

# **THE RREPORT ON RIGHT TO FAIR TRIAL OF PRISON INMATES: ISSUES & CHALLENGES**



Examining Efficacy of State (Maharashtra) Sponsored Legal Aid Lawyers for Fair Trial  
of Under Trials Male in Byculla District Prison Mumbai

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# CHAPTER I

## INTRODUCTION

### 1. CONCEPTUAL UNDERSTANDING ON RIGHT TO FAIR TRIAL UNDER LEGAL FRAMEWORK OF INDIA

The Right to Fair Trial is granted to an accused as a facet of Right To Life And Personal Liberty under Article 21 of the Constitution of India. This is equally applicable to both Indian and foreign inmates. The Right to fair trial is both a constitutional right as a dimension of personal liberty and also a significant international human right convention under Article 10 of Universal Declaration of Human Rights (UDHR) provides 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.*” , ‘*Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to the law in a public trial at which he has had all the guarantees necessary for his defense.*’ Article 11(1) of Universal Declaration of Human Rights (UDHR 1948) “*All persons shall be equal before the courts and tribunals.*”

Further under International Covenant on Civil and Political Rights (ICCPR) 1966, “*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*”.

There has been series of landmark judgements by the Supreme Court of India in the case of *v. State of Madhya Pradesh*<sup>1</sup> observed that the fair trial is the heart of criminal jurisprudence. A fair trial is a fundamental right which flows from article 21 of the Constitution. Denial of the fair trial is the denial of human rights. In the Supreme Court of India observed “each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as it is to the victim and to society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witness or the cause, which is being tried, is eliminated. In. *Mohd. Hussain @ Julfikar Ali v. The State (Govt. Of NCT)*<sup>2</sup> stated that every person, therefore, has a right to a fair trial by a competent court in the spirit of the right to life and personal

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<sup>1</sup> (2012) 4 SCC 516

<sup>2</sup>(2004) 4 SCC 158

liberty. Thus, right to a fair trial being a fundamental right cannot be refused to any person by the virtue of Constitution. In *Husainara Khatoon v. the State of Bihar*<sup>3</sup> the Supreme Court recognized that speedy trial is an essential ingredient of article 21 of the Constitution of India. And it's the Constitutional duty of the State to set up such procedure as would ensure speedy trial to the accused.

In the case of *Moti Lal Saraf v. Union of India*<sup>4</sup> the court observed that the concept of a fair trial is an integral part of article 21 of the Constitution. Section 309(1) of Cr.P.C provides that “*In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.*” The speedy trial is a right guaranteed by the Constitution and its denial is the violation of the right to fair trial. In *Himanshu Singh Sabharwa v. State of M.P. and Ors*<sup>5</sup>, the apex court observed that if fair trial envisaged under the Code is not imparted to the parties and court has reasons to believe that prosecuting agency or prosecutor is not acting in the requisite manner the court can exercise its power under Section 311 of the Code or under Section 165 of the Indian Evidence Act, 1872 to call in for the material witness and procure the relevant documents so as to subserve the cause of justice.

### **1.1.GENERAL COMPONENTS & PRINCIPLES OF A FAIR TRIAL:**

1. Presumption of innocence
2. Independent, impartial and competent judge
3. Legal Aid
4. Expeditious trial
5. Hearing should be in open court
6. Knowledge of accusation and adequate opportunity
7. Cross-examination of prosecution witnesses
8. Prohibition of double jeopardy
9. Right to Speedy Trial – through Different Legal, Judicial Mechanism
10. Right to be free from illegal detention in prison

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<sup>3</sup>1979 AIR 1369

<sup>4</sup>2007(1) SCC Cri 180

<sup>5</sup>AIR 2008 SC 1943

## **1.2.LEGAL PROVISIONS ON RIGHT TO FAIR TRIAL:**

The All India Committee on Jail Reforms, 1980-83 enumerated rights of prison inmates pertaining to right of fair trial and Ministry of Home Affairs Government of India, Model Prison Manual for the Superintendence and Management of Prisons in India 2003 as suggested following:

### **1.2.1. MAIN PROVISIONS**

- A. Right to Access to Law;
- B. Right to effective access to information; and
- C. Other legal provisions regulating conditions of detention;

### **1.2.2. SUB PROVISIONS UNDER THE MAIN PROVISIONS ABOVE MENTIONED:**

- A a Right to consult or to be defended by a legal practitioner of prisoner's choice;  
Right to access to agencies, such as State Legal Aid Boards or similar organizations providing legal service
- A.b.Right to be informed on admission about legal rights to appeal, revision, review either in respect of conviction or sentence;
- A.c.Right to receive all court documents necessary for preferring an appeal or revision or review of sentence or conviction;

## **1.3.RIGHT TO FAIR TRIAL IN CONTEXT OF PRISON INMATES (UNDERTRIALS):**

The Prison Inmates particularly the undertrials numbers are increasing in an alarming rate to cause overcrowding in prisons across country. One of the reason for such increase is the non-production before court, lack of adequate legal aid from the DLSA Legal aid lawyers, lack of contact, correspondence with family members, lack of their own personal awareness and knowledge on the same and several procedural challenges faced by the prison staff on the same. Due to these reasons, the right to fair trial of inmates is not complied with despite existing legal provisions on the same.

However, in realization of this right, it is important to identify the exact reasons and the plight of prison administrative conditions, facilities, staff available for ensuring the same and also it is pertinent to identify the problems faced by the inmates in understanding

issues related to fair trial , their awareness on the same.

#### **1.4.RESEARCH OBJECTIVE:**

To examine the efficacy of functioning of DLSA sponsored Legal aid lawyers, their periodicity of visit to prison and the nature of record keeping, counseling, legal aid advise offered to inmates.

In view of the central objective of looking into the Legal aid related matters, the subject matter of this would largely pertain to undertrials as these are gravely affected by the lack of adequate legal representation and leading to overcrowding in prisons. In Byculla District prison, there is large scale occupancy of undertrials.

#### **1.5.LISTING OF PARAMETERS TO ASSESS THE EFFICACY OF LEGAL AID LAWYERS & MODALITIES TO ATTAINING OBJECTIVE:**

The main objective of examining the efficacy of service rendered by legal aid lawyer is to be attained through collecting both qualitative and quantitative data from prison inmates particularly the under trials, and the prison officials, staff by formulating an interview schedule and administering the same and recording in writing their responses under the same. This would generate both quantifiable data in numbers in terms of the total number of inmates being represented and assisted by legal aid lawyers and the total number of inmates non represented by any lawyer. These quantitative data would be demonstrated in Table and also in Graphs and Pie charts to indicate the extent and magnitude of the number of inmates facing the legal aid issues. This would also bring the qualitative data in terms of bringing out the reasons for not availing legal aid lawyers, problems or challenges faced by the under trials in availing the services of legal aid lawyers, the nature of advice given by legal aid lawyers and related matters. These qualitative data would be categorized as specific themes and explanations, testimonies of inmates (undertrials) would be recorded under the same.

## **2. MANDATE OF STUDY**

The mandate of the conducted research was set forth by the Inspector General of Prison, Byculla District Class-I Prison, Mr. Deepak Pande. He laid forth the field of study to be the availability of Legal Aid to the Male and Female inmates of the Byculla District Class I Prison. The corresponding themes were to be looked into and researched by the

students. The proposal for a comprehensive research project on the Right to Fair Trial (Annexure 1) was altered and the scope was narrowed to focusing on the number of inmates who were being represented by private advocates and those appointed by the District Legal Services Authority, Mumbai. In addition to that the theme also included those inmates who are not being represented by an advocate.

The researchers were required to focus on the availability of fair trial especially legal aid to the inmates (only under trials) with respect to the workings of the legal aid lawyers provided for by the District Legal Services Authority which can be seen in the updated research proposal (Annexure 2). The researchers were given express instructions to cover every inmate in every barrack of the prison.

The research was carried out by the students under strict supervision of the prison officials. The students were observed with respect to the questions and queries they asked, time taken on a single inmate, manner of conducting research. Furthermore, the interview guide was administered on the inmates under the supervision of the prison officials who took precautions to not allow the students to go inside the prison Barracks for security considerations. Based on the precautions taken, the researchers usually spent about a maximum of 3-4 minutes on every inmate after the inmates had been locked in in their respective barracks at around 11-11:30 a.m.

### **3. SIGNIFICANCE OF STUDY**

The study was duly structured keeping in mind the express instructions of the Inspector General, that of covering each inmate in every barrack. Therefore, the researchers engaged in an exhaustive study with respect to the availability of legal aid to Under trial prisoners. This included covering all inmates incarcerated in the four-male barracks, 7 female barracks [6 barracks in female division and 1 being the Bachcha Barrack] and 1 foreign national's barrack. Maximum coverage was ensured through help from the prison officials which included both the police officials as well as the employed prison staff, especially the Jawabdars. The Jawabdars were instrumental in allowing the researchers to administer their interview guides on the inmates during the lock in period by ensuring that the maximum number of inmates in a Barrack were available for the concerned interview guide.

The study included informal discussions with the DLSA para legal volunteer with respect to the manner in which legal aid is given to the inmates. This included information

with respect to provisions under which the DLSA does not provide for legal aid such as cases dealing with the NDPS act, Section 143, 145 of the IPC, and habitual offenders in the male barracks. Amongst the female inmates those charged under the PITA, POCSO, NDPS, S.371 of the IPC, habitual offenders and the Foreign National Inmates were excluded.

In the Male Division, maximum barrack by barrack coverage was ensured with the help of the attendance register maintained by the Jawabdars in order to focus upon inmates who initially did not wish to meet the inmates. The said procedure though crude was resorted to as the researchers were not provided for with a Barrack to barrack list of inmates, which they were told did not exist, both by the prison officials and the DLSA volunteer.

In the Female Division, Maximum coverage was ensured by obtaining a list from the Jawabdars during the Bandhi Time and the list was used to administer the interview guide. This method was resorted to after the prison officials maintained that there was not in existence a barrackwise list. Further, the students in the Female Circle were allowed to access the DLSA register maintained by the paralegal which was used to corroborate.



## CHAPTER II

# RESEARCH METHODOLOGY

### 1. RESEARCH METHODOLOGY

The research methodology used would be that of mixed methodology involving both qualitative, quantitative approach, wherein it would be largely quantitative. It will be quantitative research to the extent it pertains to finding out the actual size, number of prison inmates having private lawyers, government lawyers or no lawyers. Further it looks into the number of inmates who are aware of their rights of legal aid and actual size of inmates who were informed by the prison officials about their rights. The research is qualitative to the extent it examines the quality of legal aid, problems faced by the inmates and their family in availing legal aid, reasons for not availing legal aid etc. The research aims to understand the functioning of legal aid Cell & its functioning,

### 2. RESEARCH METHOD

Research method is descriptive as this seeks to document and describe the problems of prison inmates in accessing legal aid lawyers and looks into the reasons of not availing the same.

#### 21. SAMPLES -STAKEHOLDERS CONCERNED:

The stakeholders include the Prison Officials, Staff, Prison Inmates covering under trials only (Male, Female Barracks) in both the male and female prisons.

#### 22. SAMPLE SIZE – STAKEHOLDERS APPROXIMATE STRENGTH:

The approximate size of such stakeholders comprising above mentioned category would be approximately covering all the under trials (male, female) in all barracks (male, female) in Byculla District prison.

#### 23. DATA COLLECTION TOOL:

The data collection tool used is using an Interview Schedule, which majorly focuses on whether the inmate has a legal representative and the follow- up question including the type of lawyer that an inmate is being represented by, i.e. a private lawyer, a government lawyer [judge-appointed or appointed by the DLSA]

## **24 UNIVERSE OF STUDY:**

The universe of study is the Byculla District Class-I Prison. Wherein all the undertrial inmates in the Male division and the Female division has been focused upon. All three circles including the Bachha Barrack and Foreign National Inmates have been focused upon apart from the undertrial inmates female division.

## **3. DATA COLLECTION PROCESS:**

The data collection process would involve administering research tool which is a semi structured interview guide on the prison inmates (male, females) and prison officials, staff for both male, female inmates.

### **3.1.DATA TRENDS & INFERENCES:**

Following the data collection process, the data would be categorized under relevant themes or headings in order to ascertain the major reasons for denial of right to fair trial among inmates in maximum number of cases and the major problems faced by prison officials, staff in securing the same. This would present an overview of the patterns or trends if any emerging out of the problems faced by the inmates. In view of the specific challenges identified from data collection, interaction, possible socio - legal measures may be suggested for the same.

**4. TIMELINE OF STUDY:** September 9th– 20th September 2019.

## **5. EXPECTED OUTCOME:**

A comprehensive report on the Actual Issues and Challenges of Fair Trial faced by Inmates, Prison Officials at Byculla District Prison covering both quantifiable and qualitative data with possible trends analysis, mapping the exact number and magnitude and the possible reasons, explanations for the same.

## CHAPTER III

# LITERATURE REVIEW

The literature review for this report which is based on Byculla District prison was conducted during our one-month field work. And this comprises a detail study of related provisions.

### **1. CONSTITUTION OF INDIA, 1950**

- 1.1. Fundamental rights (part 3), Article 22- protection under arrest and detention under certain cases
- 1.2. Directive principle of state policy, Article 39 A- direction to State to provide legal aid for all

### **2. CRIMINAL PROCEDURE CODE, 1973**

- 2.1. Section 340 procedure in cases mentioned in section 195

### **3. THE LEGAL SERVICE AUTHORITY ACT, 1987**

- 3.1. Section 4 - 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
- 3.2. Section 7 - undertake preventive and strategic legal aid programmes

### **4. MAHARASHTRA STATE LEGAL SERVICES AUTHORITY REGULATION ACT, 1998**

- 4.1. Section 4 - Duties and functions of the high court legal services committee as per Sec. 8- A (1)
- 4.2. Section 5 – additional functions of district legal aid
- 4.3. Section 7- function of the state authority under Sec. 7(1) and 7(2) of the Act
- 4.4. Section 9 – fund account of state authority
- 4.5. Section 10 – fund account of district authority
- 4.6. Section 18 - honorarium payable to legal practitioners on panel

### **5. MAHARASHTRA STATE LEGAL SERVICE AUTHORITY RULES, 1998**

- 5.1. These provide for certain official authorities, staff for Maharashtra legal aid services of authority to function better in order to meet the needs of legal aid for vulnerable sections.

### **6. LAW COMMISSION REPORTS**

- 6.1. 1st law commission report 1956, lawyers to provide representation in courts
- 6.2. 14<sup>th</sup> law commission report, 1958, free legal assistance should be provided to undefended accused
- 6.3. 48<sup>th</sup> law commission report, free legal aid by state

### **7. CIVIL SOCIETY REPORTS**

- 7.1. Commonwealth human rights initiative: legal aid service 2014
- 7.2. Human Rights Law Network (HRLN), Tata Institute Of Social Sciences (Tiss) 3<sup>rd</sup> National Consultation On Prisoners' Rights, Legal Aid, And Prison Reform, March 2016

- 7.3. NALSA schemes- standard operating procedure for representation of persons in custody - role of NALSA in promoting right to free legal aid for prison inmate

## **8. PARLIAMENTARY STANDING COMMITTEE**

- 8.1. Women in Detention and Access To Justice Parliamentary Standing Committee  
On Empowerment Of Women

## **9. SUPREME COURT AND HIGH COURT CASE JUDGMENTS:**

- 9.1. Himanshu Singh Sabharwa v. State of M.P. and Ors, (2008) AIR SC 1943  
9.2. Husainara Khatoon v. the State of Bihar, (1979) AIR 1369  
9.3. In Re-inhuman conditions in 1382 prison, (2013) W/P Civil no. 46/13  
9.4. Jan Adalat v. State of Maharashtra, (2015) CrI. PIL No. 46/ 2015  
9.5. Janardhan Reddy v. State of Hyderabad, (1951) AIR SC 411  
9.6. Khatri II v. State of Bihar, (1981) 1 SCC  
9.7. M.H. Hoskot v. State of Maharashtra, (1978) AIR SC 1675  
9.8. Mohd. Hussain @ Julfikar Ali v. The State (Govt. Of NCT), (2004) 4 SCC 158  
9.9. Moti Lal Saraf v. Union of India, (2007) (1) SCC Cri 180  
9.10. Rattaram v. State of Madhya Pradesh, (2012) 4 SCC 516  
9.11. Subhash Bhardawaj v. State of Maharashtra and Anr., (2002) AIR SC 2537  
9.12. Sunil Batra v. Delhi Administration, (1978) AIR SC 1675  
9.13. Tara Singh v State of Punjab, (1978) AIR SC 1548  
9.14. Zahira Habibullah Sheikh and Ors v. State of Gujarat and Ors, (2004)

AIRSC3467

## **10. INTERNATIONAL CONVENTIONS:**

- 10.1. Global Study on Legal Aid – Global Report By United Nations Development Programme (UNDP)  
10.2. Universal Declaration Of Human Rights, 1948  
Article 10: Fair and Public Hearing  
Article 11 Presumed Innocent Until Guilty  
10.3. The International Covenant on Civil and Political Rights, 1966  
10.4. The International Covenant on Economic, Social and Cultural Rights, 1966  
10.5. International Convention for Civil, Political, Rights ICCPR 1966  
10.6. The Convention on the Elimination Of all forms Of Discrimination Against Women 1979, CEDAW (establishment Of legal protection Of the rights of women on an equal basis with men)

- 10.7. The Body Of Principles for The Protection Of All Persons Under Any Form Of Detention or Imprisonment (1988)
- 10.8. The Basic Principles on The Role Of Lawyers (1990)
- 10.9. The United Nations Rules for The Treatment Of Women Prisoners and Non-Custodial Measures for Women Offenders, (2011, The Bangkok Rules)
- 10.10. The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (2012, UN Principles and Guidelines)
- 10.11. United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems (UN Principles and Guidelines), 2012
- 10.12. UN Principles and Guidelines 2013
- 10.13. The United Nations Development Programme (UNDP) And the United Nations Office On Drugs and Crime (UNODC), 2013
- 10.14. The Johannesburg Declaration on The Implementation Of The United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 2014
- 10.15. The Commission on Crime Prevention and Criminal Justice (CCPCJ),2016

## CHAPTER IV

# LEGAL FRAMEWORK

## 1. THE CONSTITUTION OF INDIA

### 1.1.ARTICLE 39

The Constitution of India states that “the State shall secure the legal system promoting justice on a basis of equal opportunity, and the State in particular shall provide free legal aid by suitable legislation or schemes or in any other way, so that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities”<sup>6</sup>.

### 1.2.FUNDAMENTAL RIGHTS, PART III RD ARTICLE 22

#### PROTECTION AGAINST ARREST AND DETENTION IN CERTAIN CASES-

- (1) 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
- (2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate
- (3) Nothing in clauses ( 1 ) and ( 2 ) shall apply (a) to any person who for the time being is an enemy alien; or (b) to any person who is arrested or detained under any law providing for preventive detention
- (4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless (a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:
- (5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon

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<sup>6</sup> The Constitution of India [India], 26 January 1950, Article 39A

as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose

(7) Parliament may by law prescribe

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub clause (a) of clause ( 4 );

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub clause (a) of clause (4) Right against Exploitation”<sup>7</sup>

### **1.3.DIRECTIVE PRINCIPLES OF STATE POLICY PART IV, ARTICLE 39**

The Constitution of India states that “the State shall secure the legal system promoting justice on a basis of equal opportunity, and the State in particular shall provide free legal aid by suitable legislation or schemes or in any other way, so that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities”<sup>8</sup>.

## **4. CRIMINAL PROCEDURE CODE, 1973**

Provisions of the Cr.P.C. has been interpreted by the our courts as the ones that facilitate or enable the accused to get access to legal aid, but the hind side Of these provisions is that they do not cast any duty or any legal obligation on the state to provide free legal assistance to the poor, and there is also no legal sanction if the state fails to perform its duty Of providing free legal aid.

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<sup>7</sup> The Constitution of India [India], 26 January 1950, Article 22

<sup>8</sup> The Constitution of India [India], 26 January 1950, Article 39A

**4.1. S. 340: LEGAL AID TO ACCUSED AT STATE EXPENSE IN CERTAIN CASES-**

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

(2) The High Court may, with the previous approval of the State Government, make rules providing for— (a) the mode of selecting pleaders for defence under sub-section (1); (b) the facilities to be allowed to such pleaders by the Courts; (c) the fees payable to such pleaders by the Government, and generally, for carrying out the purposes of sub-section (1)

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

**4.2. S. 309: POWER TO POSTPONE OR ADJOURN PROCEEDINGS-**

(1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody: Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time: Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:<sup>1</sup> Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.



Explanation 1.- If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2.- The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

## **5. STATUTORY ENACTMENTS**

### **5.1. THE LEGAL SERVICES AUTHORITIES ACT, 1987**

#### **5.1.1. S.4: “THE CENTRAL AUTHORITY SHALL PERFORM ALL OR ANY OF THE FOLLOWING FUNCTIONS, NAMELY: -**

(e) organize legal aid camps, especially in rural area, slums or labour colonies with the dual propose of educating the weaker sections of the society as to their rights as well as encouraging the settlement of disputes through Lok Adalats

(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”

#### **5.1.2. S. 7: “WITHOUT PREJUDICE TO THE GENERALITY OF THE FUNCTIONS REFERRED TO IN SUBSECTION (1), the state authority shall perform all or any of the following functions, namely: - (c) undertake preventive and strategic legal aid programmes.**

#### **5.1.3. SECTION 15: THE CENTRAL AUTHORITY SHALL ESTABLISH A FUND TO BE CALLED THE NATIONAL LEGAL AID FUND AND THERE SHALL BE CREDITED THERETO—**

(a) all sums of money given as grants by the Central Government under section 14; (b) any grants or donations that may be made to the Central Authority by any other person for the purposes of this Act;

(c) any amount received by the Central Authority under the orders of any court or from any other source.

