

NATIONAL JUDICIAL ACADEMY



ANNUAL NATIONAL SEMINAR FOR THE LEGAL SERVICE AUTHORITY FUNCTIONARIES ON ACCESS TO JUSTICE AND LEGAL AID

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List of Resource Persons

1. Hon'ble Mr. Justice P. V. Reddi, Former Judge, Supreme Court of India
2. Hon'ble Mr. Justice R. C. Chavan, Former Judge, High Court of Bombay
3. Hon'ble Mr. Justice G. M. Akbar Ali Former Judge, Madras High Court
4. Hon'ble Ms. Justice K. Hema, Former Judge, High Court of Kerala
5. Mr. U. Sarathchandran Judicial Member, Central Administrative Tribunal
6. Prof. M. R. K. Prasad, Principal, V. M. Salgaocar College of Law
7. Prof. Geeta Oberoi, National Judicial Academy, India

Introduction

The National Judicial Academy of India, Bhopal organized an Annual National Seminar for the Legal Service Authority Functionaries on Access to Justice and Legal Aid' on 1st and 2nd October, 2016. The secretaries and other functionaries of various state legal service authorities attended the seminar. Two day seminar was split into seven sessions. On day-1 there were four sessions. Day-2 was split into three sessions.

Hon`ble Justice P.V. Reddi, Justice R. C .Chavan, Hon`ble Mr. U. Sarathchandran, Prof. M.K. Prasad, Hon`ble Justice K. Hema, Prof. Geeta Oberoi and Hon`ble Justice Akbar Ali were the resource persons.

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DAY- 1

SESSION – 1

Topic- **Constitutional Vision of Justice, Liberty and Equality: Role of Legal Services Authorities**

Speaker: Justice P.V. Reddi

The session was formally inaugurated by Hon`ble Director of NJA Justice G. Raghuram. He welcomed all the dignitaries and participants. He opined that the basic structure and philosophy of the Indian Constitution is to secure to all its citizens Justice, Liberty and Equality. The preamble sum-up the constitutional vision social justice. The Legal Services Authorities Act 1987 underpins the constitutional outline for an egalitarian society, as the poor man cannot be denied of justice, liberty and equality.

Afterwards, the speaker Hon`ble Justice P.V. Reddi, firstly, he suggested that constitution is the paramount and supreme law and all other legislative instruments follows its mandate and philosophy. Thus, any law enacted by legislature shall be within the basic framework of the constitutional law.

Hon`ble Justice emphasized on the Preamble and Articles 14, 21 and 39-A of the constitution. The preambular window to the constitution show us what is there

inside, he said. It mandates the state to secure to all its citizens without any discrimination justice, liberty and equality.

Art.14 provides right to equality. It states that the '*State shall not deny to any person equality before law or the equal protection of laws within the territories of India*'. Therefore, there is constitutional mandate upon the state. It is a negative duty casted upon the state machinery that it should not deny any person equality before law or the equal protection of law within its territory.

Art.21 provides for fundamental right to life and liberty. It enshrines in it a basic human right which is also recognized under Universal Declaration of Human Rights 1948 by the United Nations. Art. 21 states that '*No person shall be deprived of life or personal liberty except according to procedure established by law*'. This provision includes number of human rights as the supreme court of India has enlarged its scope through organic interpretation.

Art 39-A deals with Equal Justice and Free Legal Aid. The poor having no means to access courts shall not be deprived of justice. The reason behind the enactment of Legal Services Authority Act, 1987 is the same — justice should be approachable to everyone.

Justice Reddy remarked that legal services for the weak, poor and marginalized is a constitutional imperative. Access to justice is the bare minimum for the preservation of rule of law. Through legal services authorities, judicial system will be accessible in India. Legal aid implies giving free legal services to the poor and needy who cannot afford the services of lawyer. It is very important to note that mere legal aid is not the intention of the legislation but the victim should be provided a quality legal aid. What do we mean by quality legal aid? It's very possible question in anyone's mind. By mentioning the word quality meant that the state should provide a reasonable and competent lawyer to the aggrieved. Failing to do so defeats the purpose of legislation, he added.

