Legal Aid

DRAFT READER

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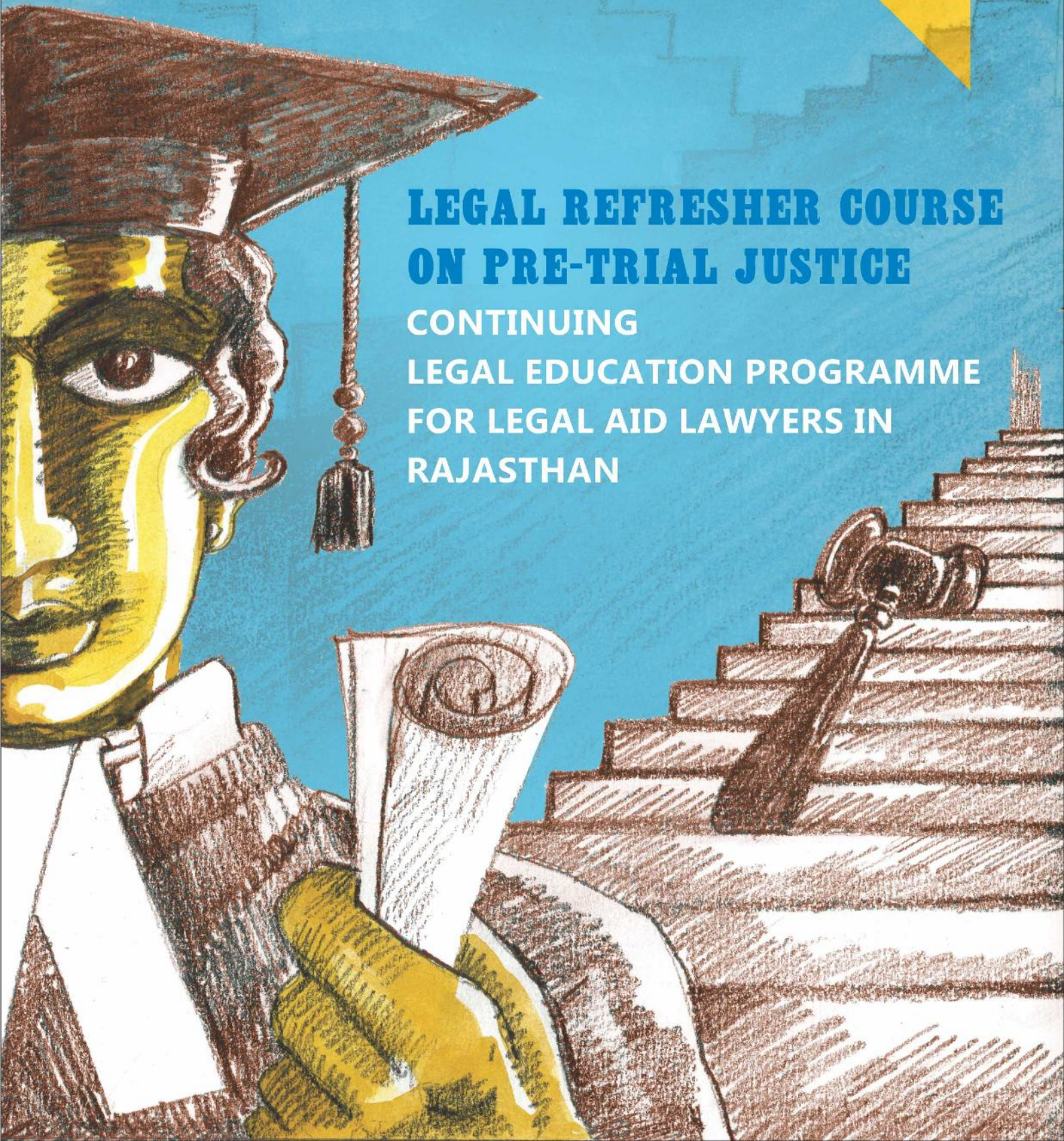

LEGAL REFRESHER COURSE ON PRE-TRIAL JUSTICE

CONTINUING LEGAL EDUCATION PROGRAMME FOR LEGAL AID LAWYERS IN RAJASTHAN

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MESSAGE & ENDORSEMENT

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MESSAGE FROM HON'BLE JUSTICE AJAY RASTOGI

CHAIRPERSON, STATE LEGAL SERVICE AUTHORITY, RAJASTHAN

Indeed, it is an ecstasy to acknowledge invitation to join you all as Chief Guest to the Inaugural Session of 'Legal Refresher Course on Pre-trial Justice' being initiated as Commonwealth Human Rights Initiative in collaboration with District Legal Service Authority (DLSA) Jodhpur & State Legal Service Authority, Rajasthan, to which I express my gratitude. Despite ardent wish to attend the Inaugural Session and to address the session: "Vision & Mission of SLSA Rajasthan for early & effective Access to Legal Aid in Police Station, Jails, Courts", I feel myself unable to be there due to my pre-occupations.

It is a matter of great pleasure that such a Training workshop is being organised for the legal aid advocates appointed under the model scheme for Remand & Bail Lawyers as well as Panel Lawyers appointed under NALSA's Retainer Lawyers Scheme.

I am confident, the Team of (DLSA) Jodhpur and SLSA Rajasthan would deliberate in the direction to contribute constructively in maintaining perception, with which the Training workshop through a continuing legal education programme is being organized, beyond expectations; and have been pleading for the cause of justice in various ways and pleasantly.

Organizing a Legal Refresher Course on the subject is an event, when each member of both the Teams with acumen will be able to think over to do justice to the participants by rendering services for better administration of justice. Kindly accept my heartiest felicitations for organisations of the Refresher Course and best wishes for its success and for betterment of the Nation.

(AJAY RASTOGI)

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न्यायाधीश श्री अजय रस्तोगी का संदेश

कॉमनवेल्थ ह्यूमन राइटस् इनिशिएटिव, जिला विधिक सेवा प्राधिकरण(डीएलएसए-जोधपुर) तथा राज्य विधिक सेवा प्राधिकरण(राजस्थान) के संयुक्त तत्वावधान में आयोजित 'लीगल रिफ्रेशर कोर्स ऑन प्री-ट्रायल जस्टिस' के उद्घाटन-सत्र में आप सबके बीच मुख्य अतिथि के तौर पर शामिल होने का निमंत्रण निश्चित ही अभिभूत करने वाला है और मैं इसके लिए कृतज्ञता ज्ञापित करता हूं। उद्धाटन-सत्र में शिरकत करने और "विजन एंड मिशन फॉर एसएलएसए राजस्थान फॉर अर्ली एंड इफेक्टिव एक्सेस टू लीगल ऐड इन पुलिस स्टेशन्स्, जेल्स, कोर्टस् " नामक सत्र को संबोधित करने की हार्दिक इच्छा के बावजूद पहले से चली आ रही व्यस्तताओं के निर्वाह के कारण मैं ऐसा करने में अपने को असमर्थ महसूस कर रहा हूं।

बड़ी खुशी की बात है कि रिमांड एंड बेल लॉयर्स नामक मॉडल योजना तथा एनएएलएसए की रिटेनर लॉयर्स योजना के तहत विधिक सहायता करने को नियुक्त अधिवक्ताओं के लिए प्रशिक्षण की ऐसी कार्यशाला का आयोजन किया जा रहा है।

मुझे विश्वास है कि जिस भावना से विधिक शिक्षा कार्यक्रम की निरंतरता में प्रशिक्षण की यह कार्यशाला आयोजित की जा रही है, उस भावना के अनुरुप जिला विधिक सेवा प्राधिकरण, जोधपुर तथा राज्य विधिक सेवा प्राधिकरण, राजस्थान की टीम अपना रचनात्मक योगदान देने की दिशा में अपेक्षा से कहीं ज्यादा आगे बढ़कर प्रयास करेगी।

विषय पर लीगल रिफ्रेशर कोर्स का आयोजन एक विशिष्ट घटना है जिसमें दोनों टीमों के प्रवीण सदस्यगण न्याय के सुयोग्य प्रस्तारण के लिए कार्यशाला के भागीदारों के हक में अनुचिन्तन को समर्थ होंगे। कृपया, रिफ्रेशर कोर्स के आयोजन के लिए मेरी हार्दिक बधाई तथा इसकी सफलता और राष्ट्र की बेहतरी के लिए मेरी शुभकामनाएं
स्वीकार करें!

(अजय रस्तोगी)

MESSAGE FROM MAJA DARUWALA
DIRECTOR, COMMONWEALTH HUMAN RIGHTS INITIATIVE

Dear Advocates,

This long term training is a platform for learning and demonstrating on any legal issue that can ensure fair trial practices and reduce unnecessary pre-trial detention. As lawyers we are always keen to polish our cognitive/legal knowledge and argumentation skills and yet the scope for this is not always easily available. We are troubled by illegalities and malpractices we see in the court room but wonder how to address them and where to begin. As defense lawyers, we have a commitment to our clients to deliver the best services and provide the best solutions within the norms of fair trial. Yet we lack the biggest ammunition for this, which is the timely access to the most recent judgments, old and new debates within law and legal reform. We wish we had the technical expertise on specialised areas of defense such as remand, bail, evidence and cross-examination, to represent our clients more effectively, but the right mentorship is missing.

As advocates, we are different from a range of other professionals. Our task is not merely the delivery of a product or just any service, but to deliver relief and to provide protection to our clients against all forms of rights violation to serve the purposes of justice. But we forget sometimes that as advocates in the legal profession, we have a primary duty towards ensuring legal service and legal aid to the large number of pre-trial detainees who might suffer longer periods of detention than necessary merely because they are poor and cannot afford good lawyers or we were late in our interventions.

We forget to peer into the jails or make regular visits to see if there is someone there who needs our counsel. The high walls of the prison with the outside world's indifference towards inmates makes prison a breeding ground for delays and illegalities that even the prison itself would want to be rid of. It is possible that someone was unnecessarily remanded to custody or not produced physically in court merely because we were not appointed, not present, we did not argue, or did not argue well enough.

This course is designed to remind us of the duties that we should feel proud to perform as advocates because only we can perform it. Bringing the legal profession closer to jail reform through timely and effective use of remand and bail laws and the use of social protection laws for vulnerable prison populations will lie at the heart of this course on fair trial.

As officers of the court we are also expected to know and defend the 'rule of law', both procedurally and substantively. Yet the nature of law seems to escape our grasp in the practices that we come upon in the functioning of the criminal justice system as a whole. Our idealism, convictions and goodwill are constantly tested by the routine of court life, the poverty of debate, competitiveness and a mass of illegalities. In the course of being competitive with our peers we forget how we can encourage, nurture and be a resource to each other and to the many young lawyers who join the courtroom battle every day.

To address all this it is indispensable that we have opportunities and learning spaces to enrich our minds and be equipped towards the duties we have to perform, both individually and collectively. This training programme for legal aid lawyers is being initiated in just this spirit. It ensures your interaction with some of the best legal minds and criminal justice actors in Rajasthan and the country who will update and expand your legal knowledge. You will be guided and mentored by some of these inspiring individuals who have great commitment to 'rule of law' and deep knowledge of the legal strategies needed to protect one's client in the fullest sense.

On the whole, the course will draw attention to the powers and rejuvenated spirit that the legal profession, particularly legal aid lawyers, can channelize back into the criminal justice system through a revitalized knowledge of the law, vulnerabilities and prejudices and role of reasoning and argumentation; and improved skills of application of the law and effective representation for the indigent. The range of things this course can do, from legal education to changing malpractices in pre-trial detention and during trial, will be moulded by the energy and enthusiasm, interest and commitment all of you will bring to it.

MAJA DARUWALA

सीएचआरआई के निदेशक माया दारुवाला का संदेश

प्रिय अधिवक्तागण,

लंबी अवधि का यह प्रशिक्षण एक मंच की तरह है- ऐसा मंच जहां आप उन कानूनों मुद्दों को सीख-जान सकते हैं जिससे अदालती सुनवाई की निष्पक्षता सुनिश्तित होती है और अदालती सुनवाई-पूर्व की अनावश्यक बंदीकरण की घटनाओं में कमी आती है। एक वकील के तौर पर हमें हमेशा ही कानून के अपने ज्ञान और तर्क-कौशल को मांजने-चमकाने की जरुरत होती है लेकिन ऐसा कर पाने के अवसर अक्सर उपलब्ध नहीं होते। अदालत के भीतर जारी अनियमितताओं और कदाचार से हम परेशान रहते हैं और हताशा-भाव से सोचते हैं कि इन बातों का क्या समाधान निकाला जाय और इसकी शुरुआत कहां से की जाय। बचाव-पक्ष के वकील के रुप में हम निष्पक्ष न्याय के मानकों के भीतर रहते हुए अपने मुवक्कील को बेहतरीन सेवा और सर्वश्रेष्ठ समाधान प्रदान करने को प्रतिबद्ध हैं। लेकिन ऐसा कर दिखाने के लिए जो सबसे ज्यादा हथियार जरुरी हैं, जैसे- नवीनतम अदालती फैसलों के बारे में सामयिक जानकारी या फिर कानून और विधिक सुधार सबंधी नयी-पुरानी बहस की जानकारी, उनका हमारे पास अभाव होता है। हमारी यह भी इच्छा होती है कि रिमांड, बेल, एवीडेंस तथा क्रास-एग्जामिनेशन सरीखे बचाव से जुड़े विशिष्ट पहलुओं पर हमें तकनीकी महारत हासिल हो ताकि हम अपने मुवक्कील की पैरवी ज्यादा कारगर ढंग से कर पायें लेकिन ऐसे मामले में हमें सही मार्गदर्शन नहीं मिल पाता।

बतौर वकील हम अन्य पेशेवर लोगों से तनिक हटकर हैं। हमारा काम किसी वस्तु या किसी सेवा को प्रदान करना भर नहीं बल्कि हमारा काम अपने मुवक्कील को राहत दिलाना और इंसाफ के रास्ते पर चलते हुए अधिकार-उल्लंघन के तमाम रुपों से उसे सुरक्षा प्रदान करने का है। लेकिन हम कभी-कभी भूल जाते हैं कि एक अधिवक्ता के तौर पर कानून के पेशे में हमारा प्राथमिक कर्तव्य विचाराधीन कैदियों को विधिक सहायता और कानून की सेवा की अदायगी को सुनिश्चित करना है क्योंकि इस बात की प्रबल आशंका होती है कि गरीबी के कारण ज्यादातर विचाराधीन कैदी अच्छा वकील ना खड़ा

पाने की स्थिति में जरुरत से ज्यादा समय तक कैद भुगतने को बाध्य हों। बहुधा यह भी होता है कि हमीं लोग समय रहते हस्तक्षेप नहीं कर पाते।

हम जेलों के भीतर झांक पाना भूल जाते है। क्या जेल के भीतर ऐसा कोई है जिसे हमारे विधिक परामर्श की जरुरत है- यह जानने के लिए जेलों में नियमित आवाजाही जरुरी है लेकिन हम ऐसा नहीं कर पाते। जेल की ऊंची दीवारें जेल के भीतर की दुनिया को अपने दायरे में समेटकर रखती हैं, बाहर की दुनिया जेल के भीतर की दुनिया से निरपेक्ष रहती है और ऐसे में जेल एक ऐसी उपजाऊ जमीन के रुप में तब्दील हो जाती है, जहां अनियमितताओं और विलंब की बेल खूब फलती-फूलती है। अनियमितताओं और विलंब की यह बेल कुछ इस कदर बढ़ती है कि खुद जेल ही इससे छुटकारा पाना चाहता है। इस बात की बहुत आशंका रहती है कि किसी आदमी को गैरजरुरी तौर पर रिमांड के तहत हिरासत में ले लिया जाय या फिर उसे सशरीर अदालत में ना पेश किया जा सके क्योंकि हम जैसा कोई वकील उनकी पैरवी के लिए नियुक्त ना हो, अनुपस्थित रहे, बहस से चूक जाये या फिर बहस करे भी तो तथ्यों को ठीक से पेश ना कर पाये।

इस पाठ्यक्रम का निर्माण हमें उन दायित्वों की याद दिलाने के लिए किया गया है जिनका सिर्फ हमीं निर्वाह कर सकते हैं और एक वकील के रुप में इन दायित्वों का निर्वाह करते हुए हमें गर्व का बोध होना चाहिए। निष्पक्ष सुनवाई से जुड़ा यह पाठ्यक्रम रिमांड और बेल से जुड़े कानूनों के कारगर और समयानुकूल इस्तेमाल और जेल के भीतर कैदी बनकर रहने वाली निरीह आबादी के लिए सामाजिक सुरक्षा के कानूनों के उपयोग के जरिए जेल-सुधार तथा कानून के पेशे को नजदीक लाने की भावना से प्रेरित है।

अदालती अधिकारी के रुप में हमसे अपेक्षा की जाती है कि हम कानून के शासन को प्रक्रिया और अंतर्वस्तु के धरातल पर समझेंगे और उसकी रक्षा करेंगे। लेकिन, जैसे ही हम दंडपरक न्याय-व्यवस्था के कामकाजी धरातल पर उतरते हैं, कानून की प्रकृति पर हमारी पकड़ ढीली जान पड़ने लगती है। रोजमर्रा की अदालती प्रक्रियाओं, बहसों के खोखलेपन, प्रतिस्पर्धा और भारी अनियमितताओं के बीच हमारे आदर्शवाद, प्रतिबद्धता और जन-कल्याण की भावना की जैसे परीक्षा होने लगती है। अपने साथी वकीलों के बीच होड़ में बने रहने की कोशिशों के बीच यह बात भूल जाती है कि हम एक दूसरे को

बढ़ावा दे सकते हैं, परस्पर पूरक साबित हो सकते हैं और एक-दूसरे के लिए तथा अदालती परिसर में रोजमर्रा की कानूनी लड़ाई के लिए दाखिल होने वाले नये वकीलों के लिए संसाधन साबित हो सकते हैं।

इन सारी बातों के समाधान के लिए बहुत जरुरी है कि हमें सीखने-जानने का अवसर और मंच मिले, जहां हम अपने मन-मस्तिष्क को समृद्ध बनायें और व्यक्तिगत तथा सामूहिक रुप से हमें जो जिम्मेदारियां निभानी हैं, उनके लिए अपने को तैयार कर सकें। विधिक सहायता प्रदान करने वाले वकीलों का प्रशिक्षण-कार्यक्रम बस इसी भावना से शुरु किया गया है। इस प्रशिक्षण-कार्यक्रम में भागीदारी करते हुए आपकी भेंट राजस्थान तथा देश के अन्य हिस्सों से आये श्रेष्ठ विधिवेत्ताओं तथा दंडपरक न्याय-व्यवस्था की अहम हस्तियों से होगी जो कानून के आपके ज्ञान को अद्यतन करते हुए उसका विस्तार करेंगे। 'विधि के शासन' के प्रति अत्यंत निष्ठावान तथा मुवक्कील के बचाव के लिए जरुरी कानूनी नुक्तों के गहरे जानकार ऐसे कुछ प्रेरणास्पद व्यक्ति प्रशिक्षण के दौरान आपका मार्ग-दर्शन करेंगे।

साररुप में कहें तो यह पाठ्यक्रम कानून के पेशे, खासकर विधिक सहायता को नियुक्त वकीलों का ध्यान उस ताकत और नव-ऊर्जस्वी कार्य-भावना की तरफ खींचने की कोशिश है जिसको दंडपरक न्याय-व्यवस्था के भीतर कानून की जीवंत जानकारी, कमजोरियों और पूर्वाग्रहों की पहचान, तर्क-कौशल और तर्क-क्षमता के इस्तेमाल, कानून के कारगर उपयोग की युक्तियों तथा गरीब-जन की बेहतर नुमाइंदगी के जरिए जगाया जा सकता है। यह पाठ्यक्रम विधिक शिक्षा से लेकर सुनवाई-पूर्व की नजरबंदी तथा सुनवाई के क्रम में होने वाले कदाचार को रोकने के मामले में जो कुछ कर पाने में मददगार होगा उस पर आपकी उस ऊर्जा, उत्साह, रुचि और प्रतिबद्धता की छाप होगी जिसके साथ आप इस प्रशिक्षण-कार्यक्रम में शिरकत करेंगे।

माया दारुवाला

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Section I: OVERVIEW

HkkX I: सारांश

'EARLY' ACCESS TO LEGAL AID: STAGES OF PRE-ARREST AND ARREST

Jaishree Suryanarayanan

1. RIGHT TO LEGAL AID: A CONSTITUTIONAL MANDATE

Anyone who is arrested has the right to a lawyer. This is a constitutional guarantee and a fundamental right.[1] A reading of the Constituent Assembly debates on the inclusion of Article 22 (1) shows the importance that was attached to this provision. The debates reveal that this provision was meant to compensate for the omission of the 'due process' clause in Article 21 (the right to life). In Dr B.R. Ambedkar's words, the Article

"*.....merely lifts from the provisions of the CrPC two of the most fundamental principles which every civilized country follows as principles of international justice…. Making a fundamental change because what we are doing.....is to put a limitation upon the authority both of Parliament as well as of the Provincial Legislatures not to abrogate the two provisions because they are now introduced in our Constitution itself.*"[2]

The moment of arrest pits the individual against the might of the police and puts her/him in jeopardy in relation to the custodian. S/He is extremely vulnerable to custodial violence and is not in a position to assert her/his rights. In reality, many of those who are arrested are from the lower income groups, who do not have legal representation, and are too poor to furnish bail bonds. As a result they suffer prolonged periods of pre-trial detention.

The Constitution was amended in 1976 in recognition of the prevailing socio-economic conditions in the country and the consequent violation of the right to equality and the right to equal access to justice. This constitutional amendment[3] stated that the State should provide free legal aid by appropriate laws or schemes to secure equal justice to all.

Our judiciary too has responded to the needs of the poor through creative interpretation of the right to equality and the right to life (Articles 14 and 21) and made the right to legal aid a fundamental right by reading it into the right to life.[4] The jurisprudence that has developed through instances of prolonged incarceration

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1 Article 22 (1) of the Constitution of India.

2 parliamentofindia.nic.in.

3 Article 39A of the Constitution.

4 *M.H. Hoskot v State of Maharashtra* AIR 1978 SC 1548.

and custodial violence, at times resulting in death, has recognised the importance of the right to legal aid in preventing such violations.[5]

These developments imply that the State must provide a person with a lawyer if s/he is too poor to hire one her/himself. Otherwise the right to equal treatment before the law is breached. That is the essence of our constitutional and legal arrangements as is summed up in the Supreme Court's statement:

"The right to free legal services is therefore, clearly an essential ingredient of 'reasonable, fair and just' procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21."[6]

2. WHEN DOES THE RIGHT TO LEGAL AID BEGIN

Expert committees[7] appointed by the central and some state governments in the 1970s have deliberated upon the nature and scope of the right to legal aid. Provision of legal aid was conceptualised as a mechanism to reduce the discrimination within the criminal justice system and to ensure that all have equal access to justice through early and effective legal representation.

It was recognised by all the committees that **legal aid should be made available at all stages in the criminal justice system as required by the fair trial standard – on arrest, during investigation, at trial and post trial.**

However, the Code of Criminal Procedure (hereinafter referred to as the Code) was amended in 2008,[8] whereby, a **pre-arrest** stage has been added to the stages identified by the committees. Early access to legal aid, therefore, needs to be seen in the context of these amendments.

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5 The Supreme Court recognised the role of legal aid in preventing custodial violence and prolonged pre-trial detention resulting in human rights violations in a series of PILs, such as, *Hussainara Khatoon (IV) v State of Bihar* 1979 AIR 1369; *Khatri (II) v State of Bihar* 1981 CrLJ 470 and *Sheela Barse v State of Maharashtra* AIR 1983 SC 378.

6 *Hussainara Khatoon (IV) v State of Bihar*1979 AIR 1369.

7 Committee appointed by the government of Gujarat in 1971 under the chairmanship of Justice P.N. Bhagwati; Expert Committee on Legal Aid appointed in 1973 (This committee was appointed by the Ministry of Law and Justice, Government of India under the chairmanship of Justice V.R. Krishna Iyer and submitted the report, *Processual Justice to the People*); Juridicare Committee appointed in 1977 (This committee was appointed by the Government of India and consisted of Justices P.N. Bhagwati and V.R. Krishna Iyer and submitted the *Report on National Juridicare: Equal Justice – Social Justice*).

8 In 2008, for the first time, significant amendments were made to the 1973 Code. The 2008 Act met with severe criticism from some sections and was notified and enforced only on December 31, 2009 (Sections 54, 55, 60A). Provisions dealing with arrest powers were again sent to the Law Commission and on its recommendations, provisions were further amended by the 2010 Act. The arrest provisions in the 2008 Act were notified and enforced from October 30, 2010 and the 2010 Act was notified on November 1, 2010 (Sections 41B, 41C, 41D).

The Legal Services Authority Act (LSAA), 1987, (which came into operation in 1996) provides that any person in 'custody' is entitled to legal aid,[9] which will begin the very moment a person comes in to contact with the police - the first point of contact within the criminal justice system - as a suspect or an accused or a witness.[10] This Act provides the enabling legal framework through the constitution of legal services authorities[11] to provide free legal services to the weaker sections.

The amendment to the Code was necessitated by the need to provide safeguards to check the abuse of the power to arrest by the police and to make the process transparent to curb custodial violence. Across the country, courts have consistently and repeatedly deplored unnecessary detentions without arrest, unnecessary arrests, custodial torture and abuse of power and addressed the importance of having safeguards on the ground to prevent torture and use of third degree methods by the police during interrogation.

The Supreme Court prescribed directions in *Joginder Kumar*[12] and *D.K. Basu*,[13] to put in place safeguards to curb abuse by the police of the power to arrest without a warrant and custodial violence while the accused is in police custody. Further, the Law Commission's recommendations in its 177th Report,[14] paved the way for the Code to be amended to include the directions prescribed in these two decisions.

The provisions relating to arrest were amended to make the process transparent and to make the police more accountable by requiring them to give reasons for carrying out a particular arrest in offences punishable with imprisonment up to 7 years. Section 41(1)(b) provides specific conditions that need to be fulfilled before carrying out an arrest in such cases.[15] The police now have to give specific reasons, in writing,

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9 Section 12, The Legal Services Authorities Act, 1987.

10 It has been held by the Supreme Court that in every arrest, there is custody but not vice versa and that both the words 'custody' and 'arrest' are not synonymous terms. *Directorate of Enforcement v Deepak Mahajan* (1994) 3 SCC 440. Also see *State of UP v Deoman Upadhyaya* AIR 1960 SC 1125; *Aghnoo Nagesia v State of Bihar* AIR 1966 SC 119; *Mukesh v State* Crl Appeal No.615/2008 judgement dated May 4, 2010 (Del HC).

11 The Legal Services Authority Act (LSAA), 1987 provides for a hierarchical structure for the delivery of legal services. Legal services authorities at national, state, district and *taluk* levels have been constituted under the Act. The Supreme Court and High Courts have their own legal aid committees. While the National Legal Services Authority (NLSA) can formulate legal aid schemes for the entire country, the State Legal Services Authorities (SLSA) frame model schemes for their respective state. The SLSA and the District Legal Services Authorities also conduct legal aid clinics in prisons.

12 *Joginder Kumar v State of UP* 1994 SCC (4) 260.

13 *D.K. Basu v State of West Bengal* AIR 1997 SC 610.

14 177th report of Law Commission of India available at http://lawcommissionofindia.nic.in/reports/177rptp1.pdf.

15 Section 41(1)(b) (i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence; (ii) the police officer is satisfied that such arrest is necessary – (a) to prevent such person from committing any further offence; or (b) for proper investigation of the offence; or (c) to prevent such person from causing the evidence of the offence to disappear or tampering

for carrying out an arrest or for not doing so in cases not falling within these specified situations, and a magistrate at first production has to independently assess the validity of these reasons.

In all cases where the arrest of a person is not required under Section 41(1) the police officer is required to issue a 'notice of appearance' directing the person to appear before her/him at a specified place and time under Section 41A. If such a person appears before the police officer, then s/he cannot be arrested, unless the police officer is of the opinion that the arrest is necessary for the conditions prescribed in Section 41. Reasons have to be recorded before any such arrest, which will be subject to scrutiny by a magistrate at first production under Section 167 of the Code.

While the Supreme Court has time and again emphasised that there is no scope for any further debate about the existence of the right to legal aid at the time of first production[16], there appears to be some ambiguity about the existence of this right at the two stages of pre-arrest and arrest.

The right to legal aid at the pre-arrest stage has not yet gained recognition. Even though some States have recognised the right to legal aid at the time of arrest and devised schemes for enforcing the right, recognition of this right at this stage is half-hearted, which is reflected in the absence of any institutional mechanism for realising this right in many States.

This paper seeks to argue for the need to recognise and enforce the right to legal aid from the earliest stage when an accused is arrested or a suspect is issued a notice of appearance and called for questioning under Section 41A, CrPC. The preventive role of legal aid needs to be acknowledged especially in the context of the amendments made to the Code.

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with such evidence in any manner; or (d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or (e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured.

16 *Khatri (II) v State of Bihar* 1981 CrLJ 470. This was reaffirmed more recently in *Md. Ajmal Md. Amir Kasab @Abu Mujahid v State Of Maharashtra* AIR 2012 SC 3565.

3. WHY 'EARLY' ACCESS TO LEGAL AID IS AN IMPERATIVE

Constitutional and Statutory Rights of an Arrested Person

- The right to a lawyer on being arrested (Article 22 (1))
- The right to have the arrest memo prepared as per Section 41B and scrutinised by the Magistrate
- The right to be informed of the grounds of arrest and of the right to bail (Section 50)
- The right of information to any friend, relative or any other person nominated by the arrested person about the arrest and the place of detention (Section 50 A)
- The right to medical examination by a medical officer/registered medical practitioner soon after arrest – female medical practitioner in the case of a female accused (Section 54)
- The right to meet an advocate of her/his choice during interrogation (Section 41 D)
- The right against self incrimination (Article 20 (3))
- The right to be produced before a competent Magistrate within 24 hours, excluding the time taken for the journey to the Magistrate (Section 56 read with Section 57)

Five years after the amendments to the Code, the non-implementation of the provisions pertaining to arrest and the continuing tendency of the police to 'arrest first and then question' came up before the Supreme Court in *Arnesh Kumar*.[17] Expressing concern, the court again called for a change in police attitudes and directed the force to abide by the amended arrest provisions, and not arrest any person unless there are supportable reasons.

The court reminded the police that Section 41 of the Code expressly precluded a police officer from arresting a person accused of an offence punishable with up to seven years imprisonment only on her/his satisfaction that such person has committed the offence. Instead, the police officer has to be satisfied that the arrest is mandated by the provisions of the section, and should be able to justify it in the facts of the case and not just mechanically reproduce the reasons contained in Section 41.[18]

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17 *Arnesh Kumar v State of Bihar* 2014 (8) SCALE 250.

18 *id*.

The court also pointed out the importance of judicial scrutiny and the duty of a magistrate in a remand proceeding to check unnecessary and baseless arrests. It was critical of the "*routine, casual, and cavalier manner*" in which detention is authorised by magistrates and directed them to independently peruse the police report and record their satisfaction.[19]

Thus it is seen that legal and judicial processes that ought to ensure that accused persons, especially the poor, who do not have the resources to engage expensive lawyers, do not suffer unnecessary arrests and lengthy pre-trial detention, have failed them. The right to a fair trial is, therefore, violated as the basic principle of 'presumption of innocence until found guilty by a court after a trial' is breached with impunity as poor undertrials languish in jails, at times for periods which exceed the sentence that could have been given if convicted.