(2) The National Legal Aid Fund shall be applied for meeting-- (a) the cost of legal services provided under this Act including grants made to State Authorities; Entitlement of legal services. Grants by the Central Government National Legal Aid Fund. The Legal Services Authorities Act, 1987 (b) the cost of legal services

provided by the Supreme Court Legal Services Committee; (c) any other expenses which are required to be met by the Central Authority.”

**5.1.4. S.16: “A STATE AUTHORITY SHALL ESTABLISH A FUND TO BE CALLED THE STATE LEGAL AID FUND AND THERE SHALL BE CREDITED THERETO —** (a) all sums of money paid to it or any grants made by the Central Authority for the purposes of this Act; (b) any grants or donations that may be made to the State Authority by the State Government or by any person for the purposes of this Act; (c) any other amount received by the State Authority under the orders of any court or from any other source. (2) A State Legal Aid Fund shall be applied for meeting-- (a) the cost of functions referred to in section 7; (b) the cost of legal services provided by the High Court Legal Services Committees; (c) any other expenses which are required to be met by the State Authority.”

**5.1.5. S.17: “EVERY DISTRICT AUTHORITY SHALL ESTABLISH A FUND TO BE CALLED THE DISTRICT LEGAL AID FUND AND THERE SHALL BE CREDITED THERETO—** (a) all sums of money paid or any grants made by the State Authority to the District Authority for the purposes of this Act; (b) any grants or donations that may be made to the District Authority by any person, with the prior approval of the State Authority, for the purposes of this Act; (c) any other amount received by the District Authority under the orders of any court or from any other source.

**5.1.6. S. 18: A DISTRICT LEGAL AID FUND SHALL BE APPLIED FOR MEETING--** (a) the cost of functions referred to in section 10 and 11B22; (b) any other expenses which are required to be met by the District Authority”

## **5.2. MAHARASHTRA STATE LEGAL SERVICES AUTHORITY REGULATIONS, 1998**

**5.2.1. SECTION 7: “FUNCTION OF THE STATE AUTHORITY UNDER SEC. 7(1) AND 7(2) OF THE ACT:—** In addition to the functions to be performed by the State Authority as laid down by Sec. 7(1) and 7(2) of the Act, the State Authority may also perform the following additional functions:— (i) The State Authority may conduct legal literacy camps in different parts of the State to bring awareness about the legal aid schemes conducted in the State and with a view to make them aware of their Legal rights and duties with special reference to the

tribal and rural population, women, children, disabled, handicapped and the weaker sections of the society. (ii) The State Authority may conduct legal aid clinics in different parts of the State in collaboration with Law Colleges, Universities and other social service organizations. (iii) The State Authority may also establish or direct the District Authority to establish standing conciliation Committees at various centers in the State with a view to providing permanent or quasi-permanent infrastructures for resolving legal disputes between the parties, whether they may be pending in Courts or may be in the offing. For conducting such committees, it will be open to the State Authority to take active assistance/support of such social service organizations that have zeal for legal aid work. (iv) The State Authority may review the cases where legal services are refused by the District Authority on application and the decision of the State Authority shall be final.”

**5.2.2. SECTION 4: DUTIES AND FUNCTIONS OF THE HIGH COURT LEGAL SERVICES COMMITTEE AS PER SEC. 8- A(1) OF THE ACT:—** The High Court Legal Services Committee and the Sub-Committees shall perform all or any of the following functions, namely:— (i) To give free legal service to persons who may have to file or defend litigations pending in the High Court and who satisfy the eligibility criteria laid down for the purpose of receiving free legal aid under the Act. (ii) To organize Lok Adalats for settlement of cases pending in the High Court under the supervision of the State Authority.”

**5.2.3. SECTION 5: ADDITIONAL FUNCTIONS OF THE DISTRICT AUTHORITY-** In addition to the functions assigned by the provisions of the Act and the Rules, the District Authority shall perform the following functions subject to the general superintendence and control of the State Authority: —

(i) To perform such other functions as the State Authority may fix by Regulations from time to time and shall also be guided by such directions as Central Authority or the State Authority, may give, in writing from time to time.

(ii) To conduct legal literacy camps in different areas of the District, especially in rural and tribal areas, with a view to bring awareness about the legal aid schemes, conducted in the State and also with a view to make them aware of their legal rights and duties with special reference to tribal and rural population and/or women/or children/or disabled/or handicapped and the weaker sections of the society

- (iii) To conduct legal aid clinics in different parts of the District in collaboration with Law Colleges, Universities and other social services organizations
- (iv) To direct, supervise and guide the working of the Taluka Committees in the District;
- (v) To call for, from the Taluka Committees in the District such periodical reports, returns, and other information as it may think fit or as are required by the State Authority;
- (vi) To prepare, consolidate and submit such reports, returns and such information, in respect of District Authorities, as the State Authority may call for;
- (vii) To receive applications for Legal Services and ensure that every application is promptly processed and disposed of;
- (viii) To consider the cases brought before it for legal service, including prelitigation matters and decide as to what extent legal services can be made available to the applicant;
- (ix) To pursue the parties to appear and make efforts to bring about a just settlement between them and if necessary also refuse the legal services, if in its opinion the conciliation has failed due to any fault on the part of the applicant;
- (x) To encourage and promote conciliation and settlement in all legal proceedings including pre-litigations;
- (xi) To take proceedings for recovery of costs awarded to a person to whom legal services were rendered;
- (xii) To review the cases on application where legal services are refused by the Taluka Committees.”

**5.2.4. SECTION 9: FUND ACCOUNTS OF STATE AUTHORITY—** (1) An account shall be opened in any of the nationalized banks by the State Authority as “State Legal Aid Fund”. (2) “State Legal Aid Fund” account shall be operated by the Member Secretary of the State Authority under the supervision of Executive Chairman.

**5.2.5. SECTION 10: FUND ACCOUNT OF DISTRICT AUTHORITY—** (1) An account shall be opened in any of the nationalized banks by the District Authority as “District Legal Aid Fund”. (2) District Legal Aid Fund account shall be operated by Member Secretary of the District Authority, under the supervision of the Chairman of the District Authority as per directions of the State Authority.”

**5.2.6. SECTION 18: HONORARIUM PAYABLE TO LEGAL PRACTITIONERS**

**ON PANEL-** (1) Subject to the approval of the State Authority, the Legal Services Authority or Legal Services Committee shall prepare for a period of two years, a panel of legal practitioners who are willing to represent or prosecute the cases on behalf of the legal aided persons under these regulations. The legal practitioners on the panel shall be paid honorarium at the rates as set out in the Schedule. Provided that, where the matter is disposed of in less than five effective hearings, the fee payable shall be ½ of the fee prescribed in the Schedule.

(2) No legal practitioner to whom any case is assigned either for legal advice or for legal aid shall receive any fee or remuneration whether in cash or in kind or any other advantage, monetary or otherwise, from the aided person or from any other person on his behalf.

(3) The legal practitioner on the panel, who has completed his assignment, shall submit a statement showing the honorarium due to him in connection with the legal proceeding conducted by him on behalf of the legally aided person to the Secretary of the Authority or Committee who shall, with the approval of the Chairman and after due scrutiny and countersignature, place the same before the Authority or Committee the amount shall be paid by the Secretary to the legal practitioner. It will, however, be open to the legal practitioner to waive the honorarium in whole or part

(4) Notwithstanding anything contained in this regulation the court may, in any case in which no legal practitioner on the panel has been engaged, direct engagement of any other practitioner as it may deem appropriate and, in every such case. (a) It shall be the duty of the legal practitioner so engaged to inform the fact of his engagement to the concerned Authority or Committee, and (b) The provision of this regulation shall apply to such legal practitioner as they apply to a legal practitioner on the panel.”

**6. MAHARASHTRA STATE LEGAL SERVICES AUTHORITY  
RULES, 1998**

**SECTION 18:**

These provide for certain official authorities, staff for Maharashtra legal aid services of

authority to function better in order to meet the needs of legal aid for vulnerable sections. The provisions of the Maharashtra Legal Aid and Advice Scheme,1979, the Maharashtra State Legal Aid and Advice Board Rules, 1981 and the Maharashtra State Legal Aid and Advice Board Regulations,1981 are given effect under these provisions including honorarium, records.

**SCHEMES - The Maharashtra State Legal Services Authority has provided for a Common Minimum Programme for every month which includes the following:**

<b>Month</b>	<b>Common Minimum Programme</b>
February, 2019	Awareness camps on plea bargaining, rights of prisoners and under trials
April, 2019	Awareness camps on equal Justice and free legal aid.
July, 2019	Reviewing of the quality of panel advocates
August, 2019	Camps on rights of prisoners, bail. Review of adequacy of numbers of legal services clinics
September, 2019	Jail visits to be conducted. Review of legal services clinics in Jail
November, 2019	Camps o Equal justice and free legal aid

It showcases activities especially camps to be conducted with respect to legal aid for prison inmates. However explicit mention of a prison visit by legal aid authorities has been mentioned only once.

Furthermore, whether the said programmes have been carried out in the prison are also required to be looked into.

## 7. JUDICIAL PRONOUNCEMENTS

### 4.1 *JANARDHAN REDDY V. STATE OF HYDERABAD*<sup>9</sup> AND *TARA SINGH v.*

*STATE OF PUNJAB*<sup>10</sup> herein the Supreme Court held a person the “right to a lawyer”, right to legal aid as a facet of right to life, personal liberty under part IIIrd fundamental right under Article 21 of constitution of India.

### 4.2 *M.H. HOSKOT v. STATE OF MAHARASHTRA*<sup>11</sup> the right to legal aid was

considered as an inalienable element of fair procedure under article 21 “this right to free legal aid is the duty of the government and is an implicit aspect of Article 21 in ensuring fairness and reasonableness; this cannot be termed as government charity”.

### 4.3 *SUNIL BATRA v. DELHI ADMINISTRATION*<sup>12</sup> lays down that “a prisoner is

entitled for legal aid to seek justice at two levels firstly to seek justice in proceedings before prison authorities and during judicial proceedings”

### 4.4 *HUSAINARA KHATOON v. THE STATE OF BIHAR*<sup>13</sup>, the Supreme Court

recognized that speedy trial is an essential ingredient of article 21 of the Constitution of India. And it’s the Constitutional duty of the State to set up such procedure as would ensure speedy trial to the accused.

### 4.5 *KHATRI II v. STATE OF BIHAR*<sup>14</sup>, held that there is constitutional duty to provide

legal aid arises from the time the accused is produced before the Magistrate for the first time and continues whenever he is produced for remand.

### 4.6 *ZAHIRA HABIBULLAH SHEIKH AND ORS v. STATE OF GUJARAT AND*

*ORS.*<sup>15</sup> The Supreme Court of India observed “each one has an inbuilt right to be dealt with fairly in a criminal trial. Denial of a fair trial is as much injustice to the accused as it is to the victim and to society

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9AIR 1951 SC 217

10AIR 1951 SC 411

11AIR 1978 SC 1548

12AIR 1978 SC 1675

<sup>13</sup> 1979 AIR 1369

14 (1981) 1SCC; 1981 SCC (Cri) 228; (1981 Cri. LJ 470)

<sup>15</sup> AIR2004SC3467

**4.7 MOHD. HUSSAIN @ JULFIKAR ALI v. THE STATE (GOVT. OF NCT)<sup>16</sup>**, stated that every person, therefore, has a right to a fair trial by a competent court in the spirit of the right to life and personal liberty.

**4.8 MOTI LAL SARAF v. UNION OF INDIA<sup>17</sup>**, the court observed that the concept of a fair trial is an integral part of article 21 of the Constitution. Section 309(1) of Cr.P.C provides that ‘In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.’ The speedy trial is a right guaranteed by the Constitution and its denial is the violation of the right to fair trial.

**4.9 HIMANSHU SINGH SABHARWA v. STATE OF M.P. AND ORS<sup>18</sup>**, the apex court observed that if fair trial envisaged under the Code is not imparted to the parties and court has reasons to believe that prosecuting agency or prosecutor is not acting in the requisite manner the court can exercise its power under section 311 of the Code or under section 165 of the Indian Evidence Act, 1872 to call in for the material witness and procure the relevant documents so as to subserve the cause of justice.

**4.10 RATTIARAM v. STATE OF MADHYA PRADESH<sup>19</sup>**, observed that the fair trial is the heart of criminal jurisprudence. A fair trial is a fundamental right which flows from article 21 of the Constitution. Denial of the fair trial is the denial of human rights.

**4.11 Re IN RE-INHUMAN CONDITIONS IN 1382 PRISON<sup>20</sup>**(April 2015) issued directives to National Legal Services Authority (NALSA) and the state legal services Authority (SLSA) to appoint and entrust panel lawyers to identify and represent in cases where detentions persist due to poverty and inability to pay bail or provide sureties in spite of bail being granted and for early disposal of compoundable offenses. Following the directive of Supreme court in *Re 1382 prison inmates’ case*, the state legal services authority are directed to ensure effective free legal aid, representation through legal aid lawyers so that they may be released on bail.

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<sup>16</sup> (2004) 4 SCC 158

<sup>17</sup> 2007(1) SCC Cri 180

<sup>18</sup> AIR 2008 SC 1943

<sup>19</sup> (2012) 4 SCC 516

<sup>20</sup> Writ Petition Civil no. 46/ 2013 , Order April 2015



**4.12 JAN ADALAT v. THE STATE OF MAHARASHTRA**<sup>21</sup>, the petitioner challenged the circular issued by the Jail Superintendent of Yervada Central Prison to the President of the Pune Bar Association to meet their clients in Yervada Central Prison between 9.00 a.m. to 10.a.m and 3.00 p.m. to 4.00 p.m. It is further stated that out of 15 windows for interviews, five will be available for the members of the Bar to meet their respective clients along with other procedural conditions. These conditions clearly reduce the visiting hours of lawyers to the inmate and therefore impose bar in accessing legal aid representation of inmates by the Legal aid lawyers.

**4.13 JAN ADALAT v. THE STATE OF MAHARASHTRA**<sup>22</sup>, The Mumbai High Court directs State including the prison authorities to provide modern day facilities including modern audio system so that prisoners can interact, interview with their relatives and family members, lawyers. To this effect, the Mumbai High Court recapitulates select provisions from criminal law are useful in facilitating effective communication and meeting between lawyers and prison inmates as following<sup>23</sup>:

*“The prison inmates should be permitted inland letters and postcards and envelopes subject to approval of Superintendent. A prisoner may with the permission of the superintendent substitute a letter for an interview or vice-versa. Further the prison inmates should write additional letters for legal purposes, normally at their own expense, and if they do not have enough money then at government cost. There shall be no limit on the number of incoming letters of prisoners. There should be supply of One copy of a newspaper in English or in the regional language or in Hindi shall be supplied at the discretion of the superintendent for certain categories of inmates”*<sup>24</sup>.

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21 Criminal Public Interest Litigation St. No. 46/ 2015

22 Jan Adalat Vs The State of Maharashtra, Criminal Public Interest Litigation St. No. 46/ 2015

23 Common Wealth Human Rights Initiative, Standards Behind Bars 2010, available at [http://www.humanrightsinitiative.org/publications/prisons/standards\\_behind\\_bars\\_maharashtra.pdf](http://www.humanrightsinitiative.org/publications/prisons/standards_behind_bars_maharashtra.pdf) (last visited November 8th, 2018)

24 The Code of Criminal Procedure (CrPC ) 1973 (Ch. XXXI, Section I, Rule 4(i) Rule 29(i,a), (Ch. XXXI, Section I, Rule 14, Rule 17(iv), (vi), (vii), (xiii)).

Common Wealth Human Rights Initiative, Standards Behind Bars 2010, available at [http://www.humanrightsinitiative.org/publications/prisons/standards\\_behind\\_bars\\_maharashtra.pdf](http://www.humanrightsinitiative.org/publications/prisons/standards_behind_bars_maharashtra.pdf) (last visited November 8th, 2018)

**4.14** *SUBHASH BHARDAWAJ v. STATE*<sup>25</sup>, It was found that the legal aid lawyer appointed from the Legal Services Authority did not turn up on the dates of examination of all-important witnesses, thus failed to make appropriate defense. Owing to nonappearance on due dates, there has been considerable delay of years filing appeal in the case. It is strongly recommended that there should be uniformity in the rules of visits by legal aid lawyers in correctional institutions or prison to be as prescribed by the standard procedure prescribed by NALSA.

## **8. LAW COMMISSION REPORTS**

**8.1.**In 1956, the 1st Law Commission of India recommended that lawyers provide representation in courts, prison appeals and criminal proceedings, and the *1961 Advocates Act* exhorted the Bar Council to “organize legal aid to the poor.” The Constitution of India specifically provides for the right to free legal aid in order to secure justice. Towards this aim, the 1970s and 1980s in India, the government formed two committees to examine legal aid, and created a Federal Committee on the Implementation Of Legal Aid Schemes.

**8.2.**In 1958, the 14<sup>th</sup> Report of the Law Commission of India states that free legal assistance should be provided to undefended accused, before the Sessions Court, without sufficient means. The Criminal Procedure Code, 1973 adopted only the recommendations made by the 14<sup>th</sup> Law Commission Of India Report and formulated provision on the similar lines. Accordingly, Section 304 Of the Code Of Criminal Procedure 1973 is included that provides that where, in a trial before the Sessions Court, the accused is not represented by a pleader, and where it appears to the court that the accused has no sufficient means to engage a lawyer; the court shall assign a lawyer for his defense at the expense Of the state. The responsibility Of providing free legal aid in non-sessions cases, which in reality form bulk Of all criminal cases, is not vested with the state.

**8.3.**In 1972, the 48<sup>th</sup> Report of the Law Commission of India recommends that there should be a provision of free legal aid by the state for all accused persons belonging to the economically weaker section of the society.

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25 Subhash Bhardawaj Vs State Criminal Appeal No 545 / 2016 available at [https://www.livelaw.in/trial-court-must-ensure-proper-legal-aid-accused-delhi-hc/\(last](https://www.livelaw.in/trial-court-must-ensure-proper-legal-aid-accused-delhi-hc/(last) visited November 8th, 2018)

## **9. CIVIL SOCIETY REPORTS**

### **9.1 COMMONWEALTH HUMAN RIGHTS INITIATIVE LEGAL AID SERVICES, 2014**

Presently in India, among the inmates of correctional institutions includes a large proportion of undertrials form more than 65% of India's prison population who are mainly from illiterate, scheduled castes, scheduled tribes and OBC backgrounds, [Prison Statistics (NCRB) 2014 year.]

The lack of regular and consistent visits made by legal aid lawyer is a perennial problematic issue. It has been found that in few states there is monthly visits or periodically once or twice in months or weekly visits by the legal aid lawyers to correctional institutions<sup>26</sup>. Whereas as per the prescribed mandate of the NALSA mandate in keeping with the prison manuals, there has to be strictly compulsory visits to the jails must be made at least twice every week<sup>27</sup>.

### **9.2 HUMAN RIGHTS LAW NETWORK (HRLN), TATA INSTITUTE OF SOCIAL SCIENCES (TISS) 3<sup>RD</sup> NATIONAL CONSULTATION ON PRISONERS' RIGHTS, LEGAL AID, AND PRISON REFORM, March 2016**

In India, "Under trials or prisoners form less than 3% of the persons benefited through legal aid schemes"<sup>28</sup>.

According to the latest Supreme Court's annual report, since the 1987 Act was enacted, "out of the total list of 1.77 crore beneficiaries of various schemes of the legal services authority, only 4.68 lakh prisoners have been provided with legal aid"<sup>29</sup>.

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26 Common Wealth Human Rights Initiative LEGAL AID SERVICES , 2014 available at <http://www.humanrightsinitiative.org/download/14571492622014%20Legal%20Aid%20Services%20in%20Correctional%20Homes%20of%20West%20Bengal.pdf>(last visited November 8th, 2018)

27 National Legal Services Authority, Standard Operating Procedure for Representation of persons in custody, available at <https://nalsa.gov.in/sites/default/files/document/SOP-%20Persons%20in%20Custody.pdf>(last visited November 8th, 2018)

28 Human Rights Law Network (HRLN), Tata Institute of Social Sciences (TISS) 3RD NATIONAL CONSULTATION ON PRISONERS' RIGHTS, LEGAL AID, AND PRISON REFORM March 2016 available at <https://hrln.org/wp-content/uploads/2018/03/National-Cons-Report.pdf>(last visited November 7th, 2018)

29 Common Wealth Human Rights Initiative, Jail Mail November 7, 2015, Prison Statistics (NCRB) 2014 , available at [http://www.humanrightsinitiative.org/publications/prisons/Jail%20Mail%20-%20Legal%20Services%20Day%20\(07.11.15\)%20\(English\).pdf](http://www.humanrightsinitiative.org/publications/prisons/Jail%20Mail%20-%20Legal%20Services%20Day%20(07.11.15)%20(English).pdf)(last visited November 7th, 2018)

“The total number of prison inmates to whom legal aid was provided in the year 2014 including prisons of 36 states is 79121”<sup>30</sup>. It may be noted that the number of legal aid lawyers, Para legal registered with national or state legal services authority are very marginal. Therefore, the reach of legal aid lawyers assistance to prison inmates in India has not been very satisfactory rather this falls short in view of the ever increasing number of under trials and already existing large number of prison inmates. As opposed to this number of under trials, contrastingly the number of legal aid lawyers has been disproportionate and declining hence this is a major impediment in providing free legal aid to inmates.

