

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 & mentally disabled persons** - The legal services institutions shall promote respect for the inherent dignity, individual autonomy including independence of mentally ill & mentally disabled persons.
- (5) **Non-discrimination** – The legal services institutions shall not discriminate mentally ill & 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 III AND MENTALLY DISABLED PERSONS IN PSYCHIATRIC HOMES, HOSPITALS AND OTHER SIMILAR FACILITIES AND IN JAILS

The Mentally III 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 SLSAs/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.

