

P-1144: National Seminar for Principal District and Sessions Judges on Access to Justice and Legal Aid

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A three day National Seminar was organized for the District & Sessions judges from 7th to 9th December, 2018.

Session 1 - Constitutional Vision & Mission of Legal Aid & Access to Justice

The session initiated by deliberating upon what ‘Justice’ means in context to the Constitutional Vision? It was followed by venturing into how the Constitutional mission to enable “Access to Justice” is to be executed in time and space. Finally examine the scope and impact of “Legal Aid”. The session aimed to explore the extent of pervasion of the aforementioned Constitutional concepts into the socio-economic and political fabric of contemporary India. The myths that creates a misty nebulas for the subordinate judiciary, as to whether they are so called “Constitutional Courts”?¹ Whether they have any role in the interpretation of the Constitution of India? etc. was clarified. The scope and role of district judiciary in rendering Constitutional Vision of Justice was identified. It was clarified that the Constitutional Vision of Justice is not about interpreting merely the Constitutional provision(s), but lies in the spirit and goals that the Constitution envisages and propagates to establish justice (social, economic and political). Every court being a Constitutional court entrusted to forward the cause of imparting justice. Additionally it was reminded that, India is obliged under the United Nations Sustainable Development – Goal 16, which underscores the obligation of States “to ensure equal access to justice for all”. Aligning with these international promises and the Constitutional Vision, India has not only internalized the idea to reach-out the last person, enabling access to justice, but has inculcated systemic changes through effective legislations (e.g. Legal Services Authorities Act, 1987) to ensure percolation of these primary ideas across the nation. The vitality and bottlenecks faced by district judiciary in terms of effective and speedy justice delivery was examined. Access to justice must not be equated to access to courts. It is distinguished from being limited to merely having an approach to a Court of law, to an inclusive idea, much wider in its scope, encapsulating quality of justice, total number of Courts (institutions for dispensation of justice), awareness of various rights, independence of judge, quantitative and qualitative legal aid, speedy dispensation of justice, right to be effectively and satisfactorily be represented and much more. The goal of decongesting the Constitutional Courts, in order to enable speedy justice delivery was discussed referring to *Krishnakant Tamrakar v. State of M.P.* 2018 SCC OnLine SC 304. It was further discussed that Supreme Court in the above case directed the Ministry of Law & Justice to prepare a quarterly report on the infrequent call for strikes, non-working etc. by the bar (causing impediment to the access to justice) and place it before the Court so that (pending legislation), the Court registers serious implications to the extent amounting to contempt. Other cases referred in the discourse included *Hussain v. Union of India*, (2017) 5 SCC 702.

Session 2 - Legal Aid & Public Trust: Enhancing User Friendliness of Trial Courts

It was emphasized at the outset that the right to free legal aid has been held to be a Constitutional right covered under Article 21 (*Khatri II v. State of Bihar* (1981) 1 SCC 627). In order to evolve and retain the sanctity of “Public Trust”, there needs to be enough Courts in the first place with appropriate infrastructure and the same must be easily approachable.

¹ It is often wrongly understood that subordinate judiciary does not interprets the Constitution of India, nor does it known as a Constitutional Court (as understood in common parlance to be a courts having writ jurisdiction) and hence, has got no bearings to the Constitutional Vision.

Moreover, timely and effective justice delivery has a direct impact on public trust. Therefore, it is the Constitutional responsibility of the State to provide necessary infrastructure and that of the High Courts to monitor the functioning of subordinate courts, to ensure timely disposal of cases. The Supreme Court in *Hussain v. Union of India*, (2017) 5 SCC 702, issued directions to the High Courts to further percolate it down as uniform guidelines to subordinate courts (particularly in criminal cases), to curb the menace of delay. The guidelines must include:

- ✓ Bail applications be disposed of normally within one week;
- ✓ Where accused in custody:
 - Magisterial trials be concluded within 6 months and
 - Sessions trials be normally concluded within 2 years;
- ✓ Efforts be made to dispose of all cases which are 5 years old by the end of the year;
- ✓ Trial Courts must make an assessment from time to time, that as a supplement to Section 436A Cr.P.C., but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence likely to be awarded if conviction is recorded such undertrial must be released on personal bond;
- ✓ The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports.

Citing *Anita Kushwaha v. Pushap Sudan*, 2016 (8) SCC 509, it was reiterated that four main facets that constitute essence of access to justice are:

- i. The State must provide an effective adjudicatory mechanism; [wherein in order that the right of a citizen to access justice is protected, the mechanism so provided must not only be effective but must also be just, fair and objective in its approach. So also the procedure which the court, Tribunal or Authority may adopt for adjudication, must, in itself be just and fair and in keeping with the well-recognized principles of natural justice.]
- ii. The mechanism so provided must be reasonably accessible in terms of distance; [The forum/mechanism so provided must,... be reasonably accessible in terms of distance for access to justice since so much depends upon the ability of the litigant to place his/her grievance effectively before the court/tribunal/court/competent authority to grant such a relief.]
- iii. The process of adjudication must be speedy; and
- iv. The litigant's access to the adjudicatory process must be affordable.

