

LEGAL AID – MEANS OR JUSTICE TO THE VULNERABLE*

I am delighted to be here this morning, in the fifth All India Meet of the

State Legal Services Authorities. I have a few thoughts to share with you on this occasion and I propose to do the same as briefly as I can. Looking into the records of NALSA, I find that my predecessors – illustrious Chief Justices of India, in their capacity as Patron-in-Chief of NALSA, have delivered inspiring speeches full of philosophical thoughts. Without repeating the same, it would suffice to say that those messages are timeless and need to be read again and again.

The Preamble to the Indian Constitution highlights 'Justice-Social, Economic and Political' as a core constitutional value. It serves to remind that the mere possession of rights, as expressed in the Constitution, without effective means for their enforcement and enjoyment, would mean nothing to the teeming millions of our country. In the matter of priority, the right of access to justice ought to be viewed as one among the highest.

Conceptually, justice is a virtue which transcends all barriers. The legal aid movements as statutorily envisioned and associated with Lok Adalats, Legal Literacy and Legal Awareness movements – all owe their origin to Articles 14, 21 and 39A of the Constitution of India. The goal of the administration of justice cannot be achieved but for these being there. Justice is threatened by the vice of inequality and unequal justice becomes injustice, if a person does not have the means of obtaining access to justice. In spite of ours being a welfare State, this inequality has increased. It is a tremendous task, in a vast and thickly populated country like ours, to provide a well-structured and comprehensive legal aid programme within the reach of everyone who is needy. For a large section of society, courts and justice are meaningless. There are women and children, mentally retarded and disabled, industrial workers, people in remote villages, victims of mass disasters, victims of trafficking in human beings, sufferers of man-made calamities like caste atrocities and ethnic violence or victims of natural calamities such as earthquake, drought, flood and to add – the latest in the list – 'Tsunami'. The Chief Justice of India is the Patron-in-Chief and the senior-most judge of the Supreme Court the Executive Chairman of NALSA. Similar is the structure in the High Courts at the level of the States. The purpose is two-fold. It is a constant reminder to the judges and the legal fraternity that legal aid is an essential part of justice dispensation. At the same time, it is an entrustment of the faith of the people of India, expressed through Parliament, in the Judiciary, that but for legal aid to the needy, justice is not done. We have to constantly remind ourselves that it will be a mistake to assume that providing legal aid is an outcome of our charitable impulses; the realistic view is that it is a sheer obligation to our fellow human beings.

This Meet, being held in Mumbai, has its own significance. Mumbai and legal aid services have a bondage and inter-relationship which dates back to decades. I would like to make a mention of two out of several such knots which bind Mumbai and legal aid together.

Among the early institutional efforts at providing legal aid, was the Bombay Legal Aid Society formed in 1924 which had among its objects, making justice accessible to the poor and

reducing the costs of litigation; providing lawyers to the poor on the basis of need; rendering legal aid gratuitously and making provision for payment of court fees. To qualify for legal aid, an applicant had to satisfy the means test and had to have a *bona fide* case. The Government, the High Court of Bombay and other courts soon developed a practice of referring persons, in need of legal assistance, to Bombay Legal Aid Society.

Then a Committee under the Chairmanship of Justice N.H. Bhagwati submitted a Report to the Government of Bombay on October 31, 1949. Among the recommendations of that Committee were:

- (a) There would be a network of legal aid committees at the taluk, district, High Court and state levels;
- (b) Legal aid was to be made available at the trial and appellate stages;
- (c) The formation of panels of lawyers for legal aid work was to be left to the Bar Associations. Only those lawyers with at least five years experience should be empanelled and having been empanelled, they could not refuse to undertake legal aid work. They would be paid fees on par with government pleaders. They were also expected to give legal advice.

I propose to touch two aspects of legal aid movements. One is the role played by NALSA and the other is how the involvement of the legal fraternity and law students can help in reaching the constitutional goal of justice to all.

The year 2005 is the 'Year of Excellence' in judiciary. Excellence is not one facet of the personality. To achieve excellence in all its dimensions, one has to be an excellent person, then an excellent Judge or a Lawyer, as the case may be, and then also display excellence in fulfilling any assignment which he accepts, including legal aid assignment. Even before I had declared the Year 2005 as Year of Excellence, a window to excellence had already opened, in the middle of 2004, with my esteemed brother, Justice N. Santosh Hegde, having assumed the office of Executive Chairman and Mr. Kamlesh Kumar, having assumed the office of Member Secretary, NALSA. The wonderful work which the Legal Aid Service Authorities, throughout the country, under the leadership of their respective Chairmen have done, impells me to observe that NALSA, now, has re-discovered the soul of legal aid movement in India. The legal aid has shedded its robes of being statutory, and by undertaking several initiatives, it has become a people's movement. The provisions of the Act have never been so well and meaningfully interpreted, as today. NALSA is reaching out to the doorsteps of the needy.

