

**Training Manual of Specialized Course
For
Prison Officers (Asst. Jailer to Supreintendent of Prisons)
on
Legal Services in Prisons
(one week)**

2022



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Message

Capacity Building of the prison staff is one of the key components of Prison Reforms. This equips the Prison Officers and Staff with the essential knowledge, skills and attitude to diligently discharge their duties in varied and complex areas related to Prisons and Correctional Administration. The MHA has mandated the BPR&D to prepare Training Manuals which can be circulated to all States and UTs for training purposes.

Services of 11 Individual Consultants with subject matter expertise were hired in 2021 to prepare the 50 Prison Training Manuals for various categories of Staff in Prisons. Numerous rounds of stakeholder consultations were held to finalize the drafts. The Manuals have adopted the contemporary principles of training and learning for indoor and outdoor classes, field visits and practical sessions and these have been prepared in compliance with the national and international best practices, the laws of the land, and the technological advancements in Prisons & Correctional Administration. The drafts were also uploaded on the BPR&D website for inviting suggestions/feedback from the stakeholders and citizens.

I extend my special appreciation to the 11 Individual Consultants, the Special Consultant (Master Trainer, DoPT) and the members of the Monitoring Committee who were instrumental in the preparation of these 50 Prison Training Manuals.

I am sanguine that these Manuals will bring about standardization of the training procedures and contents to a large extent and also facilitate capacity building of the Officers and Staff of the Prisons and Correctional Administration in the country.

(Balaji Srivastava)

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LEARNING EVENTS

Day – 1

LEARNING UNIT (LU)

LU- 1 - Introduction

LU – 1.1 - Meaning of legal services; Legal services – concept and components:

LU – 1.2 - Access to legal service - as a right; Importance of right to legal services

LU – 1.3 - Legal services in prison – need and necessity

Day – 2

LU-2 – Legal Services and International legal instruments

LU – 2.1– Universal Declaration of Human Rights (UDHR); International Covenant on Civil and Political Rights (ICCPR); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW);

LU – 2.2 - The Standard Minimum Rules for the Treatment of Prisoners, 1977;

LU – 2.3 - United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules); Beijing Rules, 1985; European Convention on Human Rights and Fundamental Freedoms:

Day – 3

LU- 3 - Legal Services & Indian Law Framework

LU – 3.1 –Indian Constitution

LU – 3.2 - Legal services authorities act, 1987

LU – 3.3 - Legal services and criminal procedure code

Day – 4

LU- 4- Legal Services as a means to ensure ‘Access to Justice’ and relevant Judicial Precedents

LU – 4.1–Important precedents

LU – 4.2 - Legal services and rights of inmates in custody during investigation;

LU – 4.3 - Legal services to a prisoner after conviction and his right to appeal

LU – 4.4 - Legal services and bail right of a prisoner; providing legal services in prison through ICT technology

Day – 5

LU-5- Institutional Mechanism ensuring Legal Services in prisons and other approaches of States

LU- 5.1 – Legal services authorities; NALSA and SALSA’s other initiatives; The National Legal Services Authority (Free and Competent Legal Services) regulations, 2010; National Legal Services Authority (Legal Aid Clinics) Scheme, 2010; National Legal Services Authority (Legal Aid Clinics) Regulations, 2011;

LU – 5.2 - National Legal Services Authority (NALSA)’S Para-Legal Volunteers Scheme, 2009; Scheme for Para-Legal Volunteers (revised); Lok Adalats; Legal Services Committee (LSC); The Supreme Court Legal Services Committee (SCLSC); High Court Legal Services Committee [HCLSC]

LU – 5.3 - Law schools; Pro bono lawyers and legal aid lawyers; MHA’s efforts and amendment to criminal procedure code & others

Followed with Feed Back and Assessment & Valediction Program

PART – C

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Emergence

The BPR&D has prepared 50 Prison Training Manuals for various ranks of Staff and Officers in Prison Administration under the categories viz., 05 Basic Courses, 08 In-Service Courses, 30 Specialized Courses, 02 Vertical Interaction Courses and 05 Handbooks for improving the quality and standardizing training of all Prison Officers and Staff across the country and to augment professional competency and capacity building of Prison Officers and Staff.

These Prison Training Manuals are objective oriented, learner centric and are outcome of several brainstorming sessions, consultative meetings (Online and Offline) and workshops for conceptualizing the drafts. Comments of the Monitoring Committee, Reports of Training Needs Analysis (TNA) for Prisons & Correctional Administration, National Training Policy (2012) have also been taken into account. In addition, various national and international practices, MHA Advisories, Landmark Judgements of the Apex Court and the High Courts, Statutory Acts/Rules have also been referred to in course of preparation of these training manuals. The design perspective of the Department of Personnel & Training, Government of India, has been adopted.

Introduction

This Training Manual titled “Legal Services in Prisons” emphasizes upon ensuring legal services to a prisoner through the institutional mechanism. The Manual which has five learning units covers legal provisions from the Indian Constitution, Criminal Procedure Code and the Legal services Authorities Act through which right to legal services of an accused including that of a prisoner is guaranteed.

The objective of the one-week course for officers of the ranks of Assistant Superintendent to Superintendent of Prison is to enhance legal awareness of the prison officers as well as prisoners thereby contributing towards making the prisons more legally compliant as well as administratively efficient institutions of State.

(For Trainers and Participants)

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INTRODUCTION

Legal services include creating legal awareness, providing services essential for an inmate in filing his bail applications, face a trial and the appeals must be provided through an effective law framework and efficient institutional mechanism. This training course is meant to understand the law as well as institutional framework in relation to the legal services that must be provided in a prison. Prison being an important machinery administering criminal justice system plays an important role also in ensuring protection of prisoners' rights. Prison must also ensure effective protection of a prisoner's right to legal services. Ensuring legal services to a prison aids for better access to justice which is integral to fair and just process of law, enshrined as legally guaranteed right of a prisoner.

AIM OF THE COURSE:

Sensitize prison officers on aspects related to legal services in prison and related issues, impart knowledge about legal and institutional framework related to 'legal services in prison'.

DESIGNED FOR

Assistant Superintendent or Deputy Jailor rank officers to Superintendent of Jails rank officers.

FACILITATORS

In House faculty or Guest faculty who are subject experts relevant to the Course.

STYLE OF THE COURSE

This course encompasses a series of sessions with combination of theoretical session with adoption of Socratic Method of learning along with practical learning activities. The Course is delivered through multiple media, styles and activities with a 'self-directed learning approach that is simulated by the use of field-based situations and sharing of best practices in Prison administration.

OBJECTIVES - At the end of the training participants will be able to:

Unit -1

Training Objective

Explain the concept, component and importance of legal services in prison and prisoners' right to legal services.

Enabling Objective

1. Define 'legal service'.
2. Explain legal service as a right of a prisoner
3. Explain the scope and importance of prisoner's right to legal service.
4. Explain the need of ensuring legal services in prison'

Unit -2:

Training Objective

Explain provisions from International legal instruments related to prisoner's right to legal services

Enabling Objective

1. List the International legal instruments relating to Prisoner's Right to legal services
2. Describe prisoner's rights to legal services from international legal instruments perspective.

Unit - 3:

Training Objective

Explain legal provisions related to 'legal services in prison'

Enabling Objective

1. Explain right to legal services of a prisoner as a constitutionally guaranteed right.
2. Describe provisions related to prisoner's right to legal services from the perspective of Indian legal framework.

Unit -4:

Training Objective

Explain prisoners right to legal services as a judicially recognized right

Enabling Objective

1. Describe the judicial precedents relating to the prisoner's right to legal services.
2. State various components of legal services that are also recognised as prisoner's right to legal service.

Unit 5:

Training Objective

Identify the institutions and mechanisms through which legal services are provided to a prisoner and explain the role played by such institutions and mechanisms.

Enabling Objective

1. Identify the institutions through which a prisoner's right to legal services are ensured
2. Describe the mechanisms and modes adopted by State in ensuring prisoner's access to legal services.

ASSESSMENT:

The priority during the Course is to assist participants to develop their skills. Assessment is, therefore, concerned with informal feedback and advice to individual participants.

Day Wise Schedule

Time	Topics	Objectives
Day 1		
	Registration	
Session I	Inauguration of the Course & UNIT 1	
Session II	Ice breaking Session and Ground rules	
Session III	Meaning of Legal Services; Legal Services – Concept and Components	1.1& 1. 3
Session IV	Access to Legal Service - As a Right	1.2
Session V	Importance of Right to Legal Services; Legal Services in Prison – Need and Necessity	1.3 &1.4
Day 2	UNIT 2	
0900- 0915	Learning Points- Recap of Day 1	
Session I	Universal Declaration of Human Rights (UDHR); International Covenant on Civil and Political Rights (ICCPR);	2.1& 2.2
Session II	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW);	2.1& 2.2
Session III	The Standard Minimum Rules for the Treatment of Prisoners, 1977; United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)	2.1& 2.2
Session IV	Beijing Rules, 1985	2.1& 2.2
Session V	European Convention on Human Rights and Fundamental Freedoms & others	2.1& 2.2
Day 3		
0900- 0915	Learning Points- Recap of Day 2	

Session I	Legal services and Indian Constitution	<u>3.1</u>
Session II	Legal services Indian Constitution – continuation	<u>3.1</u>
Session III	Legal Services Authorities Act, 1987	<u>3.2</u>
Session IV	Legal Services and Criminal Procedure Code	<u>3.2</u>
Session V	Legal Services and Criminal Procedure Code-continuation.	<u>3.2</u>
Day 4		
0900- 0915	Learning Points- Recap of Day 3	
Session I	Important Precedents	4.1
Session II	Important Precedents – continuation	4.1
Session III	Legal Services and rights of inmates in custody during Investigation	4.2
Session IV	Legal Services to a prisoner after conviction and his Right to Appeal	4.2
Session V	- Legal Services and bail right of a prisoner - Providing Legal Services in prison through ICT technology	4.2
Day 5		
0900- 0915	Learning Points- Recap of Day 4	
Session I	- Legal services authorities - NALSA and SALSA's other initiatives - The National Legal Services Authority (Free and Competent	5.1& 5.2

	Legal Services) regulations, 2010 • National Legal Services Authority (Legal Aid Clinics) Scheme, 2010 • National Legal Services Authority (Legal Aid Clinics) Regulations, 2011	
Session II	• National Legal Services Authority (NALSA)'S Para-Legal Volunteers Scheme, 2009 • Scheme for Para-Legal Volunteers (revised) • Lok Adalats	5.1& 5.2
Session III	• Legal Services Committee (LSC) - The Supreme Court Legal Services Committee (SCLSC) - High Court Legal Services Committee [HCLSC] • Law Schools • Pro Bono Lawyers and Legal Aid Lawyers • MHA's efforts and Amendment to Criminal Procedure Code: • Others	<u>5.2</u>
Session IV	Feed Back and Assessment	
Session V	Valediction Program	

Note:

Session I	0915-1030
Session II	1045-1200
Session III	1215-13.30
Session IV	1430-1530
Session V	1545-1645
Yoga	0630-0730
Library	1700-1730
Sports	1730-1830
Tea Break	1030-1045 1200-1215 (Break) 1530-1545
Break Fast	0800-0845
Lunch	1130-1430
Dinner	1930-2100

(For Trainers only)



TRAINER GUIDE

SPECIALISED COURSE FOR PRISON OFFICERS (ASST. JAILOR TO SUPRINTENDENT OF PRISONS) ON LEGAL SERVICES IN PRISONS (ONE WEEK)

INTRODUCTION

The ‘Trainer Guide’ is a comprehensive overview of the content and process of the Course. It is designed in a structured format that presents the assembled information and the planned activities with learning outcomes. Trainer Guide serves as a “Map” for sequential implementation of following content segments.