### **9.3 NALSA SCHEMES -STANDARD OPERATING PROCEDURE FOR REPRESENTATION OF PERSONS IN CUSTODY - ROLE OF NALSA IN PROMOTING RIGHT TO FREE LEGAL AID FOR PRISON INMATES –**

Some of the significant initiatives by NALSA for free legal aid for prison inmates in the recent past has been enumerated here briefly as below:

The National Legal Services Authority, the apex statutory body regulating the functioning of legal services lays down the Standard Operating Procedure for Representation of persons in custody<sup>31</sup> as per the NALSA’s SOP mandate from amongst the panel lawyers with DLSA, some lawyers should be earmarked as jail visiting lawyers.

The panel lawyers have to be strictly compulsory visits to the jails must be made at least twice every week.

The National Legal Services Authority (NALSA) Standard Operating Procedure (SOP) procedure directs the legal aid lawyers who are functioning as panel PLVs to regularly interact with the inmates and especially the new inmates to find out if they are represented by any lawyer and if not, they should inform the inmate about their right to get a legal aid lawyer<sup>32</sup>.

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30 Common Wealth Human Rights Initiative, Jail Mail November 7, 2015, Prison Statistics (NCRB) 2014 , available at [http://www.humanrightsinitiative.org/publications/prisons/Jail%20Mail%20%20Legal%20Services%20Day%20\(07.11.15\)%20\(English\).pdf](http://www.humanrightsinitiative.org/publications/prisons/Jail%20Mail%20%20Legal%20Services%20Day%20(07.11.15)%20(English).pdf) (last visited November 7th, 2018)

31 National legal Services Authority, Standard Operating Procedure for Representation of persons in custody, available at <https://nalsa.gov.in/sites/default/files/document/SOP-%20Persons%20in%20Custody.pdf> (last visited November 7th, 2018)

32 National Legal Services Authority, Standard Operating Procedure for Representation of persons in custody, available at <https://nalsa.gov.in/sites/default/files/document/SOP-%20Persons%20in%20Custody.pdf> (last visited November 7th, 2018)

The NALSA SOP procedure directs the Para Legal Volunteers (PLVs) to maintain the record mentioning the date a person was brought into the jail, the offence alleged against him, stage of case, next date of hearing and the name of the court.

There should be training Para legal volunteers (PLVs) to communicate with the inmates in the prisons especially the panel lawyers should interact with new inmates to ascertain from them their requirement of representation by any lawyer.

The PLVs should move their bail applications.

The PLVs should maintain the record mentioning the date a person was brought into the jail, the offense alleged against him or her, stage of case, next date of hearing and the name of the court.

The PLVs and the Jail visiting lawyers should keep track of non-production of any inmate in the court and such cases where no next date is available and inform the Secretary, District Legal Services Authority.

In case of non appearance before court, the PLVs should bring the same to the notice of the concerned Chief Judicial Magistrate or the Chief Metropolitan Magistrate for appropriate action.

The Jail Superintendent should be called upon to send a list of inmates in jail every fortnight to be reviewed by the Secretary of the District Legal Services Authority (DLSA). The DLSA should propose availing the services of retired judicial officers as jail visiting lawyers and honorarium should be provided for the same.

Regular awareness camps should be organized by the PLVs in the jails to create awareness on legal issues and specifically on the rights of the persons in custody.

The PLVs should encourage video conferencing to enable communication with the jail inmates. In addition to the directions to the PLVs, there are directions for training of prison inmates serving long term sentences convicts to function as PLV<sup>33</sup>.

Under the Standard operating procedure provided by National Legal Services Authority (NALSA), “there is a proposed mechanism of periodic report submission of the work undertaken by DLSA advocates to the Secretary DLSA”. The NALSA SOP procedure directs “the PLVs to maintain the record mentioning the date a person was brought into

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33 National Legal Services Authority, Standard Operating Procedure for Representation of persons in custody, available at <https://nalsa.gov.in/sites/default/files/document/SOP-%20Persons%20in%20Custody.pdf> (last visited November 7th, 2018)

the jail, the offence alleged against him, stage of case, next date of hearing and the name of the court”<sup>34</sup>.

The Delhi Legal Services Authority (DLSA) and prison authorities suggested that DLSA and jail authorities should monitor convicts’ cases to ensure that all of them approach the High Court with an appeal. The NCT government has also suggested that district court judges should be asked to inform all convicted persons of their right to file appeal against conviction, and an extra copy of the judgment should be sent to jail authorities<sup>35</sup>. Some of the progressive initiatives by legal services Authority –

(i) LEGAL AID CLINICS(LAC) AT PANCHAYAT -

The National Legal Services Authority has approved LACs at village level from panchayat offices to resolve disputes before the initiation of litigation before the courts<sup>36</sup> for speedier resolution of disputes. These LACs are to function as Para-legal workers for rendering services like preparing, verifying identity cards, job cards under the National Rural Employment Guarantee Act (NREGA) among and other community issues.

(ii) APPOINTMENT OF PARALEGALS –

The legal services authority has appointed the paralegals from among the existing prison inmates, such as long term sentence serving convicts with basic education and good behavior to be trained , enrolled as paralegals volunteers. The para legals function to assist in bail applications, special leave petitions and undertrials cases. In “Tihar jail there are

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34 National Legal Services Authority, Standard Operating Procedure for Representation of persons in custody, available at <https://nalsa.gov.in/sites/default/files/document/SOP-%20Persons%20in%20Custody.pdf> (last visited November 9th, 2018)

35 Indian express March 11, 2014, DLSA, jail authorities should ensure that convicts file appeals’ available at <https://indianexpress.com/article/cities/delhi/dlsa-jail-authorities-should-ensure-that-convicts-file-appeals/>(last visited November 9th, 2018)

36 Department of Administrative Reforms, Governance Knowledge Centre, Panchayats to set up Legal Aid Clinics (LACs), 22 December 2010 available at <http://indiagovernance.gov.in/news.php?id=499>(last visited November 9th, 2018)

around 46 paralegals volunteers working similarly on under trials cases”<sup>37</sup>. Many prisons in Maharashtra also conduct training of inmates in order to make them as paralegal volunteers with the efforts of DLSA organized trainings, programs.

The main function of these para legal volunteers is to spread legal awareness on rights of inmates, to inform the inmates about the role of DLSA and the legal aid lawyers following the training from DLSA so as to assist the inmates in seeking legal assistance.

### (iii) PRO BONO LEGAL SERVICES-

The ‘Pro bono legal services’ initiative is a web-based platform, for lawyers willing to register themselves on the website [doj.gov.in](http://doj.gov.in) to volunteer as legal aid or pro bono lawyers for such underprivileged litigants unable to bear the costs for the same. It is intended that through this online portal, the litigants from marginalised communities as enumerated under the Legal Services Act including SC and ST, women, children, senior citizens, persons with low income and persons with disabilities may avail legal aid.

### (iv) TELE LAW –

This is a scheme launched by Union Law Minister Department of Justice and NALSA partnering with Common Services Centre (CSC)- E- Governance Service Limited for mainstreaming legal aid to the marginalised communities through CSCs. This initiative, is launched across 1,800 panchayats in few states as Uttar Pradesh, Bihar, North Eastern States and Jammu & Kashmir by involving expert panel of lawyers stationed at the State Legal Services Authorities (SLSA) by connect lawyers with clients through video conferencing facilities at common service centres.

The tele law service also seeks to promote digital inclusion of the poor and making use of technology to deliver justice to the underprivileged. The department of justice has launched the online application for this initiative on its website [doj.gov.in](http://doj.gov.in).

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<sup>37</sup> businesstoday, Legal aid: All you need is law , Jan 6, 2013 [businesstoday.in](http://businesstoday.in) available at <https://www.businesstoday.in/magazine/cover-story/national-legal-services-authority-gives-legal-aid-to-poor/story/190696.html>(last visited November 9th, 2018)

## **10. INTERNATIONAL CONVENTIONS**

### **10.1. GLOBAL STUDY ON LEGAL AID – GLOBAL REPORT BY UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP)<sup>38</sup>**

Global Definition Of Legal Aid :

**10.2. UNIVERSAL DECLARATION OF HUMAN RIGHTS<sup>39</sup>** (1948, UDHR) was the first international instrument to proclaim that all persons were entitled to “equal protection of the law”<sup>40</sup>, as well as the right to a fair trial. By providing the right to be free from discrimination, the “right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him [or her] by the constitution or the law,”<sup>41</sup> and the right “in full equality to a fair and public hearing by an independent and impartial tribunal”<sup>42</sup>, the Declaration called upon countries to strengthen their justice systems to make these promises a reality for every human being.

- (i) **ARTICLE 10 Fair and public hearing:** Article 10 states, “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.”<sup>43</sup>
- (ii) **ARTICLE 11 Presumed innocent until guilty, the accused to have all guarantees necessary for his defence:** “(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.  
(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international

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<sup>38</sup>Global Study on Legal Aid – Global Report by United Nations Development Programme (UNDP), United Nations Office on Drugs and Crimes (UNODC) [October, 2016]

<sup>39</sup> General Assembly Resolution 217 A (III) Of 10 December 1948.

<sup>40</sup> Article 7 Of UDHR

<sup>41</sup> Article 8 Of UDHR

<sup>42</sup> Article 10 Of UDHR

<sup>43</sup><https://www.un.org/en/universal-declaration-human-rights/>



law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.”<sup>44</sup>

### **10.3. THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL**

**RIGHTS**<sup>45</sup> (1966, ICCPR) stresses States’ obligation to ensure that effective remedies are provided when rights are violated, in particular, through “competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system Of the State.” Article 14(3)(d) Of the ICCPR affirms the right Of individuals facing criminal charges to have legal assistance assigned to them and, “where the interests Of justice so require,” that such assistance be provided “without payment if he or she does not have sufficient means to pay for it.”<sup>46</sup> The ICCPR additionally emphasizes that “all persons are equal before the law and are entitled without any discrimination to the equal protection Of the law.”<sup>47</sup> The Human Rights Committee further elaborated on the right to legal assistance in its General Recommendation 32 noting that the “ availability or absence Of legal assistance Often determines whether or not. a person can access the relevant proceedings or participate in them in a meaningful way. While article 14 explicitly addresses the guarantee Of legal assistance in criminal proceedings in paragraph 3 (d), States are encouraged to provide free legal aid in other cases, for individuals who do not have sufficient means to pay for it. In some cases, they may even be obliged to do so. For instance, where a person sentenced to death seeks available constitutional review Of irregularities in a criminal trial but does not have sufficient means to meet the costs Of legal assistance in order to pursue such remedy, the State is obliged to provide legal assistance in accordance with Article 14, Paragraph 1, in conjunction with the right to an effective remedy as enshrined in Article 2, Paragraph 3 Of the Covenant.”<sup>48</sup>

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<sup>44</sup><https://www.un.org/en/universal-declaration-human-rights/>

<sup>45</sup> United Nations, Treaty Series, Vol 999, No. 14668.

<sup>46</sup> Article (2)(3)(a) and Article 14 also reinforces a range Of due process rights, including the right to be informed Of the availability Of assigned counsel (if the interests Of justice require), extending the right to convinced persons. Monitoring is to be provided by the Human Rights Committee, which has stressed that the severity and complexity Of a case are among the factors to consider in determining the “*interests Of justice*”.

<sup>47</sup> Article 26 Of ICCPR

<sup>48</sup> Human Rights Committee, General Comment 32: Article 14: Right to equality before courts and tribunals and to a fair trial, 23 August 2007 (ICCPR/GC/32)

**10.4. THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS<sup>49</sup> (1966, ICESCR)** asserts State parties' obligation to uphold rights without discrimination,<sup>50</sup> and to ensure the equal rights Of men and women to the protections arising from the ICESCR.

**10.5. INTERNATIONAL CONVENTION FOR CIVIL, POLITICAL, RIGHTS**

**ICCPR 1966:** Article 11 states: The International Covenant on Civil and Political Rights ratified in 1976, mentions the same under article 14 which states,  
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 (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement 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

**10.6. THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (1979, CEDAW)<sup>51</sup>** which is the key international instrument for achieving equality between men and women, includes a reference to the “establishment Of legal protection Of the rights Of women on an equal basis with men, through competent national tribunals and other public institutions for

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49 United Nations, Treaty Series, Vol 993, No. 14531

50Article 2(2): the rights enunciated in the present Covenant will be exercised without discrimination Of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

51 United Nations, Treaty Series, Vol 1249, p 13

the effective protection of women against any act of discrimination.”<sup>52</sup> In addition, the CEDAW Committee published a General Recommendation 33: Women’s Access to Justice in 2015, which includes guidelines on strengthening access to legal aid services for women, including promoting gender-sensitive services, improving accountability and legal awareness.<sup>53</sup> The CEDAW Committee’s General Recommendation 33: Women’s Access to Justice provides guidance to states on addressing key issues on enhancing women’s access to justice. The Committee noted critical challenges preventing women from accessing justice, including non-availability of courts and quasi-judicial bodies in rural/remote areas, time and money constraints, complexity of proceedings, physical barriers for women with disabilities, lack of quality and gender sensitive justice system including legal aid services.<sup>54</sup>

**10.7. THE BODY OF PRINCIPLES FOR THE PROTECTION OF ALL PERSONS UNDER ANY FORM OF DETENTION OR IMPRISONMENT<sup>55</sup>**

(1988) recognizes the right to legal aid for persons deprived of liberty. In particular, Principle 17 provides that “a detained person shall be entitled to have the assistance of a legal counsel. The person shall be informed of his or her right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it,” and that “if a detained person does not have a legal counsel of his or her own choice, then that person shall be entitled to have a legal counsel assigned to him or her by a judicial or other authority in all cases where the interests of justice so require and without payment if the person does not have sufficient means to pay.”<sup>56</sup>

**10.8. THE BASIC PRINCIPLES ON THE ROLE OF LAWYERS<sup>57</sup>** (1990) provides guidance to States in “their task of promoting and ensuring the proper role of lawyers”, including their obligations to inform the public of “their right to be assisted by a lawyer of their choice upon arrest or detention or when charged with a criminal offence” and

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<sup>52</sup> Article 2(c) of CEDAW

<sup>53</sup> Committee on the Elimination of Discrimination against Women, General Recommendation 33 on Women’s Access to Justice, 3 August 2015 (CEDAW/C/GC/33).

<sup>54</sup> CEDAW General Recommendation No. 33 – on Women’s Access to Justice

<sup>55</sup> General Assembly Resolution 43/173

<sup>56</sup> Ibid, Principle 17

<sup>57</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (1990)

to provide prompt access to lawyers possessing “experience and competence commensurate with the nature Of the Offense”, whose services must be free Of charge when the interests Of justice so require. The Basic Principles also require that lawyers undergo periodic training, uphold the principle Of non-discrimination and ensure that lawyers respect their client’s interest. It also notes the responsibility Of the State to ensure that lawyers are free from intimidation and improper interference so that lawyers are able to independently perform their prOfessional functions.

**10.9. THE UNITED NATIONS RULES FOR THE TREATMENT OF WOMEN PRISONERS AND NON-CUSTODIAL MEASURES FOR WOMEN OFFENDERS**<sup>58</sup> (2011, the Bangkok Rules) complement the Nelson Mandela Rules by giving guidance to States on reducing imprisonment Of women and meeting the specific needs Of women in imprisonment. Taking into cognizance the “particular vulnerability” Of newly arrived women prisoners, the Bangkok Rules state that they shall be provided with “access to legal advice” upon admission. The Rules also provide that “prison authorities shall help women who have suffered sexual abuse or other forms Of violence before or during detention secure access to legal assistance”.<sup>59</sup>

**10.10. THE UNITED NATIONS PRINCIPLES AND GUIDELINES ON ACCESS TO LEGAL AID IN CRIMINAL JUSTICE SYSTEMS** (2012, UN Principles and Guidelines) is the first international instrument dedicated to the right to legal aid; they highlight and reaffirm that legal aid is an essential element Of a fair, humane and efficient criminal justice system that is based on the rule Of law; a foundation for the enjoyment Of other rights, including the right to a fair trial; and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process and enables access to justice. The UN Principles and Guidelines provide States with 14 principles and 18 guidelines on the establishment, reform or administration Of national legal aid systems in the context Of criminal justice, and on ways to ensure that legal aid is “accessible, effective, sustainable and credible.”<sup>60</sup> Collectively, they Offer

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58 General Assembly Resolution 65/229

59 Ibid., Rules 2(1), 7 and 25(2)

60 UN Principles and Guidelines (see footnote 2), principle 2(15). See also, the Bangkok Declaration on Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice, General Assembly resolution 60/177, annex, and the Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World, General Assembly resolution 65/230, annex reiterating the role Of legal aid in delivering access to justice.

detailed guidance on the provision of legal aid at various stages of criminal justice proceedings and for various types of beneficiaries. When adopting the UN Principles and Guidelines, the General Assembly urged States to establish, strengthen and expand legal aid “to the maximum extent possible.”<sup>61</sup>

**10.11. UNITED NATIONS PRINCIPLES AND GUIDELINES ON ACCESS TO LEGAL AID IN CRIMINAL JUSTICE SYSTEMS (UN PRINCIPLES AND GUIDELINES) IN 2012.**<sup>62</sup>

The UN Principles and Guidelines are the first international set of standards on legal aid in criminal cases, which aim to provide guidance to countries on the fundamental principles for establishing criminal legal aid systems. In 2012, in The Declaration of the High-Level Meeting (High Level Political Forum – HLPF) of the General Assembly on the rule of law at the national and international levels, the General Assembly emphasized the importance of safeguarding “the right of equal access to justice for all, including members of vulnerable groups, and the importance of awareness-raising concerning legal rights”, and to take all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid.<sup>63</sup>

**10.12. THE UN PRINCIPLES AND GUIDELINES 2013:** recognize that “Legal aid is an essential element of a fair, humane and efficient criminal justice system that is based on the rule of law. Legal aid is a foundation for the enjoyment of other rights, including the right to a fair trial, as defined in, of the Universal Declaration of Human Rights (UDHR), a precondition to exercising such rights and an important safeguard that ensures fundamental fairness and public trust in the criminal justice process.” (Article 11, Paragraph 1) The UN Principles and Guidelines states that “the term ‘legal aid’ is defined as “legal advice, assistance and representation for persons detained, arrested or imprisoned, suspected or accused of, or charged with a criminal offence and for victims and witnesses in the criminal justice process that is provided at no cost for those without sufficient means or when the interests of justice so require.

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<sup>61</sup>General Assembly resolution 67/187, para. 4; *see also* UN Principles and Guidelines (see footnote 2), para. 10. These may involve public defenders, private lawyers, contract lawyers, *pro bono* schemes, bar associations, paralegals and others.

<sup>62</sup> General Assembly Resolution 67/187

<sup>63</sup> General Assembly Resolution 67/1

Furthermore, “legal aid” is intended to include the concepts of legal education, access to legal information and other services provided for persons through alternative dispute resolution mechanisms and restorative justice processes.”

**10.13. THE UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP) AND THE UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC) UNDERTOOK THE GLOBAL STUDY ON LEGAL AID 2013** to establish a baseline understanding of how the right to legal aid in civil, criminal and administrative cases has been defined and addressed around the world. The Global Study is the international community’s first attempt to collect data on and send a comprehensive overview of the state of legal aid globally.

**10.14. THE JOHANNESBURG DECLARATION ON THE IMPLEMENTATION OF THE UNITED NATIONS PRINCIPLES AND GUIDELINES ON ACCESS TO LEGAL AID IN CRIMINAL JUSTICE SYSTEMS, 2014**<sup>64</sup> which emerged from the International Conference on Access to Legal Aid in Criminal Justice Systems held in Johannesburg, South Africa, called upon States to fully implement the UN Principles and Guidelines and provisions related to legal aid contained in international and regional instruments

**10.15. THE UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS**<sup>65</sup> (2015, the Nelson Mandela Rules), which was first adopted in 1957 and revised by the UN General Assembly in 2015, provides that “prisoners should have access to effective legal aid”. This also applies to untried prisoners —“if an untried prisoner does not have a legal adviser of his or her own choice, he or she shall be entitled to have a legal adviser assigned to him or her by a judicial or other authority in all cases where the interests of justice so require and without payment by the untried prisoner if he or she does not have sufficient means to pay. Denial of access to a legal adviser shall be subject to independent review without delay”.<sup>66</sup>

**10.16. THE COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE (CCPCJ)** which serves as the UN system’s lead policymaking body in the

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*64 The Johannesburg Declaration on the Implementation of the United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, Johannesburg, 24-26 June 2014.*

*65 General Assembly Resolution 70/175*

*66 Ibid., Rules 119(2) and 61(3)*

area Of criminal justice, adopted resolution 25/2 on 27<sup>th</sup> May, 2016, which encourages Member States to adopt or strengthen domestic measures to ensure effective provision legal aid and requests UNODC to work closely with other UN agencies to continue to develop and disseminate relevant tools and to provide advisory services and technical assistance to Member States in the area Of legal aid.

## **11.COMPLIANCE AND NON-COMPLIANCE WITH LEGAL PROVISIONS IN BYCULLA PRISON (MALE AND FEMALE)**

### **11.1. IN COMPLIANCE WITH THE DLSA AND NALSA ACT & RULES:**

- i. There is a legal aid cell in Byculla prison which is common for both male and female prison, there is a display board indicating a legal aid cell written in Hindi and English. There is a prescribed list of names of Advocates and their mobile numbers are written in Marathi / Hindi language and even phone numbers are written in Hindi not English numbers on the outside facing wall of the legal aid cell so that it is exposed to everyone.
- ii. There is a prescribed number of days and timings for arrival of legal aid lawyers in prison as well. Only few of the inmates are allowed to meet their legal aid lawyers or any other lawyer in mulakath though not all inmates. Even in case of foreign nationals only select few inmates are allowed to meet legal aid lawyers not all foreign inmates depending on their respective country consulate.
- iii. Also keeping in view of Report of the Justice Radhakrishnan Committee on Prison Reforms (2017-2018)- The law students are able to visit Byculla Prison to understand the working and also interact with the Byculla Inmates with respect to legal aid service. And Maharashtra Legal Service Authority conducts legal aid lectures periodically with Byculla Prison.