One of the basic features of a fair trial is that an accused is able to avail of all her/his rights and put up an effective defence through competent legal representation. A person with resources would do exactly that and will not have to undergo prolonged pre-trial detention.

The right to legal aid, therefore, has been recognised as an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law. This right is a foundation for the enjoyment of other rights, including the right to a fair trial, and is an important safeguard that ensures fundamental fairness and public trust in the criminal justice process.[20]

While upholding the right against self incrimination in a custodial or near custodial setting, Krishna Iyer, J drew upon the importance of the right to legal representation and said

"*It may not be sufficient merely to state the rules of jurisprudence in a branch like this. The man who has to work it is the average police head constable in the Indian countryside. The man who has to defend himself with the constitutional shield is the little individual, by and large. The place where these principles have to have play is the unpleasant police station, unused to constitutional nuances and habituated to other strategies.*"".....*Right at the beginning we must notice Art. 22(1) of the Constitution.....*"[21]

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19 *Arnesh Kumar v State of Bihar* (2014) 8 SCC 273.

20 Principle 1, Clause 14, Resolution No. 67/187, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (2012) available at http://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidlines_on_access_to_legal_aid.pdf.

21 *Nandini Sathpaty v P.L.Dani* AIR 1978 SC 1025 followed in *State (N.C.T. Of Delhi) v Navjot Sandhu@ Afsan Guru* (2003) 6 SCC 641 .

The pre-trial stages where effective legal representation, which includes representation by a legal aid lawyer in the case of an indigent person, can prevent unnecessary/illegal arrests and custodial violence, and ensure respect for the rights of a suspect/accused, such as the right against self incrimination[22] and the right to bail, are pre-arrest and arrest. These safeguards were designed to mitigate the disadvantages faced by an accused in a custodial environment.

Pre-arrest Stage

The inclusion of Section 41A to the CrPC has created a pre-arrest stage, thereby, necessitating the enforcement of the right to legal aid even prior to arrest when a suspect can be issued a notice of appearance to appear before the police for questioning within 2 weeks of the institution of a case.[23]

The entitlement to legal aid of a suspect prior to questioning finds recognition in the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. This UN standard provides for the right to legal aid of any person who is "**detained, arrested, suspected of,** or charged with a criminal offence punishable by a term of imprisonment or the death penalty" at all stages of the criminal justice process.[24] It states that "States should ensure that, prior to any questioning and at the time of deprivation of liberty, persons are informed of their right to legal aid and other procedural safeguards as well as of the potential consequences of voluntarily waiving those rights."[25]It is the responsibility of police, prosecutors and judges to ensure that those who appear before them who cannot afford a lawyer and/or who are vulnerable are provided access to legal aid.[26]

The implementation of Section 41A can give rise to the following situations in case of offences punishable with imprisonment up to 7 years:

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[22] This right is a fundamental right under article 20 (3) and it has been held by courts that it will be available only to an accused against whom a criminal case to be investigated by the police under the Code is instituted. This right will not be available to a person against whom only an inquiry is to be conducted by customs and other revenue officials on the basis of which an offence triable by a magistrate may be made out. *Romesh Chandra Mehta v State of West Bengal* (1969) 2 SCR 461 followed in *Poolpandi v Superintendent, Central Excise* 1992 SCR (3) 247 and *Senior Intelligence Officer v Jugal Kishore Samra* (2011) 12 SCC 362. Aso see Balkishan A. Devidayal v State of Maharashtra (1980) 4 SCC 600.

[23] *Arnesh Kumar v State of Bihar* (2014) 8 SCC 273.

[24] Principle 3, Clause 20, Resolution No. 67/187, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (2012) available at http://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidlines_on_access_to_legal_aid.pdf.

[25] *ibid* Principle 8, Clause 29.

[26] *ibid* Principle 3, Clause 23.

I. a suspect can be called to appear at the police station for interrogation without being arrested and be in police custody for that duration
II. a suspect can be wrongly arrested without sufficient reasons, instead of being issued a notice of appearance

I. Questioning of a suspect pursuant to a notice of appearance

A person can be in police custody for questioning without being arrested. The terms 'custody' and 'arrest' have not been defined in the Code. However, it has been held by the Supreme Court that "in every arrest, there is custody but not vice versa and that both the words 'custody' and 'arrest' are not synonymous terms."[27] In the context of admissibility of confession of an accused while in police custody,[28] it has been held that "police custody" does not commence only when the accused is formally arrested but "would commence from the moment when his movements are restricted and he is kept in some sort of direct or indirect police surveillance."[29]

This would squarely cover an accused who is called for questioning pursuant to a notice of appearance. Therefore, it can be argued that the right to a lawyer/legal aid lawyer of suspects arises before questioning, when they become aware that they are the subject of investigation, and when they are under threat of abuse and intimidation, such as, in custodial settings. Further, Section 41A is silent on the duration for which a suspect can be detained in a police station for questioning, which can become a source of harassment and can be mitigated by the presence of a lawyer.

It has been held conclusively by the courts that the right against self-incrimination extends to the stage of investigation.[30] While there is a requirement of formal accusation for a person to invoke Article 20(3), the protection contemplated by Section 161(2) of the Code is wider. This section protects `any person supposed to be acquainted with the facts and circumstances of the case' in the course of examination by the police.[31] Therefore the right against self-incrimination protects persons who

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[27] *Directorate of Enforcement v Deepak Mahajan* (1994) 3 SCC 440. Also see *State of UP v Deoman Upadhyaya* AIR 1960 SC 1125; *Aghnoo Nagesia v State of Bihar* AIR 1966 SC 119; *Mukesh v State* Crl Appeal No.615/2008 judgement dated May 4, 2010 (Del HC).

[28] Section 26, Indian Evidence Act, 1872.

[29] *Paramhansa Jadab v State* AIR 1964 Ori 144.

[30] *M.P. Sharma v Satish Chandra* (1954) SCR 1077;

[31] *Selvi v State of Karnataka* 2010(7) SCC 263. However, in *Romesh Chandra Mehta v State of West Bengal* (1969) 2 SCR 461, this very logic was used by the Supreme Court to deny the right against self incrimination to persons who are examined during proceedings that are not governed by the Code by drawing a distinction between proceedings of a purely criminal nature and those proceedings which can culminate in punitive remedies and yet cannot be characterised as criminal proceedings. A customs officer is not a police officer as

have been formally accused as well as those who are examined as suspects in criminal cases.

The importance of legal representation as a mechanism for the practical realisation of this right against self incrimination has been recognised by the Supreme Court in *Nandini Satpathy*. The court, even while cautioning about the possibility of a potential police-lawyer nexus, held:

"*The spirit and sense of Art. 22 (1) is that it is fundamental to the rule of law that the services of a lawyer shall be available for consultation to any accused person under circumstances of near-custodial interrogation. Moreover, the observance of the right against self-incrimination is best promoted by conceding to the accused the right to consult a legal practitioner of his choice.*"[32]

Section 41D of the Code which confers on an arrested person the right to a lawyer during interrogation, does not expressly cover instances where a person is called to the police station for questioning under Section 41A without being arrested. But, the spirit and rationale behind provision of this right to an arrested person requires that the role of a lawyer, or a legal aid lawyer in the case of an indigent person, at this pre-arrest stage too, needs to be recognised and provided for in the Code.

II. Enforcement of Section 41A

The police continue to show a tendency to arrest without sufficient reasons and this very significant section, which can prevent unnecessary detention, is followed more in the breach. The Supreme Court has expressed concern over the continuing abuse by the police of the power to arrest and the non-implementation of the amended provisions pertaining to arrest. Calling for a change in the attitude on the part of the police, the court directed the police to exercise caution before arresting any person and to exercise the power to arrest only if reasons exist for doing so.[33]

Given the powerlessness of an accused, one can hardly expect him to assert his rights on being arrested or when he is in police custody for questioning, and, that too, with an awareness of the new legal provisions. The police are expected to furnish reasons to the court within two weeks if they decide not to arrest.[34] This

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he cannot file a chargesheet, can only conduct an inquiry based on which he can ask the magistrate to initiate a case. The protection of Article 20(3) becomes available only after a person has been formally accused of committing an offence. This position still holds good as the *Selvi* court did not go into it and Article 20 (3) remains unavailable to persons who are subjected to examination by customs and other revenue officials.

32 *Nandini Sathpaty v P.L.Dani* AIR 1978 SC 1025.

33 *Arnesh Kumar v State of Bihar* 2014 (8) SCALE 250.

34 *id.*

means that the police cannot continue to interrogate or investigate under notice of appearance for more than two weeks without arresting. While it is the duty of the magistrate to oversee both the use and misuse of police obligations and action, the presence of a lawyer can ensure proper enforcement of the amended Code, especially given the unequal power equation between the suspect/accused and the police.

The new provisions make it obligatory on the courts to check whether police has complied with Section 41A before conducting an arrest in pertinent cases and whether the suspect/accused was provided with a lawyer at this stage, and if followed by arrest, at that stage as well. In case of offences punishable with imprisonment up to 7 years a lawyer can ensure that the police send a notice of appearance instead of arresting, or if the arrest was premature, take up the matter in court accordingly at the time of first production.

Arrest Stage

Section 41D gives an arrested person the right to meet an advocate of her/his choice during interrogation, in part if not for its entire period. This statutory recognition can be traced to the Supreme Court's decisions in *Nandini Satpathy*[35] and *D.K.Basu*[36] which held that an arrested person has the right to have his lawyer present during interrogation, though, not throughout.

D.K.Basu judgment recognised the role that a lawyer can play and said that the presence of a lawyer for the arrestee at some point of time during interrogation will help in curbing third degree practices. This judgment covers interrogation by the police and other government agencies.[37]

The statutory right under Section 41D will prevail despite the *Kasab*[38] *c*ourt taking the view that an accused does not have the right to a lawyer during interrogation as *Kasab* does not consider Section 41D. The *Kasab* judgement, therefore, is *per in*

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35 *Nandini Satpathy v P.L.Dani* AIR 1978 SC 1025.

36 *D.K.Basu v State of West Bengal* AIR 1997 SC 610.

37 In *Senior Intelligence Officer v Jugal Kishore Samra* (2011) 12 SCC 362, the court even while relying on *Romesh Chandra Mehta v State of West Bengal* (1969) 2 SCR 461 and *Poolpandi v Superintendent, Central Excise* 1992 SCR (3) 247 to hold that *Nandini Satpathy* will not apply as the person was not at that stage accused of an offence and a customs officer did not have the same powers as a police officer, allowed the presence of a lawyer during interrogation based on *D.K.Basu v State of West Bengal* AIR 1997.

38 *Md. Ajmal Md. Amir Kasab @Abu Mujahid v State Of Maharashtra* AIR 2012 SC 3565.

curium[39]on this point and cannot be said to be a binding precedent with regard to the right of an arrested person to a lawyer during interrogation.

The *Kasab* Court has relied on the legal position, that confessions made by an accused while in the custody of a police officer are not admissible,[40] to deny the right to a lawyer during interrogation.

The Court, however, has not considered the possibility of misuse of the legal provision that permits admissibility of information given by an accused while in police custody to the extent that it leads to discovery of some facts or recovery of objects.[41] This provision can breed interrogation related malpractices like use of torture, even though the Supreme Court in *Kathi Kalu Oghad*[42] has said that use of compulsion, if proved, will render any confession resulting in discovery of a fact or recovery of a object inadmissible.

The *Kasab* court fails to consider that, in recognition of the importance of legal representation in ensuring the rights of an accused during interrogation, the amended Code itself provides the added safeguard of the right to a lawyer during interrogation, though not throughout.

The fundamental right to equality demands that the right under Section 41D should logically include the right to a legal aid lawyer when an indigent suspect cannot engage a lawyer. Denial of legal aid will amount to the denial of the right to equality and result in the rights of an indigent accused being violated. Further, the expression "a legal practitioner of his choice" in Article 22 (1) should extend to availing of a legal aid lawyer at the State's expense, in the case of an indigent accused.

The presence of a lawyer at the stage of arrest can make a huge difference to how the accused is treated in police custody. A lawyer at this stage can ensure that the police perform their duties and respect the rights of the accused, including his right to be silent, and prevents harm to the accused. It reduces the possibility of beating, torture, coercion to gain ‘confessions’, wrongful detention, fabrication, false implication and much more.

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39 '*Incuria*' literally means 'carelessness' and the phrase '*per incurium*' is used to describe judgments that are delivered with ignorance of some statute or rule.

40 Section 26, The Indian Evidence Act, 1872.

41 Section 27, The Indian Evidence Act, 1872.

42 State of Bombay v Kathi Kalu Oghad (1962) 3 SCR 10.

Further, in bailable cases, a lawyer can apply for bail at the police station itself so that pre-trial detention is kept to the minimum extent possible, which is what an accused with the necessary resources will do.

Recognising the need for legal representation at the state's expense of an indigent accused at the time of arrest, the Supreme Court, in *Sheela Barse*,[43] directed:

"*..... whenever a person is arrested by the police and taken to the police lock up, the police will immediately give an intimation of the fact of such arrest to the nearest Legal Aid Committee and such Legal Aid Committee will take immediate steps for the purpose of providing legal assistance to the arrested person at State cost provided he is willing to accept such legal assistance.*"

This PIL involved women in police lock ups in the State of Maharashtra being subjected to custodial violence and was the first instance when an institutional mechanism was created for providing legal assistance at the state's expense to an accused at the time of his arrest.

For realising this right at the time of arrest, some state legal aid bodies[44] have framed 'duty counsel schemes' for institutionalising early access to legal aid to ensure that lawyers appointed by the concerned Legal Services Authority (LSA) have access to an indigent accused at the police station itself.

Additionally, some states have a 'Paralegal Volunteer Scheme'[45] under which trained paralegal volunteers are appointed by the concerned legal services authority to provide paralegal advice to an indigent person on his arrest and while s/he is in police custody. It is submitted that this cannot be a substitute for a legal aid lawyer guiding an indigent accused through the maze of the criminal justice system, arguing for her/his bail and resisting remand, thereby ensuring that her/his indigent client does not have to suffer unnecessary pre-trial detention.

5. CONCLUSION

On the absolute necessity of ensuring legal assistance to an indigent accused, P.N.Bhagwati, J observed in *Sheela Barse*:

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43 *Sheela Barse v State of Maharashtra* AIR 1983 SC 378.

44 These states are Assam, Gujarat, Haryana, Punjab and Kerala. This is based on information received by CHRI in response to RTI applications filed in 2013 in all states as part of a study on early access to counsel.

45 Under the 'Scheme for Para-legal Volunteers' framed by the National Legal Services Authority available at http://www.bing.com/search?q=paralegal+volunteers+scheme&form=PRHPCS&pc=HPDTDFJS&refig=2956468d6f2e47f18dcd918785bc30bb&pq=pralegal+volunteer&sc=5-18&sp=2&qs=SC&sk=SC1.

"*It is a necessary sine qua non of justice and where it is not provided, injustice is likely to result and undeniably every act of injustice corrodes the foundations of democracy and rule of law, because nothing rankles more in the human heart than a feeling of injustice and those who suffer and cannot get justice because they are priced out of the legal system, lose faith in the legal process and a feeling begins to overtake them that democracy and rule of law are merely slogans or myths intended to perpetuate the domination of the rich and the powerful and to protect the establishment and the vested interests.*"

While the Code casts duties on the police and magistrates to make available all safeguards to an accused, the organic link between early and effective legal representation and the observance of these duties by the functionaries in the criminal justice system cannot be denied. Hence, the early access to legal aid at the state's expense has been conceived as essential to the realisation of the right to access to justice by all, irrespective of their socio-economic status.

The presence of a legal aid lawyer representing an indigent accused at a police station can help to clear misconceptions, if any, on the part of the police and prevent unnecessary arrest. He can apply for bail at the police station itself in bailable cases and prevent any hardship that may be caused to the accused and his family due to unnecessary detention, such as, loss of earnings and/or livelihood. A functioning legal aid system will reduce the length of time suspects are held in police stations and detention centres.

During questioning, before or after arrest, a lawyer can "*intercept where intimidatory tactics are tried, caution his client where incrimination is attempted and insist on questions and answers being noted where objections are not otherwise fully appreciated.*" "*..... he may help his client and complain on his behalf, although* ***his very presence will ordinarily remove the implicit menace of a police station***"[46] (emphasis added).

The Legal Services Authorities have to work towards making the right to equal access to justice meaningful, by not only providing legal aid mechanisms at all levels, but by also implementing a system of vigilance and monitoring. It is also important to create mechanisms to "ensure that all legal aid providers possess education, training, skills and experience that are commensurate with the nature of their work, including the gravity of the offences dealt with, and the rights and needs of women, children and groups with special needs".[47]

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[46] The Supreme Court's observation in *Nandini Sathpaty v P.L.Dani* AIR 1978 SC 1025, even while acknowledging that a lawyer's presence is not a panacea for all problems of involuntary self-crimination.

[47] Principle 13, Clause 37, Resolution No. 67/187, *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems* (2012) available at http://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidlines_on_access_to_legal_aid.pdf.

They have to formulate schemes and mechanisms, being mindful of the amendments to the CrPC, which were legislated expressly to curb malpractices by the police by casting obligations on the police and by providing certain safeguards for a person in custody. While Duty Counsel Schemes for police stations exist in some states and are a step towards ensuring early access to legal aid at the time of arrest, they need to be extended to cover the pre-arrest stage too. Further, universalisation of such schemes all over the country, their effective implementation, and rigorous monitoring is what is required.

Section II: STATUTORY PROVISIONS

Hkkx II: Ok/kkfUkd Áko/kkUk

Constitution of India

Article 39A: Equal justice and free legal aid

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities

Article 21

No person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 22 (1)

No person who is arrested shall be detained in custody without being informed, as soon as may not be, of the grounds for such arrest nor shall be denied the right to consult, and be defended by, a legal practitioner of his choice

Entry 3 in the State List/ Entry 11 in the Concurrent List

Legislative measure regarding Legal Aid may be taken by State Governments and the Centre Government. The scheme of Legal Aid may also be framed as a part of economic and social planning under entry 29 of the Concurrent List.

Legal Services Authority Act, 1987

Section 12
Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is –
(a) a member of a Scheduled Caste or Scheduled Tribe;
(b) a victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;
(c) a woman or a child;
(d) a mentally ill or otherwise disabled person;
(e) a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
(f) an industrial workman; or
(g) in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956); or in a juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act,

1986 (53 of 1986) or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987 (14 of 1987); or
(h) in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Govt., if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Govt., if the case is before the Supreme Court."
(Rules have already been amended to enhance this income ceiling). According to section 2(1) (a) of the Act, legal aid can be provided to a person for a 'case' which includes a suit or any proceeding before a court. Section 2(1) (aaa) defines the 'court' as a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions. As per section 2(1)(c) 'legal service' includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter.

The Code of Criminal Procedure, 1973

304. Legal aid to accused at State expense in certain cases.

(1) Where, in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the Court that the accused has not sufficient means to engage a pleader, the Court shall assign a pleader for his defense at the expense of the State.

(2) The High Court may, with the previous approval of the State Government, make rules providing for-

(a) the mode of selecting pleaders for defense under sub- section (1);

(b) the facilities to be allowed to such pleaders by the Courts;

(c) the fees payable to such pleaders by the Government, and generally, for carrying out the purposes of sub-section (1).

(3) The State Government may, by notification, direct that, as from such date as may be specified in the notification, the provisions of sub-sections (1) and (2) shall apply in relation to any class of trials before other Courts in the State as they apply in relation to trials before Courts of Session.

The Advocates Act, 1961

6. Functions of State Bar Councils

(1) The functions of a State Bar Council shall be—

(a) to admit persons as advocates on its roll;

(b) to prepare and maintain such roll;

(c) to entertain and determine cases of misconduct against advocates on its roll;

(d) to safeguard the rights, privileges and interests of advocates on its roll;

1[(dd) to promote the growth of Bar Associations for the purposes of effective implementation of the welfare schemes referred to in clause (a) of sub-section (2) of this section clause (a) of sub-section (2) of section 7;]

(e) to promote and support law reform;

2[(ee) to conduct seminars and organize talks on legal topics by eminent jurists and publish journals and paper of legal interest;

(eee) to organize legal aid to the poor in the prescribed manner;]

(f) to manage and invest the funds of the Bar Council;

(g) to provide for the election of its members;

9A. Constitution of legal aid Committees

(1) A Bar Council may constitute one or more legal aid committees each of which shall consist of such number of members, not exceeding nine but not less then five, as may be prescribed.

(2) The qualifications, the method of selection and the term of office of the members of legal aid committee shall be such as may be prescribed.

Rajasthan State Legal Services Authority Regulations, 1999

3. Constitution of the High Court Legal Services Committee

(1) There shall be a High Court Legal Services Committee

(2) The Committee, referred to in sub-regulation (1), shall, besides Chairman, have not more than fourteen other members.

(3) The Chairman of the Committee may constitute Sub-Committees amongst members of the Committee for the seat at Jodhpur and Bench at Jaipur and such Sub-Committees shall discharge functions assigned to them by the Committee.

5. Functions of the Committee

(1) It shall be the duty of the Committee to give effect to the policy and directions of the State Authority.

(2) Without prejudice to the generality of the functions referred to in sub-regulation (1), the Committee shall perform all or any of the following functions, namely –

(a) provide legal services to persons who satisfy the criteria laid down under the Act, the Rules and the Regulations framed there under;

(b) conduct Lok Adalats for the cases pending in High Court; and

(c) encourage the settlement of disputes by way of negotiations, arbitration and conciliation between the parties thereto.

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Section III: TABLE OF JUDGEMENTS

Hkkx III: U;kf;d QSlyksa dh rkfydk

TABLE OF JUDGEMENTS

S. No.	Name of the Case	Facts	Issues	Decision
	Right to Counsel			
1.	Nandini Satpathy v. P.L.Dani ☞ *(1978) 2 SCC 424* ☞ *Supreme Court*	A case under the Prevention of Corruption Act was filed against the petitioner. The police wanted to interrogate her by giving her a string of questions in writing. She refused to answer the questionnaire, on the grounds that it was a violation of her fundamental right against self-incrimination. The police insisted that she must answer their questions and booked her under Section 179 of the Indian Penal Code, 1860, which prescribes punishment for refusing to answer any question asked by a public servant authorized to ask that question.	Besides pondering upon other issues related to the rights of the accused, the Court was asked to deliberate upon the right of the accused to a counsel during interrogation and otherwise during his detention.	• With regards to right to counsel, the Court held that the person being interrogated has the right to have a lawyer by her/his side if s/he so wishes. • Secondly, an accused person must be informed of the right to consult a lawyer at the time of questioning, irrespective of the fact whether s/he is under arrest or in detention.
2.	D.K. Basu vs. State of West Bengal	The Executive Chairman of Legal Aid Services, West Bengal wrote	The Court was asked to (i) develop custody	The Court laid down specific guidelines that must be followed while arresting and

	☞ *AIR 1997 SC 610* ☞ *Supreme Court*	a letter to the Supreme Court saying that torture and deaths in police custody were widespread and efforts are often made by the authorities to hush up the matter. It was treated as a write by the Supreme Court.	jurisprudence and lay down principles for awarding compensation to the victims of police atrocities (ii) formulate means to ensure accountability of those responsible for such occurrences.	interrogating accused. Out of all the guidelines, the relevant ones are listed below. ☞ The arrested person may be allowed to meet her/his lawyer during interrogation but not throughout the interrogation. ☞ Secondly, the time, place of arrest and venue of custody of the arrested person must be notified by telegraph to next friend or relative of the arrested person within 8-12 hours of arrest in case such person lives outside the district or town. The information should be given through the District Legal Aid Organization and police station of the area concerned.
3.	Khatri (II) v. State of Bihar ☞ *(1981) 1 SCC 627* ☞ *Supreme Court*	Public interest litigation (PIL) was filed with regards to the right to free legal services to the accused when it is the duty of the State as explained Constitution of India, Articles 21 and 22. The PIL expressed displeasure over disregard of these directives given by the Supreme Court by the State of Bihar.	The Court had to examine the right to free legal services to the accused when it is the duty of the State as explained in the Constitution of India, Articles 21 and 22.	• The Court held that the right to free legal services is implicit in the guarantee of Article 21 and the State is under a constitutional mandate meant to provide a lawyer to an accused person. • Secondly, the State cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative liability. • Lastly, the State is under obligation to

				provide free legal aid during the first production of the accused before the magistrate as also when he is remanded from time to time.
4.	State of Maharashtra vs. Mohd. Ajmal Kasab ☞ *Confirmation Case No. 2 of 2010 in Session Case No. 175 of 2009 along with Cr. Appeal No. 738 of 2010 in Sessions Case No. 175 of 2009 along with Cr. Appeal No. 606 of 2010 in Sessions Case No. 175 of 2009*	Ajmal Mohammad Amir Kasab, a Pakistani national, earned for himself five death penalties and an equal number of life terms in prison for committing multiple crimes of a horrendous kind in India. From the judgment of the (Greater Mumbai) High Court two appeals were made, stating that the Constitutional guarantee remained unsatisfied because of denial to the appellant of two valuable Constitutional rights/protections under Article 22 (right to counsel) and Article 20(3)(right against self-incrimination).	Whether delay in providing legal aid to the accused leads to denial of two valuable Constitutional rights under Article 22(right to counsel) and Article 20(3) (right against self-incrimination)?	• Court held that the mere offer of legal aid is not the same as being made aware of one's Constitutional right to consult, and to be defended by, a legal practitioner, and that simply the offer of legal aid does not satisfy the Constitutional requirement. • It was also held that the Magistrate is required to inform the accused of his rights and only then he can be said to have made a Constitutionally acceptable choice either to have or not to have a lawyer or to make or not to make a confession.
	Right to Legal Aid at the Appellate Stage			
5.	Rajoo@Ramakant vs, State of M.P. ❖ *Cr. Appeal No 140 of*	The Appellant was sentenced to 10 years of rigorous imprisonment by the Trial Court for gang raping a woman, which was upheld by the High Court. It was alleged by the Appellant that he wasn't	Whether the appellant is entitled, as a matter of right, to legal representation in High Court or any other	Sections 12 and 13 of the Legal Services Authority Act do not make any distinction between the trial stage and the appellate stage for providing legal services. The same is also the constitutional mandate under Article 39-A. Hence, the High Court was directed to re-

	2008 ❖ *Supreme Court of India*	represented ably in the High Court.	appellate court?	hear the case after providing able legal representation to the Appellant.
6.	MH Hoskot v State of Maharashtra ☞ *(1978) 3 SSC 544* ☞ *Supreme Court*	The petitioner convicted for offences of cheating and forgery, filed a special leave petition in the Supreme Court challenging the High Court order enhancing his punishment from one day simple imprisonment to 3 years rigorous imprisonment. In his petition, he also complained of the actions of the jail authorities denying him a copy of the judgment (which he obtained in 1978 i.e. 5 years after the pronouncement of the judgment against him).	The Court was moved to consider two main aspects of the criminal justice delivery system in India, namely, supply of a copy of the judgment to the prisoners in time to file an appeal and the provision of free legal services to a prisoner.	• An important ingredient of fair procedure to a prisoner, who has to seek his liberation through the Court process, is lawyer's services. • The Court observed that the right of appeal for the legal illiterates becomes inconsequential in the absence of any statutory provision for free legal service to a prisoner. This negates the 'fair legal procedure' which is implicit in Article 21 of the constitution
	Competency of the Counsel			
7.	Ranchod Mathur Wasawa vs. State of Gujarat ☞ *1974 AIR 1143* ☞ *Supreme Court*	The amicus curae came into the picture on the day of the commencement of the trial. However, the cross examination of the witnesses did not suffer from any obstacles and the counsel was fully equipped when he came to the trial.	Does inadequacy of time on the counsel of the accused lead to grave injustice?	Sufficient time, complete papers should be made available to the advocate of the accused chosen so he may serve the cause of justice with all the help at his command. A sensitive approach on this should also be ensured by the Court to make the accused feel confident.

