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Assistant professor of Law

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and

learning.

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THE ROLE OF LEGAL AID COUNSEL IN JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT 2015

AUTHROED BY - JASDEEP KAUR

ABSTRACT¹

The Juvenile Justice Act of 2015 in many jurisdictions has ushered in a paradigm shift in the treatment of children in conflict with the law. Central to the effective implementation of this legislation is the pivotal role played by legal aid counsel in ensuring that the rights and interests of juvenile offenders are safeguarded throughout the judicial process. This abstract explores the multifaceted responsibilities and significance of legal aid counsel within the framework of the Juvenile Justice Act 2015. This paper has furthermore put limelight on the Sampurna Behrua v. Union of India & Ors which makes clear that Juvenile Justice Boards must ensure immediate legal aid for juveniles. If difficulties arise, District Legal Services Authorities should be instructed to provide assistance. Last part of this paper talks about the suggestions findings and conclusions.

Key points: Legal aid counsel, JJ act 2015, juvenile, child rights, dslsa,

Introduction

The Supreme Court of India's judgements have reinforced India's legislative framework for juvenile justice². Additionally, consider foreign trends. The UN Guidelines on Standard Minimum Rules for Administration of Juvenile Justice, 1985 (Beijing Rules) prompted the creation of the JJ Act, 1986, which established a unified legal framework for minors nationwide. On December 11, 1992, India became a signatory to the UN Convention on the Rights of the Child (UNCRC), marking a significant step forward in juvenile justice. The Juvenile Justice Act

¹ Jasdeep kaur Advocate (author) is a Registered Phd candidate at Amity University Jaipur Rajasthan batch july 2020 , she has completed her LLM in corporate governance and banking laws from University school of law and legal studies Shri Guru Gobind Singh Indraprastha University Delhi Dwarka and currently working with Delhi State Legal Services Authorities as Legal aid counsel at Juvenile Justice Board Delhi 9821378225, advjasdeepkaur@gmail.com

² Sheela Barse vs. Union of India, 1986 SCALE (2) 230

of 1986 was deemed to be incompatible with the UNCRC's juvenile justice viewpoint. As a result, the Parliament of India repealed the Act and adopted the Juvenile Justice (Care and Protection of Children) Act, 2000.³

The JJ Act of 2000 aims to safeguard vulnerable, neglected, and abused children, as well as those in confrontation with the law. The JJ Act of 2000 was amended in 2006 to address concerns raised by the Committee on the Rights of the Child in 2004 regarding the Supreme Court's ruling that a person's juvenility was not determined by the date of the offense.² The primary objective of the Juvenile Justice Act is to create a rehabilitative rather than punitive approach towards juvenile offenders. Legal aid counsel plays a crucial role in upholding the principles enshrined in the Act, ensuring that the juvenile justice system remains child-centric and protective of the rights of the child. This includes providing legal representation to juvenile offenders during court proceedings, advocating for their best interests, and ensuring fair and just treatment.

One of the key features of the Juvenile Justice Act 2015 is the emphasis on rehabilitation and reintegration of juvenile offenders into society. Legal aid counsel, through their involvement, contribute significantly to the assessment of the individual needs of the juvenile, enabling the court to tailor rehabilitation programs that address the root causes of delinquency. This requires a holistic understanding of the child's background, circumstances, and potential for reform, which legal aid counsel are uniquely positioned to provide.

Discussing further this paper talks about the following

1. Constitutional Provisions:

Article 39 of the Constitution of India; Outlines principles of policy for the state, emphasizing the need for children to develop in a healthy manner and be protected against exploitation.

- Article 39A of the Constitution: Highlights the state's responsibility to ensure equal justice and free legal aid. It stresses the promotion of justice on the basis of equal opportunity, providing legal aid to citizens irrespective of economic or other disabilities.
- Articles 14 and 22(1): Oblige the state to ensure equality before the law and a legal system that promotes justice based on equal opportunity.

