states and union territories share High Courts. There are also 640 administrative districts in India below the state level, each of which has a district court. In addition to the district courts, there are several judicial tribunals that are set up to address distinct areas of law. Though they are supervised by the state High Courts, some of these tribunals allow appeals directly to the Supreme Court. A unique feature of the Indian judicial system is that although there are central and state laws with distinct (and sometimes overlapping) jurisdictions, the court system is integrated in that courts administer both central and state laws. One of the biggest problems plaguing the Indian judicial system has been pendency. It is estimated that, as of January 2012, there were more than 27 million cases pending in the judicial system. Further, as noted by the Supreme Court itself, there are around 300 judicial vacancies just at the High Court level pending confirmation and appointment, which compounds the problem. Lawyers, activists and even Supreme Court judges have focused on this issue, which is central to an understanding of not just how legal services are provided and regulated in India, but also the real opportunities and obstacles facing lawyers interested in providing pro bono services in India.

C. Regulation of Lawyers and Legal Services

The legal profession in India is primarily governed by Bar Councils as set up by the Advocates Act in 1961 (hereinafter "Advocates Act"). The stated purpose of the Advocates Act was to "consolidate the law relating to legal practitioners and to provide for the constitution of the Bar Councils and an All-India Bar." The Advocates Act set up Bar Councils for each state composed of attorneys elected by other attorneys. The functions of Bar Councils include admitting attorneys to the bar, preparing and maintaining the register of attorneys, hearing cases of misconduct against admitted attorneys and "organising legal aid to the poor," including by constituting legal aid committees. These Bar Councils served as self-regulatory organizations, and the Bar Council of India has been tasked with establishing the rules and standards of

professional conduct for attorneys and disciplinary procedures. These rules and standards, which are set out in detail on the website of the Bar Council of India, prescribe a lawyer's duties towards the court, clients, opponents and fellow lawyers. In 2011, the Law Ministry of the central government introduced a proposal to create a Legal Services Board that would act as an additional regulator of attorneys, in addition to state Bar Councils and the Bar Council of India. The proposed bill would make it mandatory for lawyers to provide free legal services to the poor. This bill has been vigorously opposed by the legal community as, usurpation of the powers of Bar Councils and has yet to be introduced in parliament

D. Legal Aid

India's laws strongly support the provision of pro bono legal services. The Constitution of India (hereinafter "Constitution"), national legislation and Supreme Court jurisprudence together articulate an aspiration for broadly accessible legal aid. Despite robust support in the letter of the law, the national network of legal services providers is unable to meet the needs of India's disadvantaged populations, and nongovernmental organizations (hereinafter "NGOs") providing legal services face significant resource constraints. First, the Constitution guarantees access to legal services. Specifically, Article 39A of the Constitution provides: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Further, Article 22(1) of the Constitution requires that any person who is detained be given the right to "consult, and to be defended by, a legal practitioner of [their] choice." The Supreme Court has interpreted the Constitution broadly with respect to rights of the underprivileged. For example, the Court has held that the right to free legal aid falls within the ambit of the right to life set out in Article 21 of the Constitution. Second, the Legal Services Authorities Act, as amended by the Legal Services Authorities (Amendment) Act, 2002 (hereinafter "LSA Act") describes a hierarchy of state, district and taluk legal services authorities intended to give effect to the Constitutional promise of equal access to justice. The LSA Act was originally enacted by India's Parliament in 1987 and adopted by various Indian states during the mid-1990s. Sections 15, 16 and 17 of the LSA Act establish National, State and District Legal Aid Funds respectively, which collect government funding, grants and donations to finance legal services and legal literacy activities. The work of this hierarchy of legal services organizations across India has, however, fallen far short of the demand for public legal services. The LSA Act also frames the work of the Lok Adalats. Lok Adalats are local "people's court" settlement and mediation bodies, intended to promote equal access to justice to those economically or otherwise less privileged in the formal court system. Though criticized for their informality, Lok Adalats provide final settlements to disputes quickly as compared to the traditional court system. Disputes may be presented before a Lok Adalat if the parties agree

to its jurisdiction or if a court refers a matter to a Lok Adalat for settlement. Importantly, Section 21(2) of the LSA Act provides that Lok Adalat awards are final and binding on the parties to the dispute. Lok Adalats charge no court fee, do not follow procedural rules, and allow disputants to interact with the judge directly to explain their cases. In practice, for example, in the southern state of Tamil Nadu, by the end of 2001, 4,871 separate Lok Adalats had been organized, and such Lok Adalats had decided 91,178 cases. Lok Adalats usually decide money claims, and matrimonial and land acquisition matters. However, they are not a forum for large scale public interest litigation and do not offer the procedural safeguards characteristic of traditional courts. Third, and perhaps with greatest impact on legal services in India, the Public Interest Litigation (hereinafter "PIL") mechanism has liberalized access to the courts. Article 32 of the Constitution gives the Indian Supreme Court jurisdiction over PIL actions. In S.P. Gupta v. Union of India, the Court articulated a broad rule of locus standi: if a petitioner were "by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public" might petition on their behalf against the government of India to enforce a fundamental constitutional right. The S.P. Gupta Court further held that it would "respond even to a letter addressed by such individual acting pro bono publico" and treat it as a writ petition for a PIL case. PIL cases are intended to be cooperative and collaborative, rather than adversarial in nature. They allow judges to involve amici curiae and expert advisors to provide information and help structure orders such that they are easily implemented. PILs place the Court in the role of an active fashioner of remedies and ongoing monitor, eliciting forward-looking injunctive remedies rather than focusing entirely on monetary damages. As a result, PILs are often more flexible in their general approach, with courts often taking on an active and inquisitional role and sometimes granting immediate and interim remedial relief once a prima facie case is made. In PIL proceedings courts are also more likely to relax adherence to procedural rules and laws, such as principles of res judicata, laches, and standing, to permit greater protection of the rights of the disadvantaged sections of society. Critics argue that this reliance on outside experts grants amici too much influence over judicial outcomes, that the judicial activism of the PIL mechanism violates the separation of powers in Indian government, and that PIL has invited a flood of frivolous cases that abuse the increased access to the courts provided by PIL. Its critics notwithstanding, PIL has led to court rulings issuing guidelines for compensating and rehabilitating rape victims, ordering the release of bonded laborers, banning smoking in public places, and defining sexual harassment in the workplace. The potential for effective PIL cases is strengthened by the relative independence of India's judiciary. PIL provides a unique opportunity for public legal services providers in India, and is central to the work of legal services organizations such as the Lawyers Collective, Human Rights Law Network, and the Alternative Law Forum

E. Eligibility for Legal Services

Section 12 of the LSA Act lays out the criteria for eligibility for legal services under the LSA Act. According to its provisions, every person who has to file or defend a case is entitled to legal services if they are: (a) from a low caste according to the historical caste system in India; (b) a victim of human trafficking or a beggar; (c) a woman or child; (d) a mentally ill or disabled person; (e) a victim of a natural disaster or man-made disaster or conflict, such as ethnic violence; (f) an industrial workman; (g) in custody, including with the legal authorities and with a mental health institution; or (h) earning an income below the poverty ceiling amended from time to time in accordance with the LSA Act. However, as the bulk of legal services are provided by organizations established outside of the national network of legal aid, these eligibility guidelines are not determinative of whether legal services are available to marginalized groups. At the same time, the expansive entitlement provided in the LSA Act remains an unfulfilled promise.

II. PRO BONO IN INDIA: OPPORTUNITIES AND OTHER CONSIDERATIONS

A. Pro Bono Opportunities

The major organizations which provide pro bono services in India are the Lawyers Collective (hereinafter "LC"), the Human Rights Law Network (hereinafter "HRLN"), and the Alternative Law Forum (hereinafter "ALF"). The LC comprises lawyers, law students and human rights activist members and consists of a women's rights initiative as well as a focus on domestic violence, sexual harassment, HIV, access to medicine and vulnerable community issues. HRLN is a not-for-profit NGO with 25 offices across India that advocates for civil, political, economic, social, cultural and environmental rights. HRLN works on a variety of issues including criminal justice, housing rights and human trafficking. It has organized a network of Indian advocates who take on pro bono cases in addition to their individual legal practices. Finally, ALF provides legal support to groups and people marginalized on the basis of class, caste, disability, gender or sexuality.

Other legal services organizations providing pro bono services in India include: in New Delhi, the Public Interest Legal Support and Research Center, which works on environmental, refugee, religious freedom and representative governance issues; in Kolkata, Swayam focuses on women's rights, and Manabadhikar Suraksha Mancha focuses on civil and political rights in Bangalore, human rights organization SICHREM and the National Law School's Legal Services Clinic in Mumbai, the Society for Service to Voluntary Agencies, supporting nonprofits in Uttaranchal, Rural Litigation and Entitlement Kendra, an NGO serving indigenous populations and women and children and with offices across Tamil Nadu, People's Watch Tamil Nadu, which focuses on human rights litigation

Further, numerous Indian NGOs engage in law-related advocacy work. For example, the Center for Civil Society advocates for the right to education and the rights of street entrepreneurs.

Women's rights organizations include the Center for Social Research, SAKSHI and WomenPowerConnect.

In general, Indian law firms do not have organized pro bono practices. However, when invited, firms such as Amarchand Mangalda, Trilegal and Luthra & Luthra Law Offices have contributed attorney hours to certain structured pro bono efforts. While several individual advocates may contribute their time to public service activities, the work is ad hoc and consequently difficult to organize or measure.

While pro bono work is supported in Indian law, the provision of pro bono services is unlikely to increase for a variety of reasons. First, the rising demand for commercial lawyers in India may deter growth in the pro bono sector. In addition, India's tremendous diversity; its liberal laws and jurisprudence in relation to legal services for the underprivileged; its large population living in poverty; its history and present status as a secular, democratic republic; and its recent economic growth along with the rising expectations that growth has prompted, together make it a unique and challenging environment in which to develop pro bono legal services.

B. Barriers To Pro Bono Work And Other Considerations

Although Indian law prevents foreign-qualified lawyers from directly representing pro bono clients, the opportunity for such lawyers to contribute to the legal services market in India more broadly is immense.

1. General Restrictions on Foreign-Qualified Lawyers

To qualify as an "advocate" under the Advocates Act, a lawyer must be admitted to the rolls of an Indian Bar. The Advocates Act further specifies that only advocates, as defined under that Act, are entitled to practice law in India, and only advocates may practice in any Indian court or before any Indian authority. The language of the Advocates Act draws no distinction between fee-paying and pro bono work. According to this legislation, foreign- qualified lawyers cannot make any legal filings or appear in court on pro bono matters. Further, the Indian government does not routinely grant work visas to legal interns or lawyers. Litigation is currently ongoing in relation to the entry of foreign-qualified lawyers into practice in India.

2. What Role Can Foreign-Qualified Lawyers Play in Pro Bono Work?

As the restriction on foreign-qualified lawyers practicing law extends to both fee-paying and non-fee-paying work, foreign-qualified lawyers are not permitted to take on pro bono cases in India. They also may not participate in a joint venture with local lawyers to undertake pro bono work. Foreign law firms therefore cannot develop their own pro bono practices in India. However, they can partner with local organizations in a variety of support, advisory and

capacity-building roles. Lawyers are not required to charge a value-added tax on legal services, nor are there regulations that require lawyers to charge minimum tariffs for their services.

Provided that foreign-qualified lawyers do not file any documents under their names or seek to represent their pro bono clients in court, these lawyers can assist in a multitude of ways. For example, they can identify issues, research domestic and foreign precedents, interview parties, assist in drafting documents, and review and rehearse arguments for pro bono cases. They can also provide strategic advice in particular cases or in relation to models and structures for delivering pro bono services in coordination with Indian NGOs and law firms among others. They can aid generally in legal literacy, policy and advocacy efforts.

Foreign-qualified lawyers can also assist with reviews of the implementation of specific laws and research on pendency problems in the judicial system. For example, the Right to Information Act passed in 2005 was aimed at increasing transparency and reducing corruption, in part by establishing commissions to help ensure that Indian citizens are able to access public records. However, the commissions are often in need of further legal resources to read and categorize cases and reduce pendency. In addition to assisting legal services and quasi-judicial organizations in these ways, foreign-qualified lawyers might also volunteer their time to develop legal clinics in coordination with Indian law schools, and to help professionalize pro bono work in India more broadly. Given the dire need for pro bono services in India and the wide variety of organizations focused on these needs, the opportunities for foreign-qualified lawyers are effectively limited only by their creativity and interest.

C. Pro Bono Resources:

Below is a non -exhaustive list of organizations that provide pro bono services in India through which foreign-qualified lawyers may seek opportunities to participate:

- Lawyers Collective (http://www.lawyerscollective.org/)
- Human Rights Law Network (http://www.hrln.org/hrln/)
- Alternative Law Forum (http://www.altlawforum.org/)
- i-Probono (http://www.i-probono.com/)
- National Campaign for the People's Right to Information (http://righttoinformation.info/)
- Public Interest Legal Support and Research Center (http://pilsarc.org/)
- Swayam (http://www.swayam.info/)
- Manabadhikar Suraksha Mancha (http://www.masum.org.in/)
- Mahila Sarvangeen Utkarsh Mandal (http://www.escr-net.org/docs/i/838915)
- SICHREM (http://www.sichrem.org/)
- National Law School's Legal Services Clinic (http://www.nls-lsc.org/)
- National Legal Services Authority (http://nalsa.gov.in/legalservices.html)
- Rural Litigation and Entitlement Kendra (http://www.rlek.org/)

• People's Watch (http://www.peopleswatch.org/index.php)
• Centre for Civil Society (http://ccsindia.org/ccsindia/index.asp)
• Centre for Social Research (http://www.csrindia.org/)
• SAKSHI (http://www.sakshingo.org/)
• WomenPowerConnect (http://www.womenpowerconnect.org/)
• Indian Institute of Legal and Professional Development (no website available)

III. CONCLUSION

In the last three decades, legislative, institutional and jurisprudential developments in India have laid the foundation for the provision of myriad free legal services to the poor. In practice, however, only a handful of organizations effectively deliver these services, often relying on India's unique Public Interest Litigation mechanism to provide legal aid. At present, domestic law restricts foreign-qualified lawyers from representing pro bono clients. However, foreign-qualified lawyers can contribute to pro bono legal services directly, for example, by providing research and writing skills in individual cases, as well as indirectly through capacity-building efforts alongside Indian organizations. The demand for pro bono legal services in India far exceeds the supply, and interested foreign-qualified lawyers should be able to find meaningful opportunities to contribute by contacting the organizations listed above or other legal service organizations in India.

SESSION NO 8:
LOK ADALATS ORGANISATIONAL ISSUES

1. Lok Adalts and Permanent Lok Adalats[1]

The word 'Lok Adalat' means 'People's Court' albeit it is strictly not a court in the conventional sense in as much as the Lok Adalat does not adjudicate on facts by application of law. It is a forum where disputes between the parties are resolved by conciliation and participation and what ensues finally is an amicable settlement which gets crystallized into the award of the Lok Adalat. Based on Gandhian principles, Lok Adalat is one of the most important components of the ADR system operating in India. It may be comprehensively said that Lok Adalat is an ADR mechanism operating on indigenous lines where the ADR neutral known as the Lok Adalat Judge plays an evaluative and suggestive role and steers the disputant parties towards a negotiated mutually acceptable settlement. The whole emphasis in Lok Adalat proceedings is on conciliation rather than adjudication and the process contemplates effective participation and negotiation between the parties.