THE TRAINER GUIDE ALSO

- Helps continuous recall;
- Provides scope for storing illustrations, faculty questions, anticipated participant’s questions and appropriate responses;
- Contains details of points for briefing & debriefing of case study, exercises, Films, etc.
- Serves as reminder when to administer exercises; and
- Guides on the use of media

FOR TRAINERS

1. Trainer guide
2. Glossary of terms
3. References
4. Resources
5. MCQs with Answers.
6. List of case laws for group discussion

FOR PARTICIPANTS

1. Course Guide
2. Feedback Questionnaire

Day Wise Schedule

**SPECIALISED COURSE FOR
PRISON OFFICERS (ASST. JAILOR TO SUPRINTENDENT OF PRISONS)
ON
LEGAL SERVICES IN PRISONS
(ONE WEEK)**

Time	Topics	Remarks
Day 1		
	Registration& distribution of course guide	Format Registration Form – Appendix 1
Session I	Inauguration of the Course	Address by the Chief Guest
Session II	Ice breaking Session and Ground rules Self-Introduction of Participants • Name • Designation • Trainee’s Years of service • Distribute training material folders to participants Course Overview: Aims and Objects of the Course by the Training Coordinator	
Session III	Meaning of Legal Services; Legal Services – Concept and Components	Lecture and Discussion
Session IV	Access to Legal Service - As a Right	Same as above
Session V	Importance of Right to Legal Services; Legal Services in Prison – Need and Necessity	Identified Case laws discussion and lecture mode.
Day 2		

9:00- 9:15 AM	Learning Points- Recap of Day 1	Encourage each participant to say one learning point at least
Session I	Universal Declaration of Human Rights (UDHR); International Covenant on Civil and Political Rights (ICCPR);	Lecture and Discussion mode.
Session II	International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW);	Lecture and discussion mode
Session III	The Standard Minimum Rules for the Treatment of Prisoners, 1977; United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)	Lecture and Discussion mode.
Session IV	Beijing Rules, 1985	
Session V	European Convention on Human Rights and Fundamental Freedoms & others	
Day 3		
9:00- 9:15 AM	Learning Points- Recap of Day 2	Encourage each participant to say one learning point at least
Session I	Legal services and Indian Constitution	Lecture and Discussion mode.
Session II	Legal services Indian Constitution – continuation	
Session III	Legal Services Authorities Act, 1987	
Session IV	Legal Services and Criminal Procedure Code	
Session V	Legal Services and Criminal Procedure Code-continuation.	
Day 4		

9:00- 9:15 AM	Learning Points- Recap of Day 3	Encourage each participant to say one learning point at least
Session I	Important Precedents	Discussion and lecture mode
Session II	Important Precedents – continuation	
Session III	Legal Services and rights of inmates in custody during Investigation	
Session IV	Legal Services to a prisoner after conviction and his Right to Appeal	
Session V	- Legal Services and bail right of a prisoner - Providing Legal Services in prison through ICT technology	
Day 5		
9:00- 9:15 AM	Learning Points- Recap of Day 4	Encourage each participant to say one learning point at least
Session I	- Legal services authorities - NALSA and SALSA's other initiatives - The National Legal Services Authority (Free and Competent Legal Services) regulations, 2010 - National Legal Services Authority (Legal Aid Clinics) Scheme, 2010 - National Legal Services Authority	Discussion / Group Discussion mode

	(Legal Aid Clinics) Regulations, 2011	
Session II	• National Legal Services Authority (NALSA)'S Para-Legal Volunteers Scheme, 2009 • Scheme for Para-Legal Volunteers (revised) • Lok Adalats	Discussion/ Group Discussion mode
Session III	• Legal Services Committee (LSC) - The Supreme Court Legal Services Committee (SCLSC) - High Court Legal Services Committee [HCLSC] • Law Schools • Pro Bono Lawyers and Legal Aid Lawyers • MHA's efforts and Amendment to Criminal Procedure Code: • Others	Discussion cum lecture mode.
Session IV	Feed Back and Assessment	Feedback Format Form – Appendix 2
Session V	Valediction Program	

Day Wise Tasks

DAY-1

1. Registration
2. Inauguration
3. Detailed Introduction
4. Expectations
5. Course Objectives and Ground Rules
6. Self-Assessment Questionnaire
7. Course Guide distribution
8. Training
9. Learning / Unlearning / Relearning

DAY-2

10. Recap of Day-1
11. Training Sessions
12. Lunch
13. Post Lunch
14. Training

DAY-3

15. Recap of Day2
16. Training
17. Post Lunch
18. Training

DAY-4

19. Recap of Day 3
20. Training
21. Post Lunch
22. Field Visit to prison/SHRC/NHRC

DAY-5

23. Recap day 4
24. Training
25. Feedback
26. Valediction
27. Certificate Distribution
28. Group photo with Chief Guest

The course coordinator should compile the feedback of the participants and submit to the head of the training Institute

End of Course

PART-B

The Course (Learning Units)

COURSE GRID

1 INTRODUCTION	2 LEGAL SERVICES AND INTERNATIONAL LEGAL INSTRUMENTS	3 LEGAL SERVICES & INDIAN LAW FRAMEWORK
4 LEGAL SERVICES AS A MEANS TO ENSURE 'ACCESS TO JUSTICE' AND RELEVANT JUDICIAL PRECEDENTS	5 INSTITUTIONAL MECHANISM ENSURING LEGAL SERVICES IN PRISONS AND OTHER APPROACHES OF STATE	

LEARNING EVENT 1

Unit		1						
Learning Unit		Introduction						
Training Objective		Explain the concept, component and importance of legal services in prison and prisoners' right to legal services						
Enabling Objectives At the end of training, participants will be able to –		CONTENT	METHOD	MEDIA	TIME [Min]	TRAINE R	PERFORM ANCE AID	ASSESSMEN T
	1. Define 'legal service'. 2. Explain legal service as a right of a prisoner 3. Explain the scope and importance of prisoner's right to legal service. 4. Explain the need of ensuring legal services in prison'	Meaning of Legal Services Legal Services – Concept and Components: Access to Legal Service - As a Right Importance of Right to Legal Services Legal Services in Prison – Need and Necessity	Lecture-cum-Discussion	White Board, Marker, Projection System	45 each session	Guest Faculty/ In-House		GROUP DISCUSSION

LEARNING EVENT 2

Unit	2						
Learning Unit	Legal Services and International legal instruments						
Training Objective	Explain provisions from International legal instruments related to prisoner's right to legal services						
Enabling Objectives- At the end of training, participants will be able to	CONTENT	METHOD	MEDIA	TIME	TRAIN ER	PERFOR MANCE AID (IF ANY)	ASSESS MENT
1. List the International legal instruments relating to Prisoner's Right to legal services 2. Describe prisoner's rights to legal services from international legal instruments perspective.	Universal Declaration of Human Rights (UDHR); International Covenant on Civil and Political Rights (ICCPR); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW);	Lecture-cum-discussion	White Board, Marker, Projection System	45 each session	Guest Faculty/ In-House		Group discussion

	The Standard Minimum Rules for the Treatment of Prisoners, 1977; United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules); Beijing Rules, 1985; European Convention on Human Rights and Fundamental Freedoms;						
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LEARNIN-G EVENT 3

Unit	3						
Learning Unit	Legal Services & Indian Law Framework:						
Training Objective	Explain legal provisions related to ‘legal services in prison’						
Enabling Objectives- At the end of training, participants will be able to	CONTENT	METHOD	MEDIA	TIME (Min)	TRAINER	PERFORMAN CE AID (IF ANY)	ASSESSMEN T
Explain right to legal services of a prisoner as a constitutionally guaranteed right. 2. Describe provisions related to prisoner’s right to legal services from the perspective of Indian legal framework.	- Legal Services and Indian Constitution - Legal Services Authorities Act, 1987 - Legal Services and Criminal Procedure Code	Lecture-cum-discussion	White Board, Marker, Projection System	45 each session	Guest Faculty/ In-House		Group discussion – use APPENDIX 4.

LEARNING EVENT 4

Unit	4						
Learning Unit	Legal Services as a means to ensure 'Access to Justice' and relevant Judicial Precedents						
Training Objective	Explain prisoners right to legal services as a judicially recognized right						
Enabling Objectives- At the end of training, participants will be able to	CONTENT	METHOD	MEDIA	TIME [Min]	TRAINER	PERFORMANCE AID (IF ANY)	ASSESSMENT
1. Describe the judicial precedents relating to the prisoner's right to legal services. 2. State various components of legal services that are also recognized as prisoner's right to legal service.	- Important Precedents - Legal Services and rights of inmates in custody during Investigation - Legal Services to a prisoner after conviction and his Right to Appeal	Lecture-cum-discussion	White Board, Marker, Projection System	45 each session	Guest Faculty/ In-House		GROUP DISCUSSION USE APPENDIX 2 FOR CASE LAW DISCUSSIONS & APPENDIX 4

	- Legal Services and bail right of a prisoner - Providing Legal Services in prison through ICT technology						
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LEARNING EVENT 5

Unit	5						
Learning Unit	Institutional Mechanism ensuring Legal Services in prisons and other approaches of State						
Training Objective	Identify the institutions and mechanisms through which legal services are provided to a prisoner and explain the role played by such institutions and mechanisms.						
Enabling Objectives- At the end of training, participants will be able to	CONTENT	METHOD	MEDIA	TIME	TRAINER	PERFORMAN CE AID (IF ANY)	ASSESSMEN T
1. identify the institutions through which a prisoner's right to legal services are ensured 2. Describe the mechanisms and modes adopted by State in ensuring prisoner's access to legal services.	- Legal services authorities - NALSA and SALSA's other initiatives - The National Legal Services Authority (Free and Competent Legal Services) regulations,	Lecture-cum-discussion	White Board, Marker, Projection System	45 mints	Guest Faculty/ In-House		GROUP DISCUSSION

	2010 - National Legal Services Authority(Legal Aid Clinics) Scheme, 2010 - National Legal Services Authority (Legal Aid Clinics) Regulations, 2011 - National Legal Services Authority (NALSA)’S Para-Legal Volunteers Scheme, 2009 - Scheme for Para-Legal						
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	Volunteers (revised) - Lok Adalats - Legal Services Committee (LSC) - The Supreme Court Legal Services Committee (SCLSC) - High Court Legal Services Committee [HCLSC] - Law Schools - Pro Bono Lawyers and Legal Aid Lawyers - MHA's efforts and Amendment						
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	to Criminal Procedure Code: - Others + Feed Back and Assessment Valediction program						
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UNIT - I

INTRODUCTION

Effective administration of criminal justice system requires ensuring legal services to parties involved in the criminal process. Legal services are hence an integral part of justice system. It is of vital importance in a criminal justice process as it can make such process 'fair and just and reasonable'.

State has a duty to ensure that essential legal services are provided including spreading legal awareness amongst people, providing essential legal aid to needy, and enabling effective and fair administration of justice. This further requires extending legal services and legal aid to a person facing criminal process including a prison inmate.

LEGAL SERVICES – CONCEPT AND COMPONENTS:

The term legal service is a wider concept. It generally means those services provided to a person in need of legal aid or legal knowledge and other assistance while facing any legal proceedings. It includes assistance provided to a person while facing legal prosecution or any other legal proceedings. The term hence includes under its ambit services related to spreading legal awareness, providing legal aid to parties facing criminal prosecution, etc.

Legal aid is defined in Macmillan Dictionary as “a system in which the government pays for people to get advice about the law or to be represented in court when they do not have enough money for this.”¹

According to Section 2(1) (c) of the Legal Services Authorities Act, 1987, '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

¹ <https://www.macmillandictionary.com/dictionary/british/legal-aid>

giving of advice on any legal matter.” Legal Services thus includes legal aid, legal aid lawyer, legal awareness initiative, free legal advices, etc.

ACCESS TO LEGAL SERVICE - AS A RIGHT:

Access to legal services is a right of every citizen and most importantly of an accused facing criminal process. It is also regarded as a human right of a prisoner.

Right to legal service including legal aid is a right guaranteed by statutes and judicial precedents. Indian Constitution recognizes right to legal aid as an important aspect thus obligating State to ensure delivery of legal services to citizens especially to a person facing criminal legal proceedings. [Details discussed in the later part of the Manual]. Even though Indian constitution does not completely guarantee it as a fundamental right yet, its provisions relating to ‘Directive Principles of State Policy’ obligates State with duty to ensure legal services to the needy. This duty on the part of the State, on the other hand, constitutes to be legally ensured right of citizens. In fact in India legal aid right is also conferred to a foreign prisoner. Hence it is an important right of a prisoner.

Further other laws like Criminal Procedure Code, the Legal Services Authorities Act, 1987, etc. also recognizes right to legal services as a statutory right of individuals under certain circumstances. The law obligates the Government and the Courts with duty to ensure delivery of legal services to the needy and poor who are unrepresented in the judicial proceedings.

Access to justice must be ensured to all at all places including to the inmates in prisons. A prison inmate being the one facing criminal process conducted by the powerful State machinery needs legally enabled support system which can be provided through effective legal services.

