
LEGAL SERVICES CLINIC IN UNIVERSITIES AND LAW SCHOOLS: A STEP FORWARD IN ACCESSING JUSTICE

Dr. Awekta Verma

Associate Professor, Law Centre-I, Faculty of Law,
University of Delhi, New Delhi-110021

E-mail: awekta.shimla@gmail.com

ABSTRACT

Rule of law is of utmost importance for having an orderly, peaceful and just society. Promotion and protection of human rights can be ensured only when there is rule of law. Many other things like development whether social or economic too depend on it. There are many legislations, schemes and regulations apart from the constitution of India which envisage making the constitutional goal of justice for all a reality in India. Legal services clinics in universities and law Schools form an integral part of the scheme in ensuring access to justice to the poor, underprivileged, illiterate and vulnerable sections of the Indian society. Access to justice is considered so important that it is considered as a fundamental right to be given to all- whether citizens or non-citizens in India. Involving law schools and universities by setting up legal aid clinics has benefitted all-the students, the society and the justice delivery system. It gives an opportunity for hands on experience to the students, empowers community, and solves the problem faced in administration of justice by the concerned authorities. The paper explores and critically analyses the involvement of law schools in the legal aid programmes and the role played by them in meeting the constitutional goal of justice for all.

Key words: Legal services, Fundamental right, Social justice, Access to justice, Governance

1. INTRODUCTION

The Preamble to the Constitution of India envisages securing for all Indians Justice- social, economic and political. In pursuit of the same it envisions giving equal opportunity and equal treatment irrespective of the status of the person [1] as for ensuring rule of law it is very important that every person, irrespective of one's rank, position, status or condition is subject to the ordinary law and jurisdiction of the ordinary courts. In other words, every person should be able to access justice without fear, favour or any kind of disability. It's one of the basic human rights which greatly impact the quality of life of a person. Article 14 of the Constitution of India reinforces this right by providing for 'equality before law' and 'equal protection of laws' within the territory of India [2]. Anyone in India should be able to approach the concerned authorities for resolution of their disputes, for seeking remedy for the wrong done or in case of violation of their legal rights in both civil and criminal matters. Social or economic inequities should not come in the way of seeking justice or else it will violate Article 14. Access to justice is considered so important that it has been recognized as a fundamental right under Article 21 of the Constitution of India which states that "no one shall be deprived of his life or personal liberty except according to procedure established by law [3]" It has to be ensured that the procedure is just, fair and reasonable and not arbitrary, fanciful or oppressive. Free legal aid is now considered an important aspect of fair, reasonable, and just procedure as the poor and marginalized sections of the society shall not be deprived of access to justice because of their poor socio-economic conditions. The doctrine of equal justice enshrined in the Constitution of India is further reinforced by Articles 22, 32, 39-A, 51-A and 226. Some other statutes, schemes and laws also further supplement and elaborate the right of access to justice. However, the courts and legal professional alone cannot meet the challenge of providing legal services to the people of India and so the Legal Services Act, 1987 provides for establishing legal aid clinics in law schools and universities whereby students can learn the different facets of law by practicing and experiencing first hand its reach, application, issues and nuances and at the same time they help the poor and marginalized sections of the society[4].

This paper analyses the role played by law schools in realizing the constitutional vision of justice for all and bridging the gap between theories and practice vis a vis access to justice. It explores the challenges faced by the universities and law schools in operating legal aid clinics and suggests the way forward.

2. LEGAL PROVISIONS

Yahaya Al HasanSeini, Executive Director of legal Aid ,Ghana has very aptly emphasized that development and opportunity to get one's grievances addressed by the justice delivery system of a country go hand in hand with the prompt redressal of grievances without discrimination in terms of status, region, religion, sex etc. It creates a bond between citizens and the justice system. Also, it leads to overall feeling of wellbeing and safety and makes the citizens participate in the development process as their faith in the institutions is strengthened [5]. Freedom and the kind of avenues available to access justice is an important facet of good governance for ensuring Rule of Law [6]. Part III and part IV of the Constitution of India lay down the foundation and road map for securing this important human right. In India, the Supreme Court has interpreted the provisions of the Constitution i.e. Article 14, 21 and 22 very creatively and the right to legal aid has been raised to the status of fundamental right in India [7]. A progressive change came about with the inclusion of Article 39-A as a Directive Principle by the Constitution (42nd Amendment) Act, 1976. It directs that State shall strive to provide free legal aid for ensuring that justice is within reach of all without any kind of discrimination being faced by anyone in accessing it. Required laws, regulations and schemes to achieve the same shall be passed by the State to make justice system accessible to the people[8].