### **11.2. NON –COMPLIANCE WITH THE DLSA AND NALSA ACT & RULES:**

- i. Though the Byculla prison seeks to give effect to these relevant legal provisions but in its implementation and actual implementation there are certain limitations.
- ii. Though the phone numbers are mentioned of DLSA lawyers, but these phone numbers are found to be not working as contended by the inmates, the mobile numbers of most of the DLSA lawyers that are displayed on the board in the

Byculla Prison are mostly invalid. Some of these numbers are either found off, not reachable and not even from Maharashtra.

- iii. None of the names of the lawyers mentioned in the wall of the legal aid cell of prison are mentioned by any of the prison inmates.
- iv. The DLSA lawyers and Para Legal are irregular, absent on their prescribed schedule of visit in the prison. It is not clear if all the lawyers mentioned in the list of names on the walls of legal aid cell visit or only few of them visit the legal aid cell.
- v. The Para Legal are discriminatory in taking up cases and are reluctant to take cases of the inmates who are charged with PITA ACT (Prevention of Immoral Trafficking Act ,1986) and NDPS ACT (Narcotics, Drugs and Psychotropic Substances Act 1985).
- vi. The legal aid lawyers never meet the inmates inside the prison. Most of the legal aid lawyers come during the prison lock up time i.e. Bandhi in this way the inmates don't get adequate time and space to interact with their lawyers to discuss about their case. The legal aid register is not maintained properly by the legal aid lawyers. The register maintains no uniformity in language ( either in Marathi or in Hindi or in English) , in most of the pages the signatures of legal aid lawyers are also missing barely names of legal aid lawyers are mentioned. There is no record keeping or written entry of the nature of advice being given by the legal aid lawyer to the concerned in any given case. The entries are not mentioned as per any particular scheme as weekly or daily. There is a gap in the register as well.



## CHAPTER V

### MAJOR FINDINGS AND ISSUES

The Byculla male prison compound includes 4 barracks; each with a sanctioned capacity of 50. Based on the information provided by the prison officials, staff, prison data records to the LLM students, the total capacity of the prison as of 19.09.2019 was 496 which is divided as follows-

<b>Inmate categorization</b>	<b>Number of inmates</b>
Under trials	364
Convicts	132
Total	496

The scope of this study is limited to under trials only and not convicts for the purpose of assessing their needs and the status of legal aid and legal representation through private lawyers. Out of the total number of under trials, the LLM students covered 331 inmates for data collection by administering the interview guide. For a comprehensive coverage of all under trials inmates, the LLM students administered the interview guide on the under trials at a barrack to barrack basis. The approach was taken in consultation with the circle officer of Byculla male prison in order to ensure that the work undertaken was done under the supervision and guidance of the prison officials so as to ensure a better coverage. The officials did make it clear that there did not exist any barrack to barrack official data register which the LLM students could make use of. In order to get any information as to how many inmates did live in each barrack, the only records available were the attendance registers maintained by the Jawabdar of each barrack.<sup>67</sup> Hence the prison register being the basis for data collection and administering interview guide seems authentic and credible.

The Barrack to Barrack composition of Byculla male prison has been provided as follows:

<b>Barrack number</b>	<b>Inmates covered</b>
Barrack 1	63
Barrack 2	138
Barrack 3	40
Barrack 4	90
Total Coverage	331

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<sup>67</sup> However, we were warned that the data in the registers was not precise. But there is no other barrack to barrack data on account which the LLM students were forced to use the same as their baseline, though the data was required to the analysed time and again due to the various errors the records had.

The researchers had discussions with prison officials which primarily included the Senior Jailer Mr K.P Bhavar, Circle Officer Mr. Anthony, Inspector Yadav and Constable Kulkarni. Furthermore, they also had informal discussions with other constables engaged in the male barracks.

*\*The precise barrack to barrack capacity was not given to the LLM students by the officials who stated that the same was not available at all. All that was available was the total number of inmates. It has to be noted that there were repeated barracks reshufflings which did hamper the data collection of the LLM students. The movement of convicts to Barrack number 3 on 19.09.2019 led to a lot of reshuffling on account of which the coverage of Barrack number 3 is low as compared to that of Barrack number 2.*

## **12. FINDINGS FROM THE BARRACK**

Selective legal Aid to inmates by Legal Aid Lawyer - At the outset it has to be mentioned that based on the interactions of the LLM students with the Para Legal volunteer, it is learnt that the District Legal Services Authority Lawyers do not take cases of inmates who are:

- Booked under NDPS
- Booked under sections 142, 143 and 147 of IPC.
- Habitual Offenders

Out of the covered 331 inmates, the LLM students found the following with respect to legal aid-

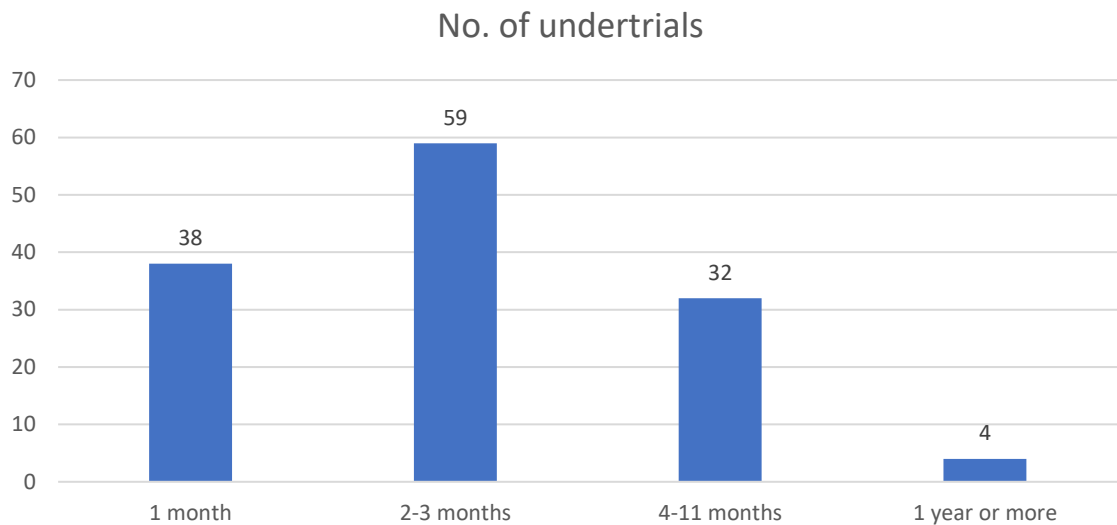
<b>Legal Aid parameters</b>	<b>Inmates</b>	<b>%</b>
No lawyer appointed	204	62
Private Lawyer Appointed	68	20
Legal Aid Lawyer Appointed	59	18
Total	331	100

### **12.1 CATEGORY –I -UNDER TRIAL INMATES WITH NO LAWYERS APPOINTED**

The table shows that out of a total of 331 inmates who were administered the interview guide, 204 claimed that they did not have a lawyer at all. Out of these 204 inmates, the LLM students were given information on the period of incarceration by 133 inmates, which is as follows-

<b>Time in Prison</b>	<b>No of undertrials</b>
1 month	38
2-3 months	59

4-11 months	32
1 year or more	4
Total	133



### **ISSUES FACED BY UNDER TRIAL INMATES WITH NO LAWYERS APPOINTED**

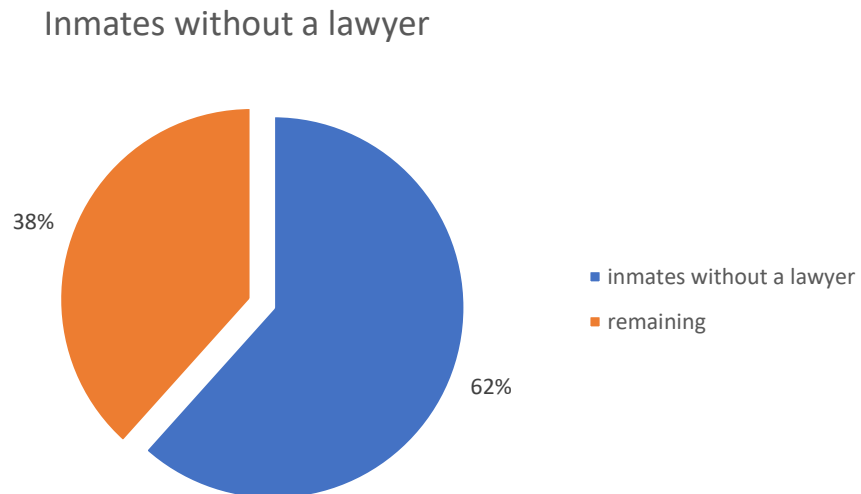
**Violation of the right to fair trial:** The right to a counsel, legal representation by an advocate in a criminal case as a Fundamental Right has been reiterated by the Supreme Court in the case of *Md. Sukur Ali. V. The State of Assam* wherein article 22 was interpreted as being inclusive of the concerned right as a facet of right to life, personal liberty.<sup>68</sup> The right to legal representation is a fundamental constitutional right guaranteed to all accused including under trials inmates.

The non-availability of an advocate especially when it leads to a violation of the rights of the inmates is not allowed under articles 21 guaranteeing the right to life, personal liberty and right of an accused to legal safeguards in criminal procedure under article 22 of the Indian Constitution. The violation of this right gets compounded by the fact that the below mentioned issues are themselves a manifestation of their violations itself.

**Delay in appointment of Legal Aid lawyers** – The under-trial inmates with no lawyers besides being denied the right to legal representation also suffer from denial of right to speedy and timely justice, as there are inmates who have been languishing in prison for almost three years for varied reasons depending on a case to case basis. As rightfully stated in a series of cases by courts, Delayed justice is denial of justice and consequently a denial of the right to life and personal liberty.

<sup>68</sup> Criminal Appeal No. 546 of 2011

**Need for Examination into Identity Documents & Related reasons-** For those under trial inmates who have no legal representation, the specific case wise matters and reasons for such inmates need to be taken into account. This may be due to a lack of valid identity documents, lack of money to avail private lawyers or any other reason for the same.



The inmates without lawyer consist of 62% which is more than one third of the size.

Hence this is a grave issue which needs consideration.

**No court hearing for inmates without lawyer:** Out of 204 inmates, 27 inmates were ones who hadn't had a single hearing. They also stated that they did not have a lawyer. The issue with respect to court hearing was something which was reiterated to the LLM students by the inmates as a general problem. While the inmates did know the date of their court hearing (*Tareekh*), the lack of lawyer is one of the major handicaps in representing the lawyer in court and also informing the inmates priori on the expected date of production before the court.

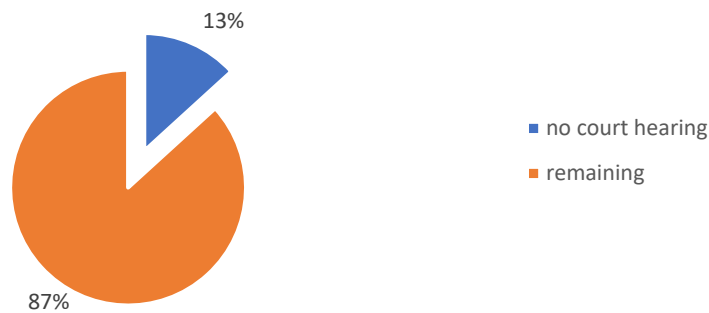
Further, they were unable to attend due to the following issues:

- i. A lack of availability of transport and manpower of any kind to transport the inmate from the prison to the court house. This was the primary reason given by the inmates
- ii. A lack of access to video conferencing. It was stated by inmates generally that they were not satisfied by the system at all since there were repeated instances of it

breaking down, not working or not connecting. Furthermore, access to video conferencing for contact with their lawyers was something on which no inmate had any information at all.

- iii. The problem was compounded by the fact that for inmates going to a court was the only appropriate time juncture wherein they could engage or change a lawyer usually with the help of a judge. Therefore, non-production before the court also denied these under trial inmates the right to avail legal aid lawyers from court and the other issues with respect to legal aid lawyers could be tackled for by the inmates only in the court since that offered them the only way of meeting their lawyer. Since the inmates mentioned were not able to attend their hearing, there most effective point of contact with respect to legal aid was unavailable to them. This finding showcases the severe distrust in which the jail legal authorities were seen by the inmates.

Inmates without any court hearing



**The inmates without court hearing comprises of 13 percent of the same.**

- iv. **Dearth of information, knowledge on legal charges, proceeding of their own case :** It has to be noted that out of 204 inmates on whom the interview guide was administered upon, there were 20 inmates who claimed that they were either made to sign a document or that their name and other details had been noted down by the Para legal volunteer but nothing of any sort had happened i.e. since nothing was told to them by any of the legal aid officials and neither did anything happen, they therefore claimed they had no lawyer. The under-trial inmates are also largely unaware of the number of charges availed against them, single or multiplicity of charges, the nature of offences being bailable or otherwise, the quantum of sentence as the fine amount, sentence period and related matters. This also points

out for the need of a lawyer who may explain these criminal charges to inmates and make them aware and help them understand the case.

<b>Time in Prison</b>	<b>No of undertrials</b>
1 month	10
2-3 months	9
4-11 months	1
Total	20

- v. **No knowledge of the right to legal aid lawyer** - In tandem with this issue, the LLM students were made aware of the problem of some inmates who did not have an idea of legal aid at all. During the administration of the interview guide, 7 inmates simply stated that they had no idea of a legal aid lawyer at all and they did not have a clear idea of what the para legal volunteer was supposed to do, apart from writing their names in a register, the purpose of which was not clear to them.
- vi. **Issues with the Lock in period:** Another issue with respect to the same was the fact that the timings of the *bandi* coincide with those of visitation of the legal aid lawyers. While inmates were called by the lawyer, a two-hour visitation from 11 A.M. to 1 P.M. did not allow for total inmate coverage by the legal counsel who usually came once a week. The inmates were therefore unable to meet the legal aid lawyers at all which then compounded the problem of lack of information on charges, bail, courts etc. There were inmates who had no idea of the fact that a lawyer even visits the prison, showcasing the problems associated with this system.
- vii. **Recourse to Plea Bargaining by under trial Inmates due to lack of a lawyer:** The LLM students were informed by 3 inmates that due to them not being appointed lawyers, they ended up accepting the crime which they had allegedly committed (plea bargaining). This was done in order to reduce their jail time since they had no idea of the period they were to be kept as under trials. They stated that the process of *Kabool* (plea bargaining) provided them with a specific time frame with respect to their incarceration in prison. A lack of lawyer led to a dearth of information with respect to the understanding of charges, bailability, and the duration of time to be spent in prison. Therefore, the inmates would usually accept the charges. This system was explained to the LLM students by the Jawabdars as one which ensured a quick and faster release from prison and was enquired about

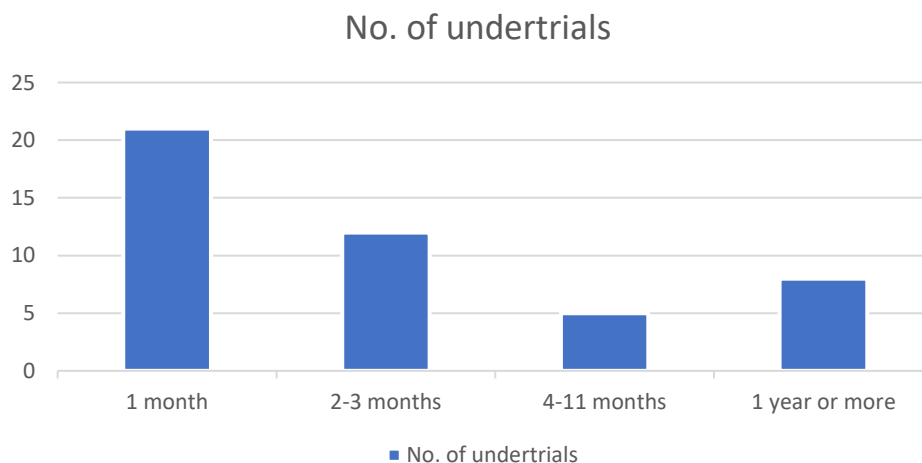
by several inmates about its efficacy as to whether it would ensure a quicker release.

This completely defeats the process of plea bargaining as plea bargaining provided under CRPC is subject to voluntary consent of the accused or inmates but in the present scenario, there is a lack of information and understanding. Hence there is no scope for consent with respect to plea bargaining. Rather this system of plea bargaining is a helpless resort by the under trials and is also a violation of relevant provisions of CRPC.

### 12.2 CATEGORY II - UNDERTRIAL INMATES WITH PRIVATE LAWYERS

Out of 204 inmates, 68 inmates had engaged a private lawyer. Amongst the concerned inmates, 46 prisoners allowed the LLM students to note down the time they had spent in the prison which is as follows:

<b>Time in Prison</b>	<b>No. of undertrials</b>
1 month	21
2-3 months	12
4-11 months	5
1 year or more	8
<b>Total</b>	<b>46</b>

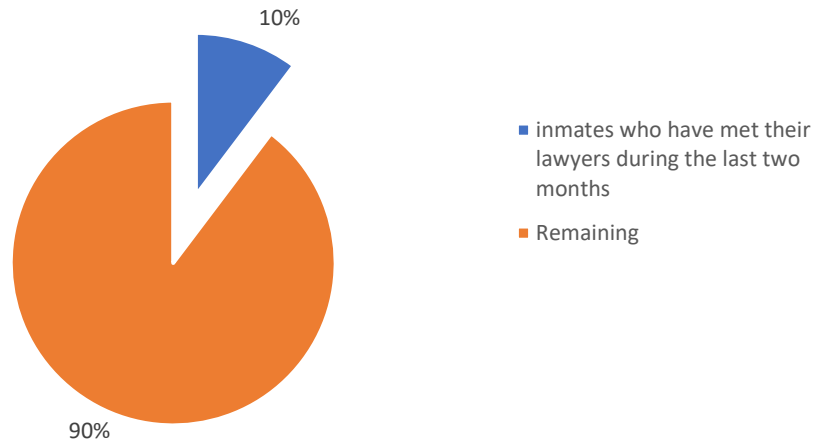


### Issues Faced by Under Trials in seeking legal Aid from Private Lawyers

- i. Prevalence of only a few specific private lawyers:** The LLM students were informed about the existence of a few specific names of private lawyer only , ( Mr. Patil) who were willing to take up the matters of several inmates whenever they had a court hearing. With respect to the aforementioned lawyer, while 5 inmates did state that they had engaged the respective lawyer, other inmates who had gone to the court had a negative opinion of the same lawyer who they believed was inefficient and charged a high rate of money. The inmates did mention that the lawyer had not once met them at prison and would only meet them at the court just prior to their hearing. The lawyer known as *Mr. Patil* practiced at the CST court.
- ii. Inmates shifting from a public or legal aid lawyer to a private lawyer:** The LLM students were provided for two instances where the inmates had shifted from a public to a private lawyer. The reason for the same was that the public lawyers had been highly inefficient. Both inmates had spent a minimum of 5 months in the prison during which time they had engaged a public lawyer but then shifted to a private one.
- iii. Instances of lawyers charging high fees:** Inmates on whom the interview guide was administered mentioned that the private lawyers charged a high fee for which they kept on pestering the inmates or their families. Even after their payment, the lawyers would hardly meet the inmates. 2 inmates were planning to change their private lawyers since they were not working at all. With respect to inmates not engaging a private lawyer, it has to be noted that the general economic condition of the inmates was not one which afforded for the engagement of a private lawyer.
- iv. Limited or No Visit by Lawyers in Mulakat in Prison with the Inmates:** Even with respect to inmates engaging a private lawyer, information with respect to case status, possibility of bail, charges and multiplicity of courts was not known by the inmates. The inmates did not have much idea on the aforementioned points at all. Visitation of lawyers to the prison was not high with only 7 inmates claiming to have met their lawyers within the previous two months.



### Meeting of inmates with their private lawyers

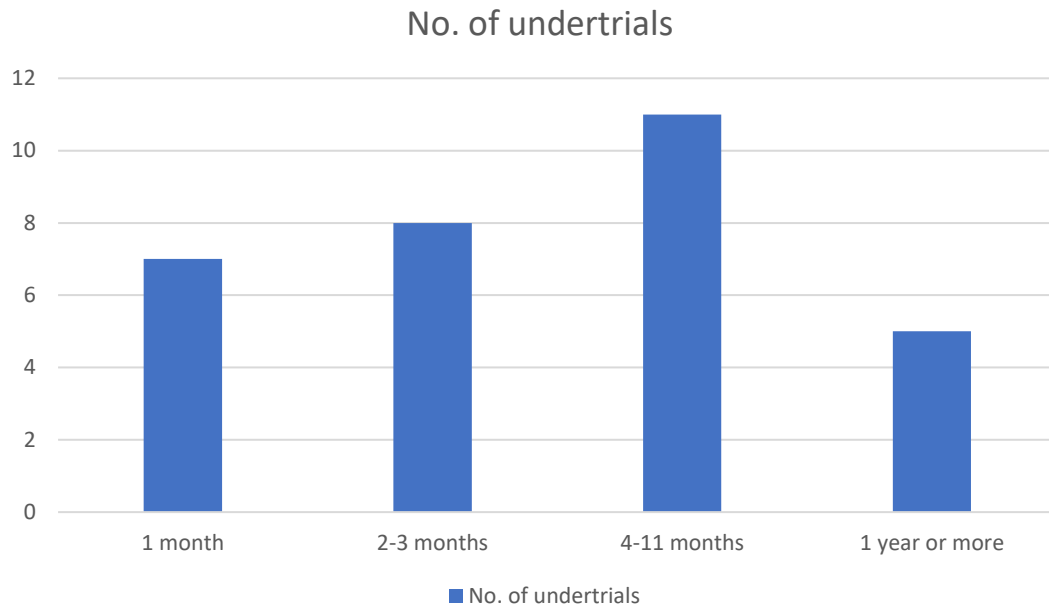


*\*There was only one inmate charged under NDPS who claimed to be satisfied with the workings of his counsel. Another inmate stated that he had engaged both a legal aid and a private lawyer, both of whom were extremely unsatisfactory.*

### 12.3 CATEGORY III - UNDERTRIAL INMATES WITH LEGAL AID LAWYER APPOINTED

Out of 331 inmates, 59 inmates claimed they had been given a legal aid lawyer. Based on the responses received, the following is the time period spent by the inmates in prison.

