

## Is E-application the e-easy way to go for Legal Aid in India

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When *Shehjad*<sup>i</sup> was admitted to Jhalawar district jail in Rajasthan in December 2015, he did not have a lawyer. It took him two months to apply for legal aid, another one month for his application to reach the legal aid authorities and it was only in June that he was informed that a lawyer had been appointed in his case. Thus, in total it took 7 months for a lawyer appointment to take place. This is the plight of the legal aid system in India. A system marred by delays, inadequacy and inefficiency.

*Shehjad's* case is one of the many stories that narrate the sad state of legal services for those in custody in India. A large number of undertrial prisoners, who cannot afford a lawyer, spend months behind bars without any meaningful legal representation. As per the latest NCRB report on prisons, two-thirds of the prison population is still awaiting trial. Majority of them are either illiterate or have not studied up to class X and are either SC, ST and OBC. They are clearly one of the weakest sections of our society. The primary objective of the Legal Services Authorities Act, 1987 was to provide free legal services to these sections. Unfortunately, not even three percent of legal aid provided under the Act reaches prisons.<sup>ii</sup> Such low proportion indicates that either access to legal aid services is difficult, or that there is no faith among prisoners on the quality of legal aid services provided, or both, due to which they shy away from availing these services.

Not that the National Legal Services Authority (NALSA) has not made any attempts to ensure that legal aid services are provided to those in custody. In the last three years it has directed for setup of legal aid clinics in prisons, regular visits by jail visiting lawyers, training of convicts as bare foot lawyers or paralegals and more recently issued the Standard Operating Procedures for Representation for Persons in Custody<sup>iii</sup> in June 2016. Yet, implementation at the ground level of these is far from satisfactory, with issues like non-appointment of legal aid actors and poor quality of legal representation when appointed, making the actual realisation of the right to legal aid quite elusive.

Fortunately, NALSA has increasingly advocated for the need to ensure legal aid for those in custody. Recently, at NALSA's Annual Meeting held on 14th April 2015, the Honourable Minister of Law and Justice categorically stated, "*It is almost a failure of our legal aid system that most of those who could have been released but for the lack of legal aid or money for surety or bail bonds are poor and marginalised...We might have travelled miles, but we have many more miles to travel. Regular oversight on this cause is required to ameliorate the situation.*"

To further their efforts in ensuring speedy legal aid, and to overcome some of the hurdles that fall in its path, NALSA has resorted to the use of technology with the launch of bilingual e-portal 'Legal Services Management System' through which anyone can apply for legal aid online.<sup>iv</sup> Whether technology will usher in the breath of fresh air to revive the dilapidated legal aid system in the country is yet to be seen, but indeed it is a step in the right direction. By using the portal, one can

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not only apply for legal aid online, but also upload documents, track information, seek clarification or send reminders.

Broadly, one can state that there are two fundamental problems with the legal aid machinery in the country - timely appointment of legal aid lawyer and quality of legal aid representation. The portal can, if implemented successfully, solve the former of the two issues i.e. ensure timely appointment of legal aid lawyers to represent those eligible for legal aid especially for persons in custody.

Even though the *United Nations Guidelines and Principles of Access to Legal Aid in the Criminal Justice System*, call for 'detained persons' to have 'prompt access to legal aid', the NALSA schemes still allow the legal aid authorities eight weeks to 'decide' whether a person is eligible for legal aid. While this is just the time between the receipt of request and appointment, even further delays are caused wherein the intimation about appointment of lawyers, as was in Shehjad's case, does not reach the prisoner before weeks, sometime months have passed. Practically speaking also, given the distances between prisons and legal aid institutions, dysfunctional jail legal aid clinics and the lack of coordination between both offices, one often finds that 'promptness' often loses its meaning with delayed appointments becoming an integral feature of legal aid delivery.

Undoubtedly, the moment a person is taken in custody and is away from the public gaze, there is an immediate need for a lawyer to safeguard their rights of those detained and safely manoeuvre them through the legal maze. NALSAs e-portal can be an effective remedy in ensuring 'promptness' in appointments and intimations. In practice, the entirety of the process involves, beyond the 8 weeks that could have been taken to decide eligibilities, the time taken to fill the form and get it attested by the prison officials; time taken for the form to be dispatched from the prison and received by the legal authorities; their issuance of the appointment letter; the dispatch of the letter to the jail and the final receipt by the person in custody. Given the leakages that are there in every step it can indeed take months before a person receives a legal aid lawyer. With applications being made online this time gap can be shortened considerably with the portal eliminating most of these leakages. No time would be lost in filling and dispatching of these forms. Given 'persons in custody' are eligible for legal aid under Section 12(g) of the Legal Services Authorities Act, it should not take more than 24 hours, instead of 8 weeks to appoint a legal aid lawyer. The case details and the details of the lawyer would also be available on the portal ensuring that the jail visiting lawyers, prison staff, paralegal volunteers or judges can give accurate/ appropriate advice to the inmate.