## SESSION - 2

### Topic- **Legal Services to Vulnerable Sections of Society: Schemes of NALSA (2015)**

Speakers: Justice R C Chavan and Mr. U. Sarthchandran

The session was opened with the question, what are vulnerable sections of society? The speaker himself opined that vulnerable groups are the groups which could be vulnerable under any circumstances. For instance, where adults are unable to provide an adequate livelihood for the household for the reasons of disability, illness, age or some other characteristics.

It was observed that for almost three decades NALSA has been working towards the noble goal of providing legal aid and assistance to the citizens in need. 'I extend my good wishes to all members and officers present here today who all have been working relentlessly towards this goal', said Justice Chavan. He observed that the forefathers of the philosophy of legal aid, late Justice Krishna Iyer and Justice Bhagwati, continue to inspire us. Art 39-A gives mandate to offer free legal services for the poor. The notion of free legal aid finds its roots in the idea that no individual should have to undergo trial in the absence of legal assistance. NALSA plays a critical role in ensuring that this constitutional guarantee is secured. As a result of NALSA's efforts of legal aid presents itself in many forms, and touches the life of many.

These include legal aid clinics, *lok adalats*, prison legal aid clinics and awareness programmes. The saying is that prevention is better than cure. The same applies in the context of justice delivery. The prominence of making people aware of their legal rights and duties becomes more acute where marginalized groups and poor are concerned.

Under section 4(b) of the legal services authorities Act, 1987, the 'central authority' i.e. the national legal services authority, has been obliged to 'frame most effective and economical schemes for the purpose of making legal services available under the provisions' of the Act. The preamble of the Act 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.

Mr. U. Sarathchandran spoke on new scheme of NALASA i.e.

- i. NALSA (Victims of Trafficking and commercial sexual exploitation) Scheme, 2015
- ii. NALSA (Child friendly legal services to children and their protection)
- iii. Scheme, 2015
- iv. NALSA (Legal services to the workers in the unorganized sector), 2015
- v. NALSA (Legal services to the Mentally Ill and Mentally disabled persons), 2015
- vi. NALSA (Effective implementation of poverty alleviation) Scheme, 2015
- vii. NALSA (protection and enforcement of tribal rights) Scheme, 2015
- viii. NALSA (Legal services to the victims of Drug Abuse and Eradication of Drug Menace) Scheme, 2015

It has been conclude that – the legal aid movement had begun in order to set a foundation for social righteousness by bridging the gap between the fortunate and less fortunate weaker sections of society. The genesis of this system is to secure social justice for the poor.

### SESSION - 3

#### Topic – **Enhancing the Capacity of Legal Aid Advocates and Para Legal Volunteers**

Speaker- Hon'ble Mr. U. Sarathchandran

Mr. U. Sarathchandran aptly remarked that 'Legal profession is monopolistic in character and this monopoly itself inheres certain high traditions, which its members are expected to upkeep and uphold. Advocate is an officer of justice and friend of the court. He is an integral part for the administration of justice. From the ancient times, the legal obligations of the advocates to conduct the case

of a poor litigant without reward when so required by the court has been recognized not only in our country and in England but also in US and other countries.'

He also harked upon Rule 46 of bar council of India which reminds advocates of the obligation they owe to the society. The rule reads as under- 'Every advocate shall in the practice of the profession of law bear in the mind that any one genuinely in the need of a lawyer is entitled to legal assistance even though he cannot pay for it fully or adequately and that within the limits of an advocate's economic condition, free legal assistance to the indigent and oppressed is one of the highest obligations an advocate owes to society'.

In fact, the least duty expected of an Advocate is to play his role sincerely in implementing the various legal aid schemes available under the Legal Services Authorities Act, 1987 –be it legal aid to poor and other marginalized sections of the society or promotion of legal literacy or facilitating resolution of disputes through *Lok Adalats*. The various schemes of legal aid under the Act can only be put into operation through advocates. The resource person observed that,-

- Assignment of a competent advocate to take up the case of a poor litigant is the most crucial component in providing effective and purposeful legal aid to the weaker sections of the society.

