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Pro-Bono Services to Marginalized Communities During Pandemic In India

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Abstract

This paper attempts to analyse the impact of covid-19 on the functioning of the legal services authorities. It also explores the ways to strengthen the legal aid system of India. Lack of legal awareness is one of the impediments to equal access to justice. Legal services authorities are mandated to spread legal awareness, so it organised legal awareness camps to educate people about their rights. The Covid-19 induced restrictions on the mobility of people, and norms of social distancing adversely affected legal awareness camps. Lack of awareness, economic resources, infrastructure, and judges all foster unequal access to justice and delay in access to justice. This paper critically analyses the statistical data to assess the functioning of legal services authorities in the last three years, i.e. 2018 to 2021. The scope of data analyses is limited to the legal awareness camps, no. of people made aware of their rights in these camps, no. of beneficiaries availed legal aid, para-legal trained and placed in the legal services clinics. The analyses of statistical data for legal aid beneficiaries also check the impact of covid-19 on different categories of beneficiaries entitled to free legal aid under section 12 of the Legal Services Authorities Act, 1987. The data analyses of poverty and pendency of cases further support the arguments proposed. Various schemes of the Department of Justice, National Legal Services Authority, Bar Council Of India are considered to explore better coordination between the stakeholders of the justice delivery system. The research paper concludes by emphasising the importance of the legal service clinics in bridging the gap between legal aid seekers and providers.

Legal Services clinics have the potential of bringing justice to the doorstep of the people who can reach the doorstep of the justice delivery system.

Key Words: Legal Aid, Legal Services Clinic, Para-Legal

Introduction

The Covid19 Pandemic brought new challenges for survival not only for human beings but also for professions. Hardly any work, occupation, trade, or practice remains unaffected by the severe impact of this pandemic. The COVID 19 pandemic created an unprecedented challenging situation for everyone, leading to new norms for daily life. In this challenging time, people's lives were adversely affected by the health issues created by the pandemic and by new norms restricting every walk of life, be it personal or professional. The period of March 2020-April 2021 experienced the worst of the covid-19 pandemic. It hardly left any aspect of life unaffected from the turmoil rippled with its outbreak. It swiped away life, liberty, and easy access, which nobody could think would come so hard to enjoy. Access to justice could also not remain unaffected by the clench of the pandemic. While the law profession owes a great responsibility of ensuring justice, embedded societal inequalities create hindrances to the profession's ability to provide equal access to justice. The COVID-pandemic has exposed and exacerbated the already vulnerable situations facing marginalised and poor communities, putting these communities and individuals at heightened and disproportionate risk of abuse, neglect, and unequal treatment. Scarcity, uncertainty, insecurity among masses added to the gravity of the problem.

The government took many initiatives to tune the machinery dispensing equal access to justice, to sail it on a pandemic's cyclone. Still, the question arises, how far they could go? Could it drift to the destination of all the people in need of equal access to justice? Illiteracy, ignorance, and poverty are the main obstacles in the path of equal access to justice. The pandemic elevated these obstacles, making it nearly impossible for a common man who was struggling to secure necessities of life, i.e. food, shelter, and clothing, to access justice. Could the hope for justice coming to the doorstep of people who can't reach the doorstep of the justice delivery system remain intact in this challenging time? The analyses of statistical data can give an insight to many such queries and bring the facts to the light for learning way forward.

Legal Awareness:

Year	Awareness Camps	No. of Participant
2020-21	126541	13069637
19-20	227394	31631228

Table-1

Source: NALSA statistical report on legal awareness camp Program[1]

One of the obstacles to access to justice is a lack of awareness about legal rights, the legal services authorities are under a mandate of the Legal Services Authorities act to spread legal awareness among people [2]. The data of legal awareness camps organised by Legal Services Authorities (Table-1) show that in the year 2019-20, 227394 awareness camps were conducted, and 31631228 people attended these legal awareness camps. Whereas in 2020-21, only 126541 legal awareness camps were organised, and 13069637 people attended these legal awareness programs. The analyses of this data show that in the year 2020-21, there is a reduction of 44.3% in conducting legal awareness programs and a reduction of 58% in people who attended these programs compared to legal awareness programs and attendees in the year 2019-20. So, the analyses of data for the year 2020-21 show that instead of increasing the legal awareness camps to make people aware of their rights in unprecedented circumstances, there is a downfall in the organisation of legal awareness camps. Hence, lesser legal awareness leads to unequal access to justice.