EVOLUTION OF LOK ADALATS

Panchayats have been a traditional forum for dispute resolution in India since times immemorial. In the modern context, Nyaya Panchayats were operating on indigenous lines even before the advent of the British system of justice. After independence Nyaya Panchayats were reorganized, however in practice, they appeared to the villagers as formal and incomprehensible and therefore failed to live up to the expectations of the people. This provoked the search for better options on different lines. The Indian Constitution aims to secure to the people of India justice – social, economic and political.[2] In 1976, Article 39A was inserted into the Constitution of India,[3] which unequivocally enjoins upon the State to secure that the operation of the legal system promotes justice, on the basis of equal opportunity, and in particular, to provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Thereafter in 1980 the Government of India appointed a Committee on Implementation of Legal Aid Schemes (CILAS) to co-ordinate the implementation of legal aid programmes, which inter alia recommended the establishment of Lok Adalats. The evolution of contemporary system of Lok Adalats is, however, traceable to the Lok Adalat run by a noted Gandhian social worker *Harivallabh Parikh* in a tribal area Rangpur in Guajrat.[4] Thereafter Lok Adalats were initially started in various parts of Gujarat in March 1982.[5] During the 1980's Lok Adalats were generally regarded as a species

[1] inflibnet.ac.in/bisstream/10603/2666/9/09/_chapter%203pdf (Shodganaga)
[2] See the Preamble to the Constitution of India.

[3] Inserted by the Constitution (Forty Second Amendment) Act, 1976, S. 8 (w.e.f. 03.01.1977).

[4] Upendra Baxi, "From Takrar to Karar: The Lok Adalat at Rangpur (1976)" available at: http://upendrabaxi.net (last visited on 25.03.2012).

[5] K. Ramaswamy, "Settlement of Disputes through Lok Adalats is one of the Effective Alternative Dispute Resolution on Statutory Basis", in P.C. Rao and William Sheffield (Eds.), *Alternative Dispute Resolution* 93 (Universal Law Publishing

of legal aid programme meant specially to cater to the needs of poor and weaker sections of society and not as a viable substitute for courts. The institution of Lok Adalats had been functioning as a voluntary and conciliatory agency without any statutory backing for its decisions and had become very popular in providing for a speedier system of administration of justice.[1] One of the purposes of starting Lok Adalat camps was to ameliorate the judicial system qua its colossal problem of arrears, while simultaneously affording an accessible forum for expeditious and economical resolution of disputes to the litigants. What therefore followed was a demand for providing a statutory basis and framework for this institution of Lok Adalat.

This demand for affording statutory recognition to Lok Adalats and the zest to transform into reality the salutary objective and mandate of Article 39A of the Constitution of India culminated in to the enactment of the Legal Services Authorities Act, 1987. One of the objectives of the Legal Services Authorities Act, 1987 is to provide for organization of Lok Adalats to secure that the operation of the legal system promotes justice on the basis of equal opportunity. Lok Adalats have thus attained statutory recognition under the Legal Services Authorities Act, 1987.

LOK ADALATS – PRACTICES AND PROCEDURES

The Legal services Authorities Act, 1987 provides that every State/ District Legal Services Authority or the Supreme Court/ High Court Legal Services Committee may organise Lok Adalats at such intervals and such places and for exercising such jurisdiction and for such areas as it thinks fit.[2] The Lok Adalats may comprise of serving or retired judicial officers and such other persons as may be prescribed by the Legal Services Authority/ Committee.[3] Any case pending before a court may be referred to a Lok Adalat if all the parties agree or if one of the parties makes an application to the court and the court is prima facie satisfied that there are chances of settlement or if the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat after giving a reasonable opportunity of being heard to the parties.[4] Thus the court can also *suo motu* refer the dispute to the Lok Adalat even where the parties are reluctant, if the court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat.[5] The prime consideration which the court has to keep in mind is the existence of the possibility of a settlement. The parties however must get a reasonable opportunity of being heard before the matter is referred to the Lok Adalat, *suo motu* by the court.[6] The Legal Services Authority or Committee organizing the Lok Adalat may also refer a case to the Lok Adalat on receipt of an application from any one of the parties after giving a reasonable opportunity

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Company Pvt. Ltd., Delhi, 1997) [13] N.V. Paranjape, *Public Interest Litigation, Legal Aid & Services, Lok Adalats and Para Legal Services* 273 (Central Law Agency, Allahabad, 1st Edn. 2006).

[1] R.L. Bhatia, "Recent Developments in ADR: Permanent Lok Adalats", *The Chartered Accountant* 757 (December 2004).

[2] S. 19(1), Legal Services Authorities Act, 1987.

[3] S. 19(2), Legal Services Authorities Act, 1987.

[4] S. 20(1), Legal Services Authorities Act, 1987.

[5] *Sau. Pushpa Suresh Bhutada* v. *Subhash Bansilal Maheshwari*, AIR 2002 Bombay 126

[6] *Commissioner, Karnataka State Public Instruction (Education), Bangalore* v. *Nirupadi Virbhadrappa Shiva Simpi*, AIR 2001 Karnataka 504.

of being heard to the parties.[1] The Lok Adalat proceeds to dispose of the case on the basis of compromise or settlement between the parties. The source of power of Lok Adalat, which is only a forum for ADR, is conciliation and the Lok Adalat is not supposed to delve into the realm of adjudication.[2] In fact the promotion of conciliation culture is one of the most important objectives of the Lok Adalat movement. The jurisdiction of Lok Adalat is therefore limited to making an effort to bring about a compromise or settlement between the parties to the dispute with their consent so that the matter is finally settled once for all. Conversely where there is no compromise or settlement the case cannot be disposed of by the Lok Adalat[3] and in such an eventuality the case is to be returned back to the court for disposal as per law. Where the matter is settled before the Lok Adalat an award is passed by the Lok Adalat on the basis of the settlement. However, the award of the Lok Adalat cannot travel beyond the compromise or settlement arrived at between the parties.[4] The award of the Lok Adalat is not a judicial decision and the Lok Adalat cannot incorporate any finding, direction or stipulation in the award *de hors* the settlement and the award is nothing but a formal assimilation and integration of the terms of the settlement or compromise arrived between the parties, by the Lok Adalat in the form of an enforceable order and the nature of this process of passing of the award though ostensibly judicial is in fact essentially administrative. Further every award of the Lok Adalat is final and binding on all the parties to the dispute[5] and no appeal lies to any court against the award. This is a very valuable and vital provision which is meant to give finality to the decision of the Lok Adalat. Even review by the court which referred the case to the Lok Adalat is not permissible. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution of India and that too on very limited grounds.

The award of a Lok Adalat is deemed to be a decree of a civil court and is *per se* executable. Viewed in that perspective, since every award of the Lok Adalat is deemed to be a decree of a civil court, the matter need not be referred back to the concerned court for passing of a consent decree. Lok Adalat has the requisite powers to specify its own procedure, however, it is bound to follow the principles of natural justice, equity, fair play and other legal principles. Although it ensures minimum standards of fairness, the emphasis is more on natural justice than the rigours and Assets and Enforcement of Security Interest Act, 2002 were not permissible; formalities of legal procedure. A Lok Adalat has the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 for summoning and enforcing the attendance of witnesses and examining them on oath, the discovery and production of any document, requisitioning of any public record, reception of evidence on affidavits, etc. and all

[1] S. 20(2), Legal Services Authorities Act, 1987.
[2] *State Bank of Indore v. Balaji Traders*, 2003(3) R.C.R.(Civil) 339.
[3] *State of Punjab* v. *Phulan Rani*, AIR 2004 SC 4105; See also *Union of India* v. *Ananto*, AIR 2007 SC 1561.
[4] *State of Punjab* v. *Ganpat Raj*, AIR 2006 SC 3089.
[5] S. 21, Legal Services Authorities Act, 1987

proceedings before a Lok Adalat are deemed to be judicial proceedings. But despite this, the procedure followed by Lok Adalat is relatively simple, flexible and straightforward.

ADVANTAGES OF LOK ADALATS

Lok Adalats are extremely important and popular ADR fora enabling the parties to resolve their disputes by way of amicable settlements once and for all. Since the final award in a Lok Adalat is based on a mutually acceptable solution it results in a win-win situation for the parties and therefore in Lok Adalat proceedings there are no victors and vanquished and, thus, no rancour.[1] Moreover the process of dispute resolution through Lok Adalats is a purely voluntary process. The biggest advantage of the Lok Adalat system is however, that the award passed by the Lok Adalat is final and binding on the parties and it has the status of a decree of a civil court and can thus be executed as such through a civil court. Moreover the award of the Lok Adalat is final thereby obviating the possibility of successive appeals and thereby saving time, money and effort of the parties which can be utilized for other constructive purposes. Another important advantage of Lok Adalats is speedy resolution of disputes. The procedure followed at a Lok Adalat is very simple and shorn of legal formalism and rituals and it utilizes voluntary conciliation as a mode of dispute resolution. There is no strict application of procedural laws like the Code of Civil Procedure and the Evidence Act. Procedural flexibility coupled with straightforward course of action results in speedier dispute resolution.

Furthermore Lok Adalats are much more accessible than regular courts and there is no requirement of a lawyer before the Lok Adalat. The Lok Adalat Judge is there to help out the parties and the parties can directly interact with the Lok Adalat Judge and seek his guidance.

Lok Adalats are popular and effective because of their innovative nature and inexpensive style. They provide inexpensive justice to the parties as the absence of a full dressed trial and mandatory requirement of representation through lawyers coupled with a simplified and expeditious procedure renders them an economical and cost effective mode of dispute resolution. Moreover no court fee is payable in a Lok Adalat and on the contrary the court fee which has already been paid before the referral court, has to be refunded if the dispute is settled before the Lok Adalat.

ISSUES REGARDING LOK ADALATS

The first important issue pertaining to Lok Adalats is with respect to the time which is spent on proceedings before a Lok Adalat. The amount of time spent assumes importance in complex matters and the same is important to secure settlements and further ensure efficacious settlements. In Lok Adalat proceedings the neutral (Lok Adalat Judge) may not be able to devote as much time and attention as is possible in case of conciliation and mediation. In case of mediation and conciliation only very few cases are taken up by the neutral (mediator or conciliator) during the day and as such a lot of personalized attention can be devoted by the neutral (mediator or conciliator). Time is also not a

[1] *P. T. Thomas* v. *Thomas Job*, AIR 2005 SC 3575.

constraint in mediation or conciliation and the parties may as well have as many numbers of sittings as are required for the satisfaction of the parties.

However in case of Lok Adalats the average time spent on a single case is less than five minutes.[1] This is understandable as Lok Adalats are generally held in Delhi on ad hoc basis for one day only – normally on second Saturdays. The time available is therefore limited and as many as 50- 60 cases on an average are listed before the Lok Adalat in a single day in Delhi.

Secondly, although there is no bar in having more than one sitting in Lok Adalats yet the same is practically not possible. In Delhi although, Lok Adalats are held on second Saturdays, yet the dates have to be formally notified by DLSA and they might change depending on exigencies. Further, if the matter is carried forward to the next Lok Adalat, there is a high probability that the matter would be listed before a different Lok Adalat judge. Thirdly there is a time gap of one month between two successive Lok Adalats. Thus the biggest disadvantage with Lok Adalats is that repeated sittings at short intervals with the same judge are almost not possible which breaks the continuity of the deliberations. The cumulative effect of all these factors practically results in a situation where practically only one sitting is held before the Lok Adalat and if the matter is not finally settled in that one sitting it is referred back to the court with an option for subsequent referral to the next Lok Adalat. One can imagine that within this time frame it is not possible for parties to arrive at final settlements in complex disputes. Thus Lok Adalats may be suitable for simple cases such as complaints under section 138 of the Negotiable Instruments Act, 1881, bank recovery suits, electricity disputes, motor accident claim cases and traffic challans where the only issue is arriving at a mutually acceptable settlement amount in terms of quantum of money and the schedule and manner of payment of the same. Likewise Lok Adalats may also be beneficial in case of simple criminal cases involving compoundable offences where complex issues are not involved and the final settlement is straightforward, which is normally based on expression of contrition and clemency or financial *quid pro quo*.

In this background it cannot be denied that Lok Adalat as a forum of dispute resolution may not be very effective for resolution of complex, multifaceted long standing disputes involving myriad issues between multiple parties such as partition suits, family disputes, complex commercial cases, matrimonial disputes, etc. For instance, in case of complex matrimonial disputes where offence under section 498 A IPC is also involved it is preferable that parties be referred to mediation. Another reason for this is that continuous, detailed and focused personalized attention on the part of the neutral is lesser than in case of mediation or conciliation.

The disposal rates of Lok Adalats also fortify this conclusion. For example in the quarter from January to March 2011, the number of cases under section 138 of the Negotiable Instruments Act, 1881 which were disposed of was 13,763 whereas only 68 matrimonial disputes were settled before Lok Adalats in

[1] In the Empirical study conducted 85% of the respondents stated that the average time spent on one case was less than 5 minutes.

Delhi. To cite another example in the month of March 2008, the number of criminal compoundable cases including cases under section 138 of the Negotiable Instruments Act, 1881, which were disposed of before Lok Adalats in Delhi was 4974 whereas only 6 disputes were settled by Mahila conciliation. Further in the mega traffic Lok Adalat held on 8th and 9th September 2007 in all district courts in Delhi 42,567 traffic challans were disposed of and similarly in the mega traffic Lok Adalat held in November 2008 in all district courts in Delhi 11403 traffic challans were disposed of. In the mega Lok Adalat pertaining to bank matters of ICICI bank only on 8th February 2009, as many as 5445 cases were disposed of.

Thus, when it comes to disposal of simple cases the disposal rates run into thousands but in case of complex disputes the number of cases disposed of is quite less. Mega Lok Adalats organized for mass disposal of cases also work well in cases of petty offences like traffic challans or cases under section 138 of the Negotiable Instruments Act, 1881 but not in case of other complex matters.

Even the majority of the cases which are referred to Lok Adalats are matters where complexities are not involved. For example, in the quarter from October to December 2008, the number of cases under section 138 of the Negotiable Instruments Act, 1881 referred to Lok Adalats was 16148. On the other hand only 40 cases pertaining to Mahila Courts, 271 cases pertaining to matrimonial disputes and 86 civil cases were referred to Lok Adalats. The necessary conclusion is that Lok Adalats are not very apposite for complex cases, however despite this fact Lok Adalats are quite popular in Delhi and are extensively used for resolution of disputes.

LACK OF CONFIDENTIALITY

Lok Adalat proceedings are held in the open court and any member of public may witness these proceedings. Thus, the element of confidentiality is also lacking. There is practically no room for chamber meetings or individual sessions as time is a major constraint. The parties are, therefore, not able to open up freely to the extent they can in conciliation or mediation proceedings. This also impedes the process of exploration of various resolution options and ultimately the success rate in matters where parties desire confidentiality.

Moreover there is no statutory guarantee of confidentiality in Lok Adalat proceedings nor is there any statutory provision which restricts reference to events during the course of settlement proceedings. However the Supreme Court[1] has remedied this situation and has held that section 20(5) of the Legal services Authorities Act, 1987 statutorily recognizes the right of a party whose case is not settled before the Lok Adalat to have his case continued before the court and have a decision on merits and any admission made, any tentative agreement reached, or any concession made during the negotiation process before the Lok Adalat cannot be used either in favour of a party or against a party when the matter comes back to the court on failure of the settlement process.

[1] *B.P. Moideen Sevamandir* v. *A.M. Kutty Hassan*, 2009 (2) S.C.C. 198.