8.	Bal Bahadur v. Customs Officer ☞ *Crl. A. No. 12/2009 – Delhi HC* ☞ *Delhi High Court*	Over a course of 8 years, one Private counsel, three amicus curae and one DLSA lawyer were engaged to defend the appellant(a Nepali national) who was charged under Narcotics Drug and Psychotropic Substances Act, 1985. There were laxities in his defence in terms of no cross-examination, absence of recovery witnesses at the hearings and mostly the insufficiency of time on the engaged counsel for the appellant	Does the competency of a counsel be altered depending upon the seriousness of offence and severity of punishment?	It shall not be disregarded that a poor accused is inept to engage a competent lawyer on his own and would naturally be unable to instruct the engaged lawyer. Hence, the Court suggested to the DLSA that it should prepare a separate panel of trial court lawyers comprising senior lawyers of not less than 10 years or more experience and associate lawyers of not less than 5 years' to defend the indigent accused facing trial for commission of offences punishable with sentence of seven years and more. A special set of fees may also be paid to such lawyers so that they can give of their best.
	Right of the Counsel			
9.	Moti Bai vs. State of Rajasthan ☞ *AIR 1954 Raj 241* ☞ *Rajasthan High Court*	The petitioner was arrested by the Police on suspicion of being involved in an offence under Section 6, Indian Wireless Telegraphy Act. The counsel of the accused prayed for an exclusive interview with the petitioner which was allowed by the DSP, however in the presence and within the hearing of the	Whether the Counsel has the right to interview the accused exclusively out of the presence of the police, however in the hearing of police?	The presence of the police is obviously needed so that the accused may not abscond from custody or do anything which may be objectionable otherwise. In order that such consultation may be effective, interviews must be allowed to his counsel, when asked for, out of the hearing of the police though within their presence.

		police.		
	Can incriminating evidence be a reason to deny the right to legal aid to the accused?			
10.	Babubhai Udesinh Parmar v. State of Gujarat ☞ *Appeal (crl.) 1635 of 2005* ☞ *Supreme Court of India*	The appellant was convicted and sentenced for raping and murdering a girl on the basis of the confession extracted from him under Section 164 of CrPC which was made in 15 minutes. For three years there was no legal aid provided to him and the same was also not asked by the Magistrate during examination.	Whether the Court can take a stand of not offering legal aid services to the accused if there is a strong impression of him being guilty of the crime in a large number of cases?	The Court held that there was no direction from the Magistrate to provide free legal aid to the appellant. He had no opportunity to have independent advice. It further held that it does not mean that such legal assistance must be provided in each and every case but in a case of this nature where the appellant is said to have confessed in a large number of cases at the same time, the State could not have denied legal aid to him for a period of three years.
	Free Legal Aid as Fair Procedure			
11.	Ramchandra Nivrutty Mulak vs. The State of Maharashtra ☞ *Cr. Appeal no. 487 of 2008* ☞ *Bombay High Court*	The accused was unrepresented before the Sessions Court. The lawyer had a filed vakalatnama to withdraw from the case which the Court rejected and the matter proceeded without the accused having services of a legal practitioner during the course of trial.	Is there a duty cast on the trial court to ask the accused to engage a lawyer for the accused under legal aid scheme, when the lawyer appearing for the accused files application for withdrawal which is rejected by the Court?	• The case where the accused is unrepresented and a case where accused is represented and the lawyer seeks to withdraw his appearance and does not attend trial stand on an equal footing. • Section 304, CrPC along with Artice 21 has to be read together in spirit and not just in principle. Therefore, in a situation like this there is burden cast on the courts to inform the accused either to engage another lawyer or to

				inform him that he is entitled to free legal aid if he so desires.
12.	Suk Das vs. Union Territory of Arunachal Pradesh ☞ *1986 SC 991* ☞ *Supreme Court*	Since no legal aid was provided to the indigent accused, they could not cross-examine the witnesses. As a result of which they were convicted and sentenced to undergo simple imprisonment for a period of 2 years. In an appeal to High Court, the Court held that the trial could not stand vitiated because the appellants did not ask for legal services. Hence, the appeal in Supreme Court.	Whether right to legal aid be lawfully denied if the accused did not apply for free legal aid?	• The Court held in negative stating that due to widespread lack of legal awareness in India among both literates and illiterates, the proposition of application for free legal aid would render the right meaningless. • If the accused does not have a lawyer by his side in his trial, the trial stands vitiated.
13.	Commonwealth Human Rights Initiative vs. State of West Bengal & Ors. ☞ *WP 56 of 2013* ☞ *Calcutta High Court*	Writ filed to pray that the accused persons shall be apprised of his right to engage a Legal Aid Lawyer. The panel of Legal Aid Lawyers shall be made available when the remand order is being made.	• Whether the panel of Legal Aid lawyers to be made available when the remand order is being made? • Whether the accused persons be apprised of their right to engage a Legal Aid lawyer?	The Magistrates are bound to apprise the accused persons at the time of remand of their right to engage a legal aid lawyer at the expense of the State. It was also held that the availability of the panel of lawyers should be ensured by the concerned bodies/authorities.
14.	Hussainara Khatoon & ors vs. Home secretary, State of	A writ of habeas corpus was filed in the Supreme Court seeking directions to release a large number of under-trial prisoners	The Court dealt with the issue of State's constitutional obligations to assure	• The Court held that the right to free legal aid is an inalienable element of 'reasonable, fair and just' procedure. • Without it, a person suffering from

	Bihar ☞ *AIR 1979 SC 1369* ☞ *Supreme Court*	languishing in the prisons of Bihar.	speedy trial and providing of free legal aid to the accused.	economic or other disabilities would be deprived of the opportunity for securing justice. Therefore, the state government should provide under-trial prisoners a lawyer at its own cost for the purpose of making an application for bail.
	Vulnerable Community			
15.	R.D. Upadhyay & Ors. vs. State of A.P. & Ors. ☞ *AIR2006SC1946* ☞ *Supreme Court*	Children, for none of their fault, have to stay in jail with their mothers. In some cases, it may be because of the tender age of the child, while in other cases, it may be because there is no one at home to look after them or to take care of them in absence of the mother. The jail environment is certainly not congenial for development of the children.	Directions to be given for the development of children who are in jail with their mothers, either as undertrial prisoners or convicts.	Guidelines were given regarding the diet of mother and child, child birth in prison, pregnant women in prison, food, clothing, medical care, and education. The State Legal Services Authorities shall take necessary measures to periodically inspect jails to monitor that the directions regarding children and mother are complied with in letter and spirit.
16.	Sheela Barse v. State of Maharashtra ☞ *AIR 1983 SC 378* ☞ *Supreme Court*	Sheela Barse, a journalist, wrote to the Supreme Court saying that women in Bombay Central Jail have admitted that they had been assaulted in police lock-up. Given the seriousness of the allegations, the Court asked for a detailed report on the same. The report admitted that in addition to	The Court primarily dealt with the issue of providing legal assistance to not only women prisoners but to all prisoners lodged in jails in the State of Maharashtra.	• The Court directed that the police must inform the nearest Legal Aid Committee as soon as an arrest is made and the person is taken to the lock-up. • Secondly, the Legal Aid Committee should take immediate steps to provide legal assistance to the arrested

		admitting that excesses against women were taking place, it also pointed out that the arrangements for providing legal assistance to prisoners were inadequate.		person at state cost, provided such person is willing to accept legal assistance.

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1	j.kNkM ekFkj oklok cuke xt:jkr jkT; 1974 ,vkbvkj 1143 mPpre U;k;ky;	fopkjd i:kjEHk gku: d: fnu U;k;fe= fu;Dr fd, x,A xokgk: dk i:frijh{k.k fdlh Hkh i:dkj l: i:Hkkfor ugh: gvk] vf/kdkj i:jh rjg l: r:;kj FkA	vf/koDrk d: D;k le; dh vi;kIrrk] vfHk;Dr d: i:fr ?kkj vU;k; gA	vf/koDrk d: ikl i;kIr le; o i:j: dkxtkr miyC/k djoku pkfg, ftl: fd og viuh {kerk l: U;k; ikfIr e: lg;kx dj ldA U;k; }kjk Hkh अभियुक्त को आष्वस्त करने हेतु संवेदनषील रवैया अपनाना चाहिए।
2	cky cgknj cuke dLVe vf/kdkjh lhvkj,y ,-u- 12@2009 fnYyh ,plh fnYyh gkbdkV	vkB lkyk d: nkjku ,d futh vf/koDrk rhu U;k;fe= o ,d Mh,y,l, vf/koDrk vihykFkh d: cpko g:r fu;Dr fd;k x, ¼vfHk;Dr u:ikyh ukxfjd Fkk½ tk ,uMhih,l ,DV 1985 dk vfHk;Dr FkkA fu;Dr vf/koDrkvk: d: ikl le; d: vHkko e: xokgk: l: ftjg ugh: gb: cjkenxh dk xokg mifLFkr ugh: gvkA	D;k vijk/k dh xHkhjrk rFkk n.M d: vk/kkj vf/koDrk dh ;kX;rk d: vk/kkj ij cnyk tk ldrk gA	,d xjhc vfHk;Dr dk Hkh viu: Lrj ij ;kX; vf/koDrk fu;Dr dju: dk vf/kdkj g] LokHkkfod rkj ij og ,l: अधिवक्ता को निर्देषित कर पान: me: vleFk gA U;k;ky; Mh,y,l, dk l>ko n:rk g: fd og ,d v/khuLFk न्यायालयों हेतु कम से कम 10 वर्ष या ml: vf/kd d: vuHko oky: vf/koDrk dk i:uy cuk, o mudk lg;kxh d: तौर पर कम से कम 5 वर्ष के अनुभव oky: vf/koDrkvk: dk fu;Dr dj: tk ,l: fu/ku vfHk;Dr dk cpko dj ld: जो सात वर्ष या उससे अधिक के दण्ड l: n.Muh; vijk/k d: vkjki dk lkeuk dj jgk gA ,l: vf/koDrkvk: d: fy, फीस का भी विषिश्ठ प्रावधान होना pkfg,] ftl: fd o cgrj ifj.kke n: ldA
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3	ekrh ckb: cuke jkt LFkku	vfHk;Dr dk ifyl }kjk Hkkjrh; ok;jy:l ,:yhxkQh vf/kfu;e dh	D;k vf/koDrk dk ifyl dh ek:tnxh o lukb: n: ldu: oky: fLFkfr d:	vfHkj{kk l: Hkkx u tk, ;k vkifrtud dk;l u dj] bl g:r ifyl dh

	jkT; ,vkbvkj 1954 jkt 241 jktLFkku gkbdkV	/kkjk 16 d rgr vijk/k dk lng gku d vk/kkj ij fxjQrkj fd;k x;kA vf/koDrk vfHk;Dr u अभियुक्त से विशिश्ठ मुलाकात के fy, ikFkuk dh] tk Mh,lih }kjk Lohdkj dh xb] ijUrq ifyl dh mifLFkfr e o mUg lukbi n ldu okyh fLFkfr eA	बिना अभियुक्त से विशिश्ठ मुलाकात dk vf/kdkj g\	उपस्थिति निष्चितरूप से आवष्यकत है। vf/koDrk dk ifyl dh ekt nxh e ijUrq mUg lukbi u n ldu okyh स्थिति में अभियुक्त से विशिश्ठ मुलाकात dh vuefr nh xbA
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4	jkt mQ jekdkUr cuke मध्यप्रदेष राज्य lhvkj vihy u- 140 dk 2008 mPpre U;k;y;	v/khuLFk U;k;ky; }kjk vihykFkh dk lkefgd cykRdkj d fy, 10 वर्श के सश्रम कारावास से दण्डित fd;k x;k] tk fu.k; mPp U;k;ky; }kjk cjdjkj j[kk x;kA vihykFkh }kjk dFku fd;k x;k fd mPp U;k;ky; e mldh vf/koDrk }kjk ijo u dh xbA ;kfpdkdrk dk mPpre U;k;ky; }kjk /kk[kk/kMh vkj tkylkth d vijk/kk d fy, दोशी ठहराया। तीन साल के सश्रम dkjkokl dh o ,d fnu d lk/kkj.k dkjkokl l mldh ltk dk c<ku का आदेष उच्च न्यायालय को pukrhA	D;k vihykFkh viu fof/kd vf/kdkj dk j[kr g, mPp U;k;ky; ;k vU; vihyk.V dkV e mDr vf/kdkj d fy, vf/kdkjh g\	fof/kd lok ikf/kdj.k vf/kdkj dh /kkjk 12 o 13 e fopkj.k d Lrj ij o vihy d Lrj ij fof/kd lgk;rk miyC/k djku d lEcU/k e dkbi foHkn ugh fd;k x;k gA Hkkjrh; lfo/kku d vu- 39 lh, e Hkh fof/kd lgk;rk nu d vkKkid iko/kku gA mPp U;k;ky; }kjk idj.k dk lefpr fof/kd प्रतिनिधित्व उपलब्ध करवाने के निर्देष के lkFk iuh lquokbi gr Hktk x;kA
5	,e ,p gkldV cuke महाराश्ट्र राज्य (1978) 3 ,l,lh 544 mPpre U;k;y;	;kfpdkdrk dk /kk[kk/kMh vkj जालसाजी के अपराधों के लिए दोश fl) fd;k ;kfpdkdrk dk 3 lky d lJe dkjkokl dh o ,d fnu d lk/kj.k dkjkokl dh ltk nh bl gr ,l-lh- में विषेश अनुमति ;kfpdk nk;j dhA ;kfpdkdrk u viuh ;kfpdk e ty vf/kdkfj;k d dk;Z की षिकायता की	U;k;ky; d vuqlkj nk e[; igyvk ij fopkj fd tkuh pkfg,A fu.k; dh ifr cUnh dk le; ij nh tkr rkfd og e¶r dkuuh lokvk dk ykHk ikIr dj ldA	,d egRoi.k rRo ;g g fd odhy निश्पक्ष भावना से अपनी सेवाएँ बन्दी को दिलवाए। ऐसे व्यक्तियों को निःषुल्क dkuuh lgk;rk U;k;ky; }kjk fnyokbi tkrh g vkj vihy d vf/kdkj d ckj e Hkh crk;k tkrk g vu- 21 e e bldk iko/kku gA mfpr dkuuh ifØ;k e lcrk dh deh o fof/kd lgk;rk u

		;kfpdkdrk u t:y vf/kdkjh }kjk fu.k; dh ifr u fn, tku dh **षिकायत की (जो प्रति 1978 में दी जानी चाहिए थी वह 5 वर्श बाद** feyh½ u Hkkjr e vkijkf/kd U;k; forj.k i.kkyh		**मिल पाने से वह दूशित हो जाती है।**
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6	ckcHkkbZ mn;fl ijekj cuke x tjkr jkT; vihy lhvkj,y 1635 dk 2005 mPpre U;k;ky;	vfHk;Dr dk ,d yMdh d cykRdkj o mldh gR;k d fy, **उसकी संस्वीकृति के आधार पर दोशी** fl/n dj nf.Mr fd;k] tk mld }kjk /kkjk 164 lhvkj- ih-lh- d rgr 15 feuV e dh xbZ FkhA rhu lky rd ml u rk fof/kd lgk;rk **दिलाई गई और न ही न्यायाधीष** }kjk ijh{k.k d nkjku mll iNk x;kA	D;k U;k;ky; ,s ekeys e fof/kd lgk;rk u miyC/k djoku dk fu.k; y ldrk g nh?k lrk dk iko/kku g\	U;k;ky; u fu/kkfjr fd;k fd **न्यायाधीष द्वारा** vihykFkh dk fof/kd **सहायता उपलब्ध करवाने हेतु निर्देष नहीं** fn;k x;k FkkA ml Lor= lykg yu dk volj ikIr ugh gvkA ;g Hkh fu/kkfjr fd;k x;k fd ijUr bldk vFk ;g Hkh ugh yxk;k tk ldrk fd bl rjg dh fof/kd lgk;rk gj ekys e miyC/k djokbZ gh tk,xhA ijUr bl idkj d ekyk e tgk vihykFkh **ने संस्वीकृति की हो, राज्य तीन वर्श तक** fof/kd lgk;rk miyC/k djoku ls bUdkj ugh dj ldrkA
न्यायालय/न्यायाधीष के कर्तव्य				
7	jkepUn uhojkoFkh eyd **बनाम महाराश्ट्र राज्य** lhvkj- vihy u- 487 dk 2008 eEcbZ gkbZdkV	vfHk;Dr l= U;k;ky; e viuk ifrfuf/kRo ugh dj ik;kA ftl **अधिवक्ता द्वारा वकालतनामा पेष** fd;k x;k Fkk] ml d }kjk og okil y fy;k x;kA U;k;ky; }kjk fopkj.k d nkjku fof/kd lgk;rk miyc/k ugh djokbZ xbZA	D;k U;k;ky; dk ;g nkf;Ro g fd og ,s vfHk;Dr ftldh vkj ls odkyrukek iLrqr dj okil y fy;k x;k gk] dk fof/kd lgk;rk ls vf/koDrk miyC/k djoku grq iNs\	¼v½ ,s ekys tgk vfHk;Dr fcuk ifrfuf/kRo d g o tgk vfHk;Dr dk ifrfuf/kRo vf/koDrk }kjk fd;k tk jgk gk] vkj og viuk odkyrukek okil y y nkuk ,d leku gA ¼c½ /kkjk 304 lhvkjihlh o vuPNn 21 **दोनों का समान व एक ही उददेष्य के** fy, gA bl idkj dh fLFkfr e ;g U;k;ky; dk nkf;Ro g fd og vfHk;Dr dk fof/kd lgk;rk d vf/kdkj ls voxr djok rFkk ml

				fof/kd lgk;rk miyC/k djkoA
8	l[knkl cuke ;fu;u टेरिटेरी अरूणाचल प्रदेष 1986 ,llh 991 mPpre U;k;ky;	fu/ku vfHk;Dr dk fof/kd lgk;rk ugh fnyokbZ xbZ ftl dkj.k og xokgk l ftjg ugh dj ik;k परिणामस्वरूप उसे दोशी करार करते हुए दो वर्श का साधारण कारावास fn;k x;kA vihy mPp U;k;ky; e dh xbZ] v/khuLFk U;k;ky; ;g nyhy ugh n ldrk fd vfHk;Dr u fof/kd lgk;rk ugh ekxhA vihy mPpre U;k;ky; e gA	tgk vfHk;Dr }kjk e¶r fof/kd lqok gr vkonu ugh fd;k x;k gk D;k ogk mld fof/kd lqok ikIr dju d vf/kdkj l euk fd;k tk ldrk gA	Hkkjr e dkuuh tkx:drk dh 0;kid deh g bl dkj.k l lk{kj o fuj{kj दोनों को न्यायालय द्वारा निषुल्क कानूनी lgk;rk inku dh tkrh g d ckj e irk ugh gA udkjkRedrk gku d dkj.k dkuuh lgk;rk d fy, vkonu dk iLrko 0;Fk gk tkrk gA @ ;fn vkjkih dk viuh vfufo{kk d fy, odhy ugh feyrk g rk mldk e|dnek fcxM tkrk g
9	dkeu oYFk ekuovf/kdkj आयोग बनाम पष्चिम बंगाल jkT; MCyu ih 2013 d 56	fjek.M d le; dkuuh lgk;rk vkjkih;k dk fey o odhyk dk iuy miyC/k djok;k tko d ckj dydrk mPp U;k;ky; e fjV nk;j dh A	tc fjek.M fy;k tkrk g ml oDr fof/kd lgk;rk d iuy vf/koDrk miyc/k djoko tkoA @@ fof/kd vf/koDrk vfHk;Dr dk fey xk ;g mudk vf/kdkj g	eftLVªV dk bl ckr d fy, ikcUn fd;k tko fd og fjek.M d le; vfHk;Dr dk ;g crko fd fof/kd lgk;rk gr odhy jkT; d [kpZ ij fey xkA tk vkidk vf/kdkj gA iuy vf/koDrk dh miyC/krk lEcf/kr निकायों / अधिकारियों द्वारा सुनिष्चित ;k vk;kftr fd tkoA
10	gl u vkjk [kkru o vU; cuke xg lfpo fcgkj jkt; ,vkbZvkj 1979 ,llh 1369 mPpre U;k;ky;	fcgkj ty e vR;f/kd l[;k e lM jg fopkjk/khu cfn;k d fy, mPpre U;k;ky; e cnh iR;{kdj.k fjV nk;j dhA	U;k;ky; u jkT; dk lo/kkfud nkf;Ro crkr g, ;g dgk fd cfn;k को निषुल्क कानूनी सहायता दी जावे o ekey d Rofjr lqokbZ gkA	U;k;ky; u dkuuh lgk;rk dk ,d उचित व निश्पक्ष व प्रक्रिया का एक vgLFkkrj.kh; rRo o vf/kdkj crk;k // राज्य सरकार ने आर्थिक दृश्टि l detkj o v{kerkvk l fifMr 0;fDr tk U;k; l ofpr jg tkr g d fy, ljdkjh [kpZ ij odhy miyC/k djoku pkfg,A @@ fopkjk/khu dfn;k dk tekur d लिए एक आवेदन पत्र बनाने के उददेष्य l ,o tekur djoku d fy, jkT; ljdkj d [kpZ ij odhy fnyok;A

		vfHk;qDr d vf/kdkj		
11	ufnuh lriFkh cuke ih-,y-nkuh ¼1978½ 2 ,llhlh 424 mPpre U;k;ky;	भ्रश्टाचार निवारण अधिनियम के तहत ,d ekeyk ;kfpdkdrk d f[kykQ mPpre U;k;ky; e nk;j fd;k x;k ifyl ml ,d fyf[kr e ,d lokyk dh fLVx ndj mll iNrkN djuk pkgrh Fkh mlu dgk कि इस प्रकार का दोश लगाना उसके vkRelEeku dk Bl igpkuk g o bll mld ekfyd vf/kdkjk dk mYy/ku gkrk gA ifyl ml ij lokyk dk tokc nu gr ml ij tkj Mkyk fd og ,d ykdlod }kjk iN loky dk tokc ugh nxh rk ml Hkk-n-l-1860 dh /kkjk 179 d rgr vkjf{kr fd;k tk;xkA	U;k;ky; u iNrkN d nkjku odhy dk feyuk vfHk;Dr vf/kdkj crk;k vkj mudh utjcnh d nkjku विचारविमर्ष के लिए कहा	U;k;ky; u ;g ekuk fd iR;d 0;fDr dk ;g vf/kdkj g fd ml viuk ilfnnk odhy feyA @@ tc fdlh 0;fDr dk fxj¶rkj ;k fu:) fd;k tkrk g rc ml 0;fDr dk ;g vf/kdkj g fd og fxj¶rkj ;k fu:) fd; tku dk dkj.k iN ldrk g viu odhy dk lpuk n ldrk gA
12	ch-d- बसु बनाम पष्चिम cxky ,vkbvkj 1997 ,llh 610 mPpre U;k;ky;	mPpre U;k;ky; u ,d i= fy[kk कि पष्चिम बंगाल में पुलिस कि fgjklr e yk; x; 0;fDr;k dk vR;f/kd ;kruk, fn tkrh g ftul mudh ifyl fgjklr e gh eR; gk tkrh g ifyl }kjk nh xb ;kruk, o ekrk d ekey e vDlj ifyl vf/kdkfj;k }kjk ekeyk jQknQk dj fn;k tkrk g ftl ij jkd लगाना आवष्यक है।	U;k;ky; u dgk fd 1 ifyl fgjklr e gb eR; ;k U;kf;d fgjklr e gb eR; dk न्यायाषास्त्र के विकास में यह सिधान्त g fd ihfMr i{kdkj dk ifyl d द्वारा मुआवजा राषि दी जावे। 2 bl idkj dh ?kVukvk o ifyl d vR;kpkj l ykxk dk evkotk fnyok;k tkoA	U;k;ky; u fu/kkfjr fd;k fd fxj¶rkj fd; x; 0;fDr dk fxj¶rkj djr oDr fuEu ckrk dk /;ku j[kk tkoA 1 fxj¶rkj fd; x; 0;fDr dk mld vf/koDrk l feyu dh vuefr nh tk ldrh gA 2 fxj¶rkj 0;fDr dk fgjklr dh fxj¶rkjh o Lrj dh txg d ekey e जो जिला या षहर के बाहर रहता है fxj¶rkjh d 8 l 12 /kV d Hkhrj अपने दोस्त या रिष्तेदार को टेलीग्राफ के }kjk lpuk nh tkuh pkfg, tk tkudkjh ftyk fof/kd lgk;rk lxBu lcf/kr {k= d ifyl Fkku d ek/;e l fn tk ldrh gA

13	[k=h f}rh; cuke fcgkj jkT; ¼1981½ lcc 627 mPpre U;k;ky;	Hkkjr dh lfo/kku dh vuPNsn 21 o 22 esa crk;k gS fd vfHk;qDr dks राज्य के खर्चे पर निषुल्क विधिक lgk;rk fn tkosxh tc jkT; dk dr0; gS fcgkj jkT; }kjk mPpre U;k;ky; esa ,d tufgr ;kfpdk प्रस्तुत की, इन निर्देषो की उपेक्षा पर U;k;ky; us ukjktxh 0;Dr dh	Hkkjrh; lfo/kku dh vuPNsn 21 o 22 esa ;g foLrkj lscrk;k gS fd jkT; dk dr0; gS fd U;k;ky; esa जब अभियुक्त को पेष किया जाता है rc vfHk;qDr dk vf/kdkj gS fd mls निषुल्क विधिक सहायता मिले	U;k;ky; us crk;k fd vfHk;qDr dks राज्य के खर्चे पर निषुल्क विधिक lgk;rk nsuk] odhy fnyokuk vfHk;qDr dk lo/kkfud vf/kdkj gS tks vuPNsn 21 esa xkjaVh dh lkFk fn;k tkuk pkfg,A दूसरे, राज्य वितिय या प्रषाषनिक दायित्व सिफारिष द्वारा अभियुक्त जो गरीब है को e¶r dkuuh lsok,a inku djus dh viuh lo/kkfud nkf;Ro lscp ugha ldrk vr esa jkT; dk ;g nkf;Ro gS fd tc vfHk;qDr izFke fnu eftLVªsV dh le{k iLrqr fd;k tkos ,oa fjek.M fd le;vaf/k के समय उसे निषुल्क विधिक lsok,a inku djsA
14	महाराश्ट्र राज्य बनाम ekgEen vtey dlkc पुश्टिकरण केस नम्बर 2/2010 सेंषन केस नम्बर 175@2009 tks fd lyXu Qkstnkjh vihy uEcj 738/2010 जो सेंषन केस uEcj 175@2009] dh Qkstnkjh vihy uEcj 606@2010]	vtey ekgEen vehj dlkc ,d ikfdLrkuh ukxjhd gS ftl ij 5 eR;qnM o vkthou dkjkokl dk nM gS ftlus vR;f/kd xHkhj vijk/k Hkkjr esa fd;s gSA xsVj eEcbZ mPp U;k;ky; dk nks vihyksa dk Qlys esa lo/kkfud vf/kdkj dk xkjaVh crkbZ gSA lfo/kku dh vuPNsn 22 ¼odhy dk ikslr djus dk vf/kdkj½ ,oa अनुच्छेद 20(3) सही आत्म अभिषंदन gS	D;k njh lsa fof/kd lgk;rk feyuk vfHk;qDr dk nk egRoiw.kZ vf/kdkj Hkkjrh; lfo/kku dh vuPNsn 22 o 20 ¼3½ dk guu gS	U;k;ky; us ;g fu/kkfjr fd;k fd fof/kd lgk;rk dk ek= iLrko o परामर्ष करना ek= lo/kkfud vf/kdkj ugha gS cfYd lo/kkfud vf/kdkj ;g gS fd mls fof/kd lsok,a o vf/koDrk fnyok;s A @@ U;k;ky; us ;g Hkh fu/kkfjr fd;k कि मजिस्ट्रेट के लिए यह आवष्यक है fd og vfHk;qDr dks ;g lfpr djs fd mldk ;g lo/kkfud vf/kdkj gS fd mls mldh ilUn dk vf/koDrk fey tk mldh Lohdfr ij fuHkj djrk gSA
piVs esa lenk;				
15	vkjMh mik/;k; o vU; बनाम अरूणाचल प्रदेष jkT; oxjg	cPps dh dkbZ xyrh ugha gksrh fQj Hkh mu cPpksa dks viuh ekrk ds lkFk tys esa jguk iMrk gS dN	निर्देषन दिया गया कि बच्चों के fodkl ds fy, tys esa cnu ltk;¶rk cnhZ o fopkjk/khu cnhZ ds	दिषानिर्देष दिया गया कि मां व बच्चे व tys esa cPps dk tUe tys esa xHkorh efgykvksa ds Hkkstu dsM fpfdRlk o

	,vkbZvkj 2006 ,lh 1946 mPpre U;k;ky;	ekeyk e cPPkk dh vk;q de gkus d dkj.k ?kj e dkbZ lnL; u gk bl dkj.k l mUgs viuh ekrk d lkFk tsy e jguk iMrk gA tsy dk okrkoj.k cPpk d fodkl d fy, lgh ugh gA	cPPkk dk fodkl fd;k tkos	षिक्षk d ckj e jkT; fof/kd lok ikf/kdj.k cPpk o ek d ckj e mDr निर्देषों का अक्षरष पालन करें। जेलो का निरिक्षण करें व आवष्यक कदम उठावें।
16	षीला बरसे बनाम महाराश्ट्र jkT; ,vkbZvkj 1983 ,lh 378 mPpre U;k;ky;	षीला बरसे एक पत्रकार थी उसने lqizhe dksVZ e ,d i= fy[kk fd eEcbZ lsVsy tsy o ifyl ykdvi e efgykvks dk Mjk;k o /kedk;k tkrk g fd og viuh Åij yxs vijk/k dk Lohdkj dj ys dksVZ us ijh fjikVZ nrs dh o fjikVZ e efgykvks d f[kykQ T;kfn;k txg txg gk jgh g mls Lohdkj djus d vykok dkuuh lgk;rk miyC/k djokus d fy, mfpr 0;oLFkk Hkh dhA	न्याययालय ने यह निर्देषित किया कि न केवल महिलाएं बल्कि महाराश्ट्र जेल में बंद सभी बंदियो को निषुल्क विधिक सहायता महाराश्ट्र राज्य देवे।	कोर्ट ने निर्देषन दिया कि ifyl tc fdlh 0;fDr dk fxj¶rkj djrh g rks og bldh lpuk utnhd d fof/kd सहायता कमेटी को यथाषीघ्र देवे। //f}rh;] fof/kd lgk;rk deVh rjUr gh mls ;kfu fd fxj¶rkj 0;fDr dk jkT; d [kpZ ij mldh lger lsfof/kd lgk;rk fnyokA

Section IV:
STATE LEGAL AID SCHEMES

Hkkx IV:
jkT; fof/kd lsok ;kstuk,¡

The Rajasthan' Remand and Bail Lawyers' Scheme

RAJASTHAN STATE LEGAL SERVICES AUTHORITY

RAJASTHAN HIGH COURT CAMPUS, JAIPUR BENCH, JAIPUR

No. RSLSA/ Legal Aid Council Scheme/ 13th F.C./2011 Date: 17-2-2012

To,

The Chairman
District Legal Services Authority
(District & Sessions Judge)
All Rajasthan.

Sub: Regarding Model Scheme for Legal Aid Counsel in Rajasthan.

Sir,

While enclosing copy of the Model Scheme for Legal Aid Counsel in all the Courts of Magistrate, I am directed to request you that as per the Scheme the District Legal Services Authority may prepare a panel of Legal Aid Counsel preferably with a minimum standing of 5 years on criminal side. The Advocates from this panel may be attached to the Courts of Magistrates and may be called the "Legal-Aid Counsel". The remuneration for trial of the case, fee schedule for acting as a defense counsel, appointed by District Legal Services Authority/ Taluk Legal Services Committee, as the case may be for added person shall be separately as per Regulation 22 of the Rajasthan State Legal Services Authority Regulations, 19999. All payments to the Legal Aid Counsel may be made after submitting monthly report regarding attendance of the Legal Aid Counsel at the time of remand bail or miscellaneous application as the case may be to the concerned judicial officer. The names of the Legal Aid Counsel may be displayed outside the Court to which he is attached and also affix hoardings in the Police Stations and Jails. The Printed Proforma of nomination letters to be issued to Legal Aid Counsel is also attached for ready reference. These instructions may be complied with in letter and spirit and compliance report of implementation of the model scheme shall be sent by 24th February, 2012.

Remuneration payable to Legal Aid Counsel under this scheme will be paid from the funds allocated to your District Legal Services Authority under recommendation of the Finance Commission under head Legal Aid to eligible persons.

Date: 17-2-2012

Yours sincerely
(K.B.Katta)
Member Secretary

Encl.As above
No: 18734-18737

Copy forwarded to the following for information:

1. Registrar-cum-Principal Secretary to the Hon'ble the Chief Justice, Rajasthan High Court, Jodhpur.
2. Secretary, Rajasthan High Court Legal Services Committee, Jodhpur/Jaipur.
3. District & Sessions Judge, Jodhpur District, Jodhpur.

(K.B.Katta)
Member Secretary.

LEGAL ASSISTANCE TO PERSON IN CUSTODY SCHEME

GUIDELINES

In exercise of the powers conferred by clause (g) of section 2 read with clause (a) of sub-section (2) of Section 7 and Section 12(g) of the Legal Services Authorities Act,1987, the state authority hereby makes the following scheme guidelines, namely:-

1. The Scheme may be called the Legal Assistance to Person in Custody Scheme.
2. (a) Act means Legal Services Authority Act, 1987 (No. 39 of 1987).

   (b) District Authority means District Legal Services Authority constituted under Section 9 of the Act.

   (c) Person in custody shall have the same meaning as defined in the Section 12(g) of the Act.
3. The District Authority or Taluk Committee, as the case may be, shall prepare

a) Panel of counsels for nomination of Legal Aid Counsel for each Court of Magistrate or more, depending upon the quantum of remand cases received each day, for defending persons in custody.