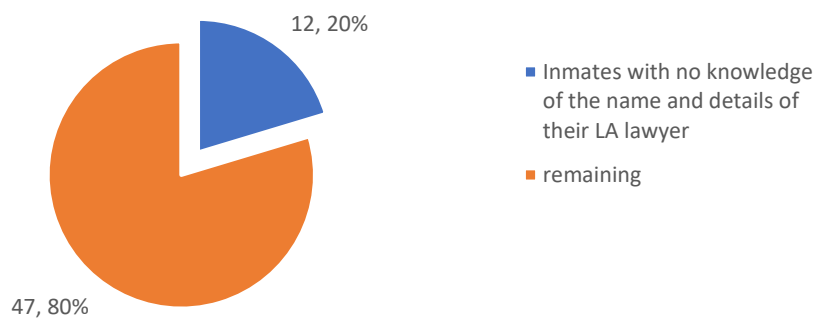
Time in Prison	No. of undertrials
1 month	7
2-3 months	8
4-11 months	11
1 year or more	5
Total	31



**Issues Faced by Under Trials in seeking legal Aid from Legal Aid Lawyers**

- i. **Dearth of information with respect to the legal aid counsels:** Based on the information received with the help of the interview guide, it was found that there were 12 inmates who knew that they had received a legal aid lawyer but were at a loss to explain who their lawyer was. Out of these 12 inmates, 4 inmates had not met their lawyers even once and did not know when they would meet them. They stated that their only chance to meet the lawyers would be during a court hearing since the lawyers had not visited them in prison.

Inmates with no knowledge of their Legal aid lawyers' details



The under-trial inmates with legal aid lawyers is barely 20 % which is a very limited number.

- ii. **Nil & Limited meeting with legal Aid lawyers** -The situation becomes all the more critical for the 5 inmates lodged inside the prison for more than a year, since 2 of them stated that their lawyer had not met them at all, while another one stated that the last time his lawyer met him was 3 months, with the remaining 2 failing to provide any information. Therefore, one can state that the legal aid representation with respect to these inmates has not been of much value.
- iii. **Non understanding of Plea bargaining by Inmates:** The issue of *kabool*/plea bargaining was prevalent with respect to one of the inmates who claimed that since he had no knowledge of his lawyer at all, he had accepted the punishment as it was much more convenient. The system of plea bargaining was prevalent in the Prison with a general tendency of the inmates to prefer this over a long uncertain wait as an undertrial.
- iv. **Lack of information on case status:** 3 inmates reported that they did not have any clue as to their case status at all. They had met their lawyers only during their court hearings after which the lawyers had not explained anything with respect to their cases, their complete charges, the possibility of bail.
- v. **No meeting with the lawyers during court hearing:** 2 inmates claimed that even on the date of their hearing, their counsels were not present. Also, the inmates were unable to contact them. The non-availability of the counsels during the court hearings created a major problem as the court simply postponed their date, which was something which the inmates complained about.
- vi. **Demand of money by Legal Aid Lawyers from Inmates:** 2 inmates stated that the legal aid lawyers had asked for money on order to ensure a quick release. They stated that the concerned lawyers did not meet them much and did not give them any information.
- vii. **Selectivism & Non representation by Legal Aid Lawyers in Cases:** With respect to NDPS issues, there was only inmate who was provided with a lawyer. However, the inmate claimed that he had met his counsel a year ago.
- viii. **Lack of Family relatives, Mulakat to follow up with Legal Aid Lawyers:** Another issue plaguing the inmates was the fact the several of them, most of them from Barrack number 2 were not from Mumbai. Since they did not have any relatives living in the city, they were informed that they could not be provided proper legal aid. Therefore, while the lawyers were duly appointed, they did not look into these cases since there was no one on the outside to contact them.

To summarise the issue, one can state that with respect to legal aid lawyers, it can be stated that the inmates did not give a positive feedback. The LLM students did not meet a single inmate who stated that he was happy with the legal aid lawyer at all, which can be inferred from the variety of issues mentioned by the inmates. These issues explain the reason for a lack of trust amongst the inmates with respect to the state legal aid service.

### **Case studies on the lack or non-availability of legal aid**

#### **Case Study 1**

#### **LACK OF LEGAL REPRESENTATION FOR UNDERTRIAL INMATE CHARGED UNDER NDPS**

**UT NO:** 19

**LAWYER:** legal aid

**CHARGES:** NDPS

**TIME IN PRISON:** 2 years 6 months (Approx.)

- ix.** The inmate came to Byculla prison in March 2017 and was charged under NDPS act. He was given a legal aid lawyer by the court after 4 months in prison. However as of now the inmate last met his lawyer approx. 20 months ago. The inmate stated that the lawyer had only met him for getting the signature on the inmate on the Valakatnama and some other documents. During the past 2 years during which the inmate was incarcerated in prison, the lawyer did not come for any *Mulakats*. Even on the date of the court hearing, the lawyer was only present during one or two hearings even though the inmate has had 6-7 hearings. Despite various attempts to contact him, he has been unable to do so since the phone number given to the inmate by the lawyer is switched off and neither is there any proper facility for the inmate to contact him at all at the court house. During the last two months the inmate has been unable to go the court due to the non-availability of any guard and van to take him to the court. The non-availability of a van during the date of a court hearing is a problem reiterated by several inmates.
- x.** The inmate is economically in a bad position on account of which he cannot afford to engage a private lawyer. Though he does plan to change his lawyer, he does not know how to except with the help of a judge on his next hearing.

## Case Study 2

### NON-AVAILABILITY OF LEGAL AID FOR 11 MONTHS

**UT NO** 119

**LAWYER:** No lawyer appointed

**CHARGES:** 150 IPC

**TIME IN PRISON:** 11 months

- xi.** The inmate has been in the prison for 11 months and has no legal representation. During the said months, he has had only 1 court hearing which according to the inmate was only for a minute. He stated that he has been unable to meet to the visiting legal aid lawyer in jail since he is not allowed to leave the barracks after the concerned *bandi* despite repeated requests. His signature was taken by the legal aid representative two months ago stating that he would be given a lawyer soon but as of now nothing has happened and no updates have been given. Even during the date of court hearing, the inmate was unable to go to the same due to the non-availability of a police escort.
- xii.** The lawyers who are appointed to give free legal aid to inmates of Byculla prison are unable to provide them assistance at all. On the other hand, the inmates do not reach on respective *tareekhs* to court so that judge can give them a government lawyer. The inmate has been in the Prison for 11 months and has had no due legal representation which is problematic.

## Case Study 3

### NO CONTACT WITH LEGAL AID LAWYER FOR 8 MONTHS

**UT NO.:** 2219

**CHARGES:** 379 IPC

**LAWYER:** Legal Aid

**DURATION IN PRISON:** 8 months

- xiii.** **SUMMARY:** The inmate informed the researchers that he has been in the prison for 8 months during which he has been appointed a legal aid lawyer which was given to him when he had his only court hearing. The lawyer has not met the inmate even once, and

neither does the inmate know any details about him. Furthermore, during the 8 months the inmate has been in prison, he has only attended a single hearing.

## CHAPTER VI

### SUGGESTIONS AND RECOMMENDATIONS

Pursuant to the month long qualitative and quantitative study conducted by the students following the administration of semi structured interview guides to inmates and officials, certain specific suggestions are formulated based on the nature of problems and challenges contented by the inmates as well as the issues observed by the students, in order to address the legal aid issues faced by inmates. All these suggestions are directed to the main goal of facilitating legal aid for the inmates (under trial) through various mechanisms and processes. These suggestions are aimed towards the attainment of three major objectives:

Generating awareness, understanding among Inmates & Empowering inmates by safeguarding the right of inmates.

- Right to legal representation, understanding and awareness of legal and case related matters, right to legal aid in compliance with the existing legal framework.
- Establishing Robust mechanism in the prison for promoting legal representation, legal information, awareness and facilitating Legal aid in Prison through the efforts of prison officials, DLSA.
- Greater involvement of Law Students, Para legals, DLSA lawyers in ensuring the inmates their legal right to representation, legal information, legal aid and improving the functioning of legal aid lawyers in prison.
- Redressing the issues and limitations faced by inmates in availing legal aid and other matters necessitating legal assistance in prison.

These objectives and purpose of attaining constitutional, legal compliance to the primary and most fundamental constitutional provision of legal representation of inmates through legal aid lawyer and further assistance in court production and proceedings, documents such as identity card verification and documentation as preparing petition, affidavits, applications and other related matters by the prison administration through the initiatives, efforts of prison officials as a range of new schemes and programs are initiated for the same by the concerned Government Ministry, Departments.

It may be categorically and specifically noted that the Right to legal representation to an accused including (under trial) inmates at the cost of state is provided under constitution (Art.22) this is distinct from right to legal aid for bail and other court related matters.

Right to be informed and made aware of criminal charges , information by legal aid lawyer involves the facets of right to making the prison inmate aware of their basic fundamental and legal right of availing right to avail lawyer, seek legal representation, right to legal aid, making the inmates informed of the legal matters pertaining to their case, this understanding would enable the inmates to exercise their right to legal aid better and also make them more involved, aware of the legal process involving them.

Right to legal aid lawyers assistance in bail and other court related matters pertaining to their case

In this regard, one of the main role of prison officials is to provide a mechanism so that inmates are informed of their legal rights as well as matters related to their case, and legal aid and other assistance at the very time of entry in prison by some specific designated prison officials. Another important role by prison officials may be included as supervising and regularizing the work of legal aid lawyers, para legals in prison and also establishing, coordination, follow up with the DLSA, to ensure up to date record keeping on the files of inmates in legal aid cell of prison.

This seeks to empower the inmates through generating awareness , understanding among them on their basic fundamental and legal right to legal representation through lawyer at the cost of state , right to avail lawyer, right to seek legal representation, right to legal aid, making the inmates informed of the legal matters pertaining to their case, this understanding would enable the inmates to exercise their right to legal aid better and also make them more involved , aware of the legal process involving them. This would also facilitate and make the entire legal process of legal representation, document verification, filing applications, availing legal aid process more meaningful and effective to inmates as they can interact discuss their case better with the legal aid lawyers. This would also make the legal aid lawyer's functions effective as they would be in a better position to discuss the case with inmates and represent them better, seek appropriate remedy for them.



In prison, with regard to inmates the right to legal representation is largely contextualized in light of bail matters only where as there is much greater need for the same for reason other than bail as well by the inmates. It may be noted that the legal aid is often and largely resorted or held synonymous with bail matters only for the under trials whereas , during this study , we have observed and informed by the inmates that they need lawyer's assistance for seeking custody of child for women inmate in barrack, to seek lawyer assistance with diplomatic or consulate office for permit and related matters, to seek other legal remedy.

As it has been invariably and largely found among the inmates both male and females that they being form largely disadvantaged socio- economic and educational background they are not in a position to understand the nature of case if bailable or otherwise, the quantum of sentence if it includes fine, imprisonment, the single or multiplicity of charges, the court production process. For this reason, such understanding on legal information, understanding, legal representation is crucial and this would strengthen right to legal aid by inmates.

### **Specific Suggestions**

In keeping with the above mentioned, these are some of the specific suggestions directed to the concerned stakeholders as following:

It has to be noted that there exists a severe trust deficit among the inmates and the prison and legal aid authorities due to the issues mentioned in Chapter V. Therefore, in order to improve upon this trust deficit, the following suggestions can be looked into.

### **Suggestions directed to the District Legal Services Authority**

During the administration of the interview guides, one of the major problems which the LLM students found was that the inmates were unaware of their basic legal rights. There is no proper prison mechanism to inform the inmates about their rights. Since the Legal Aid lawyers do not visit the prison regularly, the Para Legals should be entrusted with the responsibility of making them aware of it. Moreover, since the majority of the prisoners are illiterate the para legal should be given the responsibility of checking the documents of the inmates and providing them legal information in order to improve their scope of access to justice.

Secondly, inmates are often not aware of their charges. Therefore, the legal authority should take the responsibility of explaining the charges under which they are booked. Such information helps the inmates in knowing the offences for which they are booked as well as the possibility of bail, fine, term of imprisonment. This information allows for the inmates to provide better information to the concerned authorities for legal redressal.

A lack on information on charges is often compounded by the lack of knowledge with respect to multiplicity of courts in which the inmate is charged. Since this creates a problem for the inmates in understanding the multiplicity of courts and their respective charges, legal information by the legal services authority such as a Para legal would greatly help them.

Thirdly, para legals must ensure that the inmates have valid Id proofs such as Aadhar card, Voter id etc. Such a measure can be of immense help to both the prison officials and the inmates. The para legal should not only ensure the provision for new legal identity documents, but also engage the help of the legal services authority in ensuring the veracity of existing identity proofs of the submitted identity documents of the inmates to weed out fake documents.

Fourthly the inmates must be made aware of the plea-bargaining system by the para legal. As mentioned above, plea bargaining in Byculla prison is done by the inmates due to lack of legal aid, uncertainty of court hearings. Proper information on the system of plea bargaining will allow the inmate to make an informed choice about the same rather than being advised about the same by other inmates.

Apart from that there must be a legal information cell which help out by providing any sort of legal information to the prisoner. The cell should function 5 days a week and be open during the day in order to ensure provision of legal information to the inmate. A 2-hour approach as one taken by the legal aid lawyers is highly insufficient in the present scenario.

### **Suggestions directed to Prison Inmates**

A major issue with respect to prison inmates is the fact that they do not provide reliable data. Furthermore, a lack of cooperation with the relevant agencies compounds the problem of legal aid. Therefore, it has to be ensured that the prisoners be sensitised on

providing correct information to the authorities. A better cooperation with the relevant authorities can lead to a better availability of legal aid.

### **Suggestions directed to Prison Officials**

In view of the above research, the researcher found some viable suggestions that can be looked into by the prison official.

The researcher found that apart from national there are a number of foreign national prisoners who are facing hardship due to language bar. Many of the foreign national prisoners do not know anything except their native language. Therefore, there must be a language translator so that they are able to know their rights and case status.

Moreover, there should be a display board in Hindi, English and Marathi explaining about the various legal rights available to the inmates. Such a measure will reduce the burden of concerned authority to make them informed about their legal rights. The board should also indicate the name of the available legal aid lawyer as well as his/her contact details. The board should be regularly updated in order to provide the inmates with correct information.

The LLM students found out that many of the inmates have no knowledge about their lawyers and even if some of them do, they end up signing 2 or 3 Vakalatnamas due to the lack of any tangible work done by the lawyers with respect to their inmates. Therefore, there should be an option of a written undertaking by the inmates to provide a legal aid lawyer. A copy of Vakalatnama and the said application should be maintained both with the Inmates and the prison officials in order to ensure due legal aid.

While conducting interviews the LLM students found that most of the inmates were unaware of their right of *Mulakat* with respect to their advocate. None of the inmates on whom the interview guide was administered was aware of right to talk to his/her lawyers through video conferencing. Therefore, Inmates should be made aware of their right of *Mulakat* with their lawyers and the possibility of having a *Mulakat* through video conferencing. While one inmate in the individual cell in the female barracks was well aware of her concerned rights, but unlike her there were many Inmates who didn't have any knowledge of such facilities. On account of being under pressure, the female inmates

housed in the foreign barracks end up paying the police officials to have a session for *Mulakat* with their lawyers, as contented by one of the Foreign inmates.

### **Suggestions to Law Students**

Besides the above-mentioned suggestions, there is largely a need for generating awareness, sensitivity among prison officials, inmates, and concerned authorities for which law students can be engaged. The Radhakrishnan Committee Report on Prison Reforms (2017-2018) explains the ways in which law students can be engaged in and can thus be seen as a useful guide with respect to the same. It suggests the creation of a socio-legal counselling cell for improved legal and social preparedness of a prisoner, engaging students to deal with the bail applications of under trial prisoners, writing various applications on behalf of under trial prisoners, analysis of available facilities such as video conferencing and disseminating information on legal aid, plea bargaining to the inmates.

Apart from that law colleges should tie up with the District Legal Services Authority to ensure better follow up of cases. The legal aid clinics of law universities must be opened in the prison in order to ensure better dissemination of legal information which can help in reducing the burden of the legal authorities and provide the students with valuable and relevant experience.

The student should have a weekly or monthly visit to the prison. They should be entrusted with ancillary work and be associated with legal aid lawyers to provide them assistance in research and other matters.

## CHAPTER VII

### PROPOSED COURSE OF ACTION

The course of action for the next semester commencing from March to April 2020 (one-month duration) is formulated in a phase wise manner based on the research and data findings from the present field work. This proposed course of action subject to their execution would depend on the written consent and approval of the IG Prison, Prison officials, staff and the Faculties of SLRCG TISS Mumbai.

#### **Identification of under trial inmates languishing in prison for 12 months or more**

With respect to these inmates the LLM students will try to collect information for preparing case study with specific and case wise legal recommendations on the same. The LLM students will try to put efforts in making it beneficial for those under trial inmates who are languishing in prison for more than years by giving them preference.

#### **Trend analysis of inmates on their legal representation**

The under-trial inmates and their legal representation will be looked into. Trend analysis with respect to inmates having legal aid lawyer, private lawyers and no lawyers with respect to socio-economic factors such as caste, financial situation, gender, old age, will be done. The lack of legal aid with respect to the abovementioned socio-economic factors will be looked into in order to identify inmates who suffer disproportionately. The LLM students will try to refer the cases of the said inmates to the concerned commissions such as the Women's commission, SC/ST commission, minority commission, human rights commission in order to ensure a cooperative and targeted intervention based on which comparative studies on similar themes will be undertaken.

#### **Documentation and corroboration of the records of Under trials**

As in this fair trial report work the LLM students found that there is no proper organized record book where all the information with respect to an under trial inmate can be found on a barrack to barrack basis, therefore the following semester field work will require the LLM students to assist in the maintaining and updation of relevant records with respect to the inmates especially under trials.

#### **Setting up a periodic (fortnightly) weekly legal aid clinic**

A legal aid clinic by law students for the inmates to make them understand how legal aid works and to make them understand how they can approach to a legal aid lawyer will be looked into. This may include cooperation with the School of Law of the Tata Institute of Social Sciences.

#### **Follow up and coordination on visits of legal aid lawyers**

The LLM students will refer the cases of under trial inmates who either do not have a lawyer or those who have negligible or nil correspondence with their lawyer, be it a legal aid or a private lawyer.

The LLM students will refer the cases of under trial inmates who need assistance in bail or with respect to any other legal remedy.

#### **Issues related to fine**

During the course of this field work the LLM students came through various inmates who were having issues with payment of fine. Therefore, the next phase will be to conduct an enquiry regarding the fine paying process of the jail administration and the legal aid personnel.

#### **Proposing a combined meeting of the jail administration and legal aid cell in the prison**

The LLM students will try to setup a meeting which includes the stakeholders to discuss the measures that can be taken for providing a better legal aid service in Byculla prison. This will be done by looking into the manner in which the jail administration and the legal aid cell can work together on issues such as those related to fines, inmate awareness with respect to legal aid, a robust court visitation mechanism, free legal aid among others.

The proposed course of action is to be discussed and the modalities of same are to be worked subject to due approval.

# ANNEXURE 1

## MAHARASHTRA STATE LEGAL SERVICES AUTHORITY RULES, 1998

<sup>1</sup>[Noti. Lab. 1895/359 (642) XXII, dt . 13.01.1998 — In exercise of the powers conferred by Sec. 28 of the Legal Services Authorities Act, 1987 (39 of 1987), and of all other powers enabling it in this behalf, the Government of Maharashtra, hereby in consultation with the Chief Justice of Bombay High Court, makes the following rules, namely:—

**1. Short title and commencement: —**

- (1) These rules may be called the Maharashtra State Legal Services Authority Rules, 1998.
- 2) They shall come into force on the 14th day of January, 1998.

**2. Definitions: —**In these rules, unless the context otherwise requires. —

- (a) “Act” means the Legal Services Authorities Act, 1987 (39 of 1987);
- (b) “Chief Justice” means the Chief Justice of Bombay High Court;
- <sup>2</sup>[(c) “District Authority” means the District Legal Services Authority constituted under Sec. 9 of the Act.\*[ ]
- (d) “Government” means the Government of Maharashtra;
- (e) “High Court Legal Services Committee” means the High Court Legal Services Committee constituted for the principal seat of the Bombay High Court at Mumbai and its Benches at present functioning at Nagpur and Aurangabad and Benches that may be formed at any other place within the State of Maharashtra;
- (f) “Schedule” means Schedule appended to these rules;
- (g) All other terms and expressions used under these rules but not defined shall have the meanings respectively assigned to them in the Act.