AURA OF COURT PROCEEDINGS

Lok Adalats are considered as ADR fora and are not strictly courts in their accepted connotation. Lok Adalats are fora where voluntary efforts intended to bring about settlement of disputes between the parties are made through conciliatory and persuasive efforts. However the fact of the matter is that Lok Adalats are conducted in regular courts only. Therefore some amount of formality still remains attached with Lok Adalats. Moreover all proceedings before a Lok Adalat are deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code and every Lok Adalat is deemed to be a civil court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. Thus the proceedings before a Lok Adalat are undoubtedly 'Legal Proceedings'.

Furthermore some amount of formality continues to remain attached to proceedings before the Lok Adalat and the aura of the court continues to haunt the parties and mould the response of the litigants as a result they are not able to freely interact and communicate which hampers dispute resolution in complicated matters.

Initially in Delhi Lok Adalats were presided over by judges in their regular court rooms while sitting on the dais. However of late a tradition has been started were the judges along with associate members sit across the table with the litigants. Other such steps can be to put a curtain or a temporary screen so that the dais is not at all visible, exempt the traditional court dress, employ psychologists and counsellors as associate members, etc. The idea is to create a more friendly and congenial atmosphere for settlement negotiations.

DIMINISHED PARTY AUTONOMY

In a Lok Adalat the ADR neutral is a judge and the parties are well aware of his position. The Lok Adalat Judge though steers the parties to an acceptable resolution, plays and evaluative, interventionist and suggestive role. Therefore it cannot be said that the parties remain in absolute control of the proceedings in contradistinction to what happens in mediation. Lok Adalat is therefore a neutral-cantered process, where the primary focus is on presenting the factual/legal background of a dispute to the Lok Adalat judge who plays an evaluative role and actively proposes settlement terms and controls the process. Therefore affluent and educated parties may not feel themselves to be in total control of the process to the extent as they are in mediation. But for parties from the socially, educationally and economically moderate strata this may be irrelevant since rather than controlling the process themselves what they require is better guidance and they are more likely to trust and rely upon the Lok Adalat judge for that.

EFFICACY OF LOK ADALATS

The primary objective for which Lok Adalats were devised was reducing the swelling judicial dockets. The accumulated frustration of the people desirous of quick disposal of their cases is the biggest reason for the people having responded with hope, excitement and zeal in holding Lok Adalats for dispute ending of pending disputes. With the passage of time Lok Adalats have lived up to the expectations of the people and have been able to satisfactorily achieve their purpose. The Lok Adalat movement has

become a viable, efficacious and expeditious ADR system in India. The utility of Lok Adalats as effective ADR mechanisms cannot be disputed as far as simple cases are concerned. Their efficacy cannot be undermined for the simple reason that the majority of the cases, in terms of number, which may classified as fit for settlement are simple cases only.

The critics of the Indian judicial system constantly refer to the surmounting arrears of cases piling up in the Indian courts. However the nature of cases which are described as arrears is never considered. A vast chunk of cases which are choking the judicial system are petty cases and such kinds of cases are quite suitable for being referred to Lok Adalats. Indeed the most desired function of Lok Adalats in this era of swelling judicial dockets may seem to be clearing the backlog. In that sense, Lok Adalats have enabled the judicial system to ameliorate this institutional burden of petty cases which is not only clogging the judicial system but also adding to the figures resulting in this propaganda of surmounting arrears. It cannot be, therefore, gainsaid that the Lok Adalats have done a commendable job.

It is argued by some that the cases disposed of by Lok Adalats can very well be disposed of by the regular courts or they are already on the verge of settlement. There is no doubt that cases disposed of by Lok Adalats can very well be disposed of by regular courts. However that *ipso facto* does not render the Lok Adalats superfluous and redundant, nor does it, imply that Lok Adalats are not effective as ADR mechanisms. In fact, this argument that the cases referred to ADR can be settled before the court itself, equally applies to all ADR mechanisms.

But a case cannot be said to be really settled unless the settlement is actually recorded and the matter is finally disposed of. The Lok Adalats also conduct conciliation, steer the disputants to arrive at an amicable solution, record the settlement in the form of statements of the parties and pass awards on the basis of such settlements, which undoubtedly requires time. Lok Adalats are held on days when the regular courts are not functioning. Thus the time spent in disposal of cases in Lok Adalats does not eat away the judicial time of the judges which can be utilized by judges for adjudication of cases on merits. In case the judges take up such cases for compromise during court working hours considerable amount of judicial time would be wasted. The other way round, it may not be possible for judges to find and devote additional time for effecting settlement of such cases in regular courts. It may thus be stated that Lok Adalats is an extra endeavour on the part of the judges and the DLSA beyond the court working hours/ days to clear up the dockets by resorting to settlement of disputes through the generic process of conciliation in the open court. This extra effort is what makes a difference.

Questions are also raised sometimes in respect of quality of justice rendered. However one must remember that a legal adjudication may be flawless but heartless while a negotiated settlement will be satisfying, even if it departs from strict law. Attainment of the cherished goal of justice for all through mutually acceptable resolution of disputes is characteristic of all ADR mechanisms and this has been endorsed all over the globe. There is nothing peculiar with respect to Lok Adalats as far as this issue is concerned. The savings in terms of time, money and effort and the contentment of an amicable resolution add more value to the quality of justice. Further the concept of justice must also be viewed

in light of the prevailing scenario and one cannot harp on the concept of ideal justice given the conditions which exist in India and when viewed in that perspective there can be no doubt that quality justice is rendered by the Lok Adalats. However the Lok Adalat system is not visualized to supplant the court system but only as a supplementary machinery to get pending cases resolved. Lok Adalats provide an alternative resolution instrument for expeditious and inexpensive justice and their utility as an ADR mechanism cannot be disputed in the present scenario in Delhi. In fact the Lok Adalat concept and philosophy is an innovative Indian contribution to the world jurisprudence.

PERMANENT LOK ADALATS

Permanent Lok Adalats are a species of Lok Adalats only but modified in certain respects. In general Lok Adalats are held periodically under the aegis of the Legal Services Authorities/ Committees and are not a regular/ daily affair. However Permanent Lok Adalats are permanent dispute resolution fora which work continuously as any other court/ tribunal.

The Legal services Authorities Act, 1987 originally did not provide for establishment of Permanent Lok Adalats. However the Legal Services Authorities Act was amended in the year 2002 and the chapter pertaining to Permanent Lok Adalats was inserted.

The Legal Services Authorities are now enjoined upon to establish Permanent Lok Adalats at such places and for exercising such jurisdiction in respect of one or more public utility services[1] and for such areas as may be specified.

The Chairman of the Permanent Lok Adalat is a person who is, or has been, a district judge or additional district judge or has held a judicial office higher in rank than that of a district judge. Two other persons having adequate experience in public utility services are also nominated by the government. The jurisdiction of the Permanent Lok Adalat may be invoked by any party to a dispute at the pre litigation stage by making an application to the Permanent Lok Adalat for the settlement of dispute. Once the jurisdiction of the Permanent Lok Adalat has been invoked the parties are precluded from taking recourse to proceedings before a court of law.

However the Permanent Lok Adalat has no jurisdiction in respect of any matter relating to a non-compoundable offence or where the value of the property in dispute exceeds Rupees ten lakhs. Permanent Lok Adalats also have no jurisdiction where the matter does not pertain to any public utility service. Permanent Lok Adalats also cannot take cognizance of a matter which is already *sub judice* in a court of law.

[1] 'Public Utility Service' means any transport services for the carriage of passengers or goods by air, road or water or postal, telegraph or telephone service or supply of power, light or water to the public by any establishment or system of public conservancy or sanitation or service in hospital or dispensary or insurance service and includes any service which the Central Government or the State Government, as the case may be, may in the public interest, by notification, declare to be a public utility service. See s. 22A (b), Legal Services Authorities Act, 1987.

The Permanent Lok Adalat at the first instance employs the process of conciliation so as to assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner. It may direct parties to produce evidence and other related documents before it. The Permanent Lok Adalat, while conducting conciliation proceedings or deciding a dispute on merits has to be guided by the principles of natural justice, objectivity fail play, equity and other principles of justice, and is not bound by the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872. Where the parties reach at an agreement on the settlement of the dispute, they have to sign the settlement agreement and the Permanent Lok Adalat passes an award in terms thereof and has to furnish a copy of the same to each of the parties concerned.[1] Where the parties fail to reach at an agreement the Permanent Lok Adalat, if the dispute does not relate to any offence, has to decide the dispute on merits.[2] This is the basic area where a Permanent Lok Adalat clearly differs from an ordinary Lok Adalat. Thus Permanent Lok Adalats have residuary jurisdiction, in addition to the jurisdiction enjoyed by Lok- Adalats, to decide the dispute by virtue of S.22C(8) even if the parties have failed to resolve the dispute after conciliation. The award of the Permanent Lok Adalat is final and binding on all the parties thereto and on persons claiming under them and the same is deemed to be a decree of a civil court. Again no appeal lies against the judgment award of the Permanent Lok Adalat. The award of the Permanent Lok Adalat is final [3] cannot be called in question in any original suit, application or execution proceedings. The award however is to be made by a majority of the persons constituting the Permanent Lok Adalat.

PERMANENT LOK ADALATS

Permanent Lok Adalat definitely possesses trappings of adjudication and in this perspective sometimes questions are raised about its classification as an ADR mechanism. In *State of Punjab* v. *Jalour Singh*[4] the Supreme Court held that the Lok Adalats only have a conciliatory role and they are not competent to undertake adjudicatory determination and the award of the Lok Adalat does not mean and imply any independent verdict or opinion arrived at by the decision-making process.

The next question is then how the concept of Permanent Lok Adalat co-exists with this judgment of the Supreme Court. The aspect to be considered is that in *State of Punjab* v. *Jalour Singh* the Supreme Court was dealing with a case involving a Lok Adalat within the contemplation of section 19, 20, 21 and 22 of the Legal Services Authorities Act, 1987. The Permanent Lok Adalats in contradistinction to Lok Adalats have been expressly conferred an adjudicatory role by the statute.[5] Where in a matter before a Permanent Lok Adalat the matter cannot be settled by conciliation the Permanent Lok Adalat is statutorily enjoined to decide the dispute on merits. The judgment in *State of Punjab* v. *Jalour Singh*

[1] S. 22 C (7), Legal Services Authorities Act, 1987.
[2] S. 22 C (8), Legal Services Authorities Act, 1987.
[3] *Paras Holidays Pvt. Ltd.* v. *State of Haryana*, 2008(4) R.C.R.(Civil) 367 S. 22 E
[4] AIR 2008 SC 1209.
[5] S. 22 C (8), Legal Services Authorities Act, 1987.

would therefore not apply to Permanent Lok Adalats since in that case the court was not considering the provision enshrined under section 22C(8) of the Legal Services Authorities Act, 1987.[1]

Moreover the amendments to the Legal Services Authorities Act, 1987 pertaining to Permanent Lok Adalats were challenged, but they were upheld by the Supreme Court of India.[2]

In *Life Insurance Corporation of India* v. *Suresh Kumar*[3], the Supreme Court observed that Permanent Lok Adalat has no jurisdiction or authority vested in it to decide any lis, as such, between the parties even where the attempt to arrive at an agreed settlement between the parties has failed. However, again the court in that case was dealing with and referring to a Lok Adalat' organized under section 19 of the Act. 'Continuous Lok Adalats' organized under section 19 of the Legal Services Authorities Act, 1987 are sometimes loosely described as 'Permanent Lok Adalats' and should not be confused with Permanent Lok Adalats constituted under section 22B(1) of the Act. This position has been clarified by the Supreme Court itself[4] that a Permanent Lok Adalat has the jurisdiction to decide on the merits of the dispute where an amicable resolution of the dispute fails.[5]

Thus a person who enters the domain of a Permanent Lok Adalat cannot withdraw from the same and he must ultimately suffer a decision on merits if a negotiated settlement does not fructify and that to with the added rigour of absence of any appeal. [6] This might put a party at some disadvantage in as much as the forum which in its form appears to be conciliatory ultimately turns out to be adjudicatory. Lawyers have been very critical of this provision. But this only implies that that the concept of Permanent Lok Adalat does not appear to be completely in sync with purely non adjudicatory ADR. Be that as it may there are ADR mechanisms which have adjudicatory character also. Arbitration is a purely adjudicatory process and still it is regarded as an ADR mechanism. We also have hybrid processes such as 'Med-Arb' wherein the parties allow the same person to first mediate, and if that is unsuccessful, then arbitrate a dispute. It is also considered as an ADR mechanism having both adjudicatory as well as non-adjudicatory trappings.

Similarly dispute resolution through Permanent Lok Adalats is also an ADR mechanism, hybrid in nature, having both adjudicatory as well as non-adjudicatory trappings and alternative in the sense that it offers a substitute to conventional litigation and it steers clear of the rigidity and complexity of the conventional litigative process. A Permanent Lok Adalat is a special tribunal which is not a `court' [7] and its decision is not subject to successive appeals. The procedure is somewhat similar to Med-Arb. The Supreme Court[8] has held that the procedure adopted by Permanent Lok Adalats is what is popularly

[1] *Pu Lalkanglova Sailo* v. *Pi Ngurthantluangi Sailo,* AIR 2009 Gauhati 39.
[2] *S.N. Pandey* v. *Union of India,* Writ Petition (Civil) No. 543/2002
[3] 2011 (4) SCALE 137.
[4] *InterGlobe Aviation Ltd.* v. *N. Satchidanand,* (2011) 7 SCC 463.
[5] See also *United India Insurance Co. Ltd.* v. *Ajay Sinha,* 2008 (7) S.C.C. 454
[6] In *Ambika Kumary* v. *State of Kerala,* AIR 2012 Kerala 16
[7] *Inter Globe Aviation Ltd.* v. *N. Satchidanand,* (2011) 7 SCC 463.
[8] ibid.

known as `Con-Arb' (conciliation cum arbitration) in the United States of America, where the parties can approach a neutral third party or authority for conciliation and if conciliation fails, authorize such neutral third party or authority to decide the dispute itself, such decision being final and binding.

The Chairman of a Permanent Lok Adalat is a person who has held a judicial office of an additional District Judge or higher. Thus there can be no issues about quality of the decision making process or the decision rendered on merits. The Permanent Lok Adalat invites written statements of the parties. It may take such documents and evidence as it may deem fit and it is to be guided by the principles of natural justice, objectivity fail play, equity and other principles of justice. The mere fact that it is not bound by the provisions of Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872 does not imply that the Permanent Lok Adalat decides on the basis of no evidence or it decides capriciously.

Thus dispute resolution through Permanent Lok Adalat is definitely an ADR mechanism. A person submitting to the jurisdiction of the Permanent Lok Adalat is presumed to know the law that in case the dispute is not amicably resolved, the Permanent Lok Adalat would acquire an adjudicatory role and hence the so called disadvantage can only be described as a self imposed disadvantage, if at all it is really a disadvantage. Lawyers can also very well apprise the client of the demerits, if any, of the machinery of PLA. In spite of that, if the party is inclined to resort to the cheaper remedy, it cannot be said that the legislation is anti-litigant, as there is no compulsion that one shall first approach PLA before approaching a court of law.