IMPORTANCE OF RIGHT TO LEGAL SERVICES:

Access to justice is universally recognized as a basic human right. Opportunities, means and mechanisms through which access to justice is provided in a legal system must be equally provided to all without any discrimination. Both the rich and the poor, educated and the illiterates and people from all classes and castes should get equal access to justice. Hence, The Government of India along with other stake holders have come up with various schemes and institutional mechanisms to better provide legal services to all including prison inmates. Academic institutions as well as advocates community too cater to this need of the society, country and its legal system.

Legal aid for the needy and poor is required in various forms and at various stages. A person facing criminal process including a prisoner including legal advice and guidance on the process he is facing, to understand the applicable legal provisions and principles, to redress his grievances, to avail benefits provided by laws and most importantly to defend his case. It is of utmost importance to an accused facing criminal process so as to make the criminal justice administration meaningful and effective. Since a prisoner whose liberty is at stake, more emphasis is essential to provide legal aid to him while in such custody. Providing essential legal service is hence the moral as well as legal obligation of the State and in fact is an effort towards attaining noble cause of ensuring justice to all.

In India, since most of the prison inmates are poor, illiterate and may also be from socially excluded communities, they often are unaware of their legal rights and obligations. Such unawareness may make too handicapped to reach out to the state's legally guaranteed rights and aid. Hence, the need of ensuring legal services to prisoners. A prisoner must be able to understand his rights while in prison, while facing criminal process and while defending such process conducted against him by the powerful State machinery. He is required to understand the nuances of criminal justice system without which he may end up suffering due to improper or incomplete defense and legal representation. Legal services hence is

imminent from the very first time, an accused faces criminal process such as while getting arrested, while being interrogated by police and while being involved in a case under criminal investigation. Hence legal services such as legal aid, lawyer's representation, etc. are crucial at the early stages of the criminal justice process to ensure the efficiency and effectiveness of the criminal justice system as a whole. It is at this stage, that the extent and quality of evidence collected, and the prospects for a fair trial and appropriate decisions about guilt or innocence are determined which will have a huge bearing upon the accused's life². But many accused, due to their social and economic disability end up as under trial prisoners without recourse to bail and other legal remedies, as they are unable to get proper and effective representative in court of law. Hence, the need of providing legal services from this stage.

Prompt access to legal advice and assistance is the key to guaranteeing a fair trial and the rule of law³. Early free legal assistance also has the potential to reduce costs, both for the overall justice administration system as well as for the individuals and their families concerned⁴.

Legal service is a beneficial tool by which access to justice can be ensured to an individual. It hence is a crucial right of a person facing legal proceedings, especially while facing criminal proceedings. Most of the countries as State obligation provide legal aid as a matter of right to the accused at stages of the criminal justice process being indigent accused, having certain condition is well laid down to be satisfied by the beneficiary. The access to legal aid requires statutory institution and funding mechanism backed by an enactment.

² See: UNODC, Early access to legal aid in criminal justice processes: a handbook for policymakers and practitioners, Criminal Justice Handbook Series, UN, New York, 2014, available at https://www.unodc.org/documents/justice-and-prison-reform/eBook-early_access_to_legal_aid.pdf

³ UNODC, Early access to legal aid in criminal justice processes: a handbook for policymakers and practitioners, Criminal Justice Handbook Series, UN, New York, 2014, available at https://www.unodc.org/documents/justice-and-prison-reform/eBook-early_access_to_legal_aid.pdf

⁴Ibid.

In order to make legal services institutions more effective it is important to have a law framework providing or ensuring the same. A specific law that sets out in detail the circumstances in which a person is entitled to receive the legal services including legal aid along with rules specifying financial eligibility, etc. is essential. The law should also make it clear about the institution or individual who is made responsible to inform accused facing criminal prosecution about the rights vested on him by law and other facilities through which legal services are provided to him and other related issues.⁵ Further it is important to legally lay down procedures and guidelines essential to implement the related law and rules effectively. Such laws and mechanism should also provide a robust standard operating procedure for handling the cases in a proper manner.⁶ Further it is also important to have in place professional ethos and conducive climate which ensures that all criminal justice stake holders work effectively in order to provide legal services to an accused from the earliest stage of criminal process. Hence a country's law must include all these aspects in order to provide an effective framework related to legal services. Such law of a country can either be in form of provisions from Constitution or statute or both. India too has legal provisions related to legal services both in the Constitution\ and statutory enactments.

In addition to having a law framework, the implementation of a law in a country depends on factors that are peculiar to that country: whether it has a written constitution; the extent to which existing laws provide for early access to legal aid; and the approach to dividing regulation between primary and secondary legislation. However, it is suggested that all aspects of the regulatory regime covered be formally regulated rather than merely be the subject of guidance or protocols issued by Government ministries to prosecutors, police or prison

⁵ See: Early access to legal aid in criminal justice processes: a handbook for policymakers and practitioners, Criminal Justice Handbook Series, UNODC, https://www.unodc.org/documents/justice-and-prison-reform/eBook-early_access_to_legal_aid.pdf, last accessed on 4th February 2022.

⁶ Ibid. [Early access to legal aid in criminal justice processes: a handbook for policymakers and practitioners, Criminal Justice Handbook Series, UNODC, https://www.unodc.org/documents/justice-and-prison-reform/eBook-early_access_to_legal_aid.pdf, last accessed on 4th February 2022]

authorities. This will help to ensure that regulation of early access to legal aid is clear, appropriate, transparent and democratically accountable. This is important since these are procedural provisions that are intended to give effect to the right to legal aid, and that are usually included in legislation.

LEGAL SERVICES IN PRISON – NEED AND NECESSITY:

The number of convicts, under trial inmates and detenues were reported as 1, 44,125, 3, 30,487 and 3,223 respectively accounting for 30.11%, 69.05% and 0.67% respectively at the end of 2019. Other prisoners accounted for 0.2% (765 prisoners) of total prisoners. (as on 31.12.2019 statics)⁷. As Under trial inmates' form 69.05% of the prison population in India they require free legal services to get their trial completed expeditiously. Further as 30.11% of the prison population are convicts may require legal services to get their appeal filed and disposed within stipulated times as well as to apply in cases of eligibility for pre-term release, probation, parole, etc. As per the latest statistics of 2020, the number of Convicts, under trial inmates and detenues were reported as 1,12,589, 3,71,848 and 3,590 respectively accounting for 23.0%, 76.1% and 0.7% respectively at the end of 2020 and Other prisoners accounted for 0.1% (484 prisoners) of total prisoners.⁸

The need and importance of the legal services is that certain issues have to be identified and redressed by the authorities. Convicts often due to low literacy rate are 'not aware of the legal processes and are mostly in a state of ignorance vis-à-vis their rights'⁹.

⁷ <https://ncrb.gov.in/sites/default/files/PSI-2019-27-08-2020.pdf>

⁸ https://ncrb.gov.in/sites/default/files/Executive_ncrb_Summary-2020.pdf, last accessed on 14th February 2022.

“Accessing Justice to Convicts in Prisons through Legal Services – A Campaign”, <https://districts.ecourts.gov.in/sites/default/files/accessing%20justice%20to%20convicts%20in%20prisons%20thorough%20legal%20services.pdf>, last visited on 22nd August 2022.

The Convict's issues are as follows¹⁰:

- “(a) Lack of information and awareness about the right to appeal and its processes, and availability of free legal aid,
- (b) Difficulties in engaging lawyers,
- (c) Lack of information about the status of their appeals/SLPs/bail applications,
- (d) Lack of interaction with the lawyer representing them before Supreme Court and High Courts and
- (e) Lack of knowledge and information of Parole, Furlough, Remission etc. and its processes.”

Thus providing legal services to a prisoner is of paramount importance. State, its

¹⁰Ibid. agencies including prison administration must ensure that this right of prisoner is custody.

UNIT – II

LEGAL SERVICES

AND

INTERNATIONAL LEGAL

INSTRUMENTS

International Law assures the right to a fair trial for persons involved in criminal proceedings. The International declarations obligates the member states to recognize the right to fair trial of the accused and the free legal aid is the vital part of fair trial.

United Nations in its Universal Declaration of Human Rights [UDHR], 1948:

Indian Supreme Court rightly opined that “the widespread insistence on free legal assistance, where liberty is in jeopardy is obvious from the Universal Declaration of Human Rights Art. 8.¹¹ Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or by law.¹²

UDHR being the first and the most important document on human rights guarantees various rights to human beings by declaring them as human rights. It thereby obliges the State to ensure that the rights declared as human rights are protected by states and are ensured by the concerned State’s laws and institutions.

Article 10 of the Declaration states that “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

International Covenant on Civil and Political Rights (ICCPR), 1976:

ICCPR through Article 14 obliges states to provide legal services to a person facing criminal process. The provision states as follows:

“1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the

¹¹**Madhav Hayawadanrao Hoskot v. State of Maharashtra (1978) 3 SCC 544**

¹² Ibid

extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.”¹³

International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), 1990:

Migrant worker’s rights of fair trial and custodial rights have been explicitly recognized too under this Convention. The Convention under Article 16 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW), 1990 states that:

“1. Migrant workers and members of their families shall have the right to liberty and security of person.

2. Migrant workers and members of their families shall be entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

3. Any verification by law enforcement officials of the identity of migrant workers or members of their families shall be carried out in accordance with procedure established by law.

¹³International Covenant on Civil and Political Rights.

4. Migrant workers and members of their families shall not be subjected individually or collectively to arbitrary arrest or detention; they shall not be deprived of their liberty except on such grounds and in accordance with such procedures as are established by law.

5. Migrant workers and members of their families who are arrested shall be informed at the time of arrest as far as possible in a language they understand of the reasons for their arrest and they shall be promptly informed in a language they understand of any charges against them.

6. Migrant workers and members of their families who are arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that while awaiting trial they shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and, should the occasion arise, for the execution of the judgment.

7. When a migrant worker or a member of his or her family is arrested or committed to prison or custody pending trial or is detained in any other manner:

(a) The consular or diplomatic authorities of his or her State of origin or of a State representing the interests of that State shall, if he or she so requests, be informed without delay of his or her arrest or detention and of the reasons therefor;

(b) The person concerned shall have the right to communicate with the said authorities. Any communication by the person concerned to the said authorities shall be forwarded without delay, and he or she shall also have the right to receive communications sent by the said authorities without delay;

(c) The person concerned shall be informed without delay of this right and of rights deriving from relevant treaties, if any, applicable between the States concerned, to correspond and to meet with

representatives of the said authorities and to make arrangements with them for his or her legal representation.

8. Migrant workers and members of their families who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used.

9. Migrant workers and members of their families who have been victims of unlawful arrest or detention shall have an enforceable right to compensation.”¹⁴

OTHER LEGAL INSTRUMENTS RELATED TO PRISONERS RIGHTS:

UN has adopted rules mandating states to ensure adherence to minimum rules while treating prisoners. The first such standard was adopted in 1955, followed with a revised standards adopted from time to time.

The Standard Minimum Rules for the Treatment of Prisoners, 1977:

Rule 93 of the Minimum Rules recognizes various rights of prisoners... According to it:

“For the purposes of his defence, an untried prisoner shall be allowed to apply for free legal aid where such aid is available, and to receive visits from his legal adviser with a view to his defence and to prepare and hand to him confidential instructions.

¹⁴International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

For these purposes, he shall if he so desires be supplied with writing material. Interviews between the prisoner and his legal adviser may be within sight but not within the hearing of a police or institution official.”¹⁵

Nelson Mandela Rules, 2015:

A prisoner’s right to get relevant information including relating to legal services available to him has also been aptly recognized by the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 2015. This instrument through Rule 54 states as follows:

“Upon admission, every prisoner shall be promptly provided with written information about:

- (a) The prison law and applicable prison regulations;
- (b) His or her rights, including authorized methods of seeking information, access to legal advice, including through legal aid schemes, and procedures for making requests or complaints;
- (c) His or her obligations, including applicable disciplinary sanctions; and
- (d) All other matters necessary to enable the prisoner to adapt himself or herself to the life of the prison.” ¹⁶

Further according to Rule 61:

“(1). Prisoners shall be provided with adequate opportunity, time and facilities to be visited by and to communicate and consult with a legal adviser of their own choice or a legal aid provider, without delay, interception or censorship and in full confidentiality, on any legal matter, in conformity with applicable domestic law. Consultations may be within sight, but not within hearing, of prison staff.