4. Such Legal Aid Counsel should have put at least 5 years of practice at the Bar.
5. The District Authority or Taluk Committee, as the case may be, shall nominate one Legal Aid Counsel from the panel of Counsels prepared by them, for each court of Magistrate of more, depending upon the quantum of remand cases received each day, for defending persons in Custody.
6. It would be the duty of the Legal Aid Counsel so nominated to oppose remand, apply for bail and remove miscellaneous applications as may be required.
7. It shall be the duty of the Legal Aid Counsel so nominated to remain present during remand hours and such as may be directed by Courts concerned.
8. The District Legal Services Authority or Taluk Committee, as the case may be, shall insist upon certificate from the Court concerned about the regular attendance of the Legal Aid Counsel Concerned.

9. A Legal Aid Counsel so nominated shall be paid a fixed honorarium of Rs. 1000/- per month for discharging his functions, in addition to incidental charges.

10. The District Authority or Taluk Committee, as the case may be, shall give vide publicity to this scheme and display boards outside the Court room. The Boards should also disclose the names of Legal Aid Counsel and his address and that no payment is required to be made by the persons in custody for availing of the services of the Legal Aid Counsel. The Legal Aid Counsel shall not prepare and display any personal board or name plate at anywhere and misuse his capacity as Legal Aid Counsel.

11. Any Legal Aid Counsel demanding remuneration from the aided persons or misuse his capacity shall be liable to be removed from panel and his nomination shall be cancelled immediately.

12. The District Authority or Taluk Committee, as the case may be, shall change the nomination of Legal Aid Counsel after every six months and to nominate to another counsel from the panel so prepared for this purpose, as per rotation.

13. The District Authority or Taluk Committee, as the case may be, can take services of such Legal Aid Counsel for other legal services programmes and schemes implemented by them. It would be the duty of the Legal Aid Counsel so nominated to assist concerned authority or committee for implementation of legal services programmes or schemes.

14. After the stage of bail/ remand, if the accused desires and entitled for legal aid, his application form, for providing legal aid, can be sent to concern District Legal Services Authority/ Taluk Legal Services Committee for necessary action.

15. The Legal Aid Counsel will keep details of the case in which he has extended his legal services in the concern Court in this regard and by the end of the month, he will submit it to the concern Presiding Officer of the Court, which will be forwarded to the Chairman, Taluk Committee or Chairman, District Authority as the case may be. The Chairman, District Authority will send consolidated statistical information at the end of every Quarter to the State Authority.

(K.B.Katta)

Member Secretary.

NALSA's Free & Competent legal Services Act 2010

PUBLISHED IN THE GAZETTE OF INDIA, EXTRAORDINARY, PART III, SECTION 4

MINISTRY OF LAW & JUSTICE

(DEPARTMENT OF LEGAL AFFAIRS)

NATIONAL LEGAL SERVICES AUTHORITY

NOTIFICATION

New Delhi, dated 9th September, 2010

No.L/61/10/NALSA. - *In exercise of the powers conferred by section 29 of the Legal Services Authorities Act, 1987 (39 of 1987) and in pursuance of the provisions in section 4 of the Act to make available free and competent legal services to the persons entitled thereto under section 12 of the said Act, the Central Authority hereby makes the following regulations, namely: -*

1. Short title, extent and commencement. - (1) These regulations may be called the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010.

(2) They shall be applicable to Supreme Court Legal Services Committee, State Legal Services Authorities, High Court Legal Services Committees, District Legal Services Authorities and Taluk Legal Services Committees in India.

(3) They shall come into force from the date of their publication in the Official Gazette.

2. Definitions. – (1) In these regulations, unless the context otherwise requires, -

(a) "Act" means the Legal Services Authorities Act, 1987 (39 of 1987);

(b) "Form" means a Form annexed to these Regulations;

(c) "front office" means a room in the Legal Services Institution where legal services are made available;

(d) "legal practitioner" shall have the meaning assigned to it in clause (i) of section 2 of the Advocates Act, 1961 (25 of 1961);

(e) "Legal Services Institution" means the Supreme Court Legal Services Committee, a State Legal Services Authority, the High Court Legal Services Committee, District Legal Services Authority or the Taluk Legal Services Committee, as the case may be;

(f) "Para-Legal Volunteer" means a para-legal volunteer trained as such by a Legal Services Institution;

(g) "Secretary" means the Secretary of the Legal Services Institution;

(h) "section" means the section of the Act;

(i) "State regulation" means regulation made by the State Authorities under the Act.

2. All other words and expressions used but not defined in these regulations shall have the same meanings assigned to them in the Act.

3. Application for legal services.- (1) An application for legal services may be presented preferably in Form-I in the local language or English.

(2) The applicant may furnish a summary of his grievances for which he seeks legal services, in a separate sheet along with the application.

(3) An application, though not in Form-I, may also be entertained, if reasonably explains the facts to enable the applicant to seek legal services.

(4) If the applicant is illiterate or unable to give the application on his or her own, the Legal Services Institutions may make arrangement for helping the applicant to fill up the application form and to prepare a note of his or her grievances.

(5) Oral requests for legal services may also be entertained in the same manner as an application under sub-regulation (1) and (2).

(6) An applicant advised by the para-legal volunteers, legal aid clubs, legal aid clinics and voluntary social service institutions shall also be considered for free legal services.

(7) Requests received through e-mails and interactive on-line facility also may be considered for free legal services after verification of the identity of the applicant and on ensuring that he or she owns the authorship of the grievances projected.

4. **Legal Services Institution to have a front office**.- (1) All Legal Services Institutions shall have a front office to be manned by a panel lawyer and one or more para-legal volunteers available during office hours.

(2) In the case of court based legal services, such lawyer shall after consideration of the application, forward the same to the Committee set up under regulation 7 and for other types of legal services, the panel lawyer in the front office may provide such legal services.

(3) The panel lawyer in the front office shall render services like drafting notices, sending replies to lawyers' notices and drafting applications, petitions etc.

(4) The panel lawyer in the front office may obtain secretarial assistance from the staff of the Legal Services Institutions.

(5) In case of urgent matters, the panel lawyer in the front office may in consultation with the Member-Secretary or Secretary of the Legal Services Institutions provide legal assistance of appropriate nature:

Provided that the Committee set up under regulation 7 may consider and approve the action taken by the panel lawyer in the front office.

5. **Proof of entitlement of free legal services. --** (1) An affidavit of the applicant that he falls under the categories of persons entitled to free legal services under section 12 shall ordinarily be sufficient.

(2) The affidavit may be signed before a Judge, Magistrate, Notary Public, Advocate, Member of Parliament, Member of Legislative Assembly, elected representative of local bodies, Gazetted Officer, teacher of any school or college of Central Government, State Government or local bodies as the case may be.

(3) The affidavit may be prepared on plain paper and it shall bear the seal of the person attesting it.

6. **Consequences of false or untrue details furnished by the applicant. -** The applicant shall be informed that if free legal services has been obtained by furnishing incorrect or false information or in a fraudulent manner, the legal services shall be stopped forthwith and that the expenses incurred by the Legal Services Institutions shall be recoverable from him or her.

7. **Scrutiny and evaluation of the application for free legal services. -** (1) There shall be a Committee to scrutinise and evaluate the application for legal

services, to be constituted by the Legal Services Institution at the level of Taluk, District, State and above.

(2) The Committee shall be constituted by the Executive Chairman or Chairman of the Legal Services Institution and shall consist of, -

(i) the Member Secretary or Secretary of the Legal Services Institution as its Chairman and two members out of whom one may be a Judicial Officer preferably having working experience in the Legal Services Institution and;

(ii) a legal professional having at least fifteen years' standing at the Bar or Government pleader or Assistant Government Pleader or Public Prosecutor or Assistant Public Prosecutor, as the case may be.

(3) The tenure of the members of the Committee shall ordinarily be two years which may be further extended for a maximum period of one year and the Member Secretary or Secretary of the Legal Services Institution shall, however, continue as the ex-officio Chairman of the Committee.

(4) The Committee shall scrutinise and evaluate the application and decide whether the applicant is entitled to the legal services or not within a period of eight weeks from the date of receipt of the application.

(5) If the applicant is not covered under the categories mentioned in section 12, he or she shall be advised to seek assistance from any other body or person rendering free legal services either voluntarily or under any other scheme.

(6) The Legal Services Institution shall maintain a list of such agencies, institutions or persons who have expressed willingness to render free legal services.

(7) Any person aggrieved by the decision or order of the Committee, he or she may prefer appeal to the Executive Chairman or Chairman of the Legal Services Institution and the decision or order in appeal shall be final.

8. Selection of legal practitioners as panel lawyers. - (1) Every Legal Services Institution shall invite applications from legal practitioners for their empanelment as panel lawyers and such applications shall be accompanied with proof of the professional experience with special reference to the type of cases which the applicant-legal practitioners may prefer to be entrusted with.

(2) The applications received under sub-regulation (1) shall be scrutinised and selection of the panel lawyers shall be made by the Executive Chairman or Chairman of the Legal Services Institution in consultation with the Attorney-General (for the Supreme Court), Advocate-General (for the High Court), District Attorney or Government Pleader (for the District and Taluk level) and the respective Presidents of the Bar Associations as the case may be.

(3) No legal practitioner having less than three years' experience at the Bar shall ordinarily be empanelled.

(4) While preparing the panel of lawyers the competence, integrity, suitability and experience of such lawyers shall be taken into account.

(5) The Executive Chairman or Chairman of the Legal Services Institution may maintain separate panels for dealing with different types of cases like, Civil, Criminal, Constitutional Law, Environmental Law, Labour Laws, Matrimonial disputes etc.

(6) The Chairman of the Legal Services Institution may, in consultation with the Executive Chairman of the State Legal Services Authority or National Legal Services Authority as the case may be prepare a list of legal practitioners from among the panel lawyers to be designated as Retainers.

(7) The Retainer lawyers shall be selected for a period fixed by the Executive Chairman on rotation basis or by any other method specified by the Executive Chairman.

(8) The strength of Retainer lawyers shall not exceed, -

(a) 20 in the Supreme Court Legal Services Committee;

(b) 15 in the High Court Legal Services Committee;

(c) 10 in the District Legal Authority;

(d) 5 in the Taluk Legal Services Committee.

(9) The honorarium payable to Retainer lawyer shall be, –

(a) Rs.10,000 per month in the case of Supreme Court Legal Services Committee;

(b) Rs.7,500 per month in the case of High Court Legal Services Committee;

(c) Rs.5,000 per month in the case of District Legal Services Authority;

(d) Rs.3,000 per month in the case of the Taluk Legal Services Committee:

Provided that the honorarium specified in this sub-regulation is in addition to the honorarium or fee payable by the Legal Services Institution for each case entrusted to the Retainer lawyer.

(10) The panel lawyers designated as Retainers shall devote their time exclusively for legal aid work and shall be always available to deal with legal aid cases and to man the front office or consultation office in the respective Legal Services Institution.

(11) The panel prepared under sub-regulation (2) shall be re-constituted after a period of three years but the cases already entrusted to any panel lawyer shall not be withdrawn from him due to re-constitution of the panel.

(12) The Legal Services Institution shall be at liberty for withdrawing any case from a Retainer during any stage of the proceedings.

(13) If a panel lawyer is desirous of withdrawing from a case he shall state the reasons thereof to the Member-Secretary or the Secretary and the latter may permit the panel lawyer to do so.

(14) The panel lawyer shall not ask for or receive any fee, remuneration or any valuable consideration in any manner, from the person to whom he had rendered legal services under these regulations.

(15) If the panel lawyer engaged is not performing satisfactorily or has acted contrary to the object and spirit of the Act and these regulations, the Legal Services Institution shall take appropriate steps including withdrawal of the case from such lawyer and his removal from the panel.

9. Legal services by way of legal advice, consultation, drafting and conveyancing. - (1) The Executive Chairman or Chairman of the Legal Services Institution shall maintain a separate panel of senior lawyers, law firms, retired judicial officers, mediators, conciliators and law professors in the law universities or law colleges for providing legal advice and other legal services like drafting and conveyancing.

(2) The services of the legal aid clinics in the rural areas and in the law colleges and law universities shall also be made use of.

10. Monitoring Committee. - (1) Every Legal Services Institution shall set up a Monitoring Committee for close monitoring of the court based legal services rendered and the progress of the cases in legal aided matters.

(2) The Monitoring Committee at the level of the Supreme Court or the High Court, as the case may be, shall consist of, -

(i) the Chairman of the Supreme Court Legal Services Committee or Chairman of the High Court Legal Services Committee;

(ii) the Member-Secretary or Secretary of the Legal Services Institution;

(iii) a Senior Advocate to be nominated by the Patron-in-Chief of the Legal Services Institution.

(3) The Monitoring Committee for the District or Taluk Legal Services Institution shall be constituted by the Executive Chairman of the State Legal Services Authority and shall consist of, -

(i) the senior-most member of the Higher Judicial Services posted in the district concerned, as its Chairman;

(ii) the Member-Secretary or Secretary of the Legal Services Institution;

(iii) a legal practitioner having more than fifteen years' experience at the local Bar-to be nominated in consultation with the President of the local Bar Association:

Provided that if the Executive Chairman is satisfied that there is no person of any of the categories mentioned in this sub-regulation, he may constitute the Monitoring Committee with such other persons as he may deem proper.

11. Functions of the Monitoring Committee. - (1) Whenever legal services are provided to an applicant, the Member-Secretary or Secretary shall send the details in Form-II to the Monitoring Committee at the earliest.

(2) The Legal Services Institution shall provide adequate staff and infrastructure to the Monitoring Committee for maintaining the records of the day-to-day progress of the legal aided cases.

(3) The Legal Services Institution may request the Presiding Officer of the court to have access to the registers maintained by the court for ascertaining the progress of the cases.

(4) The Monitoring Committee shall maintain a register for legal aided cases for recording the day-to-day postings, progress of the case and the end result (success or failure) in respect of cases for which legal aid

is allowed and the said register shall be scrutinised by the Chairman of the Committee every month.

(5) The Monitoring Committee shall keep a watch of the day-to-day proceedings of the court by calling for reports from the panel lawyers, within such time as may be determined by the Committee.

(6) If the progress of the case is not satisfactory, the Committee may advise the Legal Services Institution to take appropriate steps.

12. Monitoring Committee to submit bi-monthly reports. – (1) The Monitoring Committee shall submit bi-monthly reports containing its independent assessment on the progress of each and every legal aid case and the performance of the panel lawyer or Retainer lawyer, to the Executive Chairman or Chairman of the Legal Services Institution.

(2) After evaluating the reports by the Committee, the Executive Chairman or Chairman of the Legal Services Institution shall decide the course of action to be taken in each case.

(3) It shall be the duty of the Member-Secretary or Secretary of the Legal Services Institution to place the reports of the Monitoring Committee before the Executive Chairman or Chairman of the Legal Services Institution and to obtain orders.

13. Financial assistance. – (1) If a case for which legal aid has been granted requires additional expenditure like payment of court fee, the fee payable to the court appointed commissions, for summoning witnesses or documents, expenses for obtaining certified copies etc., the Legal Services Institution may take urgent steps for disbursement of the requisite amount on the advice of the panel lawyer or Monitoring Committee.

(2) In the case of appeal or revision the Legal Services Institution may bear the expenses for obtaining certified copies of the judgment and case records.

14. Payment of fee to the panel lawyers. - (1) Panel lawyers shall be paid fee in accordance with the Schedule of fee, as approved under the State regulations.

(2) The State Legal Services Authority and other Legal Services Institution shall effect periodic revision of the honorarium to be paid to panel lawyers for the different types of services rendered by them in legal aid cases.

(3) As soon as the report of completion of the proceedings is received from the panel lawyer, the Legal Services Institution shall, without any delay, pay the fees and expenses payable to panel lawyer.

15. Special engagement of senior advocates in appropriate cases. – (1) If the Monitoring Committee or Executive Chairman or Chairman of the Legal Services Institution is of the opinion that services of senior advocate, though not included in the approved panel of lawyers, has to be provided in any particular case the Legal Services Institution may engage such senior advocate. (2) Notwithstanding anything contained in the State regulations, the Executive Chairman or Chairmen of the Legal Services Institution may decide the honorarium for such senior advocate:

Provided that special engagement of senior advocates shall be only in cases of great public importance and for defending cases of very serious nature, affecting the life and liberty of the applicant.

16. Evaluation of the legal aid cases by the National Legal Services Authority and State Legal Services Authorities. – (1) The Supreme Court Legal Services Committee shall send copies of the bi-monthly reports of the Monitoring Committee of the Supreme Court Legal Services Committee to the Central Authority.

(2) The High Court Legal Services Committees, the State Legal Services Authorities shall submit copies of the bi-monthly reports of their Monitoring Committees to their Patron-in-Chief.

(3) The District Legal Services Authorities and Taluk Legal Services Committees shall submit copies of the bi-monthly reports of their Monitoring Committees to the Executive Chairman of the State Legal Services Authority.

(4) The State Legal Services Authorities shall also send consolidated half-yearly reports of the Monitoring Committees, indicating the success or failure of each of the legal aided cases, to the Central Authority.

(5) In appropriate cases, the Executive Chairman of the National Legal Services Authority may nominate and authorise the members of its Central Authority to supervise, monitor or advise the Legal Services Institution for effective and successful implementation of these regulations.

(U. Sarathchandran)

Member-Secretary

Form -I
National Legal Services Authority
(Free and Competent Legal Services) Regulations, -2010

(see regulation-3)

The Form of Application for Legal Services
(this may be prepared in the regional language)

Registration No. :

1. Name :

2. Permanent Address

3. Contact Address with phone no. if any,
e-mail ID, if any. :

4. Whether the applicant belongs to the category :
of persons mentioned in section -12 of the Act

5. Monthly income of the applicant :

6. Whether affidavit/proof has been produced
in support of income/eligibility u/s 12 of the Act :

7. Nature of legal aid or advise required :

8. A brief statement of the case, if court based :
legal services is required.

Signature of the applicant
Place:
Date:

Form-II

National Legal Services Authority
(Free and Competent Legal Services) Regulation, 2010

(see regulation-11)

Information furnished to the Monitoring Committee about the legal Services provided

(i)	Name of the Legal Services Institution.	:	……
(i)	Legal aid application number and date on which legal aid was given.	:	……
(iii)	Name of the legal aid applicant.	:	……
(iv)	Nature of case (civil, criminal, constitutional law etc,).	:	……
(v)	Name and roll number of the lawyer assigned to the applicant.	:	……
(vi)	Name of the Court in which the case is to be filed / defended.	:	……
(vii)	The date of engaging the panel lawyer.	:	……
(viii)	Whether any monetary assistance like, court fee, advocate commission fee, copying charges etc. has been given in advance?	:	……
(ix)	Whether the case requires any interim orders or appointment of commission?	:	……
(x)	Approximate expenditure for producing records, summoning of witnesses etc.	:	……
(xi)	The expected time for conclusion of the proceedings in the Court.	:	……

MEMBER-SECRETARY / SECRETARY
Dated:

National Legal Services Authority (Legal Aid Clinics) Scheme, 2010

NATIONAL LEGAL SERVICES AUTHORITY

NATIONAL LEGAL SERVICES AUTHORITY

(LEGAL AID CLINICS) SCHEME, 2010

[Adopted in the Meeting of the Central Authority of NALSA held on 8.12.2010 at Supreme Court of India]

1. Introduction.

Legal Aid Clinics are intended to provide legal relief easily accessible to the indigent and backward sections of our society. They are almost on the lines of primary health centres where a doctor and other auxiliary medical staff provide basic health care to the people situated in village areas affected with poverty and social squalor. Like the doctors rendering health services to the people of the locality in the primary health centre, a lawyer manning the legal aid clinic provides legal services to the people. The thrust is on the basic legal services like legal advice and assisting in drafting of notices, replies, applications, petitions etc. The lawyer manning the legal aid clinic will also attempt to resolve the disputes of the people in the locality, preventing the disputes from maturing into litigation. This provides the lawyer in the legal aid clinic an opportunity to understand the difficulties faced by people in the distant villages' for access to justice. Legal aid clinics have to be manned by para-legal volunteers selected by the Legal Services Authorities and lawyers with a sense of commitment, sensibility and sensitiveness to the problems of common people.

Legal aid clinic is one of the thrust areas envisioned in the NALSA's Q*uinquennial vision & strategy document*. NALSA plans to set up legal aid clinics in all villages.

2. Name of the Scheme.

The Scheme shall be called the National Legal Services Authority (Legal Aid Clinics) Scheme, 2010.

3. Objective.

The objective of the Scheme is to provide legal services to the poor, marginalised and weaker sections of the society as categorised in Section 12 the Legal Services Authorities Act 1987 (Central Act), especially to the people living in far away places including the places with geographical barriers, away from the seats of justice and the offices of the legal services institutions ['legal services institutions' means the Taluk/Sub-divisional/Mandal Legal Services Committees, District Legal Services Authorities, High Court Legal Services Committees, State Legal Services Authorities and Supreme Court Legal Services Committee established under the Legal Services Authorities Act, 1987].

The aim of the Scheme is to provide an 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 resolving the disputes of the local people by making the parties to see reason and thereby preventing the disputes reaching courts. In cases where legal services of a higher level is required the matter can be referred to the legal services institutions established under the Legal Services Authorities Act, 1987.

4. Location of Legal Aid Clinics.

The legal aid clinics established by the Legal Services Authorities shall be located at a place where the people in the locality can easily access. A room within the office building of the local body institutions like village *panchayat* shall be ideal.

5. Sign-board exhibiting the name of the Legal Aid Clinic.

There shall be a sign-board both in English and the local language, depicting the name of the legal aid clinic. The board shall display the working hours and the days on which the clinic will be open. Working hours of Legal Aid Clinics shall be decided by the legal services institutions having territorial jurisdiction in consultation with the District Legal Services Authority.

6. Assistance of the local body institutions in obtaining a convenient room for the Legal Aid Clinic.

The Legal Services Authorities shall persuade the local body institutions like village *panchayat*, *mandal* / block *panchayat*, municipality and corporation etc, to provide a room for the functioning of legal aid clinic. Since the legal aid clinic is for the benefit of the people in the locality, the local body institutions should be impressed upon the need to co-operate with the functioning of the legal aid clinics and to realise that

the legal aid clinic is aimed at promoting peace and welfare of the people in the locality.

7. Publicity.

The local body institutions shall be persuaded to give adequate publicity about the functioning of the legal aid clinic. The elected representatives of the local body institutions shall be persuaded to spread the message of the utility of the legal aid clinic to the people in his / her constituency / wards.

8. Infrastructure in the legal aid clinic.

Every legal aid clinic shall have at least the basic and essential furniture like a table and three or four chairs. The local body institutions shall be requested to provide the essential furniture for use in the legal aid clinic. Only in those places where legal aid clinics are not functioning in the office building of the local body institutions, the Legal Services Authorities need to purchase furniture.

If the Legal Services Authority has its own building to run the legal aid clinic, the infrastructural facilities shall be provided by such Authority.

9. All villages to have Legal Aid Clinics.

The District Legal Services Authority shall establish legal aid clinics in all villages, or for a cluster of villages, depending on the size of such villages, especially where the people face geographical, social and other barriers for access to the legal services institutions.

10. The personnel manning the Legal Aid Clinic.

Every legal aid clinic shall have one or more para-legal volunteers available during the working hours of the legal aid clinics.

11. Frequency of visit by lawyers in the Legal Aid Clinics.

Subject to the local requirements, the District Legal Services Authority may decide the frequency of the lawyer's visit in the legal aid clinics. If the situation demands for providing continual legal services, the District Legal Services Authority may consider arranging frequent visits of the lawyer in the legal aid clinic.

12. Selection of lawyers for manning the Legal Aid Clinics.

Qualified legal practitioners with skills for amicable settlement of disputes may be selected from the local bar for empanelment for serving in the legal aid clinic. The selection of lawyers shall be done by the nearest legal services institution having

territorial jurisdiction. Preference shall be given to women lawyers having practice of three years or more. A list of the panel lawyers shall be sent to the District Legal Services Authority.

Para-legal volunteer (s) trained by the Legal Services Authorities and holding the identity card issued by the Legal Services Authorities may be engaged to assist the lawyer in providing legal services in the legal aid clinics.

13. Legal Services in the Legal Aid Clinic.

Legal Services rendered at the legal aid clinic shall be of wide ranging in nature. Besides legal advice, other services like preparing applications for job card under the MGNREGA Scheme, liaison with the government offices and public authorities and helping the common people who come to the clinic for solving their problems with the officials, authorities and other institutions also shall form part of the legal services in the legal aid clinic (the list given is only indicative, not exhaustive). Legal aid clinic shall work like a single-window facility for helping the disadvantaged people to solve their problems where the operation of law comes into picture.

14 Administrative Control of Legal Aid Clinics.

Legal aid clinics shall be under the direct administrative control of the nearest legal services institution having territorial jurisdiction. The District Legal Services Authority shall have supervisory and advisory powers on all legal aid clinics functioning within the district.

The State Legal Services Authority shall have the power to issue guidelines on the working of the legal aid clinics.

15. Honorarium for the lawyers and para-legal volunteers rendering services in the Legal Aid Clinics.

In consultation with the District Legal Services Authority, the State Legal Services Authority shall fix the honorarium to be paid to the lawyers and para-legal volunteers rendering service in the legal aid clinics which shall not be less than Rs. 500/- per day for lawyers and Rs. 250/- for para-legal volunteers. Special consideration may be given in cases where the legal aid clinic is situated at difficult terrains and distant areas where transport facilities are scarce.

16. Maintenance of Records and Registers.

Lawyers and para-legal volunteers rendering service in the legal aid clinics shall record their attendance in the register maintained in the legal aid clinic. There shall be a register in every legal aid clinic for recording the name and address of the

seekers of legal services, name of the lawyer who render services in the legal aid clinic, nature of the service rendered, remarks of the lawyer and signatures of seekers of legal aid and the lawyers.

The records of the Legal Aid Clinics shall be under the custody of the Secretary of the Taluk Legal Services Committee/District Legal Services Authority having territorial jurisdiction.

The legal services institution having territorial jurisdiction may maintain other registers also in consultation with the District Legal Services Authority as the situation requires.

The nearest legal services institution having territorial jurisdiction shall be the custodian of all registers and it shall be the duty of the para-legal volunteers and the lawyer in the legal aid clinic to hand over the registers to such legal services institution, when called for.

17.Change of Lawyers.

The nearest legal services institution having territorial jurisdiction may maintain a panel of lawyers preferably from the local bar. The lawyers may be deputed to the legal aid clinic on a rotation basis. If the matter handled by a lawyer requires follow up and continuous attention for a long duration, the same lawyer who had handled the matter may be entrusted to continue the legal services.

18. Lawyer in the Legal Aid Clinic shall attempt to resolve disputes locally.

During the course of legal services, if the lawyer in the legal aid clinic feels that the dispute between two locally available parties can be resolved through proper advice or by employing ADR techniques, he / she shall make an effort to do so, without permitting the dispute maturing into litigation.

In appropriate cases the lawyers may request the nearest legal services institution having territorial jurisdiction to refer the dispute to Lok Adalat for a pre-litigation settlement.

In such cases the lawyer rendering legal services in the legal aid clinic shall ensure that the procedure prescribed in sub-section (2) of Section 20 Legal Services Authorities Act, 1987 is complied with.

The nearest legal services institution having territorial jurisdiction/ District Legal Services Authority may organise Lok Adalat at the legal aid clinic or near to its premises.

19. Use of Mobile Lok Adalat Vehicle.

The lawyer rendering legal services in the legal aid clinic may request the District Legal Services Authority to send the Mobile Lok Adalat Van with the members of the Lok Adalat Bench for visiting the legal aid clinic for settlement of the disputes identified by him. The Mobile Lok Adalat Van can also be used for the legal services to mentally ill and children.

The State Authority may fix a monthly ceiling for the fuel to be used in the Mobile Lok Adalat Vans. However, the Executive Chairman of the State Authority may grant relaxation, taking into account of the exigencies of the legal services to be performed.

20. Para-Legal Volunteers in the Legal Aid Clinics.

Para-Legal Volunteers selected and trained by the Legal Services Authorities may be deputed to work in the legal aid clinics for assisting the lawyer and the seekers of legal aid. As they gain experience, the services of para-legal volunteers can be used for drafting simple petitions, applications and for accompanying the seekers of legal aid to the government offices for interacting with the officials for solving the problems of such seekers of legal aid.

Para-legal volunteers may be encouraged to obtain diplomas and degrees in law for betterment of their prospects in the long run.

21. Legal Aid Clinics run by the Law Students.

The provisions in the above paragraphs shall *mutatis mutandis* be applicable to the student' legal aid clinics set up by the law colleges and law universities also. However, in such clinics the students in the final year classes may render legal services and the junior students may assist them.

The students legal aid clinic shall always be under the supervision of a faculty member who shall be present in such clinics for immediate consultation.

The students of law colleges and law universities also may make use of the other legal aid clinics established under this scheme.

22. Student may use the legal aid clinics set up under this scheme.

Law students of the law colleges / law universities may be engaged to adopt a village especially in the remote areas and organise legal aid camps. Such students may make use of the legal aid clinics set up under this scheme in consultation with the legal services institution having territorial jurisdiction in that area.

The students in the legal aid clinics may seek the assistance of the para-legal volunteers in the legal aid clinics.

23. The Student legal aid clinics may conduct surveys and prepare reports.

The student legal aid clinics working in the remote villages may conduct surveys of the legal services required for the people of that area including identification of the problems which call for a social justice litigation. For conducing surveys, members of the student legal aid clinic may seek the assistance of the para-legal volunteers and voluntary social welfare institutions working at the grass-root level.

The student legal aid clinics shall send reports to the State Legal Services Authorities with copies to the legal services institutions having territorial jurisdiction and also to the District Legal Services Authorities concerned.

24. Permanent Legal Aid Clinics attached to the Law Colleges and Law Universities.

Besides the student legal aid clinics in the rural areas, law colleges and law universities also may set up permanent legal aid clinics attached to their institutions. The State Legal Services Authority shall be informed about the establishing of such legal aid clinics. The State Legal Services Authority shall render the required technical assistance for such legal aid clinics and shall co-ordinate with the legal aid clinics so established.

25. Services of Para-Legal Volunteers trained by the Legal Services Authorities may be made available in the Legal Aid Clinics run by the Law Colleges and Law Universities.

Trained para-legal volunteers may be deputed to the legal aid clinics in law colleges and law universities for assisting the seekers of legal aid and for interacting with the students and the members of faculty.

26. The State Legal Services Authorities to conduct periodical revenue of the functioning of Legal Aid Clinics.

The State Legal Services Authorities shall conduct periodical review of the functioning of legal aid clinics.

The State Legal Services Authorities shall collect monthly reports from the District Legal Services Authorities, law colleges and law universities and review the functioning of legal aid clinics working in their jurisdiction.

The State Legal Services Authorities shall conduct periodical review of the working of such legal aid clinics at least once in three months or more frequently.

The State Legal Services Authorities shall issue directions from time to time for improving the services in the legal aid clinics to ensure that members of the weaker sections of the society are provided legal services in an efficient manner.

The State Legal Services Authorities shall send quarterly reports about the functioning of the Legal Aid Clinics within their jurisdiction to National Legal Services Authority.