In practice Permanent Lok Adalats have similar benefits and suffer from similar disabilities as ordinary Lok Adalats do. However Permanent Lok Adalats function continuously and they require additional separate expenditure. They provide an additional state sponsored ADR mechanism with the capacity and time to deal with much greater number of cases and more complex cases than ordinary Lok Adalats. All these cases which were disposed of by Permanent Lok Adalats were cases which could have become prospective arrears for the Delhi Judiciary. Thus the disposal of these thousands of cases by Permanent Lok Adalats in Delhi is a significant contribution to the justice delivery system. Delhi has a vast population along with a very complex and widespread system of public utility services. Hence the contribution of Permanent Lok Adalats in streamlining the legal system is quite sizeable. They have provided effective ADR fora for expeditious resolution of disputes pertaining to public utility services outside the traditional court system.[1]

Lok Adalats meaning ‘People’s Courts’ are ADR fora where the Lok Adalat Judges steer the disputant parties towards a negotiated settlement by the use of generic process of conciliation. In Delhi Lok Adalats are organized under the auspices of the D.L.S.A. at the district court level and D.H.C.L.S.C. at the High Court level in the form of continuous Lok Adalats, special Lok Adalats, mega Lok Adalats etc. While Lok Adalats have proved to be extremely efficacious for disposal of simple straightforward cases such as complaints under section 138 of the Negotiable Instruments Act, 1881, recovery suits,

[1] R.L. Bhatia, “Recent Developments in ADR – Permanent Lok Adalats”, *The Chartered Accountant* (December 2004).

electricity disputes, motor accident claim cases, traffic challans, etc., they may not be very effective[1] for resolution of complex cases such as partition suits, family disputes, complex commercial cases, matrimonial disputes. The reasons are not far to seek, a few being availability of limited time with the Lok Adalat judges, heavy cause lists, lack of continuous personalized attention, want of confidentiality, limited number of sittings (sometimes only one) with the same Lok Adalat Judge, etc.

However despite these limitations Lok Adalats are extremely popular ADR fora in Delhi and are regularly organized. Thousands of simple cases which were clogging the judicial system thereby swelling the judicial dockets have been disposed of through Lok Adalats and the organization of these Lok Adalats is an extra endeavour on the part of the judges and the DLSA beyond the court working hours/ days to clear up the judicial dockets. Lok Adalats have therefore been successful in accomplishing their primary goals for which they were mooted– providing expeditious and inexpensive justice and clearing the judicial dockets. To ignore their contributions is to misunderstand both how justice functions in India and the constraints on the path to greater access to justice in the future.

The concept of Lok Adalat is no longer an experiment in India, but it is an effective and efficient, pioneering and palliative alternative mode of dispute settlement which is accepted as a viable, economic, efficient, informal, expeditious form of resolution of disputes. The empirical data reveals startling results and if the number of cases disposed of were the only parameter Lok Adalats would be crowned as the finest ADR mechanism.

At this juncture the endeavour should be to organize more and more Lok Adalats, ensure greater participation, reduce formalism, and spare more time and personalized attention thereby ensuring quality justice through Lok Adalats. The movement also requires a greater support from the bar for its success. Permanent Lok Adalats on the other hand are permanent ADR fora which have been established under the Legal Service Authorities Act, 1987 for resolution of disputes pertaining to public utility services at the pre litigation stage. The Permanent Lok Adalats initially utilize the generic process of conciliation to broker a settlement between the parties and in case the matter is not settled it proceeds to decide the case on merits, except in cases involving a criminal offence. Characterized by its huge population and all round development in all spheres of life, Delhi possesses a huge network of public utility services and speedy resolution of disputes with respect to such public utility services is essential for societal wellbeing and development. This underlines the importance of Permanent Lok Adalats in Delhi which has also been highlighted by the Delhi High Court in *Abdul Hassan and National Legal Services Authority* v. *Delhi Vidyut Board*[2]. At present there are various Permanent Lok Adalats functioning in Delhi and the disposal of thousands of cases by these Permanent Lok Adalats in Delhi is a significant contribution to the justice delivery system and therefore more and more Permanent Lok

[1] A.M. Khanwilkar (Justice), "Need to Revitalize ADR Mechanism" available at http://bombayhighcourt.nic.in/mediation/Mediation_Concept_and_Articles last visited on 11.04.2012.

[2] AIR 1999 Delhi 88.

Adalats are required to be established in Delhi covering myriad public utility services. There is no dispute about the proposition that India has moved aggressively into this realm of ADR through Lok Adalats including Permanent Lok Adalats. However the Lok Adalat movement needs to be taken to still greater echelons as the system needs to inhale the life giving oxygen of justice through the Lok Adalats.

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2. *State of Punjab v. Jalour Singh and others AIR 2008 SC 1209*

Facts: The accident took place on March 4, 1997. Amarjit Kaur, aged about 32 years, died in the accident. Her husband and minor son claimed compensation. The Tribunal granted compensation. Thereafter, the High Court Lok Adalat took up the appeal on 3.8.2001. The parties were not present. Their counsel was present. After hearing them the Lok Adalat passed the following order. The Lok Adalat had increased the amount of compensation to the family of the deceased and ordered the respondents to pay the said compensation within 2 months of the date of the order.

The appellants, therefore, filed a petition under Article 227 of the Constitution (Civil Revision Petition) challenging the order of the Lok Adalat. The said petition was rejected by another single Judge of the High Court by an order holding that it is not maintainable. The high Court stated that nothing has been pointed out showing that such a petition under Article 227 of the Constitution is maintainable. Apart from the fact that the Lok Adalat has granted time for filing the objections and the objections have been dismissed, the meager increase in the amount of compensation does not warrant any interference.

Issue: whether the Civil Revision Petition against the award of Lok Adalat in this case, is maintainable or not?

Decision: The appeal was allowed. The Lok Adalat exercised a power/jurisdiction not vested in it. On the other hand, the High Court twice refused to exercise the jurisdiction vested in it, thereby denying justice and driving the appellants to this Court

Reasoning: Reference was made to Section 19 of the Legal Services Authority Act that provides for the organisation of Lok Adalats..

It is true that where an award is made by Lok Adalat in terms of a settlement arrived at between the parties, (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds.

But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is

not an award of the Lok Adalat. The question of challenging such an order in a petition under Article 227 does not arise. As already noticed, in such a situation, the High Court ought to have heard and disposed of the appeal on merits.

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3. Bar Council of India v. Union of India (2012) 8 SCC 243

FACTS: Bar Council of India by means of this writ petition under Article 32 of the Constitution of India has raised challenge to the vires of Sections 22-A, 22-B, 22-C, 22-D and 22-E of the Legal Services Authorities Act, 1987 as inserted by the (Amendment) Act, 2002. The challenge is principally on the ground that Sections 22-A, 22-B, 22-C, 22-D and 22-E are arbitrary per se; violative of Article 14 of the Constitution of India and are contrary to the rule of law as they deny fair, unbiased and even-handed justice to all.

Issue: whether Section 22-A, 22-B, 22-C, 22-D and 22-E introduced into the Act by the Amendment Act of 2002 are contrary to the Rule of Law?

Petitioner: Section 22-C (1) read with Section 22-C (2) provides that a dispute before Permanent Lok Adalat can be raised by moving an application to it unilaterally by any party to the dispute. The public utility service provider, thus, can play mischief by pre-empting an aggrieved consumer from going to the consumer forum or availing other judicial process for redressal of his grievance and enforcement of his rights. Permanent Lok Adalats have been empowered to decide dispute on merits upon failure between the parties to arrive at a settlement under Section 22-C(8). While deciding the case on merits, the Permanent Lok Adalat is not required to follow the provisions of the Civil Procedure Code or the Evidence Act.

No right to appeal has been provided for against the award in any court of law. Since all the public utility services basically relate to the fundamental right to life provided under Article 21 of the Constitution, any adverse decision on merits by Permanent Lok Adalat would immediately impinge upon fundamental right of an aggrieved citizen. The writ jurisdiction under Articles 226/227 is extremely limited and is no substitute of the appellate jurisdiction.

Decision: The appeal was dismissed.

Reasoning: The court found no merit in the submission of the petitioner that the service provider may pre-empt the consideration of a dispute by a court or a forum under special statute by approaching the Permanent Lok Adalat established under Chapter VI-A of the 1987 Act and, thus, depriving the user or consumer of such public utility service of an opportunity to have the dispute adjudicated by a civil court or a forum created under special statute.

By not making applicable the Code of Civil Procedure and the statutory provisions of the Indian Evidence Act, there is no compromise on the quality of determination of dispute since the Permanent Lok Adalat has to be objective, decide the dispute with fairness and follow the principles of natural justice. Sense of justice and equity continue to guide the Permanent Lok Adalat while conducting conciliation proceedings or when the conciliation proceedings fail, in

deciding a dispute on merit. With respect to the fact that there is no right to appeal, the court held that it does not render the impugned provisions unconstitutional. In the first place, having regard to the nature of dispute upto a specific pecuniary limit relating to public utility service and resolution of such dispute by the procedure provided in Section 22-C(1) to 22-C(8), it is important that such dispute is brought to an end at the earliest and is not prolonged unnecessarily. If at all a Party to the dispute has a grievance against the award, High Court can always be approached under its supervisory and extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

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4. T Thomas V. Thomas Job AIR 2005 SC 3575

Facts: The appeal has been filed against the final order of the High Court of Kerala that allowed the Revision Petition filed by the Respondent. The Appellant and the Respondent are brothers, Respondent being the elder. They have another brother who is well employed in the United States. The three brothers partitioned the property left behind by their father by metes and bounds. The Respondent was running a theatre. A part of the theatre fell in the property allotted to the appellant. Since Respondent did not vacate and give vacant possession to the Appellant, he was constrained to file a suit for a mandatory injunction for removal of the building and to surrender vacant possession. The Appellant also prayed for a decree for recovery of possession. The appellant's suit was decreed as prayed for. When the matter was pending in appeal at the instance of the Respondent in the District Court, the dispute was referred to the Lok Adalat. The matter was settled in the Lok Adalat. The award of the Lok Adalat provided for sale to the Appellant or his nominee of the property scheduled to the award after a period of one year and within a period of two years on payment of a sum of Rs. 9.5 lakhs to the Respondent and on default of the Respondent to execute the document, the appellant could get it executed through court. On the other hand, in case of default on the part of the appellant, he had to give up his aforesaid right and instead be entitled to be paid to Rs. 3.5 lakhs by the Respondent.

The Respondent did not execute the sale deed within the time fixed. Notices were sent to the opposite party but there was no response. The Appellant moved for execution of the award by filing petition in the Trial Court, which was opposed on various grounds. The Subordinate Judge overruled all the objections and the appellant was directed to deposit a sum of Rs. 9.5 lakhs within three days. The Appellant, however, deposited the amount one day earlier. But, the High Court allowed the Revision filed by the Respondent and dismissed the execution petition on grounds, which according to the Appellant, are irrelevant and incorrect. Hence, the Appellant preferred the above special leave petition.

Issue: Whether the award of lok adalat be equated as the decree of Civil court or not.

Decision: The award passed by the Lok Adalat is the decision of the court itself though arrived at by the simpler method of conciliation instead of the process of arguments in court. The effect is the same.

Resaoning: The court referred to section 21 and 22 of the Legal Services Authority Act, 1987 that talk about the Award of Lok Adalats and Powers of Lok Adalats respectively. Further, the court has referred to Order 23 Rule 3 of Civil Procedure Code that provides for compromise of suit where it is proved to the satisfaction of the Court that a suit has been adjusted wholly in part by any lawful agreement or compromise, written and signed by the parties. The Court after satisfying itself about the settlement, it can convert the settlement into a judgment decree.

The court also opined that the award of the Lok Adalat is fictionally deemed to be decrees of Court and therefore the courts have all the powers in relation thereto as it has in relation to a decree passed by itself. This includes the powers to extend time in appropriate cases.

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5. Madhya Pradesh Legal Services Authority (MPSLSA) v. Prateek Jain and Another (2014) 10 SCC 690

Facts: Madhya Pradesh State Legal Services Authority, the appellant herein, has filed the instant appeal challenging the propriety of orders of MP high Court. Essentially the lis was between respondent Nos. 1 and 2. Respondent No.1 had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'Act') against respondent No.2. Matter reached before the Additional Sessions Judge in the form of criminal appeal. During the pendency of the appeal, the matter was settled between the parties. On their application, the matter was referred to Mega Lok Adalat. However, the concerned Presiding Officer in the Lok Adalat did not give his imprimatur to the said settlement in the absence of deposit that is 15% of the cheque amount which is necessary under the guidelines issued by the Supreme Court in the judgement of Damodar S. Prabhu v. Sayed Babalal [(2010) 5 SCC 663].

The costs so imposed had to be deposited with the Legal Services Authority operating at the level of the Court before which compounding takes place, but was not deposited. Against the order of Additional Sessions Judge, a writ petition was filed by respondent No.2 but the same is also dismissed by the High Court, accepting the view taken by the Additional Sessions Judge.

Issue: Whether these guidelines in the judgment of Damodar S. Prabhu are to be given a go by when a case is decided/settled in the Lok Adalat.

Judgement: It was concluded that the parties had already settled the matter and the purpose of going to the Lok Adalat was only to have a rubber stamp of the Lok Adalat in the form of its imprimatur thereto. Thus, no error was found in the judgment of the High Court. The Court answering the question held that even when a case is decided in Lok Adalat, the requirement of following the guidelines contained in Damodar S. Prabhu should normally not be dispensed with. Therefore, in those matters where the case has to be decided/ settled in the Lok Adalat, if the Court finds that it is a result of positive attitude of the parties, in such appropriate cases, the Court can always reduce the costs by imposing minimal costs or even waive the same.

Reasoning: Normally, the costs as specified in the guidelines laid down in the judgment of Damodar S. Prabhu has to be imposed on the accused persons while permitting compounding. There can be departure therefrom in a particular case, for good reasons to be recorded in writing by the concerned Court. It is for this reason that the Court mentioned three objectives which were sought to be achieved by framing those guidelines, as taken note of above.

It has been made abundantly clear that the concerned Court would be at liberty to reduce the costs with regard to specific facts and circumstances of a case, while recording reasons in writing for such variance.

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6. Abul Hassan and National Legal ServicesAuthority v. Delhi Vidyut Board & Ors.

[AIR 1999 DEL 88.]

Facts: The original petitioner, Shri Abdul Hassan, filed the instant petition for restoration of electricity at his premises which was disconnected by the Delhi Vidyut Board (for short "DVB") on account of nonpayment of the bill raised by the DVB against him. The action of the DVB has been challenged as being illegal, arbitrary, unjust, unfair and unreasonable. Similar challenges as raised by the original petitioner are raised every now and then by scores of litigants. The grievances of the citizens are not only confined to the DVB but are also directed against State agencies like, Delhi Development Authority, Municipal Corporation of Delhi, New Delhi Municipal Committee, Mahanagar Telephone Nigam Limited, General Insurance Corporation of India and other bodies. The State and its various departments and instrumentalities are also parties in a very large number of cases.

In 1998, court notices were directed to be issued to the National Legal Services Authority (for short 'the NALSA') and the Delhi State Legal Services Authority. Delhi State Legal Services Authority and DVB, on instructions, readily agreed to abide by the directions for establishing a permanent Lok Adalat for dealing with the cases in which DVB is a party. Notices were also directed to be issued to the DDA, MCD, MTNL and GIC in order to express their views with regard to the setting up of permanent Lok Adalats for resolution of the cases in which they are parties. NALSA, Delhi State Legal Services Authority, and learned counsel for other notices were heard with regard to this question and NALSA favoured setting up of the Lok Adalats for DVB, MCD, NDMC, DDA, GIC, MTNL and various departments of the Government. Only MTNL and DDA were against the idea of setting up of the Permanent Lok Adalats for dealing with specified matters.

Issue: whether there should be a permanent Lok Adalat to deal with the matters involving DVB, MCD, NDMC, DDA, GIC, MTNL and various departments of the Government.