**3. Number, experience and qualifications of other Members of the State Authority under Cl. (c) of sub-section (2) of Sec. 6 —** (1) Apart from the Chief Justice and the Executive Chairman, the following shall be *ex-officio* members of the State Authority:—

- (i) The Minister for Law and Judiciary;
- (ii) The Advocate-General of Maharashtra;
- (iii) The Chief Secretary to Government;
- (iv) The Secretary to Government in the Law and Judiciary Department;
- (v) The Secretary to Government in the Finance Department;

<sup>1</sup>. Published in the Official Gaz., Govt. of Maharashtra, Part IV-AA, dt. 13.01.1998.

<sup>2</sup>. Clause (c) Substituted by the Maharashtra State Legal Services Authority (First Amendment) Rules, 2006 (w.e.f. 29.9.2006).

\* The word “and includes the District Brihan Mumbai Legal Services Authority and District Brihan Mumbai Suburban Legal Services Authority” omitted by Notification No. LAB2005/269/(C.R.21)D-22, Law & Judiciary (w.e.f. 15.09.2006).

- (vi) The Director-General of Police, Maharashtra State;
- (vii) Member-Secretary of the State Authority appointed under sub-section (3) of Sec.6oftheAct.

Provided that, the officer presently functioning as the Secretary of the Maharashtra State Legal Aid and Advice Board shall be the Member-Secretary of the State Authority for a period of not exceeding five years as provided under the proviso to sub-section(3)ofSec.6oftheAct.

- (2) The Government may nominate, in consultation with the Chief Justice, other members not exceeding ten in number of whom at least half shall be women, possessing the experience and qualifications prescribed in sub- rule(3)of this rule.
- (3) A person shall not be qualified for nomination as member of the State Authority unless in the opinion of Government he is—
  - (a) an eminent Social Worker who is engaged in upliftment of the weaker sections of the society including Scheduled Castes, Scheduled Tribes, women, children, rural and urban labour; or
  - (b) an eminent person in the field of law; or
  - (c) a person of repute who is specially interested in the implementation of the Legal Services Schemes.

**4. Powers and functions of the Member-Secretary of the State Authority under sub-section (3) of Sec. 6:—** Subject to the general supervision of the State Authority and the Executive Chairman, the powers and functions of the Member-Secretary of the State Authority, shall be as follows, namely:—

- (a) To arrange for free legal services to the eligible and weaker sections;
- (b) To work out modalities of the Legal Services Schemes and programmes approved by the State Authority and ensure their effective monitoring and implementation;
- (c) to exercise the powers in respect of Administration, House-keeping, Finance and Budget matters as Head of Department in the State Government;
- (d) to manage the properties, records and funds of the State Authority;
- (e) to arrange for maintenance of true and proper accounts of the State Authority including checking and auditing in respect there of periodically;
- (f) to prepare Annual Income and Expenditure Account and Balance Sheet of the State Authority;
- (g) to liaison with the Social Action Groups and District and Taluka Legal Services Authorities;
- (h) to maintain up-to-date and complete statistical information including progress made in the implementation of various Legal Services Programmes from time to time;
- (i) to process proposals for financial assistance and issue utilisation Certificates thereof;
- (j) to organise various Legal Services Programmes, as approved by the State



Authority and convene meetings, seminars and workshops connected with Legal Services Programmes and preparation of Reports and follow-up action thereon;

- (k) to arrange for production of video or documentary films, publicity material, literature and publications to inform general public about the various aspects of the Legal Services Programmes;
- (l) to lay stress on the resolution of rural disputes and to take extra measures to draw schemes for effective and meaningful legal services for settling rural disputes at the door-steps of the rural people;
- (m) to perform such of the functions as are assigned to him under the Schemes formulated under Cl.(b) of Sec. 4 of the Act; and
- (n) to perform such other functions as may be expedient for efficient functioning of the State Authority.

**5. Terms of office and other conditions relating thereto, of members and Member-Secretary of the State Authority under sub-section (4) of Sec.6:-**

- (1) The term of office of the members of the State Authority nominated under sub-rule (2) of Rule 3 by the Government shall ordinarily be for a period of three years and they shall be eligible for re-nomination. A member whose terms has expired shall ,however, continue in office till new member is appointed in his place.
- (2) A member of the State Authority nominated under sub-rule (2) of Rule 3 may resign by letter addressed to the Chief Justice. He may also be removed by the Government if in its opinion he is not taking sufficient interest in the activities of the State Authority.
- (3) If a member nominated under sub-rule (2) of Rule 3 ceases to be a member of the State Authority for any reason, the vacancy shall be filled up in the same manner as the original nomination and the person so nominated shall continue to be a member for the remaining term of the member in whose place he is nominated.
- (4) If a member is a sitting or retired Judge of the Supreme Court or the High Court he will be entitled to travelling allowance and daily allowance according to the rules applicable to the sitting Judges of the Court concerned. The members who are other functionaries such as sitting members of Legislative Assembly and Government servants shall be entitled to the travelling allowance and daily allowance according to the rules applicable to them.
- (5) If the nominated member is a Government employee, he shall be entitled to only one set of travelling and daily allowance, either from his parent Department or as the case may be from the State Authority.
- (6) In all matters like age of retirement, pay and allowances, benefits and entitlement, and disciplinary matters ,the Member- Secretary shall be governed by the Government Rules applicable to him.

**6. Number of officers and other employees of the State Authority under sub-section (5) of Section 6:—** The State Authority shall have such number of officers and other employees as specified in the Schedule.

**7. Conditions of service and the salary and allowances of officers and other employees of the State Authority under sub-sec.(6)ofSec.6:—**

- (1) The officers and other employees of the State Authority shall be entitled to draw pay and allowances in the scale of pay at par with the Government officers and employees holding equivalent posts.
- (2) In all matters like age of retirement, pay and allowances, benefit and entitlements and disciplinary matters, the officers and other employees of the State Authority shall be governed by the Government Rules as are applicable to persons holding equivalent posts.
- (3) The officers and other employees of the State Authority shall be entitled to such other facilities, allowances and benefits as may be notified by the Government from time to time.

**8. Experience and qualifications of Secretary of the High Court Legal Services Committee under sub-section (3) ofSec. 8-A:—**

- (1) A person shall not be qualified for appointment as Secretary of the High Court Legal Services Committee unless he is an officer of the High Court not below the rank of an Additional Registrar.
- (2) The State Authority shall as provided under sub-section (1) of Sec. 8-A of the Act, appoint separate High Court Legal Services Committee for each of its Benches already functioning at Mumbai, Nagpur and Aurangabad and for other Benches that may be established at any other places within the limits of Maharashtra State.

**9. Number of officers and other employees of the High Court Legal Services Committee and the condition of service and the salary and allowance payable to them under sub-sections(5)and(6)ofSec.8A:—**

- (1) Each High Court Legal Services Committee shall have such number of officers and other employees as specified in the Schedule.
- (2) The officers and other employees of a High Court Legal Services Committee be entitled to draw pay and allowances in the scale at par with the Government employees holding equivalent posts.
- (3) In all matters like age of retirement, pay and allowances, benefits and entitlements and disciplinary matters, the officers and other employees of a High Court Legal Services Committee shall be governed by the Government Rules as are applicable to persons holding equivalent posts.
- (4) The officers and other employees of a High Court Legal Services Committee shall be entitled to such other facilities, allowances and benefits as may be notified by the Government from time to time.
- (5) For a period of one year from the date, Chapter III of the Act is brought into force in the State of Maharashtra, it shall be lawful for the Government to provide each High Court Legal Services Committee with the additional strength of staff as indicate in the Schedule.

**1[10. Number, experience and qualifications of Members of the District Authority, under Cl. (b) of sub-section (2) of Sec. 9:—**

- (1) In all districts except District \*[ ] Mumbai and District \*[ ] Mumbai Suburban the following shall be *ex officio* members of the District Authority, apart from the District Judge namely:—
- (i) Collector;
  - (ii) Commissioner of Police(if appointed in any district)
  - (iii) Superintendent of Police;
  - (iv) Chief judicial Magistrate;
  - (v) District Government Pleader;
  - (vi) Member-Secretary.
- (2) The Government may nominate in consultation with the Chief Justice other members not exceeding six in number of whom at least half are women possessing qualifications and experience prescribed in sub-rule(3) of this rule.
- (3) A person shall not be qualified for nomination as a member of the District Authority unless he is,—
- (a) an eminent Social Worker who is engaged in the upliftment of the weaker sections of the society, including Scheduled Castes, Scheduled Tribes, women, children and urban or rural labour; or
  - (b) an eminent person in the field of law; or
  - (c) a person of repute who is specially interested in implementation of the Legal Services Schemes.
- (4) The Government shall, in consultation with the Chief Justice, constitute the District \*[ ] Mumbai Legal Services Authority; and District \*[ ] Mumbai Suburban Legal Services Authority, consisting of the following, *ex-officio* members, namely:—
- (A) The District \*[ ] Mumbai Legal Services Authority—
    - (i) Principal Judge, City Civil Court;
    - (ii) Collector of Mumbai City;
    - (iii) Commissioner of Police, \*[ ] Mumbai;
    - (iv) Government Pleader, City Civil Court, Mumbai;
    - (v) Chief Metropolitan Magistrate, Mumbai.
  - (B) The District \*[ ] Mumbai Suburban Legal Services Authority—
    - (i) Principal Judge, Family Court, Mumbai;
    - (ii) Collector of Mumbai Suburban;
    - (iii) Commissioner of Police, \*[ ] Mumbai;
    - (iv) Additional /Assistant Government Pleader, City Civil Court, Mumbai
    - (v) Chief Judge, Small Causes Court, Mumbai.

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1. Substituted by the Maharashtra State Legal Services Authority (First Amendment) Rules, 2006(w.e.f. 29.06.2006).

\* The word “ Brihan” omitted by Notification No.LAB 2005/269/(C.R.21)D-22, Law & Judiciary(w.e.f. 15.09.2006).

- (5) The Government may nominate in consultation with the Chief Justice other members not exceeding six in number of whom at least half shall be women, on the above Authorities, possessing the qualifications and experience prescribed in sub-rule(3)of this rule.
- (6) Every High Court Legal Services Committee shall have power of general supervisionovertheDistrictAuthoritiesfallingwithintheirrespectiveterritorial jurisdiction.
- 11. Number of officers and other employees of District Authority under sub-section(5)ofSec.9:—**(1)Subjecttotheprovisoofsub-rule(4)ofRule12ofthese rules the District Authority shall have such number of officers and other employees as specified in the Schedule.
- 12. Conditions of service and salary and allowances of officers and other employees of the District Authority under sub-section(6)ofSec.9:—**
- (1) The officers and other employees of the District Authority shall be entitled to draw pay and allowances at par with the State Government employees holding equivalent posts.
- (2) In all matters like age of retirement, pay and allowances, benefits and entitlement and disciplinary matters, the officers and other employees of the District Authority shall be governed by the State Government Rules as are applicable to persons holding equivalent posts.
- (3) The officers and other employees of the District Authority shall be entitled to such other facilities, allowances and benefits as may be notified by the Government from time to time.
- (4) The staff namely, clerks, peons, *Safaikamgars* and watchmen presently functioningontheDistrictCommitteesandtheGreaterBombayLegalAidand Advice Committee shall be absorbed on the District Authority on the posts of clerk-cum-typists, peons, *Safaikamgars* and watchmen respectively on the condition that they would qualify for the said posts after absorption wherever required.
- 13. Number, experience and qualification of members of the taluka legal services committee under Cl. (b) of sub-section (2) of Sec.11-A:—**
- (1) Apart from the Chairperson appointed under Cl. (a) of sub-section (2) of Sec. 11-A of the Act, the following shall be *ex-officio* members of Taluka Legal Services Committee, namely:—
- (i) Sub-Divisional Police Officer;
- (ii) One of the Law Officers posted at the Taluka Headquarters, if any;
- (iii) Block Development Officer
- (2) The State Government may nominate in consultation with the Chief Justice other members not exceeding four in number of whom at least half shall be women, possessing the qualifications and experience prescribed in sub-rule (3) Of this rule.
- (3) A person shall not be qualified for nomination as a member of the Taluka Legal Services Committee unless he is,—
- (a) an eminent Social Worker who is engaged in the upliftment of weaker sections of the society including Scheduled Castes, Scheduled Tribes, women, children and rural labour;or

- (b) an eminent person in the field of Law; or  
(c) a person of repute who is specially interested in the implementation of the Legal Services Scheme.
- (4) The Chairman of the Taluka Legal Services Committee may appoint either the Law Officer or the Block Development Officer as Secretary of the Committee.
- 14. Number of officers and other employees of the Taluka Legal Services Committee under sub-section (3) of Sec. 11-A:—** The Taluka Legal Services Committee shall have such number of officers and other employees as specified in the Schedule.
- 15. Conditions of service and the Salary and Allowances of Officers and other employees of the Taluka Legal Services Committee under subsection (4) of Sec.11-A:—**
- (1) The officers and other employees of the Taluka Legal Services Committee shall be entitled to draw pay and allowances at par with the state government employees holding equivalent posts.
- (2) In all matters like age of retirement, pay and allowances, benefits, entitlements and disciplinary matters, the officers and the other employees of the Taluka Legal Services Committee shall be governed by the State Government Rules as are applicable to persons holding equivalent posts.
- (3) The officers and other employees of the Taluka Legal Services Committee shall be entitled to such other facilities, allowances and benefits as may be notified by the state government from time to time.
- 16. Upper limit of Annual Income of person for availing Legal Services under Cl.(h)ofSec.12:—**Any citizen of India whose case is before a Court, other than the Supreme Court, and whose annual income from all sources does not exceed \*Rs.72,000 (Rupees Seventy Two thousand) shall be entitled to legal services under Cl. (h) of Sec. 12 of the Act.
- 17. Experience and qualifications of the other persons of Lok Adalats other than referred to in sub-section (4) of Sec. 19:—** A person shall not be qualified to be included in the Bench of Lok Adalat unless he is,—
- (a) an eminent social worker who is engaged in the upliftment of the weaker sections of the people, including Scheduled Castes, Scheduled Tribes, women, children, rural and urban labour; or  
(b) a lawyer of standing repute; or  
(c) a person of repute who is specially interested in the implementation of the Legal Services Scheme and Programmes.
- 18. Saving:—**  
The provisions of the Maharashtra Legal Aid and Advice Scheme, 1979, the Maharashtra State Legal Aid and Advice Board Rules, 1981 and the Maharashtra State Legal Aid and Advice Board Regulations, 1981 on any matters such as honoraria to be paid to the Pleaders, registers and other records to be maintained etc. which are not inconsistent with any provisions of the Act or these Rules or Regulations that may be framed under Sec.29-A by the State Authority shall remain in force *mutatis mutandis* until different provisions are made under the Act, these Rules and Regulations as the case may be.

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## ANNEXURE 2

### NATIONAL LEGAL SERVICES AUTHORITY NOTIFICATION

New Delhi, the 14th October, 2009

**No. L/28/09-NALSA.**— In exercise of the powers conferred by section 29 of the Legal Services Authorities Act, 1987 (39 of 1987), the Central Authority hereby makes the following regulations, namely:—

**1. Short title and commencement.**— (1) These regulations may be called The National Legal Services Authority (Lok Adalats) Regulations, 2009.

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

**2. Definitions.** - In these regulations, unless the context otherwise requires,—

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

(b) 'Lok Adalats' means Lok Adalats to be organised under section 19 of the Act;

(c) all other words and expressions used but not defined in these regulations and defined in the Legal Services Authorities Act, 1987 (39 of 1987) or the National Legal Services Authority Rules, 1995 shall have the meanings respectively assigned to them in the said Act or rules.

**3. Procedure for organising Lok Adalats.**— (1) Lok Adalats may be organised by the State Authorities or District Authorities or Supreme Court Legal Services Committee or High Court Legal Services Committee or, as the case may be, the Taluk Legal Services Committees at regular intervals and such Lok Adalats shall be organised for a definite geographical area as the aforesaid Authorities or Committees think fit;

Provided that, special Lok Adalats shall be organised for all Family Courts at regular intervals.

(2) The Member-Secretary or Secretary of the High Court Legal Services Committee or District Authority or, as the case may be, the Chairman of the Taluk Legal Services Committee may associate the members of the legal profession, college students, social organisations, charitable and philanthropic institutions and other similar organisations for organising the Lok Adalats.

**4. Intimation to the State Authority.**—The Secretary of the High Court Legal Services Committee or District Authority or Chairman of the Taluk Legal Services Committee, as the case may be, shall inform the State Authority about the proposal to organise the Lok Adalat, well before the date on which the Lok Adalat is proposed to be organised, and furnish the following information to the State Authority, namely:—

- (i) the place and the date on which the Lok Adalat is proposed to be organised;
- (ii) whether any of the organisations as referred to in sub-regulation (2) of regulation 3 above have agreed to associate themselves with Lok Adalat;
- (iii) categories and nature of cases, viz. pending cases or pre-litigation disputes, proposed to be placed before the Lok Adalat;
- (iv) number of cases proposed to be brought before the Lok Adalat in each category;
- (v) any other information relevant to the convening and organising of the Lok Adalat.

**5. Notice to parties concerned.**— The Member-Secretary or Secretary of the High Court Legal Services Committee or District Authority or, as the case may be, the Chairman of the Taluk Legal Services Committee convening and organising the Lok Adalat shall inform every party concerned whose case is referred to the Adalat, well in time so as to afford him an opportunity to prepare himself for the Lok Adalat:

Provided that such notice may be dispensed with, if the court while referring the case to the Lok Adalat fixes or informs the date and time of the Lok Adalat in the presence of the parties or their advocates:

Provided further that if a party is not willing to refer their case to Lok Adalat, the case may be considered on its merits by the court concerned.

**6. Composition of Lok Adalat.**—

(a) At State Authority Level.—The Member-Secretary organising the Lok Adalat shall constitute benches of the Lok Adalats, each bench comprising of a sitting or retired Judge of the High Court or a serving or retired judicial officer and any one or both of the following:

- (i) a member from the legal profession; and
- (ii) a social worker of repute who is engaged in the upliftment of the weaker sections of the people, including the Scheduled Castes, the Scheduled Tribes, women, children, rural and urban labour and interested in the implementation of legal services schemes or programmes.

(b) At High Court Level.—The Secretary of the High Court Legal Services Committee organising the Lok Adalat shall constitute benches of the Lok Adalats, each bench comprising of a sitting or retired Judge of the High Court or a serving or retired judicial officer and any one or both of the following:

- (i) a member from the legal profession;
- (ii) a social worker belonging to the category as mentioned in item (ii) of sub-para (a) above.

(c) At District Level.— The Secretary of the District Authority organising the Lok Adalats shall constitute benches of the Lok Adalats, each bench comprising of a sitting or retired judicial officer and any one or both of the following:

- (i) a member from the legal profession;
- (ii) a social worker belonging to the category as mentioned in item (ii) of sub-para (a) above or a person engaged in para-legal activities of the area, preferably a woman.

(d) At Taluk Level.—The Chairman of the Taluk Legal Services Committee organising the Lok Adalat shall constitute benches of the Lok Adalat, each bench comprising of a sitting or retired judicial officer and any one or both of the following:

- (i) a member from the legal profession; and
- (ii) a social worker belonging to the category as mentioned in item (ii) of sub-para (a) above or a person engaged in para-legal activities of the area, preferably a woman.

**7. Allotment of cases to Lok Adalats.—** (1) The Member Secretary, the Secretary of the High Court Legal Services Committee, the District Authority or Chairman of the Taluk Legal Services Committee, as the case may be, shall assign specific cases to each bench of the Lok Adalat.

(2) The Member Secretary, the Secretary of the High Court Legal Services Committee or the District Authority or Chairman of the Taluk Legal Services Committee, as the case may be, may prepare a cause list for each bench of the Lok Adalat and intimate the same to all concerned at least two days before the date of holding of the Lok Adalat.

(3) Every bench of the Lok Adalat shall make sincere efforts to bring about a conciliated settlement in every case put before it without bringing about any kind of coercion, threat, undue influence, allurement or misrepresentation.

**8. Holding of Lok Adalats.—** Lok Adalats may be organised at such time and place and on such days, including holidays as the State Authority, the High Court Legal Services Committee, the District Authority or the Taluk Legal Services Committee, as the case may be, organising the Lok Adalat deems appropriate.

**9. Jurisdiction of Lok Adalats.—** Lok Adalats shall have the power only to help the parties to arrive at a compromise or settlement between the parties to a dispute and, while so doing, it shall not issue any direction or order in respect of such dispute between the parties.

**10. Reference of cases and matters.—** (1) Lok Adalat shall get jurisdiction to deal with a case only when a court of competent jurisdiction orders the case to be referred in the manner prescribed in section 20 of the Act or under section 89 of the Code of Civil Procedure, 1908 ( 5 of 1908).

(2) A mechanical reference of pending cases to Lok Adalat shall be avoided and the referring court shall, *prima facie* satisfy itself that there are chances of settlement of the case through Lok Adalat and the case is appropriate to be referred to Lok Adalat:



Provided that matters relating to divorce and criminal cases which are not compoundable under the Code of Criminal Procedure, 1973 (2 of 1974) shall not be referred to Lok Adalat.

(3) In a pending case where only one of the parties had made application to the court for referring the case to Lok Adalat, or where the court *suo motu* is satisfied that the case is appropriate to take cognizance by Lok Adalat, the case shall not be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the parties.

**11. Summoning of records and responsibility for its safe custody.**— (1) The Member-Secretary, the Secretary of the High Court Legal Services Committee, the District Authority or, as the case may be, the Chairman of the Taluk Legal Services Committee may call for the judicial records of pending cases which are referred to the Lok Adalat under section 20 of the Act from the courts concerned.

(2) The officer duly authorised by the Member Secretary, the Secretary of the High Court Legal Services Committee, the District Authority or the Chairman of the Taluk Legal Services Committee, as the case may be, shall be responsible for the safe custody of records from receiving of the same from court till they are returned.