- The Advocate is paid by the concerned legal services authority but this payment is generally quite low as compared to the normal fee charged by the advocate. Established advocates are generally reluctant to take assignment as an advocate under the scheme of legal aid under the legal services authorities Act. The result is that newly enrolled advocates who do not enough cases with them alone opt for taking such cases with the result that the poor and marginalized persons get only substandard legal assistance, which is a serious handicap in successfully implementing the legal aid.

-State provides amicus scheme for weaker sections of the society. The reluctance of senior advocate in doing service to the community is becoming a serious constraint in the success of the legal aid scheme in India.

Mr. U. Sarathchandran referred to *Kishore Chand vs. State of H.P*, wherein SC commented on the role of the legal professionals as under:

‘Though Article 39 A of the constitution provides fundamental rights to equal justice and free legal aid and though the curiae to defend the indigent accused, he would be meted out with unequal defense if, as is common knowledge the youngster from the bar who has either a little experience or no experience is assigned to defend him. It is high time that senior counsel practicing in the court concerned, volunteer to defend such indigent accused as a part of their professional duty.’

In case of para legal volunteer, the resource person viewed that they are individuals qualified by education, training or work experience who performs specifically delegated substantive legal work for which a lawyer is responsible. In India, there is a scheme called para-legal volunteers module for the orientation – induction – and refreshers course of PLVs training by NALSA. The District Legal Services Authorities maintains all the data of para-legal volunteers and identity cards are issued for the validity of one year. The fees /honorarium are paid to the trained PLV’s as prescribed under the scheme. In order to increase the efficiency of working of para-legal volunteers, they should be provided with skillful training and technical knowledge of working of legal aid services. There should also be a good payment of stipend to them. At present in many SLSA’s, para-legal volunteers are working effectively. In addition, all the state legal services authorities should implement the respective schemes of NALSA.

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SESSION-4

Topic – **SLSA, Law Colleges, Local bodies and NGO's: Coordinative Role of DLSA**

Speaker: Prof. M R K Prasad

The session commenced with a question —‘Do people required legal services to defend them?’ and the answer was affirmative. It was said that to help the people resolve their disputes NALSA and DLSA’s came into existence. People requires legal services to defend themselves. However, legal services should not be limited to litigation. There are disputes which can be solved through non-litigation methods such as counselling, mediation, *lok adalats* and alternative dispute resolution. As every dispute do not requires litigation. There are vast majority of experiences where legal remedies are available and they do not result into litigation. There are two kinds of litigation services, 1) Inside Litigation Services and 2) Outside Litigation Services. The purpose of inside litigation services is to assist people in defending and asserting their rights in the court system. They include:

- legal representation
- legal advice
- other litigation services

However, the purpose of outside litigation services is-- to assist people with legal matters where litigation is not or is unlikely to be involved. To assist people in deciding if and how to respond to legal matters. These responses could mean they avoid, exit, bypass, threaten and sometimes even consider initiating litigation. These services include:

1. Legal advice and information.
2. Minor assistance with documents, letters, and telephone calls, simple wills etc.
3. Public education and training including
 - Workshops, classes, seminars, other forms of communication; &
 - publications about the law including leaflets, booklets etc.

In order to promote equal justice, the legal aid schemes of a society should offer both types of services.

Prof. M R K Prasad asked why law colleges should be incorporated in legal services. He said, law school is the spawning ground for lawyer, jurist and judges. There are more than 1600 law colleges and more than 1, 50,000 law students are passing every year a law degree. According to the report of expert committee on legal aid 1973, report of committee on national judicature 1977, committee for implementing legal aid schemes 1981 and 184th law commission report, legal aid centers should be instituted in law colleges for the fast enforcement of LSA Act, 1987.

He pointed out various benefits of involving law students in legal aid, such as:-

- legal aid clinics are effective instruments of community education and preventive legal services programmes;
- involving law schools also improves the value and reputation of legal profession;
- there is substitute for learning while doing;
- if properly channeled, the law schools can meet the demands of modern society and in fact help to transform the society and reach desirable goals.