* * * * *

U.SARATHCHANDRAN
MEMBER-SECRETARY
NATIONAL LEGAL SERVICES AUTHORITY

Implementation of Nalsa's Scheme for the Project of Para Legal Volunteers, 2009-2010

NATIONAL LEGAL SERVICES AUTHORITY

A SCHEME FOR THE PROJECT OF

PARA-LEGAL VOLUNTEERS

(Under the Plan of Action for the year 2009-2010)

The Project of Para-Legal Volunteers is aimed at imparting legal awareness to volunteers selected from certain target groups who in turn act as harbingers of legal awareness and legal aid to all sections of people. The Volunteers are expected to act as intermediaries between the common people and Legal Services institutions and thereby removing barriers of access to justice. Initially, the volunteers are identified from the NSS units in Colleges, creditworthy NGOs and credible social organizations and Women Self Help Groups. In order to achieve the desired results and to mould the volunteers into full-fledged Para-Legal Volunteers, the following guidelines are formulated:

MODALITIES

At the First Stage, every Taluka Legal Services Committee (TLSC) shall identify 5 volunteers from each Arts and Science College where legal literacy classes are conducted. This should be done with the help of the NSS programme officers of the college and in consultation with the Principal. Volunteers shall be of good character, with inclination for social service, law obedient and with a strong sense of legal rights and justice. At least one of the volunteers should be a female student. Names, addresses, and contact telephone nos of the volunteers selected from each college will be kept in the Register of Para-Legal Volunteers maintained by the TLSC.

In the Second stage, selection of volunteers is from the members of the social organizations and Women Self Help Groups. One member with the aforesaid qualities from each panchayat, shall be selected in consultation with the Chairperson of the local self government institutions. This can be done during the legal literacy classes by making advance announcement to the participants. Names, addresses and contact telephone numbers of the selected Para-Legal Volunteers should be noted in the Register.

TLSC may identify other suitable groups also from among whom Para-Legal Volunteers can be selected.

The Third stage is Training. Training programme shall be organized by the TLSC at the Taluka centers. The modalities of training may be decided by the TLSC in consultation with the District Legal Services Authority (DLSA). Training programme is to be planned in such a manner as to provide adequate exposure to the volunteers for generating legal awareness about the Constitutional and statutory rights and duties, general civil, criminal, substantial and procedural laws. Legal issues relating to the following topics also can be included in the Training Programme:

1. Women
2. Children's rights and abolition of child labour.
3. Students.
4. Farmers
5. Industrial and Agricultural Labour.
6. Prisoners
7. Victims of natural calamities and Communal violence.
8. Physically and mentally challenged persons.
9. Victims of trafficking.
10. Members of Scheduled castes and Scheduled Tribes.
11. Consumers.
12. Senior Citizens.
13. Bonded labour.
14. Domestic Violence.
15. Farmers' debt relief.
16. Other beneficiaries of the Legal Services Authorities Act.

The Legal Services Authorities Act 1987, Rules and Regulations framed there under should be an integral part of the training programme. The training should be so oriented as to enable the trainees to act as effective coordinators with the TLSC at the first instance and then with District Legal Services Authorities, High Court Legal Services Committee, State Authority and Supreme Court Legal Services Committee.

TRAINING TOPICS:

Rights of women under the following Acts and topics:

1. Hindu Marriage Act, Christian Marriage Act, Special Marriages Act, Muslim Women's Protection Act.
2. Child Marriage Restraint Act.

3. Family Courts Act.
4. Guardian and Wards Act.
5. Hindu Minority and Guardianship Act.
6. Maternity Benefit Act.
7. Medical Termination and Pregnancy Act.
8. Dowry Prohibition Act.
9. Dowry Harassment.
10. Domestic Violence.
11. S.125 Cr.P.C.
12. Harassment of Women.
13. Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act.)
14. Consumer Protection Laws.
15. Labour Welfare Laws.
16. Procedure for claiming compensation for accident victims under Fatal Accidents Act, MV Act, W.C.Act and from railway Accident Claims Tribunal.
17. Bonded Labour (Abolition) Act.
18. F.I.R.
19. Arrest, Bail.
20. Rights of Prisoners.
21. Rights of accused in criminal cases.
22. Registration, Stamp duty.
23. Promissory Notes and Cheques.
24. Revenue Laws.
25. Rights of HIV/AIDS affected persons.
26. Govt. Orders promoting social welfare.
27. PILs.
28. LOK ADALATS, ADR system and free services under the Legal Services Authorities Act.
29. Any other topic the DLSA or TLSC consider to be of relevance to a particular local area.

PROCEDURE RELATING TO TRAINING.

1. Para-Legal Volunteer's training programme is to be conducted under the supervision of the Chairman and Secretary of the TLSC, in consultation with the DLSA.
2. As soon as the training is completed, the TLSC shall send a list of volunteers their names, address and contact details to the DLSA. A

consolidated list of Para-Legal Volunteers in the district shall be prepared by the DLSA and submitted to the State Authority.

3. A review meeting of the Volunteers shall be conducted by the TLSC once in three months and a repot shall be submitted to the DLSA within a week. A copy of the report shall be sent to the State Authority also.
4. The TLSC may devise its own plan of action for utilization of the services of the Para-Legal Volunteers.
5. The DLSA may allot a maximum of Rs.2000/- to the TLSC for each training session for providing refreshments to the trainees.
6. The TLSC may utilize the services of serving/retired judicial officers, law teachers, lawyers, law students, revenue officials, officers of the social welfare department and the law graduates among the court staff as resource persons for the training programme.

Disqualifications of Para-Legal Volunteers and their removal

No person shall be eligible to work as Para-Legal Volunteer if he/she;

a) fails to evince a sustained interest in the scheme or;
b) has been adjudged insolvent or;
c) is accused for an offence in a criminal case or convicted by a criminal court or;
d) has become physically or mentally incapable of acting as a Para-Legal Volunteer or;
e) has abused his/her position or committed misconduct in any manner as to render his/her continuance prejudicial to public interest or;
f) has willfully refused to obey the instructions of the DLSA/TLSC or;

A Para-Legal Volunteer with any of the above disqualifications may be removed by the Chairman, TLSC. Such removal should be promptly reported to the DLSA and also to the State Authority.

Duties of Trained Para-Legal Volunteers.

1. Para-Legal Volunteer shall educate people, especially those belonging to weaker sections of the society to enable them to be aware of the right to live with human dignity, to enjoy all the Constitutionally and statutorily

guaranteed rights, performing the duties and discharging obligations as per law.

2. Para-Legal Volunteers shall make people aware of the nature of their disputes/issues/problems and inform them that they can approach the TLSC/DLSA/HCLSC/SLSA/SCLSC and that they can resolve the dispute/issue/problems through these institutions.
3. Para-Legal Volunteers shall constantly keep a watch on transgressions of law or acts of injustice in their area of operation and bring them immediately to the notice of the TLSC through telephonic message or a written communication or in person to enable effective remedial action by the Committee.
4. Para-Legal Volunteers shall assist the DLSA/TLSC for organizing legal awareness camps in their area of operation.
5. Para-Legal Volunteers shall give information to the people of their locality about the legal services activities of SLSA/DLSA/TLSC/HCLSC/SCLSC and shall provide their addresses to the people so as to enable them to utilize the free services rendered by the above organizations to the eligible persons.
6. Para-Legal Volunteers shall generate awareness among people about the benefits of settlement of disputes through Lok Adalats, Conciliation, Mediation and Arbitration.
7. Para-Legal Volunteers shall propagate the facility of Pre-Litigation petitions in the TLSC/DLSA for inexpensive settlement of disputes.
8. Para-Legal Volunteers shall create awareness among citizens that if pending cases are settled through Lok Adalats the parties are entitled to refund of Court fee and that there is no appeal.
9. Para-Legal Volunteers shall make people aware of the benefits of inexpensive settlement of disputes relating to Public Utility Services like P&T, Telephones, Electricity, Water Supply, insurance and hospital services through Permanent Lok Adalats (PLA).
10. Para-Legal Volunteers shall submit monthly reports of their activities to the TLSC.
11. Para-Legal Volunteers shall see that publicity materials of legal services activities are exhibited at prominent places in there are of activity.

Expenses incurred by Para-Legal Volunteers.

Reasonable expenses incurred by Para-Legal Volunteers e.g. Bus/Train fare, Postage, Telephone charges etc., may be reimbursed by the TLSC/DLSA/SLSA, on production of proof and receipts may be obtained. Travel expenses limited to the

lowest class by road/rail/steamer of the legal aid beneficiaries brought by the Para-Legal Volunteers also may be reimbursed at the discretion of the Chairman.

AMENDMENTS BROUGHT IN AS PER THE DECISION TAKEN BY THE CENTRAL AUTHORITY OF NALSA ON 03.05.2011

1. **Number of Para-Legal Volunteers (PLVs) to be identified by the District Legal Services Authorities and Taluk Legal Services Committees:**
   (a) The Para-Legal Volunteers (PLVs) to be identified by the District Legal Services Authorities (DLSAs) shall be 100.
   (b) The number of PLVs to be identified by the Taluk Legal Services Committees(TLSCs) shall be 50.

2. **Monthly reports by Para-Legal Volunteers:**
   (a) The PLVs shall submit monthly reports to the TLSCs and DLSAs as the case may be. The DLSAs shall collect reports from the TLSCs/Sub-Divisional Legal Services Committees and shall send such reports along with the reports of PLVs of DLSAs to the SLSAs. The SLSAs may fix a date in every month as the last date for submitting such reports.

3. **Honorarium to the Para-Legal Volunteers.**
   (a) An honorarium of Rs.250/- per day may be paid to all PLVs engaged for specific works like going to the remote villages, distribution of legal literacy materials, attending the legal aid clinics and 'front offices' of the Legal Services Institutions.
   (b) In addition to the honorarium mentioned in Clause (a) above, where the PLVs have to undergo expenses for travel to places outside his / her base, the Legal Services Institutions would have to meet such expenses.
   (c) The rate of daily honorarium payable to the PLVs for the aforementioned engagements in the metro cities may be as determined by the SLSAs.

4. **Identity cards for the PLVs.**
   (a) The identify cards issued to the PLVs would be valid initially for a period of one year only.
   (b) The identify cards of PLVs shall specify the date of its expiry in the card itself.

5. **Inclusion of Retired Judges to function as PLVs.**
   (a) Persons like retired judges could also be considered to function as PLVs whenever their services are available.

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AMENDMENTS BROUGHT IN AS PER THE DECISION TAKEN BY THE CENTRAL AUTHORITY OF NALSA ON 03.05.2011

6. Number of Para-Legal Volunteers (PLVs) to be identified by the District Legal Services Authorities and Taluk Legal Services Committees:

(a) The Para-Legal Volunteers (PLVs) to be identified by the District Legal Services Authorities (DLSAs) shall be 100.

(b) The number of PLVs to be identified by the Taluk Legal Services Committees(TLSCs) shall be 50.

7. Monthly reports by Para-Legal Volunteers:

(a) The PLVs shall submit monthly reports to the TLSCs and DLSAs as the case may be. The DLSAs shall collect reports from the TLSCs/Sub-Divisional Legal Services Committees and shall send such reports along with the reports of PLVs of DLSAs to the SLSAs. The SLSAs may fix a date in every month as the last date for submitting such reports.

8. Honorarium to the Para-Legal Volunteers.

(a) An honorarium of Rs.250/- per day may be paid to all PLVs engaged for specific works like going to the remote villages, distribution of legal literacy materials, attending the legal aid clinics and 'front offices' of the Legal Services Institutions.

(b) In addition to the honorarium mentioned in Clause (a) above, where the PLVs have to undergo expenses for travel to places outside his / her base, the Legal Services Institutions would have to meet such expenses.

(c) The rate of daily honorarium payable to the PLVs for the aforementioned engagements in the metro cities may be as determined by the SLSAs.

9. Identity cards for the PLVs.

(a) The identify cards issued to the PLVs would be valid initially for a period of one year only.

(b) The identify cards of PLVs shall specify the date of its expiry in the card itself.

10. Inclusion of Retired Judges to function as PLVs.

(a) Persons like retired judges could also be considered to function as PLVs whenever their services are available.

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Section V:
WHAT DO THE KEY JUDGMENTS SAY

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[Right to Counsel in Police Station and Jail]

Sheela Barse Vs. State of Maharashtra

Hon'ble Judges/Coram: A.N. Sen, P.N. Bhagwati and R.S. Pathak, JJ.

- This writ petition is based on a letter addressed by Sheela Barse, a journalist, complaining of custodial violence to women prisoners whilst confined in the police lock up in the city of Bombay. The petitioner stated in her letter that she interviewed fifteen women prisoners in the Bombay Central Jail with the permission of the Inspector General of Prisons between 11 and 17th May, 1982 and five out of them told her that they had been assaulted by the police in the police lock up. Of these five who complained of having been assaulted by the police, the petitioner particularly mentioned the cases of two, namely, Devamma and Pushpa Paeen who were allegedly assaulted and tortured whilst they were in the police lock up. It is not necessary for the purpose of this writ petition to go into the various allegations in regard to the ill-treatment meted out to the women prisoners in the police lock up and particularly the torture and beating to which Devamma and Pushpa Paeen were said to have been subjected because we do not propose to investigate into the correctness of these allegations which have been disputed on behalf of the State of Maharashtra. But, since these allegations were made by the women prisoners interviewed by the petitioner and particularly by Devamma and Pushpa Paeen and there was no reason to believe that a journalist like the petitioner would invent or fabricate such allegations if they were not made to her by the women prisoners, this Court treated the letter of the petitioner as a writ petition and issued notice to the State of Maharashtra, Inspector General of Prisons, Maharashtra, Superintendent, Bombay Central Jail and the Inspector General of Police, Maharashtra calling upon them to show cause why the writ petition should not be allowed. It appears that on the returnable date of the show cause notice no affidavit was filed on behalf of any of the parties to whom show cause notice was issued and this Court therefore adjourned the hearing of the writ petition to enable the State of Maharashtra and other parties to file an affidavit in reply to the averments made in the letter of the petitioner. this Court also directed that in the meanwhile Dr. (Miss) A.R. Desai, Director of College of Social Work, Nirmala Niketan, Bombay will visit the Bombay Central Jail and interview women prisoners lodged there including Devamma and Pushpa Paeen without any one else being present at the time of interview and ascertain whether they had been subjected to any torture or ill-treatment and submit a report to this Court on or before 30th August, 1982. The State Government and the Inspector General of Prisons were directed to provide all facilities to Dr. Miss A.R. Desai to carry out this assignment entrusted to her. The object of assigning this commission to Dr. Miss A.R. Desai was to ascertain whether allegations of torture and ill-treatment as set out in the letter of the petitioner were, in fact, made by the women prisoners including Devamma and Pushpa Paeen to the petitioner and what was the truth in regard to such allegations. Pursuant to the order made by this Court, Dr. Miss A.R. Desai visited Bombay Central prison and after interviewing women prisoners lodged there, made a detailed report to this Court.

  The Report is a highly interesting and instructive socio-legal document which provides an insight into the problems and difficulties facing women prisoners and

we must express our sense of gratitude to Dr. Miss A.R. Desai for the trouble taken by her in submitting such a wonderfully thorough and perceptive report. We are not concerned here directly with the conditions prevailing in the Bombay Central Jail or other jails in the State of Maharashtra because the primary question which is raised in the letter of the petitioner relates to the safety and security of women prisoners in police lock up and their protection against torture and ill-treatment. But even so we would strongly recommend to the Inspector General of Prisons, Maharashtra that he may have a look at this Report made by Dr. Miss A.R. Desai and consider what further steps are necessary to be taken in order to improve the conditions in the Bombay Central Jail and other jails in the State of Maharashtra and to make life for the women prisoners more easily bearable by them.

There is only one matter about which we would like to give directions in this writ petition and that is in regard to the need to provide legal assistance not only to women prisoners but to all prisoners lodged in the jails in the State of Maharashtra. We have already had occasion to point out in several decisions given by this Court that legal assistance to a poor or indigent accused who is arrested and put in jeopardy of his life or personal liberty is a constitutional imperative mandated not only by Article 39 but also by Articles 14 and 21 of the Constitution. It is a necessary sine qua non of justice and where it is not provided, injustice is likely to result and undeniably every act of injustice corrodes the foundations of democracy and Rule of Law, because nothing rankles more in the human heart than a feeling of injustice and those who suffer and cannot get justice because they are priced out of the legal system, lose faith in the legal process and a feeling begins to overtake them that democracy and Rule of Law are merely slogans or myths intended to perpetuate the domination of the rich and the powerful and to protect the establishment and the vested interests.

Imagine the helpless condition of a prisoner who is lodged in a jail who does not know to whom he can turn for help in order to vindicate his innocence or defend his constitutional or legal rights or to protect himself against torture and ill-treatment or oppression and harassment at the hands of his custodians. It is also possible that he or the members of his family may have other problems where legal assistance is required but by reason of his being incarcerated, it may be difficult if not impossible for him or the members of his family to obtain proper legal advice or aid. It is therefore absolutely essential that legal assistance must be made available to prisoners in jails whether they be under-trial or convicted prisoners.

☞ The Report of Dr. Miss A.R. Desai shows that there is no adequate arrangement for providing legal assistance to women prisoners, and we dare say the situation which prevails in the matter of providing legal assistance in the case of women prisoners must also be the same in regard to male prisoners.

It is pointed out in the Report of Dr. Miss A.R. Desai that two prisoners in the Bombay Central Jail, one a German national and the other a That national were duped and defrauded by a lawyer, named Mohan Ajwani who misappropriated almost half the belongings of the German national and the jewellery of the That national on the plea that he was retaining such belongings and jewellery for payment of his fees. We do not know whether this allegation made by these two German and

That women prisoners is true or not but, if true, it is a matter of great shame for the legal profession and it needs to be thoroughly investigated.

The profession of law is a noble profession which has always regarded itself as a branch of social service and a lawyer owes a duty to the society to help people in distress and more so when those in distress are women and in jail. Lawyers must realise that law is not a pleasant retreat where we are concerned merely with mechanical interpretation of rules made by the legislature but it is a teeming open ended avenue through which most of the traffic of human existence passes. There are many casualities of this traffic and it is the function of the legal profession to help these casualities in a spirit of dedication and service. It is for the lawyers to minimise the numbers of those casualities who still go without legal assistance. The lawyers must positively reach out to those sections of humanity who are poor, illiterate and ignorant and who, when they are placed in a crisis such as an accusation of crime or arrest or imprisonment, do not know what to do or where to go or to whom to turn. If lawyers, instead of coming to the rescue of persons in distress, exploit and prey upon them, the legal profession will come into disrepute and large masses of people in the country would lose faith in lawyers and that would be destructive of democracy and Rule of Law. If it is true-that these two German and That women prisoners were treated by Mohan Ajwani in the manner alleged by them-and this is a question on which we do not wish to express any opinion exparte it deserves the strongest condemnation. We would therefore direct that the allegations made by the two German and That women prisoners as set out in paragraph 9.2 of the Report of Dr. Miss A.R. Desai be referred to the Maharashtra State Bar Council for taking such action as may be deemed fit.

- But, this incident highlights the need for setting up a machinery for providing legal assistance to prisoners in jails. There is fortunately a legal aid organisation in the State of Maharashtra beaded by the Maharashtra State Board of Legal Aid and Advice which has set up committees at the High Court and district levels. We would therefore direct the Inspector General of Prisons in Maharashtra to issue a circular to all Superintendents of Police in Maharashtra requiring them-

    (1) to send a list of all under-trial prisoners to the Legal Aid Committee of the district in which the jail is situated giving particulars of the date of entry of the under-trial prisoners in the jail and to the extent possible, of the offences with which they are charged and showing separately male prisoners and female prisoners.

    (2) to furnish to the concerned District Legal Aid Committee a list giving particulars of the persons arrested on suspicion under Section 41 of the CrPC who have been in jail beyond a period of 15 days.

    (3) to provide facilities to the lawyers nominated by the concerned District Legal Aid Committee to enter the jail and to interview the prisoners who have expressed their desire to have their assistance.

(4) to furnish to the lawyers nominated by the concerned District Legal Aid Committee whatever information is required by them in regard to the prisoners in jail.

(5) to put up notices at prominent places in the jail that lawyers nominated by the concerned District Legal Aid Committee would be visiting the jail on particular days and that any prisoner who desires to have their assistance can meet them and avail of their counselling services; and

(6) to allow any prisoner who desires to meet the lawyers nominated by the concerned District Legal Aid Committee to interview and meet such lawyers regarding any matter for which he requires legal assistance and such interview should be within sight but out of hearing of any jail official.

☞ We would also direct that in order to effectively carry out these directions which are being given by us to the Inspector General of Prisons, the Maharashtra State Board of Legal Aid and Advice will instruct the District Legal Aid Committees of the districts in which jails are situated to nominate a couple of selected lawyers practising in the district Court to visit the jail or jails in the district at least once in a fortnight with a view to ascertaining whether the law laid down by the Supreme Court and the High Court of Maharashtra in regard to the rights of prisoners including the right to apply for bail and the right to legal aid is being properly and effectively implemented and to interview the prisoners who have expressed their desire to obtain legal assistance and to provide them such legal assistance as may be necessary for the purpose of applying for release on bail or parole and ensuring them adequate legal representation in Courts, including filing or preparation of appeals or revision applications against convictions and legal aid and advice in regard to any other problems which may be facing them or the members of their families.

The Maharashtra State Board of Legal Aid & Advice will call for periodic reports from the district legal aid committees with a view to ensuring that these directions given by us are being properly carried out. We would also direct the Maharashtra State Board of Legal Aid and Advice to pay an honorarium of Rs. 25/- per lawyer for every visit to the jail together with reasonable travelling expenses from the court house to jail and back. These directions in so far as the city of Bombay is concerned, shall be carried out by substituting the High Court Legal Aid Committee for the District Legal Aid Committee, since there is no District Legal aid committee in the city of Bombay but the Legal Aid Programme is carried out by the High Court Legal Aid Committee. We may point out that this procedure is being followed with immense benefit to the prisoners in jails by the Tamil Nadu State Legal Aid & Advice Board.

[Right to Legal Aid as Reasonable, Fair Procedure, Right to Counsel at the time of First Production & Right to Compensation for Violation of these Rights]

Khatri and others vs. State of Bihar & ors.

Bench: Bhagwati, P.N. (j) Sen, A.P. (j)

P.N. Bhagwati, J.

- Before we deal with the main contentions urged before us on behalf of the parties, we must dispose of one serious question which raises a rather difficult problem and which has to be resolved with some immediacy. The problem is not so much a legal problem as a human one and it arises because the blinded prisoners who are undergoing treatment in the Rajendra Prashad Ophthalmic Institute, New Delhi are likely to be discharged from that Institute since their vision is so totally impaired that it is not possible to restore it by any medical or surgical treatment, and the question is wherever they can go. Mrs. Hingorani, on behalf of the blinded prisoners, expressed apprehension that it may not be safe for them to go back to Bhagalpur, particularly when investigation into the offences of blinding was still in progress and some arrangement should, therefore, be made for housing them in New Delhi at the cost of the State.

  We cannot definitely state that the apprehension expressed by Mrs. Hingorani is totally unfounded nor can we say at the present stage that it is justified, but we feel that at least until the next date of hearing, it would be desirable not to send the blinded prisoners back to Bhagalpur We would, therefore, suggest that the blinded prisoners who are discharged from the Rajendra Parshad Ophthalmic Institute, New should be kept in the Home which is being run by the Blind Relief Association of Delhi on the Lal Bahadur Shastri Marg, New Delhi and the State of Bihar should bear the cost of their boarding and lodging in that Home, We hope and trust and, in fact, we would strongly recommend that the Blind Relief Association of Delhi will accept these blinded prisoners in the Home run by them and look(sic) after them until the next hearing of the petition. The State of Bihar will pay by way of advance or otherwise as may be required the costs, charges and expenses of maintaining the blinded prisoners such Home.

- The other question raised by Mrs. Hingorani on behalf of the blinded prisoners was whether the State was liable to pay compensation to the blinded prisoners for violation of their Fundamental Right under Article 21 of the Constitution.

  She contended that the blinded prisoners were deprived of their eye sight by the Police Officers who were Government servant acting on behalf of the State and since this constituted a violation of the constitutional right under Article 21, the state was liable to pay compensation to the blinded prisoners.

  The liability to compensate a person deprived of his life or personal liberty otherwise than in accordance with procedure established by law was, according to Mrs. Hingorani, implicit in Article 21. Mr. K.G. Bhagat on behalf of the State, however, contended that it was not yet established that the blinding of the prisoners was done by the Police and that the investigation was in progress and he further urged that even if blinding was done by the police and there was violation of the constitutional

right enshrined in Article 21, the State could not be held liable to pay compensation to the persons wronged.

These rival arguments raised a question of great constitutional importance as to what relief can a court give for violation of the constitutional right guaranteed in Article 21. The court can certainly injunct the State from depriving a person of his life or personal liberty except in accordance with procedure established by law, but if life or personal liberty is violated otherwise than in accordance with such procedure, is the court helpless to grant relief to the person who has suffered- such deprivation? Why should the court not be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious Fundamental Right to life and personal liberty.

These were the issues raised before us on the contention of Mrs. Hingorani, and to our mind, they are issues of the gravest constitutional importance involving as they do, the exploration of a new dimension of the right to life and personal liberty. We, therefore, intimated to the counsel appearing on behalf of the parties that we would hear detailed arguments on these issues at the next hearing of the writ petition and proceed to lay down the correct implications of the constitutional right in Article 21 in the light of the dynamic constitutional jurisprudence which we are evolving in this Court.

☞ That takes us to one other important issue which arises in this case. It is clear from the particulars supplied by the State from the records of the various judicial magistrates dealing with the blinded prisoners from time to time that, neither at the time when the blinded prisoners were produced for the first time before the judicial magistrate nor at the tune when the remand orders were passed, was any legal representation available to most of the blinded prisoners.

The records of the judicial magistrates show that no legal representation was provided to the blinded prisoners, because none of them asked for it nor did the judicial magistrates enquire from the blinded prisoners produced before them either initially or at the time of remand whether they wanted any legal representation at State cost.

The only excuse for not providing legal representation to the blinded prisoners at the cost of the State was that none of the blinded prisoners asked for it. The result was that barring two or three blinded prisoners who managed to get a lawyer to represent them at the later stages of remand, most of the blinded prisoners were not represented by any lawyers and save a few who were released on bail, and that too after being in jail for quite some time, the rest of them continued to languish in jail.

It is difficult to understand how this state of affairs could be permitted to continue despite the decision of this Court in Hussainara Khatonn's case MANU/SC/0121/1979 : 1979CriLJ1045 . This Court has pointed out in Hussainara Khatoon's case (supra) which was decided as far back as 9th March, 1979 that the right to free legal services is clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 and the State is under a constitutional mandate to provide a

lawyer to an accused person if the circumstances of the case and the needs of justice so require, provided of course the accused person does not object to the provision of such lawyer.

It is unfortunate that though this Court declared the right to legal aid as a Fundamental Right of an accused person by a process of judicial construction of Article 21, most of the States in the country have not taken note of this decision and provided free legal services to a person accused of an offence.

We regret this disregard of the decision of the highest court in the land by many of the States despite the constitutional declaration in Article 141 that the law declared by this Court shall be binding through-out the territory of India. Mr. K.G. Bhagat on behalf of the State agreed that in view of the decision of this Court the State was bound to provide free legal services to (sic) indigent accused but he suggested that the State might find it difficult to do so owing to financial constraints.

We may point out to the State of Bihar that it cannot avoid its constitutional obligation to provide free legal services to a poor accused by pleading financial or administrative inability. The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigenous and whatever is necessary for his purpose has to be done by the State…

…Moreover, this constitutional obligation to provide free legal services to an indigent accused docs not arise only when the trial commences but also attaches when the accused is for the first time produced before the magistrate.

It is elementary that the jeopardy to his personal liberty arises as soon as a person is arrested and produced before a magistrate, for it is at that stage that he gets the first opportunity to apply for bail and obtain his release as also to resist remand to police or jail custody. That is the stage at which an accused person needs competent legal advice and representation and no procedure can be said to be reasonable, fair and just which denies legal advice and representation to him at this stage. We must, therefore, hold that the State is under a constitutional obligation to provide free legal services to an indigent accused not only at the stage of trial but also at the stage when he is first produced before the magistrate as also when he is remanded from time to time.

☞ But even this right to free legal services would be illusory for an indigent accused unless the magistrate or the Sessions Judge before whom he is produced informs him of such right. It is common knowledge that about 70 per cent of the people in the rural areas are illiterate and even more than that percentage of people are not aware of the rights conferred upon them by law. There is so much lack of legal awareness that it has always been recognised as one of the principal items of the programme of the legal aid movement in this country to promote legal literacy. It would make a mockery of legal aid if it were to be left to a poor ignorant and illiterate accused to ask for free legal services. Legal aid would become merely a paper promise and it would fail of its purpose. The magistrate or the sessions judge before whom the accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or indigence, he

is entitled to obtain free legal services at the cost of the State. Unfortunately, the judicial magistrates failed to discharge this obligation in the case of the blinded prisoners and they merely stated that no legal representation was asked for by the blinded prisoners and hence none was provided. We would, therefore, direct the magistrates and Session Judges in the country to inform every accused who appears before them and who is not represented by a lawyer on account of his poverty or indigence that he is entitled to free legal services at the cost of the State.

Unless he is not willing to take advantage every other State in the country to make provision for grant of free legal services to an accused who is unable to engage a lawyer on account of reasons such as poverty, indigence or incommunicado situation. The only qualification would be that the offence charged against the accused is such that, on conviction, it would result in a sentence of imprisonment and is of such a nature that the circumstances of the case and the needs of social justice require that he should be given free legal representation. There may be cases involving offences such as economic offences or offences against law prohibiting prostitution or child abuse and the like, where social justice may require that free legal services need not be provided by the State…

- We would also like to advert to one more matter before we close and that is rather a serious matter. It appears from the record that one blinded prisoner by the name of Umesh Yadav sent a petition to the District and Sessions Judge, Bhagalpur, on 30th July, 1980 complaining that he had been blinded by Shri B. K. Sharma, District Superintendent of Police and since he had no money to prosecute this police officer, he should be provided a lawyer at Government expense so that he might be able to bring the police atrocities before the court and seek justice. Ten other blinded prisoners also made a similar petition and all these petitions were forwarded to the District & Sessions Judge on 30th July, 1980. The District & Sessions Judge by this letter dated 5th August, 1980, addressed to the Superintendent of the Bhagalpur Central Jail stated that there was no provision in the CrPC under which legal assistance could be provided to the blinded prisoners who had made a petition to him and that the had forwarded their petitions to the chief judicial magistrate for necessary action. The Chief Judicial Magistrate also expressed this inability to do anything in the matter. It appears that the Superintendent of the Bhagalpur Central Jail also sent the petitions of these blinded prisoners to the Inspector General of Prisons, Patna on 30th July, 1980 with a request that this matter should be brought to the notice of the State Government. The Inspector General of Prisons forwarded these petitions to the Home Department. The Inspector General of Prisons was also informed by three blinded prisoners on 9th September 1980 when he visited the Banks Jail that they had been blinded by the police and the Inspector General of Prisons observed in his inspection note that it would be necessary to place the matter before the Government so that, the police atrocities may be stopped. The facts disclose a very disturbing state of affairs. In the first place we find it difficult to appreciate why the Chief Judicial Magistrate to whom the petitions of these blinded prisoners had been forwarded by the District & Sessions Judge did not act upon the complaint contained in these petitions and either take cognizance of the offence revealed in these petitions or order investigation by the higher police officers. ' The information appearing in these petitions disclosed very serious offences alleged to have been committed by the Police and the Chief Judicial Magistrate should not have

nonchalantly ignored these petitions and expressed , his inability to do anything in the matter. But apart from that, one thing is certain that within a few days after 30th July 80 the Home Department did come to know from the Inspector General of Prisons that according to the blinded prisoners who had sent their petitions, they had been blinded by the Police, and from the inspection note of the Inspector General of Police it would seem reasonable to assume that he must have brought the matter to the notice of the Government. We should like to know from the Inspector General of Prisons as to who was the individual or which was the department of the State Government to whose notice he brought this matter and what steps did the State Government take on receipt of the petitions of the blinded prisoners forwarded by the Inspector General of Prisons as also on the matter being brought to their attention by the Inspector General of Prisons as observed by him in his inspection note. We should like the State Government to inform us clearly and precisely as to what steps they took after 30th July, 1980 to bring the guilty to book and to stop recurrence of such atrocities. We want to have this information because we should like to satisfy ourselves whether the Windings which took place in October 1980 could have been prevented by the State Government by taking appropriate steps on receipt of information in regard to the complaint of the blinded prisoners from the Inspector General of Prisons.