The image of the judiciary and the public trust is immensely impacted by the activities and demeanor of the members of Bar. The 131st Report of the Law Commission of India examining the role of legal profession to strengthen the justice delivery system was discussed. The issues referred to, by the apex court in *B.Sunitha v. State of Telangana*, (2018) 1 SCC 638, were discussed which included: (i) the state of profession and its public image; (ii) profession's attitude towards the policy of social change intended under the Constitution; (iii) the functioning of the Bar Councils and the question of disciplinary jurisdiction; (iv) the strike by lawyers, its implications and fall out; (v) the question of hobnobbing between the Bar and politicians, between the Bar and the Judiciary; (vi) regulation and standardization of fees chargeable by the members of the profession in relation to the monopolistic character of the profession. The Report further illustrated that, "recurring strikes by the bar had contributed to the piling up of arrears jeopardizing the consumers of justice and has thus led to weakening the system of administration of justice."

While considering the mounting cost of litigation and on the issue of affordability to hire a competent lawyer in order to ensure "satisfactory" access to justice, it was observed that often

the fee charged by senior advocates are astronomical in character. On the other hand the young and talented lawyers are mobilized against practicing litigation to corporate lawyering (as legal advisors). The corporate sector is willing to retain talent at a high cost, thereby further shrinking the talent pool. It develops into a culture and permeates down below.

The trial courts can be more user friendly not only by being innovative on the procedure, *viz.* reducing unnecessary adjournments, providing proper and timely compensations, interim reliefs, regularly taking up legal aid supported cases, motivating and mobilizing reach-out thru voluntary para legal initiatives, but also by enabling better ‘court and case management’ by embracing information technology. It can substantially help by adopting best practices such as making the litigants aware of their rights *viz.* free legal aid at any stage of trial and their right to appeal, by mentioning the same in the order sheet itself.

Session 3 - Bar & Legal Aid in India

The session was dedicated to examine the vitality of the role of Bar, and its impact on access to justice. The discourse highlighted the importance of professional conduct of the Bar warranting accesses to justice to the litigants. The right of a litigant to be effectively represented by a competent lawyer in a *lis* was emphasized. Professional misconducts and bullying the bench using disruptive tactics by the members of the Bar was admonished citing the recent apex court judgment *B Sunitha v. State of Telangana*, (2018) 1 SCC 638, wherein the Court held that:

Commercialization to the extent of exploiting the litigant and misbehavior to the extent of browbeating the Court, breach of professional duties to the court and the litigant on the part of some members of the legal profession, affecting the right of the litigants to speedy and inexpensive justice, need to be checked.

It was reiterated that Bar plays a significant role in providing access to justice and assisting the citizens in securing their fundamental and other rights. Hence, any act by the member of the Bar inconsistent with the professional ethics would lead to a systemic catastrophe abrogating the Constitutional mission of access to justice. The 131st Report of the Law Commission of India “*Role of Legal Profession in Administration of Justice*”, was discussed, wherein it was underscored that the “role of the legal profession in strengthening the administration of justice must be in consonance with the mandate of Article 39A to ensure equal opportunity for access to justice. The legal profession must make its services available to the needy by developing its public sector. It was observed that like public hospitals for medical services, the public sector should have a role in providing legal services for those who cannot afford fee.

It was discussed that in the *B. Sunitha Case*, the Supreme Court has gone ahead asserting the Government to take cognizance of the issues and recommended introduction of requisite legislation for an effective regulatory mechanism. The same would check violation of professional ethics and ensure access to legal services (a major component of access to justice) mandated under Article 39A of the Constitution.

Discussing the *Pro bono* services in India it was clarified that, such services are complementary and are distinct to the convention and statutory mandate of legal aid services. While the legal aid services relate to services provided by lawyers engaged by the legal services authority, the *Pro bono* services are voluntarily oriented, and hence do not suffer the prejudices *viz.* inappropriate financial considerations, higher and sometimes unreasonable client expectations (since, the client relation is routed *via* the Legal Services Authority “LSA”, who engages and pays the lawyer), competency of a lawyer (in view of the litigant availing services under LSA), etc. *Pro bono* services seek to leverage the skills of highly trained, successful and top legal

professionals to help those who are unable to afford lawyers. Developed legal systems viz. US, European Union (EU), Australia etc., advocate the *pro bono* services, to extend help to the marginalized sections of the society who are socio-economically infirm and are either deprived access to justice owing to financial constraints or lack of awareness. In US the American Bar Association (ABA) in its Model Rules of Professional Conduct mandates *pro bono* legal services of at least 50 hours for every practicing lawyer. *Pro bono* legal work forms an integral part of the curriculum of law programmes offered by the academic institutions in US. It was deliberated that viz a viz US and many EU nations, the legal aid system of UK is robust and there is no such mandate for *pro bono* services.