³ Committee on the Rights of the Child, Consideration of Reports submitted by State Parties under Article 44 of the Convention- Concluding Observations: India, CRC/C/15/Add.228, 26 February 2004, para 78.

- Criminal Procedure Code (Section 304): Specifies the constitutional duty to provide legal aid at state expense from the time the accused is first produced before the Magistrate.

2. International Declarations:

- Universal Declaration of Human Rights (Article 8): Recognizes everyone's right to an effective remedy by a competent national tribunal for acts violating fundamental rights granted by the Constitution or law.
- International Covenant on Civil and Political Rights (Article 14 (3)): Guarantees the right to be tried in person or through legal assistance, with the provision of legal assistance assigned in cases where justice requires it, without payment if the individual lacks sufficient means.

3. India's Commitments:

- India is a signatory to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.
- In 1980, a Committee chaired by Hon. Mr. Justice P.N. Bhagwati, a Supreme Court Judge, was established at the national level to oversee and supervise legal aid programs.

The provided text discusses the establishment of the Committee for Implementing Legal Aid Schemes (CILAS) and the enactment of the Legal Services Authorities Act in 1987 in India.

Here's a summary of the key points:

1. CILAS and Legal Services Authorities Act:

- Formation of CILAS: The Committee for Implementing Legal Aid Schemes (CILAS) was established to monitor legal aid activities throughout the country.
- Legal Services Authorities Act, 1987: Enacted to provide a statutory basis to legal aid programs across the country in a uniform manner.
- Enforcement: The Legal Services Authorities Act was enforced on November 9, 1995, following amendments introduced by the Amendment Act of 1994.
- Fulfilment of State Mandate: The Legal Services Authorities Act, 1987, aligns with the state mandate stated in Article 39 and 39A of the Indian Constitution. It aims to provide free legal services to the weaker sections of society, ensuring that justice is not denied due to economic or other disabilities.

2. Legal Services Authorities Act, 1987:

Section 12 - Persons Entitled to Legal Services:

The Act specifies categories of persons entitled to legal services, including:

- Members of Scheduled Castes or Scheduled Tribes.
- Victims of human trafficking or beggary.
- Women or children.
- Mentally ill or otherwise disabled persons.
- Persons in circumstances of undeserved want (e.g., mass disaster victims).
- Industrial workmen.
- Persons in custody, including those in protective homes, juvenile homes, or psychiatric hospitals.

Section 13 - Entitlement to Legal Services:

- Individuals meeting the criteria specified in Section 12 are entitled to receive legal services, provided the concerned authority is satisfied that they have a prima facie case to prosecute or defend.
- An affidavit regarding income may be considered sufficient unless there is a reason to disbelieve it.

Free Legal Services:

The Act outlines that free legal services include:

- Payment of court fees, process fees, and other charges related to legal proceedings.
- Provision of legal representation by lawyers in legal proceedings.

In summary, the Legal Services Authorities Act, 1987, establishes a framework for providing free legal services to various disadvantaged sections of society, aligning with constitutional principles and international commitments. It outlines the entitlement criteria and specifies the services covered under free legal assistance.⁴

The text outlines the hierarchy of bodies created under the Legal Services Authorities Act, focusing on the National Legal Services Authority (NALSA) and its state-level counterparts. Additionally, it discusses the evolution of legal aid in the Juvenile Justice System and the

⁴ <https://nalsa.gov.in/acts-rules>

challenges faced, leading to certain directives from the Supreme Court.