(2). in cases in which prisoners do not speak the local language, the prison administration shall facilitate access to the services of an independent competent interpreter.

¹⁵ Standard Minimum Rules for the Treatment of Prisoners, 1977.

¹⁶Nelson Mandela Rules.

(3). Prisoners should have access to effective legal aid.”¹⁷

The Rule also specifically mentions about similar right been conferred upon an untried prisoner by stating under Rule 120:

“1. The entitlements and modalities governing the access of an untried prisoner to his or her legal adviser or legal aid provider for the purpose of his or her defence shall be governed by the same principles as outlined in rule 61.

2. An untried prisoner shall, upon request, be provided with writing material for the preparation of documents related to his or her defence, including confidential instructions for his or her legal adviser or legal aid provider.”¹⁸

According to Rule 41(3): “Prisoners shall be allowed to defend themselves in person, or through legal assistance when the interests of justice so require, particularly in cases involving serious disciplinary charges. If the prisoners do not understand or speak the language used at a disciplinary hearing, they shall be assisted by competent interpreter free of charge.”¹⁹

Beijing Rules, 1985:

Similar to the above legal instruments, Rule 15 of the UN’s Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), 1985 assures legal counsel and free legal aid to the juvenile and it recognizes the right of the parents or guardian to participate in the proceedings. Further, the parents or the guardian are entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile.

But for the reasons stated by the competent authority are necessary in the interest of the juvenile, then their participation can be excluded.

¹⁷Ibid.

¹⁸ibid

¹⁹ibid

European Convention on Human Rights and Fundamental Freedoms:

The European Convention on Human Rights and Fundamental Freedoms (ECHR) is a convention adopted by countries from European Union. The Convention while emphasizing on the need to protect ‘right to a fair trial’ recognizes rights related to legal services. It enunciates under Article 6(3) (c) and (e) that:

“(c) To defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;”

“(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”

The above are some of the international and regional legal instruments emphasizing on the need to provide legal services to a prisoner thereby recognizing ‘access to legal services’ as a right of such prisoner.

UNIT – III

LEGAL SERVICES AND INDIAN LAW FRAMEWORK

I. LAW FRAMEWORK RELATING TO LEGAL SERVICES:

Providing legal services in general and legal services to prisoners in particular is regarded as an important duty of the State. This is also legally recognized as an important aspect under Indian Laws. This chapter examines such laws and their legal interpretation by judiciary.

A. INDIAN CONSTITUTION

The Constitution of India in its preamble aims at securing justice in all modes of social, political and economic life of its citizens. The term Justice mentioned in the Preamble is envisioned through various Fundamental Rights and Directive Principles mentioned in the Constitution. Social and political justice, can be achieved by the Constitution when it ensures that the citizens of India have equal rights in social and political activities. To achieve this concept of fair justice following constitutional provisions have been enshrined as follows:

Article 21 which reads that “No person shall be deprived of his life or personal liberty except according to procedure established by law”. Article 21 is a fundamental right conferred under Part III of the Constitution, which ensures that no person’s life or personal liberty be taken away or deprived except by the process of law. Hence, without due process no person can be taken into custody or his liberty can be taken away. This is the cardinal principle of criminal justice administration also. In 1958, the 14th Law Commission Report emphasized on providing equal justice and free legal aid to the poor and in the following the recommendations of the law commission and various other committees in year 1976, keeping the need for providing free legal aid, the Constitution was amended by way of the 42nd Constitutional Amendment by inserting Article 39A under the Directive Principles of State Policy.

Article 39A ensures equal justice and free legal aid, according to which: “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.” Indian Government, exercising the power has under this provision, constituted a national level committee under the Chairmanship of Hon’ble. Mr. Justice P.N. Bhagwati 1980. The committee was empowered to oversee legal aid programmes delivered across India. This Committee, called as the ‘Committee for Implementing Legal Aid Schemes’ [**CILAS**] monitored and reviewed the functioning of the legal aid activities of the country.

B. LEGAL SERVICES AUTHORITIES ACT, 1987

Legal services Authorities Act. 1987 has been enacted to provide free legal services to needy persons of the society. The Act aims to ‘provide free and competent legal services to the needy section of the society’. The enactment incorporates the constitutional spirit of Justice - social, economic and political ideologies of the Constitution of India.

The Legal Services Authorities Act, 1987 constituted the legal services authorities. The Act through these authorities aims to ‘provide free and competent legal services to the weaker sections of the society’. It also aims to ensure that opportunities for ensuring justice is not denied to any citizen on the reasons associated with their economic or other disabilities. The Act also provides for organizing Lok Adalats in order ensure that ‘the operation of the legal system promotes justice on a basis of equal opportunity’.

Section 12 of the enactment provides criteria for giving legal services. It provides that 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 person with disability as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

(e) a person under circumstances of underserved 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 Government, 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 Government, if the case is before the Supreme Court.”

Thus, as per Section 12 (g), a prisoner that is a person in custody is entitled to receive ‘free and competent legal services.’

C. CRIMINAL PROCEDURE CODE

Indian Criminal Procedure Code though does not guarantee legal services of a lawyer at the cost of State to every accused, yet it provides it as a right that can be exercised by the accused at the stage of investigation, inquiry and trial as well as

post-trial stage such as at the stage of appeal, etc. This right of his can be exercised by him provided he is able to afford to exercise it. However, if an accused is facing trial before court of sessions, his right to legal aid lawyer is guaranteed at the cost of the State.

According to Section 303 "a right on a person, accused of an offence before the Criminal Court or against whom proceedings are instituted under this Code, to be defended by a pleader of his choice." As per this section, State is not obliged to provide legal aid lawyer and hence the needy and poor person because of his economic conditions if is not in a position to exercise his choice and has no means to engage a pleader to defend their case, can hardly exercise right guaranteed under this section.

On the other hand, according to Section.304, in case of a trial before the Court of Session, if an accused is not represented by an Advocate and if the court finds that such accused is not able to engage an advocate on his own, the Court can assign an Advocate to such accused for his defence. Such advocate is allotted to the accused by the Court at the cost of the State. It is interesting to note that under Section 304 (iii), the State Government, may, by notification, direct that the provisions of sub-section (i) will apply to any class of trials before other Courts in the State. Hence this right to defence guaranteed to the accused at the cost of state is an obligation of the State to be ensured in all cases by courts if such cases are tried by Sessions court. While in cases before other courts, the court may still grant such right exercising its discretionary power.

Hence Section 304 of the Cr.P.C, 1973 enables the Session Courts to engage a pleader to represent the accused at the expense of the State provided he is unrepresented and the court is satisfied that the accused has no sufficient means to engage an advocate for his defense. The Courts selects such advocate from the panel of advocates appointed in this behalf as approved and as per rules framed by High Court with previous approval of the State Government. It is also important to note that Criminal Procedure Code through its recent amendments made to section 161. Though this section recognizes the importance of the presence of a

lawyer with the accused facing investigation, in order to ensure that the investigation is not completely and unfairly interfered with, the section limits the scope of an accused's right to have a lawyer with him during investigation by limiting his presence only "during interrogation" and not "throughout investigation".²⁰

²⁰Supreme Court in Nandini Satpathy v. Dani (P.L.) and Anr AIR 1978 SC 1025.

UNIT – IV

LEGAL SERVICES AS A MEANS TO ENSURE ACCESS TO JUSTICE AND RELEVANT JUDICIAL PRECEDENTS

“Since the Supreme Court is the last in Indian pyramid of justice every party in person elicits from the Court extra solicitude so that he may not suffer from a sense of handicap due to the absence of professional legal service.”

-Justice Krishna Iyer²¹

Supreme Court of India being the beacon bearer of justice and protector of the Constitution has strived in providing legal aid for the needy and poor and has recognized the same in its various judgments.

In **Madhav Hayawadanrao Hoskot v. State of Maharashtra (1978) 3 SCC 544**, the court while interpreting ‘fair procedure’ said: “The other ingredient of fair procedure to a prisoner, who has to seek his liberation through the court process is lawyer's services. Judicial justice, with procedural intricacies, legal submissions and critical examination of evidence, leans upon professional expertise; and a failure of equal justice under the law is on the cards where such supportive skill is absent for one side. Our judicature, moulded by Anglo-American models and our judicial process, engineered by kindred legal technology, compel the collaboration of lawyer-power or steering the wheels of equal justice under the law. Free legal services to the needy is part of the English criminal justice system.”

Hon’ble SC declared that: “If a prisoner sentenced to imprisonment is virtually unable to exercise his constitutional and statutory right of appeal inclusive of special leave to appeal (to the Supreme Court) for want of legal assistance, there is implicit in the Court under Article 142 read with Articles 21 and 39-A of the Constitution, power to assign counsel for such imprisoned individual ‘for doing complete justice’”.

²¹**Madhav Hayawadanrao Hoskot v. State of Maharashtra (1978) 3 SCC 544**

The courts following observations are also noteworthy:

“Partial statutory implementation of the mandate is found in Sec. 304, Cr. P. Code, and in other situations courts cannot be inert in the face of Art. 21 and 39A.”

“We may follow up the import of Maneka Gandhi and crystallize the conclusion. Maneka Gandhi's case has laid down that personal liberty cannot be cut out or cut down without fair legal procedure. Enough has been set out to establish that a prisoner, deprived of his freedom by court sentence but entitled to appeal against such verdict, can claim, as part of his protection under Art. 21 and as implied in his statutory right to appeal, the necessary concomitant of right to counsel to prepare and argue his appeal.

If a prisoner sentenced to imprisonment, is virtually unable to exercise his constitutional and statutory right of appeal, inclusive of special leave to appeal, for want of legal assistance, there is implicit in the Court under Art. 142, read with Arts. 21, and 39A of the Constitution, power to assign counsel for such imprisoned individual for doing complete justice. This is a necessary incident of the right of appeal conferred by the Code and allowed by Art. 136 of the Constitution. The inference is inevitable that this is a State's duty and not government's charity. Equally affirmative is the implication that while legal services must be free to the beneficiary, the lawyer himself has to be reasonably remunerated for his services. Surely, the profession has a public commitment to the people but mere philanthropy of its members yields short mileage in the long run. Their services, especially when they are on behalf of the State, must be paid for. Naturally, the State concerned must pay a reasonable sum that the court may fix when assigning counsel to the prisoner. Of course, the court may judge the situation and consider from all angles whether it is necessary for the ends of justice to make available legal aid in the particular case. In every country where free legal services are given it is not done in all cases but only where public justice suffers otherwise. That discretion resides in the court.”

In the case of **Hussainara Kathoon V. Home Secretary, State of Bihar**, AIR 1979 SC 1369, the Supreme Court while hearing a matter related to the prolonged period of detention of under trial prisoners, the court made following observations:

“Then there are several under-trial prisoners who are charged with offences which are bailable but who are still in jail presumably because no application for bail has been made on their behalf or being too poor they are unable to furnish bail. It is not uncommon to find that under-trial prisoners who are produced before the Magistrates are unaware of their right to obtain release on bail and on account of their poverty, they are unable to engage a lawyer who would apprise them of their right to apply for bail and help them to secure release on bail by making a proper application to the Magistrate in that behalf. Sometimes the Magistrates also refuse to release the under-trial prisoners produced before them on their personal bond but insist on monetary bail with sureties, which by reason of their poverty the under-trial prisoners are unable to furnish and which, therefore, effectively shuts out for them any possibility of release from pretrial detention. This unfortunate situation cries aloud for introduction of an adequate and comprehensive legal service programme, but so far, these cries do not seem to have evoked any response. ***We do not think it is possible to reach the benefits of the legal process to the poor, to protect them against injustice and to secure to them their constitutional and statutory rights unless there is a nationwide legal service programme to provide free legal services to them.***” Further the Apex Court rightly linked this aspect with Article 21 of the Constitution by saying: “It is now well settled, as a result of the decision of this Court in Maneka Gandhi v. Union of India(1) that when Article 21 provides that no person shall be deprived of his life or liberty except in accordance with the procedure established by law, it is not enough that there should be some semblance of procedure provided by law, but the procedure under which a person may be deprived of his life or liberty should be 'reasonable, fair and just'. Now, a procedure which does not make available legal services to an accused person who is too poor to afford a lawyer and who would, therefore, have to go through the trial without legal assistance, cannot possibly be regarded as 'reasonable fair and just. It is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek his liberation

through the court's process that he should have legal services available to him.” Hence in this case, it is also essential to note that the court emphasized that free legal service was an inalienable element of reasonable, fair and just procedure and that the right to free legal services was implicit in the guarantee of Article 21. The court also observed that “Free legal services to the poor and the needy is an essential element of any 'reasonable, fair and just' procedure.” It also said “The philosophy of free legal service as an essential element of fair procedure is also to be found in the following passage from the judgment of Douglas, J. in *Jon Richard Argersinger v. Raymond Hamlin* (1) "The right to be heard would be, in many cases of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law, if charged with crime, he is incapable, generally of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defence, even though he has a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much truer is it of the ignorant and illiterate or those of feeble intellect.” The court then referring to Article 39-A, said: “This Article also emphasizes that free legal service is an inalienable element of 'reasonable, fair and just' procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. 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. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so required, provided of course the accused person does not object to the provision of such lawyer. We would, therefore, direct that on the next remand

dates, when the under-trial prisoners, charged with bailable offences, are produced before the Magistrates, the State Government should provide them a lawyer at its own cost for the purpose of making an application for bail, provided that no objection is raised to such lawyer on behalf of such under-trial prisoners....” The court further said: “We may also take this opportunity of impressing upon the Government of India as also the State Governments, the urgent necessity of introducing a dynamic and comprehensive legal service programme with a view to reaching justice to the common man. Today, unfortunately, in our country the poor are priced out of the judicial system with the result that they are losing faith in the capacity of our legal system to bring about changes in their life conditions and to deliver justice to them. The poor in their contact with legal system have always been on the wrong side of the law. They have always come across ‘law for the poor’; rather than ‘law of the poor’.