Supreme Court in *Indira Jaisingh v. Supreme Court of India*, (2017) 9 SCC 766, made *pro bono services*, a necessary precondition and one of the qualifying parameters for purposes of designating practicing lawyers as “Senior Advocate”.

Session 4 - Power and Functions of Legal Services Authorities “NALSA”

The deliberations in the Session initiated by considering the constitution of the institution(s) NALSA, SALSA, DLSA and the further downward grass root level machinery (under the statute, Legal Services Authorities Act, 1987) to augment access to, and dispensation of justice to the last person. It was advised that the mindset of the authorities and all who execute the machinery of legal aid should be akin to “sales person”, professing to promote and engage in publicity and public awareness. Equal opportunity and deliverable justice are the cornerstones on which the edifice of NALSA is based. Principal objective of NALSA, is to provide free and competent legal services to the weaker sections of the society and to ensure that opportunities for securing justice is not denied to anyone for reasons of socio-economic disability. The mission of spreading legal literacy and awareness, undertaking & facilitating litigations for social justice was also discussed as a primary job of NALSA.

The scope and the criteria for entitlement of legal services would include, Member of Scheduled Caste or Scheduled Tribe, victim of trafficking in human beings or *begar* as referred to in Art. 23, person with disability, a person affected by natural disasters, ethnic violence, caste atrocity, industrial workman, pecuniary limitations as laid down under statute in form of annual income etc. After accounting for the constitution of NALSA and its functionaries, State Legal Services Authority (SALSA) and the High Court Legal Services Committee (HCLSC exclusive at every High Court level), District Legal Services Authorities (DLSA), Taluk Legal Services Committees were discussed. Downward percolation of the national and the State policies (which include Legal services to the mentally-ill and the mentally-retarded, workers in the unorganized sector, dispute resolutions arising out of the implementation of the Mahatma Gandhi National Rural Employment Guarantee Act, 2005) and directions of the NALSA were discussed. Providing free legal services and conducting “Lok Adalats” as per predefined schedules was emphasized. Effective public reach out exercises *via* Para-Legal Volunteers (PLVs) formed part of the discourse. The idea of filling up the interstices and the hiatus between the objectives of the legal services authorities and its execution at the grass root level was considered to be best met out through localized PLVs. To the inquiry as to who can be best suited to be PLV was discussed to identify that, apart from interested volunteers, court appointees, the erstwhile victims form the best choices (as the former victims with their first hand experiences relate to and understand situations pragmatically and diligently). Capacity building of the PLVs at DLSAs was delved. The importance of “Legal Aid Clinics” (assisted by the PLVs) at the village level was discussed. The National Legal Services Authority (Free and Competent Legal services) Regulations, 2010 which provides for scrutiny of legal aid applications, monitoring of cases where legal aid is being provided, and engaging senior lawyers on payment of regular fees in special cases etc. was discussed. It was underscored that,

in serious matters where the life and liberty of a person are in jeopardy, the Regulations empower LSA to specially engage senior lawyer.

Sampurna Behura v. Union of India, 2011(9)SCC801 was referred, wherein the apex court directed the DGP of every State to designate one police officer in each police station as juvenile/child welfare officer to ensure rights of the children who constitute around one-third of the population of India.

It was discussed that NALSA along with Department of Justice initiated the “Tele Law Scheme” in July 2017, to facilitate the delivery of legal advice through an expert panel of lawyers stationed at the office of the SLISA in every State. The video conferencing facilities connects lawyers with clients located in remote areas. PLVs stationed at the Common Service Centre’s (run by village-level entrepreneurs) facilitate the online enablement. NALSA’s web portal to enable prisoners with legal services was applauded.

In order to further enable penetration, ensuring access to justice, in November, 2016 NALSA launched e-portal “Legal Services Management System” making legal aid accessible to anyone who applies online. The “Nyay Mitra Scheme” launched by NALSA in April, 2017 at the district level with a retired judicial or executive officer appointed as a “Nyay Mitra” was considered to be a significant value addition in promoting access to justice. The “Nyay Mitra” helps in actively identifying cases through the National Judicial Data Grid (NJDG). Litigants suffering delay in investigations or trial are identified thru NJDG and assistance (*viz.* legal advice, connecting litigants to relevant authorities etc.) to them is provided. The NALSA initiative “Nyay Sampark” (a Legal Aid Establishments meaning “contact with law”) at the offices of the State Legal Services Authority (SLISA) across India was discussed.

The directive of the Supreme Court about the duty of the trial court and the appellate court to formally inform the convict (by certification) about his right to legal aid in the standardized templates (each for Magisterial / Sessions Court and the High Courts) was discussed as laid down in *Shankar Mahto v. State of Bihar*, CRLMP No. 7862 of 2017.