Beneficiaries of Legal Aid:

Year	Total Beneficiary	SC Category	ST Category	Women	Children	In Custody
2020-21	631758	33335	39064	95654	18490	141925
2019-20	1212137	118777	104213	269787	54211	205350

Table -2

Source: NALSA statistical report on Legal Aid Beneficiaries[3]

Year	Person With Disability	Industrial Workmen	Transgender	Victim of trafficking	Victim of Mass Violence	General
2020-21	10117	36599	165	554	74489	47595
2019-20	5671	5312	189	1739	15961	157837

Table 2

Source: NALSA statistical report on Legal Aid Beneficiaries[3]

The total no. of beneficiaries of legal aid services (Table 2) are 1212137 in 2019-20 compared to 631758 people in the year 2020-21. The analyses of this data show that in the year 2020-21, there is a reduction of 47.9 % in the beneficiaries of legal aid services.

When we further explore the data to know more details of the legal aid services beneficiaries (Table 2), we find that the people entitled to legal services as per section 12 of the Legal Services Authorities Act, 1987, are affected differently in availing the legal services. In the year 2019-20, the total no of beneficiaries were

118777 under the SC category were, 104213 in the ST category, 269787 in the Women category, 54211 in the children category, 205350 in the custody category, 5671 in the person with a disability category, 5312 in the industrial workmen category, 189 in the transgender category, 1739 in the victim of trafficking and beggar category, 15961 in the victim of mass violence category, and 157837 in the person whose annual income was below the prescribed limit category. Whereas in the year 2020-21, the total no of beneficiaries was 33335 under SC category, 39064 under ST category, 95654 under women category, 18490 under children category, 141925 in custody category, 10117 under a person with disability category, 36599 under industrial workmen category, 165 under a transgender category, 554 under victim of trafficking category, 74489 under victim of mass violence category and 47595 under person whose annual income is below the prescribed limit category.

The analyses of categories of persons entitled to free legal aid and their respective beneficiaries show that in the year 2020-21, most of the categories entitled for the free legal aid had a downfall in the no. of its beneficiaries. There was a reduction of 71.9% in the SC category, 62.5% in the ST category, 64.5% in the women category, 65.9% in children category, 30.9% in the category of person in custody and detention, 12.6% in transgender category, 68.1% in the category of a victim of trafficking, 69.8% in the category of a person whose income was below the prescribed limit of annual income. But in the same year of 2020-21, when most of the beneficiaries category experienced the downfall, there were three categories of persons entitled to free legal aid, which exhibited an increase in the no. of its beneficiaries. These three categories consisted of firstly, the person with disability category, which showed a rise of 78%; secondly, an industrial workman with an increase of 588.9%; thirdly, the victim of mass violence category showed the growth of 366.7%. Hence, from the analyses of different categories of beneficiaries, it can be inferred that pandemics affected the various categories of beneficiaries differently.

Displacement and loss of livelihood were the probable consequence of lockdown that everybody could perceive with the announcement of restrictions on movements and the closure of industries. A person with a disability with a limited scope of getting alternative jobs and industrial workmen gateway to their native places in fear of uncertainty made them the worst survivor of the impact of the pandemic. So, it could be why the legal services authorities channelised their available resources to provide immediate relief to people falling in these three categories of persons entitled to legal aid, which is worth great appreciation. Still, it came at the cost of limited facilitation for legal aid in other categories.

Legal Aid Initiatives:

Legal services authorities, through its online legal aid initiative, mobile app for availing legal services[4], tried to push clenches of the pandemic in reaching out to the people in need of legal aid. The endeavours of legal aid authorities in India during the pandemic were exemplary. They showcased a high sense of promoting social justice, but data shows that still there is a scope for improvement in the legal aid system in our country.

Pandemic-induced lockdown and restrictions have led to an increased case pendency in Indian courts, which is a matter of great concern for all. As per a report, pendency in all Indian courts has crossed 4.4 crore cases, and there is a rise of 19 % pendency during the covid pandemic peak time[5]. The statistical data of case pendency in Indian courts is so alarming that it suggests an immediate need for effective interventions.

