



COMPENDIUM OF SCHEMES

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NALSA
(Legal Services
to
Disaster Victims Through
Legal Services Authorities)
Scheme, 2010





NALSA (Legal Services to Disaster Victims Through Legal Services Authorities), Scheme, 2010

1. Background

Sub clause (e) of Section 12 Legal Services Authorities Act, 1987 makes the victims of disasters who are under circumstances of undeserved want as a result of such disaster eligible for free legal services to file or defend a case. But in a disaster of catastrophic nature whether it is natural or manmade, the victims are often taken unawares and are subjected to face the grim situation of loss of life, becoming homeless, destruction of property or damage to or degradation of environment and subject to human sufferings and damage beyond the coping capacity of the community of the affected area.

Even though it is the duty of the Government and the Administration of the locality to come to the help of the victims of disasters, Legal Services Authorities by virtue of sub-clause (e) of Section 12 can play an effective role by coordinating the activities of the State Administration in the disaster management by way of strategic interventions in an integrated and sustainable manner, reducing the gravity of the crisis and to build a platform for early recovery and development. The Legal Services Authorities shall endeavour to help the victims and the administration for reducing risk and assisting them to adopt disaster mitigation policies and strategies, reducing the vulnerabilities of the geographical and social situation and strengthening their capacities for managing human made and natural disasters at all levels.

2. Name of the Scheme.

This Scheme shall be called the NALSA (Legal Services to the victims of disasters through Legal Services Authorities) Scheme, 2010

3. Objective

The objective of the scheme is to provide legal services to the victims of disaster - both manmade and natural - who are under circumstances of undeserved want being victims of mass disaster, ethnic violence, caste atrocities, flood, drought, earth-quake or industrial disasters.

The intervention of Legal Services Authorities should be for coordinating the integrated, strategic and sustainable development measures taken by the Government and Disaster management Authorities for reducing the period of crises and for building a platform for early recovery and development. The thrust of the efforts for by the State Legal Services Authorities shall be for strengthening the capacity of the victims for managing the disaster at all levels and to coordinate with the Government departments and non-governmental organisations and also for providing legal aid to the victims.

4. Strategic Intervention by the State Legal Services Authorities.

The strategy for intervention by the Legal Services Authorities for helping the victims of disasters shall be on the following lines:

1. Ensuring immediate help by Governmental and Non-Governmental Agencies to the victims.
2. Coordinating the activities of different departments of the Government and the NGOs for bringing immediate relief.
3. Supervising the distribution of relief materials.

4. Supervising the construction of temporary shelter or transporting the victims to a safer place.
5. Supervising the reunion of families.
6. Supervising the health care and sanitation of the victims and preventing the spread of epidemics.
7. Supervising the needs of women and children.
8. Ensuring the availability of food, medicine and drinking water.
9. Supervising the reconstruction of damaged dwelling houses.
10. Supervising the restoration of cattle and chattel.
11. Legal Awareness Programmes in the relief camps on the legal rights of the victims.
12. Organising Legal Aid Clinics in the affected areas for assisting in reconstruction of valuable documents.
13. Assisting the victims to get the benefits of the promises and assurances announced by the Government and Ministers.
14. Assisting in the rehabilitation, care and future education of orphaned children.
15. Taking steps for appropriate debt relief measures for the victims.
16. Assisting in the rehabilitation of the old and disabled who lost their supporting families.
17. Assisting in the problems relating to Insurance Policies.
18. Arranging Bank Loans for restarting the lost business and avocations.

19. Arranging for phyciatrist's help / counselling to the victims who are subjected to physiological shock and depression on account of the disaster.

5. Machinery for Legal Services.

The State Legal Services Authorities shall establish a Core group in all districts under the control of the District Legal Services Authorities to spring into action in the event of a disaster, whether manmade or natural.

The Core group shall consist of a senior judicial officer, young lawyers including lady lawyers selected in consultation with the local bar association, Medical Doctors nominated by the local branch of the Indian Medical Association and the NGOs accredited by the State Legal Services Authority. The Secretary of the District Legal Services Authority shall maintain a Register containing the Telephone numbers and the cell numbers of the members of the Core group.

STRATEGY FOR LEGAL AID TO THE VICTIMS

6. Ensuring immediate help by Governmental and Non-Governmental agencies to the victims.

The nodal agency for responding to a disaster shall be the State and District Disaster Management Authorities set up under the Disaster Management Act, 2006. The State Legal Services Authority should immediately alert the District Legal Services Authority concerned who in turn shall get in touch with the Disaster Management Authority of the State and District and gather the details of the steps taken by the latter.

- (a) The Core group set up the District Legal Services Authority shall immediately proceed to the area where the disaster has occurred and get involved in the work of relief.
- (b) The District Legal Services Authority and the Core team shall coordinate the activities of the relief operations by involving

themselves and without causing any hindrance to the smooth flow of the relief operations.

7. Coordinating different departments of the government and the NGOs for brining immediate relief.

The State Legal Services Authority at the apex level shall get in touch with the State Disaster Management Authority / Department to ensure that all the departments of the State Government including health, finance, social welfare and police are involved in the relief operations. The State Legal Services Authorities shall coordinate the implementation of the Plan of Action, if any, prepared by the Disaster Management Authorities.

- (a) The State and District Legal Services Authorities shall obtain a copy of the disaster management plan, if any, prepared by the State Disaster Management Authority / District Disaster Management Authority.
- (b) The State Legal Services Authority / District Legal Services Authority shall as far as practicable follow the aforesaid plan and, if necessary, make suggestions to the state administration or Disaster Management Authorities for improving the quality of relief operations.

8. Supervising the distribution of relief materials.

In the event of a disaster, the first and foremost step to be taken is to ensure that the victims are provided with adequate support to tide over their undeserved wants. This includes provision of food, safe drinking water and transferring the victims to safe shelters. The District Legal Services Authority in coordination with the Disaster Management Authority and State Government Departments, shall supervise effective and timely supply of relief materials to the victims of the disaster.

9. Supervising the construction of temporary shelters or transporting victims to safer place.

District Legal Services Authority and the Core team shall supervise construction of temporary shelters and transportation of victims to such shelters to other safer places. Any lapses can be reported to the government officer incharge to ensure that the lapses are remedied immediately.

10. Supervising the reunion of families.

A disaster may result in sudden disruption of the cohesive unit of families. Members of the family are likely to get separated on account of the disaster or by reason of the rescue operations or on account of medial emergencies. Separation can occur due to loss of life also.

The Core team shall visualise such probable traumatic situations in the families affected by the disaster and shall take necessary steps for consoling the victims and shall take earnest search for the missing members of the families.

11. Supervising the health care of the victims and preventing the spread of epidemics.

The District Legal Services Authority shall take prompt steps for coordinating with the District Medical Officer for ensuring that the victims of the disaster are given proper medical care. The injured victims shall be given prompt treatment.

- (a) When a large number of affected persons are congregated in relief camps, adequate sanitation has to be ensured. Steps shall be taken to ensure that the public health authorities are performing cleaning and sanitation of the camps on a regular basis.
- (b) The District Legal Services Authority shall ensure that adequate preventive measures are taken by the health authorities against

outbreak of contagious and infectious diseases and water-borne diseases can occur in the relief camps.

- (c) Right to health being a concomitant to the Right to Life guaranteed under Article 21 of the Constitution of India, the disaster victims are entitled to adequate health facilities and the Legal Services Authorities are dutybound to ensure the same through appropriate measures.

12. Supervising the needs of women and children.

Women and children are beneficiaries of free legal aid under Section 12 of Legal Services Authorities Act. They are the most vulnerable group amongst the victims of any disaster. Safety of women and children in the camps and their valuables like ornaments and personal belongings are to be protected. The District Legal Services Authority shall ensure that the Police takes necessary steps for preventing theft and anti-social activities. Legal Services Authorities shall coordinate with the Police Officers to ensure the safety of women and children.

13. Ensuring the availability of food, drinking-water and medicine.

The need for food, safe drinking water and medicine are basic human needs and hence are attributes of the Right to life under Article 21 of the Constitution of India. Legal Services Authorities can therefore rightfully intervene and coordinate with the State Government, District Administration and Health Authorities to ensure the availability of food, safe drinking-water and medicine to the victims living in the shelters.

14. Supervising the reconstruction of damaged dwelling houses.

Housing is one of the important problems faced by the victims of disasters. Partial or total damage may occur to houses in disasters like earthquake, flood and communal riots. Assurances given by the

Ministers and Government officials ex-gratia payment and funds for reconstruction of damaged houses of the victims may go unfulfilled or forgotten due to passage of time. Efforts shall be taken by the Legal Services Authorities to ensure that such promises are fulfilled and the promised funds or other relief measures are disbursed to the victims without delay.

15. Supervising the restoration of cattle and chattel.

Loss of cattle, chattel and household articles are concomitant with all mass disasters. Thieves, looters and anti-socials have a field day during riots and ethnic violence and also during the havocs like flood, drought, pestilence and earth-quake. The District Legal Services Authority in coordination with the Police or Armed Forces shall ensure that the valuables belonging to the victims are not looted or stolen houses. Similarly, steps shall be taken to protect livestock and chattel also. The Legal Services Authorities shall coordinate with the animal-husbandry department of the government to save the livestock.

16. Legal Awareness Programmes in the relief camps on the legal rights of the victims.

Once the victims are relieved from the immediate shock and impact of the disaster, the Legal Services Authority may chose a convenient time and place near the relief camps for imparting legal awareness to the victims. Women lawyers may be entrusted with the job of conducting informal legal awareness programme, mainly related to the rights of the disasters victims to avail of the relief measures from the authorities. The legal remedies available and the mode in which the benefits of the offers and schemes announced by the government are to be availed of also may be included as topics. Legal Awareness Programmes shall not be conducted in a ceremonial manner. Inaugural function and other formalities shall be totally avoided. The ambience of disaster and the mood of grief stricken victims should be fully taken in to

account by the resource persons and the steps for legal awareness shall be taken in such a manner as to go along with the measures for consolation and redressal of the grievances of the victims. Visits by women lawyers to the camps and homes of the victim will be desirable.

17. Organising Legal Aid Clinics in the affected areas for assisting in the reconstruction of valuable documents.

It is likely that the victims of disaster have lost their valuable documents like titled deeds, ration cards, identity cards, school and college certificates, certificate of date and birth, passport, driving licence etc. The District Legal Services Authority shall organise legal aid clinics in the affected areas and assist the victims to get duplicate certificate and documents by taking up the matter with the authorities' concerned. Arrangements for issuing Death Certificates of the deceased victims also shall be made.

18. Taking care of the rehabilitation and the future care and education of the orphaned children.

Orphaned children are the living monuments of disasters. Loss of childhood paternal affection are likely to haunt them for the rest of their lives. At times, the orphaned children may get affected with psychiatric problems also.

The Legal Services Authority shall seek the help of voluntary organisations, large business houses and Corporates for the educational needs and accommodation of such children till they attain the age of maturity. In appropriate cases, the Legal Services Authority may assist such children to be taken care of under provisions of the Juvenile Justice (Care and Protection) Act.

19. Taking steps for appropriate debt relief measures for the victims.

Rehabilitation of disaster victims will be a gigantic challenge for any administration. The adequate funds should be made available to the victims who lost everything in their life for rebuilding their avocation, buying agricultural implements and other implements required for their avocations in which they were engaged prior to the disaster. Victims belonging to fisherman community may require huge amounts for buying nets, boats and outboard engines. Such measures of rehabilitation may require the assistance of government departments concerned. The State Legal Services Authority shall coordinate with Public Sector Banks, Social Welfare Department and other departments concerned for helping the victims to re-start their avocations. In appropriate cases, provisions in the laws relating to debt relief shall be invoked.

20. Rehabilitation of the old and disabled who lost their supporting families.

Persons with disabilities as defined in Clause (e) of Section 2 of Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 are entitled to free legal aid under Section 12 of the Legal Services Authorities Act. Senior citizens are entitled to certain benefits under the provisions of Maintenance and Welfare of Parents and Senior Citizen Act. The senior citizens and disabled persons who lost their support on account of disasters shall be identified and appropriate legal aid shall be given to them.

21. Problems relating to Insurance Policies.

The Legal Services Authorities shall take up the insurance claims of the disaster victims with the Insurance Companies for settlement of such claims. Negotiations may be undertaken with the Insurance Company officials for a settlement favourable to the victims. In appropriate cases the service of Insurance Ombudsman also may be availed of.

22. Arranging Bank Loans for restarting the lost business and avocations.

The victims who suffered substantial loss of their business and implements used in their avocations shall be helped by adopting proper restorative measures. For this purpose, efforts shall be made to make available financial assistance of nationalised banks and other public sector financial institutions. The Legal Services Authorities shall persuade the officials of such financial institutions to raise to the occasion for helping the victims.

23. Arranging for the services of psychologists / psychiatrists help for counselling the victims suffering from psychological shock and depression on account of the disaster.

Mental shock and the related psychiatric manifestations are usually seen associated with the traumatic effects of disasters on the victims and their family members. Sudden loss of human life and the horrifying experiences of the trauma of the disasters can result in mental shock and psychiatric problems not only to the victims but also to their family members. The District Legal Services Authority shall in coordination with the District Medical Officer make necessary arrangements for the services of psychiatrists and psychologists.

The District Authority shall ensure the presence of the members of the Core group at the relief camps everyday till the victims are rehabilitated.

24. District Legal Services Authority shall collect reports from the Core Group.

District Legal Services Authority shall collect daily reports from the Core group working at the location of the disaster. Copies of such reports shall be sent to the State Legal Services Authority. The State Legal Services Authority shall consolidate the reports and send a

comprehensive report to the National Legal Services Authority and copies thereof shall also be sent to the District Management Authorities of the State and District. Copies of the report shall be placed before the Patron-in-Chief of the State Authorities and also in the meeting of the State Authority.

If any difficulty arises in giving effect to this Scheme, the State Legal Services Authority and District Legal Services Authority or the Core group may seek guidance from the Executive Chairman of the State Authority.

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NALSA
(Victims of Trafficking
and
Commercial Sexual Exploitation)
Scheme, 2015





NALSA (Victims of Trafficking and Commercial Sexual Exploitation) Scheme, 2015

BACKGROUND

Under Section 4 (b) of the Legal Services Authorities Act, 1987, the “Central Authority”, i.e. the National Legal Services Authority, has been obligated to “frame the most effective and economical schemes for the purpose of making legal services available under the provisions of the Act”. The Preamble of the Legal Services Authorities Act, 1987, underscores that the legal services authorities are concerned with the weaker sections of the society and imposes a duty on them to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

There can be no doubt that victims of commercial sexual exploitation, whether trafficked or voluntary sex workers are by far a highly marginalised group. Their rights are forgotten; their conditions of life and living are not anybody's concern; what happens to them and their children interest no-one. Yet they are all entitled to benefits of the various schemes of the government by the mere fact of who they are. By their much marginalised existence they are entitled to all benefits that accrue to them as are available to other marginalised sections of the society.

Victims of trafficking for commercial sexual exploitation face a great deal of trauma not just following such trafficking but also after their rescue. They need to be protected against the traffickers who would want them to come back or not pursue their case. There are also livelihood issues and if a viable alternative is not given, chances of being re-

trafficked are high.

In the case filed by PRAJWALA, being Writ Petition (C) No.56 of 2004 the NALSA has given a report in the Supreme Court to take the following actions in respect of victims of trafficking for commercial Sexual Exploitation and sex workers:

“The role of the legal services authorities as set out in the preliminary report is reiterated as follows:

- (a) Provide legal assistance to the victims of trafficking and sexual exploitation at the time of rescue and thereafter during trial.
- (b) Facilitate the accessing of the District Legal Services Authorities (DLSAs) for award of victim compensation under Section 357A Cr.P.C
- (c) To monitor and act as social auditors of the existing facilities available for rehabilitation of rescued victims of sexual exploitation and trafficking.
- (d) DLSAs can spread awareness in the community through the panel lawyers and para-legal volunteers about the issues of trafficking particularly in vulnerable areas and among vulnerable groups.
- (e) The DLSAs can act as converging nodes to ensure that the government schemes meant for the marginalized actually reach them as such access to the government support does have a positive impact in preventing trafficking and falling prey to traffickers.
- (f) Initiate steps to sensitize the corporate world to support rehabilitation measures for trafficked victims including skill building and employment under the head of CSR.

- (g) SLSAs can also assist in the training and sensitization of stakeholders, like police, lawyers including legal services lawyers, prosecutors, government servants and the judiciary.
- (h) SLSAs may also collaborate with the local educational institutions and civil society organisations and NGOs working in this field.

The NALSA believes that it is necessary to draw up a scheme to give a framework for the legal services authorities at different levels to put into action the undertaking given to the Supreme Court. To that end the present Scheme has been drawn up. It is expected that the Legal services authorities at all levels would be able to render legal services effectively to these vulnerable people by following the present scheme.

NAME OF THE SCHEME

The Scheme shall be called the Scheme for Victims of Trafficking and Commercial Sexual Exploitation.

OBJECTIVES

The objective of the Scheme is to provide legal services to address the concerns of victims of trafficking including women of all age groups and at every stage: ie prevention, rescue and rehabilitation.

The thrust of the scheme is to provide economic and social pathways for these marginalised groups so that they are socially included and thus get all social protections available to an ordinary citizen. The interventions of the legal services authorities should be to ensure the protection of the dignity of the victims which is as much their fundamental right to a life as of any other citizen.

In order that the already marginalised voluntary sex workers are not excluded from the assistance of the legal services authorities, they are

also considered victims of commercial sexual exploitation, apart from those children and adults who are trafficked for the purpose.

The terms PLVs, Legal Services Clinics, Front Office , Panel Lawyers and Retainer Lawyers will mean the same as defined under the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010 and National Legal Services Authority (Legal Services Clinics) Regulations, 2011 and the NALSA Scheme for Para Legal Volunteers (Revised) and Module for the Orientation – Induction – Refresher Courses for PLV Training.

STRATEGY FOR LEGAL SERVICES TO THE VICTIMS

The strategy of the legal services must be guided by a 360 degree approach. Thus, children, young adults of whatever sex, adolescent girls, young women and older women should all be included in the action plan. The legal services authorities must also develop an action plan for prevention, rescue and rehabilitation and not merely for one of these aspects. Further the legal services authorities must document each case and carry out a follow up at least for three years so that reintegration of the victim into the society is complete.

Enabling trafficked women to get their entitlements by completing all due diligence processes

The action plan must be to use the existing welfare schemes of the Government, both Central as well as the State, with a life-cycle approach to strengthen social security, social development and welfare in order to cover prevention of trafficking and rehabilitation of the victims. DLSA can request NGOs/CBOs to use tools such as micro planning and surveys to ascertain the demand for schemes and thereafter set up Help Desks across the district to facilitate registration for the schemes. Simultaneously the victims/community members could be motivated

and educated about how to apply for schemes they wish to enroll or register for.

The DLSA, with the support of the concerned department could facilitate the applicant to fulfil the procedures stipulated under each scheme and comply with all the due diligence processes. This would include enabling the applicant to get the supportive documents that are required to be furnished in order to establish eligibility for the benefits under a scheme, such as getting proof of residence, age certificate, nativity certificate, income certificate, etc. Once all the due diligence is over and the scheme sanctioned, DLSA should provide support to the community till the scheme gets delivered or the benefit reaches the beneficiary.

The Available Schemes

1. ICDS or Childcare development ---0-6 years, pregnant w o m e n and lactating mothers (as care givers)
2. Food security or ration cards
3. Social security or Pension for the elderly women
4. Educational schemes including midday meal, bridge schools, residential schools of Sarva Shiksha Abhiyan, Sabala; scholarships for the primary, secondary and higher education from Social Welfare Department for adolescents and specifically girls
5. Livelihood- Skill Development, Financial Inclusion, Micro Enterprise -from SC/ST/BC/Minority and Women's Development Corporation and CSR funds from government and public sector undertakings
6. Housing or Subsidy for Construction and Land Pattas from Urban Development, Housing Corporation

7. Universal entitlements-Jan Dhan, Aadhar, Voter Card, SHG membership
8. Legal aid Schemes- Legal Literacy, Para Legal Volunteers, Legal services clinics to ensure free legal aid and protection

Role of LSAs

The most important role of the SLSAs/DLSAs is to maintain convergence oversight. While the administrative convergence for all the schemes no doubt will be under the District Collector, the protection convergence will have to be overseen by the SLSAs and the DLSAs. To converge social and legal protection for marginalized women SLSAs and DLSAs will provide the oversight on the process of convergence by bringing together the administrative convergence provided by the District Collector and those generated by the structures or community organizations that are facilitating the process on the ground and are rooted in the community and its realities and have played significant roles in preventing HIV, trafficking and violence against women and girls.

In this background, the role of the SLSAs/DLSAs would be in:

Bridging the Gap- between all departments and trafficked women, women in sex work and those vulnerable to trafficking and extreme violence

Enhancing Engagement- Scheme Education Drive Organized by DLSA bringing together Community organizations and its members and government-department-district and sub-district administration

Facilitating Participation and Ownership- Led by DLSA in collaboration with community organizations through community meetings and camps

Sensitization- Enabling all departments and institutions to learn about dynamics of community, remove misconceptions

Strengthening Accountability- Through an MIS capturing all processes from identifying entitlement holder to scheme delivery.

Forging Partnerships- At the more micro level the collaborations will be with Community Organizations and NGOs working with sex workers and victims of trafficking and sexual exploitation. They will facilitate the process of reaching out to the many hidden members of the community and shape the process of community mobilization.

At the meso level, the partnership should be with and between district administrative mechanisms such as Department of Women and Child Development (especially Child Protection/Welfare Committees and Anti Human Trafficking Units) and the DLSA. This will highlight initiatives at the ground level with the community or beneficiaries.

The third level of partnership will be at the macro level with the Department of Women and Child Development which implements many schemes for victims of trafficking and also runs shelter homes for those rescued; Ministry of Home Affairs, Ministry of Social Justice and Empowerment and Rural Livelihood Mission which also the mandate of prevention of human trafficking and will be vital partner to strengthen protection and safety nets to the beneficiaries.

Action Plan

The first step that the DLSA should take is to reach out to the Non Governmental Organisations and Community Based Organisations (CBOs) working in the field. To do this, the SLSAs must contact the UNICEF or UNODC. State Agencies such as, Department of Women and Child Development, Rural Livelihood Missions . They must also

seek the assistance of the National Aids Control Organisation (NACO) and the State and District Aids Control Societies (SACS & DACS). Thus the SLSAs/DLSAs would be able to obtain information about trafficking as well as sex workers.

The second step would be to catalyse inter departmental convergence both at the State and further down to the district level so that an all inclusive and comprehensive response from all concerned departments and stakeholders emerges and essential inter-sectoral linkages, processes and mechanisms get established.