Suggestions for assessment of the authorities under the Act of 1987 was discussed w.r.t the UGC sponsored research in 2014 in Delhi Courts on the commitment and competence of legal aid lawyers, wherein:

- ✓ It showed severe adverse impact on the quality of legal services due to poor level of competence and commitment of legal aid counsels.
- ✓ 95% of woman litigants in Family and Special Courts entitled to legal services said that they had availed of private legal services as commitment and competence of legal aid counsels was low.
- ✓ 89.30% of Judges claimed they relied on amicus curiae instead of legal aid counsels in serious crimes.

Session 5 – Strengthening Access to Justice at Grassroot Level: Informal Modes of Access to Justice

In this session it was insisted that the judges must encourage young, energetic and budding lawyers who are competent to get empanelled with the LSA (at various levels) to strengthen its pool. It was also suggested that for judges to quickly figure out a LSA advocated case, the same may be flagged with an identifiable sticker. Moreover, the front office of the LSA must have the best and capable lawyers who can actively promote the cause of LSA. Retired judges may be requested to do jail visits to help monitoring and promote awareness and assistance to the needy. It was suggested that Alternate Dispute Resolution modes (ADR) is a potent tool to

improve access to justice and the experienced retired judicial officers make good ADR facilitators.

Unlike formal modes, the informal modes are those which essentially do not follow the typical conventional adversarial system of justice dispensation. It was highlighted that “informal modes” do not compete with the formal modes, but they rather complement them. The informal modes of access to justice include: 1) Nyaya Panchayats, 2) Lok Adalats, 3) Negotiation, 4) Arbitration, 5) Conciliation, 6) Mediation and 7) Ombudsman.

It was emphasized that the benefits of encouraging informal modes include:

- ✓ It helps quick disposal of a large number of trivial cases in summary manner, thereby enhancing the capacity and time available to the regular courts to deal with more complex cases.
- ✓ It relaxes strict rules of procedure and evidence and emphasizes on informal settlement procedures which creates a relatively inexpensive settlement mechanism of disputes.
- ✓ They are better suited to deal with cases involving personal laws, consumer disputes, disputes between constituents and banks and other financial institutes, disputes relating to public, utility services and compoundable petty crimes.
- ✓ It complements the formal adjudicatory court system and works in the best interest of the State and the citizen.

One of the basic idea to roll out access to justice at the very grass root level, is by the establishment of “Nyaya Panchayats”. It was emphasized that Art. 40 when read with Art. 39A of the Constitution of India enables the “Nyaya Panchayats” to effectively dispense justice based on principles of natural justice enabling procedurally simplified resolution of issues. The reasons for setting up “Nyaya Panchayats” include:

- ✓ Democratic decentralisation,
- ✓ Easy access to justice,
- ✓ speedy disposal of cases,
- ✓ Inexpensive justice system,
- ✓ Revival of traditional village community life,
- ✓ Combination of judicial system and local self-government, and
- ✓ Reduction in pressure on Civil Courts.

The constitution of a “Nyaya Panchayat” was discussed w.r.t 114th Report of the Law Commission of India. It includes:

- ✓ There should be a panchayat judge and two lay judges in a “Nyaya Panchayats”. The panchayat judge should be a legally trained person belonging to the cadre of judges to be specifically set up for the purpose.
- ✓ In order to select legally trained judges for “Nyaya Panchayats” the state shall constitute a special cadre of Judges that is panchayati raj cadre of judges.
- ✓ The lay judges should be nominated not elected.
- ✓ The-local jurisdiction of the gram nyayalaya would be over villages comprised in a Taluka/Tehsil.
- ✓ There would be no monetary ceiling on its jurisdiction. A broad civil jurisdiction should be given, and the criminal jurisdiction should be equal to that of a judicial magistrate of first class.
- ✓ The “Nyaya Panchayats” would follow a simple procedure for disposal of cases.
- ✓ Neither Code of Civil Procedure, 1908, nor Indian Evidence Act, 1872 is to be applied in deciding matters.

- ✓ In criminal trials, the Code of Criminal Procedure, 1973 may be applied but Indian Evidence Act, 1872 need not be applicable.
- ✓ Lawyers may be permitted to appear before the “Nyaya Panchayats”.
- ✓ No appeal shall lie in civil cases from the decisions of the “Nyaya Panchayats”. But a revision petition may lie to correct errors of law which may have affected the decision of the “Nyaya Panchayats” to the district courts.
- ✓ In criminal case, an appeal would lie to the sessions courts against the decision of the “Nyaya Panchayats” where substantive sentence of imprisonment is imposed.

It was brought to the notice citing *Jeet Singh v. State of U.P.*, 1993(1) SCC 325 that “Nyaya Panchayats” cannot pass divorce decrees. “Nyaya Panchayats” are not “Khap or Caste Panchayats” was emboldened during the discourse. It was further reminded that in *State of M.P v. Shobharam* AIR 1966 SC 1910, the Supreme Court held that “a bar to legal representation in criminal case involving petty offence (where fine is imposed) before Nyaya Panchayat is not violative of Art.22.”