Arguments: M.T.N.L. and DDA, submitted that there was no need to appoint a Lok Adalat under the Act in so far as the M.T.N.L. was concerned as various remedies are available to the subscribers for redressal of their grievances, namely, (1) remedy by way of statutory arbitration

as per the Indian Telegraph Act; (2) remedy available through Consumer Disputes Redressal Forum under the Consumer Protection Act (3) remedy under the M.T.R.P. Act; (4) remedy by way of instituting appropriate proceedings in case of certain types of cases before the TRAI under the Telecom Regulatory Authority of India Act, 1997; and (5) remedy by way of seeking relief before the Telephone Adalats. Also that the number of cases pending in various institutions in which the M.T.N.L. is a party, are merely about 2,500.

Decision: The misgivings of DDA and MTNL in regard to the setting up of permanent Lok Adalats thus, were ignored and the court ordered for setting up of permanent Lok Adalat. It is also directed that these Lok Adalats shall meet at such intervals as may be dictated by the necessity to hold the same according to the workload.

Reasoning: The court discussed Section 19 and 20 of the Legal Services Authority Act, 1987 that talk about organization of Lok Adalats and cognizance of cases by Lok Adalats, respectively, along with Article 39 of the Constitution of India that provides for Free legal aid to individuals. The court also highlighted the salient features of Chapter VI of the Legal Services Authority Act, to accommodate the setting up off new Permanent Lok Adalats. It was held that it would be in the interest of the citizens of India that permanent Lok Adalats are established and held continuously so that the purpose for which the Act was enacted could be achieved.

Unless permanent and continuous Lok Adalats are set up, it may not be possible to reduce the pendency in courts. The need to establish permanent and continuous Lok Adalat and to resort to alternative dispute resolution mechanism cannot be overlooked. The Lok Adalat and alternative dispute resolution experiment must succeed otherwise the consequence for an overburdened court system would be disastrous.

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7. All Guwahati Educated Unemployed Hawkers Association and etc. v. All Guwahati Municipal Corporation and Ors. etc. (High Court Of Gauhati) AIR 2006 Gau 132

Facts: The Member-Secretary, Assam State Legal Services Authority in pursuance of the provisions of Section 22 B (1) of the Act issued notices to the writ petitioners taking cognizance of various complaints received by him from different persons for adjudication of the disputes raised in accordance with the provisions of Chapter VIA of the Act. The orders passed in different cases have been challenged in all these writ petitions. Precisely, different Benches of this Court presided over by the learned Single Judges suspended the operation of the orders passed by the Member-Secretary pending disposal of the writ petitions.

Issue: Whether the Member-Secretary, Assam State Legal Services Authority is authorized under the provisions of the Legal Services Authorities Act, 1987, hereinafter referred to as the 'Act', to invoke and exercise the powers vested with a permanent Lok Adalat under the provisions of Chapter VIA of the Act?

Petitioner: The powers and functions of the Member-Secretary as provided in Sub-section (3) of Section 6 are to be exercised within the bounds of the rules as may be prescribed by the State Government and/ or as may be assigned by the Executive Chairman of the State Authority. The powers are relatable to the powers and functions of the State Authority as defined in Section 7 of the Act. The Member-Secretary cannot transcend beyond what have been prescribed by the State Government or assigned to him by the Executive Chairman. It has been submitted that the concept of a permanent Lok Adalat and the powers given to it are completely independent of the powers and functions of the State Authority. The State Authority and the Permanent Lok Adalats are required to act within the limits of their respective powers as specified in the Act, and obviously one cannot assume the jurisdiction of the other.

Decision: The Court allowed the writ petitions quashing the impugned orders in all the writ petitions, and the Member-Secretary was restrained from exercising the powers of a Permanent Lok Adalat henceforth. The exercise of powers of Permanent Lok Adalat by the Member-Secretary in pursuance of the authority given by the Executive Chairman by the order dated 21-3-2005 is without jurisdiction. The Member-Secretary was thus, directed to maintain and keep the records of all such cases in his custody for onward transmission to the Permanent Lok Adalat as and when established.

Reasoning: The provisions in Section 6 and 7 do not contemplate delegation of any power of a Permanent Lok Adalat under Chapter VIA of the Act to any person or authority. The powers of the State Authority is essentially administrative in nature, and have no nexus with the judicial powers of a Lok Adalat or a Permanent Lok Adalat. A Member-Secretary may have the requisite qualification to hold the post of Chairman of a Permanent Lok Adalat, but the scheme of the Act does not contemplate appointment of a person to hold both the posts. A Permanent Lok Adalat comes into existence only when it is established by the State Government in relation to a State in the manner as provided in Section 22B. Even with reference to the provisions in the National Legal Services Authority Rules, 1995; the Permanent Lok Adalat (the Terms and Conditions of Appointment of Chairman and the Persons) Rules, 2003 and the Assam State Legal Services Authorities Regulations, 1998, the court was unable to discern anything to infer that the Legislature have ever contemplated exercise of powers of a Permanent Lok Adalat by any other authority. Such a provision cannot be visualized in exercise of the rule making powers.

SESSION NO 09:
BUDGET MANAGEMENT

1. Improving Public Financial Management in India: Opportunities to Move Forward: by Asso. Prof Pratap Ranjan Jena [1]

Abstract

In recent years the role of a sound PFM system to achieve the objectives of fiscal discipline, strategic planning, and improved service delivery has been getting increasing public attention in India. Since public financial management reforms undertaken intermittently over the years, have not delivered anticipated results in these areas, studies and recommendations of Government appointed committees and expert bodies have identified gaps that need attention to strengthen the PFM institutional framework and to improve the efficiency of government spending. This paper examines key PFM reform measures undertaken in India over the past few years and provides suggestions to enhance the effectiveness of these PFM systems.

1. Introduction

Finding ways to improve delivery of public services, establishing an accountability framework, and proper implementation of pro_poor policies have remained key concerns in India. India's growth rate of more than 9 percent has declined due to the global financial crisis of 2008-09 and fiscal stress has been building up since then. Although there has been steady decline in the poverty level, more than 300 million people remain below the poverty line[2]. The progress in achieving improvements in human development has been slow and India lags behind several other Asian countries (UNDP, Human Development Report, 2007-08). The Government has expanded the scope of the key central programmes, particularly for social sector spending, it is increasingly apparent that in addition to a pertinent set of policies to address these issues, a sound public financial management (PFM) system that emphasizes institutional efficiency is important to design and implement appropriate polices to achieve the desired results.

While the PFM system appears to be consistent with well-established budgeting, accounting, audit, and legislative control systems (D. Swarup, 1990), recent studies point out that there is still considerable scope to improve the efficiency of government spending and public service delivery by strengthening

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[2] Eleventh Five Year Plan (2007-12) documents mentions that 'the percentage of the population below the official poverty line has come down from 36% in 1993–94 to 28% in 2004–05.

the institutional framework for PFM. [1]. Reform initiatives to make the budget performance oriented, transition to accrual accounting, adopting rule based fiscal management, and strengthening budget management and expenditure control are noteworthy in this context. Still, not all of these efforts have resulted in enduring changes (Premchand 2008), and increasing demand for better accountability, good governance, and improved service delivery has made it imperative to explore more ways to strengthen India's PFM system. Reform recommendations by Statutory Body like Central Finance Commission and Government appointed Committees like Second Administrative Reform Commission (ARC) and Expert Committee on Expenditure Management in recent years need to be evaluated and implemented to bring in desired changes. The areas in need for reforms as identified by the PEFA report by measuring performance of PFM institutions at the Union level, provides another useful reference for reform initiatives.

This paper examines PFM reform measures that have been adopted over the past few years and proposes ways to enhance the effectiveness of India's PFM system.

Given the complex nature of PFM, this paper addresses fundamental PFM issues discretely and does not purport to provide a comprehensive reform programme. The rest of the paper is organized as follows. Section 2 deals with various issues related to the budgeting system and Section 3 examines the effectiveness of the delegation of financial powers and the system of financial advisers. Section 4 addresses issues related to transitioning from cash based accounting to accrual accounting. Sections 5 and 6 analyze issues related to internal audit and external audit to enhance accountability. Section 7 outlines concerns with specific intergovernmental transfers and Section 8 notes some institutional changes in PFM that are currently underway and Section 9 contains concluding remarks.

Budgeting System

Attempts to Make the Budget Performance Oriented

Given the complexity of budgeting in the public sector where political choice plays crucial role in decision-making, fulfilling the basic objectives of budgeting functions remains arduous and depends heavily on the effectiveness of institutions to achieve better fiscal outcomes. The Indian approach in this context has been to supplement a line-item budget with a ministry-wise performance budget for the same budget session. The general budget presented in the Parliament can best be described as traditional budget (Wildavsky 1978) and displays characteristic problems. This system allows substantial adjustments in the budget during the year indicating the absence of a hard budget constraint (Jena, 2010), particularly since departments surrender substantial amount of unspent money under various programmes at the lapse of the financial year[2]. Unspent provisions are indicative of lack of efficiency in programme management at departmental level in a strict annual budget cycle. Revenue projection

[1] Report of the Second Administrative reforms Commission , "Strengthening Financial management Systems - 2009", and PEFA India report - 2010,

[2] Audit reports of appropriation accounts by the CAG bring out these amounts every year.

has always remained a challenge as the movement of economy and changes in tax administration determine the actual revenue collection. Since the traditional budget does not provide information on results to be achieved from the use of public resources, one needs to look at the performance budgets of the ministries and departments. The performance budget in India was introduced in 1968 following the recommendations of the first Administrative Reform Commission. The objective of introducing the performance budget as a supplement to the traditional budget was to provide a link between the financial budget of the departments to tangible targets in order to enhance the effectiveness and efficiency of public spending. In addition to lack of adequate preparation and capacity development, major impediment experienced while preparing the performance budget was the absence of realistic performance measurement in terms of developing performance indicators for schemes and projects run by the departments (John Toye, 1981). Over the year it evolved as translation of departmental budgets by incorporating the general physical expectations from the plan schemes run by them. The preparation of performance budget had become a routine affair like compilation of another document without any discernible influence on resource allocation linked with results. .The weakness of the performance budget as practiced over the years became more apparent when the Government decided to adopt another version of performance budget called the Outcome Budget in 2005[1]. The outcome budget has been designed to rise above the traditional line item system to define outcomes for all government programmes[2] and to bring about improvements in the quality of governance[3]. The outcome budget at the Central level is being considered as a model for State Governments to improve the framework for subnational budgeting[4]. Preparation of outcome budget involves the following steps – defining measurable outcomes, standardizing the unit costs of delivery, benchmarking standards, capacity building for attaining the requisite administrative capacity ensuring necessary funding, effective monitoring, and evaluation and making the system far more intrusive through the participation of the community and the stakeholders[8]. Still, there are multiple difficulties associated with outcome budgeting as well. There are difficulties in measuring outcomes as compared to outputs and ensuring

[1] Guideline for outcome budget 2006-07, Ministry of Finance (MOF), "a need has for some time been felt to address certain weaknesses that have crept in the performance budget documents such as lack of clear one-to-one relationship between the Financial Budget and the Performance Budget and inadequate targetsetting in physical terms for the ensuing year. Besides, there is growing concern to track not just the intermediate physical "outputs" that are more readily measurable but the "outcomes", which are the end objectives of State intervention."

[2] Outcome budget, Ministry of Finance, 2007-08, "the Outcome Budget is an endeavor of the Government to convert the "Outlays" into "Outcome" by planning the expenditure, fixing appropriate targets, quantifying the deliverables in each scheme and bring to the knowledge of all, the "Outcomes" of the Budget outlays provided for each scheme/programme."

[3] Eleventh Five Year Plan (2007-12), Chapter -10 – Governance, pg 229.

[4] Some of the State Governments have started adopting the outcome budget, which are almost like replica of the Central one. [8] Ministry of Finance, Department of Expenditure (2007), Guideline for Preparation of Outcome Budget 2007-08

managerial accountability to link funds to outcomes for public programmes. The outcomes could be influenced by many external factors (Shah and Shen, 2007). In addition, establishing a direct link between the level of funding and performance may not be possible due to the role of political concerns and value judgments involved in trade-offs in budgetary decisions (Kelly 2003). Since the regular budget presented in the Parliament is a separate process from the ministry wise outcome budgets tabled later in the budget session, this relationship between the departmental outcome budget and the general budget decisions needs to be strengthened to improve the performance orientation of the budgeting system. An advanced statistical system is also required to collect appropriate data and utilize it to measure the cost of service provision in various sectors. The evaluation of the achievement of last year's results, a feature provided in the outcome budget, can be utilized in its true spirit to get the feedback to improve the policy design and measurement of performance indicators. The Government of India has also attempted to address the issue of performance management by introducing the 'Performance Monitoring and Evaluation System (PMES)' for Departments in 2009. The PMES provides a framework to measure performance of all schemes and projects run by the departments. The key element of the PMES is the Results Framework Document (RFD), a record of understanding between the departmental Minister and the Secretary of the department, providing physical performance indicators to be achieved during a year[1]. While the RFD does not specifically link with the outcome budget, it implicitly settles a debatable issue relating to output versus outcomes by emphasizing that the success indicators are physical achievement of government programmes through which managerial accountability can be ensured[2]. The PMES, properly integrated with the outcome budget, has the ability to boost the much sought after accountability framework in the budgeting system. Strengthening key features of PMES, such as a providing a robust mission and vision statement, designing an incentive system, and increasing transparency in result evaluation would improve its effectiveness. Still, even though the PMES provides for a performance related incentive system, it is still in its evolving stage, and its impact remains to be seen.

Medium Term Perspective in Expenditure Planning

Medium-term expenditure planning provides a perspective of projects spreading over a number of years and adjusts expenditure priorities. In India it was maintained that five year plans provide the basis for a multi-year perspective for resource allocation. The feature of breaking up the medium term five year plans into annual plans and integrating them annual budgets and further monitoring of their progress was an important innovation (Thimmaiah, 1984). The development planning-budgeting link in India,

[1] This is to concur the recommendation of the Second Administrative Reform Commission to have an annual performance agreement to be signed between the departmental minister and the secretary of the department on details of works done during the year.

[2] Guidelines for Results Framework Documents (RFD) 2011-2012, Cabinet Secretariat, GoI [11] Government of India, Planning Commission, (2011), Report of the High Level expert Committee on efficient Management of Public Expenditure

however, has not been smooth. While plans provide conceptual framework by focusing on various sectors in the economy, the budget is more concerned with systems of control over the use of funds by government and pay more attention to financial aspects (Premchand, 1983). In the current budgetary practice, the link between the plan and the budget is tenuous. Planned goals, objectives, outputs, and resources allocated to achieve them are not adequately integrated into the annual budgets. The basic feature of plan allocation through schemes and sectors does not remain the same when the budget is prepared under different heads and sub-heads following the existing budgeting classification. It is therefore, difficult to link the plan objectives of various schemes/projects to budgetary practice of allocating resources under various heads. It takes considerable effort to link objectives of the various schemes/projects to the expenditures under various heads and sub-heads[11].

Even though a fully programmatic MTEF requires developing and prioritizing expenditure plans and budgeting for results within the available resources, the experience of introducing MTEF in developing countries indicates it to be a costly affair without much of the perceived benefits (Salvatore 2009). Therefore, in 2011 the high level Expert Committee on Expenditure Management opted for a realistic approach more suited to India. It recommended removing the plan and non-plan distinction from the expenditure classification, and suggested taking a holistic view of expenditure for budgeting in a multi-year mode. The Committee also suggested developing a 3 year expenditure framework to be updated in the light of resource availability, with sectoral priorities and performance. The key feature of this plan is that the Ministry of Finance would estimate the budgetary resources and indicate the ceilings to ministries on three year rolling basis.