Trafficking: As regards trafficking, from the Anti Human Trafficking units in the State and with the help of the NGOs/CBOs, the DLSA should map out the vulnerable areas and the vulnerable populations within its jurisdiction. Then preventive strategies can be put into motion. These would be spreading information about schemes and connecting the vulnerable people to such schemes so that they benefit from them. This would also include spreading awareness about the law and about the dangers posed by prospective traffickers. The children and adolescent children could be made aware of the dangers of strangers befriending them and the parents cautioned about the falsity of promises made to them of better education for their children in cities. Young adults could similarly be warned about false promises of jobs and better lives.

The SLSAs/DLSAs should create a team of panel lawyers and social workers to spread awareness about the welfare schemes of the government. The PLVs should be used to ensure that all the due diligence processes including eligibility documents and proofs are collected to enable the vulnerable communities to access the various schemes. The DLSA should use their PLVs and their offices wherever necessary to interact with the Administrative heads such as the District Collector or Chief Secretary to ensure the final realisation of the scheme.

The PLVs attached to or assigned to a police station in compliance of the orders of the Supreme Court of India to handle cases of missing children should be given special training by the SLSAs /DLSAs to sensitise them on children's issues as well as trafficking issues, so that they are responsive. These PLVs must inform the SLSAs/DLSAs whenever such a case of trafficking is reported or arrest of a sex worker occurs at the police station.

Sex Workers: One method of understanding community needs is to organise meetings between the Member Secretary SLA or Full Time Secretary DLSA and the community leaders where the community leaders can explain the difficulties they face in accessing social entitlements especially the social security schemes such as widow and old age pension schemes even though they fall under eligible category.

The other method is to organize public hearings where community members would “depose”, or in other words relate their experience with governance at all levels. The “jury” should be made up of DLSA Chairperson and /or Full time secretary , other judicial officers wherever possible, high government functionaries such as DC, Principal Secretaries or Chief Secretaries, police officers and protection officers. The SLSAs/DLSAs should also involve senior advocates and panel lawyers in such programmes.

After the deposition, the Member Secretary /Secretary, as the case maybe, or the panel advocate should explain to the community about the legal services available in the Legal Services Authority and encourage them to file complaints and seek free legal aid whenever their rights are infringed or they have a legal problem such inheritance etc. The Legal Services Authority can enable the target groups to redress the violence and harassment they face in their day to day life. In cases of violence from partners or husbands, the DLSA along with Protection Officers can provide legal aid and counselling services.

The DLSAs can accredit Para legal volunteers drawn from the community and train them as per the NALSA module. These PLVs can then act as the front line workers of the Authority as far as the community is concerned. The effort must be to ensure “saturation coverage” by having representation from all the blocks of the district and ultimately the entire State.

Once again, the DLSAs should assess the need for schemes in the community and facilitate the access of the community to the various welfare schemes of the government in the manner as mentioned hereinbefore.

Prevention: While ensuring the implementation of government welfare schemes, the SLSAs/DLSAs should pay attention to the structure already available under the Integrated Child Protection Scheme, particularly the setting up of the Village Level Child Protection Committees (VLCPC). These Committees are made up of Panchayat members, school teachers, students and parents from the community. Special awareness programmes should be organized for the VLCPC to keep a watch on the children in the village. The teachers should be sensitized to keep a watch for children missing from school and report them, so that further enquiries about their well being are promptly made.

A similar awareness and sensitization programme should be organized for the Anganwadi and Health workers for younger children and adolescent girls. Again, the SLSAs/DLSAs must ensure that children remaining absent are followed up and reported immediately.

PLVs drawn from the VLCPCs and Anganwadis as well as teachers should be trained with special emphasis on the issues of trafficking and sexual exploitation. The work of these PLVs must be closely monitored. At the same time these PLVs must be given effective mentors and support so that any incident reported is given full and complete attention by the SLSA/DLSA concerned.

Student Legal Literacy Clubs should be encouraged to write about and talk and discuss about trafficking issues. These clubs could play the role of peer educators about the dangers of growing up and how to keep oneself safe.

The SLSAs/DLSAs should strengthen groups who are working to prevent child marriages and empowerment of women. Many times, child and forced marriages are a prelude to trafficking for sexual exploitation. Apart from spreading awareness, student groups should be formed in vulnerable areas and communities to report on child marriages and initiate preventive action.

While dealing with women already in sex work, the SLSAs/DLSAs should focus on the livelihood alternatives to help these women come out of the profession and prevent their children entering it. Women could be encouraged to save money and channelize the money into entrepreneurship which would ensure their social recognition and assimilation. The SLSAs/DLSAs should help the women to protect themselves from domestic violence and provide legal assistance to follow up court cases. They should help these women access all government schemes as mentioned above.

Strategies of prevention and protection of victims of trafficking implemented by the Rural Livelihood Missions should also be understood and explored so as to replicate some of the successful methods and establish collaborative efforts.

Rescue and Rehabilitation: The protocol for the One Stop Crisis Centre would no doubt be available for the rescued victims of trafficking. Apart from ensuring compliance of the directions of the Supreme Court in Prajwala's case, the SLSAs/DLSAs must also follow up with the rehabilitation of the victim chiefly through access to government schemes to provide a stable alternate livelihood for the victims. The DLSAs should ensure that panel lawyers and PLVs help the victims to get

their FIR registered and are present during remand proceedings to oppose bail etc. The Panel lawyers should obtain court orders for protection of witnesses wherever necessary and to counsel the victims before deposition and be present during trial including recording of the statement of the victim. The panel lawyers and PLVs should also help the victim to apply to the DLSAs for release of compensation under the Victims Compensation Scheme and also to access other welfare schemes of the Govt. meant for the rehabilitation of such victims.

Management Information Systems: The SLSAs and DLSAs will have to develop a sound MIS so that every activity under this scheme is recorded, followed up and assessed. Similarly, the assistance of the PLVs and the Panel lawyers given to the victims will have to be recorded and monitored closely by the Secretary DLSA. Where the DLSA has facilitated the rehabilitation, there must be a tracking of the person for at least three years so that the rehabilitation is complete and there is no danger of re-trafficking.

Transgenders: The provisions of this scheme will be applicable to all Transgenders as well.



NALSA
(Legal Services
to the
Workers in
the Unorganized Sector)
Scheme, 2015





NALSA (Legal Services to the Workers in the Unorganized Sector) Scheme, 2015

1. Background

- 1.1 One of the major characteristics of the Indian economy is the contribution of a vast majority of labour employed in the unorganised sector. The economic survey of India (2007-2008) and National Sample Survey for unorganized sector (2009-2010) have estimated the employment in this sector at about 93-94% of the total workforce. Its contribution to the GDP is estimated to be more than 50%.
- 1.2 Majority of unorganised workers (about 52 per cent) are employed in agriculture. Other major categories include construction workers, workers in small enterprises, workers employed through contractors even in large enterprises, artisans/craftsman, home based workers, workers depending upon forest produce, fisheries, self-employed workers like rickshaw pullers, auto drivers, coolies etc.
- 1.3 The distinguishing feature of the unorganised sector is non-applicability of most of the labour laws and other regulations providing for decent working conditions, job security and social security to the workers. The unorganised workers lack collective bargaining power and are therefore susceptible to excessive exploitation. They work under poor working conditions and receive far lower wages/remuneration as compared to the organised sector, even for comparable jobs. Most of the

employment in this sector is seasonal and the workers therefore have no job guarantee. This also leads to large scale migration of workers from one place to another leading to un-stability of work and residence which further often leads to discontinuity of the education of their children. In cities, they live in slums without proper housing and sanitation. Health care and maternity benefits which are statutorily available in the organised sector are not available for them. The legislations providing for social securities for old-age, health-care and assistance in the event of death, marriage and accidents etc., like the Workmen's Compensation Act, 1923; Employees State Insurance Act, 1948; Maternity Benefits Act, 1961; Industrial Disputes Act, 1947; Payment of Gratuity Act, 1972; Employees' Provident Fund and Miscellaneous Provisions Act, 1952 etc., do not apply to them. The combined effect of the above factors is that many of them are generally, forced to lead an undignified and servile life.

1.4 Existing Legal Frame Work

Although there are a large number of categories of employment in the unorganized sector, legislation providing for working conditions etc., have been enacted only in respect of few categories like:-

- Dock Workers (Regulation of Employment) Act, 1948;
- Beedi and Cigar Workers (Conditions of Employment) Act, 1966;
- Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
- Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Rules, 1984;
- Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
- Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013.

1.5 In order to provide for social security to all categories of unorganised workers, the Central Government has also enacted an umbrella legislation by the name of Unorganised Workers Social Security Act, 2008. Various social security schemes have been/are required to be floated for the benefit of the workers under the Building and Construction Workers Act, 1996 and Unorganised Workers Social Security Act, 2008.

2. Scheme for providing legal services.

2.1 The enactment of the few statues as mentioned herein above does not appear to have made any appreciable difference to the lives of the workers inter-alia, for the following reasons:-

- a) The Unorganised Workers Social Security Act, 2008 does not statutorily provide any mechanism to implement the schemes and there appears to be no sanction against a refusal of the concerned authorities to extend the benefits of the schemes to eligible workers.
- b) Very few States have constituted the Social Security Boards and have framed rules as envisaged under Section 14 of the Act. The result is that in many States, no welfare schemes are being administered and even where the schemes are in place, there is no effective monitoring. Similarly, all the States have not yet established the Building and other Construction Workers Welfare Boards as mandated under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and consequently, no security schemes have been floated for these workers.
- c) Although cess is being collected by many States under Building and Other Construction Workers Welfare Cess Act 1996, utilisation of cess amount for the benefit of the workers is

abysmally low. This may be due to very low registration of workers and/or non extension of benefits even to the registered workers.

- d) The schemes and the benefits available thereunder are not being sufficiently publicised. Workers in the unorganized sector being generally uneducated and not unionised are mostly unaware of the schemes.
- e) Workers Facilitation Centres as envisaged under section 19 of the Social Security Act 2008 have not been set up by any State.
- f) There is no responsibility of the employer /contractor to get their workers registered under any of the schemes. It is for the workers to apply for the same and they are unable to do so due to lack of awareness and complexity of the procedure.
- g) Separate registration is required for each scheme which makes it difficult for workers to avail benefits under all the schemes available to them in case of need.
- h) The registration under the scheme is generally non-portable and therefore, workers in most of the categories being migrant workers are unable to avail the benefits and are therefore reluctant to register themselves under the scheme.

2.2 The Legal Services Institutions can play an important role in bridging the gap between the implementing authorities and target beneficiaries. With this object in view, the National Legal Services Authority had adopted the Scheme i.e. National Legal Services Authority (Legal Services to the Workers in the Unorganised Sector) Scheme, 2010 in the meeting of the Central Authority of NALSA held on 08.12.2010.

2.3 However, the magnitude of the problem and the fact that the benefits of the legislations are still elusive to the needy workers

even after several years of their enactment has given rise to the need for more focused attention to this sector. The present revised scheme is meant to achieve this purpose.

The terms PLVs, Legal Services Clinics, Front Office , Panel Lawyers and Retainer Lawyers will mean the same as defined under the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010 and National Legal Services Authority (Legal Services Clinics) Regulations, 2011 and the NALSA Scheme for Para Legal Volunteers (Revised) and Module for the Orientation – Induction – Refresher Courses for PLV Training.

3. Name of the Scheme

The Scheme shall be called “National Legal Services Authority (Legal Services to the Workers in the Unorganised Sector) Scheme 2015”.

4. Objectives

1. To institutionalize essential legal services to all unorganized workers.
2. To get the gaps in legislation/implementation plugged through coordination with government authorities and by initiating public interest litigation.
3. To mobilize the machinery of the State Government and the District Administration to identify and register all unorganized workers in all categories and to extend the benefits of all government schemes, as applicable to them.
4. To spread awareness among the employers regarding the statutory provisions and the need for providing decent working conditions, living wages and social security to the workers.

5. To disseminate information among the workers regarding their entitlements under the existing legislations and schemes.
6. To provide counselling and assistance to all categories of unorganized workers for their registration with the concerned authorities under the schemes available for their category.
7. To assist the workers in availing the benefits of the scheme for which they are registered as per their need/entitlements.

5. Guiding Principles

The following principles shall be borne in mind by all Legal Service Institutions while implementing the scheme for the unorganized workers:-

- 5.1 The Preamble to the Constitution of India assures equality of status and opportunity to all citizens and to promote among them fraternity, assuring the dignity of the individual. Article 42 mandates that the State shall make provision for securing just and humane conditions of work and for maternity relief. By virtue of Article 43, the State is obliged to secure to all workers, work, a living wage, condition of work ensuring a decent standard of life and full enjoyment of leisure, social and cultural opportunities.
- 5.2 The Preambular promise of upholding the dignity of the individual cannot be fulfilled unless the dignity of labour is ensured.
- 5.3 The unorganized sector is one of the marginalized sections of the society and they, as citizen of the country, are equally entitled to the right to work, just and humane conditions of work, living wages, maternity relief and a decent standard of life. It is the statutory mandate of the Legal Services Authorities to facilitate realization of this Constitutional assurance.

The Legal Services Authorities have to act as watchdogs against administrative inaction.

- 5.4 The welfare measures initiated by the Government in the form of legislations or schemes etc. require the intended beneficiaries or the victims to mobilize the system for realization of their rights/entitlements. The workers in the unorganized sector belonging as they do, to the deprived and vulnerable sections of the society do not possess the capacity to mobilize the system. It is the job of the Legal Services Authorities to provide them support in getting justice to their doorsteps.
- 5.5 The large number of categories of the unorganized workers,, large population in each category and their vast geographical spread necessitates a project-approach to the issue of providing legal services to them. An institutionalized setup, committed work force and sustained efforts for a considerable period of time are required to be able to make them capable of realizing their constitutional rights.

Plan of Action

1. Setting up of Special Cells

- 6.1 In order to provide effective legal services to the workers in this sector, each State Legal Services Authority (SLSA) shall constitute a special cell focusing exclusively on these services. The cell shall be manned by one panel lawyer specialising in Labour Laws, one counsellor/consultant having requisite qualification/experience in relevant field, wherever feasible, representative of an NGO doing demonstrably good work in the area and such number of Para Legal Volunteers, as the SLSA may prescribe .

- 6.2 The functions of the special cell shall be:
- i) to organize and conduct Legal Awareness/Literacy programmes, training programmes and seminars for unorganized workers;
 - ii) to co-ordinate with government authorities in relation with registration and extension of the benefits of the schemes to the unorganized workers;
 - iii) to facilitate and provide assistance in filing , processing and furnishing application form for registration and in availing benefits of the schemes to the unorganized workers;
 - iv) to provide legal assistance and legal aid to the unorganized workers in respect of any claim or defence before any court or other authority;
 - v) any other function that the State Authority may prescribe for them.
- 6.3 The special cell shall work under the guidance of the Member Secretary or any other officer of the Authority, as nominated by the State Authority, and shall file periodic reports of the progress of its assigned duties with him.
- 6.4 The members of the cell shall be paid honorarium for each of the duties at such rates, as may be fixed by the State Authority.

7 Identification of Unorganized Workers

- 7.1 The first job for the Legal Services Institutions is to identify the categories and population of unorganised workers operating in their respective areas, by seeking the data available with the Labour Department/Social Welfare Department of the State and if necessary, conducting surveys either themselves or in collaboration with law students and NGOs operating in the area.

- 7.2 In the process of identification, special efforts should also be made to identify any child labour or bonded labour and in case any workers in the said prohibited categories are found, the Legal Services Authorities shall inform the concerned authorities and facilitate their rescue, release and rehabilitation, as provided under the Bonded Labour System (Abolition) Act 1976, The Child Labour (Prohibition and Regulation) Act 1986 and Juvenile Justice Act, 2000.
- 7.3 The State Authority may fix timelines for identification of all categories depending upon the area, population and other relevant factors in each state.

8 Conditions of work and minimum wages

The State and District Legal Service Authorities shall, in collaboration with the State and District Administration and local NGOs, assess the need of statutory regulation of conditions of work and minimum wages etc., for the categories of Unorganized Workers particularly, of Domestic Workers and if found necessary, the State Legal Services Authority shall take the requisite steps to get the same notified.

9 Setting up of State Social Security Board and Building & Other Construction Workers Welfare Boards

Wherever the Social Security Board and Building & Other Construction Workers Welfare Boards have yet not been set up, the State Legal Services Authorities shall coordinate with the State Government and, if necessary, institute, with the approval of the Hon'ble Executive Chairman, SLSA, Public Interest Litigation in the respective High Courts for getting these boards set up, as soon as possible.

10 Utilisation of Cess

State Legal Services Authorities shall coordinate with the Building and Constructions Workers Welfare Boards to ensure that the cess collected by them does not keep lying in fixed deposits and is actually utilised for the benefit of the needy workers as per the schemes available. The State Authorities shall seek relevant information from the boards, encourage the workers to apply for the benefits and then, coordinate with the boards to provide the said benefits.

In case of denial of due benefits to any worker, legal remedies can be prosecuted on his behalf by the State Legal Services Authority through the Special Cell for Unorganized Workers.

11 Government Schemes under the statutes

Legal Services Authorities shall move the State Governments to notify the schemes relevant to the category of unorganised sector operating in the States. This also, if necessary, can be achieved through institution of Public Interest Cases, with the approval of the Hon'ble Executive Chairman.

12 Legal Awareness

- 12.1 After identification of the unorganised workers in each category, legal awareness programmes may be organised about the different schemes and social security measures available for such categories. The special cells for unorganized workers shall organize legal literacy camps for this purpose preferably, at their place of work itself or at community centres etc.
- 12.2 All State Legal Services Authorities shall publish booklets/ pamphlets containing the details of the available schemes, their

eligibility criteria and procedure for registration for obtaining the benefits as per the requirements of the workers. Copies of the booklets/pamphlets shall be kept available in all Front Offices, Legal Services Clinics and the place of sitting of the Special Cell and shall be distributed in the legal awareness/literacy programmes.

- 12.3 Information regarding the abovesaid details should also be disseminated through Doordarshan, All India Radio and Community Radio.
- 12.4 The Labour and Social Welfare Departments of the State should be requested to display the telephone numbers and helpline numbers of the Legal Services Institutions and the members of the Special Cell.

13 Specialised Training for PLVs

State Legal Services Authorities shall conduct specialized training programs for the paralegal volunteers focusing on the needs of the particular categories of Unorganised Workers as are operating in that area and the benefits which they can avail from the government schemes. PLVs should be trained inter-alia to educate the workers, help them identify the benefits they should seek and to liaise with the authorities for making the said benefits available to the needy workers.

14 Workers Facilitation Centres

State Legal Services Authorities shall coordinate with the Labour Departments of the State for setting up of worker's facilitation centres as envisaged under Section 9 of the 2008 Act. They may also set up legal services clinics manned by specially trained PLVs/NGOs, to be attached to such centres.

15 **Decent Working Conditions**

Some of the Statutes like the Building and Other Construction Workers (Conditions of Service) Act and Beedi and Cigar Workers (Conditions of Employment) Act have provisions to regulate the minimum working conditions for all workers employed in the said sectors. Even in other sectors where the statutory provisions are not available, the requirement of having proper wages and humane work conditions cannot be over emphasized.

State Legal Services Authorities may launch campaigns, in collaboration with law students and suitable NGOs to ensure that the employers provide decent conditions of work to the unorganised sector workers, abiding by all the statutory provisions laid down for this purpose.

16 **Seminars for Employers**

State Legal Service Authority and the Special Cell for unorganized sector shall organize seminars/colloquia for making employers aware of their statutory duties and the need to fulfill the genuine requirements of the workers.

17 **Rehabilitation Schemes**

Certain statutes provide for rehabilitation of workers like in Section 13 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013. State Legal Services Authorities shall coordinate with the concerned State authorities either themselves or through coordinating with NGOs to frame rehabilitation schemes for the erstwhile manual scavengers as per the provisions of the said Acts.

18 **Legal Assistance and Legal Representation**

The special cell for Unorganized Workers shall provide counselling, legal assistance and legal aid by way of legal representation before any court or other authority, as required, to all Unorganized Workers.



NALSA
(Child Friendly Legal Services
to
Children and their Protection)
Scheme, 2015





NALSA (Child Friendly Legal Services to Children and their Protection) Scheme, 2015

1. Introduction and Background

“It cannot be questioned that children are amongst the most vulnerable sections in any society. They represent almost one-third of the world's population, and unless they are provided with proper opportunities, the opportunity of making them grow into responsible citizens of tomorrow will slip out of the hands of the present generation.....” The said observation made in *Salil Bali Vs.: Union of India (UOI) and Anr, 2013VII AD (S.C.)* by Supreme Court goes on to show that it is our obligation to the young generation to open up all opportunities including the legal services for every child to unfold its personality and rise to its full stature, physical, mental, moral and spiritual.

2. International Commitments

- 2.1 While adopting the declaration of the Rights of the Child on 20th November, 1959, the General assembly of the United Nations laid down ten principles designed to enable children, irrespective of race, colour, sex, language, religion or origin, to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity.
- 2.2 The United Nations standard minimum rules for the administration of Juvenile Justice (“ The Beijing Rules,” 1985) call on States to ensure that throughout the proceedings the

Juvenile shall have the right to be represented by a Legal Advisor or to apply for free legal aid where there is provision for such aid in the country.

2.3 The United Nations Convention on the Rights of the Child (UNCRC) is a comprehensive, internationally binding agreement on the rights of children, adopted by the UN General Assembly in 1989. The purpose of the UNCRC is to outline the basic human rights that should be afforded to children. There are four broad classifications of these rights. These four categories cover all civil, political, social, economic and cultural rights of every child which are as follows:-

- (a) **Survival rights:** include the child's right to life and the needs that are most basic to existence, such as nutrition, shelter, an adequate living standard, and access to medical services
- (b) **Development rights:** include the right to education, play, leisure, cultural activities, access to information, and freedom of thought, conscience and religion.
- (c) **Protection rights:** ensure children are safeguarded against all forms of abuse, neglect and exploitation, including special care for refugee children; safeguards for children in the criminal justice system; protection for children in employment; protection and rehabilitation for children who have suffered exploitation or abuse of any kind.
- (d) **Participation rights:** encompass children's freedom to express opinions, to have a say in matters affecting their own lives, to join associations and to assemble peacefully. As their abilities develop, children are to have increasing opportunities to participate in the activities of their society, in preparation for responsible adulthood.

3. Constitutional Assurances

- 3.1 The framers of our Constitution were well aware of the fact that the development of the nation can be achieved by the development of the children of the nation and it is necessary to protect the children from exploitation as well. The Indian Constitution accords rights to children as citizens of the country, and in keeping with their special status the State has even enacted special laws. The Constitution, promulgated in 1950, encompasses most rights included in the UN Convention on the Rights of the Child as Fundamental Rights and Directive Principles of State Policy.
- 3.2 It is the constitutional right of every citizen under Article 22 of Constitution of India to be defended by a legal practitioner of his choice. One of the fundamental principles to be followed in the administration of Juvenile Justice is ensuring Legal services at the State expenses. It is a mandatory duty of Legal Services Authority that free legal aid service be made available to every Juvenile.