Yet another potent informal mode discussed was “Lok Adalat” (LA). It is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/ compromised amicably. LA draws the statutory status from the Legal Services Authorities Act, 1987. In 1999, the Indian government further legitimized LAs by adding Section 89 to the Civil Procedure Code. In order to enable uniformity in the functioning of the LAs the apex court in *B.P. Moideen Sevamandir v. AM Kutty Hassan* 2009 (1) SCC 446 directed the NALSA to formulate guidelines. It held:

As an award of a Lok Adalat is an executable decree, it is necessary for the Lok Adalats to have a uniform procedure, prescribed registers and standardised formats of awards and permanent record of the awards, to avoid misuse or abuse of the ADR process. We suggest that the National Legal Services Authority as the apex body, should issue uniform guidelines for the effective functioning of the Lok Adalats. The principles underlying following provisions in the Arbitration and Conciliation Act, 1996 relating to conciliators, may also be treated as guidelines to members of Lok Adalats, till uniform guidelines are issued: Section 67 relating to role of conciliators; Section 75 relating to confidentiality; and Section 86 relating to admissibility of evidence in other proceedings.

Nature of cases to be referred to LAs, and composition of LA, the National and the Permanent LAs, various jurisdictions of LA, were discussed. Other modes such as negotiation, mediation were also discussed w.r.t. *M/s. Afcons Infra. Ltd. & Anr v. M/S Cherian Varkey Construction Co.*, 2010 (8) SCC 24.

A reasonable account of the constitution and functioning of the institute of Ombudsman was discussed which referred to the Lokpal and Lokyuktas Act, 2013. It was highlighted that in the financial sector in India, banking ombudsman is appointed by the Reserve Bank of India and is usually a chief general manager or general manager of the Reserve Bank of India (RBI). The insurance ombudsman is named by the Governing Body of the Insurance Council (GBIC) which was set up to appoint and supervise the insurance ombudsman.

Session 6 - Socio-economic Impediments in Access to Justice

Discussing as to who generally suffers socio-economic impediments, a general overview projected a list including, transgender, trafficked women and children, people from the lower caste, regional and religious minorities in a State, gender etc. were projected for discussion. It was also highlighted that social and economic impediments do not necessarily need to hinder

the access to justice when considered collectively. They may not necessarily be seen to pose impediments to a specific group in a society or forming a society. They may also be responsible as impediments individually, distinctly and disjointly (i.e. Socially or economically). A *pardanasheen* women subject to domestic violence with limited access outside her home may be economically not challenged but socially deprived. It was suggested that the *locus standi* of the LSA must be diluted and the PLV may be encouraged to reach out such a case to break the paralysis to enable access to justice. Moreover, under law in case of a typical domestic violence it is not mandatory for a victim to reach out the law enforcing agencies, the job can be done by any other *bonafide* person.

While dealing with “Social Context Judging”, it was highlighted that the major issues include:

- ✓ Typical adversarial mindset of a judge. Instead the judge ought to engage himself as an active participant in the justice delivery system.
- ✓ Owing to the uniqueness and the diversity of India in terms of caste, religion, gender etc., the judges’ sensitivity to the social context draws extreme importance.

The role of NALSA through its specific schemes to address the needy with special consideration to the prevalent socio-economic issues were discussed *viz.*:

- ✓ NALSA (Legal Services to Disaster Victims Through Legal Services Authorities), Scheme, 2010
- ✓ NALSA (Victims of Trafficking and Commercial Sexual Exploitation) Scheme, 2015
- ✓ NALSA (Effective Implementation of Poverty Alleviation Schemes) Scheme, 2015
- ✓ NALSA (Protection and Enforcement of Tribal Rights) Scheme, 2015
- ✓ NALSA (Child Friendly Legal Services to Children and their Protection) Scheme, 2015
- ✓ NALSA (Legal Services to Senior Citizens) Scheme, 2016
- ✓ NALSA (Legal Services to Victims of Acid Attacks) Scheme, 2016. Judgments *Parivartan Kendra v. Union of India*, 2016 (3) SCC 571 and *Laxmi v. Union of India*, 2014 (4) SCC 427 were discussed.
- ✓ Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes – 2018. *Nipun Saxena v. Union of India*, 2018 (11) SCALE 350, wherein the Supreme Court directed the special judge to “pass appropriate orders regarding actual physical payment of the compensation or the interim compensation so that it is not misused or mis-utilized and is actually available for the benefit of the child victim. If the Special Judge deems it appropriate, an order of depositing the amount in an interest-bearing account may be passed.”, was emphasized.