Though it is unclear as to how the offline and online systems i.e. jail legal aid clinics and e-portal, would function together; ideally they should be complementary, with the portal fortifying the working of the jail legal aid clinics. There is also a need for NALSA to prepare guidelines, outlining the roles of the members of the jail legal aid clinics vis-à-vis filing of online applications, thus interlinking both its offline and online systems in order to ensure maximum efficacy within the system.

Having said the above, the question of 'access' to the portal by those in custody still poses a major hurdle. With little if any publicity having been given to the portal, firstly, awareness regarding the

availability of such services and secondly, access to an internet-enabled computer pose major threats upon the actual usage of the portal by those in custody. In order to ensure access by inmates to this portal, efforts should be made to connect it to the E-prisons suite or similar prison management systems that have been installed in many prisons across the country. Even then there are two ways of going about it. First, at the point of admission, when data is fed into the prison management system, there should be a module on legal representation, and in all cases where the accused answers in the negative on whether he has legal representation or not, an application should be sent automatically to the concerned legal aid institution via the portal. Secondly, regular reviews should be conducted by the convict or community paralegal volunteer, who is appointed to man the prison legal aid clinic, to not only ascertain that lawyer was appointed, but also to update the prisoner about the lawyer details and status of the case. An additional feature can be the installation of kiosks, wherein prisoners themselves can access the information and receive/send updates and complaints regarding legal aid services rendered.

The other key issue with our legal aid delivery systems is with regard to ensuring the quality of legal aid services rendered. Quality can only be ensured by regular monitoring of legal aid services. Worldwide countries are struggling to ensure the quality legal aid services are provided. Given the concept of 'legal aid' itself warrants that beneficiaries have no role to play in the remuneration of the service providers, quality indeed suffers. There is a standard response/excuse to any enquiry on the lack of monitoring the legal representation - the pittance paid to legal aid lawyers. The '*itne paisa mein itna hi milega*' attitude needs to change. And for this the role of the legal aid authorities is crucial. NALSA (Free & Competent Services) Regulations 2010 mandate the constitution of monitoring committees in every legal aid institution. These committees are expected to monitor the work of legal aid lawyers on a day to day basis. The committees might exist on paper, but they do not function as per mandate. In Rajasthan, these committees hardly meet, and when they convene, it is only to settle the remuneration of the legal aid lawyers. In West Bengal, they were not known to be functional even after 6 years of their supposed constitution.

One common hurdle that these monitoring committees face is the lack of documentation and reporting by legal aid lawyers on progress of the legal aid cases. With no guidelines in place, and no access to records, it becomes very difficult to track progress and thus review performance. While the 'track your application' and 'reminder/clarifications' feature of the online portal are yet to be functional, given that subsequently they would, the online linkage between the prison and legal aid institutions could also then assist in monitoring of cases. But first it is necessary to link the various schemes via the e-portal, including the regulations pertaining to monitoring laid under NALSA Regulations 2010. Once it becomes imperative upon the jail legal aid clinic personnel to enter comments and feedback on services rendered into the system, along with it necessary for lawyers to update case progress after every hearing, it might be very convenient for the monitoring committees to track the work of the legal aid lawyers without calling for the case details from the court or the lawyer. It would thus assist them in ascertaining the lawyer's presence in court and at the prison, and also give an opportunity to the inmate to air his grievances. While this may seem as a distant dream, the launch of the e-portal is a step in the right direction.

Our criminal justice system is one where common practice becomes the law, and the practice is never suited to the convenience of the ones at the bottom of the pyramid - the persons in custody.

With celebrations of the 22nd National Legal Services Day just completed, we hail NALSA and other legal aid institutions to remember the preambular promise of securing justice to all citizens - even for those who are forgotten behind bars. We hope that with each passing day, use of technology will make it easier for those behind bars to access justice.

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<sup>i</sup> Name changed on request.

<sup>ii</sup> Supreme Court Annual Report 2014-15.

<sup>iii</sup> <http://nalsa.gov.in/sites/default/files/document/SOP-%20Persons%20in%20Custody.pdf>.

<sup>iv</sup> <http://nalsa.gov.in/lsams/nologin/applicationFiling.action?requestLocale=en>.

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