The following are the provisions of the Indian Constitution relating to children:

- (a) **Article 14** provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- (b) **Article 15(3)** provides that nothing in this Article shall prevent the State from making any special provision for women and children.
- (c) **Article 21** provides that no person shall be deprived of his life or personal liberty except according to procedure established by law.

- (d) **Article 21A** provides that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.
- (e) **Article 23(1)** provides that traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.
- (f) **Article 24** provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
- (g) **Article 29(2)** provides that no citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.
- (h) **Article 39(e)** provides that the State shall, in particular, direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
- (i) **Article 39(f)** provides that the State shall, in particular, direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
- (j) **Article 45** provides that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.

- (k) **Article 47** provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.
- (l) **Article 51A(k)** provides that it shall be the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

4. **Other Legislations**

Apart from the Constitution there are a number of legislations which deal with children. The following are some of them:

(a) **The Guardian and Wards Act, 1890**

This Act deals with the qualifications, appointment and removal of guardians of children by the courts and is applicable to all children irrespective of their religion.

(b) **The Child Labour (Prohibition And Regulation) Act, 1986**

This Act came into force to prohibit the engagement of children in certain employments and to improve the conditions of work of children in certain other employments. Under the act "Child" means a person who has not completed his fourteenth year of age. The Act is intended to ban the employment of children i.e., those who have not completed their 14 years in specified occupations and processes.

(c) **The Pre-Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act 1994**

This Act provides for the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or

metabolic or chromosomal abnormalities or certain congenital malformation or sex-linked disorders and for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide.

(d) JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN)ACT,2000

This Act deals with the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under the Act.

(e) THE COMMISSIONS FOR PROTECTION OF CHILD RIGHTSACT,2005

This Act provides for the constitution of a National Commission and State Commissions for Protection of Child Rights and Children's Courts for providing speedy trial of offences against children or of violation of child rights and for matters connected therewith or incidental thereto.

(f) THE PROHIBITION OF CHILD MARRIAGE ACT,2006

This Act restrains the solemnization of child marriages by laying down the minimum age for both boys & girls. According to Section 2(a) of the Prohibition of Child Marriage Act, 2006, a "child" means a person who, if a male, has not completed twenty-one years of age, and if female, has not completed eighteen years of age.

(g) THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATIONACT,2009

Article 21A of the Constitution, provides that the State shall

provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. Parliament has made the law contemplated by Article 21A by enacting the Right of Children to Free and Compulsory Education Act, 2009 . This Act provides for free and compulsory education to all children of the age of six to fourteen years.

(h) THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

An Act to protect children from offences of sexual assault, sexual harassment and pornography and provide for establishment of Special Courts for trial of such offences and for matters connected therewith or incidental thereto.

5. Entitlement to Legal Services

- 5.1 Children are the beneficiaries of legal services under the Legal Services Authorities Act, 1987. The Act was enacted to constitute legal services authorities for providing free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
- 5.2 Under section 12 (c) of Legal Services Authorities Act, 1987, a child who has to file or defend a case is entitled to legal services. Therefore, it is the duty of various State Legal Service Institutions to provide free legal aid to juvenile in conflict with law and work towards speedy disposal of cases.
- 5.3 In this background, the Scheme has been drawn up for the legal services institutions (State Legal Services Authorities, District Legal Services Authorities, Taluk Legal Services Committees, High Court Legal Services Committees, Supreme Court Legal Services Committee) to be followed while they deal with legal services to the children.

6. Name of the Scheme

This Scheme shall be called National Legal Services Authority (Child Friendly Legal Services to Children and their Protection) Scheme, 2015

7. Definitions

In this scheme unless the context otherwise requires,

- a) “Act” means the Legal Services Authorities Act, 1987 (39 of 1987).
- b) “JJ Act” means The Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000).
- c) “JJ rules ” means Juvenile Justice (Care and Protection of Children) Rules, 2007.
- d) “Legal Service” has the same meaning as defined under section 2(c) of Legal Services Authorities Act 1987.
- e) Legal Services Clinic means a clinic as defined under regulation 2 (c) of National Legal Services Authority (Legal Services Clinics) Regulations, 2011.
- f) Legal Services Institution means a State Legal Service Authority, Supreme Court Legal Services Committee, High Court Legal Services Committee, District Legal Service Authority or Taluk Legal Service committee, as the case may be.
- g) Panel Lawyer means the panel lawyer selected under Regulation 8 of the National Legal Services Authority (Free and Competent Legal Services) Regulations 2010.
- h) Para Legal Volunteers means a Para Legal Volunteer defined and

trained under the NALSA Scheme for Para Legal Volunteers (Revised) and Module for the Orientation – Induction – Refresher Courses for PLV Training and engaged as such by a legal services institution.

- i) All other words and expressions used but not defined in this Scheme and defined in the Legal Services Authorities Act, 1987 (39 of 1987) or the National Legal Services Authorities Rules, 1995 or National Legal Services (Free and Competent Legal Services) Regulations, 2010 shall have the same meaning respectively assigned to them in the said Act or Rules or Regulations.

8. Objective

- 8.1 In Delhi, 16-year-old 'X' is accused of stealing a cell phone. In Mumbai, 12-year-old 'Y' is the victim of sexual abuse. In Calcutta, 10-year-old 'Z's parents are fighting over his custody. In Chennai, 13-year old 'S' was rescued from a factory who found to be trafficked. Everyday children such as these come in contact with the justice system, where formal and informal justice providers make decisions that have the potential to influence the future course of their lives. What rights do these children have when they come in contact with the law? Are they entitled to any type of legal assistance? If so, how might those services best be made available and actually reach children in crisis or in need? How can legal services be made “child friendly” given logistical and financial limitations? And how does the concept of child friendly justice play out in informal justice systems? The purpose of this Scheme is to suggest a conceptual and practical framework for addressing these questions, with the ultimate goal to provide children with meaningful, effective, affordable, and age appropriate legal assistance “on the ground.”

8.2 The main objectives of the Scheme are:-

- i) To outline the basic rights and benefits that should be afforded to children.
- ii) To ensure legal representation to the children in need of care and protection and children in conflict with law at all levels;
- iii) To strengthen legal services, institutional care, counselling and support services at the national, state , district and taluka levels;
- iv) To create an environment in the juvenile justice system, in which children are valued, encouraged and affirmed and have their rights respected and are treated as individuals.
- v) To enhance capacities at all levels, of all functionaries including, PLVs, Panel Lawyers, counsellors, service providers, NGOs, local bodies, police, judiciary and other concerned departments of State Governments, to undertake responsibilities for providing child friendly legal services;
- vi) To ensure that mandatory authorities and institutions, like JJBs, CWCs, other welfare committees, observation and shelter homes, psychiatric hospital or psychiatric nursing home, commissions, boards, office of probation officers etc. under various child friendly legislations have been set up;
- vii) To have database of all the existing central or state schemes, policies, regulations, SOPs, police directives, conventions, rules, declarations, comments, and reports etc. available for child welfare and protection;
- viii) To organise awareness programmes to educate public at large including all stakeholders i.e. PLVs, Panel Lawyers, member of JJBs and CWCs, welfare officers, counsellors, probation officers, police , public prosecutor, judicial officers, care takers of various homes, educational and medical institutions etc., on child rights

and their protection on available child protection services, schemes and structures at all levels;

- ix) To undertake and organise training, orientation and sensitization programs, for senior police officers, SJPU, JWOs, panel lawyers, PLVs, member of JJBs and CWCs, welfare officers, counsellors, probation officers, public prosecutor, judicial officers, care takers of various homes for their skill enhancement and for creating a sense of responsibility amongst them;
- x) To organize seminars, colloquia, workshops and conferences relating to law and schemes on child rights and allied fields.
- xi) To develop effective coordination and interface with all Govt. Bodies or functionaries, Institutions, Authorities, NGOs and other Organisations concerning or entrusted with the responsibilities relating to child rights;
- xii) To undertake research and documentation to study the various schemes, laws etc. to find out the gaps and then to make suggestions to the appropriate authorities;

9. **The key principles that should be kept in mind by legal services institutions at all levels are:-**

- 9.1 **Best interests of the child:-** Every child has the right to have his or her best interests given primary consideration while providing legal services to the children in need of care and protection and child in conflict with law.
- 9.2 **Welfare of the child:-** The welfare of children must always come first, regardless of all other considerations. Early intervention and support should be available to promote the welfare of the child.
- 9.3 **Right to dignity:-** Every child has the right to be treated with

dignity and compassion and its worth is to be respected and protected.

- 9.4 **Right to equality and no discrimination:-** A child shall be treated without discrimination of any kind, irrespective of the child's cast, race, religion, beliefs, age, family status, culture, language, ethnicity, disabilities if any or place of birth.
- 9.5 **Principle of right to be heard-** Every child has right to be informed, right to be heard and to express views and concerns freely .
- 9.6 **Principle of right to safety-** Every child has right to safety at all stages and he or she shall not be subjected to any harm, abuse or neglect etc.
- 9.7 **Principle of confidentiality-** The privacy of a child shall be protected by legal services institutions at all levels.

10. Plan of Action

10.1 Constitution of boards, committees, commissions, etc.

- (a) Under section 4 of JJ Act, the State Government has been authorized to constitute Juvenile Justice Board in every district. SLSAs shall ensure that Juvenile Justice Board is established in each district separate from the regular court and where no such board has been set up, SLSA will take up the matter on urgent basis with State Government so that JJB is established in every district.
- (b) Section 29 JJ Act allows the State Government to form Child Welfare Committees in relation to child in need of care in every district. Such committees will consist of a Chairperson and four other members appointed by the State government including one woman. SLSAs shall ensure that Child Welfare Committees are

established in each district and where no such committee has been set up, SLSA will take up the matter on urgent basis with State Government so that committee is established in every district.

- (c) JJ Act contemplates constitution of Special Juvenile Police Unit (SJPU) to deal with Juvenile in conflict with law. In every police station at least one police officer specially instructed and trained is required to be designated as Juvenile/Child Welfare officer to deal with the Juvenile. (section 63, JJ Act and rule 11 of JJ Rules). SLSAs shall ensure that such Special Juvenile Police Unit has been established.
- (d) SLSAs shall ensure that list of designated Juvenile Welfare Officers and members of SJPU's with contact details be prominently displayed in every police station in the state.
- (e) Under section 62A of JJ Act, every state government shall constitute a child protection unit for the state and for every district to take up the matters relating to children in need of care and protection. SLSAs shall ensure that such child protection Unit has been established.
- (f) Under section 17 of Commission for Protection of Child Rights Act 2005, State is under obligation to constitute State Commissions. SLSAs shall ensure that such commission u/s 17 of Commission for Protection of Child Rights Act 2005 has been constituted and working effectively. (Re. Exploitation of Children in Orphanages in the State of Tamil Nadu Vs. Union of India (UOI) and Ors. (2014)2SCC180).
- (g) Under section 16 of The Prohibition Of Child Marriage Act, 2006, the State Government is authorised to appoint for the whole State, or such part thereof as may be, an officer or officers to be known as the Child Marriage Prohibition Officer to prevent child marriage and to deal the matters connected thereto. SLSA shall take up the matter with State for appointment of the Child

Marriage Prohibition Officer, where ever they have not been appointed.

10.2 Observation and Shelter Homes

- (a) Juvenile in conflict with law are kept in a home and not in jail or lockup. There are two categories of homes for juveniles in conflict with law, namely observation homes and special homes. Juvenile is kept in the Observation Home pending inquiry against him by the Board and such home are to be established and maintained by the State Government in every district or group of districts (section 8 of JJ Act r/w rule 16 (1) of JJ Rules).
- (b) Similarly, special homes are to be set up in every district or group of district separately for boys and girls to house juveniles, if found guilty on conclusion of inquiry (section 9 of JJ Act r/w rule 16(1) of JJ Rules).
- (c) Under section 34 of JJ Act, State Governments have been empowered to establish and maintain either by themselves or in association with voluntary organizations, children homes in every district or a group of districts for the reception of child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation
- (d) SLSAs shall keep the updated record of as to how many institutions i.e. children homes, shelter homes and observation homes, either run by the State Governments or by Voluntary Organisations for Children in need care and protection or children in conflict with law are there in the State.
- (e) All such homes or institutions run by the State Governments or by Voluntary Organisations for Children in need care and protection have to be registered under the provisions of Section 34 of JJ Act, read with Rule 71 of the said Act.

- (f) Any unregistered institutions for children in need of care and protection are there then they have to be shut down or taken over by the State Governments. (Re. Exploitation of Children in Orphanages in the State of Tamil Nadu Vs. Union of India (UOI) and Ors. (2014)2 SCC 180). In this regard, SLSAs shall take up the matter with the state Government so that needful could be done in respect of unregistered institutions.
- (g) SLSAs shall ensure that there are observation homes, shelter homes and child care homes in sufficient numbers registered with the government to house the juvenile in conflict with law and child in need of care and protection.
- (h) Each SLSA shall constitute a committee namely “ Observation and Children Home Committee” for every district in the State comprising of District Secretary as chairperson, one panel lawyer and probation officer as members. The committee so constituted shall formulate a calendar of its visit to each of home situated in the district at least once in a month.
- (i) Broadly, the functions of the committee would be to see that observation homes , special homes and children homes are child friendly and it should not look like a jail or lockup and should have a good quality of care and facilities. It should have sanitation and hygiene, clothing and bedding , meals and diet, medical and mental health care, tie up with local primary health centre, maintaining the health record etc. if anything deficient is noted by the committee then SLSA will take up the matter with concerned authorities for necessary action at their end and shall follow up the matter.

10.3 Legal Services Clinics

- (a) SLSAs shall set up Legal Services Clinic at every Juvenile Justice Board and Child Welfare Committee in each district in the State.
- (b) Opening of Legal Services Clinic shall be communicated to all Government bodies, departments including Police, NGOs along with relevant contact numbers and addresses of the clinics.
- (c) PLVs shall be deputed in such clinics.
- (d) SLSAs shall display the contact number and the other information of the clinic in all its offices at state, district and Taluka service levels.
- (e) The legal services clinics so established shall be governed by the National Legal Services Authority (Legal Aid Clinics) Regulations, 2011 in respect of their functioning, infrastructural facilities, maintenance of record and register, visit of panel lawyers, deputing of PLVs and control over such clinic.
- (f) All DLSAs shall set up legal literacy club in each of the schools in the District under the control of DLSA with co-ordination with the principals.

10.4 Legal Representations.

Statutory provisions

- (a) Under section 12(1) (c) of the Act every child who has to file or defend a case is entitled to free legal services.

- (b) The Board is to ensure free legal aid to all juvenile through State Legal Services Authority or recognized voluntary legal services organisations or the University Legal Services clinics. [Rule 3.I (d) (iii) r/w 14(2) of JJ Rules].
- (c) The Legal Officer in the District Child Protection Unit and the State Legal Services Authority shall extend free legal services to all the Juveniles. [Rule 14(3) of JJ Rules].
- (d) Under section 40 of Protection of Children from Sexual Offences Act, 2005, the Legal Services Authority shall provide a lawyer to the family or the guardian of the child, if they are unable to afford a legal counsel.

Role of SLSAs

- (a) To meet the requirement of law, SLSAs shall constitute a separate panel of trained and committed advocates to represent child /Juvenile before every forum i.e JJBs, CWCs etc., so that meaningful and effective legal services could be provided at the ground level.
- (b) SLSAs shall ensure that legal services provided to child or Juvenile is of high quality and that it is effective which requires competent and dedicated panel lawyers at JJB and CWCs.
- (c) SLSAs shall supervise and monitor the working of Panel lawyers and have mechanism of surprise check.
- (d) The remuneration to the panel lawyer may be released on the basis of work done report countersigned by the JJB or CWCs wherever the panel lawyer is deputed.
- (e) SLSA shall ensure an effective coordination between legal officer, panel lawyer and Legal Services clinic established at JJBs

and CWCs so that every child is legally represented and provided free legal aid and other necessary support.

10.5 Training and orientation programme

- (a) All SLSAs shall strictly adhere to various guidelines already issued by NALSA for training the designated juvenile / child welfare officers attached to every police station and the members of the special juvenile police unit and also for legal services in juvenile justice institutions in connection with the compliance of the order dated 12.10.2011 and 19.08.2011 of Hon'ble supreme court of India in Sampurna Behrua v. Union of India & Ors. in Writ Petition © No.473/2005).
- (b) Every State Legal Services Authority shall coordinate with the head of the concerned Police Department to ensure that a Standing Order outlining the roles, responsibilities and functions of Special Juvenile Police Units and Juvenile/ Child Welfare Officers is issued. Such Standing Order shall be based on the JJ Act, JJ Rules / the applicable Rules (If State Government has notified its own Juvenile Justice Rules) and the judgement of the Hon'ble Supreme Court in Sheela Barse V. Union of India (1986 SCALE (2) 230): (1987)3SC50. State Legal Services Authority shall render assistance in drafting and preparing such Standing Order. State Legal Services Authority shall also ensure that such Standing Order is translated into local language and is made available at all the Police Stations.
- (c) In order to be effective, the concepts and potential of legal service to serve children must be communicated effectively. This requires that Legal Service Providers, whether they are lawyers, PLVs, Police Officer or Judicial Officers require effective training in how to communicate with children.

- d) Children legal service providers, judicial officer, panel lawyers, police officers, JJB's, CWCs whether or not formally trained with the law, should receive on-going training in the areas of relevance to the rights of the children.
- (e) To the extent possible, training in substantive legal concepts and applicable laws, regulations and rules as well as skills training in advocacy should be problem based and interactive.
- (f) Law relating to Juveniles is comprised of constitutional provisions, legislations, schemes, reports, international convention, rules. The challenge is how to convey this information in meaningful way to those who are working on the ground on behalf of the children. Therefore, the training material for such functionaries should contain all important information which is necessary for solving the problem of children.

10.6 Legal Awareness

- (a) All SLSAs shall publish booklets/pamphlets/legal service manual containing the details of the available schemes pertaining to the child rights. Copies of booklets/pamphlets/ legal service manual shall be kept available in all front offices, legal services clinics, JJBs, CVCs, police stations etc.
- (b) Information regarding the above details should also be disseminated through Doordarshan, All India Radio and Community Radio.
- (c) All SLSAs shall spread awareness amongst the public about children rights and their protection in collaboration with educational institutions , State Commission for Protection of Child Rights , NGOs etc.
- (d) Essay competitions, street play competitions, poster making competitions, painting competitions and even debate are other

means of spreading awareness of child rights amongst school and college students.

- (e) PLVs may be asked to create an effective outreach campaign through the distribution of posters using child appropriate messaging.
- (f) In addition to informing individual children about their right to legal assistance, it is also important to engage in outreach to communities and public and private agencies as a way of building support for legal empowerment and an effective working relationship with Legal Service providers .
- (g) Many children in need of legal service live in remote rural areas. As a result, the children often find it impossible to physically access legal services where they live. To overcome this barrier, SLSAs may take some initiative including mobile clinic and one Stop Centre programmes offering a range of legal services to the children at the same location.
- (h) DLSAs can take the services of PLVs deputed at each police station, in compliance of the direction in Bachpan Bachao Aandolan vs Union Of India, for conducting initial interviews and investigations, to provide counselling and to work as a link between the children and his or her family.
- (I) Each SLSA shall take up the matter with the State Government so that child rights could be included in the school curriculum of all schools to enable children to know their rights.
- (j) SLSAs shall spread awareness about the newly added provisions of section 357 A CrPC and any Victim Compensation Scheme of the State so that immediate compensation is released to the children.

- (k) Each SLSAs shall develop directory on legal services which must be available ready with all key stake holders.
- (l) Each SLSAs shall organize intensive legal awareness campaigns at all levels about children's right to education as well as fundamental duties of parents to send their children to schools.
- (m) There is a need for creating awareness about the availability of non-institutional services such as adoption, sponsorship and foster care for children.
- (n) SLSAs shall endeavour the accreditation of NGOs having sound credentials and involved in matters of children who are in need of care and protection.
- (o) To eliminate the menace of child labour and to effectuate the mandate of the Constitution, Supreme Court had given a large number of mandatory directions in *M.C. Mehta v. State of Tamil Nadu* reported as (1996) 6 SCC 756. One of the important directions was to direct an employer to pay a compensation of Rs. 20,000/- for having employed a child below the age of 14 years in hazardous work in contravention of Child Labour (Prohibition & Regulation) Act, 1986. The appropriate Government was also directed to contribute a grant/deposit of Rs. 5,000/- for each such child employed in a hazardous job. The said sum of Rs. 25,000/- was to be deposited in a fund to be known as Child Labour Rehabilitation-cum- Welfare Fund and the income from such corpus was to be used for rehabilitation of the rescued child.

All LSAs shall co-ordinate with police, labour department and other authorities concerned for compliance of the aforesaid directions and follow up the matter.

11. Database

All SLSAs shall have database of all the existing central or state schemes, policies, regulations, SOPs, police directives, conventions, rules, declarations, comments, and reports etc. available for child welfare and protection so that same may be used as and when required for legal awareness and for providing legal services to the Juveniles.



NALSA
(Legal Services to the
Mentally Ill
and Mentally Disabled Persons)
Scheme, 2015





NALSA (Legal Services to the Mentally Ill and Mentally Disabled Persons) Scheme, 2015

BACKGROUND

Persons with disabilities, especially those suffering from mental illness and other barriers like mental retardation are usually not those who catch the attention of the authorities that be. They are sidelined and are viewed only from the prism of the paternalistic “social welfare” which looks upon them merely as persons who are in need of special protection by the State and the society. India is a signatory to the UN Convention on the Rights of Persons with Disabilities (CRPD) 2008 and since our country has ratified the Convention, it is obligatory for our legal system to ensure that human rights and fundamental freedoms of persons with disability (including mentally ill persons and persons with mental disabilities) are enjoyed on equal basis with others and to ensure that they get equal recognition before the law and equal protection of the law. The Convention further requires us to ensure effective access to justice for persons with disabilities on an equal basis with others.

Under Section 12 of the Legal Services Authorities Act, 1987, persons who are disabled as defined in clause (i) of Section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and those in a psychiatric hospital or in a psychiatric nursing home within the meaning of clause (q) of Section 2 of the Mental Health Act, 1987 are entitled to legal services. Hence, NALSA had drawn up a scheme to provide effective legal services to the mentally ill and mentally disabled, in 2010, in terms of its mandate under S.4 (b) of the Legal Services Authorities Act, 1987.