The relevance of speedy justice, legal awareness, and equal access to justice has been highlighted by the various dignitaries time and again from different platforms. The Union Law Minister, Kiren Rijiju[6] once said that people's expectation for speedy justice is the legitimate expectation in the light of the constitutional mandate of providing access to justice and stressed the need for collaboration by all the stakeholders of the administration of justice in promoting access to justice. He also recognised that the complexities of the procedure for accessing justice make it arduous for many. It gets further complicated for marginalised communities due to lack of awareness, limited financial resources, insufficient knowledge of the local language, and long-distance for reaching legal services providers. In such a situation, legal aid is the only mechanism to promote access to justice. An effective legal aid system would require stronger cooperation between the Legal Services Authorities and the various government departments and agencies.

The question for which an answer needs to be explored is how the cooperation between the Legal Services Authority and various government departments and agencies can be strengthened. The answer can be inferred from the analyses of statements of dignitaries, rules of the Bar Council of India and schemes of the Department of Justice. Justice D Y Chandrachud[7] highlighted the importance of legal aid clinics and para-legals by recognising the potential of para-legals in bridging the gap between seekers of legal aid and the institutions and people providing legal aid. Bar Council of India has also mandated a paper on clinical legal education in the curriculum and establishment of legal aid clinics at law schools.[8] The Department of Justice has also promoted the idea of taking assistance of students[9] and encouraging the alumni of law schools in providing pro-bono services by joining them through the Nyaya Bandhu app[10]. The objective behind encouraging students to undertake the training of para-legals and participating in the working of legal aid clinics is to provide them with an opportunity to learn the practicality of law, to teach the feeling of social responsibility of promoting social justice in students, and to provide assistance to pro-bono advocates for legal research, drafting and representation of pro-bono cases before the court of law. The ultimate purpose of using this bridge of para-legal is to promote equal access to justice. The National Legal Services Authorities in the year 2009 launched a scheme called 'Para Legal Volunteer Scheme'[11], which aims at bridging the gap between the common man seeking justice and the justice delivery system. It provides the training of volunteers from every walk of life as para-legal volunteers to provide legal assistance for removing the barriers to equal access to justice. This scheme targets to bring the legal services authorities to the doorstep of the people who can't reach the doorstep of the justice delivery.

Para-Legal Volunteers:

Year	Paralegal	Paralegal Placed
2020-21	60024	13153
2019-20	64436	22240

With the background understanding of the scheme bridging a gap between legal aid seekers and the providers, let's look at the statistical data[12] on the training of para-legal volunteers and their employment in the legal aid clinics established under the scheme. Analyses of this data aim to check whether the scheme serves the purpose for which it was provided. In the year 2018-19, 65663 volunteers were trained as para-legals, whereas in the year 2019-20, 64436 people were trained as para-legals. Comparative analyses of data for these two years show a decline of 1.9% in the training of para-legals. When looking at the data of years 2020-21, there seems to be steep deflation in the training of para-legals with only 60024 trainings resulting in a decline of 6.8%. The purpose of training para-legals is to utilise their assistance in providing legal aid at the clinics established under the scheme. The statistical data shows that in 2018-19, only 23489 para-legal volunteers could be placed in the legal aid clinics out of the total number of 65663 para-legal volunteers trained in that year. It means 42174 para-legal volunteer assistance could not be utilised for providing legal aid. In 2019-20, only 22240 out of the 64436 para-legal volunteers trained were placed, which is 5.3% less than the previous year's placement. It means again following the underutilisation of services of trained para-legal volunteers, 42196 para-legal volunteers services could not be utilised in the year 2019-20. Similarly, in 2020-21, only 13153 para-legal volunteers were placed out of the 60024 para-legal volunteers trained in that year which is 40% less than the placement in the previous year leading to the non-utilisation of 46871 para-legal volunteers for the year.

The three critical questions arising from the analyses of the above data are first, why there is a constant decline in the number of volunteers trained each year? Secondly, when the purpose of training volunteers is to utilise their assistance in legal aid clinics, why are more than 50% of trained para-legals not getting placed in legal aid clinics? Thirdly, why is there a constant decline in the placement rate of para-legal volunteers?

