

## PRESS RELEASE

### THE EVOLUTION OF LEGAL AID MOVEMENT IN INDIA

Guest Lecture by Justice Dr. S. Muralidhar

NALSAR Lecture Series on Constitutionalism hosted Justice Dr. S. Muralidhar, Judge, Delhi High Court on the 11<sup>th</sup> of February, 2017 at the R.N. Jhunjhunwala Conference Hall at [NALSAR University of Law, Hyderabad](#), to present the 12<sup>th</sup> Gutta Sri Rama Rao Memorial Lecture. He spoke on the topic '*Evolution of Legal Aid Movement in India*'.

Justice Muralidhar is best known for his pro bono work including the cases for the victims of the Bhopal Gas Disaster and those displaced by the dams on the Narmada river. He was appointed amicus curiae by the Supreme Court in several PIL cases and in cases involving convicts on the death row. He was appointed a judge at the Delhi High Court in 2006. We also know him for his significant contribution to the decision of the Delhi High Court in the 'Naz Foundation' decision. The first Gutta Sri Rama Rao Memorial Lecture was delivered by Professor Upendra Baxi, who was co-incidentally also amongst the audience, since he is currently teaching a short course on 'Climate Law and Anthropocene Justice' at NALSAR. [Prof. Baxi is in fact due to deliver the next lecture under the series on 'Constitutionalism and Identity' on the 17<sup>th</sup> of February, 2017 at NALSAR.](#) Justice P.V. Reddi, former judge of the Supreme Court also graced the occasion.

Dr Muralidhar began his lecture from the origins of the Constitution by alluding to the Constituent Assembly Debates. He quoted the following from the address by Dr. B.R. Ambedkar:

*"...there is complete absence of two things in Indian Society. One of these is equality. On the social plane, we have in India a society based on the principle of graded inequality by which we have a society in which there are some who have immense wealth as against many who live in abject poverty...there is complete absence of two things in Indian society. One of these is equality. On the social plane, we have in India a society based on the principle of graded inequality by which we have a society in which there are some who have immense wealth as against many who live in abject poverty."*

Thus, Dr Muralidhar paralleled the social with the political, and asserted that law as an instrument of change can bring in some measure of equality into the social and economic sphere. In this perspective, he viewed as legal aid to the poor as an effective instrument to sufficient utilization of political equality. Moving to the constitutional text, he analyzed how the preamble and the DPSPs provide for distributive justice to materialize. Building on the

approaches of Rawls, Gandhi, and Amartya Sen, he spoke about how access to effective justice is an important requisite to give effect to the full potential of human life; which in turn was constituted by the two components - *firstly*, that every person is able to invoke the legal processes for redress irrespective of social or economic status or other incapacity, and *secondly*, that every person should receive a just and fair treatment within the legal system.

Then he went on to explain the ideal multi-layered structure of an effective legal aid model which has the following dimensions:

- **Preventive:** This includes providing counselling, advice, pre-litigation resolution mechanisms at the nearest point in time and within easy reach;
- **Remedial:** This envisages strengthening the existing models of providing legal assistance from the point of entry into the legal system till the point of exit, characterized by availability, affordability and adequacy; and
- **Rehabilitative** This envisages an expanded notion of providing legal services even beyond the phase of litigation. This is relevant for issues like bonded labour, child labour, persons who have been under involuntary incarceration in penal custodial institutions, etc.

Justice Muralidhar then noted the different phases at which an effective legal aid mechanism ought to intervene. The first of these is legal representation in courts: the traditional model of legal aid which is based on providing representation to poor litigants in courts. In the post-emergency phase with the expanded or diluted notion of *locus standi*, the second mode in which legal aid can prove to be instrumental is that of Public Interest Litigation. The third phase in which poor may be supported is now the Alternative Dispute Resolution mechanisms such as Mediation, Arbitration, Conciliation and Lok Adalats. While the preceding three phases are more or less of high currency, Dr. Muralidhar believed that in an increasingly globalized world, the legal aid must intervene also at the global stage in processes such as Online Dispute Resolution, and humanitarian concerns, for instance.