In the next segment of his presentation Prof. M. R. K. Prasad discussed on elements of legal aid in legal services. He said legal aid in wider sense encompasses-

- *Legal representation
- *Legal advice
- *Legal awareness
- *Para-legal services
- *Public Interest Litigation
- *Promoting Alternative Dispute Resolution
- *Law Reforms

Legal duty of legal services authorities to partner educational institutions as medium of legal services was stressed. He said Sec. 4 National Legal Service Authorities Act, 1987 provides that-develop in consultation with the Bar Council of India, programmes for clinical legal education and promote guidance and supervise the establishment & working of legal services clinics in universities, law colleges and other institutions.’

Reference was also made to Sec. 4-J which provides for grants-in aid for specific schemes to various voluntary social service institutions and the state and district authorities, from out of the amounts placed at its disposal for the implementation of legal services schemes under the provisions of this Act.

He concluded that district legal services authority is mandatorily require to establish, subject to financial resources, legal Aid clinics in all villages or for a cluster of villages especially where the people face geographical, social and other barriers for access to the legal services institutions.

Next part of his presentation was focused on legal services in the legal aid clinics. Resource person made following observation on legal aid clinics.

- *The legal aid clinic shall work like a single window facility for helping the disadvantaged people to solve their legal problems whenever needed.
- *Preparing applications for job card under the Mahatma Gandhi National Rural Employment Guarantee Scheme.
- *Provide assistance by providing initial advice on a problem
- *Assistance in drafting representation and notices
- *Filling up forms for the various government schemes
- *Referring to legal services institutions for taking further actions
- * Law college students may adopt a village for legal aid camps.
- * The state legal services authority shall render required technical assistance to legal aid clinic.
- * Authorities may issue certificates to students who complete their assignment in legal aid clinic.

*SLSA should monitor the reports of working of legal aid clinic in law colleges or universities in their jurisdiction.

In the end, Prof. M. R. K. Prasad highlighted the bottlenecks of legal aid clinics and legal services in law colleges.

- ✓ Lack of financial support
- ✓ Restrictions on faculty to practice
- ✓ Absence of academic credits for students
- ✓ Legal aid is not a part of workload for faculty
- ✓ Lack of involvement of Bar
- ✓ Lack of infrastructural facilities
- ✓ Lack of involvement of judiciary
- ✓ Restrictions on students
- ✓ No training facilities to faculty
- ✓ Lack of specific directions from BCI
- ✓ Absence of designated full time faculty
- ✓ Poor student quality
- ✓ Lack of trained faculty
- ✓ Part time student

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DAY-2

SESSION-5

Topic- **Access to Justice and Legal Aid to Victims of Domestic and Sexual Offences**

Speaker- Justice K. Hema

Hon'ble resource person started the session with a question- Is there any provision in LSA Act, 1987 which refers to expression 'Access to Justice and Legal Aid'?

Answer was: **No**. The LSA Act, provides for a legal services. It nowhere mention any expression like legal aid. Sec. 2 (c) defines legal services as,

- 'any service to conduct case means legal service';
- 'Giving advice in legal matter';

- ‘The rendering of any service in the conduct of any case or other legal proceedings before any court or other authority or tribunal and giving of advice on any legal matter.’

Her second question was- What is the objective of LSA Act?

She said the Act has a threefold objectives viz.-

- To constitute Legal Services Authority ;
- To provide Free and Competent legal services ;
- To organise *Lok Adalats*.

Next question was- What type of legal services in conduct of case and at investigation stage be given? Reference made to *Mohd, Ajmal Kasab vs State of MS*. The expression ‘Legal Aid’ comes under code of criminal procedure. Whereas ‘Legal services’ comes under Legal Services Authorities Act, 1987.

She also asked- Who is entitle to get legal aid? The participants replied that Sec.12 of LSA Act gives the criteria for giving legal services. Referring to ‘Domestic Offences’ Hon’ble justice opined that as such there is no term as ‘Domestic Offence’. Domestic violence has the meaning as given under special Act viz. Protection of Women from Domestic Violence Act, 2005 and it includes not only physical violence but also other forms of violence such as emotional or verbal, sexual and economic abuse. The said Act differs from the provision of the Penal code – sec.498A of the Indian Penal Code-in that it provides a broader definition of domestic violence.