Fiscal Rules and Budget Management

The Fiscal Responsibility and Budget Management Act (FRBM) was adopted in 2003[1] in response to severe deterioration of public finance both at Central and State levels in late nineties and failure to salvage the situation through discretionary policy actions (Rao and Jena 2009, 12th FC, pp. 62). The combined (both Centre and States taken together) fiscal deficit crossed 9 per cent of GDP and debt-GDP ratio grew considerably with slowing down of the economy during early part of 2000s. The FRBM act was adopted with the objective to reduce fiscal deficit to GDP ratio at 3 per cent both by Central and State Governments by 2008-09 and to balance the current account, and to maintain long-run fiscal sustainability and prevent an increase in future indebtedness.

[1] The central Act was followed by the sub-national Governments enacting FRBM Acts separately. [13] The revised road map for fiscal consolidation charted by the TFC, which targets fiscal deficit consistent with debt-GDP ratio, was laid down as the fiscal roadmap by amending the FRBM Act for the next five years.

In the fiscal restructuring plan the consolidated debt to GDP ratio is targeted to decline from 78.8% in 200910 to 67.8% in 2014-15. In line with this, the fiscal deficit is supposed to be reduced from 9.5% to 5.4% during the same period. The central government is required to reduce its outstanding debt to GDP ratio from 54.2% in 2009-10 to 44.8% in 2014-15, its fiscal deficit from 6.8% to 3% and its revenue deficit from 4.8% to a surplus of 0.5%.

Post FRBM fiscal developments reveal that the success of fiscal rules was closely related with the growth performance of the country necessitating revision when the economy slowed down. Close scrutiny of fiscal data shows that significant improvement in the fiscal situation in the country since 2003-04 was mainly revenue driven, particularly due to income tax, riding high on buoyant economy and modernization of tax administration (Rao et al 2008). The consolidated gross fiscal deficit relative to GDP declined from 9.9 per cent in 2001-02 to 6.4 per cent in 2006-07 and further to 5.4 per cent in 2007-08. On the expenditure front, however, barring decline in interest payment due to debt swap programme and decline in interest rates, not much restructuring was evident. The real test of the fiscal rules came during 200809, when the national growth rate slowed down sharply to 6.7 per cent from an average of 9.4 per cent in the preceding three years, because of the international financial crisis. This has triggered an expansionary fiscal stance by the Central Government through fiscal stimulus packages comprising both tax cuts and expenditure hikes (Economic Survey, 2008-09, pp 35). The targets of the fiscal rules were considerably breached in the terminal year of the fiscal consolidation path as the combined fiscal deficit rose to 8.5 per cent of GDP in 2008-09 and further to 9.4 per cent in 2009-10.

Although fiscal stress has not been eased since the global economic slowdown of 2008-09, the Government has reemphasized the need to continue with fiscal rules by extending the time line and redefining the parameters. The revised road map for fiscal consolidation was suggested by the Thirteenth Finance Commission with an extended time horizon up to 2014-15 emphasizing curtailment of debt stock and fiscal deficit consistent with it[13]. The fiscal prudence requires political commitment without which it becomes difficult to adhere to fiscal rules for a long period (Von Hagen, 2007). The fact that the fiscal rules have been operating both at Central and State level in India and the Government has opted to reinvent it in difficult time, fixed constraints seems to have gained political acceptance. The reasons for the shift from a disciplined fiscal posture to large deficits in 2008 have been economic in nature. The Indian experience shows that automatic reduction in revenue collection and rise in expenditure through the stimulus package in the difficult year of 2008 produced large and unplanned deficit in excess of the level stipulated by the FRBM Act. While the modification in fiscal rules was necessary, it does not assure adherence on the face of adverse economic conditions in the future. The tendency of expanding the scope of populist Government programmes and subsidies, which have large expenditure commitments in the future years, needs to be restricted to emphasize fiscal discipline.

Role of Integrated Financial Advisors in Financial Management

Through delegation of financial powers from the Ministry of Finance to agencies, the departments enjoy considerable freedom to spend their own budget allocations and maintain the accounts. To support the departments to exercise the enhanced powers delegated to them, a system of integrated Financial Advisors (FA) was developed. This institutional form has assumed crucial role in developing financial management capability of departments spanning over policy formulation and implementation to functional oversight on accounting and budgeting aspects. While assisting the departments in achieving their goals and ensuring value for money, the FAs also act as representatives of the Ministry of Finance

in all financial matters. Indeed balancing the dual role, advising the Secretaries of the departments and acting as 'eyes and ears' of the Ministry of Finance is a difficult job for the FAs.

The role, authority, as well as accountability of the Financial Advisers were revised through a charter in 2006 to enhance their capacity to meet the challenges associated with this role[1]. Redefining the charter, as the official memorandum indicates, was intended to assist the departments in achieving their objectives, facilitating implementation of the approved programmes with due financial prudence, ensuring the monies allocated were spent on time and in prescribed manner, and ultimately ensuring `value for money'. The responsibilities assigned to the FAs through this revised charter have been ambitious since they include most of the financial activities starting from performance budgeting (outcome budget), expenditure control and cash management, to project formulation and appraisal and monitoring and evaluation functions. The revised charter has raised many questions regarding the expectations from FAs since the expansion of responsibilities does not match with existing powers and support systems. Since the effectiveness of the role of Financial Advisors is circumscribed by the management framework within which they function, addressing these concerns exclusively with FAs would not be too helpful. Rather, capacity building and support from the administrative ministry would be more helpful. In India, there is no separate cadre of Financial Advisers, and it should be recognized that financial management in the public sector can no longer be treated as a function of generalist officers. The lack of attention to the technical and professional skills of FAs compares unfavorably with the heavy and technical nature of responsibilities required of them.

Efforts to Adopt Accrual Accounting

In India, most government accounts are maintained on a cash basis, which is deficient in not being able to provide the complete picture of the financial position of the Government. It lacks complete information on assets and liabilities, and therefore makes it difficult to ascertain the total cost of services provided by Government departments[2]. In 2005 the Government of India accepted the Twelfth Finance Commission's recommendation to switch to an accrual based accounting system. The Government entrusted the GASAB (Government Accounting Standards Advisory Board) to prepare a detailed roadmap and an operational framework to adopt accrual based accounting system.[3] While the benefits from using accrual accounting in the Government sector have been widely mentioned (Blondal, 2003, Paul Boothe (2007), Athukorala and Reid 2003), inadequate administrative capacity and skills required for bringing about such a major reform in accounting system and the high costs involved in its implementation and maintenance are cited as major impediments (Diamond, 2006: a). The benefits of accrual based accounts and reports have not been clearly established in practice. In the context of accrual

[1] Ministry of Finance, Office Memorandum of F(5)/L&C/2006 dated 1.6.2006

[2] See "Primer on Accrual Accounting", Government Accounting Standards Advisory Board (GASAB

[3] Operational Guidelines for Accrual based Financial Reporting in Government, 21 June 2011

accounting system concerns range from technical issues like valuation of assets to broader questions regarding differences in the requirements of the public sector versus the private sector and administrative accountability (Wynne, 2004). The susceptibility of cash accounting to manipulations of financial statements by managing the timing of transactions is considered as key criticism. However, the scope for manipulation in accrual accounting is also there in the formation of estimates of revenues and expenses due to considerable scope for judgment (Hepworth (2003). There is still limited unanimity at the political and administrative level, even after taking a principled stand to introduce accrual accounting, due to apprehensions regarding risks involved, likely costs involved, and requirement of administrative capacity.

A stage-by- stage approach to introduce accrual accounting is often advocated. The GASAB roadmap to introduce accrual accounting system envisages a transition period of 10 to 12 years divided into several stages. The operational framework details the plan of transition encompassing accounting and treatment of assets, liabilities, revenue and expenses and the final accounts of the Government consistent with the provisions of the Constitution. Progress seems to have been made in the case of Urban Local Bodies where introducing the accrual accounting system has gained momentum. The Comptroller and Auditor general of India (CAG) prepared National Municipal Accounting Manual incorporating the principles of accrual accounting in a stage-wise approach. Many State Governments have also shown interest in this direction. Some of the State Governments have adopted a double entry accounting system for their rural local bodies, which is amenable to conversion to accrual basis. Still, systematic efforts need to be made over a number of years to implement accrual accounting. Helpful steps to achieve this would include imparting necessary training, recruiting suitable professionals, preparation of accrual accounting manuals, getting together comprehensive data regarding assets and liabilities, establishing suitable accounting standards and norms, and using information and communication technology.

Updating the Internal Audit System

One of the main weaknesses of the internal audit system in India is that it has not kept pace with emerging international standards and practices (Ghosh and Jena, 2008). The modern concept of internal auditing goes far beyond its traditional limits. Internal audit is no longer considered as a mere routine review of financial and other records by specially assigned staff. The internal audit is emphasized as a management tool and an integral part of both management controls and communication processes (Diamond 2006).Internal audit is still conducted based on departmental codes and manuals, which are a legacy of the past. These codes mainly emphasize regularity audit and does not encompass management audit and operational audit, they also do not evaluate internal control systems of the units under audit or bind the audited entity to take action on the observations and recommendations of the internal audit. The concern regarding role and function of internal audit led the Government to constitute a Task Force in 2006 to benchmark the status of internal audit in the Central Government and outline a roadmap for its improvement. The Task Force came to the conclusion that due to severely restricted

mandate and lack of interest of the management, the internal audit has not been able to systematically evaluate the risks associated with various activities of the ministry/department for determining their audit strategies and thrust areas. There was no segregation of duties especially at supervisory levels between those who are responsible for internal audit and those responsible for pre-audit, disbursement and accounting functions suggesting lack of required independence for effective functioning. The recommendations of this Task Force subscribed to the modern view that internal auditing should not be restricted to financial issues alone, but should also extend to issues like cost benefit analysis, utilization and deployment of resources, matters of propriety, effectiveness of management etc. and the focus should be on risk, control and governance issues. It also provided other multiple recommendations including: segregating duties relating to internal audit from those relating to financial advice and accounting functions, setting up an Apex Board to prescribe internal audit standards and processes across jurisdictions, legislating internal audit standards and policies, establishing a Board of Internal Audit (BIA), and ultimately, appointing a Chief Internal Auditor (CIA) trained in auditing. The CIA would function in accordance with standards and procedures prescribed by BIA.

External Audit

The external audit by the Comptroller and Auditor General of India (CAG) has played crucial role in India and assisted the Parliament in exercising financial control over the executive. The recent performance audit reports by the CAG have raised nationwide debate on corruption in Government and the necessity of adopting strong measures to improve the accountability of the executive and the elected representatives. Two recent incidents include the license and allocation of the 2G spectrum by the Department of Telecommunications, and the performance audit of the Commonwealth Games 2010[1]. The CAG derives the position and authority in relation to the external audit from the Constitution of India[2], which ensures independence and autonomy of the public audit. The Parliament scrutinizes the audit reports through a committee called the

Public Accounts Committee (PAC). The external audit by the CAG has contributed to transparent financial management by raising audit observations repeatedly relating to budgetary controls, deficiencies in revenue collection, wastage of public resources, inappropriate accounting, poor returns on investments, diversion of funds, and system deficiencies. The Second Administrative Reform Commission (ARC) in its report on financial management in the country, however, raised several issues relating to the external audit. It pointed out that, though the powers conferred on CAG are wide, they

[1] Report No. -19 of 2010-11 for the period ended 2009-10 Performance Audit of Issue of Licenses and Allocation of 2G Spectrum by the Department of Telecommunications (Ministry of Communications and Information Technology

Report No. - 6 of 2011-12 for the period ended 2010-11 - Performance Audit of XIXth Commonwealth Games 2010

[2] The duties and powers of the CAG are enshrined in Articles 148 to 151 of the Constitution and set out in the CAG's (Duties, Powers and Conditions of Service) Act, 1971.

are not explicit. The other issues indicated by the ARC include improving timeliness of audit reporting, improving audit procedures to reflect the executive accountability, prescribing corrective actions for detected irregularities, carrying out risk analysis to highlight systemic issues and analyze causes in entirety, establishing operational synergy with the internal audit system of the departments. The ARC also expected the CAG to play a key role in the audit process of the decentralized governance in the country. These issues are important for effective functioning of the Supreme Audit Authority.

Effectiveness of external audit largely depends on the interest it evokes and support it obtains from the Public Accounts Committee (PAC), a parliamentary committee scrutinizing the audit observations. The functioning of PAC over the year has shown that the percentage of audit observations (paras) being discussed in PAC has been reducing. The Ministries and Departments take only those audit paras seriously which were scrutinized by the PAC. Most important there is no law which binds the audited ministries/departments to follow up with actions recommended by the CAG. As a result the replies in the form of 'action taken' reports by the audited units come with a substantial time lag. Even when the Action Taken Notes are submitted, these are largely formal rather than substantive. While external audit has been a strong element of Indian PFM system, the follow-up process needs improvement to enable the external audit system to play its desired role.

Inter-Governmental Transfers and PFM concerns

The Intergovernmental resource transfer system in India continues to be complex, which involves several conduits like the Finance Commission, Planning Commission and several Central Ministries. In addition to devolution of central taxes determined by the Central Finance commission and plan assistance determined by the Planning Commission of India, Centrally Sponsored Schemes (CSS) have emerged as a key source of funds in social and economic sectors for States. These are specifically designed programmes for employment generation, primary education, basic health services and rural infrastructure and run by the concerned central ministries. The CSS form part of the Central Plan as they are meant to provide additional resources to the states for implementing programmes that are considered by the Government of India to be of national/regional importance. Over the years the CSS has become an important tool of the central Government to influence polices and expenditures on subjects constitutionally allocated to the States. The funds under these programmes are provided in respective budgets of Central Government Ministries, implemented at state level by specifically created implementing agencies and rural local bodies. The budgetary provision for direct transfers to implementing agencies has increased from Rs.1890 billion in 2010-11 to Rs.1246 billion in 2011-12[1].

The PFM concerns are many in this type of funding through central programmes. The funding of the big ticket CCS bypass the state budgets and are routed through implementing agencies such as missions or autonomous societies created under the provision of the specific schemes, and local bodies. A direct transfer of resources to state budgets would seem to have merit in terms of accountability. However,

[1] Expenditure Budget, Vol – I, 2011-12, Ministry of Finance, GoI

apprehensions regarding timely release of central funds by the States to the designated central programmes led to creation of implementing agencies in States and directly routing funds to their bank accounts outside state budgets. This funding arrangement is considered efficient so far as fund utilization is concerned in a timely manner. Although state functionaries predominantly man these agencies, the financial management of the implementing agencies remains outside the formal accountability structure of both the central and state governments. Mere release of funds to the agencies at central level is considered as expenditures, which is not reflected in the state budgets. A certain level of utilization in the form of an unaudited certificate is needed for the next level of funding. Rather than the CAG, the empanelled chartered accounts audit such bodies. The information on availability funds and actual expenditure by the service delivery units, a school or a health service unit, at the far flung areas is sketchy. Given the diversity in the implementation hierarchy, the number of implementing units and the geographical reach of central schemes, it has remained a challenge to have meaningful information on these schemes and support informed planning. Further many a times these programmes are caught in political tangle as regards their ownership and accountability in delivering services.