[Vulnerable Groups & Legal Aid]

Sheela Barse Vs. State of Maharashtra

Hon'ble Judges/Coram: *A.N. Sen, P.N. Bhagwati and R.S. Pathak, JJ.*

- ☞ We may now take up the question as to how protection can be accorded to the women prisoners in police lock ups. We put forward several suggestions to the learned Advocate appearing on behalf of the petitioner and the State of Maharashtra in the course of the hearing and there was a meaningful and constructive debate in Court. The State of Maharashtra offered its full co-operation to the Court in laying down the guidelines which should be followed so far as women prisoners in police lock ups are concerned and most of the suggestions made by us were readily accepted by the State of Maharashtra. We propose to give the following directions as a result of meaningful and constructive debate in Court in regard to various aspects of the question argued before us.

    (i) We would direct that four or five police lock ups should be selected in reasonably good localities where only female suspects should be kept and they should be guarded by female constables. Female suspects should not be kept in police lock up in which male suspects are detained. The State of Maharashtra has intimated to us that there are already three cells where female suspects are kept, and are guarded by female constables and has assured the Court that two more cells with similar arrangements will be provided exclusively for female suspects.

(ii) We would further direct that interrogation of females should be carried out only in the presence of female police officers/constables.

(iii) Whenever a person is arrested by the police without warrant, he must be immediately informed of the grounds of his arrest and in case of every arrest it must immediately be made known to the arrested person that he is entitled to apply for bail. The Maharashtra State Board of Legal Aid & Advice will forthwith get a pamphlet prepared setting out the legal rights of an arrested person and the State of Maharashtra will bring out sufficient number of printed copies of the pamphlet in Marathi which is the languages of the people in the State of Maharashtra as also in Hindi and English and printed copies of the pamphlet in all the three languages shall be affixed in each cell in every police lock up and shall be read out to the arrested person in any of the three languages which he understands as soon as he is brought to the police station.

(iv) We would also direct that whenever a person is arrested by the police and taken to the police lock up, the police will immediately give an intimation of the fact of such arrest to the nearest Legal Aid Committee and such Legal Aid Committee will take immediate steps for the purpose of providing legal assistance to the arrested person at State cost provided he is willing to accept such legal assistance. The State Government will provide necessary funds to the concerned Legal Aid Committee for carrying out this direction.

(v) We would direct that in the city of Bombay, a City Sessions Judge, to be nominated by the principal Judge of the City Civil Court, preferably a lady Judge, if there is one, shall make surprise visits to police lock ups in the city periodically with a view to providing the arrested persons an opportunity to air their grievances and ascertaining what are the conditions in the police lock ups and whether the requisite facilities are being provided and the provisions of law are being observed and the directions given by us are being carried out. If it is found as a result of inspection that there are any lapses on the part of the police authorities, the City Sessions Judge shall bring them to the notice of the Commissioner of Police and if necessary to the notice of the Home Department and if even this approach fails, the City Sessions Judge may draw the attention of the Chief Justice of the High Court of Maharashtra to such lapses. This direction in regard to police lock ups at the districts head quarters, shall be carried out by the Sessions Judge of the district concerned.

(vi) We would direct that as soon as a person is arrested, the police must immediately obtain from him the name of any relative or friend whom he would like to be informed about his arrest and the police should get in touch with such relative or friend and inform him about the arrest; and lastly,

(vii) We would direct that the magistrate before whom an arrested person is produced shall enquire from the arrested person whether he has any complaint of torture or mal-treatment in police custody and inform him that he has right under Section 54 of the CrPC 1973 to be medically examined.

We are aware that Section 54 of the CrPC 1973 undoubtedly provides for examination of an arrested person by a medical practitioner at the request of the arrested person and it is a right conferred on the arrested person. But very often the arrested person is not aware of this right and on account of, his ignorance, he is unable to exercise this right even though he may have been tortured or maltreated by the police in police lock up. It is for this reason that we are giving a specific direction requiring the magistrate to inform the arrested person about this right of medical examination in case he has any complaint of torture or mal-treatment in police custody.

☞ We have no doubt that if these directions which are being given by us are carried out both in letter and spirit, they will afford considerable protection to prisoners in police lock ups and save them from possible torture or ill-treatment. The writ petition will stand disposed of in terms of this order.

Legal-Aid to Vulnerable Communities:-

R.D. Upadhyay v. State of Andhra Pradesh and Ors.

(A.I.R. 2006 SC 1946)

- Concerned by the plight of the undertrial prisoners languishing in various jails in the country, various directions were issued by this Court from time to time. Presently, we are considering mainly the issue of directions for the development of children who are in jail with their mothers, who are in jail either as undertrial prisoners or convicts. Children, for none of their fault, but per force, have to stay in jail with their mothers. In some cases, it may be because of the tender age of the child, while in other cases, it may be because there is no one at home to look after them or to take care of them in absence of the mother. The jail environment are certainly not congenial for development of the children.

- For the care, welfare and development of the children, special and specific provisions have been made both in Part III and IV of the Constitution of India, besides other provisions in these parts which are also significant. The best interest of the child has been regarded as a primary consideration in our Constitution. Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Article 15(3) provides that this shall not prevent the State from making any special provision for women and children. Article 21A inserted by 86th Constitutional Amendment provides for free and compulsory education to all children of the age of six to fourteen years. Article 24 prohibits employment of children below the age of fourteen years in any factory or mine or engagement in other hazardous employment. The other provisions of Part III that may be noted are Articles 14, 21 and23. Article 14 provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 21 provides that no person shall be deprived of his life or personal

liberty except according to procedure established by law. Article 23prohibits trafficking in human beings and forced labour. We may also note some provisions of Part IV of the Constitution. Article 39(e) directs the State to ensure that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 39(f) directs the State to ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Article 42 provides that the State shall make provision for securing just and humane conditions of work and maternity relief. Article 45 stipulates that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. Article 46 provides that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. Article 47 provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

- The National Institute of Criminology and Forensic Sciences conducted a research study of children of women prisoners in Indian jails. The salient features of the study brought to the notice of all Governments in February 2002, are:

(i) The general impression gathered was the most of these children were living in really difficult conditions and suffering from diverse deprivations relating to food, healthcare, accommodation, education, recreation, etc.

(ii) No appropriate programmes were found to be in place in any jail, for their proper bio-psycho-social development. Their looking after was mostly left to their mothers. No trained staff was found in any jail to take care of these children.

(iii) It was observed that in many jails, women inmates with children were not given any special or extra meals. In some cases, occasionally, some extra food, mostly in the form of a glass of milk, was available to children. In some jails, separate food was being provided only to grown up children, over the age of five years. But the quality of food would be same as supplied to adult prisoners.

(iv) No special consideration was reported to be given to child bearing women inmates, in matters of good or other facilities. The same food and the same facilities were given to all women inmates, irrespective of the fact whether their children were also living with them or not.

(v) No separate or specialised medical facilities for children were available in jails.

(vi) Barring a few, most mother prisoners considered that their stay in jails would have a negative impact on the physical as well as mental development of their children.

(vii) Crowded environment, lack of appropriate food, shelter and above all, deprivation of affection of other members of the family, particularly the father was generally perceived by the mothers as big stumbling blocks for the proper development of their children in the formative years of life.

(viii) Mother prisoners identified six areas where urgent improvement was necessary for proper upkeep of their children. They related to food, medical facilities, accommodation, education, recreation and separation of their children from habitual offenders.

(ix) No prison office was deployed on the exclusive duty of looking after these children or their mothers. They had to perform this duty alongside many other duties including administrative work, discipline maintenance, security-related jobs etc. None of them was reported to have undergone any special training in looking after the children in jails.

- Some of the important suggestions emanating from the study are:

(i) In many States, small children were living in sub-jails which were not at all equipped to keep children. Women prisoners with children should not be kept in such sub-jails, unless proper facilities can be ensured which would make for a conductive environment there, for proper bio-psycho-social growth of children.

(ii) Before sending a woman in stage of pregnancy, to a jail, the concerned authorities must ensure that particular jail has got the basic minimum facilities for child delivery as well as for providing pre-natal and post-natal care for both to the mother and the child.

(iii) The stay of children in crowded barracks amidst women convicts, undertrials, offenders relating to all types of crime including violent crimes, is certainly harmful for such children in their personality development. Children are, therefore, required to be separated from such an environment on priority basis, in all such jails.

(iv)A permanent arrangement needs to be evolved in all jails, to provide separate food with ingredients to take care of the nutritional needs of children to them on regular basis.

(v) Children of women prisoner should be provided with clothes, bed sheets, etc. in multiple sets. Separate utensils of suitable size and material should also be provided to each mother-prisoner for giving food to her child.

(vi) Medical care for every child living in a jail has to be fully ensured. Also, in the event of a women prisoner falling ill herself, alternative arrangements for looking after the child should be made by the jail staff.

(vii) Adequate arrangements should be available in all jails to impart education, both formal and informal, to every child of the women inmates. Diversified recreational programmers/facilities should also be made available to the children of different age groups.

(viii) A child living in a jail along with her incarcerated mother is not desirable at all. In fact, this should be as only the last resort when all other possibilities of keeping the child under safe custody elsewhere have been tried and have failed. In any case, it should be a continuous endeavour of all the sectors of the criminal justice system that the least number of children are following their mothers to live in jails.

- The State Governments and Union Territories were requested to consider the aforesaid suggestions for implementation. By filing IA Nos. 1 and 7, the attention of this Court has been drawn to the plight of little children on account of the arrest of their mothers for certain criminal offences.

I.A. No. 1 was filed by Women's Action Research and Legal Action for Women (WARLAW), through its program coordinator, Ms. Babita Verma stating that more than 70% of the women prisoners are married and have children. At the time of arrest of the women prisoners having children, indiscriminate arrest is not confined only to women/mother prisoners but such arrest is automatically extended to these children who are of tender age and there is no one to look after the child and take care of the child without their mother. Such children are perforce subjected to a kind of arrest for no offence committed by them. Further, the atmosphere in jail is not congenial for a healthy upbringing of such children. There are two non-Governmental organizations (NGO's), namely Mahila Pratiraksha Mandal and Navjyoti who are counsellors. Adjoining the jail premises at Delhi there is Nari Niketan which is a women's reform home. Some of the children who are detained in jail are sent to Kirti Nagar Children's home for their studies. The arrangement pertaining to the education and looking after of these children is not adequate. To the best of the information of the applicant, there is no specific provision or regulation in Jail Manual for facilitating the mother prisoners to meet the children. It is for the family protection of these women prisoners including their minor children that the trial period of undertrials shall be minimized and a period of two years shall be fixed.

- It was suggested that arrest of women suspects be made only by lady police. Such arrests should be sparingly made as it adversely affects innocent children who are taken into custody with their mother. To avoid arrest of innocent children the care and custody of such children may be handed over to voluntary organizations which can assist in the growth of children in a congenial and healthy atmosphere. Periodic meeting rights should be available to the women/mother prisoners in order to mother the healthy upkeep of the children.

- A letter dated 8th March, 2000 written by a 6 years old girl child, studying in upper KG in a school at Bangalore, to Chief Justice of India enclosing an article 'Dogged by Death in Jail' in a women's magazine dated 20th January, 2000 narrating plight of children in jail with their mothers, was registered as IA No. 7. The article, inter alia, notes that the fate of the women undertrials is more pitiable because some of them live with their tiny tots whether born at home or inside the jail and that a visitor to jail is sure to see a series of moving scenes.

- The order dated 20th March, 2001 notes that the learned Solicitor General shares the concern of the Court regarding the plight of the children in jail and the submission that with a view to frame some guidelines and issue instructions, it would be necessary to first ascertain the number of female prisoners in each of the jails, in each of the States/union Territories, the offences for which they have been arrested; the duration of their detention and whether children with any of those female prisoners are also lodged in jail. The Court directed the States and Union Territories to disclose on affidavit the following:

(i) The number of female prisoners (undertrial) together with the nature of offence for which they have been detained;

(ii) Period of their detention;

(iii) Children, if any, who are with the mothers lodged in the jail;

(iv) Number of convicted female prisoners and whether any children are also lodged with such convicts in the jails;

(v) Whether any facilities are available in the jail concerned for taking care of such children and, if so, the type of facilities.

- Specific suggestions have been put forward vis-a-vis children once they reach the confines of the prison. The minimum is the existence of a Balwadi for such children, and a crhches for those under the age of two. The Balwadi should be manned by a trained Balwadi teacher and should have the facilities of a visiting psychiatrist and pediatrician. A full-time nurse could also be made available. Immunization should take place on a regular basis. If the child is sick and needs to be taken outside the prison, the mother should be allowed to accompany the child. The Balwadi would provide free space, toys and games for children. It can also organize programmes on mother and child care, hygiene and family life for mothers. It has also been suggested that these facilities should be located outside, but attached to the prison. This would combat the negative psychological impact of the prison environment and expose the children to 'normal' figures not found in the women's barracks. It is also suggested that specialized clothing including winter-wear and bedding including plastic sheets should be provided to children. Concerns have also been raised regarding the issuance of a birth certificate that mentions the prison as the place of birth of a child born in prison. It is suggested that child's residence should be mentioned as the place of birth and not the prison.

- Emphasis has been placed on the diet of such children. It recommends that a special diet be prescribed, as per the norms suggested by a nutrition or child development expert body such as the National Institute of Public Cooperation and Child Development. The diet should be standardized according to the age of the child and not prescribed as uniform irrespective of the age of the child. The special needs of the child should be kept in mind, for instance, milk needs to be kept fresh which will not be the case if it is handed out only once in the morning. Toned milk may be required

or boiled water may need to be provided. For satisfying these needs and providing a satisfactory diet may even require the creation of a separate kitchen unit for children.

- Several suggestions have been made vis-a-vis the judiciary, legal aid authorities, the Department of Women and Child Development/Welfare and the Juvenile Justice Administration (under the Juvenile Justice Act) and the Probation Department in relation to the welfare measures that can be taken for children of undertrial and incarcerated prisoners, both living within and outside the jail premises.

- The Union of India, in its affidavit, has pointed out that it has taken several measures for the benefit of children in general, including children of women prisoners in this larger group. These measures include 'Sarva Shiksha Yojna', Reproductive and Child Health Programme, and Integrated Child Development Projects and passing of the Juvenile Justice (Care and Protection of Children) Act, 2000 for the welfare of children in general.

- The Union of India noted that the "National Expert Committee on Women Prisoners", headed by Justice V.R. Krishnaiyer, framed a draft Model Prison Manual. Chapter XXIII of this manual makes special provision for children of women prisoners. This manual was circulated to the States and Union Territories for incorporation into the existing jail manuals. It is significant to note that this committee has made important suggestions regarding the rights of women prisoners who are pregnant, as also regarding child birth in prison. It has also made suggestions regarding the age up to which children of women prisoners can reside in prison, their welfare through a crhches and nursery, provision of adequate clothes suiting the climatic conditions, regular medical examination, education and recreation, nutrition for children and pregnant and nursing mothers.

- However, on the basis of various affidavits submitted by various State Governments and Union Territories, as well as the Union of India, it becomes apparent that children of women prisoners who are living in jail require additional protection. In many respects, they suffer the consequences of neglect. While some States have taken certain positive measures to look after the interests of these children, but a lot more is required to be done in the States and Union Territories for looking after the interest of the children. It is in this light that it becomes necessary to issue directions so as to ensure that the minimum standards are met by all States and Union Territories vis-a-vis the children of women prisoners living in prison.

- In light of various reports referred to above, affidavits of various State Governments, Union Territories, Union of India and submissions made, we issue the following guidelines:

1. A child shall not be treated as an undertrial/convict while in jail with his/her mother. Such a child is entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.

2. Pregnancy:

a. Before sending a woman who is pregnant to a jail, the concerned authorities must ensure that jail in question has the basic minimum facilities for child delivery as well as for providing pre- natal and post-natal care for both, the mother and the child.

b. When a woman prisoner is found or suspected to be pregnant at the time of her admission or at any time thereafter, the lady Medical Officer shall report the fact to the superintendent. As soon as possible, arrangement shall be made to get such prisoner medically examined at the female wing of the District Government Hospital for ascertaining the state of her health, pregnancy, duration of pregnancy, probable date of delivery and so on. After ascertaining the necessary particulars, a report shall be sent to the Inspector General of Prisons, stating the date of admission, term of sentence, date of release, duration of pregnancy, possible date of delivery and so on.

c. Gynaecological examination of female prisoners shall be performed in the District Government Hospital. Proper pre-natal and post-natal care shall be provided to the prisoner as per medical advice.

3. Child birth in prison:

a. As far as possible and provided she has a suitable option, arrangements for temporary release/parole (or suspended sentence in case of minor and casual offender) should be made to enable an expectant prisoner to have her delivery outside the prison. Only exceptional cases constituting high security risk or cases of equivalent grave descriptions can be denied this facility.

b. Births in prison, when they occur, shall be registered in the local birth registration office. But the fact that the child has been born in the prison shall not be recorded in the certificate of birth that is issued. Only the address of the locality shall be mentioned.

c. As far as circumstances permit, all facilities for the naming rites of children born in prison shall be extended.

4. Female prisoners and their children:

a. Female prisoners shall be allowed to keep their children with them in jail till they attain the age of six years.

b. No female prisoner shall be allowed to keep a child who has completed the age of six years. Upon reaching the age of six years, the child shall be handed over to a suitable

surrogate as per the wishes of the female prisoner or shall be sent to a suitable institution run by the Social Welfare Department. As far as possible, the child shall not be transferred to an institution outside the town or city where the prison is located in order to minimize undue hardships on both mother and child due to physical distance.

c. Such children shall be kept in protective custody until their mother is released or the child attains such age as to earn his/her own livelihood.

d. Children kept under the protective custody in a home of the Department of Social Welfare shall be allowed to meet the mother at least once a week. The Director, Social Welfare Department, shall ensure that such children are brought to the prison for this purpose on the date fixed by the Superintendent of Prisons.

e. When a female prisoner dies and leaves behind a child, the Superintendent shall inform the District Magistrate concerned and he shall arrange for the proper care of the child. Should the concerned relative(s) be unwilling to support the child, the District Magistrate shall either place the child in an approved institution/home run by the State Social Welfare Department or hand the child over to a responsible person for care and maintenance.

5. Food, clothing, medical care and shelter:

a. Children in jail shall be provided with adequate clothing suiting the local climatic requirement for which the State/U.T. Government shall lay down the scales.

b. State/U.T. Governments shall lay down dietary scales for children keeping in view the calorific requirements of growing children as per medical norms.

c. A permanent arrangement needs to be evolved in all jails, to provide separate food with ingredients to take care of the nutritional needs of children who reside in them on a regular basis.

d. Separate utensils of suitable size and material should also be provided to each mother prisoner for using to feed her child.

e. Clean drinking water must be provided to the children. This water must be periodically checked.

f. Children shall be regularly examined by the Lady Medical Officer to monitor their physical growth and shall also receive timely vaccination. Vaccination charts regarding each child shall be kept in the records. Extra clothing, diet and so on may also be provided on the recommendation of the Medical Officer.

g. In the event of a woman prisoner falling ill, alternative arrangements for looking after any children falling under her care must be made by the jail staff.

h. Sleeping facilities that are provided to the mother and the child should be adequate, clean and hygienic.

i. Children of prisoners shall have the right of visitation.

j. The Prison Superintendent shall be empowered in special cases and where circumstances warrant admitting children of women prisoners to prison without court orders provided such children are below 6 years of age.

6. Education and recreation for children of female prisoners:

a. The child of female prisoners living in the jails shall be given proper education and recreational opportunities and while their mothers are at work in jail, the children shall be kept in crhches under the charge of a matron/female warder. This facility will also be extended to children of warders and other female prison staff.

b. There shall be a crhche and a nursery attached to the prison for women where the children of women prisoners will be looked after. Children below three years of age shall be allowed in the crhche and those between three and six years shall be looked after in the nursery. The prison authorities shall preferably run the said crhche and nursery outside the prison premises.

7. In many states, small children are living in sub-jails that are not at all equipped to keep small children. Women prisoners with children should not be kept in such sub-jails, unless proper facilities can be ensured which would make for a conducive environment there, for proper biological, psychological and social growth.

8. The stay of children in crowded barracks amidst women convicts, undertrials, offenders relating to all types of crimes including violent crimes is certainly harmful for the development of their personality. Therefore, children deserve to be separated from such environments on a priority basis.

9. Diet:

Dietary scale for institutionalized infants/children prepared by Dr. A.M. Dwarkadas Motiwala, MD (Paediatrics) and Fellowship in Neonatology (USA) has been submitted by Mr. Sanjay Parikh. The document submitted recommends exclusive breastfeeding on the demand of the baby day and night. If for some reason, the mother cannot feed the baby, undiluted fresh milk can be given to the baby. It is emphasized that "*dilution is not recommended; especially for low socio-economic groups who are also illiterate, ignorant, their children are already malnourished and are prone to gastroenteritis and other infections due to poor living conditions and unhygienic food habits. Also, where the drinking water is not safe/reliable since source of drinking water is a question mark. Over-dilution will provide more water than milk to the child and hence will lead to malnutrition and infections. This in turn will lead to growth retardation and developmental delay both physically and mentally.*" It is noted that since an average Indian mother produces approximately 600 - 800 ml. milk per day (depending on her own nutritional state), the child should be provided at least 600 ml. of undiluted fresh milk over 24 hours if the breast milk is not available. The report also refers to the "Dietary Guidelines for Indians - A Manual," published in 1998 by the National Institute of Nutrition, Council of Medical Research, Hyderabad, for a balanced diet for infants and children ranging from 6 months to 6 years of age. It recommends the following portions for children from the ages of 6-12 months, 1-3 years and 4-6 years, respectively: Cereals and Millets - 45, 60-120 and 150-210 grams respectively; Pulses - 15, 30 and 45 grams respectively; Milk - 500 ml (unless breast fed, in which case 200 ml); Roots and Tubers - 50, 50 and 100 grams respectively;

Green Leafy Vegetables - 25, 50 and 50 grams respectively; Other Vegetables - 25, 50 and 50 grams respectively; Fruits - 100 grams; Sugar - 25, 25 and 30 grams respectively; and Fats/Oils (Visible) - 10, 20 and 25 grams respectively. One portion of pulse may be exchanged with one portion (50 grams) of egg/meat/ chicken/fish. It is essential that the above food groups to be provided in the portions mentioned in order to ensure that both macronutrients and micronutrients are available to the child in adequate quantities.

10. Jail Manual and/or other relevant Rules, Regulations, instructions etc. shall be suitably amended within three months so as to comply with the above directions. If in some jails, better facilities are being provided, same shall continue.

11. Schemes and laws relating to welfare and development of such children shall be implemented in letter and spirit. State Legislatures may consider passing of necessary legislations, wherever necessary, having regard to what is noticed in this judgment.

12. The State Legal Services Authorities shall take necessary measures to periodically inspect jails to monitor that the directions regarding children and mother are complied with in letter and spirit.

13. The Courts dealing with cases of women prisoners whose children are in prison with their mothers are directed to give priority to such cases and decide their cases expeditiously.

14. Copy of the judgment shall be sent to Union of India, all State Governments/Union Territories, High Courts.

15. Compliance report stating steps taken by Union of India, State Governments, Union territories and State Legal Services Authorities shall be filed in four months whereafter matter shall be listed for directions.

Right to Legal Aid and Competent Representation

The State of Maharashtra v. Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid.

- Mr. Solkar submitted that A1-Kasab was denied a fair and reasonable opportunity to defend his case because services of experienced lawyer were not made available to him. He submitted that the appointed lawyer was not given time to study the case and the case was concluded in a great hurry causing grave prejudice to A1-Kasab.Counsel submitted that vital evidence was not brought on record and, therefore, the case must be remanded for retrial or additional evidence needs to be taken on record by this court. Counsel submitted that the alleged confessional statement has been extracted from A1-Kasab by the police by exerting pressure on him. It is not a true and voluntary statement. A1-Kasab has retracted it and, hence, it should not have been relied upon for any purpose. Similarly, plea of guilty of A1-Kasab was retracted by him and, therefore, learned Sessions Judge erred in using it against him. Counsel submitted that the prosecution has failed to prove its case beyond reasonable doubt. Counsel relied upon several judgments in support of his case to which we shall soon advert.

- We shall start with Mr. Solkar's submission that A1-Kasab was not given a fair opportunity to defend the prosecution case and, hence, it is necessary to remand the case to the trial court.

- In this connection, counsel took us to Appendix B of Chapter V of the Criminal Manual. He relied on Rules 6 and 7 and particularly sub-rules (5) and (6) of Rule 7. Rule 6 pertains to panel of legal practitioners for Legal Aid. Mr. Solkar submitted that as per Rule 6, the appointment of a legal practitioner for the unrepresented accused person shall be made from a panel of legal practitioners constituted for each court by the Presiding Officer of the Court in consultation with the President and the Office bearers of the Bar Association. He submitted that where the offence is punishable with sentence of death or imprisonment for seven years or more, a senior advocate with a junior advocate from the panel shall be appointed for defending the unrepresented accused and as far as possible, the Presiding Officer shall not make an appointment from outside the panel but he may do so for any exceptional reason to be recorded in writing.

- Mr. Solkar submitted that this procedure ought to have been meticulously followed by learned Sessions Judge, which he has not done. Relying on the judgment of the Orissa High Court in Pitambar Dehury & Ors. V.State of Orissa, 1985 Cri.L.J. 424, judgment of the Madhya Pradesh High Court in Sagri v. State of Madhya Pradesh, III-1991 (1) Crimes 580 and judgment of the Allahabad High Court in Ram Awadh v.State of U.P., 1999 Cri.L.J. 4083, Mr. Solkar submitted that the advocate has not to be merely a senior advocate, but he must also have sufficient experience in criminal matters. He may not be a designated senior advocate but he should necessarily have several years of practice to his credit. Counsel submitted that the record does not show that learned Sessions Judge went through the panel of lawyers and made the appointment after due deliberation. He submitted that A1-Kasab was deprived of the services of a competent lawyer.

- It is not possible for us to accept this submission. Initially, Ms. Anjali Waghmare was appointed as amicus curiae for A1-Kasab. However, by order dated 15/4/2009 passed on application (Ex-7), her appointment was revoked because, it appears that an allegation was made that she had appeared for one of the victims. In the said order, learned Sessions Judge has stated that he had gone through the list of advocates on the panel of free legal aid maintained by the Registrar, Sessions Court, Greater Bombay. He has observed that some of them had met him in his chamber. Pertinent observation of learned Sessions Judge must be noted. He has stated that considering the nature of the case, the magnitude thereof and voluminous record, it was necessary to appoint a lawyer who has the ability to handle the case of this nature competently and with due diligence. He has expressed that it was, therefore,

necessary to convey a message to the President of the Bar Association to find out as to whether any lawyer who is not on the panel, is ready to appear for A1-Kasab. He requested Mr. Kazmi,who was present in the court to convey this message to the President of the Bar. He, thereafter, adjourned the matter to 16/4/2009.

- The order passed by learned Sessions Judge on 16/4/2009 is also a reasoned order. It notes that the President of the Bar Association, learned advocates Mr.Sudeep Pasbola, Mr. Dave, Mr. Randhir Kale, Mr. Suhas Gaikwad, Mrs. Arundhati Walavalkar, Mr. Pravin Singhal,Mr. Abbas Kazmi and Mr. Yug Choudhari were present. He has recorded that he had a meeting with them for about15 to 20 minutes regarding the issue of providing free legal aid to A1-Kasab and the discussion proved to be fruitful. He has recorded that after due deliberations with the lawyers who were present in the chamber, it was decided that Mr. Kazmi shall represent A1-Kasab. Learned Sessions Judge has observed that Mr. Kazmi is not a lawyer on the panel of lawyers maintained by the Principal Judge of City Civil and Sessions Court, Greater Mumbai but he has referred to what he had stated in his order dated15/4/2009 that considering the nature of the case, the magnitude thereof and the voluminous record, it was necessary to appoint a competent lawyer though he may not be on the panel. He has then considered the question whether lawyers who are not on the panel can be appointed. He has rightly relied on the judgment of the Madhya Pradesh High Court in Chandra PrakashGajurel v. Inspector of Police, Chennai, 2006 Cri.L.J.1791 where the submission that lawyer who is not on the panel cannot be appointed, was rejected. Learned Sessions Judge has also referred to another judgment of this court in Criminal Appeal No.487 of 2008 in Ramchandra Nivrutti Mulak v. State of Maharashtra on question of fees to be paid to the amicus curiae lawyer and observed that the Government should consider granting reasonable fees to the appointed lawyer.

- Having perused the above orders, we are of the opinion that learned Sessions Judge was alive to the need to appoint a competent lawyer to defend an accused who is facing serious charges like murder, waging of war, etc.He has considered whether a counsel who is not on the panel, could be appointed for the accused or not. He had a discussion with the President of the Bar of Sessions Court and other lawyers and after due deliberation, he has appointed Mr. Kazmi. It may be stated here that Rule 6 of Appendix B of Chapter V of the Criminal Manual states that as far as possible, the Presiding Officer shall not make an appointment from outside the panel, but he may do so for any exceptional reason to be recorded in writing. Therefore, this Rule vests discretion in learned Sessions Judge to appoint a counsel from outside the panel. He has to only give reasons for it. In this case, learned Sessions Judge has while exercising discretion given reasons. It cannot be said that learned Sessions Judge has appointed Kazmi without taking into consideration the salutary principle that a fair and reasonable opportunity has to be given to an accused to defend his case. It is not contended by Mr. Solkar that Mr. Kazmi is a junior lawyer or that he had no sufficient experience. It is true that at times, Mr. Kazmi has not chosen to cross-examine certain witnesses but at times, he has cross-examined some witnesses at

length. It cannot be inferred from the fact that because Mr. Kazmi chose not to cross-examine certain witnesses that he showed lack of competence in handling the present case. We also find that learned Sessions Judge has also examined Court Witnesses and, wherever necessary, he has asked questions to the witnesses. There is, therefore, no miscarriage of justice.