(3) The judicial records shall be returned within ten days of the Lok Adalat irrespective of whether or not the case is settled by the Lok Adalat with an endorsement about the result of proceedings:

Provided that wherever it is appropriate, the court concerned from where the records are called may permit the records to be retained beyond the period of ten days.

(4) Every judicial authority is expected to co-operate in transmission of the judicial records.

**12. Pre-litigation matters.**— (1) In a pre-litigation matter it may be ensured that the court for which a Lok Adalat is organised has territorial jurisdiction to adjudicate in the matter.

(2) Before referring a pre-litigation matter to Lok Adalat the Authority concerned or Committee, as the case may be, shall give a reasonable hearing to the parties concerned:

Provided that the version of each party, shall be obtained by the Authority concerned or, as the case may be, the Committee for placing it before the Lok Adalat,

(3) An award based on settlement between the parties can be challenged only on violation of procedure prescribed in section 20 of the Act by filing a petition under articles 226 and 227 of the Constitution of India.

**13. Procedure in Lok Adalats.—** (1) Members of Lok Adalat have the role of statutory conciliators only and have no judicial role and they, *mutatis mutandis*, may follow the procedure laid down in sections 67 to 76 of the Arbitration and Conciliation Act, 1996 (26 of 1996).

(2) Members of Lok Adalat shall not pressurise or coerce any of the parties, to compromise or settle cases or matters, either directly or indirectly.

(3) In a Lok Adalat the members shall discuss the subject matter with the parties for arriving at a just settlement or compromise and such members of Lok Adalat shall assist the parties in an independent and impartial manner in their attempt to reach amicable settlement of their dispute:

Provided that if it found necessary the assistance of an independent person or a trained mediator may also be availed by the Lok Adalat.

(4) Members of Lok Adalat shall be guided by principles of natural justice, equity, fairplay, objectivity, giving consideration to, among other things, the rights and obligations of the parties, custom and usages and the circumstances surrounding the dispute.

(5) The Lok Adalat may conduct the proceedings in such a manner as it considers appropriate taking into account the circumstances of the case, wishes of the parties including any request by a party to the Lok Adalat to hear oral statements, and the need for a speedy settlement of the dispute.

(6) The Lok Adalat shall not determine a reference, at its own instance, but shall determine only on the basis of a compromise or settlement between the parties by making an award in terms of the compromise or settlement arrived at:

Provided that no Lok Adalat has the power to hear the parties to adjudicate their dispute as a regular court:

Provided further that the award of the Lok Adalat is neither a verdict nor an opinion arrived at by any decision making process.

**14. Administrative assistance.—**Administrative assistance for facilitating Lok Adalat proceedings may be arranged by suitable institutions or persons engaged in providing legal services.

**15. Formulating compromise or settlements.—**The Lok Adalat may, at any stage of the proceedings, make proposal for a settlement of the dispute and such proposal need not be accompanied by a statement of the reasons therefor.

**16. Communication between Lok Adalat and parties.—**(1) A Lok Adalat may invite the parties to meet it or may communicate with it orally or in writing and it may meet or communicate with the parties together or with each of them separately. The factual information concerning the

dispute received from a party may be disclosed to the other party in order that the other party may have the opportunity to present any explanation:

Provided that the Lok Adalat shall not disclose any information, if one of the party desires to keep it confidential.

(2) Each party may on its own initiative or at the invitation of the Lok Adalat, submit suggestions for settlement of the dispute.

(3) When it appears to the Lok Adalat that there exists elements of a settlement which may be acceptable to the parties, the terms of a possible settlement may be formulated by the Lok Adalat and given to the parties for their observations and modifications, if any, suggested by the parties can be taken into consideration and terms of a possible settlement may be re-formulated by the Lok Adalat.

(4) If the parties reach a compromise or settlement of the dispute, the Lok Adalat may draw up or assist the parties in drawing up the terms of such compromise or settlement.

**17. Award.**— (1) Drawing up of the award is merely an administrative act by incorporating the terms of settlement or compromise agreed by the parties under the guidance and assistance from Lok Adalat.

(2) When both parties sign or affix their thumb impression and the members of the Lok Adalat countersign it, it becomes an award. (see a specimen at Appendix-I) Every award of the Lok Adalat shall be categorical and lucid and shall be written in regional language used in the local courts or in English. It shall also contain particulars of the case, viz., case number, name of court and names of parties, date of receipt, register number assigned to the case in the permanent register (maintained as provided under regulation 20) and date of settlement. Wherever the parties are represented by counsel, they should also be required to sign the settlement or award before the members of the Lok Adalat affix their signature.

(3) In cases referred to Lok Adalat from a court, it shall be mentioned in the award that the plaintiff or petitioner is entitled to refund of the court fees remitted.

(4) Where the parties are not accompanied or represented by counsel, the members of the Lok Adalat shall also verify the identity of parties, before recording the settlement.

(5) Member of the Lok Adalat shall ensure that the parties affix their signatures only after fully understanding the terms of settlement arrived at and recorded. The members of the Lok Adalat shall also satisfy themselves about the following before affixing their signatures:

(a) that the terms of settlement are not unreasonable or illegal or one-sided; and

(b) that the parties have entered into the settlement voluntarily and not on account of any threat, coercion or undue influence.

(6) Members of the Lok Adalat should affix their signatures only in settlement reached before them and should avoid affixing signatures to settlement reached by the parties outside the Lok Adalat with the assistance of some third parties, to ensure that the Lok Adalats are not used by unscrupulous parties to commit fraud, forgery, etc.

(7) Lok Adalat shall not grant any bail or a divorce by mutual consent.

(8) The original award shall form part of the judicial records (in pre-litigation matter, the original award may be kept with the Legal Services Authority or Committee, concerned) and a copy of the award shall be given to each of the parties duly certifying them to be true by the officer designated by the Member-Secretary or Secretary of the High Court Legal Services Committee or District Legal Services Authority or, as the case may be, the Chairman of Taluk Legal Services Committees free of cost and the official seal of the Authority concerned or Committee shall be affixed on all awards.

**18. Confidentiality.**— (1) The members of the Lok Adalat and the parties shall keep confidential all matters relating to the proceedings in the Lok Adalat and the members of the Lok Adalat shall not be compelled to disclose the matters which took place in the Lok Adalat proceedings before any court of law, except where such disclosure is necessary for purposes of implementation and enforcement of the award.

(2) The views expressed and discussions made by parties during the proceedings of Lok Adalat in respect of the possible settlement of a dispute and the proposals made by the members of Lok Adalat or admission made by any party or the conduct of the parties in the course of the proceeding before Lok Adalat shall not be brought in evidence or made use of in other court or arbitral proceedings.

(3) Members of the Lok Adalat shall not record the statement of any of the parties or record any conduct of the parties or express any opinion in such a manner as it would prejudice such party in any other proceedings before a court or arbitrator.

(4) If any member of the Lok Adalat violates the confidentiality and the ethical concerns which are akin to any other judicial proceedings, such member shall be removed from the panel of members of Lok Adalat.

**19. Failure of Lok Adalat proceedings.**— If a pre-litigation matter is not settled in the Lok Adalat, the parties may be advised to resort to other Alternative Dispute Resolution (ADR) techniques or to approach a court of law and in appropriate cases they may be advised about the availability of legal aid.

**20. Compilation of results.**—At the conclusion of session of the Lok Adalat, the officer designated by the Member Secretary, the Secretary of the High Court Legal Services Committee, the District Authority or the Chairman of the Taluk Legal Services Committee, as case may be, shall compile the results for submission to the State Authority in the proforma given in Appendix-II.

**21. Maintenance of panel of names of Lok Adalat members.**—The Member Secretary or Secretary of the High Court Legal Services Committee or District Authority or, as the case may be, the Chairman of the Taluk Legal Services Committee shall maintain a panel of names of retired judicial officers, advocates and social workers to work in Lok Adalats.

**22. Procedure for maintaining record of cases referred under section 20 of the Act, or otherwise.**— (1) The officer designated by the Member Secretary, the Secretary of the High Court Legal Services committee, the District Authority or the Chairman of the Taluk Legal Services Committee, as the case may be, shall maintain a permanent register wherein all the cases and pre-litigation matters received by him by way of reference to the Lok Adalat shall be entered giving particulars of:

- (i) date of receipt;
- (ii) nature of the case or pre-litigation matter;
- (iii) other particulars, if any;
- (iv) date of compromise or settlement and the manner in which the case or matter was finally disposed of; and
- (v) date of return of the case file.

(2) A copy of the award, if passed, duly certified in the manner stated in regulation 17 shall be kept in the office of the Authority or Committee, as the case may be, as a permanent record.

(3) Records other than the original of the awards of pre-litigation Lok Adalats may be destroyed after a period of three years from the date of disposal of the matter by Lok Adalat.

**23. Appearance of lawyers and the procedure to be followed in the cases before Lok Adalats.**—The appearance of lawyers on behalf of the parties at the Lok Adalat shall not be barred and an effort shall be made to encourage the parties to be present personally. The lawyers may be advised to avoid wearing their robes and bands during the proceedings before the Lok Adalat

**24. Application of regulations.**—The above regulations shall be applicable in the same manner with appropriate changes to the Lok Adalats organised by the National Legal Services Authority and the Supreme Court Legal Services Committee.

U. SARATH CHANDRAN, Member Secy.

[ADVT-III/4/123/09-Exty.]

**BEFORE THE LOK ADALAT**

**HELD AT \_\_\_\_\_**

[Organised by \_\_\_\_\_ Authority/ \_\_\_\_\_ Committee under Section 19, of the Legal Services Authorities Act, 1987(Central Act)]

**Petitioner/Plaintiff/Complainant:**

**Defendant/Respondent :**

**No. of proceedings of the \_\_\_\_\_ Court/Authority/Committee**

*Present:-*

**Name of Judicial Officer / :  
Retired Judicial Officer**

**Name of Members : (1)  
(2)**

**AWARD**

The dispute between the parties having been referred for determination to the Lok Adalat and the parties having compromised/settled the case/matter, the following award is passed in terms of the settlement:

.....  
.....  
.....  
.....

The parties are informed that the court fee, if any, paid by any of them shall be refunded.

<b>Petitioner/Plaintiff/Complainant</b>	<b>Defendant/Respondent</b>
<b>Judicial Officer</b>	<b>Member                      Member</b>

**Date:**  
**(Seal of the Authority/Committee)**

## Appendix-II

## PROFORMA

## DISPOSAL OF CASES IN LOK ADALAT

Place:			Date:		
			Nature of Cases disposed of		
Sl.No.	Case No.	Name of parties	Civil	Claims	Criminal
<b>Total</b>					

## ANNEXURE 3

# MAHARASHTRA STATE LEGAL SERVICES AUTHORITY REGULATIONS, 1998

**Noti. Lab. 1895/359 (642)-XXII, dt. 30.03.1998<sup>1</sup>**— In exercise of the powers conferred under the provisions of Sec. 29-A of the Legal Services Authorities Act, 1987 (39 of 1987) and in consultation with the Hon'ble The Chief Justice of Bombay High Court, the State Government hereby make the following Regulations.

### Chapter I

#### PRELIMINAR

##### Y

#### 1. Short title and commencement:—

- (1) These regulations may be called Maharashtra State Legal Services Authority Regulations, 1998.
- (2) They shall come into force on the 30th day of March 1998.

#### 2. Definitions:—

- (1) In these regulations, unless the context otherwise requires—
  - (a) “Act” means, the Legal Services Authorities Act, 1987 (No. 39 of 1987);
  - (b) “Chairman” means the Executive Chairman of the State Authority, or as the case may be, the Chairman of the High Court Legal Services Committee or the Chairman of the Sub-Committee, as the case may be, the Chairman of the District Legal Services Authority, or the Chairman of Taluka Committee;
  - (c) “District Authority” means the District Legal Services Authority constituted under Sec. 9 of the Legal Services Authorities Act;
  - (d) “High Court Committee” means the Bombay High Court Legal Services Committee at Mumbai and Sub-Committees at its benches at present functioning at Nagpur and Aurangabad and its benches that may be formed at any other place within the State of Maharashtra;
  - (e) “Legal Practitioner” shall have the meaning assigned to that expression in the Advocates Act, 1961;
  - (f) “Member” means a member of the State Authority, the High Court Committee, the Sub-Committee, the District Authority or the Taluka Committee as the case may be;
  - (g) “Nominated Member” means a member nominated to the State Authority, the High Court Committee, the Sub-Committee, the District Authority or the Taluka Committee as the case may be;
  - (h) “Patron-in-Chief” means the Patron-in-Chief of the State Legal Services Authority i.e. the Chief Justice or the Acting Chief Justice of the High Court of Bombay, as the case may be;
  - (l) “Rules” means the Maharashtra State Legal Services Authority Rules, 1998;

<sup>1</sup> Published in the Maharashtra Gazette, Ext., Pt. 4-A, dt. 20.04.1998.



- (j) “State Authority” means, the Maharashtra State Legal Services Authority;
- (k) “Taluka Committee” means the Taluka Legal Services Committee constituted under Sec. 11-A of the Legal Services Authorities Act;
- (2) All other words and expressions used in these Regulations but not defined shall have the meaning respectively assigned to them in the Act and the Rules framed thereunder.

**Chapter II**  
**EXECUTIVE**  
**AUTHORITY**

**3. Meeting of the Executive Authority:—**

- (1) The executive authority of the State Authority shall vest in the Executive Chairman and may be exercised by the Member-Secretary who shall act under the control of the Executive Chairman.
- (2) The executive authority of the District Authority shall vest in its Chairman and it may be exercised by its Secretary who shall act under the control of the Chairman.
- (3) The executive authority of the Taluka Committee shall vest in its Chairman and may be exercised either by himself or through such other officer who is chosen for the purpose.

**Chapter III**  
**STATE AUTHORITY**

**4. Function of the State Authority under Sec. 7(1) and 7(2) of the Act:—** In addition to the functions to be performed by the State Authority as laid down by Sec. 7(1) and 7(2) of the Act, the State Authority may also perform the following additional functions:—

- (i) The State Authority may conduct legal literacy camps in different parts of the State to bring awareness about the legal aid schemes conducted in the State and with a view to make them aware of their Legal rights and duties with special reference to the tribal and rural population, women, children, disabled, handicapped and the weaker sections of the society.
- (ii) The State Authority may conduct legal aid clinics in different parts of the State in collaboration with Law Colleges, Universities and other social service organisations.
- (iii) The State Authority may also establish or direct the District Authority to establish standing conciliation Committees at various centres in the State with a view to providing permanent or quasi-permanent infrastructures for resolving legal disputes between the parties, whether they may be pending in Courts or may be in the offing. For conducting such committees it will be open to the State Authority to take active assistance/support of such social service organisations that have zeal for legal aid work.
- (iv) The State Authority may review the cases where legal services are refused by the District Authority on application and the decision of the State Authority shall be final.

**Chapter IV**  
**HIGH COURT LEGAL SERVICES COMMITTEE**

**Constitution of the High Court Legal Services Committee at  
Mumbai and its sub-committees at its Benches; their powers  
and functions**

- 5. Duties and functions of the High Court Legal Services Committee as per Sec. 8-A(1) of the Act:—** The High Court Legal Services Committee and the Sub-Committees shall perform all or any of the following functions, namely:—
- (i) To give free legal service to persons whomayhavetofileordefendlitigations pending in the High Court and who satisfy the eligibility criteria laid down for the purpose of receiving free legal aid under the Act.
  - (ii) To organise Lok Adalats for settlement of cases pending in the High Court under the supervision of the State Authority.
- 6. Constitution of the High Court Legal Services Committee at Mumbai and its sub-committees at Nagpur and Aurangabad, their powers and functions as per Sec. 8-A of the Act:—** The State Authority shall constitute a High Court Committee and its sub-committees, consisting of a sitting Judge of the High Court who shall be nominated by Patron-in-Chief as Chairman and the following other members also to be nominated by Patron-in-Chief:—
- (i) The Presidents of Bombay Bar Association, Advocates Association of Western India, Incorporated Law Society at Mumbai, Presidents of High Court Bar Association, Nagpur, Vidharbha Labour Practitioners Association, Nagpur and President of High Court Bar Association, Aurangabad.
  - (ii) One Member out of Bar Association of Bombay and one member of the Sub-Committee from Bar Association of Nagpur and Aurangabad respectively, having at least 10 years of standing at the Bar.
  - (iii) An eminent social worker engaged in welfare of the weaker sections of the society including, Scheduled Castes, Scheduled Tribes or Members of other Backward Classes.
  - (iv) An eminent person in the field of Law.
  - (v) A person of repute and standing who is specifically interested in the implementation of the Legal Services Schemes.
- 7. Term of Office of the Members and Secretary of the High Court Legal Services Committee and its sub-committees:—**(i) The term of office of the Secretary and the Members of the High Court Committee and its Sub-Committees shall be of \* [three] year.
- (ii) All the Members of the Committees except the Secretary shall function in the honorary capacity.
  - (iii) If any member including the Chairman ceases to be the member of the High Court Committee and/or the Sub-Committees for any reason, the vacancy shall be filled up in the same manner as the original nomination and the person so nominated shall continue to be the member or the Chairman, as the case may be, for the remaining term of the member or the Chairman in whose place he is nominated.

\* Substituted vide Notification No.LAB 2005/270 (Pra.Kra. 22)/KA.22, Law and Judiciary (w.e.f. 31.08.2006).

- (iv) A member of the High Court Legal Services Committee and/or its sub-committees may resign his office by writing under his hand addressed to the Patron-in-Chief and forwarded by the Chairman of the High Court Committee and its Sub-Committees. The resignation shall take effect from the date on which it is accepted.

## Chapter V

### DISTRICT AUTHORITY

**8. The conditions relating to the terms of office of the Members and the Secretary of the District Authority, under Sec.9(4) of the Act:—**The term of office of the Members of the District Authority:—

- (i) The term of office of the Members and the Secretary of the District Authority shall be for a period of \* [three] year.
- (ii) If any member of the District Authority ceases to be the member for any reason, the vacancy shall be filled up in the same manner as the original nomination and the person so nominated shall continue to be the member for the remaining term of the member, in whose place he is nominated.
- (iii) A member of the District Authority may resign his office by writing under his hand addressed to the State Authority through the Executive Chairman of the State Authority and forwarded through the Chairman of the District Authority. The resignation shall take effect from the date on which it is accepted.

**9. Additional functions of the District Authority:—**In addition to the functions assigned by the provisions of the Act and the Rules, the District Authority shall perform the following functions subject to the general superintendence and control of the State Authority:—

- (i) To perform such other functions as the State Authority may fix by Regulations from time to time and shall also be guided by such directions as Central Authority or the State Authority, may give, in writing from time to time.
- (ii) To conduct legal literacy camps in different areas of the District, especially in rural and tribal areas, with a view to bring awareness about the legal aid schemes, conducted in the State and also with a view to make them aware of their legal rights and duties with special reference to tribal and rural population and/or women/or children/or disabled/or handicapped and the weaker sections of the society.
- (iii) To conduct legal aid clinics in different parts of the District in collaboration with Law Colleges, Universities and other social services organisations;
- (iv) To direct, supervise and guide the working of the Taluka Committees in the District;
- (v) To call for, from the Taluka Committees in the District such periodical reports, returns, and other information as it may think fit or as are required by the State Authority;
- (vi) To prepare, consolidate and submit such reports, returns and such

information, in respect of District Authorities, as the State Authority may call for;

- (vii) To receive applications for Legal Services and ensure that every application is promptly processed and disposed of;
- (viii) To consider the cases brought before it for legal service, including pre-litigation matters and decide as to what extent legal services can be made available to the applicant;
- (ix) To pursue the parties to appear and make efforts to bring about a just settlement between them and if necessary also refuse the legal services, if in its opinion the conciliation has failed due to any fault on the part of the applicant;
- (x) To encourage and promote conciliation and settlement in all legal proceedings including pre-litigations;
- (xi) To take proceedings for recovery of costs awarded to a person to whom legal services were rendered;
- (xii) To review the cases on application where legal services are refused by the Taluka Committees.

**10. Decisions by resolutions:**— All decisions of the State Authority, High Court Committee and its Sub-Committees, District Authority, or the Taluka Committee shall be by way of resolution passed in the meeting and in the event of an equal division of votes, the decision of the Executive Chairman or the Chairman of the different other bodies as the case may be, shall be final.

Provided that in such matters as may be directed by the Executive Chairman or the Chairman of the different other bodies, as the case may be, the decision of the State Authority or of the High Court Committee, the District Authority or the Taluka Committee may be taken by circulation/resolution.

**<sup>2</sup>[10-A. Fund Accounts of State Authority :—**

- (1) An account shall be opened in any of the nationalized banks by the State Authority as “State Legal Aid Fund”.
- (2) “State Legal Aid Fund” account shall be operated by the Member Secretary of the State Authority under the supervision of Executive Chairman.

**<sup>3</sup>[10-B. Fund Account of District Authority :—**

- (1) An account shall be opened in any of the nationalized banks by the District Authority as “District Legal Aid Fund”.
- (2) District Legal Aid Fund account shall be operated by Member Secretary of the District Authority, under the supervision of the Chairman of the District Authority as per direction of the State Authority.

**11. Travelling allowance and daily allowances payable for attending meeting:**—(a) Members other than Ex-Officio are entitled to travelling allowance and daily allowance for attending the meetings which shall not be less than payable to Class I Gazetted Officer.