1. Hierarchy of Bodies under the Legal Services Authorities Act:

a. National Legal Services Authority (NALSA):

- Role: Apex body responsible for laying down policies, principles, and guidelines for effective legal aid schemes.
- Functions:
 - Formulating policies and guidelines.
 - Framing economical schemes.
 - Disbursing funds and grants to State Legal Services Authorities and NGOs.

b. State Legal Services Authority (SLSA):

- Role: Implements NALSA policies and directions at the state level.
- Functions:
 - Provides free and competent legal services to eligible persons.
 - Organizes Lok Adalats for dispute resolution.
 - Conducts legal awareness camps in rural areas.

c. District Legal Services Authority:

- Role: Implements legal aid programs and schemes at the district level.
- Chairperson: District Judge serves as the ex-officio Chairman.

d. Taluk Legal Services Committees:

- Role: Coordinates legal services in Taluk or Mandal areas.
- Chairperson: Senior Civil Judge operating within the jurisdiction of the committee serves as the ex-officio Chairman.

2. Legal Aid in the Juvenile Justice System:

a. Historical Focus:

- Initially concentrated on providing legal aid to adults.
- Juvenile Justice System functioned with the assistance of Probation Officers (POs).

b. Shift in Focus:

- Over time, the role of Probation Officers got diluted.
- Private lawyers became more involved, leading to challenges and exploitation of children.
- Nexus observed between police and private lawyers, influencing the appointment of lawyers for children in conflict with the law.

c. Supreme Court Directives (October 2011):

- Case: Sampurna Behrua v. Union of India (Public Interest Litigation).
- Directives:
 - Designate one police officer in each police station as a juvenile/child welfare officer.
 - Train designated police officials.
 - Provide free legal services to all children in conflict with the law.⁵

The provided text outlines the directives issued by the Honorable Supreme Court of India in the case of Sampurna Behrua v. Union of India & Ors. (W.P.(C) No.473/2005) dated 19.08.2011. The focus is on the establishment of Legal Aid Centres attached to Juvenile Justice Boards in State capitals with high pending cases. Here's a summary of the key points:

Supreme Court Directives:

1. Legal Aid Centres:

- NALSA (National Legal Services Authority) is directed to establish Legal Aid Centres attached to Juvenile Justice Boards in State capitals with high pending cases.

2. Steps for Implementation:

a. District Legal Services Authority (DLSA):

- DLSA of the Capital District is directed to establish Legal Aid Centres in Juvenile Justice Boards in the capital city.

b. Selection of Panel Lawyers:

- DLSA should prepare a list of young panel lawyers, preferably women, willing to work the entire day in a child-friendly manner.
- The same set of lawyers may be available for legal aid in Child Welfare Committees (CWCs) and different Homes under the Juvenile Justice Act.

⁵ Sampurna Behrua v. Union of India & Ors. W.P.(C) No.473/2005

c. Training Camp:

- DLSA to organize a training camp for panel lawyers on juvenile jurisprudence, focusing on the UN Convention on the Rights of the Child 1989 and the Juvenile Justice Act.

d. Attendance at JJB Proceedings:

- Panel lawyers to attend Juvenile Justice Board (JJB) proceedings throughout the day, regulated by DLSA based on the volume of work.

e. Communication to JJB:

- List of panel lawyers communicated to Principal Magistrates and JJB Members, displayed prominently in JJB premises.

f. Request to Magistrates and JJB Members:

- Request to Principal Magistrates and JJB Members to use the services of panel lawyers and inform children about the availability of free legal aid.

g. Honorarium:

- State Legal Services Authority to fix a special honorarium rate for panel lawyers attending JJBs for the entire day.

h. Use of Infrastructural Facilities:

- Panel lawyers permitted to use existing infrastructural facilities available in the District Legal Services Authority.

i. Monthly Statistical Report:

- Submission of a monthly statistical report on legal aid given to children to the State Legal Services Authority, included in statistics sent to NALSA.

j. Guidelines for Panel Lawyers:

- Guidelines to be supplied to panel lawyers, with copies given to each lawyer, and acknowledgment of receipt obtained.

The directives aim to enhance the provision of legal aid to children in conflict with the law, emphasizing training, awareness, and the active involvement of lawyers in Juvenile Justice Board proceedings.