- In Pitamber Dehury, the Orissa High Court has referred to the judgment of the Supreme Court in Ranchod Mathur Wasawa v. State of Gujarat, AIR 1974 SC 1143 where the Supreme Court has stressed the need to appoint competent State counsel for undefended accused in grave cases. It was observed that indigence should never be a ground for denying fair trial or equal justice. Therefore, particular attention should be paid to appoint competent advocates, equal to handling the complex cases. The Supreme Court has further observed that sufficient time and complete papers should also be made available, so that the advocate chosen may serve the cause of justice with all the ability at his command. In Sagri, the Madhya Pradesh High Court has reiterated the same view. In Ram Awadh, the Allahabad High Court has observed that when the law enjoins appointing a counsel to defend an accused, it means an effective counsel, a counsel in real sense who can safeguard the interest of the accused in best possible manner which is permissible under law. It is further observed that where the accused is facing a murder charge, his case should be handled by a competent person and not by a novice or one who has no professional expertise. It is further observed that the duty of a judge is to discern the truth. It is observed that a defence lawyer plays an important role in bringing out the truth before the court by cross-examining the witnesses and placing relevant material or evidence before the court. It is further observed that the absence of proper cross-examination may, at times, result in miscarriage of justice and the court has to guard against such an eventuality. Reliance was placed on the judgment of the Supreme Court in Ranchod Wasawa, to which we have made a reference hereinabove.

- There can be no dispute about the need to make services of a competent experienced lawyer available to an accused who is facing serious charges like murder, waging of war, etc. As we have already stated, we are unable to come to a conclusion that learned Sessions Judge has not kept these principles in mind. The orders passed by him which we have quoted hereinabove indicate that after due application of mind, he appointed Mr. Kazmi. Besides, learned Sessions Judge has himself monitored the proceedings effectively, examined court witnesses and, whenever necessary, he has asked questions. The submission of Mr. Solkar that A1-Kasabwas not provided a competent lawyer or any prejudice was caused to him must, therefore, be rejected.

- Mr. Solkar drew our attention to sub-rules (5) and (6) of Rule 7. Sub-rule (5) states that if any advocate after having agreed to serve on a panel neglects or refuses to accept an appointment, he shall forthwith cease to be a member of the panel and shall be debarred from being reappointed on the panel. If an advocate refuses or

neglects an appointment, his name shall be reported by the Presiding Officer of the court to the Bar Council of Maharashtra. Sub-rule (6) states that if any legal practitioner after accepting an appointment, neglects or refuses to discharge his duties properly, the authority which sanctioned the appointment shall remove the legal practitioner and appoint another in his place. Mr. Solkar submitted that Mr. Kazmi should have been removed at the earliest and another competent officer should have been appointed in his place.

- It appears that after almost all important witnesses were examined and the question of taking affidavits of formal witnesses such as claimants of dead bodies was being considered, Mr. Kazmi did not assist learned Sessions Judge properly. He stated that he did not care for those affidavits. He seemed to have made certain gestures which offended learned Sessions Judge. Looking to his attitude and gestures, on 30/11/2009 at the fag end of the trial, learned Sessions Judge revoked order appointing Mr. Kazmi and, in his place, he appointed Mr.Pawar who was assisting Mr. Kazmi and was well conversant with the facts. Learned Sessions Judge has observed that since Mr. Pawar knows Marathi language,Mr. Kazmi took assistance from him and, as such, Mr.Pawar could conduct the case. Thus, the procedure contemplated in sub-rule 6 of Rule 7 was followed when necessary by appointing another advocate who was conversant with the facts so that A1-Kasab's interest will not be jeopardized.

- On the question of remand, Mr. Solkar placed reliance on Zahira Sheikh, which is popularly known as Best Bakery case. This case arose out of a bizarre incident where, out of communal frenzy, a mob set fire to a bakery and killed innocent people. In that case, prosecution was faulty and biased. Witnesses were threatened and the trial court had adopted a perfunctory approach. The Supreme Court was convinced about the improper conduct of the trial. The Supreme Court was of the view that there was ample evidence on record glaringly demonstrating subversion of justice delivery system. In view of the fact that there was no congenial and conducive atmosphere in the State of Gujarat, the Supreme Court transferred the case to Mumbai for retrial. While doing this, the Supreme Court reminded the courts of their participatory role in a trial. Reference was made to Section 311 of the Code and Section 165 of the Evidence Act which confer vast powers on the presiding officer of the court to elicit all necessary materials and to monitor the proceedings in aid of justice. The Supreme Court stressed the need to have fair prosecutors. The Supreme Court also referred to Section 391 of the Code which allows appellate court to take additional evidence, if found necessary. It is in the context of the peculiar facts before it that the Supreme Court held that failure to accord fair hearing to the accused or to the prosecution violates even the minimum standard of due process of law. Though, there can be no dispute about the principles laid down by the Supreme Court, by no stretch of imagination, facts of the present case can be equated with the facts in Zahira Sheikh.

- Mr. Solkar submitted that it was incumbent upon learned Magistrate to ascertain from A1-Kasab as to for how long he was in police custody prior to the recording of his statement. She has not done so. Learned Magistrate has, therefore, not ascertained whether he was under the influence of the police and was forced to make a statement. Mr. Solkar drew our attention to the evidence of PW-607 PI Mahale, who has stated that he last interrogated A1-Kasab in the night between 16/2/2009and 17/2/2009. Therefore, on 17/2/2009 when A1-Kasabwas produced before learned Magistrate he was under the influence of police. Mr. Solkar further submitted thatPW-607 PI Mahale has stated that A1-Kasab had first expressed his willingness to make a confessional statement in December, 2008. It was, therefore, necessary to record his statement immediately. Mr. Solkar submitted that the delay in recording the confession clearly indicates that the confession was concocted. Mr. Solkar further submitted that services of a lawyer ought to have been made available to A1-Kasabeven before 17/2/2009 when he was produced before learned Magistrate because the lawyer would have explained to him the implication of making a judicial confession. Mr. Solkar submitted that the alleged confession indicates that A1-Kasab was not repentant. Therefore, it cannot be called a confession. Mr. Solkar further submitted that on 17/2/2009 A1-Kasab was produced before learned Magistrate for the first time. On that day, she is stated to have asked him certain questions as required by the High Court Criminal Manualand Section 164 of the Code. Mr. Solkar contended that learned Magistrate should have asked the same questions again to A1-Kasab when he was produced before her on18/2/2009 and on 21/2/2009. Failure to do so has eroded the evidentiary value of the alleged judicial confession.

- Mr. Solkar submitted that the prosecution has to first prove its case. Judicial confession can only be used in aid of proved facts. It has to be true and voluntary. He submitted that the judicial confession has to be read as a whole. It must be corroborated in material particulars.Mr. Solkar submitted that A1-Kasab's alleged judicial confession contains details which are not corroborated by any evidence on record. Therefore, it will have to be rejected in its entirety. In support of his submissions, Mr.Solkar relied on the judgments in State (NCT of Delhi)v. Navjot Sandhu @ Afsan Guru 2005 SCC (Cri.)1715; Dhananjaya Reddy v. State of Karnataka,(2001) 4 SCC 9; Kehar Singh v. State (Delhi Admin.)AIR 1936 PC 253(2); Mazahar Ali & Anr. v. State1976 Cri. L.J. 1629; State v. Mitu 1977 Cri. L.J. 1018;Ganesh Prasad Singh v. State of Orissa 1987 Cri.L.J.1345 and State of Orissa v. Duleswar Bank, 2008 Cri. L.J. 1065.

- She then gave him 48 hours' time for reflection, informed him about it and remanded him to judicial custody. She told him that during that period, he will be kept in judicial custody. He signed on this questionnaire. He also put his thumb impression thereon. On 20/2/2009,he was again produced before PW-218 Ms. Sawant-Waghule. Noting made by learned Magistrate on20/2/2009 shows that she again asked the same questions to A1-Kasab in order to ascertain whether he wants to give his confession voluntarily. After satisfying herself from his answers that he was ready to give confession voluntarily, she started recording his confession on 20/2/2009. In the

noting dated 21/2/2009made by learned Magistrate at the beginning of Part II of the confession, she has stated that A1-Kasab was produced from judicial custody. She has noted that she satisfied herself that there was no policeman in the court's chamber where the proceedings could be heard or seen, except her typist Mr. Kadam and her court's Head Constable Mr. Antu Chavan, who were not concerned with the investigation and who were necessary to guard the accused. Recording of confession was completed on21/2/2009. Certificate II dated 21/2/2009 issued by learned Magistrate and appended to judicial confession dated 21/2/2009 clearly states that learned Magistrate had explained to A1-Kasab that he was not bound to make confession and that, if he confesses, the confession maybe used against him. She has further stated that the confession was taken in her presence and was read out toA1-Kasab and admitted by him to be correct and containing a full and true account of statement made by him. She has further stated that she believed that the confession was voluntarily made. Certificate III issued by her and which is appended to confessional statement dated 21/2/2009 states the grounds on which learned Magistrate felt that the confession was genuine. The grounds stated by her are: (a) she had explained the questions to A1-Kasab and he had given reply to each and every questions freely; (b) where time was required A1-Kasab asked for time freely without hesitation and then himself explained the events and (c) during the recording of confession, he was calm and stable. Learned Magistrate has noted the precautions taken by her as follows: (a) she informed him that he was no more in police custody and she is not concerned with the police investigation; (b) she had put him in the custody of her court staff during the recording of confession and(c) she had given him sufficient time for reflection. She has concluded the certificate by confirming that she had given 72 hours' time for reflection to A1-Kasab before recording the confession. She has also stated that after the confession, A1-Kasab was remanded to judicial custody. She has also stated that as a precaution, in addition to his signature, she has taken A1-Kasab's right hand thumb impression.

- We have perused the evidence of PW-218 Ms.Sawant-Waghule and we are of the opinion that learned Magistrate has taken adequate care while recording the confessional statement of A1-Kasab. She had given him sufficient time for reflection. Her evidence indicates that except her personal staff, no person from any investigating agency or police officer was in her chamber when the confession was being recorded. Her evidence is in tune with her order dated 17/2/2009, the noting made by her on 18/2/2009, 20/2/2009 and 21/2/2009 and the certificates appended by her to the confessional statements.

- We have gone through the cross-examination of PW-218 Ms. Sawant-Waghule. The defence has not been able to make any dent in her evidence. The defence has not elicited anything in the cross-examination from which it can be said that she had not followed the provisions of Section 164 of the Code or of the High Court Criminal Manual. She comes across as a very truthful witness. No allegation is made against her that she forced A1-Kasab to give confessional statement. We have no hesitation

in placing implicit reliance on this witness. We are of the opinion that learned Magistrate has ensured that requirements of Section 164 of the Code are satisfied.

- In Abdul Kadar Allarakhia , this court has observed that, if the accused makes a statement that he is guilty of the offence charged, before the question of its acceptance by the court can arise, the court must ordinarily be satisfied that the statement has been made with full understanding of the plea and of the implications of the plea. This court has further observed that it is desirable to record a complete statement of the accused to find out what he exactly means by pleading guilty. This court has further observed that a plea made by the accused before the judge at the commencement of the sessions case cannot stand in a worse position than a confession made by the accused himself before a Magistrate under Section164 of the Code, or a statement made by the accused admitting his guilt to the court of the committing Magistrate. This court has further observed that such plea could not be effaced from the record and in reality forms part of the record. The following observations of this court need to be quoted.

> "Where, therefore, the accused pleads guilty, and the Judge is satisfied that the accused understands fully the implications of his plea, then the plea must be recorded. After recording the plea, it is open to the Judge either to convict or not to convict the accused upon that plea, and as a matter of practice it is desirable to proceed with the trial as if the plea was one of not guilty, lest the evidence may disclose that the facts proved do not, in law, constitute an offence of murder but some lesser offence. But in such cases, the plea remains a plea of guilt, and the trial proceeds for the purpose of ascertaining the circumstances which had resulted in the death and to find out whether the accused can, in law, be said to have committed murder."

In view of the above, in our opinion, learned Sessions Judge has rightly made the plea a part of record.

- In the light of the above judgments, learned Sessions Judge adopted a very prudent approach and, instead of accepting the plea of guilty which was partial, and convicting A1-Kasab, he proceeded with the trial to ascertain his involvement. Learned Sessions Judge did not examine A1-Kasab under Section 313(a) of the Code at that stage, because according to him that would have caused prejudice to him. Learned Sessions Judge had the advantage of seeing the demeanor of A1-Kasab. He was, therefore, in a better position to evaluate credibility of his plea (as to demeanor see Babu v. State of Kerala,(2010) 9 SCC

189). We are, therefore, of the opinion, that learned Sessions Judge's observation that A1-Kasabwas absolutely comfortable and he made the statement voluntarily will have to be accepted. Learned Sessions Judge has observed that A1-Kasab told him that he was not mentally and physically tortured in jail. We have no reason to disbelieve this statement.

Section VI:
WHAT DOES THE LAW COMMISSION SAY

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128TH LAW COMMISSION REPORT

❖ **High Cost of Litigation – A Barrier**

"One of the impediments in access to justice has been identified as the economic barrier which, in simple terms, means high costs of litigation. It has become so counter-productive that numerous litigants, it is apprehended, may, for want of wherewithal, suffer injustice, giving up the idea to approach the court because of the prohibitive costs." [48]

❖ **Introduction of Article 39A**

"This disturbing phenomenon of rising cost of litigation attracted the attention of the Parliament. While Constitution mandated that the State shall secure and protect, as effectively as it may, a social order in which justice shall inform all the institutions of national life, there was no effective provision in the Constitution for translating this promise into reality. Article 39A was introduced in the Constitution in the year 1976. It provided that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. In introducing this article, Parliament showed its awareness that by numerous statutes, rights, privileges and concessions have been conferred on the economically and socially disadvantaged sections of the society but they themselves are not in a position by their own effort to enforce rights or enjoy the privileges and concessions. And till that is done, it cannot be said that the legal system promotes justice because justice system is an integral part of the legal system of the country. No one who has a right must be denied the benefit of it. There must be forum for enforcement and vindication of this right. Access to forum must be unimpeded either by geographical, physical or economic barriers. The justice system must be easily accessible to each and every one from whatever strata of society he comes. Economic or any other disability should not become a barrier to access to justice. Economic

[48] Page 3, Para 1.3, Chapter I –Introduction, Law Commission Report 128 – Cost of Litigation

incapacity for enforcing rights must be remedied. It can be done in two ways: (i) considerably reduce the cost of litigation; and (ii) extend help by legal aid scheme wherever it is possible."[49]

- **Article 39A vis-à-vis Lawyer's Fees**

"Therefore, article 39A provided for setting up free legal aid schemes to at least deal with one component of the cost of litigation, namely, lawyer's fees. But there are numerous components of cost litigation and each will have to be adequately and scientifically examined to demarcate areas where there is enough leeway for reducing the cost of litigation."[50]

- **Kinds of expenditure to be borne by the litigant**

"Before attempting to ascertain the areas where the expenses are incurred by the litigants in initiating or prosecuting or defending litigation, it would be worthwhile to recall the broad heads under which the litigants have to bear expenditure in prosecuting or defending litigation. They may be broadly grouped as under:-

(1) Advocates' fees, including the fees for serving notice wherever it is necessary;
(2) Court fees and process fees;
(3) Travelling expenses, etc., of litigants and witnesses;
(4) Costs for obtaining copies of documents, typing and other miscellaneous expenses;
(5) Costs on account of adjournments; and
(6) Costs payable by the vanquished party to the successful party.[51]

- **The Value of right to Legal Aid**

"The Law Commission is aware that there is a class of litigants to whom the quantum of costs is not at all a relevant factor in pursuing litigation. In fact when the opponent is from an economically impoverished class, the well-to-do opponent, irrespective of the cost of litigation, will pursue it relentlessly either to tire out the

[49] Page 6, Para 1.5, Chapter I –Introduction, Law Commission Report 128 – Cost of Litigation
[50] Page 7, Para 1.6, Chapter I –Introduction, Law Commission Report 128 – Cost of Litigation
[51] Para 2.1, Page 11, Chapter II, Components of Cost of Litigation, 128th Law Commission Report – Cost of Litigation

impoverished litigant or to impose upon him an unfair and unjust compromise. It is for this class of litigants coming from the impoverished segment of society and designated as economically disadvantaged class of litigants, for whose benefit rights have been created or privileges and concession have been conferred by statutory and Executive orders but who are denied the same and are unable to enforce the same through justice system on account of economic barrier, that the Law Commission is concerned."[52]

- **Court Fee**

"The Committee[53] recommended rate of court fee on writ petitions under article 225 of the Constitution as under:-

i)	Habeas Corpus	No Fee
ii)	Fundamental rights	Rs. 100
iii)	Tax matters	Rs. 500.
iv)	Miscellaneous matters	Rs. 250.

Undoubtedly the committee was fully justified in recommending no court fee on a petition for a writ of habeas corpus. And the Law Commission accords its full support to that recommendation."[54]

[52] Para 2.2, Page 12-13, Chapter II, Components of Cost of Litigation, 128th Law Commission Report – Cost of Litigation

[53] The Consultative Committee attached to Ministry of Law and Justice, at its meeting in June 1980, set up a Sub-Committee to go into the question of court fees in trial courts.

[54] Para 3.21, Page 56-57, Chapter III, Court Fee as a Component of Cost of Litigation and Its Rationalisation, 128th Law Commission Report, Cost of Litigation

- ***Devaluation of Legal Profession***

  "The non-professional voluntary bodies have a different tale to tell. One respondent stated that 'people are openly saying that the legal profession is no longer service-oriented that it is only profit-oriented and the lawyers are out only to squeeze the clients to the maximum extent possible.' Another voluntary body devoted to providing legal aid to the needy women, opined in a similar reframe that 'the contemporary legal profession has fallen in the popular estimation because of the greed for money, lengthening of the case for years together for small reasons and even changing their loyalty to the other party for the sake of money only. Sometimes lawyers of both sides join hands to make both the parties compromise even if the clients have to suffer the loss. Majority of the lawyers harass their clients for more and more fees, false bills while not taking the required interest in the case.'[55]

- ***Promoting the quality of justice***

  "…in our country, the role of legal profession has to be assessed in the context of the constitutional mandate as set out in Article 39A of the Constitution. It is the duty of the State to secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The role of legal profession in strengthening administration of justice must be in consonance with the intendment underlying article 39A. in other words, in an adversary system as in vogue in law courts being the fulcrum of administration of justice, the role of legal profession must ensure equal opportunity to all litigants in search of justice. In process, opportunity for securing justice should not be denied to any citizen by any reason of economic or other disabilities. Legal profession is expected to ensure that anyone who has not the economic wherewithal to seek justice must not turn away from law courts on the only ground that he is unable to incur necessary expenditure for securing justice. Equally important is the fact that social disabilities should not deny access to centers of justice of which legal profession is an integral and inseparable adjunct. The State, which has conferred a monopoly on the legal profession by permitting it to regulate its own admission, qualification for admission and be the regulator of its own internal discipline, should so conduct itself as affording every facility for securing justice. To discharge this obligation, the legal profession must make its services available to those needy who otherwise cannot afford to pay the cost of legal services. Costs as also their social disabilities may not come in the way of legal profession assisting such persons from securing justice. The

[55] Para 2.6, Page 8, Chapter 2, Debate

profession must develop its own public sector. Briefly stated, ways and means must be devised so that the profession plays a meaningful role in promoting the quality of justice and to bring about such changes in society as are in consonance with the egalitarian goals, to which we are committed both constitutionality as also as our policy objectives. Within these parameters, the role of legal profession in strengthening administration of justice must be spelt out."[56]

- ***Lawyer-Client Relationship***

  "It is unquestionable that in any organized profession, there are bound to be some persons who are unable to maintain the high standard of profession. In some cases, evidence reveals a sordid state of affairs in lawyer-client relationship. This itself cannot be sufficient to condemn the profession as a whole but this aspect cannot be ignored also. It is here the question of accountability of the profession to the litigant and system comes to fore. The leaders of the Bar must show a deliberate concern with the fate of the poor and the indigent by volunteering to take up their cases in courts of law. They must also take up the role of questioning the credentials of persons who do not maintain high professional standards, its accountability by introspection or by internal regulation of the profession. It must submit itself to social audit. It is too much to expect a litigant coming from rural areas to understand what is expected of his lawyer and to complain against him if he feels cheated and thereafter to prosecute his complaint before the Bar Council. It is for the profession to provide a self-regulating mechanism whereby it takes notice of an errant lawyer and deals with him without anyone coming forward to law a complaint. This would be its first and foremost task, namely, to perform its duties both towards the profession and the wider society. Maintenance of the irreducible minimum standards of profession cannot be left to members of the society complaining against anyone. That is a tall order. Accountability can be provided or by a self-regulating mechanism. This must also include an improper or unprofessional behavior in the court that would be impairing the system."[57]

- ***Justice to all***

  "Closely allied to the question of prescribing the floor and ceiling in fees chargeable by members of the legal profession for rendering service to litigants is the question of providing totally free service to a class of litigants who are unable even to pay the minimum fees. The philosophy underlying article 39A of the Constitution has to be translated into an action oriented programme. Even if the ceiling and floor in fees are prescribed, there will be still be members of our society who would suffer denial of justice because they can ill-afford the fees payable to the legal profession. The fee would be a barrier to access to justice. Article 39A was a promise to them, when it was said that the State shall ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. If such seekers of

[56] Para 3.4, Page 13/14, Chapter III, Conclusions and Recommendations
[57] Para 3.8, Para 14, Chapter III, Conclusions and Recommendations

justice who cannot even afford to pay the minimum fees would suffer denial of justice on account of economic disability, article 39A would stand violated. To make effective the intendment underlying article 39A, the legal profession has to gear up to provide service to such seekers of justice. The legal profession is, to all intents and purposes, in private sector. The medical profession is also in private sector but free public hospitals have been set up where anyone can get medical service without the obligation to pay any fees. The poorest can have access to such to hospitals. Unfortunately, till today, there is no public sector in legal profession. It is the duty and obligation of the organized legal profession to set up its public sector unit where the services of its members would be available to those needy who cannot afford to pay the fees for their services. Legal aid scheme operated by the Government of India to some extent helps in this behalf. However, concrete measures have to be taken to set up public sector clinics, operated by members of the legal profession, where anyone who is needy and cannot afford to pay the fees of the private sector can walk in and not only get advice but even initiate proceedings for seeking justice. This is an overdue measure which the legal profession must undertake. To some extent this will also resolve the problem of accountability."[58]

[58] Para 3.30, Page 20, Conclusions and Recommendations

223RD LAW COMMISSION REPORT

❖ **Human Rights bases to approach to development demands**

"If injustices and discriminations in society are the main reason for poverty, then as an effective operational mechanism, the human rights-based approach to development demands:

- Participation and transparency in decision-making – this implies making participation throughout the development process a right and the obligation of the State and other actors to create an enabling environment for participation of all stakeholders;
- Non-discrimination – this implies that equity and equality cut across all rights and are the key ingredients for development and poverty reduction;
- Empowerment – this implies empowering people to exercise their human rights through the use of tools such as legal and political action to make progress in more conventional development areas;
- Accountability of actors – this implies accountability of public and private institutions and actors to promote, protect and fulfill human rights and to be held accountable if these are not enforced."[59]

❖ **All persons equal before law**

"Law must protect rights. Any dispute about them is not to be resolved through the exercise of some arbitrary discretion, but through the adjudication by competent, impartial and independent processes. These procedures will ensure full equality and fairness to all parties, and determine the questions in accordance with clear, specific and pre-existing laws, known and openly proclaimed. All persons are equal before the law, and are entitled to equal protection. The rule of law ensures that no one is above the law, and that there will be no impunity for human rights violations."[60]

❖ **Free Legal Aid as a matter of right**

"An accused who cannot afford legal assistance is entitled to free legal aid at the cost of the State. This right is part of the fair, just and reasonable procedure under article 21. The court must inform the accused of his right to be represented by a lawyer through legal aid and at the expense of the State. Failure to do so will vitiate his trial and his conviction can be set aside.(*Suk Das vs. Union Territory of Arunachal Pradesh, (1986)2SCC401)*"[61]

[59] Para 1.10, Page 15/16, Chapter I, Extreme Poverty: Denial of Human Rights
[60] Para 1.15, Page 18, Chapter I, Extreme Poverty: Denial of Human Rights
[61] Para 3.22, Page 31, Chapter III, Expanse of Article 21 of the Constitution

- **Public Interest Litigation**

  "Public interest litigation is a strategic arm of the legal aid movement, intended to bring justice within the reach of the poor masses, who fall within the low-visibility area of humanity. Public interest litigation is brought before the court not for the purpose of enforcing the rights of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantageous position should not go unnoticed and un-redressed."[62]

- **Voluntary legal aid**

  "To help the poor litigants, article 39A of the Constitution provides, inter alia, that the State shall provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Invoking the said article and the Universal Declaration of Human Rights, the Supreme Court held that it is the duty of the State to provide amicus curiae to defend an indigent accused. The Court also held that he would be meted out with unequal defence, if, as is common knowledge, a youngster from the Bar who has either a little experience or no experience is assigned to defend him and, therefore, it is high time that senior counsel practicing in the court concerned should volunteer to defend such indigent accused as a part of their professional duty.(*Kishore Chand vs. State of Himachal Pradesh, (1991)1SC286)*"[63]

[62] Para 3.24, Page 32, Chapter III, Expanse of Article 21 of the Constitution
[63] Para 3.31, Page 35, Chapter III, Expanse of Article 21 of the Constitution

Section VII:
ADVISORIES ISSUED BY THE MINISTRY OF HOME AFFAIRS

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Overcrowding in Prison (09.05.2011)

No.17011/2/2010-PR

Government of India/Bharat Sarkar
Ministry of Home Affairs/Grih Mantralaya

North Block, New Delhi
Dated the 9th May 2011 To

The Principal Secretary (Prison) / Secretary (Home) (In-charge of Prisons) - All State Governments / UTs

DGs/ IGs incharge of prisons- All State Governments / UTs.

Subject: Overcrowding in prisons-regarding

Sir,

Overcrowding in prison is one of the most challenging problems faced by Criminal Justice Systems worldwide. Prison overcrowding is more often a consequence of the way in which criminal justice is administered than a result of rising crime rates. The over-use of pre-trial detention, along with strict sentencing practices, are two main contributory factors. Overcrowding undermines the ability of prison systems to meet the basic needs of prisoners, such as healthcare, food, and accommodation. This also endangers the basic rights of prisoners, including the right to have adequate standards of living and the right to the highest attainable standards of physical and mental health. Prison overcrowding brings in its wake a host of serious problems to prison administration. It not only create security problem but also causes severe strain on the essential services, results in serious health hazards and disrupts penal reformation and rehabilitation programme. In an overcrowded prison segregation of hardened criminals and their separation from mild offenders become impossible. Prison overcrowding compels prisoners to be kept under conditions unacceptable to the United Nations Standard Minimum Rules for treatment of offenders to which India is a signatory.

NATIONAL SCENARIO

1 The problem of overcrowding in prisons in India has been in existence since long. However, it is not uniform in all prisons of India. The District Prisons are more overcrowded than the other Prisons. As per the statistics published by the National Crime Record Bureau,

as on 31.12.2008, there were 384753 prisoners in various prisons of the country against its total authorized capacity of 297777 prisoners. Out of this, the number of undertrial prisoners was 257928 which constitute 67% of the total prison population. The prison is India is overcrowded to the extent of 129%. While in some States, there was no overcrowding, the jails of some States are still heavily overcrowded.

2 In order to address the aforesaid issue, an all India Conference of Correctional Administrators was held in New Delhi on 8th-9th September 2010. One of the agenda for discussion was the issue of "Overcrowding- Reducing the number of undertrials" and it was strongly felt that the States need to take measures to reduce overcrowding in prisons. Some of the initiatives taken by the Central and some State Govts are also highlighted below.

INITIATIVES TAKEN BY THE GOVERNMENT OF INDIA

4. Although Prisons is a State subject, for reducing number of undertrials, the Government of India has taken various administrative and legislative measures. Some of the measures taken are illustrated below:

(a) Establishment of **Fast Track Courts (FTCs)** for expeditious disposal of long pending cases in the Sessions Courts. The FTCs were established to expeditiously dispose of long pending cases in the Sessions Courts and long pending cases of undertrial prisoners. The Government accorded approval for the setting up of 1562 FTCs upto 31.3.2010. FTCs were created exclusively to deal with cases

involving senior citizens, abuse of women and the disabled to expedite the disposal of session trial cases.

(b) To reduce the delay in the disposal of criminal trials and appeals and also to alleviate the suffering of under-trail prisoners, the concept **of plea-bargaining** was introduced in the Code of Criminal Procedure 1973 by way of Criminal Law (Amendment) Act 2005.

(c) Launch of **National Mission for Justice Delivery and Legal Reforms**. Under the Mission, the Hon'ble Chief Justices of High Courts have been requested to reduce the number of undertrial prisoners by two-thirds during the period January-July 2010.

(d) **Amendment in section 436 and insertion of a new section viz 436A in the Criminal Procedure Code.** Under Section 436, a person accused of a bailable offence can be detained in prison for a maximum period of 7 days and also a person who is unable to furnish bail within 7 days could be released on personal bond without surety. Under section 436A, an undertrial has a right to seek bail on serving one half of the maximum possible sentence. No one can be detained in prison for a period exceeding maximum possible sentence. This provision is, however, not applicable for those who are charged with offences punishable with death sentence.

(e) Under section 167 of Cr.P.C. the maximum period for completing police investigations and filing charge sheet (for offence punishable with 10 years or more or death) is 90 days, whereas for all other offences, the period is 60 days. The undertrial prisoner is entitled to seek release on bail, if investigation is not completed within the stipulated period.

(f) Creation of additional capacity of prisons through the Scheme of Modernisation of Prisons. Under the scheme, the Government of India has provided financial assistance of Rs 1800 crores to the States/UTs for construction of new jails, construction of additional barracks, repair/renovation of existing jails, construction of staff quarters and improvement of water and sanitation in jails.
(g) The Government of India has provided an amount of Rs 5000 crore as grant for the period 2010-11 to 2014-15 for bringing about improvement in administration of justice. Out of this, Rs 100 crore has been earmarked for Lok Adalats and Rs 200 crore for providing legal aid.
(h) Thereafter Finance Commission has recommended a total amount of Rs. 609 crore for construction and upgradation of prisons for the States of Andhra Pradesh (Rs. 90 crore), Arunachal Pradesh (Rs. 10 crore), Chhattisgarh (Rs. 150 crore), Kerala (Rs. 154 crore), Maharashtra (Rs. 60 crore), Mizoram (Rs. 30 crore), Orissa (Rs. 100 crore) and Tripura (Rs. 15 crore).