Though the Scheme was first launched in 2010, from the reports received from all the States on its implementation, it appears that there is a need to review the scheme to strengthen the services rendered by the State Legal Services Authorities/Legal Services Institutions to these marginalised people to enable them to access justice. There is imperative need for a proactive outreach to these people. So far, the SLSAs/DLSAs seem to be concerned only with matters reaching them. Even then, there remains much to be done in court related activities.

It is in this background, that this new Scheme for Legal Services to the Mentally Ill and Mentally Disabled persons has been drawn up as “ NALSA (Legal Services to the Mentally Ill and Mentally Disabled Persons) Scheme, 2015”.

OBJECTIVES

This Scheme includes fresh guidelines to the Legal Services Institutions (State Legal Services Authorities, District Legal Services Authorities, Taluk Legal Services Committees, High Court Legal Services Committees, Supreme Court Legal Services Committee) to be followed while they render legal services to the mentally ill and persons with mental disabilities. The objective is to ensure that the mentally ill or mentally disabled are not stigmatized and they are dealt with as individuals who are to be helped to enforce all rights they are entitled to and as assured to them by law.

The terms PLVs, Legal Services Clinics, Front Office , Panel Lawyers and Retainer Lawyers will mean the same as defined under the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010 and National Legal Services Authority (Legal Services Clinics) Regulations, 2011 and the NALSA Scheme for Para Legal Volunteers (Revised) and Module for the Orientation – Induction – Refresher Courses for PLV Training.

PART-I:

PRINCIPLES

While dealing with Mentally Ill or Mentally Disabled Persons, the Legal Services Institutions must keep in mind the following factors:-

- (1) **Mental illness is curable** – The Legal Services Institutions shall keep in mind the fact that mental illness is curable on proper medication and care.
- (2) **Mentally disabled persons are not mentally ill persons** – Mentally disabled persons are suffering from mental disabilities due to developmental disorders. Mental Retardation (MR) is of permanent nature and is not curable. So also Autism and Cerebral Palsy. They are, therefore, treated as persons with disabilities under Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act). The statutory provisions for the welfare of mentally disabled persons are (i) PWD Act, 1995 and; (ii) National Trust for the Welfare of Persons with Autism, Cerebral Palsy Mental Retardation and Multiple Disabilities Act, 1999 .
- (3) **Mentally ill and Mentally disabled persons are entitled to all human rights and fundamental freedoms** – While dealing with mentally ill and mentally disabled persons for rendering legal services it shall be the prime concern of the legal services institutions to promote, protect and ensure the full and equal enjoyment of human rights and fundamental freedoms of these persons.
- (4) **Respect for the inherent dignity of mentally ill and mentally disabled persons** - The legal services institutions shall promote respect for the inherent dignity, individual autonomy including

independence of mentally ill and mentally disabled persons.

- (5) **Non-discrimination** – The legal services institutions shall not discriminate mentally ill and mentally disabled persons merely because of his/her state of mental health. Rather, they are to be dealt with greater sensitivity and care.
- (6) **Reasonable Accommodation**–The legal services institutions shall make provisions including reasonable accommodation to ensure that persons with mental illness or mental disabilities have equal access to any scheme, programme, facility or service offered.
- (7) **The right of mentally ill persons to get treatment**– Right to treatment and to get proper health care, emanating from Article 21 of the Constitution of India is equally applicable to all mentally ill persons. Mentally ill persons are deprived of treatment either due to lack of information or due to illegal confinement because of superstition or lack of means or stigma. Therefore the legal services institutions shall ensure that such persons are able to access treatment facilities available in the psychiatric hospitals or psychiatric nursing homes by invoking the provisions in chapter IV of the Mental Health Act, 1987.
- (8) **Informed consent for treatment** – Legal services institutions shall ensure that when a person is subjected to treatment for mental illness, his / her informed consent is obtained. If any person is incapable of giving such consent, the informed consent of his / her relatives or friend and in their absence, the satisfaction of the court under Part II Chapter V of Mental Health Act, 1987 shall be ensured.
- (9) **Prevention of exploitation and abuse of mentally disabled persons**– Mentally disabled persons, particularly female

mentally disabled, are one of the vulnerable groups most likely to be exploited. Therefore, the legal services institutions shall come to the assistance of mentally disabled persons in preventing their exploitation including sexual abuse and also for taking legal action against the abusers and exploiters.

- (10) Mentally disabled persons and, by and large, mentally ill persons, cannot fruitfully utilize information, because of their mentally challenged situation. Hence, they cannot be imparted with optimum legal literacy to empower them to access justice. Therefore, legal service institutions should assess and audit their eligibilities and needs, in terms of the laws, on collective as well as individual basis, and such requirements shall be addressed by extending legal services.

PART-II

LEGAL SERVICES TO THE MENTALLY ILL AND MENTALLY DISABLED PERSONS IN PSYCHIATRIC HOMES, HOSPITALS AND OTHER SIMILAR FACILITIES AND IN JAILS

The Mentally Ill and Mentally disabled persons used to be kept in jails under the head of “non-criminal lunatics”. Through directions of the Hon'ble Supreme Court of India in Sheela Barse Vs. Union of India and others (Criminal Petition No.237/1989) the Supreme Court deprecated this practice and declared that the admission of the non-criminal mentally ill persons in the jails was illegal and unconstitutional. The Supreme Court further directed that henceforth only Judicial Magistrates and no Executive Magistrate shall send a person who is mentally ill to places of safe custody for treatment. The Judicial Magistrates are also obligated to first seek the advice of a professional or psychiatrist before doing so. The Judicial Magistrates are also required to, as per the directions of the Supreme Court of India to send quarterly

reports to the High Court setting out the number of cases sought to be screened and sent to places of safe custody and the action taken by the Judicial Magistrates thereon.

The Supreme Court of India transferred the records of the case to each High Court requesting the High Courts to register the records so received as a Public Interest Litigation treating the High Court Legal Services Committee as the Petitioner, to assist the High Court in the matter of monitoring compliance of the orders and directions of the Supreme Court of India and the orders of the High Court which may be passed from time to time.

In order to comply with the directions of the Supreme Court of India, the following actions need to be taken:

At Jails:

- The SLSAs will have to first ensure that the Public Interest Litigation is registered in the High Court and an Hon'ble Judge is designated to deal with the matter, as directed by the Supreme Court of India.
- The SLSAs will carry out inspection of all jails with the assistance of the State Mental Health Authority (SMHA) or any other team constituted by the High Court or under the directions of the High Court to ascertain whether there are any mentally ill and mentally disabled persons in the jails and if there are, to immediately seek appropriate directions from the High Court with regard to their shifting out and their treatment.
- The SLSAs will in coordination with the SMHA constitute a team of psychiatrists/psychologists /counsellors to visit the jails and assess the state of mental health of the inmates in jail. Depending on the need assessment by the team, SLSAs will initiate

corrective measures necessary to facilitate the treatment of the jail inmate by psychologists or psychiatrists.

- In compliance of the orders of the Supreme Court of India, the Judicial Magistrates should also send quarterly reports to the High Court setting out the number of cases screened and sent to places of safe custody and the action taken by the Judicial Magistrates thereon. Intimation regarding every such reporting shall be given by the Judicial Magistrate to the SLSA, which, in turn, shall ensure that the said quarterly report gains prompt attention of the designate Hon'ble Judge and shall seek such directions and orders as may be found necessary; either general in nature, or as regards any particular individual or issue. SLSA shall, in the event of any such direction or order being issued, notify the DLSA/TLSC concerned to aid and monitor its compliance, and shall also bring to the notice of the designate Hon'ble Judge any non-compliance or deficiency in compliance of any such direction or order.

At psychiatric hospitals, homes and facilities:

- The SLSAs should request the High Court for the constitution under Section 37 of the Act a Board of Visitors for all psychiatric hospitals, homes and similar facilities, whether government run or privately run in the State, in which the Member Secretary/Full Time Secretary, SLSAs/DLSAs should also be a Member. The Board of Visitors should regularly visit these to assess the living conditions of the inmates in these facilities, homes or hospitals.
- The SLSAs/ Board of Visitors should review the persons in these hospitals, homes and facilities to ascertain whether there are any cured persons staying there whose families appear reluctant to take them back or are themselves not able to contact their families. Whenever the SLSAs/DLSAs or Board of Visitors find such

inmates, the VLSAs/DLSAs must take all steps to facilitate restoration, including providing legal representation in court to seek orders for restoration of the cured person with the family.

- Legal services institutions shall during their visits to the psychiatric hospitals or homes or facilities ascertain through interaction with inmates, doctors and staff as to whether any of the persons admitted there are victims of forced admission or not. In such cases, legal services shall be given to such persons for their release from the psychiatric hospitals or homes or facilities.
- SLSAs/DLSAs should setup Legal Services Clinics at the psychiatric hospitals, homes and facilities in order to provide legal assistance wherever required to the Mentally Ill/ mentally disabled persons and their families to address legal issues concerning the mentally ill and mentally disabled persons.
- Such a legal clinic should be manned by Para Legal Volunteers and Panel Lawyers who are sensitive to such issues and persons.
- It would be quite appropriate to train the doctors, nurses and other para medical staff/administrative staff at the mental health facilities as Para Legal Volunteers so that the best legal services can be provided keeping in mind the welfare of the mentally ill / mentally disabled persons.
- The Clinic should also help in ensuring that the homes meant for the mentally ill and mentally disabled persons have all facilities, including for learning appropriate skills for independent and/or assisted living and earning. The legal services institutions may approach the Government, and if necessary the High Court for appropriate directions, to ensure the availability of such facilities.
- The Legal Services Institutions should also connect the mentally disabled persons with the National Trust for Welfare of Persons

with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities so that benefits provided under the “National Trust For Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999” are assured to these persons and their families.

- Legal Services Institutions should involve through the PLVs the para medical staff/administrative staff and doctors at the mental health facilities to identify the relatives and homes of those patients in relation to whom such facts are not available on record and take appropriate steps through the different legal services institutions to reach to the relatives of the patients to facilitate reunion of the patients with the near and dear ones.
- Patients, who are housed in mental health centres, homes and facilities, away from their domicile and home, must be considered for providing legal assistance to ensure their transit to mental health centres, homes and facilities nearer to their native place. This can be done with the involvement of SLSAs and DLSAs.

LEGAL SERVICES TO THE MENTALLY ILL AND MENTALLY DISABLED PERSONS WHO ARE WANDERING HOMELESS AND DESTITUTES

Under section 23 of the Mental Health Act, 1987, the officer in charge of a police station can take or cause to be taken into protection a wandering mentally ill person or a dangerous mentally ill person within the limits of his station and produce such person before the Magistrate under Section 24 for passing reception orders authorizing the detention of the said person as an inpatient in a psychiatric hospital or psychiatric nursing home for purposes of treatment.

Similarly, under Section 25 , a police officer or a private person who has reason to believe that a mentally ill person within the limits of his station is not under proper care and control or is ill-treated or neglected by relatives or other the persons having charge of such mentally ill person, can report the matter before the Magistrate .

The Magistrate can pass an order of reception or even fine the person who is responsible for neglecting the mentally ill.

In the case of the homeless or destitute mentally disabled person, ordinarily the matter must be reported to the Local Level Committee through a registered organization as prescribed under the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 and Rules and Regulations thereunder. It is the Local Level Committee which would pass appropriate directions for the care of the neglected or destitute mentally disabled person.

Action to be taken by legal services institutions

- The legal services institutions must draw up a panel of sensitive and sensitized legal services lawyers to represent the best interests of the mentally ill person at the time of the production of the person under Section 24 or Section 25 of the Mental Health Act,

1987 and assist the Magistrate while passing an order that would be in the welfare of the mentally ill person.

- The legal services institutions must assist the police through its PLVs assigned to the police stations to refer the mentally disabled persons, who are neglected, homeless or destitute to the Local Level Committee set up under Section 13 of the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999 so that orders such as the appointment of guardian, whether individual or

institutional, for the care and rehabilitation of the mentally disabled person is ensured.

- Legal services institutions must devise sensitization programmes with the junction of mental health officials including doctors, police officials and judicial magistrates dealing with inquisition proceedings to evolve locally conducive mode to ensure that wandering mentally ill persons are identified and dealt with securing their human rights by obtaining appropriate judicial orders as may be found necessary in each case.

LEGAL SERVICES TO THE MENTALLY ILL AND MENTALLY DISABLED PERSONS DURING COURT PROCEEDINGS

The two statutes governing the rights of the mentally ill persons and the mentally disabled persons are the Mental Health Act, 1987 and the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. Both entail a hearing before the passing of appropriate orders by the Magistrate or the Local Level Committee, as the case may be. It is important that the legal services institutions participate in them through the PLVs or the Panel lawyers.

- It shall be the duty of the legal services institutions to depute its retainer/panel lawyer to the court where an application for reception orders has been moved or is under consideration under Section, 19, 20, 22, 24, 25, 26, 27 or 28 of the Mental Health Act, 1987.
- The legal services institutions may request the Magistrates who deal with such applications to give notice to the legal services institutions in all cases, for protecting the interest of the mentally ill persons in relation to whom the application for reception or discharge order is being made.
- The retainer/panel lawyer shall gather the details of the

circumstances and shall liaise with the relatives of the alleged mentally ill persons, doctors in the psychiatric hospitals or psychiatric nursing homes or any other competent person to ensure that the condition of the person against whom the application for reception/discharge order has been made warrants such an order from the court.

- The legal services institutions having local jurisdiction shall keep a list of the mentally ill persons against whom reception orders have been passed by the courts and shall monitor the progress of treatment of the mentally ill persons in the psychiatric hospitals or psychiatric nursing homes where the mentally ill persons is detained as per the reception order.
- The legal services institutions shall bring to the notice of the Magistrate concerned about any cured mentally person remaining in the psychiatric hospitals or psychiatric nursing homes where such mentally ill person has been sent as per the reception order.
- The legal services institutions should through the PLVs/ panel/retainer lawyers help the cured voluntary patients for moving requests for discharge under Section 18 or by an involuntary patient under Section 19.
- The legal services institutions should through the clinics or as part of the Board of Visitors always keep track of admissions under Section 19 (1) of the Act so that detention beyond the period of the first ninety days is only on the orders of the court.
- The legal services institutions shall also keep track of cases under Section 20 of the Act, so that no cured patient is allowed to remain in the psychiatric hospital, home or facility by default. They must move applications for discharge as soon as the patient is cured.
- The legal services institutions shall also keep track of cases under Section 23 read with Section 25 of the Act, in relation to

wandering or destitute mentally ill persons, so that the requirements under Section 28 of the Act, of a ten day review by the Magistrate of the need to keep a person under observation is strictly complied with and no person is detained longer than needed for the issuance of the certificate of mental illness under Section 24 (2) (a) of the Act.

- The legal services institutions through their legal services clinics and PLVs and panel/retainer lawyers should keep track of discharge of patients and wherever necessary should aid and assist the patient to move the application for discharge to the medical officer in charge or to the court which had passed the reception orders.
- The legal services clinics and PLVs and panel/retainer lawyers should also render assistance to inpatients to obtain leave of absence as provided under Section 45 and Section 46 of the Act. They should also assist the filing of appeals as provided for under Section 49 of the Act.
- The legal services institutions shall also participate in inquisition proceedings under Section 50 of the Act to protect the interests of the mentally ill person. A request must be made to the District Judge to issue notice to the legal services institution whenever an application under Section 50 comes before it.
- Where an alleged mentally ill person is possessed of property and if no persons mentioned in Clauses (a) to (d) of Sub-section (1) of Section 50 of Mental Health Act is coming forward with an application for holding judicial inquisition under Chapter VI of the Mental Health Act, the legal services institutions shall take appropriate steps for initiating judicial inquisition regarding the mental condition of the alleged mentally ill persons, custody of his/her person and management of his/her property. For this

purpose the Legal Services Institutions may contact any of the aforesaid persons referred to in Clauses (a) to (d) of Sub-section (1) of Section 50 of Mental Health Act, 1987 in writing and may also take up the matter with the Advocate General of the State or with the Collector of the appropriate District in terms of Clause (d) of Sub-section (1) of section 50 of that Act. Legal Services institutions must extend legal aid to the mentally ill persons involved in such matters by providing effective assistance as may be appropriate and requested for by the Collector concerned to aid and assist in preparing and processing such proceedings.

- The legal services institutions should follow up every case where a guardian of the person is appointed under Section 53 and /or the manager of the property has been appointed under Section 54 or an order of maintenance has been passed under Section 71 and Section 79 of the Act and take every step to protect the interests of the mentally ill person.
- The legal services institutions should render all help to pursue appeals as provided under Section 76 of the Act.
- The legal services institutions should through the legal services clinics and PLVs and through visits including as Member of the Board of Visitors that there are no transgression of the human rights of the inmates and whenever such transgressions are noticed, shall bring it to the notice of the High Court.
- As the National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act 1999, is a comprehensive Act to provide for the care of the mentally disabled, including assistance in care to parents of the mentally disabled and also for arranging the care and finances of the mentally disabled after the death of the parents through appointment of guardians, it is important that legal services institutions inform the public of the Act and further help them to

benefit from it. The PLVs and the legal services clinics should come to the assistance of the mentally disabled and their families in the matter of appointment of guardians.

- Legal services institutions shall come to the help of mentally ill and the mentally disabled in protecting their rights of inheritance, owning properties and enjoying financial rights. The persons with mental illness or mental disability have rights with others to inherit property, both movable as well as immovable, and also have a right to control their financial affairs and have access to bank loans, mortgages and other forms of financial credit, which can be accessed by them personally or through a support person who has no interest in conflict to the person with mental illness or mental disability. Legal services institutions should render all legal help in realizing this.
- Legal services institutions shall assist the mentally disabled for obtaining all benefits under The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.
- The legal services institutions shall find out the different beneficial schemes for the mentally disabled and their families. The legal services institutions shall assist the mentally disabled and their families to avail the benefits under such schemes.

AWARENESS AND SENSITISATION PROGRAMME

- The legal services institutions shall organize awareness programmes especially in rural areas, to educate people that mental illness is curable and there is no stigma attached to mental illness or mental disabilities.

- The legal services institutions should explain the need for equal treatment of mentally ill with other persons in the society. In such special legal awareness camps, the presence of psychiatrists, lawyers and social workers can help the participants to clear their doubts and misconception about mental illness and mental disabilities.
- The legal services lawyer in such camps may educate the public and families on the property and other legal rights and the other provisions of law relating to the mentally ill and mentally disabled persons.
- The State Legal Services Authority / District Legal Services Authority may organize training programmes in association with the Judicial Academy to sensitize the judicial officers about the socio-legal problems faced by the mentally ill and mentally disabled persons, their parents, relatives and family members.
- Similar programmes may be organized with the help of the bar associations to sensitize the panel lawyers and the other members of the legal profession.
- The legal services institutions shall co-ordinate with NGOs and other volunteer social organizations for dealing with the issues relating to the mentally ill and mentally disabled persons.



NALSA
(Effective Implementation of
Poverty Alleviation Schemes)
Scheme, 2015





NALSA (Effective Implementation of Poverty Alleviation Schemes) Scheme, 2015

1) Background

Under Section 4 (1) of the Legal Services Authorities Act, 1987, the National Legal Services Authority envisaged as the Central Authority under the Act, is obligated to “take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures”. The Preamble of the Legal Services Authorities Act, 1987, underscores that the legal services authorities are concerned with the weaker sections of the society and imposes a duty on them to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Very often intended beneficiaries of poverty alleviation and social security measures are unable to access the benefits due to severe lack of capabilities, social structures, economic marginalisation and exploitation, social values, cultural norms, discrimination etc. In this context, the role of legal services authorities must be a proactive one where measures designed to alleviate poverty must be brought to the attention of the intended beneficiaries. Further, legal services authorities are very well suited to facilitating access to such poverty alleviation measures due to their last mile presence. Therefore this scheme lays down a mechanism for identification of poverty alleviation and social security measures, a framework for facilitating access to such measures

by intended beneficiaries and a model for effective review of these processes. In designing this scheme, the concern that there could be local variations and requirements have been particularly considered and sufficient flexibility has been built in for local legal aid authorities to adapt this national scheme according to their needs.

This scheme is built on the foundation that poverty is a multi-dimensional experience and is not limited to issues of income. Multi-dimensional poverty include issues like health (including mental health), housing, nutrition, employment, pension, maternal care, child mortality, access to water, education, sanitation, subsidies and basic services, social exclusion, discrimination, etc. Further, in identifying the specific schemes for implementation at the state and district level, legal services authorities are expected to be cognisant of the fact various vulnerable and marginalised groups experience poverty in myriad and unique ways.

2) **Name of the Scheme**

This Scheme shall be called National Legal Services Authority (Effective Implementation of Poverty Alleviation Schemes), Scheme 2015

3) **Definitions**

- 1) “Act” means the Legal Services Authorities Act, 1987.
- 2) “Central Authority” means the National Legal Services Authority constituted under Section 3 of the Act.
- 3) “Complainant Beneficiary” refers to any Scheme Beneficiary who files a complaint against any designated authority or officer who is identified as the designated authority or officer under any of the Poverty Alleviation Schemes.

- 4) "District Authority" means a District Legal Services Authority constituted under section 9 of the Act.
- 5) "Legal Services Officer" refers to any person who is designated as such for the purpose of this Scheme.
- 6) "Para-legal volunteers" refers to 'PLV' as defined and trained under the NALSA Scheme for Para Legal Volunteers (Revised) and Module for the Orientation – Induction – Refresher Courses for PLV Training.
- 7) "Poverty Alleviation Schemes" refer to any scheme/ programme/ launched either by the Central Government, or the State Government, that is aimed at addressing any dimension of poverty. They also include social security measures.
- 8) "Scheme Beneficiaries" include:
 - a. Scheduled Castes or Scheduled Tribes;
 - b. all persons eligible for applying under the Poverty Alleviation Schemes; and
 - c. other persons for whom special economic, social or political measures are taken including but not limited to children, women and transgenders.
- 9) "State Authority" means State Legal Services Authority constituted under Section 6 of the Act.
- 10) "Taluka Legal Services Committee" means a Taluka Legal Services Committee constituted under section 11-A of the Act.
- 11) The terms Legal Services Clinics, Front Office, Panel Lawyers and Retainer Lawyers will mean the same as defined under the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010 and National Legal Services Authority (Legal Services Clinics) Regulations, 2011.