Dr. Muralidhar traced the evolution of legal aid movement through three distinct phases in Indian history:

- **First:** This phase saw the dawn of independence. In the pre-independence era, beginning with the introduction in the 17<sup>th</sup> century of the Anglo Saxon adversarial model of litigation. The right to legal aid received an early recognition of the right under the 1898 Cr PC. Courts were alive to the need to provide legal aid in criminal cases, as can be deciphered from the judgments in cases such as [\*Re: Llewelyn Evans AIR 1926 Bom 551\*](#) and [\*P.K.Tare v. Emperor AIR 1943 Nag 26\*](#). Things became clearer with the adoption of the Constitution of India, with Articles 21 and 22 in place. However, the courts in post-colonial India were initially reluctant to recognize the right, as became apparent in [\*Janardhan Reddy\*](#) and [\*Tara Singh Cases\*](#) (1951). Justice Muralidhar also spoke about the Bombay Committee on Legal Aid and the 14<sup>th</sup> Report of the Law Commission of India.
- **Second:** This phase begins in the years of the Emergency, with the constitution of the Gujarat Committee (1971), Expert Committee on Legal Aid (Central Government)

(1973), Swaran Singh Committee which introduced Article 39-A (1976), and the Judicature Committee (Central Government) (1977). The movement got a boost with the advent of Public Interest Litigation (PIL) in 1979 as a strategic arm of the legal aid movement. This phase also witnessed a shift in the focus from remedial to preventive and rehabilitative facets of legal aid through the Committee on Implementation of Legal Aid Schemes (CILAS).

- **Third:** This phase of the movement saw the creation of tribunals as bypasses. These tribunals were of a diverse nature right from some such as TDSAT being adjudicatory and child rights related tribunals being non-adjudicatory in nature. The issues that came to the tribunals were accident claims, consumer disputes, debt recovery, issues related to employment under the State and the Armed Forces, telecom disputes etc. This phase is special since it saw the enactment of the [Legal Services Authorities Act, 1987 \(LSAA\)](#). The phase is also instructive in the sense that it focuses on Lok Adalats and other pragmatic means of ensuring speedy justice. Lastly, this phase saw an increasing thrust towards arbitration, mediation, conciliation through statutes such as the Gram Nyayalayas Act 2008.

Justice Muralidhar then went on to look closely at the LSAA 1987. LSAA was inspired by the draft legislation appended to the 1977 Report of the Judicature Committee in **two** important ways; *firstly*, its definition of 'Legal services' included "*the giving of advice on any legal matter*" and *secondly*, the creation of special categories who are entitled to legal aid irrespective of their qualifying the means test.

Thereafter he came to the issues which concern the lawyers. He verified the adage, that "*We are over-lawyered and under-represented*" which poses solemn problems in endeavors to provide effective legal aid. The availability of experienced and competent lawyers at all levels and the consequent quality of legal services delivery is another issue which must be resolved. He said that payment of fees to legal aid lawyers must be commensurate to the fees payable to public prosecutors and recollected the advances that Delhi has made in this regard as a jurisdiction. Lastly, and most importantly, he lamented that legal aid is largely judge-driven and state-driven rather than it being propelled by advocates, as is the case in the United States. In fact quite to the contrary, it is dependent on the goodness of the heart of advocates and is being treated as a matter of charity, rather than it being seen as a privilege.

Justice Muralidhar then identified the barriers to effective inclusion of poor into the legal fold by drawing attention to discriminatory laws, such as those which criminalize poverty, the systemic problem of the mystification of law and legal processes, and the privileging of sections of society including the high dependence on lawyers by poor illiterate litigants. It was noted that the costs involved in the legal process, delays and uncertainties embedded in the institutional model of state-sponsored legal aid; coupled with further special disadvantages such as poverty, social status, economic status, gender, age, sexual orientation, etc; pose serious problems. He also remarked as to how our failure to integrate the non-formal legal systems with the formal legal system has had an adverse impact on the socially

disadvantaged sections of the society, despite some of them having proved more effective than the formal legal system itself.

He acknowledged the active role played by the civil society in relation to providing effective legal aid; and was hopeful of greater collaboration between the state dominated system and civil society institutions such as human rights groups, special needs' groups, women fora, online portals and issue-based initiatives.

Of particular interest to NALSAR students was his insights on university's potentials on enhancing legal aid system's reach through measures such as:

- Simplifying legal texts: Street Law project;
- De-mystifying legal processes;
- Setting up help desks in penal custodial institutions;
- Preparing materials for awareness literacy campaigns which may be issue based and statute specific;
- Rural outreach programmes;
- Use of digital and social media;
- Social action litigation at all levels of courts and tribunals; and
- Court observation; poor people's courts.

Lastly, he presented a poignant reminder to the sad state of affairs in the Indian justice delivery system where India ranked 66 out of 133 countries in the World Justice Report. He expressed his hope that law schools such as NALSAR would take the lead and join hands with the formal legal setup to strengthen justice delivery in India.