**Chapter VI**

**12 Taluka Legal Services Committee, term of office and other conditions**

2. Inserted vide LAB 2005/270 (Pra.Kra. 22)/KA.22, Law and Judiciary (w.e.f.31.08.2006).

**relating thereto of members of the Taluka Committee:—**

- (1) The term of office of the Members of the Taluka Committee shall be for a period of \*[three]years.
- (2) If any member of the said Committee ceases to be such member for, any reason, the vacancy shall be filled up in the same manner as the original nomination and the person so nominated shall continue to be the member for the remaining term of the member in whose place he is nominated.
- (3) A member of the said Committee may, resign his office by writing under his hand addressed to the Executive Chairman of the State Authority and forwarded through the Chairman of the District Authority under the intimation to the Chairman of the Taluka Committee. Such resignations shall take effect from the date on which it is accepted by the Executive Chairman of the State Authority.

**Chapter VII**

**CONDUCT OF BUSINESS**

- 13. Meetings:—**The Secretary of the State Authority with the prior approval of the Executive Chairman of the State Authority shall arrange a meeting of the Authority once in a three months and as and when the business may warrant.

The Secretary of the High Court Committee and its Sub-Committees with prior approval of its Chairman, the Secretary of the District Authority, and the Chairman of the Taluka Committee, as the case may be, shall hold meetings of the respective bodies at least once in a month and as frequently as the business may be.

In the absence of the Executive Chairman of the State Authority or of the Chairman of the High Court Committee and the Sub-Committees, the District Authority or the Taluka Committee, as the case may be, one of the member nominated by all the other Members present at the meeting shall preside over the meeting of the respective bodies,

- 14. Minute of the meeting:—**The minutes of the proceedings of every meeting shall be prepared by the Secretary.

**Chapter VIII**

- 15. Filing of application for Legal Services:—**A person seeking legal service from the High Court Legal Services Committee or its Sub-committees, District Authority or the Taluka Committee, as the case may be, shall send an application containing brief facts of the case to it.

- 16. Scrutiny of applications:—**The applications shall be scrutinised and disposed of by the Secretary of the High Court Committee or its Sub-committees or by the Secretary of District Authority or by the Chairman of the Taluka Committee, as the case may be, giving such directions and legal services as are thought necessary;

Provided that all orders passed by the Secretary of the High Court Committee or its Sub-Committees or the District Authority rejecting legal services shall be passed after obtaining order of the respective Chairman;

Provided further that all orders of the grant of legal services by the Secretary of the High Court Committee or its Sub-Committees or the District Authority shall be subject to control and modifications by the Chairman of the respective bodies.

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3. Inserted vide LAB 2005/270 (Pra.Kra. 22)/KA.22, Law and Judiciary (w.e.f. 31.08.2006).

**17. Duty of Legal Practitioners and further action after the decision of a case by the Court:**— The legal practitioners conducting a case on behalf of a person receiving the legal services shall, as soon as the case is decided, apply for a copy of judgment and decree if any, and immediately on receipt of the copies shall submit them to the body appointing him, together with his detailed comments. The Taluka Committee, the District Authority or the High Court Committee or its Sub- Committees as the case may be, shall take steps to recover the expenses of the legal services rendered from out of the costs, if any awarded by the Court to the person concerned and received by him, such bodies may also consider, where necessary, the feasibility of filing an appeal, revision or writ petition if—

- (i) the case has been decided against the person; or
- (ii) the case is prima facie fit for taking such remedies; or
- (iii) the aided person has applied for legal services for taking recourse to such remedies:

Provided that it will not be necessary to make a fresh enquiry as to eligibility under Sec. 12(h) of the Act, wherever applicable, unless the Taluka Committee, the District Authority or the High Court Committee or its Sub- Committees, as the case may be, is of the opinion that a change of circumstances has taken place since the grant of legal services.

“18. Honorarium payable to legal practitioners on panel : -

- (1) Subject to the approval of the State Authority, the Legal Services Authority or Legal Services Committee shall prepare for a period of two years, a panel of legal practitioners who are willing to represent or prosecute the cases on behalf of the legal aided persons under these regulations. The legal practitioners on the panel shall be paid honorarium at the rates as set out in the Schedule.

Provided that, where the matter is disposed of in less than five effective hearings, the fee payable shall be  $\frac{1}{2}$  of the fee prescribed in the Schedule.

- (2) No legal practitioner to whom any case is assigned either for legal advice or for legal aid shall receive any fee or remuneration whether in cash or in kind or any other advantage, monetary or otherwise, from the aided person or from any other person on his behalf.
- (3) The legal practitioner on the panel, who has completed his assignment, shall submit a statement showing the honorarium due to him in connection with the legal proceeding conducted by him on behalf of the legally aided person to the Secretary of the Authority or Committee who shall, with the approval of the Chairman and after due scrutiny and countersignature, place the same before the Authority or Committee the amount shall be paid by the Secretary to the legal practitioner. It will, however, be open to the legal practitioner to waive the honorarium in whole or part;
- (4) Notwithstanding anything contained in this regulation the court may, in any case in which no legal practitioner on the panel has been engaged, direct engagement of any other practitioner as it may deem appropriate and, in every such case.
  - (a) It shall be the duty of the legal practitioners so engaged to inform the fact of his engagement to the concerned Authority or Committee, and
  - (b) The provision of this regulation shall apply to such legal practitioner as they apply to a legal practitioner on the panel.”

3. After regulation 18 of the principal regulation, so added, the following Schedule shall be added, namely:-

## SCHEDULE

[See Regulation 18(1)]

Details of fees paid to the Advocates on the Legal aid Panel

### Schedule

1	For Civil and criminal cases	1) Rs. 300/- for acceptance (No limit of number of days on which case is on Board for acceptance). 2) Rs. 1800/- for final hearing (including Notice of Motion, CA, there is no limit of number of days for hearing of the case).
2	Only for legal advice	Rs. 200/- for legal advice in the cases coming under jurisdiction of High Court.
3.	Preparing draft	1) Rs. 450/- drafting petition, affidavit, affidavit-in-reply, etc. 2) Rs. 800/- drafting statement in Supreme Court cases.
4.	High Court (Original Side) Civil and Criminal cases	<b>i) Long Cause Suit</b> 1) Rs.450/- drafting plaint 2) Rs.450/- drafting written statement <b>ii) Write Petition</b> 1) Rs.450/- drafting Writ Petition 2) Rs.450/- drafting Affidavit
5.	Civil and Criminal Appeals in the High Court	1) Rs.300/- finalizing draft of Appeals 2) Rs. 800/- Application for grant of permission to file Appeal in the Supreme Court
6.	High Court (Appellate Side) Civil/ Criminal Writ Petition	1) Rs. 450/- drafting Petition, Affidavit, Affidavit-in-reply or any other statement. 2) Rs. 800/- drafting statement in Supreme Court cases
7.	High Court Civil and Criminal matters	1) Rs.100/- drafting affidavit and Notice of Motion in reply. 2) Rs. 100/- drafting memorandum of Appeal or Revision Application 3) Rs.100/- each for drafting other legal documents in the matter.
8.	Central and State administrative Tribunal	Rs.300/- for acceptance (No limit of number of days on which case is on board for acceptance but maximum limit is Rs.1800/-)
9.	City Civil and Sessions Court	Rs. 300/- for acceptance (No limit of number of days on which case is on board for acceptance but maximum limit is Rs. 1800/-)
10.	Chief Metropolitan Magistrate, Mumbai  Small Causes Court, Mumbai, Pune and Nagpur	Rs. 200/- for each effective hearing but maximum limit is Rs. 1200/- for one matter (as per certificate issued by Presiding Officer of the Court). Rs. 200/- for each effective hearing but maximum limit is Rs. 1200/- for one matter (as per certificate issued by Presiding Officer of the Court)

	C) All the Courts at District Headquarters	Rs. 200/- for each effective hearing but maximum limit is Rs. 1200/- for one matter (as per certificate issued by Presiding Officer of the Court)
11.	Motor Accident Claim Tribunal	Rs. 200/- for each effective hearing but maximum limit is Rs. 1200/- for one matter (as per certificate issued by Presiding Officer of the Court)
12.	Sessions Court at Taluka Headquarters	Rs. 200/- for each effective hearing but maximum limit is Rs. 1200/- for one matter (as per certificate issued by Presiding Officer of the Court)
13.	Family Court, various Tribunals and Forums except Metropolitan Magistrate, Small Causes Court and Sessions Courts at District Headquarters	Rs. 200/- for each effective hearing but maximum limit is Rs. 1200/- for one matter (as per certificate issued by Presiding Officer of the Court)
14.	Courts at Taluka Headquarters	Rs. 150/- for each effective hearing but maximum limit is Rs. 800/- Note : concerned Legal Aid Committee can sanction double fees if the advocate has taken special efforts in the matter.
15.	Only for legal advice	i) Rs. 150/- for the matter in District Court ii) Rs. 100/- for the matter in Taluka Court
16.	City Civil and Sessions Court	1) Rs. 300/- for each effective hearing but maximum limit is Rs. 1200/- 2) Rs. 200/- for each effective hearing but maximum limit is Rs. 1200/- (also applicable to Additional Sessions Court at Taluka Place).
17.	Sessions Court Matters / Appeals before other sessions court	Rs. 200/- for each effective hearing but maximum limit is Rs. 1200/- (also applicable to Additional Sessions Court at Taluka Place)
18.	For preparing draft in City Civil and Sessions court / other session court matters	1) Rs. 200/- for each matter for drafting application / written statement (also applicable to Mofusil, City Civil and Sessions Court). 2) Rs. 100/- for drafting Affidavit and other Legal documents.
19.	Office of Metropolitan Magistrate, Mumbai	Rs. 200/- for each effective hearing but maximum limit is Rs. 12200/-.
20.	Courts at Taluka Places (excluding Talukas at Mumbai District headquarter)	Rs. 100/- for each effective hearing but maximum limit is Rs. 800/-.
21.	Courts at Taluka Places (excluding Talukas at Mumbai District headquarters)	For preparing Draft : Rs. 100/- drafting application / written statement. Rs. 50/- drafting affidavit and other documents.
22.	Counseling Centre [Maharashtra State Legal Aid and Advice Counseling Rules, 1996 (Rule 25)]	Rs. 100/- for each session in the counseling Centre at Mumbai. Rs. 50/- for each session in Mofusil.



<b>For drafting documents</b>		
23.	City Civil Court and Courts and Tribunals at District Headquarters	1) Rs. 200/- for finalizing plaint (including finalization of written statement in Criminal/Family matters). 2) Rs. 100/- drafting affidavit, Notice of Motion and other legal documents.
24.	Courts at Taluka Headquarters and other courts in Taluka	1) Rs. 100/- drafting Plaint, written statement. 2) Rs. 50/- drafting affidavit and other legal documents.
25.	Drafting Applications in Mumbai and Mofusils and official documents	1) Rs. 100/- Advocate's fee in Mumbai. 2) Rs. 60/- in Mofusil. 3) Rs. 50/- drafting application in Mumbai and Mofusils and official documents.
26.	Maharashtra State Para Legal Training Court Rules, 1989	1) Rs. 60/- per day to Controller (Rule-32) 2) Rs. 100/- per day in Mumbai 3) Rs. 60/- per day in Mofusil (Ru 8le39) 4) Rs. 50/- per day to participants (Rule-31) 5) Rs. 50/- expenses limit (Rule-41)
27.	Maharashtra State Legal Aid Camps Rules, 1989	1) Rs. 100/- per day in Mumbai (Rule-33) 2) Rs. 60/- in Mufusil.
28.	Maharashtra State Legal Literacy Rules, 1989	1) Rs. 60/- per day to organisers (Rule 37) 2) Rs. 100/- per day in Mumbai 3) Rs. 60/- per day at other places (Rules 41) 4) As above (Rule 64) 5) Rs. 60/- Remuneration to Advocates (Rules 71) 6) Rs. 60/- Main Speaker (Rule 81) 7) Rs. 60/- Main Speaker (Rule 87)
29.	Maharashtra State Relief through Authorities Rules, 1989	1) Rs. 100/- Advocate's fees (in Mumbai) 2) Rs. 60/- in Mofusil 3) Rs. 50/- drafting applications in Mumbai and Mofusils and official documents.
30.	Maharashtra State Legal Aid Centre Rules, 1989	Rs. 100/- per session to counsellors in Mumbai and Rs. 60/- at other places.
31.	Maharashtra State Justice at Home Rules, 1989	Rs. 30/- per day allowance to administrative assistance (Rule 14)
32.	Daily Allowance on tour to District Regional Officers	Rs. 40/- when District Regional Officer is on tour.
33.	Maharashtra State Legal Aid Clinic Rules, 1989	
34.	Maharashtra State Lok Nyayalaya Rules, 1989	

By order and in the name of  
Maharashtra State Legal Services Authority

Member Secretary

## ANNEXURE 4: DATA COLLECTION SAMPLE- FEMALE PRISON

*Vakkalathamma*

	VI	B	CL	LA	P	NO	SHR	D	
✓	1169	3	THEFT	✓	—	—	<del>2 days</del>	20 days arrest	no contact w/la
✓	1512	3	379,	—	✓	—	—	6m	No contact Police appointed a P/LA father. No one to know, says he
✓	1511	2	381	—	✓	—	—	14 days	No contact Husband. No contact w/ wife - lived w/ husband either
✓	93	4	395	—	✓	—	—	—	No contact No picking up calls
X	877	3	40300	✓	—	—	—	7m	No contact No picking up calls only DLSA Hater (Name) jammed a name
✓	881	4	352, 332, 506	✓	—	—	—	6m	Judge appointed No contact complaint to J No one to know - contact for or long time
✓	1019	2	420	—	—	—	—	—	No contact
✓	26	5	489	✓	—	—	—	45m	Judge appointed No contact - Only in laud
✓	1510	2	30	—	—	—	—	17 days	No contact in laud Family Med.
✓	999	3	581	—	—	—	—	5 months	NO LA
✓	1550	5	650	—	✓	—	—	3 days	Got Bail Said he to stay for 2 days? bail
✓	1525	4	379, 511, 24	—	✓	—	—	3/Sept	No - contact at all
✓	344	4	302, 1PC	—	✓	—	—	—	Don't remember - But talks to the la
✓	1736	4	Passport	—	—	—	—	1m / 5 days	No LA
✓	1207	4	Passport	—	✓	—	—	3m	No name but in contact
X	1555	1	Don't know	—	✓	—	—	—	No name but in contact
X	1425	6	420, 1Tad	—	—	—	—	46 days	No contact LA yet
X	93	4	395	—	✓	—	—	3m	No contact No been produced in laud, No contact w/ la

# ANNEXURE 5: DATA COLLECTION SAMPLE: MALE PRISON

S.No.	U.T.	Barrack No.	Charges	Lawyer Legal Aid Private	No Lawyer Appointed	Shift from Legal Aid To Private Lawyer	Duration in Prison	Last Contact with The Lawyer	Additional Remarks/ Miscellaneous
1.	647	2	130,92		✓		9 months	NO	- 2 weeks
2.	93276	2	92		✓		20 days	-	Met Patel
3.	363226	2	392	✓			20 days	-	Met Patil in court
4.	2664	2	379,356		✓		3 months	NO	- NO
5.	182862	2	392		✓		2 months	NO	- Took in written but not in court, no record
6.	3347	2	379		✓		8 days	NO	- 24th Aug
7.	3710	2	379		✓		17 days	- NO	- Signed a form but passport done
8.	206	2	150E		✓		10 months	- NO	- <del>NO</del> Suit taken a year longer
9.	7290	2	379		✓		1 month	NO	- No lawyer
10.	3256	2	154,145,147		✓		1 month	NO	- Signed but no court hearing
11.	2044	2	3APF		✓		7 months	- NO	- No lawyer had to meet
12.	616	2	150E	✓			9 months	- NO	- Did not meet lawyer
13.	9255	2	379		✓		2-3 months	- NO	- Met to meet but not against
14.	2526	2	379,150E		✓		7 months	- NO	- Signed by Siddhant, but not in court
15.	431	2	-(Warrant)	✓			1 month	- NO	- No record
16.	3283	2	3APF		✓		2 days	- NO	- Only signed by lawyer
17.	2526	2	392		✓		3 months	- NO	- Only met PRAYA's lawyer
18.	3101	2	392		✓		1 1/2 months	- NO	- Signed by D'souza but nothing happened

1  
Barracks. No. 2

Lack of info. on g number - introduction.

# ANNEXURE 6: AUTHORIZATION LETTER FOR FIELD WORK



विशेष पोलीस महानिरीक्षक (कारागृह)  
दक्षिण विभाग, भायखळा, मुंबई-४  
दुरध्वनी क्र.23001177  
23074508

पत्र

प्रति,  
डॉ. अरविंद तिवारी,  
प्रोफेसर/ डॉन,  
स्कुल ऑफ लॉ,  
टाटा इन्स्टिट्यूट ऑफ सोशल सायन्स,  
मुंबई.  
मा.क्र.विपोमनि/दवि/परवानगी/क्षेत्रकार्य/ 1570/2019 मुंबई दि. 21.08.2019

विषय :- क्षेत्रकार्य करण्याची परवानगी मिळणे बाबत.

संदर्भ :- या कार्यालयाचे परवानगी आदेश जा.क्र. विपोमनि/दवि/परवानगी  
क्षेत्रकार्य/1550/2019, मुंबई दिनांक 14.08.2019.

उपरोक्त संदर्भाकित विषयान्वये कळविण्यात येते की, महाराष्ट्र कारागृह नियमावली १९७९ मधील चॅप्टर क्र.१५ नियम क्र.१९ प्रमाणे व मुख्यालयाचे परिपत्रक क्र.कारागृह भेट/परवानगी/२०१०/कक्ष-९ (३) ८६७८ दि.१४.१०.२०१० व परिपत्रक क्र.न्यायी/समाजकार्य महाविद्यालय/३३८३/१३ कक्ष-९ दि.२४.०३.२०१४ अन्वये खालील अटीचे अधीन राहून एल.एल.एम. मध्ये शिकत असलेल्या १० विद्यार्थ्यांना परवानगी देण्यात आली होती. त्यामध्ये बदल करण्यात येवून असिस्टंट प्रोफेसर श्रीमती सोनाली कुसुम व ६ एल. एल. एम. शिकत असलेले विद्यार्थी नामे खवाब अहमद, शरमाद अजिज, कुशन डोसाज, स्नेहल लाहोटी, नॉयनिका समंत्रा, एस.पी. ईझीलाव्हीया यांना मुंबई महिला जिल्हा कारागृह व भायखळा जिल्हा कारागृह येथील कारागृह भेटीस परवानगी देण्यात येत आहे.

१. अर्जदाराने दिलेल्या मुदतीत अधीक्षक ठरवतील त्या दिनांकास क्षेत्रकार्य करण्यात यावे. दिनांक, वेळ व कालावधी याबाबत अधीक्षकांशी संपर्क साधावा.
२. सादर विद्यार्थ्यांनी स्वतःच्या ओळखपत्राची छायांकित प्रत अगोदर कारागृहाकडे सादर करावी तसेच क्षेत्रकार्याच्या अहवालाची एक प्रत कारागृह अधीक्षक व प्राचार्य दोलतराव जाधव, तुरुंग अधिकारी प्रशिक्षण, महाविद्यालय, येरवडा, पुणे व या कार्यालयास सादर करावी लागेल.
३. कारागृह भेटीच्या वेळी स्वतःचे ओळखपत्र कारागृह अधिका-यांना दाखवावे तद्नंतरच कारागृहात प्रवेश दिला जाईल. सादरचे क्षेत्रकार्य कारागृहाचे शिक्षक/अधिका-यांचे उपस्थितीत करण्यात यावे.

४. कारागृहातील कोणत्याही बंद्याचे वा परिसराचे छायाचित्र काढता येणार नाही.
५. अभ्यासालागत कारागृहातून संकलीत केलेली माहिती कोणतेही व्युत्पन्न व प्रसिद्धी माध्यमातून प्रसिद्ध करणार नाही.
६. कारागृहात नेण्यास अक्षेपाई असलेल्या वस्तू कारागृहाच्या मैनगेटवर जमा कराव्यात.
७. कारागृहातील बंद्यांशी बेकायदेशीर स्वरूपाचे कुठलेही संबंध ठेवता येणार नाही.
८. कारागृहाची सुरक्षितता, शांतता व सुव्यवस्थेत बाधा येईल अशी कोणतीही कृती करू नये.
९. क्षेत्रकार्यासाठी आलेल्या व्यक्तींनी मैन गेट नोंद घेऊन क्र.११ मध्ये स्वहस्ते नोंद करण्यात यावी.

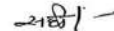
  
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प्रत :- अधीक्षक, मुंबई जिल्हा महिला कारागृह/भायखळा जिल्हा कारागृह यांचेकडे माहिती व योग्य त्या कार्यवाहीसाठी अर्जित.

२/- भेट देणा-या विद्यार्थ्यांची संख्येकडून यादी प्राप्त करून घ्यावी व त्यानुसार फोटो असलेले ओळखपत्र याची छाया करून कारागृह प्रवेशाबाबत कार्यवाही करावी. क्षेत्रकार्यासाठी आलेल्या विद्यार्थ्यांनीची मैन गेट नोंद घेऊन क्र.११ मध्ये स्वहस्ते नोंद करण्यात यावी. कारागृह सुरक्षा आबाधीत ठेवून कारागृह नियमांचे उल्लंघन त्यांचेकडून होणार नाही याची दक्षता घ्यावी कारागृहात होणा-या कार्यक्रमा/प्रशिक्षणासाठी/भेटी/क्षेत्रकार्याची माहिती दर्शविणारे एक स्वतंत्र रजिस्टर ठेवून त्यामध्ये तपशीलवार नोंद घ्यावी..

प्रत :- कु. सोनाली कुसुम, असिस्टंट प्रोफेसर, स्कुल ऑफ लॉ, टाटा इन्स्टिट्यूट ऑफ सोशल सायन्स, मुंबई.

  
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