4) **Objectives of the Scheme**

The main objectives of the Scheme are as follows:

- 1) To ensure access to basic rights and benefits afforded to socially or economically weaker sections of society;
- 2) To strengthen legal aid and support services at the national, state, district and taluka levels for persons belonging to socially or economically weaker sections in accessing Poverty Alleviation Schemes;
- 3) To spread awareness about the Poverty Alleviation Schemes through the members of the District Authority, Taluka Legal Services Authority, panel of lawyers, social workers, para-legal volunteers, and students in legal aid clinics;
- 4) To create a database of all the existing central or state schemes, policies, regulations, policy directives, conventions, rules, and reports available concerning Poverty Alleviation Schemes along with the latest funding information on these schemes;
- 5) To undertake and organise training and orientation programs, for panel lawyers, para-legal volunteers, officers under Poverty Alleviation Schemes, student volunteers in legal aid clinics for their skill enhancement and for developing a sense of deeper engagement amongst them for implementing this Scheme; and
- 6) To develop effective coordination and interface with all government bodies or functionaries, institutions, authorities, NGOs and other organisations concerning or entrusted with the responsibilities relating to welfare of socially/ economically weaker sections of the society.

5) **Identification of Poverty Alleviation Schemes**

- 1) Every State Authority shall identify the existing and active Poverty Alleviation Schemes applicable in the State and circulate a list of the same every twelve months to all the District Legal Services Authorities in the State. The list shall include the following:
 - a. Poverty Alleviation Schemes applicable in that State along with the names of the specific districts in which they are applicable in that year;
 - b. The intended beneficiaries under each of the Poverty Alleviation Schemes;
 - c. The name of the designated authority or the designated officer to be approached to access each of the Poverty Alleviation Schemes, as identified under each of them;
 - d. The list of documents required to access each of the Poverty Alleviation Schemes, as identified under each of them;
 - e. The benefits under each of the Poverty Alleviation Schemes, as provided for in each of them;
 - f. The amount of funds allocated to each of the Poverty Alleviation Schemes by the Central Government, or the State Government, or both of them, as the case maybe, for the particular year;
- 2) The list prepared by every State Authority under sub-clause (1) shall be circulated annually to all the District Authorities. A copy shall also be sent to the Central Authority.

- 3) The State Authority shall also upload the list under sub-clause (1) on their web-site.
- 4) Every District Authority shall, on the receipt of the list prepared under sub-clause (1), within 7 days of receipt of the list, send a copy of the list to the following functionaries:
 - a. All Taluka Legal Services Committees in the district;
 - b. All the village panchayats in the district;
 - c. People working in legal services clinics, members of Panchayats, law students and other para-legal volunteers who volunteer to assist in the implementation of the Scheme.

6) **Organisation of Awareness programmes**

- 1) The State Authorities in collaboration with concerned District Authorities shall take steps for conducting awareness programmes to generate awareness about various Poverty Alleviation Schemes available in that District. Steps shall also be taken by Taluka Legal Services Committees to create awareness regarding the availability of legal services for accessing Poverty Alleviation Schemes, in Panchayat meetings, town hall meetings, Pulse Polio camps, festival gatherings or other village gatherings.
- 2) All State Authorities shall send a list of such programmes organised in their respective jurisdictions every six months to the Central Authority.

7) **Legal Services Officers and Para-legal Volunteers**

- 1) Every District Authority and Taluka Legal Services Authority shall designate at least three panel lawyers as Legal Services Officers for the purpose of this Scheme.

- 2) District Authorities shall constitute teams of PLVs under a Legal Services Officer to implement this Scheme and the Legal Services Officer will supervise and mentor the PLVs in his team to help the beneficiaries access the various schemes of the Govt.
- 3) District Authorities shall conduct specialised training programs for panel of lawyers, members working in legal services clinics, members of panchayats, law students and other para-legal volunteers to assist in the implementation of the Scheme, to sensitise them regarding the needs of persons belonging to socially and economically weaker sections and the benefits that they can avail through Poverty Alleviation Schemes.

8) **Legal assistance for access to Poverty Alleviation Schemes**

Legal assistance must be provided to all the Scheme Beneficiaries seeking access to Poverty Alleviation Schemes. Legal services to be provided by

Legal Services Officers or volunteers under this Scheme includes, inter alia:

- 1) Informing the Scheme Beneficiaries about each of the Poverty Alleviation Schemes to which they are entitled, and the benefits thereunder
- 2) Assisting the Scheme Beneficiary in procuring the documents required for availing the benefits under any of the Poverty Alleviation Schemes
- 3) Informing the Scheme Beneficiary of the name and the address of the designated authority or the officer to be approached for registration under any of the Poverty Alleviation Schemes

- 4) Offering to send para-legal volunteers including from the legal services clinics with Scheme Beneficiaries to the office of the designated authority or the officer to be approached under any of the Poverty Alleviation Schemes
- 5) Informing the Scheme Beneficiary of her option to register a complaint with the Legal Services Officer or para-legal volunteer, about any designated authority or officer under any of the Poverty Alleviation Schemes who refuses to cooperate with a Scheme Beneficiary in providing her access to the benefits that she is entitled to under the Poverty Alleviation Scheme.
- 6) Maintaining a record of all the complaints received under sub-clause (5).
- (7) Providing Scheme Beneficiaries with the contact number, if available, of the Legal Services Officer, and availability of the Legal Services Officer on call during working hours for such Scheme Beneficiaries to whom contact number is provided

9 Action by Legal Services Officers on complaints

- 1) On receiving complaints under sub-clause (5) of clause 8, each Legal Services Officer shall herself personally accompany the Complainant Beneficiary to the office of the designated authority or officer, and assist the Complainant Beneficiary in availing the benefit that she is entitled to under the Poverty Alleviation Scheme.
- 2) In case the designated authority or officer fails to register the Complainant Beneficiary in the Poverty Alleviation Scheme, the Legal Services Officer shall submit a complaint to the District Authority. The letter of complaint shall describe the conduct of the designated authority or officer who refused to register the Complainant Beneficiary under the Poverty Alleviation Scheme,

and circumstances of such refusal and whether refusal was despite submission of all necessary documents.

10) Action by District Authority and State Authority on complaints

- 1) On receiving a complaint regarding the designated authority or officer, the District Authority shall seek a report from the concerned officer regarding the reasons for denying the benefits under the Poverty Alleviation Scheme to the Complainant Beneficiary. In the event that sufficient reason is not provided by the concerned officer for refusal to register the Complainant Beneficiary in the Poverty Alleviation Scheme or to provide benefits under the Poverty Alleviation Scheme, the District Authority shall immediately communicate to the superior officer in the department the details of the refusal to provide access to the Poverty Alleviation Scheme.
- 2) If the superior officer, in the opinion of the District Authority, also withholds the benefit under the Poverty Alleviation Scheme without sufficient cause, the District Authority shall then communicate the same to the State Authority.
- 3) On receiving such communication from the District Authority, the State Authority may choose to further pursue the matter with the concerned department or file appropriate legal proceedings to ensure that the Complainant Beneficiary receives the benefit under the Poverty Alleviation Scheme.
- 4) The District Authority, through para-legal volunteers or legal services clinics, shall provide regular updates to the Complainant Beneficiary about the status of the complaint.

1) Evaluation of the Scheme

- 1) Every Legal Services Officer shall follow-up with each Scheme Beneficiary who sought legal assistance under this Scheme and record:
 - a. if such person was able to register under the Poverty Alleviation Scheme sought to be registered under and whether such benefits were being received
 - b. any grievances experienced by the Scheme Beneficiaries in getting registered and availing benefits under the various Poverty Alleviation Schemes.
- 2) The District Authority shall compile the observations made under sub-clause (1) for all the Legal Services Officers working under the Scheme in the district, and shall send a copy of such observations in a compiled document to the State Authority every six months.
- 3) The State Authority shall consolidate the compiled documents received from all the District Authorities under sub-clause (2), and hold a meeting every 6 months to review the functioning and effectiveness of this Scheme. The minutes of such meeting shall be recorded and published as a public document.
- 4) If in the meeting under sub-clause (3), the State Authority finds a substantive or procedural defect in any of the Poverty Alleviation Schemes which makes seeking benefits under the scheme a problem for the Scheme Beneficiaries, such defect must be brought to the notice of the Central Government or the State Government, as the case may be, for improving the specific Poverty Alleviation Scheme and/or its effective implementation.



NALSA
(Protection and Enforcement
of Tribal Rights)
Scheme, 2015





NALSA (Protection and Enforcement of Tribal Rights) Scheme, 2015

BACKGROUND

Although the Census of India 2011 enumerates the total population of Scheduled Tribes at 10,42,81,034 persons, constituting 8.6 per cent of the population of the country, the tribal communities in India are enormously diverse and heterogeneous. There are wide ranging diversities among them in respect of languages spoken, size of population and mode of livelihood. As per the Census of India 2011, the number of individual groups notified as Scheduled Tribes is 705.

The North Eastern States are not a homogeneous block, because of the diversities amongst themselves. There are about 220 ethnic groups with equal number of languages and dialects. These groups can be broadly categorised into three main groups of Tibeto-Burman, Mon-Khmer and Indo-European.

Certain tribes have been characterised as Particularly Vulnerable Tribal Groups (PVTGs) (earlier known as Primitive Tribal Groups) on the basis of their greater 'vulnerability' even among the tribal groups. PVTGs, currently include 75 tribal groups, who have been identified as such on the basis of the following criteria: 1) forest-dependent livelihoods, 2) pre-agricultural level of existence, 3) stagnant or declining population, 4) low literacy rates and 5) a subsistence-based economy. As per the 2001 census, these 75 PVTGs had a total population of 27,68,322. The majority of the PVTG population lives in the seven States of Maharashtra, Madhya Pradesh, Chhattisgarh, Jharkhand,

Odisha, Andhra Pradesh and Tamil Nadu. The PVTGs among the tribes need special attention due to their vulnerability.

Up till independence the tribal population lived in comparative isolation from the national scene and lived almost a self-sufficient life in the remote and rugged forested tracts. The interactions of the colonial administrative machinery with the tribes in India were largely of authoritarian and exploitative nature. They were largely interested to let them remain isolated and had no intention to integrate them with mainstream of national life.

After independence, the India Constitution adopted many provisions to provide tribal people with special status and Parliament through various protective legislations made conscious efforts to safeguard their interest. Planning Commission of India through its development initiative adopted Tribal Sub Plan (TSP) approach and under Panchayati Raj Institutions the Provisions of the Panchayats (Extension to Scheduled Areas) Act 1996 (PESA) was legislated.

Despite all these efforts made to improve the socio-economic conditions of tribes it is still a fact that the life situations of Scheduled Tribes (STs) have improved only marginally. The Human Development Index (HDI) of the STs is much lower than the rest of the population. The gap in the literacy rate is high. There are more ST families below the poverty line than those from other communities. Their percentage in government jobs is not in proportion to their population despite the provision of reservation. Their condition, thus, is far worse than that of the rest of the population and they have not been able to reach the envisaged level of development, where they could benefit from the opportunities offered by a fast expanding economy.

It was in this background that the NALSA felt the need to draw up a Scheme for the Tribal People. To facilitate this, a Committee was constituted to study the issue and come up with suggestions.

The Committee submitted a comprehensive report to the Hon'ble Executive Chairman, NALSA on 9.8.2015 on the occasion of World Tribal Day. The present Scheme is based on the Report of the Committee.

The Scheme may be called the "NALSA (Protection and Enforcement of Tribal Rights) Scheme, 2015".

OBJECTIVES

The Scheme is aimed at ensuring access to justice to the Tribal People in India. The access to justice would be facilitated in all its connotations, i.e. access to rights, benefits, legal aid, other legal services, etc., so that the assurance of the Constitution of justice social, economic and political, is meaningfully experienced by the tribal population in the country.

Several legal rights are guaranteed to the tribal people under:

- The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 – (FRA)
- The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989,
- The Right of children to Free and Compulsory Education Act, 2009,
- The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013,
- Panchayats (Extension to Scheduled Areas) Act 1996 – (PESA) and
- Fifth and Sixth Schedule of the Constitution of India.

These provisions are not implemented stringently, leading to violation of their legal rights. Such violations are one of the prime reasons for the marginalization of the tribal people.

This scheme is intended that these legal rights are not violated.

The terms PLVs, Legal Services Clinics, Front Office , Panel Lawyers and Retainer Lawyers will mean the same as defined under the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010 and National Legal Services Authority (Legal Services Clinics) Regulations, 2011 and the NALSA Scheme for Para Legal Volunteers (Revised) and Module for the Orientation – Induction – Refresher Courses for PLV Training.

Part I : An overview of the issues of Tribal people

A. Vulnerability Issues

1. The lack of literacy amongst the tribal people is a crucial issue. As a consequence, the tribes remain unaware of their fundamental, legal and statutory rights. They also lack knowledge about the welfare schemes run by the government for their well-being, thereby resulting in lack of participation from their side.
2. Non implementation of the schemes introduced by the government to resolve the problems is another major concern. However, non-implementation of programmes for tribal welfare is also due to lack of skilled work force in the tribal areas.
3. Numerous armed conflicts affect large parts of tribal areas in contemporary India spanning the central region to the North East, leading to severe problems in accessing legal and administrative mechanisms and in the implementation of beneficial schemes.

4. In the recent years the state police and the paramilitary forces have been accused of grave human rights violations in the tribal areas including of alleged fake encounters and rape.
5. A number of tribal people are put in jails allegedly as Maoists. There have been cases of people staying in Jail for days, without their name in the charge-sheet. Bails are not granted as cases are serious such as waging war against India, sedition and so on.
6. The unfamiliar judicial processes make the tribal people dread the court, even if they are the ones who are suffering from lawlessness. They feel that the laws like Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 do not exist for the protection of tribal people.
7. Migrating tribes face difficulties in accessing the welfare schemes run by the government. Some are totally devoid of any access.
8. There are preconceived notions or assumptions regarding the 'primitivism' and 'backwardness' of the PVTGs. It is essential for government bodies to shed assumptions of tribal backwardness and savagery and devaluation of the culture and traditions of these communities.
9. Many PVTGs and Scheduled Tribes (STs) are forest dwellers and depend heavily on land and forest resources for their subsistence. Over time, their habitat has been declared as Reserved Forest, Protected Forest, leaving them vulnerable to displacement and eviction without compensation.
10. All tribes in the list of PVTGs have not been granted ST status, thereby increasing the vulnerability of these tribes, who lack the protections and rights offered by the Fifth Schedule and the Provisions of Panchayat (Extension to Scheduled Areas) Act, 1996.

11. For PVTGs, the implementation of FRA has been poorest since their habitat rights are not clearly defined or understood by the Forest Department. No disaggregated information and data at the national level on status of the implementation of the provision for rights of PVTGs particularly of habitat rights under the FRA are available.
12. The North Eastern States share a large area of international boundary with the neighbouring countries of Bhutan, China, Myanmar and Bangladesh which makes it a very fertile ground for cross border terrorism, drug smuggling, arms smuggling, infiltration, etc.
13. Another issue which is of serious concern is human trafficking. Tribal people from central India and Assam appear particularly prone to trafficking.
14. Another issue is that till recently there has been no division of executive and judiciary. The institutions set up under the Sixth Schedule apply customary laws which have their own issues as they are not codified.
15. Due to insurgency and law and order problems in the North East, there is absence of faith in the system. There has been a tendency of the public to take law into their hands, in what amounts to “mob justice” by dismantling/destroying houses of the suspected/accused persons and ostracising the family which leads to serious social problems. Even doctors and hospitals have not been spared for their alleged negligence in treatment of patients.
16. In the remote areas and villages, large numbers of tribal people still believe in “Witch hunting”.

17. Tribal people are not treated with dignity and so feel alienated. For instance, the Jarawas tribes in Andaman Islands are treated like animals by the tourists. They are teased and tormented as if they are monkeys/animals and fun derived from their angry responses. Similar experiences were earlier common in Bastar where cultural mores were never understood.

B. Land Related Problems

1. Forest and hills are the main source of tribal identity. It is in this context that the devastation of lives of tribal people caused by loss of access to forest and involuntary displacement from their land has to be understood. Dispossession takes place both directly by depriving tribal communities of their land, habitat, livelihood, political system, culture, values and identity and indirectly through denials of benefits of development and of their rights.
2. Under the Resettlement and Rehabilitation (R&R) programme, land is not replaced and there is meagre reconstitution of livelihoods. Almost all the R&R colonies lack proper public health facilities, protected drinking water, marketing, schools and transportation.
3. Dependence on forests for food in the form of shifting cultivation, fruits and flowers, small game, tubers for medicines, fodder, material for house building, raw material for traditional art and crafts income by selling firewood, leaf-plates, fruits etc. is substantial. This loss, due to displacement is not compensated and also affects food security.
4. A major portion of land falls under forest areas. Most of the tribal people of the interior areas are staying on forest lands without having any right, title, interest on those lands and there are no such legal provisions for those homeless tribal people for

protection and enforcement of their rights under “The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006”.

5. Another major problem with tribal people is a result of development projects viz. construction of dams, Forest sanctuaries, mining operations, etc. These developments lead to an influx of non-tribal people, seeking employment in these areas forcing the tribal people to migrate. Hence, the tribal people have not been able to reap the benefits of development projects.
6. Growing indebtedness contributes as one of the most important reasons for and alienation and displacement of tribal people. Tribal indebtedness (they are often tricked into accepting loans with exorbitant interests) often leads to situations of bonded labour.
7. Further, there have been violations of PESA which endow Gram Sabha “the power to prevent land alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawful alienated land of a Scheduled Tribe.” In case of acquisition of forest lands, it is mandatory to consult with Gram Sabha of the affected area and obtain their free consent. However, often Gram Sabhas are neither sent notices for consultation, nor are their consent signatures taken.
8. The compensation given to the tribal people under The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is meagre and the living conditions that are provided on resettlement are very poor.
9. Another problem with tribal people is that instead of individual rights in the land, they believe in community rights and thus written proof of ownership are mostly not available in cases of

litigation relating to land. The claims of tribal people in this respect are mostly based on oral evidences with consequential difficulties in establishing individual rights.

C. **Legal Issues**

The legal issues faced by the tribal people are as follows:

1. The recognition of rights of tribal people before their displacement from Protected Areas (PAs) is not being completed. Tribal people are evicted before verification and settlement of claims under the FRA. This has caused a decline in the economic status, as well as erosion in their customary forest practices.
2. Incorrect assumption by the Forest departments with regard to the FRA has led to violation of their legal rights. For instance, at some of the Forest Departments, it was believed, contrary to the provisions of section 4 (2) of the FRA that rights under FRA could not be claimed in Protected Areas (PAs) and that FRA is not applicable in Tiger Reserves.
3. Some problems that arise for tribal communities in claiming habitat rights include:
 - * lack of clarity over definition and interpretation of what is entailed in habitat rights;
 - * multiple interpretations of habitat, especially if the user rights of other, non- PVTG groups sharing the same territory are involved;
 - * if the traditional habitat boundaries of PVTGs overlap with wildlife habitats; and
 - * a lack of awareness among such communities about the terms in which to articulate such claims.

4. There has been little perceptible effort to create awareness among women regarding the process of claim making, verification and the rules relating to it provided under the FRA.
5. Claims filed by tribal people under the FRA are being rejected without assigning reasons, or based on wrong interpretation of the Other Traditional Forest Dwellers (OTFD) definition and the 'dependence' clause, or simply for lack of evidence or 'absence of GPS survey' (a lacuna which only requires the claim to be referred back to the lower-level body), or because the land is wrongly considered as 'not forest land', or because only forest offence receipts are considered as adequate evidence.
6. The rejections are not being communicated to the claimants, and their right to appeal is not being explained to them nor its exercise facilitated. There is a need for awareness amongst tribal people, so that they can protect their legal rights against such practices.
7. Section 3 (1) (m) of the FRA, regarding the rights of persons illegally displaced or evicted by development projects without proper compensation, has not been implemented at all.
8. Lack of effective consultations with Gram Sabha and recognition of their rights of ownership in farm produce.

D. Other legal issues

1. Criminal charges are filed, maliciously, against the tribal people, and in some cases non-tribal people, who protest against the acquisition of land and thereby against the establishment of developmental projects. It has been found that between 2005 and 2012, over 95 percent of the cases were found to be baseless and ended in acquittal.

2. Discrimination, violence and police brutality is experienced at regular intervals by the people belonging to the De-Notified Tribes because of the Habitual Offenders Act, 2000.
3. In Andaman and Nicobar, the 'Jarawa' tribe face incidents of sexual exploitation. Also, the people of the tribe were asked to give their blood samples for DNA testing without their informed consent.
4. A study for the Planning Commission revealed that 43.6 percent of the rehabilitated bonded labourers belong to Scheduled Tribes. This suggests that many tribal families are trapped in bondage. The main reason for bondage that is cited is indebtedness and food.

E. Issues related to education

The scenario of education in India regarding the tribal people has improved, but there are some problems which still persist. The issues relating to education are as follows:

1. There are a large number of schools which do not have minimum facilities.
2. Even where there is reasonable infrastructure and student enrolment, regular school attendance is a problem in the tribal areas, due to distances and poverty.
3. Teacher absenteeism is high.
4. There is poor level of student learning and high drop-out rate at class X. A possible explanation for this is the failure of tribal students to cope up.

5. There is a marked gender gap. There is a need for greater gender focus and social mobilization to encourage education of girls.
6. Once the tribal students manage to take admission, they are humiliated in various ways that they are demoralized. This leads to a high school drop out rate. Derogatory names being given to tribal students from the North East are well-known.
7. There are residential schools for tribal girls which are often in the news for corruption, bad maintenance of facilities and sexual exploitation of resident girls.
8. As nomadic tribes are always on the move, their children miss out on education provided by the government for free.
9. Most of the tribal communities in India have their own mother tongue. But in most of the States, official/regional languages are used for classroom teaching and these are not understood by the tribal children particularly at primary level of schooling.
10. There is a need of familiarity for teachers teaching tribal children with tribal culture and language so that learning is hassle-free. For instance, most of the district officials, being from outside do not understand the languages of the people like Gondi and Halbi. Even the teachers in schools do not understand these languages.
11. Tribal children are not at ease in structured class rooms due to their affinity to nature causing them to lose interest in formal education as is presently provided.
12. The main reason of illiteracy amongst tribal people is low involvement of parents and community in education of tribal children and inadequate quality schools in Tribal areas. The Tribal Community is mostly unaware about the benefits of education.

F. Health issues

The tribal population face several health issues:

1. The national health model is primarily designed for the non-tribal areas. It does not take into account the different belief system, different disease burden and health care needs as well as the difficulties in delivering health care in a geographically scattered, culturally different population surrounded by forests and other natural forces.
2. There is a lack of health care human resource that is willing, trained and equipped to work in tribal areas. Though buildings are built and health care institutions created in the form of health sub-centres, PHCs and CHCs, they often remain dysfunctional. This is further compounded by inadequate monitoring, poor quality of reporting, and accountability.
3. Factors such as unfriendly behaviour of the staff, language barrier, large distances, poor transport, low literacy and low health care seeking, lead to lower utilization of the existing health care institutions in tribal areas.
4. The absence of participation of ST people or their representatives in shaping policies, making plans or implementing services in the health sector often ends up targeting wrong priorities.
5. The tribal population is seriously affected by high consumption of alcohol and smoking, often resulting in addiction. Immediate and serious corrective policy measures to curb the same are necessary.
6. Child marriage among the different tribal communities is still prevalent as illiterate tribal people follow their old customs without understanding the laws of the land which results in poor health.