The law is regarded by them as something mysterious and forbidding-always taking something away from them and not as a positive and constructive social device for changing the socio-economic order and improving their life conditions by conferring rights and benefits on them. The result is that the legal system has lost its credibility for the weaker sections of the community. It is, therefore, necessary that we should inject equal justice into legality and that can be done only by dynamic and activist scheme of legal services.”

The court also said: “We would strongly recommend to the Government of India and the State Governments that it is high time that a comprehensive legal service programme is introduced in the country. That is not only a mandate of equal justice implicit in Article 14 and right to life and liberty conferred by Article 21, but also the compulsion of the constitutional directive embodied in Article 39A.

In *State of Haryana vs. Darshana Devi & Ors* AIR 1979 SC 855, the Supreme Court said “access to court is an aspect of Social Justice and that the State has no rational litigation policy if it forgets this fundamental” and quoted Australian Law Reform Commission

which states: “The right of effective access to justice has emerged with the new social rights. Indeed, it is of paramount importance among these new rights since, clearly, the enjoyment of traditional as well as new social rights presupposes mechanisms for their effective protection. Such protection, moreover, is best assured by a workable remedy within the framework of the judicial system. Effective access to justice can thus be seen as the most basic requirement-the most basic 'human right'-of a system which purports to guarantee legal right.”

In *Khatri and Others vs. State of Bihar & Ors* (1981 SCC (1) 627), the court observed that “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 indigence and whatever is necessary for his purpose has to be done by the State. The State may have its financial constraints and its priorities in expenditure but, as pointed out by the court in *Rhem v. Malcolm*. “The law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty” and to quote the words of Justice Blackmun in *Jackson vs. Bishop*, 404 F. Supp. 2d, 571: “humane considerations and constitutional requirements are not in this day to be measured by dollar considerations.” It held that: “The State is under a constitutional obligation to provide free legal services not only at the stage of trial but also at the stage when the accused is first produced before the magistrate as also when he is remanded from time to time.” The court in this case also emphasized upon the earliest stage of criminal process when legal services to the accused must be provided. It said: “this constitutional obligation to provide free legal services to an indigent accused does 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.”

The court also recognizes the importance of court’s duty to inform about this right to an accused by stating: “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 recognized 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.”

The Supreme Court in *Suk Das & Anr vs. Union Territory Of Arunachal*²² deliberated on ‘the question of considerable importance relating to the administration of criminal justice in the country and the question is whether an accused who on account of his poverty is unable to afford legal representation for himself in a trial involving possibility of imprisonment imperiling his personal liberty, is entitled to free legal aid at State cost and whether it is obligatory on him to make an application for free legal assistance or the Magistrate or the Sessions Judge trying him is bound to inform him that he is entitled to free legal aid and inquire from him whether he wishes to have a lawyer provided to him at State cost: if he is not so informed and in consequence he does not apply for free legal assistance and as a result he is not represented by any lawyer in the trial and is convicted, is the conviction vitiated and liable to be set aside? This question is extremely important because we have almost 50% population which is living below the poverty line and around 70% is illiterate and large sections of people just do not know that if they are unable to afford legal representation in a criminal trial, they are entitled to free legal assistance provided to them at State cost.’

The court rightly held that “The right to free legal service is a constitutional right of every accused person who is unable to engage a lawyer and secure legal service on account of reasons, such as, poverty, indigence or Incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of the justice to require, provided, of course, the accused person does not object to the provision of such lawyer.” The court also said: “It would in these circumstances 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.”

²²AIR 1986 SC 991

Legal services and rights of an inmate during judicial custody in the course of investigation

The right of a prisoner to get legal aid while in police and judicial custody. That ever since his arrest, the accused has a right to be consulted by a legal advisor of his choice and to be defended by him 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; and . That such a right must of course not be abused and must be granted subject to reasonable restrictions as to time and convenience of the police authorities not less than that of the party making the interview.

In the case of Nandini Satpathy vs. Dani (P.L.) And Anr AIR 1978 SC 1025, the court emphasized on the need of having a lawyer's presence with the accused at the time of investigation especially during interrogation. The court said: "if an accused person expresses the wish to have his lawyer by his side when his examination goes on, this facility shall not be denied, without being exposed to the serious reproof that involuntary self-crimination secured in secrecy and by coercing the will was the project lawyer cannot harangue the police but may help his client and complain on his behalf although his very presence will ordinarily remove the implicit menace of a police station. No doubt the presence of a lawyer is asking for the moon in many cases until a public defender system becomes ubiquitous. The police need not wait more than for a reasonable while for an advocate's arrival. But they must invariably warn and record that fact about the right to silence against self-incrimination; and where the accused is literate take his written acknowledgment." Court reiterated that the "Lawyer's presence is a constitutional claim in some circumstances in our country also, and, in the context of Article 20(3), is an assurance of awareness and observance of the right to silence." [**Also see** - Khatri and Others vs. State of Bihar & Ors (1981 SCC (1) 627) – discussed above]

Article 22(1) of Constitution of India states- “no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.”

In *Sheela Barse v. State of Maharashtra*²³ the Supreme Court considered the right to legal aid to under-trial and convicted prisoners. Court after considering various problems with regard to the legal aid to under-trial and convicted prisoners, pronounced the following directions:

- (1) to send a list of all under-trial prisoners to the Legal Aid Committee of the district in which the jail is situate 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 Cr.P.C. 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

²³ 1983 AIR 378, 1983 SCR (2) 337

regarding any matter for which he requires legal assistance and such interview should be within sight but out of hearing of any jail official.

Legal services to a prisoner after conviction and his Right to Appeal.

If a prisoner is convicted and sentenced to prison and if he is practically unable to exercise his constitutional and statutory right of appeal or review, including special permission to appear due to lack of legal assistance, the prison administration will have to make all facilities available for the exercise of that right. In *Madhav Hayawadanrao Hoskot v. State of Maharashtra*²⁴ the Court in this case emphasizes upon the importance of providing free legal services to an accused stating that it is pertinent to point the requirement of the ‘provision of free legal services to a prisoner who is indigent or otherwise disabled from securing legal assistance where the ends of justice call for such service’ and ensuring this is one of the “State responsibilities under Article 21.”

Further the prison authorities can assist the prison inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries (offline or online) or adequate assistance from pro-bono advocates or the legal services authority.

In *Bounds v. Smith*²⁵, the 1977 landmark United States Supreme Court decision, which led to the establishment of law libraries in most major U.S. prisons. This case laid down a fundamental right of prisoner’s right and his ability to seek redress of complaints before courts of law.

Legal services and bail right of a prisoner

It is a perennial problem that many under trial prisoners languish in prison a longer period while awaiting trial due to various reasons. When there is a delay in proceedings and disposal of a criminal case it would be pertinent that courts may make an effort to release the under trial prisoners to avoid hardship to him. (*Ramamurthy v. State of Karnataka*, (1997) S.C.C. (Cri) 386).

²⁴ AIR 1978 S.C. 1548

²⁵ 430 U.S. 817

Further Section 436A has been inserted to Criminal Procedure Code, by virtue of Criminal Law Amendment, 2005 wherein it reads:

“Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.”

Hence, by virtue of Section 436 A any under trial prisoner undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties, which recognizes the right of the prisoner not to be incarnated in prison due to delay in trial.

The Ministry of Home Affairs’ advisory on “Use of Section 436A of the Cr.P.C to reduce overcrowding of prisons” dated 17th January 2013, requires Prison authorities to ‘educate under trial prisoners on their rights to bail’ and ‘Provide

legal aid - may be provided through empanelled lawyers of DLSA to cases presented for release on bail and reduction of bail amount.²⁶

Providing legal services in prison through ICT technology

Information and Communications Technology has become a boon to many under trials. As the judiciary has geared up and upgraded itself with technology the courts are using online platforms to hear the cases. Especially during COVID-29 pandemic IC technology has allowed the judiciary to function without any hindrance and aided in delivery of justice.

Justice V.S. Malimath Committee on Reforms of Criminal Justice System in 2003 had suggested to use the technology in criminal investigation as well as for the basic process to benefit under trials.

The Supreme Court of India had formed E-Committee to bring out national policy and action plan for implementation of information and communication technology in the Indian judiciary, 2005 which had advanced the use of technology in delivery justice system.²⁷ Usage of ICT in the prison for its meaningful contribution to criminal justice administration is also envisaged in the plan proposed by this committee. The project envisaged by this committee emphasized that in its second phase, “all the remaining Court Complexes are provisioned to be connected with Jails and Desktop based Video Conferencing to go beyond routine remands and production of under-trial prisoners. It will also be used for recording evidence in sensitive cases and gradually extended to cover as many types of cases as possible.”²⁸

In 2010, the Indian government initiated the E-Courts project to establish technology-enabled courts, promote automation of case management processes

²⁶https://www.mha.gov.in/sites/default/files/AdvSec436APrison-060213_0_0.pdf, last accessed on 14th February 2022.

²⁷ See: <https://main.sci.gov.in/pdf/ecommittee/action-plan-ecourt.pdf>

²⁸https://services.ecourts.gov.in/ecourtindia_v6/static/about-us.php, last visited on 22nd August 2022.

and provide online systems for payment of fees in lower courts. The objective was to reduce delays by increasing transparency for litigants and providing access to legal databases to judges.

Because of Integrated Services Digital Network [ISDN] technology, courts and prisons have been connected and the remand appearance of the accused are conducted from prison itself without taking the prisoners outside to the premises of the Court. The Judge or magistrate either in video conference chamber or in the court itself are accessing the network and extending the remand of the under trials. Hence without the need to transport prisoners to the courts on every day has saved time, manpower and financial burden on the State.

Further the Department of Justice in 2017 has launched the Nyaya Mitra program. As part of this program, the retired judicial or executive officers with legal experience work as Nyaya Mitras and provide legal assistance to resolve cases that have been pending for more than ten years by liaising with the different departments to fast disposal of cases and referring cases to Lok Adalat as identified from the National Judicial Data Grid (NJDG) database.

National Legal Services Authority (NALSA) which has also been entrusted with responsibility to provide legal aid to persons in custody has launched a Web Application for free Legal Services to Prisoners and the Legal Services Management System developed through the NIC in the year 2017.²⁹

Through Web Application the State Legal Services Authorities and District Legal Services Authorities shall feed the data for each individual prison inmate in the jails within their jurisdiction, with regard to their being represented through a counsel in the court. The technology will be able to generate reports showing total number of inmates, number of inmates unrepresented, number of inmates represented by legal services lawyers and number of inmates represented by private lawyers. All the above information can be generated State wise, District

²⁹ See: nalsa.gov.in/lams/nologin/howToApply.action).

wise and also in respect of each jail. The reports can also be generated by the period of incarceration, which will in turn generate information with regard to prisoners eligible for bail under Section 436-A Cr.P.C. The said application shall make the legal services system more transparent; this application will be universally useful for all the relevant authorities to monitor the grant of legal aid to the prisoners in order to ensure that absolutely no prisoner goes unrepresented right from the first day of his production in the court. Hence, use of ICT in prison has further the cause of legal aid by the State in achieving the mandate made by the Constitution of India under Article 39-A.