The provided **guidelines outline** the procedures and expectations for legal services in Juvenile Justice Institutions based on the directives in the Sampurna Behrua v. Union of India & Ors. case. Here's a summary of the guidelines:

Guidelines for Legal Services in Juvenile Justice Institutions:

1. Introduction to Legal Aid Lawyer:

- When a child is brought before the Juvenile Justice Board (JJB) by the police, the Board should call the legal aid lawyer in front of it.
- The lawyer should be introduced to the Child in Conflict with Law (CCL) and their parents.
- Emphasize to the CCL and their family/parents that they have the right to legal aid, and no fees need to be paid.

2. Interaction Time:

- JJB should give time to the legal aid lawyer to interact with the CCL and their parents before conducting the hearing.

3. Documentation in Orders:

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

4. Sufficient Time for Familiarity:

- Ensure that the child and their parents are given sufficient time to become familiar with the legal aid counsel and discuss the case before the hearing.

5. Universal Legal Aid:

- The Juvenile Justice Board should ensure that no case of a Child in Conflict with Law goes without having a legal aid counsel.

6. Certificate and Verification:

- JJB should issue a certificate of attendance to legal aid lawyers at the end of each month.
- Verify the work done reports of legal aid lawyers.

7. Reporting Lapses:

- In case of any lapse or misdeed by legal aid lawyers, the Board should inform the State Legal Services Authority and take corrective steps.⁶

⁶ <http://nalsa.gov.in/sites/default/files/document/Guidelines%20JJB.pdf>

8. Coordination and Solidarity:

- Encourage a spirit of understanding, solidarity, and coordination between the Juvenile Justice Board and legal aid lawyers.

9. Understanding of Juvenile Justice Law:

- Legal aid lawyers should develop a good understanding of Juvenile Justice Law and child psychology by reading and participating in workshops/training.

10. Diary Maintenance:

- Legal aid lawyers should maintain a diary at the centre in which dates of cases are regularly entered.

11. Leave and Attendance:

- If a legal aid lawyer goes on leave or is unable to attend the Board on any given day, they should ensure that cases are attended by a fellow legal aid lawyer, and no case is neglected.

12. Professionalism:

- Legal aid lawyers should not treat legal aid work as charity but should strive to deliver the best services.

13. Monthly Meetings:

- Legal aid lawyers should raise issues, concerns, and problems in monthly meetings with the State Legal Services Authority.

These guidelines aim to ensure the effective provision of legal aid to children in conflict with the law and promote coordination between legal aid lawyers and the Juvenile Justice Board.

These guidelines, based on *Sampurna Behrua v. Union of India & Ors.*, provide a comprehensive framework for legal services in juvenile justice institutions. They emphasize the importance of ensuring that Child in Conflict with the Law (CCL) receives adequate legal representation and support. Here's a summary of the guidelines:

1. Introduction to Legal Aid:

- The Juvenile Justice Board (JJB) should call the legal aid lawyer when a child is brought

before the Board by the police.

- Introduce the CCL and their parents to the lawyer.
- Emphasize that legal aid is their right and they need not pay any fees for it.

2. Pre-Hearing Interaction:

- JJB should allow time for the legal aid lawyer to interact with the CCL and their parents before the hearing.

3. Documentation:

- The JJB should explicitly mention in its order that a legal aid lawyer has been assigned.
- Include the name and presence of legal aid lawyers in the order.

4. Sufficient Time for Familiarization:

- Ensure that the child and parents have adequate time to become familiar with the legal aid counsel and discuss the case before the hearing.

5. Universal Legal Aid:

- Ensure that every CCL's case has a legal aid counsel assigned.

6. Certificate and Verification:

- JJB should issue a certificate of attendance to legal aid lawyers at the end of each month.
- Verify the work done reports of legal aid lawyers.

7. Accountability:

- In case of any lapse or misdeed by legal aid lawyers, the Board should inform the State Legal Services Authority and take corrective steps.

