

Editorial

Legal aid in hospitals: An innovative approach

The World Health Organization (WHO) defined health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”¹. While physical and mental health is well defined, social well being is ignored. An important measure to ensure social well-being of a person is to ensure social justice. It usually refers to giving what is rightly due to an individual, group or community. It is the responsibility of the Welfare State to prevent human rights violation and to protect and promote human rights of its citizens. The Government of India enacted the Legal Services Authorities Act in 1987².

Legal Services Authorities Act 1987: ‘Legal aid’ is defined as, provision of free legal aid to the poor, illiterate and to those who do not have access to courts. The legislation makes provision for *Lok Adalats* to ensure speedy and amicable settlement of disputes. It also makes provisions to raise legal awareness through campaigns. To achieve the above objectives, Legal Services Authority has been constituted in every State. In every district, District Legal Services Authority has been constituted to implement Legal Services Programmes and is located in the District Courts complex. The *Taluk* Legal Services Committee has been set up to reach the unreached in many *taluk* courts.

Under this Act, free legal services are available to scheduled castes or scheduled tribes, women and children, victims of human trafficking, persons with disabilities, persons with mental illness, victims of disasters, persons in custody and persons with annual income less than ₹ 9,000 or such other higher amount as may be prescribed by the State Government. Persons covered by the Act are entitled to legal counselling (advice and guidance concerning a legal matter), legal advice (interpreting the law to a given set of facts), legal representation (legal work that a licensed attorney performs on behalf of a client) and legal adjudication

(legal process of resolving a dispute) free of cost². Legal Services Authorities after examining the eligibility criteria of an applicant and the existence of a prima facie case in his/her favour should provide him/her a counsel at State expense, pay the required court fee in the matter and bear all incidental expenses in connection with the case. The person to whom legal aid is provided does not need to spend anything on the litigation once it is supported by a Legal Services Authority².

A Legal Aid Clinic in the hospital premises: A free Legal Aid Clinic, an innovative and a novel service was launched in collaboration with the Karnataka State Legal Services Authority on January 15, 2011 in the out-patient complex of the National Institute of Mental Health and Neuro Sciences (NIMHANS), Bangalore³. It was established as per the provisions of the Legal Services Authority Act, 1987². The aim of this clinic is to provide free legal services to all patients in the form of legal counselling, mediation, alternate dispute resolution, advocate services and also to assist in court related procedures such as payment of court fees, filing affidavit, etc. Karnataka State Legal Services Authority provides legal support by deputing two staff members from the office of the State Legal Services Authority and also two advocates. The NIMHANS hospital provides logistic support in the form of providing necessary space, infrastructure, forensic psychiatrist on call for the clinic, deputing full time psychiatric social work consultant, students and staff.

During the initial workup of the case or during follow up, if the doctors find that there are legal issues such as domestic violence, property dispute, marital and family discord, certificate issues, pension and employment related issues, the patients are offered legal help by referring them to the legal aid clinic with a brief mention of medical condition and the intervention required. The patients are counselled and if required,

are advised to come with the required legal documents. The eligibility criteria of an applicant and the existence of a prima facie case are explored. Subsequently, the case is referred to Legal Services Authorities for further assistance such as, to provide the patient a counsel at State expense, pay the required court fee in the matter and bear all incidental expenses.

In the past one year 2011, 274 patients utilized these services: 76 per cent of patients from the discipline of psychiatry, 10 per cent were from neurology, 9 per cent were walk in clients without any neuropsychiatric problem and 5 per cent belonged to the neurosurgery department. Patients availing health services at NIMHANS approached free legal aid clinic for the following issues: family related issues (domestic violence, conjugal rights, divorce and maintenance issues) comprised 27 per cent of the cases; 22 per cent required legal advice on miscellaneous issues such as court procedure, jurisdiction, merits and limitation of their case, filing affidavit, information on various Acts and laws, *etc*; 17 per cent needed assistance on property related disputes; 6 per cent were job related (leave, suspension, retirement and retirement benefit related issues); 6 per cent were pertaining to medical certificates (injury certificate, disability certificate, insurance, compensation and disability benefit) and 5 per cent were in the context of the Mental Health Act 1987 (admission, discharge, escape and rights of the mentally ill).

Free legal aid clinic is also accompanied by the risk of the patient filing complaints against the medical staff. Presence of both, the legal and health professionals inside the free legal aid clinic provides an opportunity for issues to be addressed immediately in collaboration without defeating the purpose of the free legal aid clinic. However, frivolous charges against the treating team by litigious persons are potential concerns.

Free legal aid: Legal aid services such as legal advice, legal representation and legal adjudication free of cost can be utilized by patients. Persons with disabilities can assert their rights using such legal aid clinics in matters such as disability certification, employment and pension. Persons with mental illnesses can defend their rights regarding admission to mental hospitals, human rights violation, treatment, property issues and marital issues. Women often stand to benefit in issues like sexual violence, domestic violence and property related issues.

India being a signatory to the UN Convention on the Rights of Persons with Disabilities (CRPD) 2007⁴

and since our country has ratified the Convention, it is obligatory for our legal system to ensure the human rights and fundamental freedom of persons with disability (including mentally ill persons and those with mental disabilities) are enjoyed on equal basis with others and to ensure that they get equal recognition before the law and equal protection from the law. The National Legal Service Authority has issued guidelines to be followed by the legal services institutions while they provide legal services to the mentally ill persons and to those with mental disabilities⁵.

In conclusion, although free legal aid clinics play crucial role and are present in every district and *taluk*, patients and health professionals are not aware of their existence. A logistic problem of accessibility is another issue. These inadequacies can be overcome by having these made available inside the hospital premises to provide immediate redressal for many patients. There is a need to establish legal aid clinic in all the government hospitals and medical colleges. Many health professionals and also fellow citizens do not have the knowledge and the existence of Legal Services Authority Act 1987 and its provisions. There is a need to educate the medical fraternity so that the benefits can flow down to those in need.

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