A Way Forward- Legal Services Clinics:

The inference from an attempt to answer above stated three questions is that the scheme of para-legal volunteers alone cannot bridge the gap between the seekers of legal aid and the providers of legal aid. There is a need for proportionate legal services clinics to accommodate trained para-legal volunteers for availing their services. The National Legal Services Authority(Legal Services Clinics)Regulation, 2011[13] aims for providing legal relief easily accessible to the indigent and backward sections of society by establishing legal aid clinics in rural, remote areas, jails, educational institutions, juvenile homes, protection homes etc.

The Legal Services Authorities select para-legal volunteers with a high sense of commitment and sensitivity to people's problems to run these legal aid clinics along with advocates. These para-legals assist the advocate in drafting applications, pleadings and applications.[14] The services provided in these clinics are comprehensive to give a single window to disadvantaged people for solving their legal problems. In addition to helping their legal disputes, it also provides services to help people availing benefits under different social welfare schemes and other government schemes.[15] The para-legals, under this scheme, also participate in legal awareness camps, distribute pamphlets and other legal literacy material. They also accompany the person seeking legal services to concerned institutions, help interact with the officials, and contact the nearest legal services clinic and the empanelled advocate[16].

The Para-legal volunteer and advocates at Legal services clinics try to settle the dispute amicably at the pre-litigation stage. If it appears to them that the conflict can be resolved through recourse to the alternate dispute resolution mechanism, then they refer it to the ADR centres[17]. The legal services institutions can also organise the Lok Adalats at these legal services clinics to settle the dispute at the pre-litigation stage[18]. Under this scheme, the law universities can also adopt a village and, in collaboration with the para-legals, survey to assess people's problems [19]. Universities and colleges can also set up legal aid clinics on their campus, and legal services authorities can promote the activities of these clinics. Students work under the supervision of their faculty members in these clinics[20]. The para-legal advocate trained by the legal services authorities can also be deputed in the legal services clinics of universities and colleges to assist people seeking legal aid[21].

The pendency rate at various courts in India and the poverty making justice inaccessible certainly shows the scope of promoting equal and speedy access to justice through the assistance of para-legal volunteers. But, to fully utilise the potential of para-legal volunteers, there need to be proportionate legal aid clinics to avail their services. The assistance of para-legal volunteers can contribute to promoting equal, speedy and amicable access to justice.

End Notes:

1. <https://nalsa.gov.in/statistics/awareness-camps-programmes-report>
2. <https://nalsa.gov.in/acts-rules/the-legal-services-authorities-act-1987>
3. <https://nalsa.gov.in/statistics/legal-service-beneficiaries-report>
4. https://play.google.com/store/apps/details?id=com.nalsa.lsmsapp&hl=en_IN&gl=US
5. <https://www.news18.com/news/explainers/explained-cji-ramana-says-4-5-crore-cases-pending-heres-what-has-been-fuelling-backlog-3977411.html>
6. <https://www.livelaw.in/top-stories/kiren-rijiju-mediation-for-commercial-disputes-ease-of-dispute-resolution-ease-of-living-182974>

7. <https://www.livelaw.in/top-stories/justice-dy-chandrachud-access-to-legal-aid-failure-of-legal-fraternity-nalsa-182954?infinitemscroll=1>

8. <http://www.barcouncilofindia.org/about/legal-education/draft-rules-of-legal-education-2019/>

9. <http://www.probono-doj.in>

10. https://play.google.com/store/apps/details?id=in.probono_doj.nyayabandhu

11. <https://nalsa.gov.in/acts-rules/preventive-strategic-legal-services-schemes/scheme-for-para-legal-volunteers>

12. <https://nalsa.gov.in/statistics/para-legal-volunteers-report>

13. <https://nalsa.gov.in/acts-rules/regulations/national-legal-services-authority-legal-services-clinics-regulations-2011>

14. Section 5, National Legal Services Authority (Legal services Clinic) Regulation, 2011

15. Section 9, National Legal Services Authority (Legal services Clinic) Regulation, 2011

16. Section 10, National Legal Services Authority (Legal services Clinic) Regulation, 2011

17. Section 16, National Legal Services Authority (Legal services Clinic) Regulation, 2011

18. Section 18, National Legal Services Authority (Legal services Clinic) Regulation, 2011

19. Section 23, National Legal Services Authority (Legal services Clinic) Regulation, 2011

20. Section 24, National Legal Services Authority (Legal services Clinic) Regulation, 2011

21. Section 25, National Legal Services Authority (Legal services Clinic) Regulation, 2011