8. Collaboration and Coordination:

- Encourage a spirit of understanding, solidarity, and coordination between the Juvenile Justice Board and legal aid lawyers.

9. Professional Development:

- Legal aid lawyers should develop a good understanding of Juvenile Justice Law and child psychology through reading and participating in workshops/trainings.

10. Record Keeping:

- Legal aid lawyers should maintain a diary at the center in which dates of cases are regularly entered.

11. Alternate Representation:

- If a legal aid lawyer is on leave or unable to attend, ensure that cases are covered by a fellow legal aid lawyer to prevent neglect.

12. Professionalism:

- Legal aid lawyers should not view legal aid work as a matter of charity; they should deliver the best services.

13. Communication:

- Legal aid lawyers should raise issues, concerns, and problems in monthly meetings with the State Legal Services Authority.

These guidelines aim to promote fairness, accountability, and effective legal representation for children involved in the juvenile justice system.

Continuing with the guidelines for legal services in juvenile justice institutions, here are additional points related to the responsibilities and conduct of Legal Aid Lawyers:

14. Case Documentation:

- Legal Aid Lawyers should maintain a file for each case.
- Daily entries of proceedings should be made to ensure comprehensive documentation.

15. Proactive Case Handling:

- Legal Aid Lawyers should not wait for the Juvenile Justice Board (JJB) to call them for taking up a case.
- Efforts should be made to proactively approach families who come to the JJB and take up cases independently.

16. Inspire Faith and Confidence:

- Legal Aid Lawyers should inspire faith and confidence in children and their families whose

cases they take up.

- Make all possible efforts to provide necessary assistance and support to the clients.

17. Adherence to Empanelment Terms:

- Legal Aid Lawyers should strictly abide by the terms and conditions of empanelment on the Legal Aid Panel.

18. Monthly Work Done Report:

- Legal Aid Lawyers should tender their monthly work done report to the JJB within one week of each month.
- Submit the report to the concerned authority along with the attendance certificate for processing payments.

19. Client Communication:

- Legal Aid Lawyers must inform the client about the next date of the hearing.
- Provide the client with their contact information so that they can make calls in case of any need.

These additional guidelines focus on the importance of thorough case documentation, proactive case management, maintaining professional conduct, and effective communication with clients. They aim to ensure that Legal Aid Lawyers are actively involved in the cases they take up, providing comprehensive support to children and their families within the juvenile justice system.

The provided text discusses the discontinuation of practices like Bal Adalat, Bal Samwad Adalat, and Bal Lok Adalat for disposing of cases involving children in conflict with the law. It highlights the perspective that such practices are against the letter and spirit of juvenile law, emphasizing the need for a rehabilitative mechanism for children in conflict with the law.

Here are the key points and the suggested way forward:

1. Discontinuation of Bal Adalats:

- The National Legal Services Authority (NALSA) communicated that holding Bal Adalats for disposing of cases related to children in conflict with the law is against the juvenile law's principles.

- The practice of holding Bal Adalats has been discontinued, emphasizing the importance of treating children differently and incorporating individual care plans in disposal orders.

2. Importance of Juvenile Justice Act (2015)⁷:

- The Juvenile Justice (Care and Protection of Children) Act 2015 is highlighted as a socio-legal act, with a need for the social and legal aspects to work hand in hand.
- The Juvenile Justice Board comprises a magistrate and two social workers, reflecting the dual nature of the Act.

3. Concerns about Legal Aid Emphasis:

- While strengthening legal aid is seen as a positive move, there is apprehension about doing so without concurrently strengthening the probation system.
- The text expresses concern about the potential "legalization" of the "socio-legal Act" due to an overemphasis on legal aspects without adequate focus on rehabilitation.

4. Emphasis on Rehabilitation:

- The text emphasizes the need for a balance between case disposal and rehabilitation of children in conflict with the law.
- Strengthening both free legal aid and the probation system simultaneously is seen as crucial for the true functioning of the juvenile justice system.