Session 7 – Legal Aid to Victims of Crime: Compensation & Rehabilitation

The Session focused on the aspects of relief in the form of compensation and rehabilitation to the victims of a crime. Various queries relating victimology were taken-up and addressed by citing appropriate case law. The fundamental right to legal aid is not limited to the trial stage alone, but it extends to the appellate stage also. In *Rajoo @ Ramakant v. State of Madhya Pradesh*, (2012) 8 SCC 553 the apex court held that “[W]e are of the opinion that neither the Constitution nor the Legal Services Authorities Act makes any distinction between a trial and an appeal for the purposes of providing free legal aid to an accused or a person in custody.” It further held that:

It is important to note in this context that Sections 12 and 13 of the Act do not make any distinction between the trial stage and the appellate stage for providing legal services. In other words, an eligible person is entitled to legal services at any stage of the proceedings which he or she is prosecuting or defending. In fact the Supreme Court

Legal Services Committee provides legal assistance to eligible persons in this Court. This makes it abundantly clear that legal services shall be provided to an eligible person at all stages of the proceedings, trial as well as appellate. It is also important to note that in view of the constitutional mandate of Article 39-A, legal services or legal aid is provided to an eligible person free of cost.

It was suggested that, the Courts may adopt as a best practice, the following in a step-wise manner, to ensure and maximize victim support: 1. Ensuring access to justice, 2. Award of compensation, 3. Rehabilitation, 4. Protection of victim as well as witnesses, 5. General support needed.

The Calcutta High Court in *Malati Sardar v. State of West Bengal*, 2017 SCC OnLine Cal 9536, laid down procedural guidelines so that availability of legal aid/assistance to every convict is intimated promptly at the time of judgment itself enabling her/him to appeal against an order of conviction if (s)he is not having adequate resources was discussed. It was laid down that:

1. Every Judge while pronouncing a judgment of conviction and sentence shall inform the convict about his right to prefer an appeal against the judgment including his right to avail legal aid.
2. The above fact should be stated at the foot of every judgment.
3. Necessary amendments may be made to Chapter X of the Calcutta High Court Criminal (Subordinate Courts) Rules, 1985 so that such duty is imposed on the trial Judge at the time of delivery of judgment.
4. Correctional Home shall also communicate to the convict about his right to prefer an appeal with legal aid and record his willingness, if any. If the convict desires to prefer appeal with legal aid, superintendent of the correctional home concerned should forward the necessary papers to registry along with the appellate court and secretary of legal services authority concerned.
5. Within a period of 7 days, the secretary of the correctional home concerned should appoint a lawyer from its panel to prefer and prosecute the appeal on behalf of the appellant.
6. Till the disposal of the appeal, the lawyer appointed should send reports quarterly to the secretary of the legal services authority concerned about the steps taken by him in regard of the appeal.
7. Registrar General of the High Court is directed to circulate a copy of this order to every judicial officer in the State of West Bengal to ensure that the aforesaid directions are duly complied with. He shall also initiate the procedure for amendment of the Criminal Rules and Orders.
8. The above stated guidelines should be circulated through the secretary, state legal services authority, to all the secretaries of the district and sub-divisional legal services authorities along with the publicity to the general public.
9. Department is directed to communicate the order to the Director General of Correctional services, West Bengal, which shall be communicated to the superintendents of all the Correctional homes of West Bengal for effective implementation of the directions.

In case of child sexual abuse (under the POCSO Act, 2012 and the Rules therein), pending amendment, in order to fill-up the hiatus created due to absence of guidelines; and provide interim compensation to address the immediate needs of such child victim, the Supreme Court in *Nipun Saxena v. Union of India*, 2018 (11) SCALE 350, laid down guideline that, “the NALSA Compensation Scheme should function as a guideline to the Special Court for the award of compensation to victims of child sexual abuse Under Rule 7 until the Rules are

finalized by the Central Government.” It was further held that, “The Special Judge will also pass appropriate orders regarding actual physical payment of the compensation or the interim compensation so that it is not misused or mis-utilized and is actually available for the benefit of the child victim. If the Special Judge deems it appropriate, an order of depositing the amount in an interest bearing account may be passed”.

In order to ensure rehabilitation of a victim of sexual assault the Calcutta High Court in *Bijoy @ Guddu Das v. State of West Bengal*, 2017 SCC OnLine Cal 417, issued directions to the investigating agencies, prosecutors and the Special Courts so that ... fundamental right of dignity of a child victim and other basic human rights are preserved:

1. Police Officer or the Special Juvenile Police Unit receiving complaint as to commission or likelihood of commission of offence under the Act shall forthwith register the same in terms of Section 19 of the Act and furnish a copy free of cost to the child and/or his/her parents and inform the child or his/her parents or any person in whom the child has trust and confidence of his/her right to legal aid and representation and if the child is unable to arrange for his/her legal representation, refer the child to the District Legal Services Authority for necessary legal aid/representation under section 40 of the Act. Failure to register First Information Report in respect of offences punishable under sections 4, 6, 7, 10 & 12 of POCSO shall attract penal liability under section 166-B of the Indian Penal Code as the aforesaid offences are cognate and /or *pari materia* to the Penal Code offences referred to in the said penal provision.
2. The Police Officer on registration of FIR shall promptly forward the child for immediate emergency medical aid, whenever necessary, and/or for medical examination under section 27 of the Act and ensure recording of the victim's statement before Magistrate under Section 25 of the Act. In the event, the Police Officer or the Special Juvenile Police Unit is of the opinion that the child falls within the definition of "child in need care and protection" as defined under Section 2(d) of the Juvenile Justice (Care and Protection of Children) Act, 2000, the said Police Officer or the Special Juvenile Police Unit shall forthwith forward the child to the jurisdictional Child Welfare Committee for providing care, protection, treatment and rehabilitation of the child in accordance with law.
3. Whenever a registration of FIR is reported to the Special Court, the Special Court shall make due enquiries from the investigating agency as to compliance of the aforesaid requirements of law as stated in (1) and (2) above and pass necessary orders to ensure compliance thereof in accordance with law, if necessary.
4. Officer-in-Charge of the police station and the investigating officer in the case including the Special Juvenile Police Unit shall ensure that the identity of the victim is not disclosed in the course of investigation, particularly at the time of recording statement of the victim under section 24 of the Act (which as far as practicable may be done at the residence or a place of choice of the victim or that of his/her parents/custodian, as the case may be), his/her examination before Magistrate under section 25 of the Act, forwarding of the child for emergency medical aid under section 19(5) and/or medical examination under section 27 of the Act.
5. The investigating agency shall not disclose the identity of the victim in any media and shall ensure that such identity is not disclosed in any manner whatsoever except the express permission of the Special Court in the interest of justice. Any person including a police officer committing breach of the aforesaid requirement of law shall be prosecuted in terms of section 23(4) of the said Act.
6. Trial of the case shall be held in camera in terms of section 37 of the Act and evidence of the victim shall be promptly recorded without unnecessary delay and following the

procedure of screening the victim from the accused person as provided in section 36 of the Act. The evidence of the victim shall be recorded by the Court in a child friendly atmosphere in the presence of the parents, guardian or any other person in whom the child has trust and confidence by giving frequent breaks and the Special Court shall not permit any repetitive, aggressive or harassing questioning of the child particularly as to his/her character assassination which may impair the dignity of the child during such examination. In appropriate cases, the Special Court may call upon the defence to submit its questions relating to the incident during cross-examination in writing to the Court and the latter shall put such questions to the victim in a language which is comprehensible to the victim and in a decent and non-offensive manner.

7. In the event, the victim is abroad or is staying at a far off place or due to supervening circumstances is unable to physically attend the Court to record evidence, resort shall be taken for recording his/her evidence by way of video conference.
8. The identity of the victim particularly his/her name, parentage, address or any other particulars that may reveal such identity shall not be disclosed in the judgment delivered by the Special Court unless such disclosure of identity is in the interest of the child.
9. The Special Court upon receipt of information as to commission of any offence under the Act by registration of FIR shall on his own or on the application of the victim make enquiry as to the immediate needs of the child for relief or rehabilitation and upon giving an opportunity of hearing to the State and other affected parties including the victim pass appropriate order for interim compensation and/or rehabilitation of the child. In conclusion of proceeding, whether the accused is convicted or not, or in cases where the accused has not been traced or had absconded, the Special Court being satisfied that the victim had suffered loss or injury due to commission of the offence shall award just and reasonable compensation in favour of the victim. The quantum of the compensation shall be fixed taking into consideration the loss and injury suffered by the victim and other related factors as laid down in Rule 7(3) of the Protection of Children from Sexual Offences Rules, 2012 and shall not be restricted to the minimum amounts prescribed in the Victim Compensation Fund. The interim/final compensation shall be paid either from the Victim Compensation Fund or any other special scheme/fund established under section 357A of the Code or any other law for the time being in force through the State Legal Services Authorities or the District Services Authority in whose hands the Fund is entrusted. If the Court declines to pass interim or final compensation in the instant case it shall record its reasons for not doing so. The interim compensation, so paid, shall be adjusted with final compensation, if any, awarded by the Special Court in conclusion of trial in terms of section 33(8) of the Act.
10. The Special Court shall ensure that the trial in cases under POCSO is not unduly protracted and shall take all measures to conclude the trial as expeditiously as possible preferably within a year from taking cognizance of the offence without granting unreasonable adjournment to the parties in terms of section 35(2) of the Act. Concerned Legal Services Authority shall ensure that the interim/final compensations are paid to the victim from the Victim Compensation Fund or any other scheme/fund established under section 357A Cr.P.C. or the State government, as the case may be.

P.S.: at the time of reporting subsequently the Supreme Court in Nipun Saxena v. Union of India, WP (C) No.565 of 2012, on 11th December, 2018 referred to the above mentioned Calcutta High Court judgement held that FIR relating to such cases must not be made available to the public domain in light of preservation of right to privacy of the victim.