Pro bono Legal Services is a web-based platform initiated by Department of Justice in year 2017 to achieve access to justice for marginalized sections of the society and providing them with free legal aid. The scheme uses technology to enhance access to justice for all, the Nyaya Bandh app will allow marginalized individuals seeking quality legal advice and counsel, to connect via a mobile application with "Advocates" who have volunteered their time and services on this platform legal aid. The advocates are considered as Nyaya Bandhu.

UNIT - V:

**INSTITUTIONAL MECHANISM
ENSURING LEGAL SERVICES
IN PRISONS
AND
OTHER APPROACHES OF
STATE**

Legal Services Authorities

The Mechanism under the legal services Act is in three tiers namely (a) National Legal Services Authority (NALSA) (b) State Legal Services Authority (SLSA) and (c) District Legal Services Authorities (DLSAs) (d) Taluk Legal Services Authorities.

The National Legal Services Authority (NALSA) has been constituted to monitor and evaluate implementation of legal aid programmes and to lay down policies and principles for making legal services available for the needy. NALSA is entrusted with responsibility to provide legal aid inter-alia to all persons in custody.³⁰

In every State, State Legal Services Authority (SLSA) and in every High Court, a High Court Legal Services Committee has been constituted under the Act.³¹ The District Legal Services Authorities (DLSA), Taluk Legal Services Committees have been constituted in the districts and most of the taluks to give effect to the policies and directions of the NALSA and to provide free legal services to the people and conduct Lok Adalats in the state.³²

Functions of National Legal Services Authority (NALSA) under Section 4 of the Act are to do following functions³³:

- (a) lay down policies and principles for making legal services available under the provisions of this Act;
- (b) frame the most effective and economical schemes for the purpose of making legal services available under the provisions of this Act;
- (c) utilise the funds at its disposal and make appropriate allocations of funds to the State Authorities and District Authorities;

³⁰Ministry of Law & Justice, Press Information Bureau, 29-June-2017, <https://pib.gov.in/newsite/printrelease.aspx?relid=166991>, last accessed on 14th February 2022.

³¹Ibid.

³²Ibid.

³³ Act under Section 4

- (d) take necessary steps by way of social justice litigation with regard to consumer protection, environmental protection or any other matter of special concern to the weaker sections of the society and for this purpose, give training to social workers in legal skills;
 - (e) organise legal aid camps, especially in rural areas, slums or labour colonies with the dual purpose of educating the weaker sections of the society as to their rights as well as encouraging the settlement of disputes through Lok Adalats;
 - (f) encourage the settlement of disputes by way of negotiations, arbitration and conciliation;
 - (g) undertake and promote research in the field of legal services with special reference to the need for such services among the poor;
 - (h) to do all things necessary for the purpose of ensuring commitment to the fundamental duties of citizens under Part IVA of the Constitution;
 - (i) monitor and evaluate implementation of the legal aid programmes at periodic intervals and provide for independent evaluation of programmes and schemes implemented in whole or in part by funds provided under this Act;
- Functions of State Legal Services Authority (SALSA) under Section 7 of the Act are to do following functions³⁴:

- (a) It shall be the duty of the State Authority to give to effect to the policy and directions of the Central Authority.
- (b) give legal service to persons who satisfy the criteria laid down under this Act;
- (c) Conduct Lok Adalats, including Lok Adalats for High Court cases;
- (d) undertake preventive and strategic legal aid programmes; and
- (e) perform such other functions as the State Authority may, in consultation with the Central Authority fix by regulations.

NALSA & SALSA's other initiatives:

NALSA in order to further facilitate delivery of legal services to prisoners, launched a Web Application for free Legal Services to Prisoners and the Legal Services Management

³⁴ Section 7

System developed through the NIC on 28.06.2017.³⁵ According to the Governments press release: “Through Web Application the State Legal Services Authorities and District Legal Services Authorities shall feed the data for each individual prison inmate in the jails within their jurisdiction, with regard to their being represented through a counsel in the court. The software will be able to generate reports showing total number of inmates, number of inmates unrepresented, number of inmates represented by legal services lawyers and number of inmates represented by private lawyers. All the above information can be generated State wise, District wise and also in respect of each jail. The reports can also be generated by the period of incarceration, which will in turn generate information with regard to prisoners eligible for bail under Section 436-A Cr.P.C. The said application shall make the legal services system more transparent; this application will be universally useful for all the relevant authorities to monitor the grant of legal aid to the prisoners in order to ensure that absolutely no prisoner goes unrepresented right from the first day of his production in the court.”³⁶

The National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010:

This regulation prescribes the procedure of making application for legal services from legal service institutions [which includes under **Rule 2(e)** 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).³⁷

The State Legal Services Authorities have established Legal Service Clinics in jails with a view to provide free legal assistance to persons in need. There are about 1091 Legal Service Clinics in jails which are operated by Empanelled Legal Services Advocates and

³⁵Ministry of Law & Justice, Press Information Bureau, 29-June-2017, <https://pib.gov.in/newsite/printrelease.aspx?relid=166991>, last accessed on 14th February 2022.

³⁶Ibid. [Ministry of Law & Justice, Press Information Bureau, 29-June-2017, <https://pib.gov.in/newsite/printrelease.aspx?relid=166991>, last accessed on 14th February 2022.]

³⁷ See: https://nalsa.gov.in/uploads/pdf/2019/09/26/26_09_2019_875124084.pdf

trained Para-Legal Volunteers. Such clinics have been opened in jails to ensure that no prisoner remains unrepresented and legal aid and advice is provided to the prisoners. For easing and expediting the justice process, Video Conferencing facility has been enabled between 3240 court complexes and 1272 corresponding jails.”³⁸

The 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] also requires for establishment of legal aid clinics at various institutions in order to provide legal relief easily accessible to the indigent and backward sections of our society .

The National Legal Services Authority (Legal Aid Clinics) Regulations, 2011 requires the District Legal Services Authority to 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.³⁹

As per NALSA Legal Aid Clinics Regulations, 2011, and instructions from time to time, Legal Aid Clinics were established in all the Districts at Jails, Law Colleges and Universities, villages and other community centers such as Police Stations, Juvenile Justice Institutions, Old-age Homes, Tribunals for Old-age Homes, Hospitals etc.⁴⁰ The Jail Clinics are functioning in the Jails where the Jail Authorities have provided demarcated place within the Jail premises.⁴¹ Today, thousands of ‘Legal Services Clinics are operational in jails, catering to the legal needs of prisoners.’⁴² Further, advocates are enrolled in the panel to provide legal

³⁸ MHA’s response to Rajya Sabha on 2nd February 2022, available at <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2022-pdfs/RS02022022/57.pdf>, last visited on 14th February 2022.

³⁹ Rule 3. See: <http://slsagoa.nic.in/schemes/nlacr.pdf>

⁴⁰ https://apslsa.ap.nic.in/legal_literacy.html

⁴¹ Ibid. [https://apslsa.ap.nic.in/legal_literacy.html] & also see: National Legal Services Authority (Legal Aid Clinics) Scheme, 2010, available at http://chdsla.gov.in/right_menu/schemes/pdf/files/legal_aid_clinic.pdf

⁴² National Legal Services Authority, Accessing Justice to Convicts in Prisons through Legal Services: A Campaign, available at <https://nalsa.gov.in/library/a-campaign-for-accessing-justice-to-convicts-in-prisons-through-legal-services>, last accessed on 14th February 2022.

aid to prisoners. These lawyers can also interact with prisoners through video conference. Additionally, the functionaries of District Legal Services Authorities also regularly visit jails for providing legal services.⁴³

The National Legal Services Authority (NALSA)'s Para-Legal Volunteers Scheme, introduced in 2009 further attempted to remove the barriers into access to justice by way of appointing the Para-Legal Volunteers (PLVs) who 'are expected to act as intermediaries bridging the gap between the common people and the Legal Services Institutions to remove impediments in access to justice'.⁴⁴

According to the Scheme for Para-Legal Volunteers (Revised)⁴⁵

- When the PLV receives information about the arrest of a person in the locality, the PLV shall visit the Police Station and ensure that the arrested person gets legal assistance, if necessary, through the nearest legal services institutions.
- PLVs shall, with proper authorization from the DLSA/TLSC visit jails, lock-ups, psychiatric hospitals, children's homes/observation homes and shall ascertain the legal service needs of the inmates and intimate the authorities concerned about any absence noticed of basic essential necessities with special emphasis on hygiene.
- The Secretary, DLSA or TLSC may depute PLVs in the Legal Aid Clinics set up under the National Legal Services Authority (Legal Aid Clinics) Regulations, 2011. The PLVs engaged in the Legal Aid Clinics shall function in such clinics in accordance with the provisions of the aforesaid regulations.

⁴³ Ibid. [National Legal Services Authority, Accessing Justice to Convicts in Prisons through Legal Services: A Campaign, available at <https://nalsa.gov.in/library/a-campaign-for-accessing-justice-to-convicts-in-prisons-through-legal-services>, last accessed on 14th February 2022.]

⁴⁴ <https://districts.ecourts.gov.in/para-legal-volunteers>

⁴⁵ Scheme for Para-Legal Volunteers (Revised) & Module for The Orientation - Induction - Refresher Courses for PLV Training, National Legal Services Authority, available on <https://nalsa.gov.in/acts-rules/preventive-strategic-legal-services-schemes/scheme-for-para-legal-volunteers>.

- A few educated well-behaved prisoners serving long term sentences in the Central Prison and District Prisons may be identified for being trained as Para Legal Volunteers. Their services shall be available to the other prisoners in the jail including the under-trial prisoners. The training of such PLVs may be conducted along with the other PLVs.

Lok Adalats

In order to facilitate alternative methods of dispute resolution, NALSA conducts Lok Adalats. It is supplementary system or forum where disputes/cases pending in the court of law or at the pre-litigation stage are settled/compromised amicably with the aid and assistance of the court and advocates.⁴⁶Lok Adalats have been given statutory and formal institutional status under the Legal Services Authorities Act, 1987 as per Chapter VI of The Legal Services Authorities Act, 1987.

According to Section 21 of the Act, every award of the Lok Adalat shall be deemed to be a decree of a civil court or order of the Court and where a compromise or settlement has been arrived at by a Lok Adalat and the court-fee paid in such case shall be refunded to the party who has paid the Court fee. And every such award is considered legally as a final order and it is binding on all the parties to the dispute. The section does not provide for an appeal against such order.

There are three types of Lok Adalats:

- 1) The Regular Lok Adalats which are organized by the Legal Services Authorities/Committees as per the convenience/discretion of the State/District authorities, for settlement of both pre-litigation and post-litigation cases.
- 2) The National Lok Adalats which are conducted quarterly for settlement of cases (both pre-litigation and post-litigation) in all the courts from the Supreme Court of India to the taluk courts on a single day.

⁴⁶ See: <https://nalsa.gov.in/lok-adalat>

3) Permanent Lok Adalats which as the name itself indicates is a permanent establishment which is set up in most of the districts so as to provide compulsory pre-litigative mechanism for settlement of disputes related to public utility services [see Section 22 of the Act].

Legal Services Committee (LSC)

1. The Supreme Court Legal Services Committee (SCLSC)

This has been constituted under Section 3A of the Legal Services Authorities Act, 1987 provides for the constitution of the Supreme Court Legal Services Committee. This committee is to ensure free and competent legal services to the weaker sections of the Society in the cases that fall under the jurisdiction of Hon'ble Supreme Court of India.

This Committee is regulated as per the Supreme Court Legal Services Committee Regulations, 1996. It is important to note that this committee is headed by a sitting Judge of the Hon'ble Supreme court as its chairman along with 9 members who are nominated by the Hon'ble Chief Justice of India.

2. High Court Legal Services Committee

The High Court Legal Services Committee (HCLSC) has been constituted under Section 8A of the Legal Services Authorities Act, 1987 and regulated by The High Court Legal Services Committee Regulations, 1997 for providing free and competent Legal Services to the weaker sections of the Society in the cases which fall under the jurisdiction of High Court. The Committee consists of a sitting Judge of Hon'ble High Court, who is Chairman and 10 members nominated by the Hon'ble Chief Justice of High Court. It enables High Court of each State to constitute Legal Services Committee to implement legal services related to the High Court.