In the course of discussion Justice Hema told to the participants that in 2010, Justice Altamas Kabir, Supreme Court Judge and the chairman of the NALSA said ‘judges and presiding officers should understand and identify the problems faced by women and try to solve them, while inaugurating a free legal aid clinic for the victims of domestic violence, the first of its kind in a country established under the Act of 2005. In case of sexual assaults, while a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female.’

The complaints of the sexual assault cases should be provided with legal representation. Such a person should be well acquainted. The Advocate's role should not be merely of explaining to the victim the nature of proceeding, to prepare for the case and assist her, but to provide her with guidance as to how she might obtain help of a different nature from other agencies-for e.g. Psychiatric consultation or medical assistance.

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SESSION – 6

Allocation and Utilization of Budget

Speaker- Justice R C Chavan and Prof. Geeta Oberoi

The session started with distribution of reference material in which relevant statistical reports and data of the budget granted and utilized were given. The various questions and answers held in Loksabha and Rajyasabha also referred.

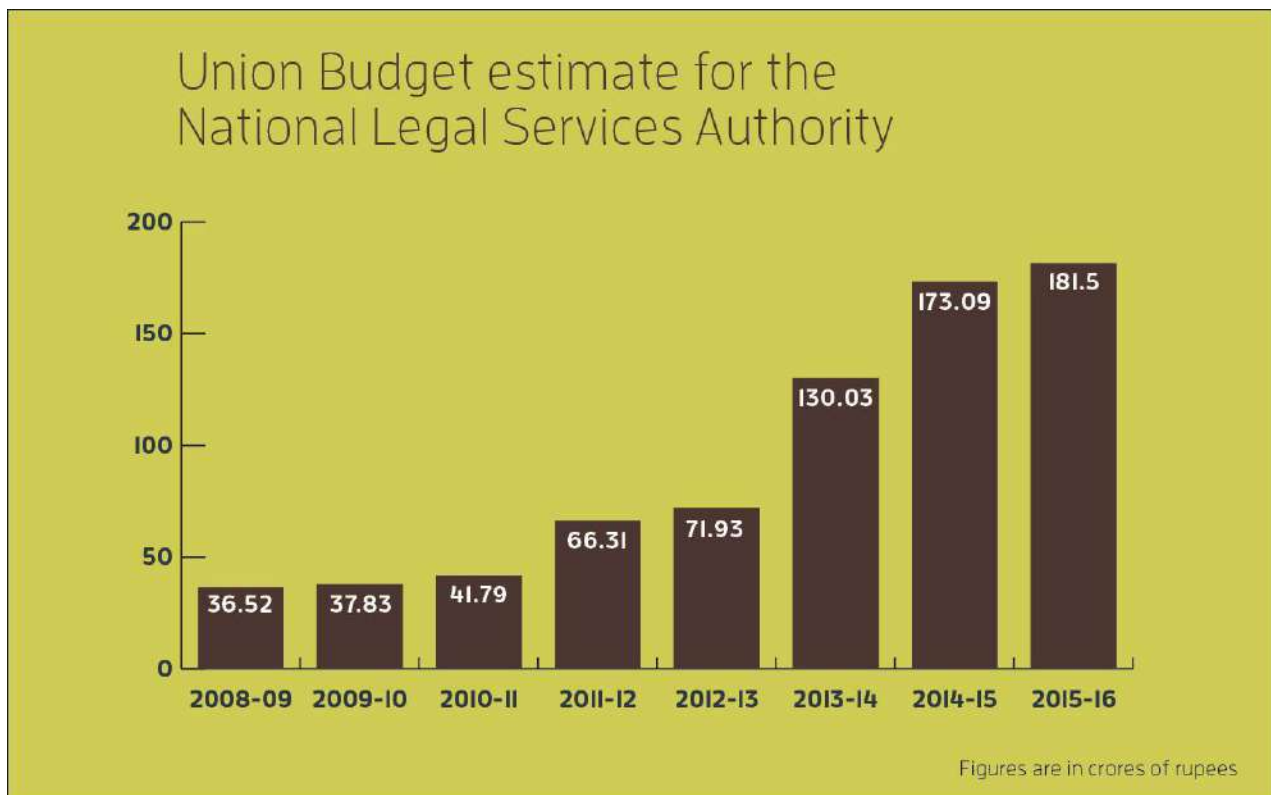
Answer to one of the questions asked to Law minister Shri. D V Sadanand Gowda, said that the NALSA (legal aid clinics) Regulations, 2016 provides for the establishment of legal aid clinics in all villages or for a cluster of villages, especially where the people face geographical, social and other barriers for access to the legal services institutions. The objective of the regulation is to provide inexpensive local machinery for rendering legal services of basic nature like legal advice, drafting of petitions, notices, replies, applications and other documents of legal importance and also for resolution of disputes without having to go to the courts. The regulation provides that preference shall be given to women lawyers having the practice of at least 3 years. The budget shall be allotted and utilized accordingly in the best interest of justice.