On 10th October, 2004, World Mental Health Day was celebrated and brother Justice Hegde, Legal Aid volunteers and I had the opportunity of spending time with mentally-challenged women and children from a rehabilitation shelter and having some heart-to-heart talks with them. The reality, I encountered on that day and the feelings which emerged into my heart cannot be described in words. On March 6, 2005, National Legal Literacy Mission was launched to ignite us with a drive to look beyond the appointment of legal aid counsel only. Jal Adhikar Abhiyan (Right to Water Project) was launched on 27th April, 2005. May Day, *i.e.*, 1st of May has led to the formulation of initiative in establishing a Cell in every district to take care of crime against labour and assist the labour in enforcement of their rights, under the labour laws and labour welfare schemes. NALSA has also focused on women and children. It proposes to establish and activate women and children protection units in every district. Child Rights Campaign has been launched in Government schools. Celebration of World Environment Day, with the NALSA touch, is under contemplation.

NALSA has acquired the nickname of being the social face of Judiciary.

It is necessary for all of us to focus our attention on these micro steps which will bring the beneficiaries into our fold and provide us an opportunity of getting closer to them, so as to make justice available to the most vulnerable sections of the society. These few projects, out of many which I have just referred to, are illustrative of the recent trends in the functioning of NALSA that access to justice is closely associated with the concept of the basic rights or human rights. Yet another message which the new face-lift of NALSA gives to us is that we have to constantly innovate new style of functioning and evolve strategies that will help us to reach out to our beneficiaries for whom we stand as trustees.

One can think of associating oneself with human rights functionaries and other accredited institutions such as Red Cross Society. Maintaining a close rapport with the District Magistrates, Police Commissioners or high police functionaries would help one in implementing the projects smoothly and without hassles. These officials, by and large, are a responsible lot and once they have understood you, they can be of immense utility for you.

The law schools can be a source of providing enthusiastic and willing legal aid and legal literacy volunteers. Involve them. It will be of mutual advantage.

Lawyers and Legal Aid

A word about the role of lawyers. The struggle for freedom witnessed, among other things, the predominant role played by lawyers. Their entry into the political scene was spearheaded by the tallest among them, Mahatma Gandhi, who gave up a successful practice of two decades, as a Barrister, to plunge into the freedom movement. In the course of a discussion on the Federal Court of India at the Federal Structure Committee on October 23, 1931, Gandhiji reflected on the contribution of his compatriots thus:

*"I recall the names of Motilal Nehru, C.R. Das, Manomohan Ghose, Badrudin Tyebji and a host of others, who gave their legal talent absolutely free of charge and served their country faithfully and well. The taunt may be flung in my face that they did so because they were able to charge princely fees in their own professional work. I reject that argument for the simple reason that I have known every one of them with the exception of Manomohan Ghose. It was not that they had plenty of money and, therefore, gave freely their talent, when India required it. I have seen them living the life of poor people and in perfect contentment.... I can point out to you, several lawyers of distinction who, if they had not come to the national cause, would today be occupying seats of the High Court benches in all parts of India."*¹

In his autobiography, the first President of India, Dr. Rajendra Prasad recalls how Gandhiji inspired the *vakils* of Patna, among whom was the young Rajendra Prasad, to investigate into the conditions of the 22,000 indigo farmers in Champaran in Bihar, which later led to a satyagraha, that was to be a turning point in the freedom struggle. The first President recalls:

*"When we had finished the work in Champaran, we returned home with new ideas, a new courage, and a new programme...we could feel and realize that if the public life of Bihar was to be at all effective, some of us would have to devote ourselves to it, to the exclusion of everything else."*²

The challenge, today, before the legal profession is to recapture that spirit with which they participated in the liberation of the country. The legal system has to address the problems of the poor if it has to have relevance and legitimacy.

Young lawyers who are in need of professional assignments should be drawn to legal aid work. We need lawyers and young lawyers need briefs. Without compromising with quality and by laying down certain guidelines, suitable young lawyers can be entrusted with legal aid briefs.

However, the emphasis on providing quality legal aid requires to be noticed as well. It is useful to recall Justice Venkatachalaiah's warning that: "legal aid to the poor should not

degenerate to poor legal aid.” A constant review and evaluation of the existing legal aid services is a must, if we have to improve the quality of our services. The issue requires to be addressed from the point of view of the person being assisted. It must be remembered that for such a person, the right of access to justice is a substantive one and not merely a measure of welfare. Standards are measurable by definite parameters that have now been evolved by the American Bar Association, in the context of the public defender programme.³ The criticism that standards need to be evolved *in advance* and not wait to be evolved on a case by case basis, holds good for the Indian scene as well. Closely linked to the question of quality, is that concerning the fees paid to lawyers doing legal aid work. While comparisons of the levels of earnings of lawyers in relation to their counterparts in other countries may not be appropriate to determine what should be the right figure, the legal profession can come up with realistic proposals in this regard.