The addition of this Article speeded up the efforts on the part of the judiciary as well as the legislature to make free legal services an important element of procedural justice as without it poverty, illiteracy, or any other kind of handicap will deprive the poor and marginalized any opportunity for securing justice. This Article in the Constitution of India along with others served as a basis for enactment of Legal Services Authorities Act, 1987 [9] (hereinafter referred as LSAA) which uses the expression 'legal services' instead of 'legal aid' as by the time it was enacted there was a shift in the approach from welfare to rights in sphere of access to justice. Justice J.N Bhatt in *LabhuLaxman v State of Gujarat* [10] has made the distinction between these two very clear by stating that 'Aid' means, to assist or help, whereas, 'services' means to perform the duty. The authorities are duty bound to provide it to the deserving and needy. Section 12 of the LSAA lists the eligibility criteria for availing legalaid and it is only people falling in any of these categories who are entitled for availing legal aid either to file or defend a case if they have a prima facie case. The following are eligible as per thissection:

A person belonging to Scheduled Caste or Scheduled Tribe

A trafficking victim

A woman or child

A person with disability

Anyone who is a victim of any kind of disaster or violence

An industrial workman

A person in custody (In juvenile home, protective home, psychiatric hospital etc.)

Anyone who's annual income is less than Rs.5 lakhs in case of Supreme Court and in case of other courts as prescribed by the respective states.

Apart from LSAA, 1987 the right to free legal aid is provided under Civil Procedure Code as well as Criminal Procedure Code, 1973. Section 304 of the Criminal Procedure Code, 1973 mandates giving legal aid at state expense to an indigent accused if he is not able to afford a lawyer to represent him in a trial before the session's court. In civil cases, Order 33 of the Civil Procedure Code, 1908 makes provision for legal aid in cases of the suit by indigent person. If plaintiff is not represented by pleader, then the government can assign a pleader to him and he is not liable to pay court fee. Similarly, The Rights of Persons with Disability Act, 2016 mandates under section 12 that the Government shall ensure that a person with disability should not face any discrimination in accessing the justice system [11]. All these laws echo and implement the human rights values as mentioned and enumerated in the Universal Declaration of Human Rights 1948 under Articles 3, 8, 10 and 11, which envision provision for legal aid whenever the personal liberty of a person is under attack. By incorporating legal aid provisions in different statutes, India being a signatory to International Covenant on Civil and Political Rights, has adequately fulfilled its obligations as mandated by Article 14(3)(d) which ordains providing legal aid for the citizens of member states.

3. ESTABLISHMENT OF LEGAL SERVICES CLINIC IN UNIVERSITIES

Legal education in India has undergone a paradigm shift over the last few decades. It has moved on from being a purely academic pursuit to experiential learning over a period of years. Though the movement started from the Universities offering three year law courses but Law Schools offering five year integrated courses of BA LLB took the lead and have embraced it fully in their curriculum itself. Almost all law schools have legal aid clinics [12] running successfully. However, the Universities are also catching up. As per the Legal

education Rules 2008, it has been made mandatory by the Bar Council of India that all law schools shall have legal aid clinics and so Universities offering law courses are now bound to have law clinics in their law schools. Though it is entirely another matter as to how many are really functional and running successfully.

Now, the institutional mechanism for legal aid has been established in India but still there is a huge gap between need and response. The concept of free legal aid has not been internalized by the stakeholders i.e. law students, police, judges, administrators and lawyers. As per BCI [13] in 2011 there were approximately 12 Lakh registered advocates in India, more than 950 law schools and approximately 4-5 lakh students across India. The number has surely grown by the year 2021. Thus, Indian legal profession is one of the largest in the world. Such a large student population can play a significant role in promoting and ensuring access to justice. Adoption of clinical legal education and establishment of law clinics has brought legal education out of the classrooms and closer to reality. Students are able to have real life experiences and also fill the gap in providing access to legal services, counselling, legal advice and promoting alternative dispute resolution.