7. Tribal people seek treatment modes based upon their customary beliefs without resorting to any modern medicines even when they contract modern day illnesses leading to high mortality even in curable situations.
8. The Jarawas remain vulnerable to outside diseases to which they have little or no immunity. When the tourists enter their areas, they contract new diseases because of them. Their women and girls are also being sexually abused which result in many diseases for which the tribal people have no cure.
9. The immunisation programme of the governments has not reached the tribal areas.
10. Tribal populations are highly malnourished. PVTGs inhabit areas that are inaccessible by road, and therefore they cannot travel easily to Anganwadi centres, where food is prepared. Moreover, their hamlets are considered too small to open an Anganwadi centre. The result is that their children do not get the nourishment provided under the government schemes.
11. Rules have been framed to prohibit the killing of forest animals without giving an alternative to tribal people who traditionally hunt them for food, leading to loss of nutrient food to these communities.
12. The tribal areas face acute water problems including water pollution and tribal health suffers as a consequence.
13. A very pernicious effect of violence and killing, is the rise in mental disorder cases.
14. In areas of high literacy, as in the North East, lack of employment amongst skilled youth has resulted in mental depression and high suicidal tendencies.

15. Health issues arising out of drug use such as HIV AIDS and mental disorder is high in the North Eastern states located in close proximity to the “Golden Triangle”. Drugs such as Ketamine, pseudoephedrine, etc. are being smuggled into these regions with catastrophic effect on the families of drug users.

H. Livelihood

1. Due to absence of modern day skills and education, tribal people mainly depend on their traditional skills for livelihood, which is not profitable.
2. Although very few are landless, the land that tribal people possess is not very productive.
3. Due to language and cultural barriers, they lack modern skills of agriculture and agriculture based activities.
4. Further as a result of their living in difficult terrain and their aloofness from others they are not able to get adequate prices of their produce and products.
5. Inadequate transportation and communication facilities in their areas compounded by their reluctance in using such means also lead to failure to obtain good prices for their produce.
6. Adherence to traditional practices such as jhum cultivation for livelihood is an important reason that they live below poverty line.
7. When land is taken away from them for development work or they alienate their land, or they are denied access to forests for collecting forest produce, tribal people are left with no means of survival and are reduced to impoverishment and starvation.

Part II :Role of Legal Services Authorities

As is evident from the issues listed above, the State Legal Service Authorities have an important role to play in assisting tribal people in access to justice. The State Legal Services Authorities (SLSAs) will have to bridge the divide between the tribal communities and the Government and Judiciary. The SLSAs will have to ensure that Rule of law prevails. Restoring faith in the legal system, efficacy of rule of law is of prime importance amongst the tribal people. The SLSAs should explore activities in these areas.

The SLSAs should take the following initiatives:

A. Litigation related

1. They should constitute an exclusive panel of lawyers drawn from the tribal communities who should be paid good fees.
2. The Tribal people should be given suitable legal aid in litigation and in appropriate cases, senior lawyers should be engaged on their behalf even if on payment of special fee, so that the rights and interests of tribal people are protected.
3. The Judiciary operates in Hindi and English, leaving poor tribal people at the mercy of lawyers and judges from outside their community. They are the ones who need access to justice and should be supported by SLSAs.
4. Panel lawyers must sincerely represent the tribal people in the courts, explaining to them the process and the law so that distrust of the system is eliminated and there would be greater understanding of the processes of the court.

5. Panel lawyers must assist the tribal people in clarifying areas of confusion or overlapping of jurisdiction of the normal courts and the traditional village authority courts at the village level and help people in the smooth functioning of the justice system.
6. Panel lawyers must visit jails and set up legal services clinics in jails to tackle long term imprisonment without bail and also follow up cases where there are no charges made out so that there is early release from prison.
7. Panel lawyers should, with the help of para legal volunteers, facilitate the tribal people for getting compensation of their acquired land and assist them for rehabilitation.
8. The issues, requirements and legal needs as well as availability of educational and medical facilities in tribal areas must be identified with the assistance of PLVs and action for judicial redressal initiated in appropriate cases.
9. The full time Secretaries/judicial officers should interact with the persons of such area in order to identify their problems and needs and in order to assure them that they will be given suitable assistance and services for their genuine legal and other requirements and rights.
10. Where any tribal person is facing prosecution in a court of law, he should be identified and given proper legal aid and assistance by legal services authority from the inception of the proceedings against him, that is from the time of his interrogation.
11. The SLSAs must open legal services clinics wherever feasible to be visited by tribal lawyers.

12. The SLSAs must make use of the Multi Utility Vehicles to reach out to sparsely populated tribal areas not only for spreading awareness but also to extend prompt legal assistance to the tribal people who may have criminal, civil , revenue or forest rights issues.
13. The SLSAs must co-ordinate with government departments such as the forest department to settle habitat claims and compensation claims through the mobile lok adalats.
14. Legal assistance must be promptly given to the tribal people to approach the High Court under its writ jurisdiction both for civil as well as criminal matters. The High Court Legal Services Committees must empanel committed lawyers who are tribal people themselves or have a good understanding of tribal issues and are able to personally communicate with tribal people.
15. Social Justice Litigation with the approval of Hon'ble Executive Chairman, SLSA may be initiated whenever required.

B. Para legal volunteers (PLVs)

1. Each District Legal Services Authority, with the help of statistical and other Government department should identify the areas of the districts where there are tribal population and reach out to them through the Para Legal Volunteers.
2. In order to gain trust of the tribal communities, to know the problems of each such community and also to communicate with them effectively during awareness programmes it is necessary that para legal volunteers must be selected from amongst such tribal people. The SLSAs should prepare exclusive panel of para legal volunteers (PLVs) from these communities under the direct mentorship and control of the Full Time Secretary of DLSAs.

3. Such PLVs should be properly trained in respect of their roles to reach out proactively to the tribal people and to become the 'go to person' for the tribal community he/she is assigned to serve.
4. The SLSAs through the PLVs should help the illiterate tribal people requiring legal assistance in filling up forms and filing applications for getting benefits of various schemes made by Government to do so for their getting such benefits.
5. Legal Services Authority could play a vital role in providing medical help with assistance of Para Legal Volunteers from amongst the tribal community. The needy persons may be identified with the help of Para Legal Volunteers and with assistance of the local Legal Services Authority, such tribal people may be facilitated in getting suitable medical assistance and medicines as well as benefits of medical schemes.
6. The PLVs must be the voice of the tribal people to communicate to the concerned authorities when there are issues relating the schools, absence of teachers, and harassment of tribal children etc as listed in Part 1 of this scheme.
7. The PLVs may be useful in the matters of human trafficking for identifying the victims of trafficking and taking suitable action for obtaining victim compensation and accessing various rehabilitation schemes.
8. The PLVs must assist the trafficked children when they are rescued and produced before the Child Welfare Committees (CWCs). They should help the CWCs in tracking out the families of the victims.
9. The PLVs must hand hold the victims when they have to testify in the Court.

10. The PLVs must be the bridge between the tribal people and the panel lawyers and must assist both the tribal person as well as the lawyer so that the case of the tribal is effectively understood and heard by the court.
11. The PLVs must also be the connect between the government departments and the tribal people to ensure that the food and rations meant for the tribal people reach them even when they live in remote and sparsely populated areas in the State.
12. Documentary proof of land is mostly not available with tribal people. The tribal people may, in such cases, need legal assistance for getting proper compensation and rehabilitation. PLVs should help the tribal people to collect all documents and other evidence so that displaced tribal people may be rehabilitated properly.
13. The PLVs must visit jails and interact with inmates to find out about their cases and report to the Full Time Secretary of the DLSA about them so that immediate follow up can be taken for their release on bail or expeditious hearing of their cases.

C. Awareness

1. Legal Awareness in Tribal area should be different than the ordinary mode of awareness programmes. Audio Visual Mode will be more useful in this respect. Awareness may be through organising cultural programmes such as dances, dramas etc. in which the involvement of tribal people must be ensured. Folk Songs and dances of such tribal people may be utilised for effectively conveying messages to them. The awareness programme in tribal area must be carefully carried out by persons having full knowledge of their problem and solutions.

2. There is requirement for spreading legal awareness amongst tribal people about forest laws and consequences of infringing the provisions of law.
3. The SLSAs should organise intensive legal awareness programme in tribal areas enlightening the Tribal community about the benefits of education, their rights and entitlements under various government schemes and benefits of modern technology which may be helpful in improving their occupational works.
4. The Tribal Community may be informed that education to their children may secure their future because such children may get jobs in public or private sector where reservation policy is applicable.
5. School legal literacy clubs should be started in tribal dominated areas to reach out to tribal children to encourage them to stay in school, while at the same time sensitising other students and teachers of the special needs of tribal children.
6. The SLSAs with the assistance of Govt. agencies and NGOs may organise training programmes by audio visual mode and also by showing them practical demonstrations of modern technology for gainful agricultural work.
7. Medical awareness programmes may be organised in tribal areas to teach them the benefits of safe drinking water, nutrition and care of pregnant women as well as immunisation programme with NGOs working in the field.
8. The SLSAs should take other initiatives like establishing a community radio in the villages to bridge linguistic divide.



NALSA
(Legal Services to the Victims
of Drug Abuse and the
Eradication of the Drug Menace)
Scheme, 2015





NALSA (Legal Services to the Victims of Drug Abuse and the Eradication of the Drug Menace) Scheme, 2015

1 Background:

- 1.1. The phenomenal rise in drug trafficking and drug abuse amongst the youth, children and adolescents has serious implications, adversely affecting national health and economy. Curbing it is the highest priority for the State as well as the society.
- 1.2. It is an open secret that drugs have spread their dreaded tentacles on innocent children, adolescents, youth and women. The horrible dimension, which this menace has acquired, can be gauged from the average age of initiation of drugs which is as low as nine-ten years. Recent empirical studies reveal that about 7 crore people in India are involved in substance abuse, out of whom about 17% are addicts.
- 1.3. The illicit cultivation of plants wherefrom the substances/drugs are derived is an area of major concern. Generally, people are unaware of the ill effects of such cultivation. In order to prevent illicit cultivation of substances, participation of Panchayati Raj Institutions and Local Bodies is necessarily required.
- 1.4. Although many agencies of the State as well as Non-Governmental Organizations are working in the field for eradication of drug trafficking and drug abuse, there is lack of coordination amongst them. Individual efforts of different

functionaries and agencies have not achieved the desired results. Experience shows that the victims of drug abuse have no idea how to tackle the issues of treatment and rehabilitation.

- 1.5. Considering the fact that Legal Services Institutions can contribute a lot to curb this menace, a resolution was passed in the 13th All India Meet of State Legal Services Authorities held at Ranchi (Jharkhand), concluding that Drug Addiction and Drug Abuse should be a major area of concern for all Legal Services Institutions and a necessity was felt to examine the issue therein.

2 Existing Legal Provisions

- 2.1 The efforts to combat the menace of Narcotic Drugs and Trafficking started at the International level with Single Convention on Narcotic Drugs by the United Nations in March, 1961 and thereafter a protocol amending the resolution of this Convention was adopted in March, 1972. The United Nations Convention on Psychotropic Substances was held in 1971, followed by United Nations Convention against Illicit Trafficking in Narcotic Drugs & Psychotropic Substances, 1988. India is signatory to all such Conventions.
- 2.2 Article 47 of the Constitution of India mandates that State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.
- 2.3 The growing trend of illicit drug traffic and drug abuse, at the National level, has led to the passing of comprehensive legislations: (i) The Drugs and Cosmetics Act, 1940 and (ii) The Narcotic Drugs and Psychotropic Substances Act, 1985, for prohibition, control, regulation, cultivation, manufacture, sale transportation, consumption etc. of narcotic drugs and

psychotropic substances. Despite tough laws, illicit drug trade, in an organized manner, is growing manifold.

- 2.4 It is in this background that it was felt by NALSA, that Legal Services Institutions have a significant role to play in supply and demand reduction and de-addiction and rehabilitation. A Committee was constituted for the purpose of understanding the dimensions of the problem and defining the role of the Legal Services Institutions to effectively address the problem. This Scheme has been framed on the deliberations of the Committee based on the inputs received at the Regional Conference on the 'Drug Menace in India – Overview, Challenges and Solutions' at Manali, Himachal Pradesh.

3 **Name of the Scheme**

The Scheme shall be called “National Legal Services Authority (Legal Services to the Victims of Drug Abuse and the Eradication of Drug menace) Scheme, 2015”. (hereinafter referred to as “the Scheme”).

4 **Definitions**

In this scheme unless the context otherwise requires,

- a) “Act” means the Legal Services Authorities Act, 1987 (39 of 1987)
- b) “NDPS Act” means The Narcotic Drugs and Psychotropic Substances Act,1985 (Act no.61 of 1985)
- c) “Legal Service” means as defined under section 2(c) of Legal Services Authorities Act 1987.

- d) Legal Services Clinic means a clinic as defined under regulation 2 of National Legal Services Authority (Legal Services Clinics) Regulations 2011.
- e) Legal Services Institution means a State Legal Service Authority, Supreme Court Legal Services Committee, High Court Legal Services Committee, District Legal Service Authority or Taluk Legal Service committee, as the case may be.
- f) Panel Lawyer means the panel lawyer selected under regulation 8 of the National Legal Services Authority (Free and Competent Legal Services) Regulations 2010.
- g) Para Legal Volunteer means a Para Legal Volunteer defined and trained under the NALSA Scheme for Para Legal Volunteers (Revised) and Module for the Orientation – Induction – Refresher Courses for PLV Training. trained as such by a legal services institution.
- h) All other words and expressions used but not defined in this scheme and defined in the Legal Services Authorities Act, 1987 (39 of 1987) or the National Legal Services Authorities Rules,1995 or National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010 shall have the same meaning respectively assigned to them in the said Act or Rules or Regulations.

5 The Objectives of the Scheme

- 5.1 To disseminate awareness amongst the general masses regarding the Legal Provisions, various Policies, Programmes and Schemes, in respect of Narcotic Drugs and Psychotropic Substances as well as to create awareness about the ill effects of drug abuse amongst the children in schools and colleges, street

children, urban slum children, injective drug user(s), families, prisoners, workers in unorganized Sector, Chemists, drug pedlars, sex workers and general masses etc.

- 5.2 Organizing literacy camps for sensitizing the farmers who are carrying out permissible cultivation of various substances/source plants about the adverse health and life threatening effects of consumption of such drugs and substances.
- 5.3 To spread awareness amongst the parents, teachers and students about the ill effects of the substance abuse.
- 5.4 To sensitize the various stakeholders viz; Judiciary, Prosecution, Members of Bar, Police, Forensic Laboratories, De-addiction Centres, Corrective Homes, Rehabilitation Centres, School, College and University administration, Children Homes, Old-age Homes, NariNiketans, Schools for Special Children, Ministerial Staff of Courts, etc. about the drug menace and effective measures to curb it.
- 5.5 To mobilize the available infrastructure in identifying the victims of drug abuse, their treatment and post detoxification rehabilitation.
- 5.6 To tap the potential of the Panchayati Raj Institutions/Local Bodies at grassroot level for intervention and prevention of drug abuse and destruction of illicit cultivation of plants used to derive the drugs/ substances.
- 5.7 To maintain effective coordination with the Drug De-Addiction Centres. and Rehabilitation Centres etc. for better facilities and respect for the rights of the victims and to intervene, if any, breach is noticed.

- 5.8 To coordinate the activities of various stakeholders working in the field.
- 5.9 To ensure essential legal services to the victims of drug trafficking and drug abuse.

Plan of Action

6 Establishment of Special Units

- 6.1 The State Legal Services Authority (hereinafter referred to as SLSA) shall, within one month of the communication of this scheme, establish Special Units in all the Talukas/ Mandals/ Sub Divisions in the State, consisting of Judicial Officer(s), young lawyer(s) to be nominated by the Chairman, DLSA, Medical Officer(s) to be nominated by the Chief Medical Officer concerned, a Revenue/Police/Forest Officer(s) nominated by the Chief Secretary, social worker, Para Legal volunteer and a representative of NGO(s) having done substantial work for eradication of drug menace or rehabilitation and de-addiction, and accredited with SLSA. The Special Units shall be headed by the Chairman of the Taluka/ Mandal/ Sub Divisional Legal Services Committee (hereinafter referred to as TLSC), under the overall supervision of the Chairman, DLSA.
- 6.2 Such Special Units shall comprise of not more than ten members. The Secretary, DLSA shall be the Nodal Officer for the District. The Secretary, Taluka Legal Services Committee shall be Secretary of the Special Units.
- 6.3 After the constitution of the Special Units, the DLSAs shall conduct training programmes for members of the Special Units, as per module of NALSA.

- 6.4 The Special Units shall submit regular action taken reports to the SLSA through Chairman, DLSA, who will forward it along with his/her comments.
- 6.5 The Special Units shall, in terms of the scheme, within 15 days of its constitution, prepare a Micro Level Programme to be carried out/performed in their respective areas for tackling, intervention and prevention of drug abuse.
- 6.6 Such programme(s) shall be forwarded by the Chairman of the DLSA to the Member Secretary of the SLSA, who, in turn, shall place the same for approval, before the Executive Chairman. The Executive Chairman SLSA, may accord sanction with or without amendments, within 15 days.
- 6.7 Apart from the functions assigned to them under the provisions of this scheme, the Special Units shall also perform any other function, which SLSA may assign from time to time.

7 Creation of Database

- (a) The SLSAs shall create a Database of all the existing Policies, Schemes, Regulations, Directives, Preventions, Rules, Declarations and Reports available for effective prevention, protection, rehabilitation, elimination of Narcotic Drugs and Psychotropic Substances and upload the same on its website and share the same with NALSA.

8 Implementation of various schemes.

- (a) The SLSAs shall take all steps to disseminate the information regarding policies, schemes, programmes to the general public and in particular, to the victims of Drug abuse, their families and the functionaries of De-addiction / Rehabilitation Centers
- (b) The Special Units shall display such information prominently in their offices and shall get suitable booklets/pamphlets/placards etc, printed, as approved by the SLSA.

9 Destruction of Illicit cultivation

The SLSAs shall coordinate with the State Governments for the destruction of illicit cultivation of cannabis and opium as well as any other plant used to derive Narcotic and Psychotropic Substances. The SLSAs may also urge the State Government to include such destruction as admissible work under MNREGA Scheme. This will pave the way for the destruction of illicit plants on a large scale besides, encouraging community involvement in the entire campaign.

10 Participation of Local Bodies/Panchayati Raj Institutions at grassroot level

The participation of these institutions shall be in the following manner:-

- (a) Special Units shall coordinate with the Panchayati Raj Institutions to identify areas, where substances such as charas/ganjaetc are being illegally cultivated. Reports so prepared by the Special Units shall be forwarded to the SLSA through the Chairman DLSA and with the approval of the Executive Chairman, SLSA, the matter shall be taken up with the concerned authorities for appropriate action.

- (b) The Special Units shall seek assistance of Panchayati Raj Institutions to identify the drug addicts and injective drug user (s) for making arrangements for their treatment and rehabilitation.
- (c) The Special Units shall also seek assistance of the Panchayati Raj Institutions for spreading awareness about ill effects of drugs in the rural areas.
- (d) The Special Units should as far as is possible associate the Mahila Mandals and Yuvak Mandals or other similar self help groups of the area in such campaigns

11. Awareness

11.1 Awareness in Schools/Colleges

The Special Units shall coordinate with Legal Literacy Clubs in schools and Legal Services Clinics in colleges to conduct awareness and sensitization programmes in the Schools and Colleges, to make students aware of the ill effects of drugs.

- (a) The awareness and sensitization programmes could be conducted through various modes, such as;
 - i. Starting awareness campaign in the school/cluster of schools under the banner of “run against drug abuse” by associating the “Icons” of the area.
 - ii. Awareness camps
 - iii. Holding regular Parents-Teachers meetings.
 - iv. Through Mass Literacy campaigns
 - v. Through Symposiums. Seminars, Debates, etc.

- vi. Organizing quiz and essay writing competitions about the ill effects of drug abuse
 - vii. Nukkad Nataks; Any other similar and innovative manner
- (b) The teachers in the schools/colleges should also be involved in awareness/sensitization programmes.
 - (c) Pamphlets/booklets prepared by the NALSA/SLSA should be distributed to the students in awareness/sensitization programmes.
 - (d) Such pamphlets/booklets will also be distributed at all awareness camps and also help at front offices and legal services clinics
 - (e) Inclusion of Chapter on Drug Abuse in School and College Curriculum-An endeavour for compulsorily getting a chapter on drug abuse included in the curriculum of Schools and Colleges, by taking up the matter with respective Education Boards and Universities

11.2 Awareness to the families of the victims of Drug Abuse

Children generally become victims of drug abuse in those families where the affectionate bond between children and parents is either loosened or obliterated or where parents or family members consume drugs /substances.

- (a) The Special Units should identify the families of victims of drug abuse and the parents who are habituated to either one or other forms of addiction and shall sensitize them to build parental bonds with their children. The focus will be on persuading the parents to interact with children, supervise their activities and to talk to the teachers about their children and their behaviour and that drug addiction can be cured.

- (b) Awareness must be raised to aid in the de-stigmatization of addiction as well as the mental illnesses arising out of it, in order for addiction to be recognised as any other health problem and treated at the earliest

11.3 Awareness amongst Street Children

- a) Large number of victims of drug abuse are the street children. They are the most neglected and vulnerable class, generally abandoned and left out by their families. Hence, there is a greater need to ensure their safety along with NGOs working with street children.
- (b) The Special Units shall identify the addicted street and urban slum children and make arrangement for admitting them to De-Addiction Centre(s) or Rehabilitation Centre(s), as the case may be.

11.4 Awareness amongst the victims of drug abuse

With the identification of the drug addicts, Special Units shall conduct regular sensitization programme(s) for them by associating Psychologists and Doctors. Role Models and the persons who have achieved success in the field of Sports, Cinema, Literature etc. may be associated in such programmes.

11.5 Awareness Programmes for sex workers

The Special Units shall organize strategic awareness programmes in the red-light areas, targeting the sex workers and their children about the ill effects of drug abuse.

11.6 Awareness Programmes in Jails.

The Legal Services Institutions shall organize periodical awareness and sensitization programmes for inmates of jails and jail staff about the ill-effects of the narcotic drugs.

