

IMPORTANCE OF LEGAL AID FOR JUVENILES

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ABSTRACT

The children who are in conflict with law are the ones who have committed an offence and in need of care and protection are generally the ones who are either forgotten, abandoned, exploited, wandering around, abused, tortured, involved in drug trafficking, victims of natural calamities and so on. The Act provides for legal aid services to the juveniles and various other cases are dealt with which provide for legal aid services in other nations such as England, United States of America.

KEYWORDS: Children, Juvenile, Legal, Lawyer, Case

The Juvenile Justice Act is basically an act to deal with children in conflict with law and in need of care and protection by fulfilling their basic needs through proper care, protection, development, treatment, social re-integration through “child friendly approach” in disposing of the cases which are in best interest of children and to promote their rehabilitation under the institutions and bodies established under the act.

Section 8 (3)(b) of The Juvenile Justice Act 2015 ensures that the function of the Juvenile Justice Board shall be to ensure the availability of legal aid for the child through the legal service institution’s.

Section 30 (xvii) says that functions and responsibilities of the Child Welfare Committee shall include accessing appropriate legal services for children.

Section 53(1)(viii) says that institutions registered under the act for rendering the services of rehabilitation and re-integration may include legal aid where required.

Guidelines Issued by National Legal Services Authority (NALSA) for Legal Services in Juvenile Justice Institutions in connection with the compliance of the order dated 19.08.2011 of Hon’ble Supreme Court of India in case to establish legal aid centres attached to JJBs.

1. When a child is produced before Board by Police, Board should call the legal aid lawyer in front of it, should introduce juvenile / parents to the lawyer, juvenile and his/her family/parents should

be made to understand that it is their right to have legal aid lawyer and that they need not pay any fees to anyone for this.

2. JJB should give time to legal aid lawyer to interact with juvenile and his/her parents before conducting hearing.

3. Juvenile Justice Board should mention in its order that legal aid lawyer has been assigned and name and presence of legal aid lawyers should be mentioned in the order.

4. Board should make sure that a child and his parents are given sufficient time to be familiar with legal aid counsel and get time to discuss about the case before hearing is done.

5. Juvenile Justice Board should make sure that not a single juvenile’s case goes without having a legal aid counsel.

6. Juvenile Justice Board should issue a certificate of attendance to legal aid lawyers at the end of month and should also verify their work done reports.

7. In case of any lapse or misdeed on the part of legal aid lawyers, Board should intimate the State Legal Services Authority and should take corrective step.

8. Juvenile Justice Board and the legal Aid lawyers should work in a spirit of understanding, solidarity and coordination. It can bring a sea-change.

9. Legal Aid Lawyer should develop good understanding of Juvenile Justice Law and of juvenile delinquency by reading and participating in workshops/ trainings on Juvenile Justice.

10. Legal Aid Lawyer should maintain a diary at center in which dates of cases are regularly entered.

11. If a legal aid lawyer goes on leave or is not able to attend Board on any given day, he/she should ensure that cases are attended by fellow legal aid lawyer in his/her absence and that case is not neglected.

12. Legal Aid lawyer should not take legal aid work as a matter of charity and should deliver the best.

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13. Legal Aid Lawyer should raise issues/ concerns/ problems in monthly meeting with District Legal Services Authority.

14. Legal Aid Lawyer should maintain file of each case and should make daily entry of proceeding.

15. Legal Aid lawyer should not wait for JJB to call him/her for taking up a case. There should be effort to take up cases on his/her own by way of approaching families who come to JJB.

16. Legal Aid Lawyer should inspire faith and confidence in children/ their families who cases they take up and should make all possible efforts to get them all possible help.

17. Legal Aid lawyer should abide by the terms and conditions of empanelment on legal Aid Panel.

18. Legal Aid lawyer should tender his/her monthly work done report to JJB within one week of each month for verification and should submit it to concerned authority with attendance certificate for processing payments.

19. Legal Aid Lawyer must inform the client about the next date of hearing and should give his/her phone number to the client so that they could make call at the time of any need.

Lord Denning while observing that legal aid is a system of government funding for those who cannot afford to pay for advice, assistance and representation said:

“The greatest revolution in the law since the post-second world war has been the evolution of the mechanism of the system for legal aid. It means that in many cases the lawyers fees and expenses are paid for by the state and not by the party concerned. It is a subject of such importance that I venture to look at the law about costs-as it was- as it is- and as it should be.

Important and Landmark cases are:

- a) Ridge Vs Baldwin - relating to Administrative law.
- b) RookesVs Barnard - relating to Law of Torts.
- c) Gooday Vs Gooday - relating to Matrimonial Law.

All these cases have been fought with the financial assistance of legal aid, which can broadly be classified under Legal advice and Assistance, Civil Legal Aid and Criminal Legal Aid.

In United States of America

In the case of Powell Vs Alabama, The defendants were prosecuted for the offence of Rape. Sutherland J, delivering the opinion of the court, held that in a capital case where the defendant was unable to employ a counsel, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of the “due process” clause.

In the case of Gideon Vs Wainright, The court overruled Betts Vs Brady where free legal aid was refused to the accused in all cases and extended the right of counsel in all felony trials without the requirement of any special circumstances. In the opinion of the court, any person hauled into court who is too poor to hire a lawyer cannot be assured a fair trial unless a counsel is provided for him at the states expense. The right to be heard was interpreted to include the right to get legal aid which was inherent in the “due process” clause and it is not governed by the classification of the offence or by whether or not jury trial is required.