STEPS TAKEN BY VARIOUS STATE GOVERNMENTS

5. During the conference, the States/UTs have also highlighted various measures taken by them in order to reduce overcrowding in prisons. Some of these, as detailed below, are definitely worth considering by the other States /UTs as these shall go a long way in bringing about reduction in number of undertrials:

(a) Use of plea bargaining methods.
(b) Holding of Lok Adalats
(c) Implementation of section 436 and 436 A of Cr.P.C.
(d) Regular visits of High Court judges/ Secretary, District Legal Services Authority to district prisons .
(e) Regular monthly coordination meetings between the District Judge, Superintendent of Police, Prosecution and Superintendent of Prisons wherein pending cases of undertrials are discussed for expediting disposal.
(f) Preparation of list of undertrial prisoners and the status of the cases court-wise and prison-wise. Identical cases in which the undetrial prisoners can be released, can be pursued vigorously both legal aid and prison authorities.
(g) Those cases of undertrial where the maximum punishment prescribed for the offence committed is upto seven years are put up by the jail authorities before the visiting judge every three months for review of their cases for release on bail.
(h) Formation of Undertrial Review Committee in every District with the District Session Judge as the Chairman and Superintendent of Police and Superintendent of Prison as members to review the cases of undertrial every three months, of those lodged for more than 3 months.
(i) Engaging competent legal counsels for indigent undertrial prisoners
(j) Requesting court for reductions of surety amount where the amount is beyond means of the undertrial prisoners.
(k) Taking up cases of seriously sick prisoners with the trial courts for their release on bail, as per law.

(l) Providing legal aid through the Legal Aid Cell and use of video conferencing facilities by which the advocates of different District and High Courts can have interaction with the prisoners in jails to facilitate provision of legal aid.

(m) In the case of undertrial from other States, local surety is not insisted upon and it shall be sufficient on verification of the identities and actual places of residence of the undertrials outside the State and their sureties to release them on personal bonds, or with or without sureties, as the case may be.

(n) Release of undertrial under section 4(3) of Probation of Offenders Act.

(o) Probation officers contacts families of the undertrial prisoners in cases where bail has been granted but not availed due to various reasons by arranging bailers to expedite release of undertrials.

ACTION REQUIRED TO BE TAKEN BY STATE GOVERNMENTS

6. Apart from implementing the various measures taken by the Government of India for reduction of undertrials as mentioned above, the States/UTs are advised to consider the best practices being followed in this regard by various States/ UTs towards reduction of undertrial prisoners. The States/UTs are also advised to explore alternatives to imprisonment. Instead of sentencing offenders to prison, alternative sentencing should be made by way of imposing fine, community sentencing. The Government of Andhra Pradesh has recently introduced 'Community Service of Offenders Act, 2010' which is a new initiative in Penal Reforms. The said Act provides for imposition of 'Community Service' instead of sentence of imprisonment on offenders in certain cases. The Act applies only to offenders found guilty of minor offences in which imprisonment of not more than one year is envisaged. The States/UTs are advised to carry out suitable legislation for providing alternatives to imprisonment. Apart from above, the States/UTs may also consider taking following actions:

(a) A survey of all such cases covered under section 436 and 436A may be carried out every six months by the prison authorities and presented before the magistrate/ judges concerned in each district, by sending such lists to the District Legal Services Authorities (SLSAs).

(b) With regard to the provision of legal aid for release on bail, reduction of bail amount etc, the State Legal Service Authority (SLSAs) should direct the (DSLAs) in the state to arrange for lawyers for the unrepresented undertrial prisoners through their legal aid panels.

(c) Fee to lawyers in the legal aid panel may be enhanced so as to attract services of better quality of legal aid lawyers.

(d) Greater use of Probation of Offenders Act, 1958 by the judiciary, as a means to decongest prisons by releasing young, first time and less serious offenders on probation.

(e) NGOs should be encouraged to do legal guidance work and link up with DLSAs to arrange legal aid for unrepresented undertrial prisoners. The SLSAs may organize para- legal training of such NGOs in the State in collaboration with academic institutions.

(f) implementation of guidelines issued by the Mumbai High Court in Rajendra Bidkar vs State of Maharashtra & Ors (CWO no. 386 of 2004) with regard to production of undertrial prisoners through the video conferencing facility.

7. All the State/UTs are advised to consider adopting these practices for efficient and effective management of prisons, as also to reduce overcrowding in prisons and to ensure reformation & rehabilitation of prison inmates in the true spirit of correctional administration.

The receipt of this letter may please be acknowledged.

Yours faithfully

Sd/

[Dr (Smt.) Praveen Kumari Singh]
Director (SR)
Telefax: 23092161

Comprehensive Advisory on Prison administration (17.07.2009)

No.17014/3/2009-PR

Government of India/Bharat Sarkar

Ministry of Home Affairs/Grih Mantralaya

North Block, New Delhi dated the 17th of July 2009.

To

The Principal Secretary (Prison) / Secretary (Home) (In-charge of Prisons) - All State Governments / UTs

DGs/ IGs incharge of prisons- All State Governments / UTs.

Subject: Prison Administration- regarding

Sir,

As you are aware 'Prisons' is a State subject under Entry-4 (Prison Reformatories, Borstal Institutions and other institutions of like nature) in the State List (List-II) of the Seventh Schedule to the Constitution of India. Therefore, the management and administration of Prisons falls in the domain of the State Governments. The Prisons are governed by, interalia, The Prisons Act, 1894 and the Prison Manuals/ Rules/ Regulations framed by the respective State Governments from time to time.

2. The Indian prison system has been under the close scrutiny of judiciary / District Magistrates who have been given a responsibility to closely monitor the administration and management of prisons under their jurisdiction and to inspect the same periodically. The Central Government has, from time to time, been interacting with the State Governments through advisories, conferences and meetings etc on various aspects of prison administration including appropriate security measures in prisons.

3. As you are aware, various Committees, Commissions and Working Groups had been constituted in the past by the Government of India to study and make suggestions for improving the prison conditions and administration, inter alia, with a view to making them more conducive to the reformation and rehabilitation of prisoners. Some of the important committees are as under:

- All India Jail Manual Committee (1957),
- Working Group on Prisons (1972),
- All India Prison Reforms Committee (1980-83) known as Mulla Committee,
- All India Group on Prison Administration, Security and Discipline known as R.K. Kapoor Committee (1986) and
- National Expert Committee on Women Prisoners known as Justice Krishna

Iyer Committee (1987) etc.

These committees made a number of recommendations to improve the conditions of prisons, prisoners and prison personnel. Some of the important recommendations are annexed as Annexure-I. Since most of the recommendations of these committees pertained to the State Governments/UT Administrations, these were forwarded to the State Governments by the Ministry of Home Affairs for taking appropriate action. In 2001, the Ministry of Home Affairs through BPR&D also circulated a detailed questionnaire relating to actionable recommendations of these committees.

Model Prison Manual

4. Keeping in view the directions given by the Hon'ble Supreme Court in the case of Ramamurthy vs State of Karnataka (1996) and also taking into account the recommendations of various committees regarding the need for bringing uniformity in laws relating to prisons, Government of India constituted All India Model Prison Manual Committee headed by Director General of BPR&D to prepare a Model Prison Manual for the Superintendence and Management of Prisons in India. The "**Model Prison Manual**" so prepared was circulated to all the State Governments/ UT Administrations in December 2003 for adoption for effective and efficient superintendence and management of prisons. This manual is an exhaustive document and has been prepared after wide consultations with the State Governments. It is, however, learnt that only a few States have so far adopted the model prison manual in its true spirit. The Parliamentary sub-committee on modernization of prisons has recently visited many states and has shown their disappointment on the poor adoption of the Model Prison Manual by the State Governments. They have asked the Government of India to take initiative for ensuring that the State Governments adopt the Model Prison Manual. You are accordingly once again advised to go through the Model Prison Manual and consider its adoption as per the requirements and suitability to the State.

Court Judgments

5. From time to time various High Courts and Supreme Court have given wide ranging judgments on conditions of prisoners, prisons and the rights of prisoners. Some of these path-breaking judgments/ rulings are important for the rank and file of prison officials/ State Governments. A compilation of such judgments was brought out by the BPR&D in 2000 in which an attempt was made to identify and document some latest rulings/ judgments of the Supreme Court/ High Courts relating to the area of prison administration. The same was thereafter revised and updated in 2007. This compilation is also available at the BPR&D website **(www.bprd.gov.in).** The same was also circulated to all the State Governments /UT Administrations to make this document more user friendly, important operational points of these rulings/ judgments were culled out and compiled. Some of the important judgments are annexed as Annexure-II.

6. In order to comply with and give effect to the important directions of the Hon'ble Supreme Court/High Courts, the Government of India has

i) Introduced section 436A in Cr.PC to liberalize the bail conditions;

ii) Introduced section 265A in Cr.PC for plea bargaining;

iii) Initiated the Scheme for Prison Modernization in 2002 in order to reduce overcrowding, improve hygiene conditions as also provide better facilities to prisoners and prison personnel.

7. Government of India has prepared a Draft Policy Paper on Prisons with the approval of the Home Minister in order to broadly address the agreed upon objectives in incarceration and the measures to be implemented by the various State/UT Governments. The policy objectives as well as the measures required to be taken by the State /UT Governments are annexed as Annexure-III.

8. The Sub Committee of the Department Related Parliamentary Standing Committee of the Ministry of Home Affairs presented to the Rajya Sabha on 26.02.2009 in their report of Modernization of Prison Scheme has also made certain observations, on which action needs to be taken. The report has already been circulated to all States for their comments and necessary action. Some of the important observations are annexed as Annexure-IV.

9. The National Human Rights Commission has also been issuing suitable instructions from time to time to all the States/ UTs against the violation of human rights in prisons and take suitable steps in this regard.

10. For the strengthening of security arrangements in jails, the Government of India has also been advising the State Governments vide advisories dated 21.9.1998 and 17.8.2006 for taking adequate and effective measures for tightening security and to ensure that prisoners are not in possession of prohibited items like mobile phones, weapons etc. The State Governments are requested to take appropriate measures in the light of the aforesaid advisories.

11. Recently in the case of Jaswant Singh v/s State (Criminal Appeal No. 257/2004), the Hon'ble Delhi High Court vide its order dated 30.9.2008 has directed to issue instructions for devising a foolproof system to avoid any lapse while transferring convicts/ accused persons from one jail to another. In the instant case, the prisoner had been released pre-maturely by the jail officials on being transferred from one jail to another.

12. As for the human resources who are actually going to man these prisons , it is recommended that the State shall consider:

- Establishing well equipped training infrastructure in the state, with adequate skilled and well qualified instructional staff, to cater to the normal needs of basic and in-service training for the prison staff in different discipline.
- Availing slots for in-service training being offered in ICA, Chandigarh, NICFS, New Delhi, RICA, Vellore and other institutes sponsored by BPR&D/MHA.
- Deputing prison officials for training in specialized institutes in India and abroad in consultation with BPR&D and MHA.
- Creating adequate posts for prison staff as per norms in different categories

commensurate with operational needs of safe custody, reformation, rehabilitation, health care, legal assistance etc.

- Filling up all the vacancies, presently running up to 17.58% (2006) within time bound frame and ensure proper cadre management through timely trainings, promotions recruitments etc.
- Acknowledging the role of good work done by prison officers/ officials individually or in a team by way of a suitable reward schemes.
- Rewarding those prison staff during whose tenure the prison shows remarkable improvement in term of elimination of or significant reduction, in the incidence of unnatural deaths, indiscipline by prisoners; number of prisoners pursuing educational and vocational programmes, implementation of Section 436-A and 265-A to 265-L CrPC, 1973 etc.
- Nominating deserving prison officers for the award of Correctional Service Medals on the occasion of Independence/Republic Day and presenting the recipients such medals in ceremonial functions like State Day, Independence Day/Republic Day etc.

13. All the State Governments/ UT administrations are requested to take effective measures in the light of the recommendations made by the various committees/ court judgments, the Model Prison Manual and advisories issued by the Government of India from time to time for the effective and smooth functioning of the prisons.

14. The receipt of this letter may please be acknowledged.

Yours faithfully, Sd/-

(Nirmaljeet Singh Kalsi)
Joint Secretary (CS)
Telefax:011-23092630

Advisory on the policy for the treatment of terminally ill prisoners / inmates (13.08.2010)

MOST IMMEDIATE

No.V-17014/5/2010-PR
GOVERNMENT OF INDIA/BHARAT SARKAR
MINISTRY OF HOME AFFAIRS/GRIH MANTRALAYA
(CS DIVISION)

North Block, New Delhi, 13th August, 2010.

To

The Chief Secretary,
The Principal Secretary (Prisons)/ Principal Secretary (Home-in-charge of Prisons),
All State Governments and UT Administrations.

Subject: Advisory on the policy for the treatment of terminally ill prisoners / inmates (TIPs) -regarding

Sir/Madam.

The Hon'ble High Court of Delhi, taking suo motu cognizance to deal with the issue of terminally sick inmates in the prisons all over India in Writ Petition (Crl) no. 201/2009 (Court on its own motion v/s State NCT of Delhi), has given directions to the Union of India to formulate a concrete policy towards the treatment of terminally ill prisoners languishing in prisons. "Terminal illness" is a medical term to describe an active and progressive illness that cannot be cured or adequately treated and that is reasonably expected to result in the death of the patient. It is also described as a malignant disease for which there is no cure and the prognosis is fatal. As defined by the American Cancer Society, "Terminal illness" is an irreversible illness that, without life-sustaining procedures, will result in death in the near future or a state of permanent unconsciousness from which recovery is unlikely. Some examples, among others, of terminal illness may include advanced cancer, advanced heart disease, full blown AIDS etc.

2. 'Prisons' is a State subject under Entry-4 (Prison Reformatories, Borstal Institutions and other institutions of like nature) in the State List (List-II) of the Seventh Schedule to the Constitution of India. Therefore, the management and administration of prisons falls in the domain of the State Governments and UT Administrations. Prisons are governed by interalia, the Prisons Act, 1894 and Prison Rules, as adopted/ amended by the respective State Governments and UT Administrations from time to time and the Pension Manuals framed by them. It is, therefore, for the State Government/UT

Administration concerned to devise appropriate policies and procedures to identify and deal with the special needs of their terminally ill prisoners (TIPs) in a manner that respects their human rights, ensures their dignity as well as takes into account the needs of security and safety of the community. Such policies and procedures should, however, address the special medical care needs/requirements of TIPs, the formulation of clear criterian for their release, parole, furlough etc. on compassionate ground and facilitate interaction with their families and friends.

3. The Government of India is deeply concerned about the terminally ill prisoners in all the States/ UTs of the country and would, therefore, advise the State Governments and UT Administrations to take the following steps for effective management of terminally ill prisoners within their jurisdiction:-

(i) As a first step, identify all the terminally ill prisoners/inmates (TIPs) in all the prisons of the State/UT. For this purpose a special District Level Medical Board and State Level Medical Board with suitable medical experts may be constituted within 30 days. All cases of terminal illness of prisoners/inmates may be examined, identified and certified by the District level Medical Board within the next 60 days subject to any guidelines prescribed by the Medical Council of India (MCI), Ministry of Health and Family Welfare and the Health and Family Welfare Department of the Statee/UT concerned regarding terminal illness and confirmed by the State level Medical Board within say 15 days thereafter.

(ii) All patients with terminal illness have special medical needs relating to their disease. Such patients also need special psychological counseling and spiritual support since they face the prospect and trauma of impending death. Such needs are further intensified in the isolated environment of a prison, where the medical needs of each TIP must also be identified in consultation with the District State Medical Board. State Governments and UT Administrations are responsible for making available/providing reasonable medical care facilities/aid to the TIPs on a need basis, either in the prison or through a specialty / super-specialty Government hospital or in the nearest Medical Centre, as would be available to a free person outside the prison. All TIPs should be, as far as possible, shifted to a prison in a place where maximum/best medical care facilities could be made available to them.

(iii) TIPs also have special needs in terms of adequate and timely legal representation at various stages of their judicial custody, trial in the Courts and Conviction. Many TIPs, especially those in an advanced stage of terminal illness, may have been abandoned by their families or may have

family links disrupted due to long sentence or age. Such prisoners must be given access to legal counsel, including free legal aid services, if indigent, during the entire process of criminal justice. Such access to free legal services is vital for defendants with terminal illness, particularly with regard to their rights for non-custodial sanctions and measures such as bail, suspended sentences on compassionate grounds or their rights to the requisite medical care in prisons.

(iv) For the purpose of legal recourse, the TIPs may be categorized as persons in judicial custody, under trials and convicts. Taking into account the limited medical care facilities which could be made available in prisons, and also in view of the special needs of TIPs, State Governments and UT Administrations must resort to all possible legal measures to enable TIPs to live the remaining part of their lives with dignity, in peace and in the close vicinity of their family members and close friends. Some of the indicative measures are as follows:-

a. For all TIPs who are in judicial custody the investigating policy officer/officer in-charge of the case should be advised to make all efforts to complete the investigation of the cases, as far as possible, before the prescribed limit of 90 days.

b. The Jail Superintendent /Investigating police officer/Officer in-charge of the case must bring to the notice of the Hon'ble Trial Court the medical condition of the TIP concerned during the process of trial for taking a sympathetic view while considering their requests for bail and expeditious disposal of the case etc. so that the Hon'ble Court may pass appropriate orders as deemed fit.

c. Cases of such TIPs should also be submitted before the inspecting Judges of District Courts or during visit of judges of Hon'ble Supreme Court/High Courts so that the Hon'ble Judges may take a view and may consider such cases for a Judicial Review as deemed fit.

d. Provisionsfor non-custodial measures and alternatives to imprisonment could also be pleaded before the Court for TIPs in case they do not pose any risk to the society. Alternatively, such TIPs could be shifted to the open jails as far as possible under a court order.

e. To enable TIPs to receive the support of family and friends during the extremely distressing period prior to death, the State Governments and UT Administrations may consider amendments in their Prison Acts/Rules/Manuals to make special provisions on compassionate grounds for more frequent visits by their family members and friends, their release on parole or other similar provisions for the remaining period of the sentence.

f. The State Governments/UT Administrations may also consider release of such prisoners as a part of general amnesty. Provisions of special leave may be made applicable to TIPs, as is prescribed in Prison Manuals of the respective States.

g. The TIPs and their families should bemade aware of the special powers of the President and Governor under Article 72 and 161 of the Constitution of India, respectively, to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State, and in certain cases of the Union, extends and all necessary help must be rendered to enable such TIPs to submit a petition to the President or the Governor, as the case may be.

h. Cooperation of community health care services, NGOs and civil society must also be sought and facilitated to ensure proper care of TIPs in the prison and continuity of care following their release from the prison.

i. The correctional needs of such prisoners are also different as it is not the social reintegration which is relevant, but there is a need for psycho-spiritual support and adequate human contact to help them maintain their mental balances. TIPs should, therefore, be placed as close to their homes as possible to enable regular visits from their family members and friends.

(v) Foreigner TIPs should be identified separately under each of the categories of judicial custody, undertrials and convicts so as to deal with their cases in a focused and expeditious manner as indicated below:

a. While all facilities available to Indian TIPs would also be available to Foreigner TIPs, the State Governments and UT Administrations must immediately take up the cases of the convicted foreign TIPs with the Government of India for repatriation to their respective countries as per the provisions of the Repatriation of Prisoners Act 2003 and Repatriation of Prisoners Rule, 2004. Under the Repatriation of Prisoners Act, 2003, bilateral agreements have been signed by Government of India with a number of countries for the repatriation of sentenced persons from India to that country or vice versa and efforts are being made to sign similar agreements with other countries.

b. Even if no bilateral agreement exists with a foreign country, the repatriation of a convicted foreign TIP must be taken up immediately by the State Government/UT Administration concerned through the Ministry of Home Affairs and Ministry of External Affairs, Government of India through diplomatic channels on humanitarian grounds.

c. The cases of foreign TIPs, who are under judicial custody/undertrials, should also be taken up with the respective trial Courts on priority on the lines suggested for the similarly placed Indian TIPs. Their cases should be submitted expeditiously to the Hon'ble Courts for Judicial Review and the Hon'ble Courts may like to dispose of such cases as deemed fit.

(vi) The State Governments/UT Administrations are, therefore, advised to amend legislation/ rules and make policies and procedures to provide for community sanctions and measures for TIPs, at all stages of the criminal justice process, to enable them to receive the medical care they need and to die in dignity, surrounded by their family members and friends rather than in the desolate environment of prisons. Such amendment in legislation/rules/policies/procedures should, as a minimum, include clear criteria and procedures relating to:

f. Facilities /enabling cooperation of community health care services, NGOs and civil society to ensure proper care in the prisons and continuity of care following release of TIPs.

a. Identification and certification of TIPs by a competent authority;

b. Segregation of such terminally ill prisoners/inmates (TIPs), and assessment of their special medical, psychological, legal and social needs and

c. Making reasonable and adequate provisions for such special needs, including special health care facilities within the legal administrative and financial constraints of the State;

d. Transfer of TIPs to prison with better medical care facilities Government / civilian hospitals, open jails etc. on need basis

e. Free legal assistance to TIPs in judicial custody/undertrials;

9. All the State Governments/UT Administrations are requested to take effective measures in this regard. The aforesaid measures are only indicative and the State Governments/UT Administrations may take any additional measures for the terminally ill prisoners/inmates. This Ministry may also be kept apprised of any special measures/mechanisms introduced in their respective jurisdictions so that the same could be circulated to the other State Governments and UT Administrations for consideration/adoption.

10. The receipt of this letter may kindly be acknowledged.

Yours faithfully, Sd/- (Dr. Nirmaljeet Singh Kalsi) Joint Secretary to the Govt. of India
Tele. No. 23092630

Commonwealth Human Rights Initiative's (CHRI)
Work on Pre-trial Detention in Rajasthan

As part of its mandate to ensure that the working of the criminal justice system promotes fair trial and prevents unnecessary detention, Commonwealth Human Rights Initiative (CHRI) has been conducting a series of micro studies in Rajasthan, using the Right to Information Act, interviews with undertrial prisoners in judicial custody and court observation exercises to understand and record court practices related to pre-trial detention such as court production, remand and bail.

Pursuant to a study on access to counsel in the district jail of Alwar that was completed in November 2010, CHRI conducted four workshops between February 2011 and September 2011 with a focus on effective representation and rights of the accused in the three towns of Jaipur, Jodhpur and Alwar. One of the major findings of the study was that a large percentage of undertrials had no access to legal representation or legal aid, or representation was obtained after the first production, sometimes at the time of filing of the chargesheet. The study also indicated poor lawyer-client relationship, as even those undertrials who had legal representation could only meet their respective lawyer in the courts.

With an aim to improving early access to counsel and effective representation, CHRI has also been conducting workshops in collaboration with the District Legal Services Authority in Jodhpur district of the state of Rajasthan on remand and bail for legal aid lawyers appointed under the State's Model Scheme of 'remand and bail lawyers'. Alongside, CHRI has engaged with the Jodhpur Bar Association with a plan to jointly hold regular discussions and debates on topical legal issues for lawyers.

In 2013, CHRI conducted three impact assessment workshops to evaluate the impacts of the workshops in Jaipur, Jodhpur and Alwar. The broad impact assessment areas were interventions, preparedness and results vis-à-vis arrest and first production, bail, remand, chargesheet, pro-bono lawyering, lawyer-client relationship, and defense preparedness. The assessment also highlighted future learning needs of the lawyers.

With the objective to strengthen the legal aid structure inside prison and to demonstrate a legal aid environment where no suspect/accused goes unrepresented, CHRI, in 2012, began *Swadhikaar,* a legal aid services initiative

in Jodhpur Central Prison. The legal aid clinic's area of work ranges from identifying illegal and unnecessary detentions, providing legal representation through referrals to DLSA and to the CJM, the Convenor of the Periodic Review Committee for Undertrials, drafting petitions and applications on behalf of the inmates, providing legal counselling and guidance whenever sought by the inmates, conducting legal aid awareness activities inside the prison and training convicts as jail paralegals to support the work of the DLSA and *Swadhikaar* legal aid clinic.

Many of these activities have been undertaken in close co-operation with the Rajasthan Prisons Department, the District Legal Services Authority, Jodhpur, the International Bridges to Justice and the National Law University (NLU), Jodhpur.

सुनवाई-पूर्व कैद से संबंधित सीएचआरआई का राजस्थान में कार्य-कलाप

कॉमनवेल्थ ह्यूमन राइटस् इनिशिएटिव (सीएचआरआई) का एक संकल्प दंडपरक न्याय-व्यवस्था के भीतर निष्पक्ष सुनवाई को सुनिश्चित करना और अनावश्यक कैद को रोकना है। अपने इस संकल्प के एक हिस्से के रुप में सीएचआरआई राजस्थान में व्यष्टिगत अध्ययनों की एक ऋंखला चला रहा है जिसमें सूचना का अधिकार अधिनिय़म का इस्तेमाल करना, न्यायिक हिरासत में लिए गए विचाराधीन कैदियों का साक्षात्कार लेना तथा अदालती कार्रवाइयों के नजदीकी अवलोकन के जरिए विचाराधीन कैदी से संबंधित कोर्ट प्रोडक्शन, रिमांड और बेल सरीखे अदालती कार्य-व्यवहारों को दर्ज करना शामिल है।

साल 2010 के नवंबर महीने में सीएचआरआई ने अलवर जिला-जेल में प्राप्त न्यायिक परामर्श की स्थिति के अवलोकन पर केंद्रित एक अध्ययन पूरा किया था। इस अध्ययन के बाद इसी क्रम में साल 2011 के फरवरी से सितंबर महीने के बीच तीन शहरों जयपुर, जोधपुर और अलवर में चार कार्यशालाओं का आयोजन किया गया। इन कार्यशालाओं का जोर अभियुक्त के कारगर प्रतिनिधित्व और उसके अधिकारों पर था। अध्ययन का एक मुख्य निष्कर्ष यह था कि ज्यादातर विचारधीन कैदी न्यायिक प्रतिनिधित्व या विधिक सहायता हासिल नहीं कर पा रहे या फिर उन्हें न्यायिक प्रतिनिधित्व अपने प्रथम कोर्ट-प्रॉडक्शनव के बाद हासिल हुआ, कभी-कभी तो आरोप-पत्र दाखिल किए जाने के बाद उन्हें वकील की सहायता मिल पायी। इस अध्ययन से यह भी स्पष्ट हुआ कि वकील और मुवक्कील के बीच संबंधों की स्थिति अच्छी नहीं है क्योंकि जिन विचाराधीन कैदियों को अपनी पैरवी के लिए वकील की सहायता हासिल हो पायी थी, उनकी अपने-अपने वकील से मुलाकात अदालत पहुंचकर ही हो पायी।

विचाराधीन कैदियों को शुरुआती चरण में ही न्यायिक परामर्श मिले जाये और अदालती कार्रवाई में ऐसे कैदियों की पैरवी कारगर तरीके से हो सके, इस लक्ष्य को ध्यान में रखते हुए सीएचआरआई राजस्थान के जोधपुर जिले में जिला विधिक सेवा प्राधिकरण के साथ मिलकर रिमांड और बेल के मामले में सहायता प्रदान करने के मुद्दे पर वकीलों को लेकर कार्यशाला का आयोजन करता रहा है। इन वकीलों की नियुक्ति राज्य सरकार की एक मॉडल योजना रिमांड एंड बेल लॉयर्स के तहत की गई है। इसके साथ-साथ सीएचआरआई की एक योजना जोधपुर बार एसोसिएशन के साथ मिलकर प्रासंगिक कानूनी मसलों पर नियमित चर्चा और बहस-मुबाहिसा चलाने की है।

जयपुर, जोधपुर और अलवर में आयोजित कार्यशालाओं के प्रभाव के आकलन के लिए साल 2013 में सीएचआरआई ने तीन इम्पैक्ट असेसमेंट कार्यशालाएं आयोजित कीं। प्रभाव के

आकलन के अंतर्गत मुख्य तौर पर यह जानने की कोशिश की गई कि गिरफ्तारी और प्रथम कोर्ट-प्रॉडक्शन, बेल, रिमांड, चार्जशीट, जन-कल्याण के निमित्त की गई वकालत, वकील और मुवक्कील के आपसी संबंध तथा बचाव-पक्ष की तरफ से की जाने वाली तैयारी के मामले में हस्तक्षेप, बंदोबस्त और परिणाम क्या रहे। प्रभाव के आकलन से यह बात भी उभरकर सामने आई कि आगे आने वाले दिनों में वकीलों के लिए किन बातों को जानना-सीखना जरुरी होगा।

कारागृह के भीतर और उसके बाहर हासिल होने वाली विधिक सहायता का ढांचा मजबूत हो और विधिक वातावरण कुछ इस तरह का बने कि संदिग्ध या अभियुक्त करार दिया गया कोई भी व्यक्ति कानूनी पैरवी से वंचित ना रहे- इस उद्देश्य को ध्यान में रखते हुए सीएचआरआई ने साल 2012 में पहल करते हुए जोधपुर केंद्रीय कारा में एक विधिक सहायता सेवा 'स्वाधिकार' नाम से शुरु की। विधिक सेवा केंद्र के कामकाज के दायरे में अनेक चीजें शामिल हैं, जैसे- गैरकानूनी और अनावश्यक नजरबंदी की पहचान करना, डीएलएसए और सीजेएम के पास रेफरल के माध्यम से कानूनी प्रतिनिधित्व प्रदान करना, विचाराधीन कैदियों के लिए आवधिक पुनर्वीक्षा समिति का संयोजन, बंदियों के लिए अर्जी और आवेदन लिखना, बंदी के कहने पर उसे कानूनी परामर्श और मार्गदर्शन प्रदान करना, कारागृह के भीतर विधिक सहायता विषयक जागृति की गतिविधियां संचालित करना तथा डीएलएसए और 'स्वाधिकार' विधिक सेवा केंद्र की मदद के लिए अभियुक्तों को जेल-पैरालीगल्स् के रुप में प्रशिक्षित करना।

इनमें से कई गतिविधियां राजस्थान कारा विभाग, जिला विधिक सहायता प्राधिकरण(जोधपुर) तथा इंटरनेशनल ब्रिजेज टू जस्टिस एंड द नेशनल लॉ यूनिवर्सिटी(जोधपुर) के निकट सहयोग से संचालित की जा रही हैं।

About the Course

This Legal Refresher Course on Pre-trial Justice will be conducted primarily for legal aid advocates by the Prison Reforms Programme of the Commonwealth Human Rights Initiative (CHRI), in collaboration with State Legal Services Authority (SLSA), Rajasthan, the District Legal Services Authority (DLSA), Jodhpur, in co-operation with Jodhpur Bar Association, Rajasthan High Court Lawyers Association, and the International Bridges to Justice.

The course will help legal aid advocates to find solutions to unnecessary and long detentions in police and judicial custody. Through a revisiting of constitutional values and legal safeguards of writs and bail; re-familiarising with skills of opposing unnecessary custody, argumentation, cross-examination, evidence-building; reiterating the core principles of legal aid, ethics of the advocate's profession and lawyer-client relationship, the course attempts to refine courtroom practices towards reaching the high goal of rule of law.

By focusing on the short term and long term impacts of incarceration on the prisoner, the Course will approach their constructive diagnosis with a focus on due process treatment, strengthening legal aid services, and effective legal interventions by advocates that are grounded in the organic link between police reform, jail reform, legal aid reform and judicial reforms.

The Course will include Refresher Workshops on Cr.P.C, Workshops on Case Analysis, Legal Strategies, Legal Aid & Pro-Bono Lawyering, New Developments in Evidence, a Module on Law, Justice & Everything in Between; Rule of Law and Reform of the Criminal Justice System and will use lectures and talks, exercises and case studies, exposures to places of custody, synthesis workshops and mentoring sessions to advance the knowledge and skills of the participants towards furthering the goals of early access to counsel, effective representation and access to justice for all.

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