11.7 **Awareness amongst General Public**

- a) The Special Units shall periodically organize Legal Literacy Camps on NDPS Act in the areas where farmers are permitted to cultivate opium or other such plants with special focus on spreading awareness about the ill effects of illegal sale or consumption of narcotic substances.
- (b) The general public shall be made aware of the fact that giving secret information to police about illegal possession, transportation, sale or cultivation etc. of drugs or prohibited and banned drugs is protected under law and their identity is kept secret.
- c) The Special Units shall also organize regular Legal Literacy Camps for transporters and taxi operators for educating them about the consequences and ill effects of drugs.
- d) The Legal Services Institutions Special Units shall display sign boards, hoardings etc. about the stringent provisions of the NDPS Act and ill effects of drug abuse at public places such as Bus-Stands, Railway Stations, Airports, Public and Private Schools, Universities, Panchayat Bhawans, Courts, District Collectrates, SDM offices etc.
- (e) The Special Units shall organize awareness camps in Villages, Fairs and Festivals about the ill effects of the drug abuse.
- (f) The Special Units shall organize awareness camps in resettlement colonies, residential areas, market places by involving various organizations/ associations.

- (g) The SLSAs will endeavour to involve Postal Authorities, Courier Agencies, and Financial Institutions to sensitize their staff about the drugs being transported clandestinely through these agencies.

11.8. Awareness amongst Chemists and Peddlers

- (a) The Special Units shall sensitize the chemists and druggists about the ill effects of the drugs.
- (b) Chemists may be trained to watch out for children and youth who are buying prescription drugs on a regular basis and refuse to sell them such drugs.
- (c) The Drug Peddlers shall be identified and similar sensitization programmes shall also be conducted for them.
- (d) Police could also be sensitized to be involved in the prevention of addiction by keeping a watch on suspicious activities by street vendors, paan stalls etc.

11.9 Awareness through Electronic and Print Media.

SLSAs should organize regular Radio talks and Television programmes on harmful effects of drugs and means to curb the same. Judicial Officers, Lawyers, Psychologists, Psychiatrists, Police Officers, Icons etc. shall be associated in these programmes.

12. Co-ordination with De-addiction/Rehabilitation Centres

- (a) The Special Units shall visit the Rehabilitation and De-addiction Centre (s) situated within their jurisdiction at least once in a month. The Special Units will draw up a list of rehabilitation and de-addiction centres in the Taluk and will continuously update the information. It shall also forward the list to the SLSA along with details of who is running the same and their background

- (b) The Special Units will inspect the facilities at the rehabilitation/ de-addiction centre(s) to assess the adequacy of the facilities
- (c) The Special Units shall inspect the record regarding visits of the counselor, psychologist and Doctors.
- (d) The Special Units will check the staff ratio to see that there is no shortage of staff and staff strength is commensurate to the number of victims at the drug rehabilitation centres.
- (e) Whenever the Special Units find inadequacy in staff, infrastructure or facilities, the Special Units will make appropriate recommendations in this regard to the DLSA, who shall take up the matter with the concerned authorities and ensure that the deficiencies are removed.
- (f) In case, the Special Unit comes across any violation of human rights of victims, it shall promptly file a report with the Chairman, TLSC who shall look into the report and apply his mind before initiating legal proceedings. The TLSC will also grant legal assistance where such proceedings are to be initiated on behalf of the victim.
- (g) The Special units shall gather information from the rehabilitation centre(s) and shall send monthly report to the DLSA concerned, mentioning therein, the details of victims, activities undertaken and visits of Psychologist(s) and Doctor(s) and the corrective measures, if any, taken on the report of the Special Units.
- (h) The Special Units will arrange and organize periodical awareness camps for the victims. Cultural and other Socially Active Groups shall be associated in such awareness camps with an aim to bring the victims to the main stream of the society.

13. Training/Refresher Courses for Stakeholders

The SLSAs shall arrange and organise either by themselves or along with the State Judicial Academies, sensitization programmes, refresher courses, special trainings and conferences for Judicial Officers, Prosecutors, members of the bar, police officers and ministerial staff of the Courts.

14. Observance of International Day against Drug Abuse on 26th June

All Legal Services Institutions with the help of Special Units shall organize awareness programmes on 26th June every year for observing “International Day against Drug Abuse and Illicit Trafficking” for creating awareness about drug abuse and its consequences.

15. Association of Reformed Drug Addicts.

The Special Units shall identify former drug addicts in their areas and associate them in the awareness camps to share their experiences.

16. Anti Drug Clubs

- (a) The School and College authorities shall be requested and involved by Special Units for opening Anti Drug Clubs in the School (s)/College(s) so that the students become role models and make their colleagues aware of ill effects of drugs.
- (b) The Special Units shall organize sensitization programmes through Anti Drug Clubs in School(s)/College(s). Legal literacy clubs and legal services clinics should be used for this as mentioned earlier.

17. Involvement of Para Legal Volunteers

The Para-Legal Volunteers shall be imparted training about various Schemes, who in turn shall visit different areas and make aware and sensitize people about the ill-effects of the Narcotic Drugs and Psychotropic Substances.

18. Recognition of Good Work

At the end of every financial year, the SLSA should commend outstanding work done by the members of the best Special Units in the State.



NALSA
(Legal Services to Senior Citizens)
Scheme, 2016





NALSA (Legal Services to Senior Citizens) Scheme, 2016

1. BACKGROUND

- 1.1 The Senior Citizens constitute a class in themselves. They are a reservoir of experience and knowledge, yet in many cases they are marginalised and almost wished away by the younger sections of the society as a burden on the society. The senior citizens do not constitute a homogenous group, the differences being based on the age gap amongst the senior citizens themselves, level of physical and mental alertness, their ability to work and such like.
- 1.2 Over the years, with advancement in science, there has been a substantial increase in life expectancy. As mentioned in the National Policy on Senior Citizens, 2011, “the demographic profile depicts that in the years 2000-2050, the overall population in India will grow by 55% whereas population of people in their 60 years and above will increase by 326% and those in the age group of 80+ by 700% - the fastest growing group.” 1/8th of the world's elderly population lives in India. In real terms the population of elderly persons has increased from nearly 2 crores in 1951 to 7.2 crores in 2001 to 10.38 crores in 2011. Thus about 8% of the population is above 60 years. The highest percentage of people aged above 60 years is found in Kerala with the elderly constituting 12.55% of the population of the state. The number of females is larger in the category of 60+ age group with the number of females being 5, 27, 77, 168 to 5, 10, 71, 872 males as per the Census of 2011.

- 1.3 Senior citizens face a myriad of challenges- social, physical, mental and economic which are unique to them. The economic problems could be on account of loss of employment with a consequent loss of income and economic insecurity. Physical problems include health and medical problems. Social problems could be lack of familial support and social maladjustment. Security is another major issue for the older persons. The problem is made more acute with the break-up of the joint family system and more and more elderly persons being left to fend for themselves. There is migration of productive members of the family from the rural to urban areas. As such the women and the older persons in rural areas face greater problems.
- 1.4 There is also evidence of systematic and continuous abuse of the elderly i.e. infliction of physical, emotional or psychological harm on the older persons. Half of the elderly population reportedly experience abuse besides disrespect and neglect. According to the report of the National Crime Records Bureau (NCRB), a total of 8,973 cases were registered as crimes against senior citizens from January 2014 to October, 2014. As such every society and State recognizes certain rights of the senior citizens, distinct from the rest of the society.
- 1.5 The issue of ageing has been raised at the United Nations from time to time since 1948. The World Assembly on Ageing was held in Vienna in 1982 where an International Plan of Action on Ageing was adopted with the objective to strengthen the ability of individual countries to deal effectively with the ageing in their population, keeping in mind the special concerns and needs of the elderly. In 1991, the UN General Assembly adopted certain principles aimed at independence, participation, care, self-fulfilment and dignity of the older persons. 1st October has been declared as the International Day for the Elderly, now known as the International Day of the Older Persons.

Note: For the purposes of this Scheme, the persons above the age of 60 years are referred to as 'senior citizens' and the terms 'older persons', 'elder persons' are used synonymously.

2. CONSTITUTIONAL GUARANTEES

- 2.1 The Constitution of India guarantees the right to life and liberty of every individual under Article 21. This has been interpreted to include the right to live with dignity and would encompass the right to live with dignity of the senior citizens. Article 41 of the Constitution lays down that the State shall, within the limits of economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Article 46 also imposes a positive obligation on the State to promote with special care the economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation. Articles 41 and 46 are included in the Directive Principles of State Policy which are not enforceable in any court of law, nevertheless, they impose positive obligations on the State and are fundamental in the governance of the country.
- 2.2 Entry 9 in the State List and entries 20, 23 and 24 of the Concurrent List in the Seventh Schedule to the Constitution relate to old age pension, social security and social insurance and economic and social planning. Entry 24 in the Concurrent List specifically deals with the 'Welfare of labour, including conditions of work, provident funds, liability for workmen's compensation, invalidity and old age pension and maternity benefits.' Thus, there are several constitutional entries relating to old age.

3. LEGISLATIVE FRAMEWORK

- 3.1 Most of the legislation as exists relates to making provision for maintenance for the parents and does not refer to senior citizens specifically. Hindu Law has recognized the obligation of the sons to maintain the parents, who were not able to maintain themselves

since ancient times. Under the Hindu Adoption and Maintenance Act, 1956, aged or infirm parents are entitled to maintenance from son and daughter provided the parents are unable to maintain himself/herself out of his/her own earnings or other property. The Muslim Personal Law places an obligation on children in easy circumstances to maintain their parents, even if the latter are able to earn something for themselves. A person is also bound to maintain his paternal and maternal grandfathers and grandmothers, if they are poor and not otherwise, to the extent as he is bound to maintain his poor father.

- 3.2 Sections 125 to 128, Code of Criminal Procedure, 1973 enable the father or mother, who is unable to maintain himself or herself to claim maintenance from his/her major son/daughter, if they neglect or refuse to maintain the parents. This is a secular law and applies across all religions. If the person against whom the order has been passed fails to pay the amount of maintenance without any sufficient reason, execution proceedings can be filed and the court may even issue a warrant imposing fines for the breach of the order and the person may be imprisoned. Similarly, the mother may file a petition against her son under the Protection of Women from Domestic Violence Act if she is subjected to domestic violence and claim various reliefs provided under the Act.
- 3.3 Considering the need to protect the rights of senior citizens and to further the constitutional objectives, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 was enacted. Under this Act, an application for maintenance can be made by (a) 'Parent', i.e., father or mother whether biological, adoptive or step father or step mother; and (b) 'Senior Citizen', i.e. a person who has attained the age of 60 years or above. The application for maintenance can be made by (a) parent or grand-parent, against one or more of his/her children, i.e., son, daughter, grandson and grand-daughter, not being a minor; and (b) childless senior

citizen, against his/her relative, i.e. legal heir, not being a minor, who is in possession of or would inherit his property after his death. The Act provides for the setting up of one or more Tribunals for each sub-division for the purpose of adjudicating and deciding upon the order of maintenance and for the constitution of Appellate Tribunal for each district to hear the appeal against the order of the Tribunal. Importantly, under the Act, the right to receive maintenance is enforceable against transferee of property of the parent/senior citizen, if the transferee has notice of the right, or if the transfer is gratuitous though the same is not enforceable against the transferee for consideration and without notice of right. The Tribunal may even declare transfer of property by a senior citizen as void at the option of the transferor where a senior citizen has transferred the property by way of gift or otherwise, subject to the condition that the transferee shall provide the transferor with basic amenities and basic physical needs, and such transferee refuses or fails to provide such amenities and physical needs.

- 3.4 Another important feature of the Act is that abandoning of senior citizen by anyone having care or protection of such senior citizen is an offence punishable for a maximum period of 3 months or fine upto Rs.5000/- or with both. This is a very important provision for protecting the life and property of senior citizens and to prevent their being abandoned at places from where they could not be found. The Act also provides:

-for the establishment of Old Age Homes for Indigent Senior Citizens i.e. senior citizens who do not have sufficient means.

-that the State Government has to ensure that the Government hospitals or hospitals funded fully or partially by the Government shall provide beds for all senior citizens; separate queues are arranged for senior citizens and that facility for treatment of chronic, terminal and degenerative diseases is expanded for senior citizens.

4. GOVERNMENTAL SCHEMES FOR SENIOR CITIZENS

4.1 Different Ministries under the Central Government have come up with different Schemes for senior citizens. The National Policy on Senior Citizens focusses on mainstreaming senior citizens, especially older women, promoting the concept of 'ageing in place' or ageing in own home, housing, income security and homecare services, old age pension and access to healthcare insurance schemes and other programmes and services to facilitate and sustain dignity in old age. The Schemes for Senior Citizens include:

- i) Integrated Programme for Older Persons under which financial assistance upto 90% of the project cost is provided to NGOs for establishing and maintaining Old Age Homes, Day Care Centres, Mobile Medicare Units and to provide non-institutional services to older persons.
- ii) Rebate in income tax, deduction in respect of medical insurance premium upto Rs.30,000/- under section 80D of Income Tax Act, 1961, deduction under section 80D for treatment of specified ailment is Rs.60,000/- for senior citizens, separate counters for senior citizens at the time of filing the income tax returns and on the spot assessment facility.'
- iii) Senior Citizens Saving Scheme' under which the citizens of 60 years and above can deposit Rs.1000/- or its multiples in post offices doing savings bank work which carries an interest of 9% per annum and the maturity period of the deposit is five years, extendable by another three years. For senior citizens i.e. those having the age of 65 years and above, higher rates of interest on saving schemes are available.

- iv) Under the Indira Gandhi National Old Age Pension Scheme, central assistance is given towards pension at the rate of Rs.200/- per month to persons above 60 years and at the rate of Rs.500/- per month to senior citizens of 80 years and above belonging to a household below the poverty line and the same is expected to be supplemented by at least an equal contribution by the States.
- v) Discount on basic fare for domestic flights in economy class and priority in boarding the flights.
- vi) Concession for senior citizens in all classes and trains, priority for lower berths, separate counters for senior citizens for purchase/ booking or cancellation of tickets, wheel chairs for use of senior citizens are available at all junctions, District Headquarters and other important stations.
- vii) Reservation of two seats in the front rows of buses of State Road Transport Undertakings for senior citizens and even fare concession.
- viii) Separate queues for older persons in hospitals for registration and clinical examination and concessions to senior citizens in treatment of diseases like kidney problem, cardiac problem, diabetes and eye problem.
- ix) Under the Antyodaya Scheme, the Below Poverty Line families which include older persons are provided food grains i.e. 35 kgs per family per month at concessional rates. The persons above 60 years from the BPL category were given priority for identification.
- x) Under the Annapoorna Scheme being implemented by the States/ UT Administration, 10 kgs of food grains per

beneficiary per month are provided free of cost to those senior citizens who remain uncovered under the old age pension scheme.

- xi) Priority in issuance of ration to ration card holders who are over 60 years of age in Fair Price Shops.
 - xii) Priority in giving telephone connections by the Ministry of Telecommunications and priority to faults/ complaints of senior citizens by registering them under senior citizens category with a VIP Flag which is a priority category.
- 4.2 Priority is also given to cases of senior citizens in the courts with a view to expeditious disposal. Under the Right to Information Act, second appeals filed by senior citizens are taken on a high priority basis.
- 4.3 Several States have come out with their own Schemes and Programmes for the benefit of the senior citizens especially to provide security to senior citizens.
- 4.4 Despite the existence of various legal provisions and Schemes for senior citizens, their benefits have reached very few senior citizens. Often the senior citizens are unaware of their entitlements and/ or they are in too destitute a condition to be able to access the said benefits. They are not only deprived of their properties but also subjected to all forms of abuse ripping them off their dignity as well. For the widows who are senior citizens or for the retired senior citizens, it often becomes a herculean task to get their pension and other benefits. The laws and the Schemes lay down the entitlements of the senior citizens and if the senior citizens have any difficulty in availing their entitlements under the laws and the Schemes, it is felt by NALSA that Legal Services Institutions have a significant role to play and they can play a pivotal role in ensuring access to the benefits of the Schemes and the legal provisions to the senior citizens.

4.5 The Preamble of the Legal Services Authorities Act, 1987 emphasises that the legal services authorities are concerned with the weaker sections of the society and imposes a duty on them to ensure that opportunities for securing justice are not denied to any citizen by reason or economic or other disabilities. Under Section 4(b) of the Legal Services Authorities Act, 1987, the “Central Authority” i.e. the National Legal Services Authority has been obligated to “frame the most effective and economical schemes for the purpose of making legal services available under the provisions” of the Act. Further Section 4(l) enjoins the “Central Authority” to take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures. Likewise, under Section 7(c) it is the function of the State Authority i.e. the State Legal Services Authority to undertake preventive and strategic legal aid programmes. Thus the Act itself casts a duty upon the Legal Services Authorities to spread legal awareness about the laws and various administrative measures and programmes and to undertake preventive and strategic programmes.

5. **NAME OF THE SCHEME**

5.1 The Scheme shall be called “NALSA (Legal Services to Senior Citizens) Scheme, 2016”. In this scheme, the persons above the age of 60 years would be regarded as senior citizens.

5.2 The terms PLVs, Legal Services Clinics, Front Office, Panel Lawyers and Retainer Lawyers will mean the same as defined under the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010 and National Legal Services Authority (Legal Services Clinics) Regulations, 2011 and the NALSA Scheme for Para Legal Volunteers (Revised).

6. OBJECTIVES OF THE SCHEME

The main objectives of the Scheme are as follows:

- 1) To outline the basic rights and benefits that should be accorded to senior citizens;
- 2) To strengthen legal aid and representation at the national, state, district and taluka levels for senior citizens who are entitled under Section 12 of the Legal Services Authorities Act, 1987 in availing the benefits of the various legal provisions which exist;
- 3) To ensure access to various Governmental Schemes and programmes to the senior citizens;
- 4) To ensure that the authorities and institutions such as the Tribunals and the Appellate Tribunals under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, old age homes for senior citizens have been established;
- 5) To create and spread awareness about the rights and entitlements of the senior citizens under the various laws and Governmental Schemes and programmes through the District Legal Services Authorities, Taluka Legal Services Committees, panel lawyers, para-legal volunteers, students and legal services clinics;
- 6) To enhance capacities at all levels of panel lawyers, para-legal volunteers, volunteers in legal services clinics, government officers tasked with the implementation of the various schemes, service providers, police personnel, non-governmental organizations by organizing training, orientation and sensitization programmes; and
- 7) To undertake research and documentation to study the various schemes, laws etc. to find out the gaps, the needs and to make suggestions to the appropriate authorities.

The ultimate objective of the Scheme is to ensure that the senior citizens live a life of dignity and enjoy all the benefits and facilities which are due to them.

7. PLAN OF ACTION

7.1 Establishment of Tribunals, Appellate Tribunals etc.

As a precursor to the senior citizens being able to enforce their rights, it is essential that the institutions contemplated under the law for providing relief to them are set up.

- a) Section 7 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, provides for the setting up of one or more Tribunals for each sub-division for the purpose of adjudicating and deciding upon the order of maintenance. Section 15 of the Act also provides for the constitution of an Appellate Tribunal for each district to hear appeals against the orders of the Tribunal. The SLSAs and the DLSAs shall take up the issue of constitution of Tribunals and Appellate Tribunals as per the mandate of the Act on an urgent basis with the State Government.
- b) Section 19 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 provides for the establishment of Old Age Homes for Indigent Senior Citizens i.e. senior citizens who do not have sufficient means, as determined by the State Government, from time to time to maintain themselves. The SLSAs and DLSAs will take up with the State Government, the matter of establishment of sufficient number of Old Age Homes for Indigent Senior Citizens. The SLSAs and DLSAs may also explore the possibility of setting up of Old Age Homes for Senior Citizens under Corporate Social Responsibility.

Note: For the purposes of grant of legal aid, the eligibility criteria is laid down in Section 12 of the Legal Services Authorities Act, 1987. All women including those who are senior citizens would be entitled to legal aid under Section 12 of the Act and all those who fall in any of the categories enumerated in Section 12 including senior citizens would be entitled to legal aid. However, other services such as assistance in availing benefits under Governmental schemes, legal awareness may be provided across the spectrum to all senior citizens.

- c) SLSAs should carry out regular visits to the old age homes to ensure that the senior citizens have adequate facilities and that they are treated with dignity.

7.2 **Legal Services Clinics**

- a) SLSAs shall set up Legal Services Clinics at every Tribunal and Appellate Tribunal established under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and also in old age homes.
- b) While at present there is a bar to lawyers appearing before the said Tribunals, it shall be ensured that trained para-legal volunteers are available in the Legal Services Clinics to assist the senior citizens in making applications and carrying out other procedural requirements.
- c) Opening of the Legal Services Clinics shall be communicated to all the Government bodies and departments including the police, NGOs.
- d) The Legal Services Clinics so established shall be governed by the National Legal Services Authority (Legal Services Clinics) Regulations, 2011 in respect of their functioning, infrastructural facilities, maintenance of records and registers, deputing of PLVs and control over such clinics.
- e) The SLSAs and DLSAs shall encourage the students in Legal Services Clinics set up in colleges and universities to visit old age homes and provide legal services to senior citizens in the community.
- f) The Legal Services Clinics shall also facilitate the widows and senior citizens in getting pensionary benefits and other entitlements.

7.3 Legal Representation

- a) All senior citizens who are entitled to legal aid under Section 12 of the Legal Services Authorities Act, 1987 shall be provided legal aid on a priority basis.
- b) It is essential that the Legal Services Institutions are accessible in terms of physical infrastructure for the senior citizens, otherwise access to justice would become meaningless for them. Accordingly, steps should be taken by Legal Services Institutions to ensure accessibility such as having the front office on the ground floor.
- c) SLSAs shall ensure that the senior citizens do not have to face any kind of discomfort in procedural wrangles.
- d) Every District Legal Services Authority and Taluka Legal Services Committee shall designate at least three panel lawyers as Legal Services Officers for the purpose of this Scheme.
- e) The District Legal Services Authorities shall also depute sufficient number of PLVs for the implementation of this Scheme and for this purpose they shall draw upon PLVs who are trained to attend to the problems of senior citizens. Efforts should also be made to identify and train PLVs from amongst the senior citizens, both men and women.
- f) The PLVs shall act as the interface between the senior citizens in the community who are unable to access the Legal Services Institutions and the Legal Services Institutions. Where it is not possible for the senior citizens to reach the Legal Services Institutions on account of their conditions, the Legal Services Institutions shall reach out to them through panel lawyers and PLVs.

- g) SLSAs shall provide training to panel lawyers to enable them to sensitively deal with cases of senior citizens. The SLSAs shall ensure that the legal services provided to senior citizens are of the highest quality so that meaningful and effective legal services can be provided to them.