4. A SHIFT FROM THEORY TO PRACTICE

First Prime Minister of India, Pt. JawaharLal Nehru, in his speech ‘Tryst with Destiny’ exhorted Indians to work hard to build modern India. He called upon all to keep working till poverty, disease, suffering is wiped out from the country and people get equal opportunity in every sphere [14]. It is this spirit with which the National Legal Services Authority and the legal services clinics in universities and law schools need to work to make accessing justice a reality for the poor and vulnerable. As per 2011 Regulations of NALSA on legal Services Clinics in Universities, law Colleges and Institutions Scheme of 2013, NALSA works in close coordination with law school based clinics established under Legal Education Rules of 2008 as mandated by Bar Council of India. The legal services clinic in law Schools coordinate with Legal Services Authorities at State and District level too for realizing the vision of making justice accessible for all [15]. The law clinics provide great opportunity to the students to contribute in realization of constitutionally guaranteed rights. In the process the students get sensitized to the existing socio-economic realities, issues and problems of India. Working in the legal aid clinic gives them practical exposure to the working of the law in real life beyond text books. It will help them in becoming better lawyers, judges, administrative officials, police personnel and citizens.

The general activities taken up by the law school clinics are:

- Legal Awareness in communities, prisons, juvenile homes, schools and colleges etc.
- Legal Literacy
- Legal Advice
- Providing Legal Representation
- Filing of Public Interest litigation
- Awareness drives about welfare schemes
- Adopting slums and villages for specific objectives like ensuring there is no out of school child in the area.
- Legal Research for Policy Formation and law Reform
- Counselling the victims
- Helping workers get minimum wages or compensation wherever due.
- Specialised clinics like consumer law clinic, Entrepreneurial clinic (IPR), GST law clinic etc.

The objective of all these activities is to spread legal awareness and empower the citizens for realizing their rights on their own. Most of the time people are not aware of the proper forums they need to approach for redressal of their grievances. Once they know about how and whom to approach when in distress they are able to exercise the rights given to them by the constitution of India and by different legislations. Working in the clinic does add value to the students' knowledge about how law empowers and disempowers at the same time, how it shapes and impacts human lives and how empowered citizens can help in ensuring proper implementation of the law. Empirical studies and field work done by the students can help legislators and policy makers in making laws which are grounded in social realities and cater to the needs of the people of India. It will also help judges and law enforcement officials know, understand and appreciate the true facts and execute and implement the law in its true spirit. In the process everything gets humanized- the law, law enforcement officials and all the stakeholders.

Legal Aid during the COVID19 Pandemic

Some legal aid clinics of the universities and law schools have come forward to help people during the pandemic in accessing justice as well as the COVID 19 related resources. They verified resources to help people needing oxygen (equipment, refiller and supply), home care, medicines, ambulance and tele-consultation[16]. The paralegal volunteers[17] from law

schools trained by NALSA and various State Legal Services Authorities have participated actively in executing various legal aid initiatives by these agencies. Majority of the law schools and universities offering law courses have not been able to shift to online mode of operating law clinics because of budgetary and other constraints but their students as paralegal volunteers have carried on the good work. Economic as well as technological support to the law schools and universities will definitely help in shifting the legal aid clinics to online mode and allow them to participate more actively in helping people to access justice during the current pandemic.

5. ISSUES AND CHALLENGES

The legal aid movement is still at a nascent stage in India and has to grow at a mass stage. All Universities do not have the same approach as far as the legal education is concerned and in some institutions only lip service is done in the name of having a legal aid clinic. Law schools have succeeded to a certain extent in providing legal aid but much remains to be desired. The main issues and challenges faced in making it a reality in the University system are as follows:

Lack of Resources

Universities lack in resources- both human and infrastructural. There is a dearth of trained and motivated teachers who can guide and supervise the students. Moreover, the time which a teacher spends in legal aid work is not counted as workload and the teacher is overburdened with work. Lack of supporting staff exacerbates the matter further. The teacher doing legal aid work has to give extra time for this work and has to forego many holidays too. There are no incentives for spending extra time every day for this work. Lack of proper infrastructure like spacious rooms, furniture, computers, internet, printers etc further limits the results which can be achieved.