Session 8 – ICT as a Tool to Enhance Access to Justice

The session was dedicated to the usage and potential of Information and Communication Technology (ICT) in order to enable the judicial system, to facilitate access to justice. The participants took the opportunities to share best practices followed by various courts in their respective jurisdictions.

It was highlighted that apart from a few statutes (legislations for special courts, e.g. POCSO Act, SC/ST POA Act, NDPS Act etc.) wherein the victim is duly informed about the stages of legal procedures, it is generally not the case with other statutes. It was hence suggested that a best practice may be adopted to inform the victims about the same in every case to enable awareness. It was brought to the notice that in the State of Andhra Pradesh which has adopted “e-FIR” an automated notice is sent to the victim forthwith. It was also suggested that the Case Information Software (CIS) system may be upgraded to send automated information to the stake holders as soon as a charge sheet is filed.

A mobile application exclusively for the judicial officers “justice” is been worked upon.

The second phase of the “e-Courts” project is implemented by Department of Justice during 2015 – 19 under the guidance of “e-Committee”, Supreme Court of India for ICT enablement of all district and subordinate courts in the country. It was stated that Phase-II is a visionary document which distinguishes Indian judiciary from many countries in the matter of digitization. The concept of cloud computing is not only safe with the data backups been secured at three separate places, it enables quick and real time simultaneous data upgradations by the courts using WAN.

The mission of implementation has been divided under two heads: a) “Core”, wherein it is overseen, developed and managed by the e-committee of Supreme Court (e.g. common issues of national importance *viz.* relating to Parliament, Supreme court, High Courts etc. wherein uniformity is essential requirement), and b) “Peripheral”, issues typical to each High Court jurisdictions.

On the issue of video conferencing *Swapnil Tripathi v. Supreme Court of India*, (2018) 10 SCC 639 was referred to note that although the High Courts were advised to make Rules for guiding video conferencing, but it was given to understand that only Delhi High Court seems to have executed the same.

It was informed that in the month of August 2018, the Supreme Court in collaboration with Ministry of Electronics and IT launched three specific applications to enable “access to justice”.² These are seen to be path breaking citizen centric applications namely:

1. A web portal www.efiling.ecourts.gov.in is being made functional for purposes of “e-filing”. This application is in pursuance to paperless courts. It is expected that apart from the High Courts now using this application approximately 1600 District Courts can also be a part of the journey to paperless courts. The lawyers and litigants can do online registration at this website thereby a database is created for the portfolio management of cases of litigants and lawyers at the site. This application enables filing cases from any part of India to any court on registration. One can get updates from time to time about filed cases, cases under objection or rejected cases. The facility of “e-sign” is provided for those who cannot afford purchasing token for making digital signatures. Transition from CIS 1.0 to CIS 3.0 (which is integrated to “e-filing”) is an

² Refer *CJI Launches Applications to Facilitate Litigants and Lawyers*, Press Information Bureau, Government of India, Ministry of Electronics & IT, 23-August-2018 14:39 IST. Also available at: <http://pib.nic.in/newsite/PrintRelease.aspx?relid=182015>, last visited on 20-12-2018.

expectation which is anticipated to make significant progress in the field of transition towards paperless courts in India.

2. NSTEP - National Service and Tracking of Electronic Processes is the second step taken by the Government and the Supreme Court in collaboration with CIS, web portal and mobile application wherein it renders transparency and is a secured system for transmission of process from one location to another. It helps in addressing unnecessary delays in process serving, particularly for processes beyond a particular jurisdiction. It was highlighted that NSTEP will lead to secured auto generation of processes (serving notices & summons etc.) with unique QR Code through CIS, publishing processes on portal and transmission of processes to other court complexes in the country and ultimately to mobile app of the bailiffs who can get digital signatures on the handset itself. The mobile set being GPS enabled improves services and transparency to the process. A facility to send electronic processes directly to registered mail of the addressee by secured mechanism, to upload documents associated with process and facilities like tracking GPS where process is served or otherwise, obtaining photograph and on screen signature after service is provided. Immediate communication of status of service of process to Court and stake holders will be done and there is a secured dedicated system for transmission of processes from one district to another or from one state to another with travel time in seconds. The service will empower litigants with real time information relating to status of service of process and will entail litigants to take immediate follow up action which will reduce delays. The status of service can also be tracked on public portal.
3. “e-pay” application at www.pay.ecourts.gov.in is a unified portal facilitating online payments of court fees. The platform is user friendly. “e-Payment” ensures safety and security (using OTP enabled transactions), with faster hassle free way to pay court fees with instant acknowledgment through automated sms. At present, the facility has been made operational in two States of Maharashtra and Haryana in and rest of India it will be rolled out in a phased manner. It enables generation of accurate report of court fees collection for any court once fully implemented.

The above ICT enablement is not only a definite enabler of “access to justice” but also injects systemic transparency and once rolled out ought to reduce the menace of corruption.