Statement showing the number of legal aid clinics set up till January, 2016

S. No.	State authority	No. of legal aid clinics set up till Jan.2016
1	Andhra Pradesh	849
2	Arunachal Pradesh	004
3	Assam	197
4	Bihar	363
5	Chhattisgarh	377
6	Goa	098
7	Gujrat	989
8	Haryana	462
9	Himachal Pradesh	2628
10	J & K	183
11	Jharkhand	389
12	Karnataka	701
13	Kerala	1329
14	Madhya Pradesh	1058
15	Maharashtra	645
16	Manipur	21
17	Meghalaya	125
18	Mizoram	75
19	Nagaland	134
20	Odisha	363
21	Punjab	381
22	Rajasthan	1588
23	Sikkim	22
24	Tamilnadu	677
25	Telangana	14
26	Tripura	99
27	Uttar Pradesh	3679
28	Uttarakhand	272
29	West Bengal	1019
30	Andaman & Nicobar Island	00
31	Chandigarh U.T	18
32	Dadra & Nagar Haveli	12
33	Daman & Diu	8
34	Delhi	137
35	Lakshadweep	02
36	UT of Puducherry	55
	TOTAL	18973

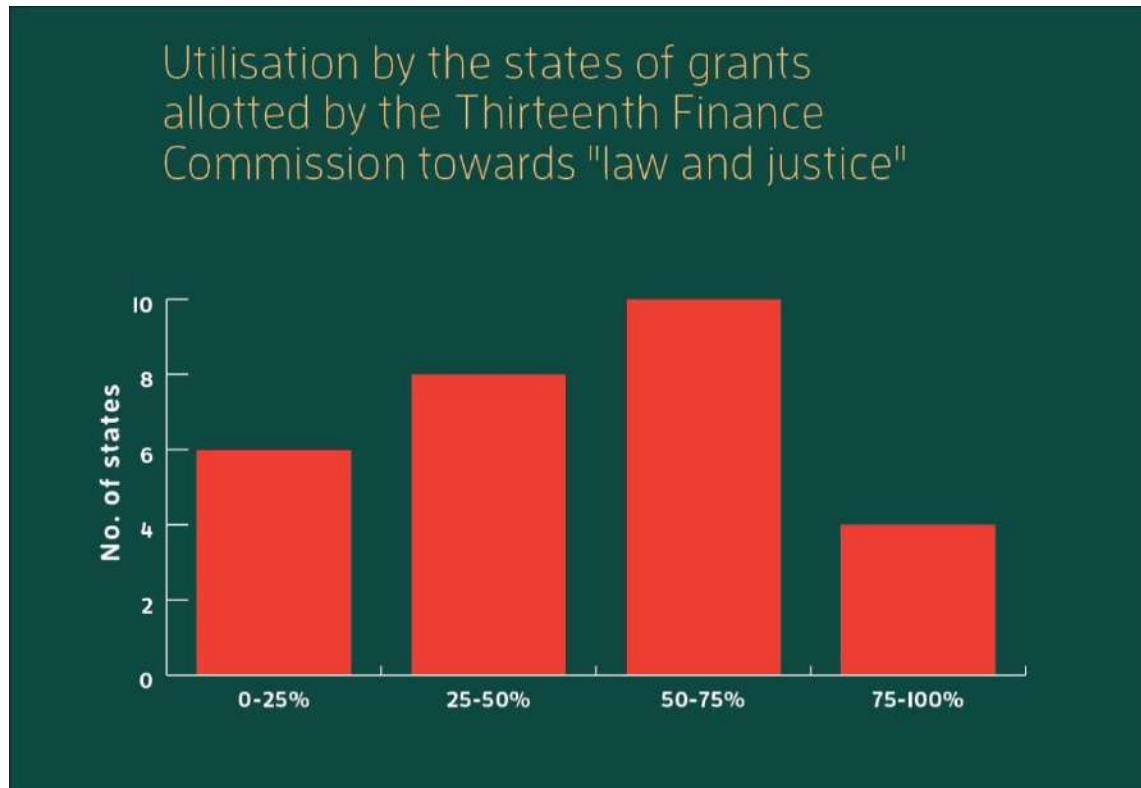
The eligibility conditions for availing of free legal services are given in the LSA Act, 1987. During the trial it is the duty of the trial court to ensure that no accused person whether in custody or on bail remains unrepresented by counsel. All accused in custody and those on bail who do not have counsel are referred to the concerned legal services institution for appointment of a counsel at State expense.