5. Challenges of Free Legal Aid:

- Challenges related to free legal aid persist, even with the establishment of a panel of lawyers trained to deal with cases involving children.
- The implementation of provisions ensuring fair compensation for lawyers across all states is highlighted as a challenge.

6. Socio-Legal Cell Concept:

- The text suggests that a concept of a "Socio-Legal Cell" may be more appropriate than a "Legal Aid Cell" in the context of juvenile justice.
- This implies a focus not only on legal aspects but also on the socio-legal dimensions of addressing the needs and rehabilitation of children in conflict with the law.

⁷ The Juvenile Justice (Care and Protection of Children) Act 2015

Findings and suggestions

Findings on the Role of Legal Aid Counsel in the Juvenile Justice Act (JJ Act):

1. **Legal Representation:** Legal aid counsel plays a crucial role in providing legal representation to juveniles in conflict with the law, ensuring their rights are protected during court proceedings.
2. **Best Interest Advocacy:** Legal aid counsel advocates for the best interests of juveniles, aligning with the rehabilitative approach of the JJ Act and contributing to fair and just treatment.
3. **Rehabilitation Assessment:** Legal aid counsel assists in the assessment of individual needs, aiding the court in tailoring rehabilitation programs that address the underlying causes of juvenile delinquency.
4. **Child-Centric Approach:** Legal aid counsel contributes to maintaining a child-centric approach in the juvenile justice system, safeguarding the rights and dignity of juvenile offenders.
5. **Special Procedures Safeguarding Rights:** Legal aid counsel ensures the implementation of special procedures mandated by the JJ Act to protect the vulnerable rights of juveniles, including confidentiality and protection from harm.

Suggestions:

1. **Enhanced Training:** Provide specialized training for legal aid counsel in juvenile law to effectively navigate the unique challenges associated with juvenile justice.
2. **Resource Allocation:** Allocate sufficient resources to legal aid services, ensuring they have the capacity to meet the demands of representing juveniles in conflict with the law.
3. **Awareness Campaigns:** Conduct awareness campaigns to educate legal aid counsel about the nuances of the JJ Act and its rehabilitative objectives.
4. **Collaboration with District Legal Services Authorities:** Foster strong collaboration between Juvenile Justice Boards and District Legal Services Authorities to streamline the process of providing immediate legal aid when difficulties arise.
5. **Regular Monitoring and Evaluation:** Implement mechanisms for the regular monitoring and evaluation of legal aid counsel's performance in juvenile cases to ensure adherence to the principles of the JJ Act.

By implementing these findings and suggestions, the role of legal aid counsel in the Juvenile Justice Act can be strengthened, contributing to a more effective and child-

centric juvenile justice system.

Conclusion

In summary, the text emphasizes the need for a balanced approach that integrates legal aid and the probation system, with a strong focus on the rehabilitation of children in conflict with the law within the framework of the Juvenile Justice Act.

Furthermore, the Act recognizes the vulnerability of juveniles in the justice system and mandates special procedures to protect their rights. Legal aid counsel acts as a safeguard, ensuring that the juvenile is treated with dignity and fairness, and that their rights to legal representation, confidentiality, and protection from harm are diligently upheld.

The act delves into the challenges faced by legal aid counsel in implementing the Juvenile Justice Act. These challenges may include resource constraints, societal biases, and the need for specialized training in juvenile law. Overcoming these challenges is crucial to effectively fulfill the role of legal aid counsel and to promote the overarching goals of the Juvenile Justice Act 2015.

In conclusion, this abstract provides a comprehensive overview of the indispensable role played by legal aid counsel in the implementation of the Juvenile Justice Act 2015. By advocating for the rights and well-being of juvenile offenders, legal aid counsel contribute significantly to the establishment of a fair, child-centric, and rehabilitative juvenile justice system.