Very often the question arises of paucity of funds for legal aid. I have two observations to make in this regard. Firstly, we must ensure, by our manner of utilizing the funds, that we are trustees of the funds made available to us and every rupee must be utilized for the purpose for which it is meant. Not even a single rupee is to be wasted. We must realise that we are accountable for it. The State Governments, once convinced, would not be lagging behind in sanctioning the projects. We, on our part, must stress that the right of access to justice is a non-derogable right and its availability cannot be made dependent on adequacy of state finances. To recall the words of Judge Blackmun in *Jackson v. Bishop*⁴ that “Human considerations and constitutional requirements are not, in this day, to be measured by dollar considerations.” In countries like the USA and Canada, the legal profession has taken upon itself, the task of maintaining systems of legal aid. In England, the State bears the largest portion of the cost of legal aid. However, they freely draw upon three sources of income: (i) contribution from the people, (ii) costs recovered from the opposite parties in litigation, and (iii) a grant from the exchequer. The legal profession, through its various organizations, is entrusted with the responsibility of administering the legal aid schemes. In India, the State assistance remains the principal element. But there is scope for voluntary effort. Good Samaritans and NGOs can be of immense assistance. These areas need to be explored.

The present statutory framework of legal aid services delivery is contained in the Legal Services Authorities Act, 1987 which envisages a network of legal aid institutions, at the head of which is the National Legal Services Authority. The agenda for these institutions is indeed a daunting one and many of the objectives can be achieved only with active co-operation of not only the State, the Judiciary and the legal profession but civil society as well.

I would like to make a little diversion. Today, I happened to read a message of Swami Ranganathananda in ‘Sacred Space’⁵, a permanent column in ‘The Times of India’ which is my favourite column and I am very much inclined to share that message with you. Today special *pooja* and public meetings are being organized in memory of Swami Ranganathananda at Rama Krishna centres, world-wide. His message is very appropriate and apposite to the theme of this meeting. He says—

“‘Mission Possible’

The whole world has to be raised. You can’t raise only one part of the world. We need a philosophy for it. We need a particular ideology for it. Not mere humanistic jargon; that won’t do. We must have a basis for truth before our action [Advaita philosophy proclaims that Truth.]

There is only one infinite Self in all. Differences are only on the surface, at the sensory level. Deep down there is perfect unity. You and I are one. Then love alone can come out of your heart. Service alone can come out of your heart.

We need a philosophy of human unity, of human service[Vedanta is that comprehensive philosophy, a science of human possibilities].”

Ladies and Gentlemen, I would not have another opportunity of meeting you all, in my capacity as Patron-in-Chief of NALSA. But that is not any matter of regret. You would find me handing over the reigns to a very worthy successor, excellent in all respects and one who would be able to provide a real and effective leadership. Shortly, we would be bidding a good-bye to Justice N. Santhosh Hegde, the Executive Chairman of NALSA. The wonderful work which he did, as the Executive Chairman, is leaving an indelible print on the path of the journey performed by NALSA under his leadership. NALSA's is a long journey, from ignorance to awareness, from poverty to legal empowerment, from injustice to justice. I would like to remind the Executive Chairman present here, the Member-Secretaries and all those who are associated with the legal aid and legal literacy campaigns that no matter what the level of your ability, you have more potential than you can ever develop in a lifetime⁶. Your devotion is your power and your dedication is your driving force. Success is the best utilization of the ability which you have⁷. Remember that which we persist in doing becomes easier – not that the nature of the task has changed, but because our ability to do has increased⁸. The sure way to miss success is to miss the opportunity⁹. Let us not miss the opportunity which we have today collectively before us.



* Inaugural speech in the 5th All India Meet of the State Legal Services Authorities on 7th May, 2005, at Mumbai.

1. M.K. Gandhi *The Law and Lawyers*, (SB Kher), Navjivan Publishing House, 1962 (1993 Reprint), p. 229.
2. Rajendra Prasad *Autobiography* (1957), 91-92.
3. The American Bar Association's advisory guidelines establish limits of the number of cases, categorwise that a public defender can undertake.
4. 404 F Supp 2d 571.
5. Sacred Space (TOI, 07.05.05).
6. James T McCay (Sacred Space, TOI).
7. Zig Ziglar (Sacred Space, TOI).
8. R.W. Emerson (Sacred Space, TOI).
9. Charles (Wisdom, May 2005).