In India

India’s legal aid schemes in the private market economy of lawyering did not provide legal aid and advice in an efficient and capable manner. Independent India wasnot clear about the broad perspective of its legal aid programme. After Independence, schemes of legal aid developed under the aegis of NH Bhagwati J, then of Bombay High Court and Trevor Harris J, of the Calcutta High Court. The matter of Legal Aid was also referred to the law commission to make recommendations for making the legal aid programme an effective instrument for rendering social justice. Coming up with the recommendations in its XIV report, under the leadership of leading jurist M.C Setalvad, the commission opined that free legal aid is a service which should be provided by the state to the Poor. The State must, while accepting the obligation, make provision for funds to provide legal aid. The legal community must play a pivotal role in accepting the responsibility for the administration and working of the legal aid voluntarily. These would include representation by lawyers at government expenses to accused persons in criminal proceedings, in jails and appeals. The Commission also recommended the substitution in Order XXXIII CPC of the word “pauper”-with “poor persons”. On the recommendations of the law Commission, The Government

of India in 1960 prepared a national scheme of legal aid in all courts including tribunals. It envisaged the establishment of committees at the State, District and Tehsil Level. However, due to the inability of states to implement the scheme because of lack of finances the scheme did not survive. The Government of India formed an expert committee, the Krishna Iyer Committee in 1973, to see how the states should devise and elaborate the legal aid scheme. The Committee came up with establishment of legal aid committees in each district, state and central level. To set up autonomous corporations, law clinics in universities and lawyers be urged to help. Government of India appointed a committee under the chairmanship of PN Bhagwati J, to effectively implement the Legal Aid Scheme. It encouraged the concept of Legal Aid Camps and Nyayalayas in rural areas. The Committee recommended the introduction of Legal Aid concept in the constitution. So, Article 31-A was introduced in the Directive Principles of state Policy.

In 1980, the Central Government established its Committee for implementation of Legal Aid Services (CILAS) which survives till today. It financed and supported various committees at different levels today. It has set up the Supreme Court Legal Aid Committee and gives aid to State Legal Aid and Advice Boards and Para Legal Institutions for Legal Aid Programmes. CILAS also felt compelled to commission a report on the impact of PIL on Legal Aid Schemes. The Court said, "It is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek liberation through the courts process that he should have legal services available to him.....Free Legal services to the poor and the needy is an essential element of any "reasonable, fair and just procedure."

A few authors have expressed views about Legal Aid:

Inability to consult or to be represented by lawyer may amount to the same thing as being deprived of the security of law. Rawls first principle of Justice is that each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberties for all.

Whatever standards a man chooses to set for himself, be they religious, moral, social or purely rational in origin, it is the law which prescribes and governs his rights and duties towards the other members of the community. This somewhat arbitrary collection of principles he has very

largely to take as he finds ad in a modern society it tends to be so diverse and complex that the help of an expert is often essential not merely to enforce or defend them.

CONCLUSION

Therefore various provisions have been discussed and cases of importance have been highlighted. So, Section 2(1)(c) of the Legal Services Authorities Act, 1987, defines "Legal Service" includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter, To provide free and competent legal services to the weaker section of the society was the basic object of enacting the aforesaid Act. Justice - social, economic and political, is our constitutional pledge as enshrined in the preamble of our Constitution. The incorporation of Article 39-A in the Directive Principles of State Policy in the year 1976, enjoined upon the State to ensure justice on the basis of equal opportunity by providing free legal aid. The assumption of our legal system is that all citizens shall have equal access to means of legal redress. Access to inexpensive and expeditious justice is a basic human right. But, in practice, legal services of all kinds have gone to the highest bidders. Wealthy persons and large corporations receive the highest quality advice. There should be a system of administration of justice of which the poorest are able to take advantage. Equal access to the law for the rich and the poor alike is essential for the maintenance of the rule of law. So it is essential to provide legal aid to women, children or other needy persons those who are not able to pay for it or who are threatened as to their life, liberty, property or reputation.

REFERENCES

- Sampurna Behrua v. Union of India & Ors. W.P.No. (C) No. 473/2005.
- Lord Denning, What Next is the Law (Butterworths, London 1982).
- 1964 AC 40: (1963) 2 All ER 66 (HL).
- 1964 AC 1129: (1964) 2 WLR 269 (HL).
- (1968) 3 WLR 750: (1968) 3 All ER 611 (CA).
- 77 L Ed 158: 287 US 45 (1932).
- 9 L Ed 2d 799: 372 US 335 (1963).

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Rajeev Dhawan (Ed.), Justice Nh Bhagwati (1334) and Justice Trevor Harris of Calcutta,” Law as Struggle: Public Interest Litigation in India” (1994) 36 JILI 325.

Roma Mukherjee; Women, Law and Free Legal Aid (Deep & Deep, New Delhi 1998)

Rajeev Dhawan,”Law as Struggle: Public Interest Litigation in India”(1994) 36 JILI 302.

Government of India, “ Report on National Judicare: Equal Justice Soial justice” (1778) (Bhagwati Krishna Iyer Report).

HussainaraKhatoon(4) Vs Home Secretary, State of Bihar1980 SCC (Cri.) 40.

John Rawls,A Theory of Justice.

Mathews &Outton, Legal Aid & Advice (Butterworths, London 1971).