A person in need of legal services while taking up a legal matter or while defending a legal action before a High court can approach this committee and seek for legal services. He can apply for legal services by making an application for the same either through a written form or by way of filling up the forms prescribed by the Committee. He must mention in brief the reason for seeking legal aid in such application. Upon the receipt of application for legal service, the Secretary of the Committee examines such application and decides upon the question of eligibility of such applicant to seek for legal services. If such applicant satisfies the eligibility criteria, the Secretary proceeds with further examination of such application on the question of merit of such application. Upon the satisfaction of merit of the application, he/she proceeds to decide the mode of legal service.

On the other hand, if such application is rejected for not being able to establish merit, the secretary should record reasons for such rejection in writing and accordingly inform the applicant. An appeal against such rejection can be taken up before the Chairman of the Committee.

This mechanism has been very helpful in ensuring legal services in cases of genuine need before high courts.

Law Schools

Legal Colleges have made legal aid and legal service clinic as a part of their curriculum and taken up the initiative to spread awareness about the law and provide legal aid to the needy. The law colleges have taken up the duty of spreading legal awareness all around the country. The legal aid/service clinics in some law colleges serve two purpose i.e., (a) Creating legal awareness among the people and (b) Nurturing the young legal minds in understanding the real-life social issues of the society.

Legal Services Clinics are student run committee which offers legal and paralegal services. To spread legal awareness, students are made to regularly perform legal literacy programmes, distribute newsletters, etc., and undertake other projects to disseminate important legal topics on the law among the public in local languages.

The Department of Justice under the NyayaBandhu or Pro-bono services scheme have enlisted law schools and are advising and monitoring the legal aid activities of the law schools. The legal clinics establish contact established lawyers across the State and seek advice from them to aid and assist the students who are spreading legal awareness amongst the needy and rural population. These schemes inculcate a sense of social and civic responsibility in the students towards the society. Students are made to attend seminars, visiting the jails and interact with the downtrodden and prisoners.

Pro bono lawyers and legal aid lawyers

It is State's duty to provide legal aid as a part of fair trial right guaranteed both under Criminal Procedure Code as well as Constitutional provisions relating to fundamental rights as well as per Article 39A. Article 39A from the Directive Principles of State Policy requires State to "provide free legal aid to the poor and needy, the lawyers or law firms as member of the civil society render their legal services on humanitarian grounds." On the other hand, it is also the duty of citizens including lawyers to contribute in the best possible manner towards complying with fundamental duties. Lawyer's being citizens must use their professional skill and expertise to provide legal aid to needy. This is also implicit in the constitutionally recognized fundamental duty under Article 51- A (j) according to which "It shall be the duty of every citizen of India to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement." Hence the need of free legal services by lawyers. Lawyers are thus required to provide pro bono services as and when possible so that social justice is ensured in society. "Pro Bono Legal services" refers to the advocates or law firms giving legal assistance to those who are unable to represent themselves due to financial restraint. The word "*Pro Bono*" is derived from a Latin term – 'pro bono public' meaning 'for the public good.'⁴⁷ Since legal profession is considered as noble profession those who are in genuine need of legal help are represented by advocates for free of cost or at a minimal cost.

According to Rule 46 of the Bar Council of India's Standards of Professional Conduct and Etiquette, "Every advocate shall in the practice of the profession of law bear in mind that

⁴⁷<https://legal-dictionary.thefreedictionary.com/Pro+bono+publico>, last visited on 22nd August 2022.

any one genuinely in need of a lawyer is entitled to legal assistance even though he cannot pay for it fully or adequately and that within the limits of an Advocate's economic condition, free legal assistance to the indigent and oppressed is one of the highest obligations an advocate owes to society." The rule obligates of an advocate to safeguard the interest of the poor and the needy and provide the legal assistance for free of cost or for minimal cost.

National Legal Services Authority and State Legal Aid Services authorities also engage the voluntary services of advocate by appointing them in panel of advocates. Such advocates are referred the cases wherein they take up the cases of needy and poor and conduct for the nominal charges fixed by the authority or do free of cost. On the other hand, many lawyers provide legal services for their poor and underprivileged clients on their personal efforts which cannot be quantified or accounted.

DLSA is required to depute 'Remand Advocates' in the Magisterial Courts, Sessions Court and also in the courts of Executive Magistrate as per the requirement.⁴⁸ These remand advocates represent prison inmates in courts including while filing bail applications, challenging remand orders, etc. a remand advocate plays 'an important role to play in Justice Delivery System (JDS) as he is the pioneer in minimizing the remand of a person arrested by the Police'.⁴⁹

Legal services extended effectively to prison inmates can also solve problems such as – over stay in prison and overcrowding of prisons. Recently Supreme court asked NALSA to consider issuing uniform SOP for convicts to secure premature release and directed the U.P. State legal services authority to 'ensure that its panel of lawyers visit every prison within the State and after due scrutiny of the nature of conviction, term of sentence and the sentence undergone, advise convicts and assist them in drafting appropriate representations

⁴⁸ See: http://117.239.39.53/docs/other_files/Early-Access-to-Justice-at-Pre-Arrest-Arrest-and-remand-stage.pdf. Also see - <https://nalsa.gov.in/acts-rules/guidelines>.

⁴⁹ Hon'ble Justice Virender Singh. See: Remand Advocates play crucial role in justice delivery: CJ, Wednesday, 05 October 2016, PNS, Ranchi, available at <https://www.dailypioneer.com/2016/state-editions/remand-advocates-play-crucial-role-in-justice-delivery-cj.html>, last accessed on 14th February 2022.

to enable them to pursue their remedies regarding pre-mature release in accordance with law.⁵⁰

MHA's efforts and amendment to Criminal Procedure Code:

In addition to the above initiatives, the Ministry of Home Affairs has also been contributing to the expansion of legal services to prisoners. Its efforts can be seen in form of amendment made to criminal procedure code by way of adding section 436A. further, E-prisons Software, which is a Prison Management Application integrated with Interoperable Criminal Justice System provides facility to State Jail authorities to access the data of inmates in a quick and easy manner and helps them in identifying inmates whose cases are due for consideration by the Under Trial Review Committee.⁵¹ The Ministry of Home Affairs has also issued various advisories to States & UTs to adopt various measures to reduce overcrowding in prisons and addressing the issue of under trials.⁵²

Based on a letter indicating concerns relating to overcrowding in prisons, etc., written by the Hon'ble Chief Justice R. C. Lahoti (Retired) on 13.06.2013, the Hon'ble Supreme Court of India took cognizance of the matter and issued several directions including the following⁵³:

- Appointment of Director, NALSA as the Nodal Officer to assist the Hon'ble Supreme Court Bench and NALSA issued directions to the State Legal Services Authorities and District Legal Services Authorities for helpline release of prisoners who could not furnish the bail bonds.

⁵⁰ **The Hindu, Supreme Court asks NALSA to consider issuing uniform SOP for convicts to secure premature release, August 14, 2021, last accessed on 14th February 2022.**

⁵¹ MHA's response to Rajya Sabha on 2nd February 2022, available at <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2022-pdfs/RS02022022/57.pdf>, last visited on 14th February 2022.

⁵² Ibid. [MHA's response to Rajya Sabha on 2nd February 2022, available at <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2022-pdfs/RS02022022/57.pdf>, last visited on 14th February 2022]

⁵³ https://districts.ecourts.gov.in/sites/default/files/Standard%20Operating%20Procedure%20SOP%29%20for%20UTRCs_removed.pdf

- The Under Trial Review Committee (UTRC) constituted by the Ministry of Home Affairs was required to consider the cases of inmates who have completed half of their sentence in terms of Section 436A Cr. P.C and On 06.05.2016, the domain of UTRC was enhanced much beyond Section 436(A) Cr. P.C. by inclusion of total 14 categories of inmates for consideration of their early release. Further on 31.10.2017, NALSA was directed to prepare a Standard Operating Procedure (SOP) for smooth functioning of Under Trial Review Committees (UTRCs) with an aim to ensure that UTPs covered under 14 categories get benefit without delay. This SOP was prepared on 12.12.2017.

According to the finalized NALSA's Standard Operating Procedure (SOP) for UTRCs⁵⁴

- The Jail superintendent of every jail in the district will collate the data regarding the UTPs lodged in the jail
- The office of Secretary, DLSA, with the aid of empanelled panel lawyers, Retired Judicial Officers and law students trained as PLVs, if required and available, shall draw list of UTPs/Convicts eligible for consideration by the UTRC out of Data sent to him.
- If any further details are required by the Secretary, DLSA from any court or from the Jail Superintendent or from the police authorities, the same may be ascertained by the Secretary DLSA
- Cases of UTPs / Convicts falling under following categories shall be considered by the Secretary, DLSA for placing them before the UTRC
 - o UTPs / Convicts falling under covered under Section 436A Cr.P.C.[As per order of Hon'ble Supreme Court dated 24th April, 2015]
 - o UTPs released on bail by the court, but have not been able to furnish sureties.[As per order of Hon'ble Supreme Court dated 24th April, 2015]

⁵⁴National Legal Services Authority, NALSA's Standard Operating Procedure (SOP) for Under Trial Review Committees (UTRCs), WP (C) 406/2013 – In Re- Inhuman Conditions in 1382 Prisons, available at https://districts.ecourts.gov.in/sites/default/files/Standard%20Operating%20Procedure%28SOP%29%20for%20UTRCs_removed.pdf, last accessed on 14th February 2022.

- TPs accused of compoundable offences.[As per order of Hon’ble Supreme Court dated 24th April, 2015]
- UTPs eligible under Section 436 of Cr.P.C.[As per order of Hon’ble Supreme Court dated 05th February, 2016]
- UTPs who may be covered under Section 3 of the Probation of Offenders Act, namely accused of offence under Sections 379, 380, 381, 404, 420IPC or alleged to be an offence not more than 2 years imprisonment.[As per order of Hon’ble Supreme Court dated 05th February, 2016]
- Convicts who have undergone their sentence or are entitled to release because of remission granted to them.[As per order of Hon’ble Supreme Court dated 05th February, 2016]
- UTPs become eligible to be released on bail u/s 167(2)(a)(i) & (ii) of the Code read with Section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (where persons accused of Section 19 or Section 24 or Section 27A or for offences involving commercial quantity) and where investigation is not completed in 60/90/180 days.[As per order of Hon’ble Supreme Court dated 06th May, 2016]
- UTPs who are imprisoned for offences which carry a maximum punishment of 2 years.[As per order of Hon’ble Supreme Court dated 06th May, 2016]
- Convicts who have undergone their sentence or are entitled to release because of remission granted to them.[As per order of Hon’ble Supreme Court dated 05th February, 2016]
- UTPs become eligible to be released on bail u/s 167(2)(a)(i) & (ii) of the Code read with Section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (where persons accused of Section 19 or Section 24 or Section 27A or for offences involving commercial quantity) and where investigation is not completed in 60/90/180 days. [As per order of Hon’ble Supreme Court dated 06th May, 2016]
- UTPs who are imprisoned for offences which carry a maximum punishment of 2 years.[As per order of Hon’ble Supreme Court dated 06th May, 2016]
- UTPs who are detained under Chapter VIII of the Cr.P.C. i.e. u/s 107, 108, 109 and 151 of Cr.P.C. [As per order of Hon’ble Supreme Court dated 06th May, 2016]

- UTPs who are sick or infirm and require specialized medical treatment.[As per order of Hon’ble Supreme Court dated 06th May, 2016]
- UTPs women offenders[As per order of Hon’ble Supreme Court dated 06th May, 2016]
- UTPs who are first time offenders between the ages 19 and 21 years and in custody for the offence punishable with less than 7 years of imprisonment and have suffered at least 1/4th of the maximum sentence possible. [As per order of Hon’ble Supreme Court dated 06th May, 2016]
- UTPs who are of unsound mind and must be dealt with Chapter XXV of the Code.[As per order of Hon’ble Supreme Court dated 06th May, 2016]
- UTPs eligible for release under Section 437(6) of Cr.P.C, wherein in case tribal by a Magistrate, the trial of a person accused of any non-bailable offence has not been concluded within a period of 60 days from the first date fixed for taking evidence in the case.[As per order of Hon’ble Supreme Court dated 06th May, 2016]
- UTRC shall consider the cases shortlisted by the Secretary, DLSA and make recommendations for release/ appropriate action
- The UTRC shall share recommendations with the concerned Trial Court/Jail Superintendent and Secretary, DLSA. Jail Superintendent shall bring it to the notice of UTP/Convict. Secretary, DLSA shall instruct the panel lawyers to move appropriate application in legal aided cases. The Trial Courts may deal with the recommendations in the manner deemed appropriate for each particular case with the assistance of Legal Aid/Private Lawyer.
- In suitable cases, pursuant to UTRC’s recommendation, UTP shall be released.