7.4 Identification of issues affecting senior citizens

- a) SLSAs and DLSAs shall make an endeavour to identify the core issues which affect the senior citizens in a particular area and deal with them accordingly. While some issues may be common across geographical barriers, there may be some issues which are unique to some areas such as in some areas, the senior citizens being on their own may be a major issue as their families may have migrated to cities or other countries. Certain health problems may be more acute in a particular area.
- b) SLSAs and DLSAs shall then seek solutions to the issues that arise on regional basis and use their resources to implement the solutions, including through coordination with the concerned governmental agencies.
- c) SLSAs and DLSAs should facilitate the setting up of self-help groups of senior citizens to encourage community support and to reduce a sense of dependency on the part of the senior citizens.

7.5 Database

- a) All SLSAs shall have database of all the existing Central or State Schemes, policies, regulations, policy directives concerning senior citizens and the same may also be published in the form of pamphlets or booklets to be used in dissemination of information and creating awareness about the rights of the senior citizens.
- b) SLSAs and DLSAs shall publish information booklets in regional languages explaining in simple terms:

- 1) provisions of law such as on maintenance, Wills, social welfare schemes;
- 2) details about access to remedies; and
- 3) contact details of helpline numbers available across the state.

Such information booklets may be distributed to senior citizens and used during awareness programmes.

- c) DLSAs shall also maintain a database of hospitals, medical centres and other facilities which may be available for senior citizens in their area.
- d) The information maintained by DLSAs shall be circulated to the Taluka Legal Services Committees, village panchayats, legal services clinics and PLVs.
- e) SLSAs/ DLSAs shall also upload the data collected on their website.
- f) DLSAs shall prepare a database of senior citizens in their area so that PLVs may be deputed for their assistance as and when necessary. Such database may also be shared with law enforcement agencies to address the security concerns of senior citizens. This would also enable the DLSAs to provide immediate assistance to persons in distress by coordinating with the concerned departments such as, health or police departments.

7.6 Implementation of various Schemes

- a) SLSAs shall take all steps to disseminate information regarding the policies, schemes, programmes to the senior citizens and government functionaries.

- b) SLSAs shall ensure that such information is prominently displayed in old age homes, hospitals and other places which are frequented by senior citizens.
- c) Various States have special schemes for security of senior citizens such as registration of senior citizens with the concerned police stations. SLSAs may liaise with the law enforcement authorities to address the security concerns of senior citizens and to enhance the interface between the police and the senior citizens such as through increased patrolling, maintaining regular contact with senior citizens once every week or every fortnight. SLSAs and DLSAs may depute PLVs to assist in the registration of senior citizens with the police stations, in getting servant and tenant verifications done and such other matters which concern the security of the senior citizens.
- d) Legal services to be provided would include informing the beneficiaries about the different government schemes to which they are entitled and the benefits thereunder; assisting the beneficiaries to procure the documents required for availing the benefits under the schemes; informing the beneficiaries of the name and address of the designated authority or the officer who may be approached for availing the benefits under the schemes; offering to send para-legal volunteers with the beneficiaries to the office of the designated authority or to the officer concerned under any of the schemes.
- e) SLSAs shall develop effective coordination and interface with all the governmental bodies or functionaries, non-governmental organizations and other organizations concerning the welfare of senior citizens to ensure that the benefits of the various schemes that exist for senior citizens reach the senior citizens.

7.7 Awareness

- a) SLSAs shall draw up yearly programme for creating awareness on the rights of senior citizens and should endeavour to create a culture which is sensitive to the rights and needs of senior citizens.
- b) The Legal Services Institutions shall organize awareness programmes to sensitize people to the needs of the senior citizens and that it is the moral duty of children to take care of senior citizens and not to leave them in a destitute condition in their old age.
- c) The Legal Services Institutions should explain the need to treat the senior citizens with dignity.
- d) SLSAs along with DLSAs shall conduct awareness programmes to generate awareness about the entitlements of the senior citizens under various laws and government schemes.
- e) SLSAs, DLSAs and Taluka Legal Services Committees shall also create awareness regarding the availability of legal services for senior citizens to facilitate access to their entitlements.
- f) Special awareness drives may be undertaken in old age homes or other places frequented by senior citizens and PLVs and students may be encouraged to actively participate in such programmes.
- g) While organising awareness programmes, the DLSAs and Taluka Legal Services Committees may also coordinate with the relevant health department to organise special health or check-up camps for senior citizens such as general health camps, eye check-up camps etc. or with the police to have a special registration drive of senior citizens.

- h) All possible methods of spreading awareness should be used such as Doordarshan, All India Radio, private TV channels, hoardings, organising cultural programmes and setting up stalls at religious fairs, festivals.
- i) SLSAs should engage with senior citizens and actively avail of their services in carrying out awareness programmes on various issues as the senior citizens may have greater credibility and appeal in an area.

7.8 Training and Orientation Programmes

SLSAs shall conduct training and orientation programmes for panel lawyers and PLVs to sensitize them on how to deal with cases of senior citizens and to build their capacity, knowledge and skill. Sensitization programmes should also be organized for other stakeholders such as the government functionaries, police personnel and NGOs.

7.9 Observance of the International Day for the Older Persons

All Legal Services Institutions shall observe 1st October of every year as the International Day for the Older Persons and organize awareness programmes on that day for creating awareness of the rights and entitlements of the senior citizens.



NALSA
(Legal Services to Victims of Acid Attack)
Scheme, 2016





NALSA (Legal Services to Victims of Acid Attacks) Scheme, 2016

1. BACKGROUND

- 1.1 Acid attacks are the most pernicious form of violence that is resorted to and is mostly gender specific. While acid attacks are reported in many parts of the world, the incidents of acid attacks in India have been on the rise. As per the data maintained by National Crime Records Bureau, the number of incidents of acid attacks reported in 2011 were 83, 85 in 2012 and 66 in 2013 though according to the Acid Survivors Foundation India (ASFI), at least 106 such attacks were reported in 2012, 122 in 2013 and 309 in 2014 and according to the activists, the figure rose to 500 in 2015. However, according to the National Crime Records Bureau, 222 cases of acid attacks were reported in 2015. The figures may vary but the number of acid attacks have been on the rise. There are also many unreported cases of acid attacks, especially in the rural areas and some such incidents may even result in the death of the victims. Many incidents are not reported due to fear of backlash from the perpetrators.
- 1.2 The incidents of acid attacks in India show that they are generally against the women. Quite often they are a result of a rejection of the marriage proposal or sexual advances. Conflicts related to dowry can also result in acid attacks. The acid attacks are also resorted to as a means of taking revenge or due to family or land disputes or over inheritance and other property issues. Occasionally, acid attacks may occur due to social or political or religious beliefs. The Justice Verma Committee constituted by the

Central Government in 2013 in the aftermath of the Nirbhaya case to suggest reforms in the criminal justice system dealt with the issue of acid attacks and observed:

“We understand that a most heinous form of attack on women, which is commonplace in several Asian and African countries is the throwing of acid on women for a multitude of reasons, including alleged adultery, turning down advances from men, and also as a form of domestic violence. Acids and other corrosive substances are thrown on women or administered to them, thereby causing death or physical and psychological damage with unfathomable consequences. The 226th Report of the Law Commission of India, which dealt particularly with this offence stated:

“Though acid attack is a crime which can be committed against any man or woman, it has a specific gender dimension in India. Most of the reported acid attacks have been committed on women, particularly young women for spurning suitors, for rejecting proposals of marriage, for denying dowry etc. The attacker cannot bear the fact that he has been rejected and seeks to destroy the body of the woman who has dared to stand up to him.”

5. In a certain sense, the aggressor is conscious that self-worth and self-esteem of a woman often lies in her face, which is a part of her personality. The dismemberment of the face or the body is not merely an offence against the human body but will cause permanent psychological damage to the victim. What happens when there is permanent physical and psychological damage to a victim, is a critical question and law makers have to be aware that offences are not simply based on the principle of what might be called offence against the body, i.e., damage of the body, but they must take into account the consequences on the right to live with dignity which survives the crime. This is an

important consideration both in the fields of criminology and also in the field of sociology.”

The factors which lead to acid attacks were thus discussed in both the Justice Verma Committee Report and in the 226th Report of the Law Commission as also the effects of acid attacks. Apart from lifelong bodily disfigurement and physical challenges often requiring life-long treatment, the psychological challenges are greater and deeply affect the victims apart from affecting the employability of the victims. It is also seen that there are limited medical facilities available in the country for acid victims with the number of specialised burn hospitals being limited and it becomes a herculean task for the victim to get admitted in a hospital, much less to get treatment which may often span from a few months to several years. The treatment may also involve huge costs for the victims and their families. The rehabilitation of the victims also becomes an important issue.

2. CONSTITUTIONAL GUARANTEES

- 2.1 The Constitution of India guarantees the right to life and liberty of every individual under Article 21. This has been interpreted to include the right to live with dignity and would encompass the right to live with dignity of all including victims of acid attacks. Article 41 of the Constitution lays down that the State shall, within the limits of economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Article 15(3) of the Constitution also empowers the State to make special provisions for women.

3. LEGISLATIVE FRAMEWORK

- 3.1 In the absence of any specific provisions to deal with incidents of acid attacks, such cases were generally dealt with under Section 326 of the IPC and other provisions. However, the Justice Verma Committee recommended that acid attacks be defined as an offence in the IPC and observed:

“9. The gender specificity and discriminatory nature of this offence does not allow us to ignore this offence as yet another crime against women. We recommend that acid attacks be specifically defined as an offence in the IPC, and that the victim be compensated by the accused. However in relation to crimes against women, the Central and State governments must contribute substantial corpus to frame a compensation fund. We note that the existing Criminal Law (Amendment) Bill, 2012, does include a definition of acid attack.”

Thus a recommendation was made not only for the inclusion of a specific offence in respect of acid attacks but also for providing compensation to the victims of acid attacks.

- 3.2 By virtue of Criminal law (Amendment Act), 2013, Sections 326A and 326B were inserted in the Indian Penal Code providing for punishment to anyone who causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt or who throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or

grievous hurt to that person. “Acid” was defined to include any substance which has acidic or corrosive character or burning nature that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

- 3.3 The issue of acid attacks also came up before the Supreme Court and in its order dated 18.7.2013 in *Laxmi v. Union of India*, W.P. (Crl.) No.129/2006, the Supreme Court directed that over the counter sale of acid would be completely prohibited unless the seller maintained a log/ register recording the sale of acid which would contain the details of the person(s) to whom acid(s) is/ are sold and the quantity sold. Further the acid would be sold only after the buyer had shown a photo ID issued by the Government which also had the address of the person and the reason/ purpose for procuring acid was specified. It was also directed that no acid shall be sold to any person who was below 18 years of age. Directions were also issued for educational institutions, research laboratories, hospitals, Government Departments and departments of Public Sector Undertakings who were required to keep and store acid. In the final order dated 10.4.2015, it was reiterated that an appropriate notification banning the sale of acid across the counter should be issued within three months from the date of the order. Further the Supreme Court in *Parivartan Kendra and Anr. V. Union of India and Ors.* WP (Civil) No.867 of 2013 decided on 7.12.2015 directed that stringent action be taken against those erring persons supplying acid without proper authorization and also the concerned authorities be made responsible for failure to keep a check on the distribution of the acid.
- 3.4 Regarding proper treatment, after care and rehabilitation of the victims of acid attack, a direction was issued by the order dated 10.4.2015 to the State Governments/ Union Territories to take up the matter with all the private hospitals to the effect that private

hospitals should not refuse treatment to victims of acid attack and that full treatment should be provided to such victims including medicines, food, bedding and reconstructive surgeries. It was also observed that action may be taken against hospital/ clinic for refusal to treat victims of acid attacks and other crimes in contravention of the provisions of Section 357C of the Code of Criminal Procedure, 1973. A direction was also issued that the hospital, where the victim of an acid attack was first treated should give a certificate that the individual is a victim of an acid attack which may be utilized by the victim for treatment and reconstructive surgeries or any other scheme that the victim may be entitled to with the State Government or the Union Territory, as the case may be.

- 3.5 Taking note of the fact that acid attack victims need to undergo a series of plastic surgeries and other corrective treatments, the Supreme Court in its order dated 18.7.2013 directed that the acid attack victims shall be paid compensation of at least Rs.3 lakhs by the concerned State Government/ Union Territory as the after care and rehabilitation cost, out of which a sum of Rs.1 lakh would be paid to the victim within 15 days of the occurrence of such incident (or being brought to the notice of the State Government/ Union Territory) to facilitate immediate medical attention and expenses in this regard. While disposing off the said writ petition on 10.4.2015, it was directed that the Member Secretary of the State Legal Services Authority take up the issue with the State Government so that the orders passed by the Court were complied with and a minimum of Rs.3,00,000/- was made available to each victim of acid attack. The Member Secretaries of the State Legal Services Authorities were also directed to give wide and adequate publicity in the State/ Union Territory to the Victim Compensation Scheme so that each acid attack victim could take the benefit of the Victim Compensation Scheme. It was also directed that in case of any compensation claim made by any acid

attack victim, the matter would be taken up by the District Legal Services Authority, which would include the District Judge and such other co-opted persons who the District Judge felt would be of assistance, particularly the District Magistrate, the Superintendent of Police and the Civil Surgeon or the Chief Medical Officer of that District or their nominee and the said body would function as the Criminal Injuries Compensation Board for all purposes. The matter also came up before the Supreme Court in Parivartan Kendra and Anr. V. Union of India and Ors. WP (Civil) No.867 of 2013 decided on 7.12.2015 where it was observed that the State and Union Territory concerned can give even more amount of compensation than Rs.3,00,000/- as was directed in Laxmi's case. An important direction given in this case was that all the States and Union Territories should consider the plight of such victims and take appropriate steps with regard to inclusion of their names under the disability list.

- 3.6 It is thus seen that acid attacks by themselves have been recognised as offences under the Indian Penal Code for which punishment is prescribed. Besides, Section 357A Cr.P.C. provides for a Scheme being drawn up by the State Government in coordination with the Central Government for providing funds for the purpose of compensation to the victim and such Schemes have been drawn up in most States and Union Territories which also provide for compensation to victims of acid attacks. The Central Government has issued the Central Victim Compensation Fund Guidelines with an objective to support and supplement the Victim Compensation Schemes of the States and Union Territories. A corpus of Rs.200 crores has been fixed for the purpose. One of the admissible activities under the Central Victim Compensation Fund is “to promote special financial assistance upto Rs.5 lakhs to the victims of acid attack to meet treatment expenses over and above the compensation paid by the State/ Union Territory.” However there is need for greater awareness

about the availability of compensation for victims of acid attacks. Despite specific directions to hospitals to provide treatment to victims of acid attacks, it is still not easy for them to get proper treatment. Over the counter sale of acid still remains rampant. It is thus felt by NALSA that Legal Services Institutions have a significant role to play and they can play a pivotal role in ensuring access to the benefits of the Victim Compensation Scheme to the victims of acid attacks and to the medical and other facilities.

4. Role of Legal Services Institutions

- 4.1 The Preamble of the Legal Services Authorities Act, 1987 emphasises that the legal services authorities are concerned with the weaker sections of the society and imposes a duty on them to ensure that opportunities for securing justice are not denied to any citizen by reason or economic or other disabilities. Under Section 4(b) of the Legal Services Authorities Act, 1987, the “Central Authority” i.e. the National Legal Services Authority has been obligated to “frame the most effective and economical schemes for the purpose of making legal services available under the provisions” of the Act. Further under Section 4(l) enjoins the “Central Authority” to take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures. Likewise, under Section 7(c) it is the function of the State Authority i.e. the State Legal Services Authority to undertake preventive and strategic legal aid programmes. Thus the Act itself casts a duty upon the Legal Services Authorities to spread legal awareness about the laws and various administrative measures and programmes and to undertake preventive and strategic programmes. Besides, under Section 12 of the Act, all women are entitled to legal services as

also a person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

5. NAME OF THE SCHEME

- 5.1 The Scheme shall be called “NALSA (Legal Services to Victims of Acid Attacks) Scheme, 2016”.
- 5.2 The terms PLVs, Legal Services Clinics and Panel Lawyers will mean the same as defined under the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010 and National Legal Services Authority (Legal Services Clinics) Regulations, 2011 and the NALSA Scheme for Para Legal Volunteers (Revised).

6. OBJECTIVES OF THE SCHEME

The main objectives of the Scheme are as follows:

- 1) To strengthen legal aid and representation at the national, state, district and taluka levels for victims of acid attacks in availing the benefits of the various legal provisions and schemes for compensation which exist;
- 2) To enable the victims of acid attacks to get access to medical facilities and rehabilitative services;
- 3) To create and spread awareness about the entitlements of the victims of acid attacks through the District Legal Services Authorities, Taluka Legal Services Committees, panel lawyers, para-legal volunteers and legal services clinics;
- 4) To enhance capacities at all levels of panel lawyers, para-legal volunteers, volunteers in legal services clinics, government officers tasked with the implementation of the various schemes,

service providers, police personnel, non-governmental organizations by organizing training, orientation and sensitization programmes; and

- 5) To undertake research and documentation to study the various schemes, laws etc. to find out the gaps, the needs and to make suggestions to the appropriate authorities.

The ultimate objective of the Scheme is to ensure that the victims of acid attacks are appropriately rehabilitated in the society and live a life of dignity.

7. PLAN OF ACTION

7.1 Legal Representation

- a) All victims of acid attacks shall be provided legal aid on a priority basis in order to enable them to get the benefit of the Victim Compensation Scheme.
- b) SLSAs and DLSAs shall ensure that the victims of acid attacks do not have to face any kind of delay in procedural wrangles and the interim compensation is awarded at the earliest.
- c) Support persons and legal representation shall be provided to victims of acid attacks during the recording of their statement under section 164 Cr.P.C., giving evidence etc.
- d) Every District Legal Services Authority and Taluka Legal Services Committee shall designate at least one panel lawyer as Legal Services Officer for the purpose of this Scheme.
- e) The District Legal Services Authorities shall also depute sufficient number of PLVs for the implementation of this Scheme.
- f) The PLVs shall act as the interface between the victims of acid

attacks and the Legal Services Institutions. All out endeavour shall be made to reach out to the acid attack victims.

7.2 Legal Services Clinics

- a) SLSAs shall set up Legal Services Clinics at hospitals having specialized facilities for treatment of burns where victims of acid attacks may be referred for treatment. The PLVs and panel lawyers deputed to such Legal Services Clinics shall be in regular touch with the victims of acid attacks and their relatives and ensure all possible help to them in securing appropriate medical help and treatment.
- b) The PLVs shall provide assistance and support to the families of victims of acid attacks and where possible counselling for them may be arranged so as to bring them out of trauma occasioned by the incident of acid attack.
- c) The PLVs shall also assist the victims of acid attack in obtaining from the hospital where the victim was first treated a certificate that the individual is a victim of an acid attack which may be utilized by the victim for treatment and reconstructive surgeries or any other scheme that the victim may be entitled to with the State Government or the Union Territory, as directed by the Supreme Court in the order dated 10.4.2015.
- d) The PLVs shall ensure that the victims of acid attacks are able to avail of various rehabilitative services that may be available for them.
- e) The Legal Services Clinics shall ensure that action is taken against hospitals which deny treatment to victims of acid attacks on superficial grounds.
- f) Opening of the Legal Services Clinics shall be communicated to

all the Government bodies and departments including the police, NGOs.

- g) The Legal Services Clinics so established shall be governed by the National Legal Services Authority (Legal Services Clinics) Regulations, 2011 in respect of their functioning, infrastructural facilities, maintenance of records and registers, deputing of PLVs and control over such clinics.

7.3 Co-ordination with the Government Departments

- a) The SLSAs shall coordinate with the States and Union Territories to amend the respective Victim Compensation Schemes to bring the same in line with the directions issued by the Supreme Court.
- b) The SLSAs shall remain in touch with the concerned governmental agencies to ensure that adequate funds are always available for disbursement as compensation to victims of acid attacks.

The SLSAs shall take up the matter with the concerned States and Union Territories for taking appropriate steps with regard to inclusion of the names of the victims of acid attacks under the disability list and thereafter to ensure that they get the benefit of all the schemes which are available for persons with disability

7.4 Database

- a) All SLSAs shall have database of the existing Central or State Schemes, policies, regulations, policy directives concerning victims of acid attacks and the same may also be published in the form of pamphlets or booklets to be used in dissemination of information and creating awareness.
- b) All SLSAs shall have database of the hospital where specialized facilities for treatment of burn victims are available.

- c) The lists prepared shall be circulated annually to all the District Legal Services Authorities which shall further circulate the same to the Taluka Legal Services Committees, village panchayats, legal services clinics and PLVs.
- d) SLSA shall also upload the list on their website.

7.5 Implementation of various Schemes

- a) SLSAs shall take all steps to disseminate information regarding the policies, schemes, programmes that exist for the victims of acid attacks.
- b) Legal services to be provided would include informing the beneficiaries about the different government schemes to which they are entitled and the benefits thereunder; assisting the beneficiaries to procure the documents required for availing the benefits under the schemes; informing the beneficiaries of the name and address of the designated authority or the officer who may be approached for availing the benefits under the schemes; offering to send para-legal volunteers with the beneficiaries to the office of the designated authority or to the officer concerned under any of the schemes.
- c) SLSAs shall develop effective coordination and interface with all the governmental bodies or functionaries, non-governmental organizations and other organizations concerning the welfare of victims of acid attacks to ensure that the benefits of the various schemes especially schemes for rehabilitation reach them.

7.6 Awareness

- a) The Legal Services Institutions shall organize awareness programmes to sensitize people to the needs of the victims of acid attacks so that the community provides support to them which is essential for their rehabilitation.

- b) SLSAs along with DLSAs shall conduct awareness programmes to generate awareness about the Victim Compensation Scheme and the entitlements under the same and various laws and government schemes.
- c) SLSAs, DLSAs and Taluka Legal Services Committees shall also create awareness regarding the availability of legal services for victims of acid attacks to facilitate access to their entitlements.
- d) SLSAs, DLSAs and Taluka Legal Services Committees shall organize awareness drives to highlight that over the counter sale of acids stands prohibited. The PLVs may inform the concerned department or DLSAs if they come across any incidents of sale of acids so that appropriate action can be taken immediately.
- e) All possible methods of spreading awareness should be used such as Doordarshan, All India Radio, distribution of pamphlets, leaflets.

7.7 Training and Orientation Programmes

- a) SLSAs shall conduct training and orientation programmes for panel lawyers and PLVs to sensitize them on how to deal with cases of victims of acid attacks and to build their capacity, knowledge and skill. Sensitization programmes should also be organized for other stakeholders such as the government functionaries, police personnel, medical officers and NGOs.
- b) SLSAs shall, in coordination with the State Judicial Academies, plan and conduct training/ sensitization programmes for Judicial Officers with a view to ensuring quick and adequate award of compensation, including interim compensation, and a fair and dignified treatment of the victims of acid attacks during trial of cases.