The newly launched Central Plan Monitoring System has attempted to address deficiencies in the existing accounting system for the CSS and its inability to support informed planning, budgeting, and effective monitoring. This web-enabled application has features to map flow of funds, releases and expenditure details, payment to the ultimate beneficiary through banking channels, and enhance report generation capabilities integrated into the transaction databases. In spite of this effort to reinforce the information base of the central plan schemes, the overall financial management of CSS and its integration with the State level systems continues to be weak. The performance management framework in CSS is stretched over various agencies starting from the central to State Government for which monitoring the service delivery and fixing accountability for results has become difficult. Therefore, there is an increasing demand for direct routing of funds under these flagship programmes through State budgets. The Expert Committee on expenditure management has also favored this arrangement to bring these schemes under the mandated financial control of the Government.

Institutional Changes underway for Better PFM

There have also been attempts to improve the institutional framework in some other areas. The Government's establishment of the Debt Management Office in the Ministry of Finance is an attempt to delink debt and cash management from monetary management controlled by the Reserve bank of India and to change the existing debt management system. The independent debt management office is expected to formulate a long term debt management strategy consistent with sustainability requirements, create an annual borrowing calendar, forecast cash and borrowing requirements, formulate risk management strategy, and develop and disseminate debt related information and data.

Another initiative to pursue a sustained dialogue on fiscal policy and to promote independent review and monitoring of the implementation of various measures is the creation of a Fiscal Council, as recommended by the Thirteenth Finance Commission. . This Commission recommended that a

committee should be established to review and monitor the implementation of the FRBM process[20], and to, over time, evolve into a full-fledged autonomous Fiscal Council to assist the Government in addressing its fiscal tasks in a professional, transparent and effective manner. The Commission has referred to examples of such pertinent institutional measures in many countries like Brazil, Japan, Korea, Mexico, and Sweden. The Fiscal Council is expected to become a forum to facilitate implementation of PFM reforms.

Changes are also expected in the area of procurement by various ministries and departments. With the exception of the rules and directives in the General Financial Rules (GFR), 2005, there is no law that governs public procurement exclusively. These rules indicate that the ministries or departments have full power to make their own arrangements to procurement goods. With the exception of limited control and oversight functions carried out by the Central Vigilance Commission (CVC), there is no central authority exclusively responsible for defining procurement policies and for overseeing compliance with the established procedures. Acknowledging the weakness in procurement process, the Central Government is planning to pass legislation to regulate public procurement by all Ministries and Departments of the Central Government. While the draft bill prescribes an open competitive bidding as the preferred method of procurement, for low-value procurement the existing methods of procurement as specified in the GFR will continue This legislation, once passed, is expected to improve transparency and accountability. It includes provisions that emphasize publishing procurement details in a web-based format starting from the bidding stage to the ultimate award of contracts. The bill also endorses establishing appropriate grievance redressal procedures and anti-corruption mechanisms. While a central Law for procurement is always better than rules and executive decisions dispersed across the departments, its usefulness will depend on the extent to which it is heeded and monitored.

Concluding Remarks

While the reform initiatives undertaken to strengthen PFM institutions over the years in India have yet to meet their full potential, they underline the intent of the Government to boost the efficiency and effectiveness of the system. There are gaps and unfinished agenda that need further action and refinement. These include producing suitable performance measures that will influence budgetary decisions; continuing with existing efforts to expand accrual accounting, modernizing internal audit and control, improving the effectiveness of external audit, and introducing an exclusive procurement law. . In contrast to the intermittent nature of past efforts, the future agenda should focus on continuously evaluating the outcome of these changes in order to take corrective action as soon as possible. At the same time, expectations of immediate results from these reforms may be misplaced. There is always a time lag for institutions to deliver expected results. In a large country like India where the fiscal federal nature of the country puts large functional responsibility on sub-national Governments, a coordinated approach is needed to focusing the ability of the PFM system in delivering quality services at the State level. The capacity and willingness to internalize and change at State level, and political involvement and willingness to steer the changes are also key to facilitate the reforms.

SESSION NO 10:
ORGANISATIONAL SKILL

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I. INTRODUCTION

Without efficient organization, no management can perform its functions smoothly. Sound organization contributes greatly to the continuity and success of the enterprise. Once Andrew Carnagie, an American industrialist said, "Take away our factories, take away our trade, our avenues of transportation, our money. Leave nothing but our organization, and in four years we shall have re-established ourselves". That shows the significance of managerial skills and organization. However, good organization structure does not by itself produce good performance – just as good constitution does not guarantee great presidents or good laws a moral society. But a poor organization structure makes good performance impossible, no matter how good the individuals may be. The right organizational structure is the necessary foundation; without it the best performance in all other areas of management will be ineffectual and frustrated.

II. MEANING AND CHARACTERISTICS OF ORGANISATIONJ

The term 'organization' connotes different meanings to different people. Many writers have attempted to state the nature, characteristics and principles of organization in their own may. For instance, to the sociologists organization means a study of the interactions of the people, classes, or the hierarchy of an enterprise; to the psychologists organization means an attempt to explain, predict and influence behaviour of individuals in an enterprise; to a top level executive it may mean the weaving together the functional components in the best possible combination so that an enterprise can achieve its goals. The word 'organization' is also used widely to connote a group of people and the structure of relationships.

Some important definitions of organization are given below:

"It is grouping of activities necessary to attain enterprise objectives and the assignment of each grouping to a manager with authority necessary to supervise it".

Koontz and O'Donnel

"The process of identifying and grouping the work to be performed, defining and delegating responsibility and authority and establishing relationship for the purpose of enabling people to work more effectively together in accomplishing objects".

Louis A. Allen

"The structure and process by which a cooperative group of human beings allocates its tasks among its members, identifies relationship, and integrates its activities towards common objectives". Joseph L. Massive

From the above definitions, it is clear that organizing is the process of determining the total activities to achieve a given objective, grouping and assigning of activities to individuals, delegating them authority necessary to perform the activities assigned and establishing authority relationship among different positions in the organization.

An analysis of the above definitions reveals the following characteristics of an organization:

1. It is a group of individuals which may be large or small.
2. The group in the organization works under the executive leadership.
3. It is a machine or mechanism of management.
4. It has some directing authority or power which controls the concerted efforts of the group.
5. The division of labour, power and responsibilities are deliberately planned.
6. It implies a structure of duties and responsibilities.
7. It is established for accomplishment of common objectives
8. It is a functional concept.

Sound organization brings about the following advantages:

1. Facilitates attainment of the objectives of the enterprise.
2. Facilitates optimum use of resources and new technological development.
3. Facilitates growth and diversification.
4. Stimulates creativity and innovation.
5. Facilities effective communication.
6. Encourages better relations between the labour and the management.
7. Increase employee satisfaction and decreases employee turnover.

III. NATURE OF ORGANISATION

The term 'organization' is used in two different senses. In the first sense it is used to denote the process of organizing. In the second sense, it is used to denote the results of that process, namely, the organizational structure. So, the nature of organization can be viewed in two ways:

(a) Organization as a process; and

(b) Organization as a structure or framework of relationship.

Organization as a process: As a process, organization is an executive function. It becomes a managerial function involving the following activities:

(i) Determining activities necessary for the accomplishment of the business objective.

(ii) Grouping of interrelated activities.

(iii) Assigning duties to persons with requisite competence,

(iv) Delegating authority, and

(v) Coordinating the efforts of different persons and groups.

When we consider organization as a process, it becomes the function of every manager. Organizing is a continuous process and goes on throughout the life time of an enterprise. Whenever there is a change in the circumstances or material change in situation, new type of activities spring up. So, there is a need for constant review and reassignment of duties. Right persons have to be recruited and necessary training has to be imparted to enable them to be competent to handle the jobs.

The process of organization thus, involves dividing the work into rational way and interpreting the activities with work situation and personnel. It also represents humanistic view of the enterprise since it is the people which are uppermost in the process of integration of activities. Continuous review and adjustment makes this dynamic as well.

Organization as a structure or framework of relationships: As structure, organization is a network of internal authority, responsibility relationships. It is the framework of relationship of persons, operating at various levels, to accomplish common objectives. An organization structure is a systematic combination of people, functions and physical facilities. It constitutes a formal structure with definite authority and clear responsibility. It has to be first designed for determining the channel of communication and flow of authority and responsibility. For this, analysis of different types has to be done. Peter F. Drucker suggests following three types of analysis:

(i) Activities analysis

(ii) Decision analysis, and

(iii) Relations analysis,

A hierarchy has to be built-up i.e., a hierarchy of positions with clearly defined authority and responsibility. The accountability of each functionary has to be specified. Therefore, it has to be put into practice. In a way, organization can be called a system as well.

The main emphasis here is on relationships or structure rather than on persons. The structure once built is not liable to change so soon. This concept of organization is, thus, a static one. It is also called classical concept. Organization charts are prepared depicting the relationship of different persons.

In an organizational structure, both formal and informal organizations take shape. The former is a per-planned one and defined by the executive action. The latter is a

spontaneous formation, being laid down by the common sentiments, interactions and other interrelated attributes of the people in the organization. Both formal and informal organizations, thus, have structure.

IV. STEPS IN THE PROCESS OF ORGANISING

The managerial function of organizing may be called as the 'process of organizing'. When the objectives have been set and policies framed, the necessary infrastructure of organization has to be built up. The concentration goes to activities and functions. These form 'the building blocks' of the organizational structure. There are no such rules as to which will lead to the best organizational structure. But the following steps can be of great help in the designing a suitable structure, which will laid in achieving enterprise objectives:

1. **Clear definition of objectives:** The first step in developing an organizational structure is to lay down its objectives in very clear terms. This will help in determining the type, stability and basic characteristics of the organization. In fact, organization activities are detailed in terms of objective to be achieved.
2. **Determining activities:** In order to achieve the objectives of the enterprise, certain activities are necessary. The activities will depend upon the nature and size of the enterprise. For example, a manufacturing concern will have production, marketing and other activities. There is no production activity in retail establishment. Each major activity is divided into smaller parts. For instance, production activity may be further divided into purchasing of materials, plant layout, quality control, repairs and maintenance, production research etc.
3. **Assigning duties:** The individual groups of activities are then allotted to different individuals according to their ability and aptitude. The responsibility of every individual should be defined clearly to avoid duplication and overlapping of efforts. Each person is given a specific job suited to him and he is made responsible for its execution. Right man is put in the right job.
4. **Delegating authority:** Every individual is given the authority necessary to perform the assigned activity effectively. By authority we mean power to take decisions, issue instructions, guiding the subordinates, supervise and control them. Authority delegated to a person should commensurate with his responsibility. An individual cannot perform his job without the necessary authority or power. Authority flows from top to bottom and responsibility from bottom to top.

5. **Coordinating activities:** The activities and efforts of different individuals are then synchronized. Such coordination is necessary to ensure effective performance of specialized functions. Interrelationship between different job and individuals are clearly defined so that everybody knows from whom he has to take orders and to whom he is answerable.

6. **Providing physical facilities and right environment:** The success of an organization depends upon the provision of proper physical facilities and right environment. Whereas it is important to have right persons on right jobs, it is equally important to have right working environment. This is necessary for the smooth running and the prosperity of the enterprise.

7. **Establishment of structural relationship for overall control:** It is very essential to establish well defined clear-cut structural relationships among individuals and groups. This will ensure overall control over the working of all departments and their coordinated direction towards the achievements of predetermined goals of business.

It is thus clear from the foregoing analysis that organization provides a structural framework of duties and responsibilities. It not only establishes authority relationship but also provides a system of communication. The various processes of organization explained above are technically performed through (a) departmentation (b) delegation of authority and fixation of responsibilities and (c) decentralization of authority subject to central control through centralization of decision-making.

V. OBJECTIVES OF ORGANISING

Every economic activity which is deliberately done has some purpose. When a group of people assemble without any per-planed aim or purpose, it is not an organization but just a mob. But when, for instance they are invited to participate in a conference, an element of purpose has been introduced. A purpose refers to commitment to desired future. Objectives and purposes, generally, are interchangeable terms.

Why should business enterprise organize itself? The answer to this question brings out its objectives. Objectives of a business organization are distinguished from the objectives of other social organizations. To put it more precisely, the nature of an organization (i.e. political, social, religious or economic) can only be known by studying its objectives.

The following may be, generally speaking, the objectives (or purpose) of organizing business:

1. **Effective management of the enterprise:** Effective management largely depends upon effective organization. It is the effective organization which ensures proper balance between authority and responsibility. It achieves a clear

line of communication, and defines the areas of work. It is the organization which allows the top management to concentrate on overall planning and supervision, leaving the routine work for the lower levels of administration. It saves the entire enterprise from adhocism, over-lappings and inefficiency.

2. **Maximum production at minimum cost:** The activities are allotted according to the principle of division of labour. The efficient system of organization encourages every employee to make his best contribution in raising output. The increase in output and control of wasteful expenditure helps to decrease the cost of production. The profitability of the concern will also go up.

3. **Sustained growth and diversification:** A business enterprise should be a growing organism. With the passage of time, an enterprise must expand its activities. It should also aim at diversification of products and markets.

   A static business soon grows stale and get out of run. It should grow from a small scale concern to a medium scale one and from a medium scale concern to large scale one. Organization plays an important role in this respect. Execution of policies in organized manner builds the necessary capacity and confidence in undertaking bigger activities.

4. **Cooperation of employees:** The organizational structure will succeed only if employees cooperate in the work. The employees learn working in closer cooperation of others. The management introduces various incentive schemes and gives monetary and other benefits to the employees, so that they work in a team spirit.

5. **Discharging social responsibility:** Maximizing of profits, no doubt, is the motive of every business. Without profit, no business can exist. But business is a part and parcel of society at large. It cannot survive long by exploiting consumers and society. It has to serve the society by providing it with goods of good quality at reasonable prices. It has to ensure smooth supply of goods as per the needs to consumers. The service motto cannot be realized without a well-knit organization structure. So, to discharge social obligation is an important objective of building up sound organization.

The purpose of sound organization is:

(i) to establish an activity-authority environment in which people can perform most effectively.

(ii) to make group action efficient and effective by providing centres for decision making and a system of communication to effectively coordinate individual efforts towards group-goals.

(iii) to create relationships which minimize friction, focus on the objective, closely define the responsibilities of all parts and facilitate the attainment of the objective.

(iv) to subdivide the management process by which plans are translated into actions so as to make management most effective.

Thus, to sum up we can say that organization is a process by which the manger brings order out of chaos, removes conflicts between people over work or responsibility, and establishes an environment suitable for teamwork.

VI. PRINCIPLES OF ORGANISATION

Effective and efficient working of any organization depends on how the managerial function of organization is being performed. The function of organization can be carried effectively with the help of under mentioned principles:

(i) **Attention to objectives:** An organization is a mechanism to accomplish certain goals or objectives. The objectives of an organization play an important role in determining the type of structure which should be developed. Clearly defined objectives facilitate grouping of activities, delegation of authority and consequently effective coordination.

(ii) **Authority and responsibility:** Authority should commensurate with responsibility. While assigning the responsibility, authority should also be assigned. If authority is not granted, the subordinates cannot discharge their responsibility properly.

(iii) **Continuity:** The form of organization structure should be such which is able to serve the enterprise to attain its objectives for a long period of time.

(iv) **Coordination:** The principal of coordination underlines that there should be proper liaison and cooperation between different departments and units of work. Unity of efforts for the accomplishment of desired objectives is the main aim of organization. This can be achieved through the principle of coordination.