According to the ‘SOP for UTRC where Jails are digitized and have Software to filter the cases which are eligible for release’, The UTRC can examine the data filtered by the software and make appropriate recommendations.⁵⁵

Ibid. [National Legal Services Authority, NALSA’s Standard Operating Procedure (SOP) for Under Trial Review Committees (UTRCs), WP (C) 406/2013 – In Re-Inhuman Conditions in 1382 Prisons, available at <https://districts.ecourts.gov.in/sites/default/files/Standard%20Operating%20Proced>

As a part of the above strategy, the Model Prison Manual was also drafted by Ministry of Home Affairs with the help of NALSA. Like the above framework available in form of SOP, the Model Prison Manual also provides for a similar approach to be adopted in prisons. According to the manual⁵⁶: “Most importantly the model prison manual states that the “The Superintendent shall communicate a list of prisoners of the following categories to the Duty Counsel, State Legal Services Authority at the High Court, and Legal Services at Supreme Court, in addition to contacting with District Legal Services Authority on continuous basis, for providing of legal aid and assistance to them:

- i. Under-trial prisoners who are old and infirm, including women who are pregnant or have babies to be nourished
- ii. Under-trials who have spent more than three months in prisons and who have no means to engage a counsel
- iii. Persons arrested on suspicion under Section 41 of the Code of Criminal Procedure Code, 1973 (Central Act 2 of 1974) who have been in prison beyond a period of 15 day
- iv. Under-trials who, the Superintendent has reasons to think, have not completed 18 years of age and who should ordinarily be kept away from adults
- v. Any convicted prisoner who has already filed an appeal through prison authorities, as provided in the Code of Criminal Procedure Code, 1973 (Central Act 2 of 1974) and who has given in writing his/her desire to avail free legal aid. The Superintendent shall also supply information to the Duty Counsel regarding such appeal along with a copy of memorandum of appeal, if available
- vi. Prisoners, or the members of their family, requiring legal assistance in any civil or criminal matters

[ure%28SOP%29%20for%20UTRCs_removed.pdf](#), last accessed on 14th February 2022.]

⁵⁶ Model Prison Manual for the Superintendence and Management of Prisons in India, Bureau of Police Research and Development Ministry of Home Affairs Government of India, available at <https://bprd.nic.in/WriteReadData/userfiles/file/5230647148-Model%20Prison%20Manual.pdf>, last accessed on 14th February 2022.

According to the Model Prison Manual, 2016⁵⁷

- Socio-legal counselling cell shall be set up in each institution to be managed by volunteers from a designated law school, school of social work, or a non-governmental voluntary agency.
- Assistance of lady members of the district legal aid committee shall be made available to women prisoners to help them with their procedural and legal problems.
- The prison social welfare and legal aid counselling staff, or literate prisoners, shall be utilized to assist illiterate prisoners in recording their complaints. All such complaints shall be received and tackled in an understanding manner without the risk of retribution to the complainant
- If a prisoner cannot write, the Legal Aid Cell attached to the prison shall prepare his/her appeal petition.

⁵⁷ Ibid. [Model Prison Manual For The Superintendence And Management of Prisons in India, Bureau of Police Research and Development Ministry of Home Affairs Government of India, available at <https://bprd.nic.in/WriteReadData/userfiles/file/5230647148-Model%20Prison%20Manual.pdf>, last accessed on 14th February 2022.]

CONCLUSION

“Legal services authorities must now move from awareness to engagement”

–Hon’ble Justice Gogoi⁵⁸

Legal service is actually a mode of ensuring accused including a prison inmate’s access to justice. In order to ensure in reality a prison inmates’ fair participation in criminal process conducted against him by State’s criminal justice administering agencies, it is essential to have a law and an institution framework providing such legal services to a prison inmate. From Indian constitution to criminal procedure code, from legal services authority to legal aid clinics of law schools are some of such approaches adopted in India to extend legal services to a prison inmate. In order to make both laws and institutions more effective more changes to laws as well as such institutional framework is essential.

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⁵⁸ Former Chief Justice of India, Ranjan Gogoi during his speech at the Conclusion of 17th all-India meet of State legal services authorities, available at <https://nalsa.gov.in/library/17th-all-india-meet-of-state-legal-services-authorities-17th-18th-aug-2019-at-nagpur>, last visited 1st July 2021.

PART-C

APPENDICES

- 1. REGISTRATION FORM**
- 2. PRE-COURSE ASSESSMENT**
- 3. POST-COURSE ASSESSMENT**
- 4. FEEDBACK FORM**
- 5. COURSE COORDINATOR’S REPORT**
- 6. FIELD-VISIT FORMAT**
- 7. ASSESSMENT – MCQ**
- 8. NOTE FOR THE FACILITATOR ON PANEL DISCUSSION**
- 9. PRISON STATISTICS, 2021 (IN BRIEF)**

(Name of the Training Institute)

(Name of the Course)

(Dates)

REGISTRATION FORM

PARTICIPANT DETAILS

1. Name :
2. Date of birth :
3. Male/Female
- 4.. Qualifications :
(a) Academic
(b) Professional
5. Designation :

ORGANIZATION DETAILS

6. Department/Organization :
7. Address
8. Telephone No.
9. E-mail id :

RESIDENTIAL DETAILS

10. Address
11. Telephone No.
12. Mobile No.
13. Emergency contact details:

Signature
Name
Date

PRE-COURSE ASSESSMENT EXERCISE

Answer the following –

S. No.	Name of Unit (As given in the Course Grid)	Pre-Assessment (Knowledge-level before training)		
		Absolutely Yes	Not Sure	No knowledge
1.	Are you aware of.....			
2.	Do you have an understanding of.....			
.....				

POST-COURSE ASSESSMENT EXERCISE

Answer the following –

S. No.	Name of Unit (As given in the Course Grid)	Post-Assessment (Knowledge-level after-training)		
		Absolutely Yes	Not Sure	No knowledge
_____	_____	_____	_____	_____
1.	Are you aware of.....			
2.	Do you have an understanding of.....			
.....				

(Name of the Training Institute)
 (Title of the Course)
 (Dates of the Course)

FEEDBACK FORM

(To be filled-in by individual participants at the end of the Course)

1. To what extent the Objectives of the Course were met

To a great extent 4	To some extent 3	To a limited extent 2	Not at all 1

2. Did you receive advance intimation from the Institution about the Course. if so, did you respond to the Institution?

Yes

No

3. What do you think about the structure and organization of the Course to meet the objectives?

Very well Structured 4	Well Structured 3	Some-what structured 2	Un-structured 1

4. How useful this training would be to you immediately in your job?

Very Useful 4	Quite Useful 3	Of limited Use 2	Not at all Useful 1

5. How useful this training is likely to be for the future jobs you may handle?

Very Useful 4	Quite Useful 3	Of limited use 2	Not at all Useful 1

6. Practical Orientation of the course.

Highly Practical Oriented 4	Practically Oriented to a Great extent 3	Practically Oriented to a Limited extent 2	Not Practically Oriented 1

7. How far have you been benefited from interaction with the other participants in the Course?

Substantially 4	Considerably 3	Fairly 2	Not at all 1

8. How far was the Course Material supplied relevant and related to the Course Contents?

Extremely Relevant 4	Considerably Relevant 3	Fairly Relevant 2	Not at all relevant 1

9. To what extent are you satisfied with the following:
(The Training Institution may please block the parameters not applicable)

Satisfied fully 4	Satisfied to a large extent 3	Satisfied to a limited extent 2	Not satisfied 1

- a) Reception & Transport

- b) Residential
Accommodation
- c) Food Quality & Service
- d) Classroom facilities
- e) Library facilities
- f) Computer facilities
- g) Interaction with the staff
of the Institute

10. Feedback on the Training/Faculty:
(Kindly fill up the Annexure)

11. Which parts of the Course did you find most helpful?

12. Which parts of the Course did you find least helpful?

13. Your overall impression of the course:

Excellent 4	Very Good 3	Good 2	Fair 1

14. Did the Course give you any specific ideas Yes/No
about improvements in your working
situation when you get back.

15. If yes, kindly spell them out briefly?

16. Any other comments/observations you wish to make about the Course

Date:

Name

Designation

Place:

Organization

COURSE COORDINATOR'S REPORT
on
(Name of the Training Course)
(Duration)

1. Name of the Training Institution :
2. Whether the Course was conducted :
in the Institute's Campus or elsewhere
3. Title of the Course :
4. Duration of the Course :
5. Number of participants :
(Attach final list of participants)
6. Details of Training Facilitators :
(Name/Designation/Organization)
(In-House/Guest)
7. States/UTs represented :
8. Details of Sessions with working hours :
9. List of Training Material distributed :
10. Details of Methods/Methodology used:
11. Feedback of participants :
(Attach copies of Feedback Forms)
12. Summary of the Feedback :
13. Summary of the Pre/Post Assessments :
14. Any areas of improvement noticed :
15. Overall impression of the Course :
Coordinator

Signature
(Name of the Course Coordinator)
Designation
Date
(Mobile Number/E-mail)

FIELD VISIT REPORT FORMAT

Format of Field Visit Report

Name of the trainee officer :

Batch No. :

Officer in charge of the visit :

Name of the Institute/organization visited :

Time and Date of visit :

Subject for which visit is made :

Signature of the trainee

Signature of the officer in charge of the visit

Structure of the Report

- Introduction about the institute
- Origin and history of the institute
- Primary duties and functions of the institute
- Officer with whom interacted
- Report of the Visit [write summary of learnings from the visit] \
- Any other Comments/ remarks about the visit and the learnings from the visit.

NOTE FOR THE FACILITATOR ON THE PANEL DISCUSSION

Instructions to Course Coordinator

Invite a member from each of the agencies to have a panel discussion while conducting the panel discussion, faculty should act as a Moderator

The Moderator should introduce the theme and then the panellists. Each panellist can be given around 15 minutes time to speak and discuss the role of their agencies and areas where coordination is required. After all panellists have spoken, the panel should be open for discussion with question from the participants. The key points of each speaker should be summed up by the moderator and the discussion should be concluded by the moderator well within time. The participants should be instructed to ask specific questions to the panellists.

Group Discussion :

Each Participant should be encouraged to participate. Establish Ground Rules first.

Cull out the important points that emerge from the discussion

Action Plan : Group Work Activity

Prison based Rehabilitation programs

Participants should be divided into groups of 5-6 members of all ranks (warder, to Superintendent) and all should brainstorm and discuss what goals to set for prisoner rehabilitation programs in a particular prison. Action Plan should be time bound and can be short term, medium term and long term. Work Sheets, Flip chart sheets and sketch pen should be distributed to all the groups and facilitator should ensure that all contribute their ideas. Each goal should make clear the responsibility-what you can do at your level (e.g. at Deputy Superintendent level), what can be done by others (e.g. at headquarters). Further review of action is essential. Make clear that there is a start and end date to the action, so the Plan is time bound.

PRISON STATISTICS INDIA – 2021

Total Number of Prison Inmates as on 31.12.2021			
Male	:	5,31,025	
Female	:	22,918	
Transgender	:	91	
Prison Population	:	5,54,034	

Prisoner Types and Demography

Convicts		Undertrials		Detenues		Others	
Male	117846	Male	409346	Male	3381	Male	452
Female	4990	Female	17745	Female	88	Female	95
Transgender	16	Transgender	74	Transgender	01	Transgender	00
Total	122852	Total	427165	Total	3470	Total	547

Number of Jails, Capacity, Population and Occupancy Rate in India at the end of 2021

Type of Jail	Number	Authorized Capacity	Population of Inmates	Occupancy Rate (%)
Central Jail	148	193536	239311	123.7
District Jail	424	163606	254214	155.4
Sub Jail	564	45436	46736	102.9
Special Jail	41	7473	6582	88.1
Open Jail	88	5953	2178	36.6
Women Jail	32	6767	3808	56.3
Borstal School	19	1775	745	42.0
Others	03	1063	460	43.3
Total	1319	425609	554034	130.2

Source : NCRB, MHA (2021) <https://ncrb.gov.in/en/prison-statistics-india-2021>