Prof. Geeta observed that NALSA's funding has been increased by more than five times between 2008-09 and 2015-16. According to the Union Budget, which apportions funds to NALSA, this money is meant to provide for 'law officers, legal advisers and counsels and also for legal aid to poor through National Legal Services Authority (NALSA)'. It is not clear as to what portion of this amount is meant for the NALSA secretariat and its administration and management.



She remarked that from the relevant statistical data provided by various State Legal Services Authorities to the NALSA, it is shown that there is no balance of funds allotted and received. In some cases, there are some SLSA's to whom big

amount of funds are allotted but there is no satisfying utilization of those amounts. Whereas, there are some SLSA's which having been allotted small amounts but they have carried out number of activities out of those funds. So, there subsist a paradoxical situation.



She concluded her presentation with a suggestion. She said that for the proper management of budget and maintenance of accounts, the state legal services authorities should engage a good chartered accountancy services.

SESSION – 7

Promotion of Lok Adalats through DLSA: Issues and Concerns

Speaker- Justice Akbar Ali

Justice Akbar Ali observed that introduction of *lok adalats* added a new chapter to the justice dispensation system of this country. *Lok adalats* succeeded in providing a supplementary forum to the litigants for conciliatory settlement of their disputes. In 1987 Legal Services Authorities Act was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern. It is one of the objects of the Act to organise *lok adalats* to ensure that opportunities for securing justice were not denied to any citizen by reason of economic or other disabilities and the operation of legal system promoted justice on a basis of equal opportunity. The system of *lok adalat* which is an innovative mechanism for alternate dispute resolution, has proved effective for resolving disputes in a spirit of conciliation outside the courts.

However, the major drawback in the existing scheme of organization of the *lok adalats* under chapter 6 of the Act is that the system of *lok adalats* is mainly based on compromise or settlement between the parties. If the parties do not come to any compromise or settlement, the case is either returned to the court of law or the parties are advised to seek remedy in a court of law. This causes unnecessary delay in the dispensation of justice, said Justice Akbar Ali.

As per amendment, permanent *lok adalats* can be established. The pecuniary jurisdiction of permanent *lok adalat* will be up to rupees 10 lacs. Historically speaking, the camps were started initially in Gujrat in March 1982 and now it has been extended throughout the country.

The evolution of this movement was a part of strategy to relieve heavy burden on the courts with pending cases. The reason to create such camps were only the pending cases and to give relief to the litigants who were in a queue to get justice. Therefore, it is the responsibility of District legal services authorities to

organise and conduct *lok adalat* in an effective enforcement of intention of legislature in enacting the LSA Act, 1987.