(v) **Decentralization:** This principles is of great significance to big organizations. Decentralization implies selective dispersal of authority to help departments and units to run effectively and efficiently without frequent interruptions from the top of the enterprise. It requires very careful selection of what decisions to push down into the organization, of what to hold at or near the top specific policy making to guide the decision-making, selection and training of people and adequate control. Decentralization, as such, embraces all areas of management and evidently is of overwhelming significance in organization structure.

(vi) **Departmentation:** Departmentation is the process of grouping activities into units for purposes of administration. In other words, it denotes grouping of related jobs and activities without violating the principle of homogeneity over which an executive has authority to exercise and assert. The main advantages of departmentation are that it enables individual executive to mange his subordinates effectively since a manageable number of persons are brought under the direct supervision of individual executive.

(vii) **Division of work:** While structuring organization, division of work, at the very outset, should be considered as the basis of efficiency. It is an established fact that group of individuals can secure better results by having division of work. Therefore, while designing the organization we should aim at making suitable grouping of activities. This is also called the principle of specialization.

(viii) **Efficiency:** The organization should be able to attain the predetermined objectives at the minimum cost. It is done so; it will satisfy the test of efficiency. From the point of view of an individual, a good organization should provide the maximum work satisfaction. Similarly, from the social point of view, an organization will be efficient when it contributes the maximum towards the welfare of the society.

(ix) **Flexibility:** While designing the organization it should be kept in mind that organizational structure should not be regarded as static. Every organization is a living entity in a living environment which is fast changing. As such there must be sufficient room for changing and modifying the structure in the light of environmental changes so that the ultimate objective of the organization is achieved.

(x) **Management by exception:** It is a fundamental principle that makes any organization effective in its true sense. This principle signifies that problems of unusual nature only should be referred upward and decided by higher level executives in the managerial hierarchy, whereas the routine problems should be passed on to lower levels and resolved there. Application of this principle as such, certainly requires adhering to the principle of delegation of authority. The principle of exception is thus of significant practical utility and applies to all levels in the organization structure.

(xi) **Proper balance:** It is important to keep various segment or departments of an organization in balance. The problem of balance basically arises when an activity or a department is further divided and subdivided into smaller segments. The problems of balancing also crops up with the growing of any organization in its size and functioning.

(xii) **Scalar principle:** Scalar chain refers to the vertical placement of superiors starting from the chief executive at the top through the middle level to the supervisory level at the bottom. Proper scalar chain or line of command is prerequisite for effective organization.

(xiii) **Span of management:** Span of management also refers to span of control signifying the number of subordinates reporting directly to any executive. It is an established fact that larger the number of subordinates reporting directly to the executive, the more difficult it tends to be for him to supervise and coordinate them effectively. This important principle of management should also be kept in mind.

(xiv) **Unity of command:** Organization structure should also be designed in such a way that there exists unity of command in the sense that a single leader is the ultimate source of authority. This facilitates consistency in directing, coordinating and controlling to achieve the end objectives.

(xv) **Unity of direction:** This means that each group of activities having the same objectives should have one plan and one head. There should be one plan or programme for each segment of work which is to be carried under the control and supervision of one head or superior. If different plans or policies are followed in one department by the subordinates, confusion is bound to occur.

VII. ADVANTAGES OF ORGANISATION

The primary duty of management is to achieve the objectives of the enterprise. The objectives may be social, economic, political or religious. Proper organization of men, materials, money and equipment is necessary. Organization is the mechanism through which management directs, coordinates and controls the business. A sound organization offers the following advantages, which summarizes its importance:

1. **Adoption of new technology:** A properly designed and well-balanced organization permits prompt adoption and optimum use of technological improvements. It has the capacity to absorb changes in the environment of business and to provide a suitable reaction to such changes. A good organization helps in the development of new and improved means of doing things.
2. **Better human relations:** Human beings involved in an organization are only dynamic element of organization. A dedicated and satisfied group of persons proves an asset to any establishment. An organization, built on sound principles, helps harmony in human relations. With properly defined authority, responsibility and accountability, different persons enjoy job-satisfaction. Organization consists of human beings and their satisfaction helps in improving human relations.

3. **Check on corrupt practices:** A weak and unsound organization is source of corruption and inefficiencies. Well organized, well-defined, disciplined and sound organizations boost the morale and motivation of workers. It develops a feeling of involvement, belongingness, devotion, honesty and sincerity among employees. It prevents corruption, inefficiencies and wastage in an enterprise.
4. **Coordination:** Organization facilitates coordination of diverse activities. Different functions are welded together to accomplish the desired objectives. Clear lines of authority and responsibility between various positions; ensure mutual cooperation and harmony in the enterprise. A good organization enables people to work with team spirit.
5. **Creativity, initiative and innovation:** A good organization encourages initiative and creative thinking. Employees are motivated to break new grounds and try unconventional methods. A sound organization offers the scope for recognition of merit followed by financial incentives to the personnel showing creativity.
6. **Enhancement of managerial efficiency:** A sound organization brings a proper coordination among various factors of production and leads to their optimum utilization. It avoids confusion, duplication and delays in work. It motivates the worker by proper division of work and labour. It reduces the work load of executives by delegation of authority.
7. **Growth, expansion and diversification:** Organization provides the framework within which an enterprise can expand and grow. Through organization, management can multiply its strength. In a good organization, the money and effort spent on different activities are in proportion to their contributions. It is through proper organization setup that many firms have grown from humble beginning to a giant size.
8. **Proper weightage to all activities:** A sound organization divides the entire enterprise into different departments, sections and sub-sections according to the functions to be performed by them. Each function of an enterprise has got its own importance. Emphasis is given according to their relative importance. Funds and manpower is allocated to their relative importance.
9. **Specialization:** A sound organization structure provides the benefits of specialization. Various activities are allocated between different individuals according to their qualifications, experience and aptitude. It increases their efficiency. Systematic organization of activities helps to secure economics and to minimize costs.
10. **Training and Development:** By delegating authority to lower levels, training and development of future executives is made possible. A good organization puts 'right

man at the right job' and provide them right training and managerial development programmes. By appointing employees in different department assigning them different jobs, their training needs can be ascertained.

Thus, organization is the foundation of management. Sound organization is an indispensable mean for efficient management and better business performance. It not only facilitates efficient administration but also encourages growth and diversification. It provides for optimum use of new technology, stimulates innovation and creativity.

VIII. FORMAL AND INFORMATION ORGANISATION

Formal organization refers to the structure of relationships deliberately built up by the top management to realize the objectives. In this form instructions, responsibility, authority, accountability, lines of command, and positions and authority are clearly defined and declared. Each person is aware of his duties and authority. Every subordinate is expected to obey his supervisor in the formal chain of command. Each individual is fitted in the organization like a cog in the machine. It is designed after careful identification, classification and assignment of business activities. So, it is conscious creation of relationships.

Informal organization refers to the network of personal and social relationships which arise spontaneously when people working together interact on personal whims, likes and prejudices. Such relations are not created by the top management and they are not recognized formally. The informal groups sometimes run parallel to the formal ones. Informal relations are not portrayed on organization charts and manuals. An informal organization provides an opportunity to workers to come close to each other, develop a feeling of cooperation and coordination among themselves.

Difference between formal and informal organizations

The difference between formal and informal organizations can be enumerated briefly as below:

1. **Authority:** Formal authority is attached to a position and it flows from top to bottom. Informal authority is attached to a person and it flows either downwards or horizontally.
2. **Basis:** A formal organization is based upon rules and procedures, while an informal organization is based upon attitudes and emotions of the people. It depends on informal, social contacts between people working and associating with one another.
3. **Depiction:** Formal organization can be shown in an organization chart or a manual. But an informal organization cannot be depicted in the chart or manual of the enterprise.

4. **Emphasis:** In a formal organization, the main emphasis is placed on authority and functions. In an informal organization the stress is on people and their relationships.
5. **Existence:** A formal organizations exists independently of the informal groups that are formed within it. But an informal organization exists within the framework of a formal structure.
6. **Formation:** Formal organization is deliberately created by management. It is the result of a conscious and deliberate effort involving delegation of authority. On the other hand, informal organization arises spontaneously and no conscious efforts are made to create it. It takes place on the basis of relationships, caste, culture, occupations and on personal interests etc. No delegation of authority is essential in informal organization.
7. **Nature:** A formal organization is stable and predictable and it cannot be changed according to the whims or fancies of people. But an informal organization is neither stable nor predictable.
8. **Rationality:** A formal organization operates on logic rather than on sentiments or emotions. All activities follow a predetermined course. As an association between like-minded people, an informal organization has little rationality behind it. In an informal organization, activities are influenced by emotions and sentiments of its members.
9. **Set up:** A formal organization is a system of well defined relationships with a definite authority assigned to every individual. It follows predetermined lines of communication. On the contrary, an informal organization has no definite form and there are no definite rules as to who is to report to whom. Even a low-placed employee may have an informal relationship with an officer far above him in the formal hierarchy.

IX. FORMS OF ORGANISATION STRUCTURE

Organization requires the creation of structural relationship among different departments and the individuals working there for the accomplishment of desired goals. The establishment of formal relationships among the individuals working in the organization is very important to make clear the lines of authority in the organization and to coordinate the efforts of different individuals in an efficient manner. In order to organize the efforts of individuals, any of the following types of organization structures may be set up: (i) Line organization, (ii) Line and staff organization, (iii) Functional organization, (iv) Committee organization, (v) project Organization, and (vi) Matrix organization. The nature merits and demerits of line organization, and line and staff organization are discussed as under:

6.1 Line Organization

The line organization represents the structure in a direct vertical relationship through which authority flows. It is the simplest from of organization structure and is also known as scalar or military organization. Under this, the line of authority flows vertically downward from top to bottom throughout the organization. The quantum of authority is highest at the top and reduces at each successive level down the hierarchy.

In line organization, the line of authority consists of an uninterrupted series of authority steps and forms a hierarchical arrangement. The line authority not only becomes the avenue of command to operating personnel but also provides the channel of communication, coordination and accountability in enterprise.

Advantages of Line Organization

(i) If facilitates unity of command and thus conforms to the scalar principle of organization.

(ii) It ensures excellent discipline in the enterprise because every individual knows to whom he is responsible.

(iii) It facilitates prompt decision-making because there is definite authority at every level. An executive cannot shift his decision making to others, nor can the blame be shifted.

(iv) It is very easy to establish line organization and it can be easily understood by the employees.

(v) There is clear-cut identification of authority and responsibility relationship. Employees are fully aware of the boundaries of their jobs.

Disadvantages of Line Organization

(i) Line organization is not suitable to big organizations because it does not provide specialists in the structure. Many jobs require specialized knowledge to perform them.

(ii) There is concentration of authority at the top. If the top executives are not capable, the enterprise will not be successful.

(iii) There is partially no communication from bottom upwards because of concentration of authority at the higher levels. If superiors take a wrong decision, it would be carried out without anybody having the courage to point out its deficiencies.

(iv) With growth, the line organization makes the superiors too overloaded with work. If the executive try to keep up with every activity, they are bogged down in myriad details and are unable to pay proper attention to each one. It will hamper their effectiveness.

In spite of these drawbacks, the line organization structure is very popular particularly in small organizations where there are less number of levels of authority and a small number of people. A modification of this structure is line and staff organization under which specialists are attached to line executives to provide them specialized assistance on matters of great importance to be enterprise.

6.2 Line and Staff Organization

The line executive is often described as the individual who stands in the primary chain of command and is directly concerned with the accomplishment of primary objectives. Line organization provides decision-making authority to the individuals at the top of the organization structure and a channel for the flow of communication through a scalar chain of authority. Line executives are generalists and do not possess specialized knowledge which is a must to tackle complicated problems. With a view to give specialist aid to line executives, staff positions are created throughout the structure. Staff elements bring expert and specialized knowledge to provide advice to line managers so that they may discharge their responsibilities successfully.

In line and staff organization, the line authority remains the same as it does in the line organization. Authority flows from top to bottom. The main difference is that specialists are attached to line managers to advise them on important matters. These specialists stand ready with their specialty to serve line men as and when their services are called for to collect information and to give help which will enable the line officials to carry out their activities better. The staff officers do not have any power of command in the organization as they are employed to provide expert advice to the line officers. Staff means a supporting function intended to help the line manager. In most organizations, the use of staff can be traced to the need for help in handling details, gathering data for decision-making and offering advice on specific managerial problems. Staff investigates and supplies information and recommendations to managers who make decisions.

Line and staff structure has gained popularity because certain problems of management have become very complex and, in order to deal with them, expert knowledge is necessary which can be provided by the staff officers. For instance, personnel department is established as staff department to advise the line executives on personnel matters. Similarly, finance, law and public relations departments may be set up to advice on problems related to finance and accounting, law and public relations.

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Advantages of Line and Staff Organization

(i) **Better decisions**. Staff specialists help the line executives in taking better decisions by providing them with adequate information of right type at the right moment and expert advice.

(ii) **Flexibility.** Line and staff organization is more flexible as compared to the line organization. General staff can be employed to help line managers at various levels.

(iii) **Proper weightage**. Many problems that are ignored or poorly handled in the line organization can be properly covered in the line and staff organization by the use of staff specialists.

(iv) **Reduction of burden**. Staff specialists relieve the line managers of the botheration of concentrating on specialized functions like accounting, selection and training, public relations, etc.

(v) **Specialized knowledge**. Line managers get the benefit of specialized knowledge of staff specialists at various levels.

(vi) **Unity of command**. Under this system, the experts provide special guidance without giving orders. It is the line manager who only has got the right to give orders. The result is that the enterprises takes advantage of functional organization while maintaining the unity of command i.e., one subordinate receiving orders from one boss only.

Demerits of Line and Staff Organization

Line and staff organization suffers from the following drawbacks:

(i) Since staff men are not accountable for the results, they may not be performing their duties well.

(ii) The allocation of duties between the line and staff executives is generally not very clear. This may hamper coordination in the organization.

(iii) There is generally a conflict between the line and staff executives. There is a danger that the staff may encroach on the line authority. Line managers feel that staff specialists do not always give right type of advice, and staff officials generally complain that their advice is not properly attended to.

(iv) There is a wide difference between the orientation of the line and staff men. Line executives' deals with problems in a more practical manner. But staff officials who are specialists in their fields tend to be more theoretical.

Superiority of Line and Staff Organization over Line Organization

Line and staff organization is considered better than the line organization because of the following reasons:

(i) Staff makes available expert advice to line executives. This is necessary to deal with complex problems of management. For instance, personnel department is established as a staff department to advise the top executives and other line executives on personnel matters.

(ii) Better decisions are ensured in line and staff organization as compared to a simple line organization.

(iii) Line and staff structure is more suitable for large organizations as expert advice is always available. The line managers can make use of the knowledge of staff specialists to deal with complicated problems. Therefore, line and staff organization is certainly better than line organization.

X. SUMMARY

The word organization has two common meanings. The first meaning refers to the process of organizing. The second meaning signifies the institution or group which comes into existence as a result of organizing. The organizing process involves a number of steps, viz. consideration of objectives, grouping of activities into departments, deciding which departments will be treated line and which will be related staff, determining the levels at which various types of decisions are to be made, determining the span of supervision and setting up a coordination mechanism. There are a number of principles of organizing, which should be remembered in the process of organizing.

XI. SELF ASSESSMENT QUESTIONS

1. "Organization is an important tool to achieve organizational objectives," Comment.
2. Define organization and discuss its characteristics.
3. Discuss the nature and importance of organization.
4. Explain the meaning of organization and state its principles.
5. What are the important steps in the process of organization?
6. What do you mean by (a) line organization and (b) line and staff organization? Discuss their respective merits and demerits.
7. What do you understand by informal organization? How does it differ from a formal organization?