Lack of Funds

In Universities students come from different socio-economic backgrounds. Lack of funds to sponsor the visits of students for different campaigns and also in helping them make effective presentations hampers the activities of the clinic. Research work also suffers because of lack of academic resources.

No Credits/ Voluntary Work

It's a purely voluntary work for both teachers and students and neither credits are given to students or any incentives given to teachers in the universities. Moreover, students doing this work sometimes lack attendance in regular classes and can be barred from sitting in the examination.

Lack of Adequate Training

There is no training given to either teachers or students to carry on this work effectively. Whatever little training the students get as paralegal volunteers is not sufficient to effectively do this task.

Low quality of Panel Advocates

The panel advocates assigned to the law clinics are at times not properly qualified to do the job. At times they are not properly motivated and engage in unethical practices. Inexperienced, demotivated lawyers do more harm than good to both students and the cause they are expected to take up.

6. SUGGESTIONS AND WAYFORWARD

Separate Faculty

Faculty should be appointed specifically for the purpose of legal aid work as it requires long working hours and continuous supervision, mentoring and guidance of the students. Lot of time is required for research, coordination, envisioning and execution of selected activities and projects. The workload of a teacher convener is equivalent to one course work or even more at time depending on the nature of work.

Funding

Adequate funds should be available for the successful running of the clinical programmes. Continuous training, outreach programmes, research activities and delivery of effective legal services are affected because of the lack of funds.

Good Quality Panel Lawyers

Panel lawyers should be selected taking into account the kind of legal advice and counseling they have to do. Experienced and well qualified lawyers who can handle civil and criminal cases should be sent to the clinics. Due regard should be given to their ethics and level of motivation to work in the clinic. Proper replacements should be given when they are engaged in their personal cases and as far as possible it should be ensured that their day of clinic visit

should not clash with their personal appearance in their own cases at the courts.

Incentives to students and Teachers

Students need to be given some credits for their legal aid work in the universities. Most of the law schools give credits to students for legal aid work. Presently in the universities the students doing legal aid work end up being penalized for the same as at times because of the nature of their work they have to forego their classes and can be detained for being short on attendance. Incentives should be given to teachers who spend extra time working day and night to complete the assigned projects.

Training programmes

Training of faculty and students should be held at regular intervals to hone their skills and awareness. That should be the norm rather than an exception.

Involvement of Judges and Lawyers

There should be good coordination between the judges, faculty and lawyers for the effective visualization, implementation and execution of the legal aid programmes.

Adequate Staff

Adequate supportive staff should be made available for the legal services clinic as in its absence it's difficult to coordinate, execute and keep proper records of different events and projects.

7. CONCLUSION

Legal aid clinics in law schools and Universities do facilitate the realization of the constitutional goal and mission of NALSA to secure access to justice for all in India. Training more law students as para legal volunteers and improving the quality of their training will go a long way in increasing accessibility for legal services by the people. The widening of legal services by incorporating preventive and rehabilitative approach has made it more acceptable to people. A legally aware citizen can contribute more effectively in nation building. Involvement of law students in this benefits them as well as the society as both get sensitized to the socio-legal realities. Moreover, it ensures better governance as awareness campaigns by para legal volunteers help people know their rights, duties and to access different government schemes and initiatives. Camps are organized by legal aid clinics to access those welfare schemes or for resolving issues related to them. This helps in speedy disposal of cases and lead to overall sense of peace, satisfaction and faith in the institutions on the part of the people. Involving para legal volunteers from law schools and universities in digital initiatives

like Tele-law by NALSA will definitely increase the avenues for accessing justice as well as keep the practical and social learning process of law students alive during the pandemic. Lack of funds, infrastructure, technical knowhow, trained manpower, digital divide etc has prevented universities from making a smooth transition from offline to online legal services clinic. Involving the para-legal volunteers and students from universities and law schools in Government run initiatives by NALSA and State legal Services Authorities will go a long way in widening the reach of law and also in making accessing justice much easier for the common man. Moreover, it will help overcome the problem of digital divide as students can be engaged in their respective states by the government authorities.

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