Role of Para-Legal Volunteers in the Prison System: A Resource Manual

Prayas, a field action project of the Centre for Criminology and Justice, School of Social Work
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INTRODUCTION

"Millions of people in the world's poorest countries remain imprisoned, enslaved, and in chains. They are trapped in the prison of poverty. It is time to set them free."

- Nelson Mandela, London's Trafalgar Square in 2005.

Maintenance of rule of law in a country like India requires that access to legal aid for the poor and marginalised is a basic ingredient. In the last 14 years, around 15 million people out of the 1 billion eligible Indian citizens have been provided with legal aid services.[1] Hundreds of crores of rupees have been allocated by the Central and State government for legal aid services but data shows that a small number of people have received legal aid services. Hon'ble Justice Shri U.U. Lalit, former Chief Justice of the Supreme Court of India has stated that only 1 per cent of the eligible population has received legal aid services.[2] There are various contributing factors due to which people are not able to reach services provided by the legal aid authorities, for example, lack of awareness about the availability of services, lack of legal literacy among the people who need such services and inability of the system to reach out to people in need of legal aid services. These reasons have been acknowledged by the Hon'ble Supreme Court. However, there is a need to create trust in the system to cater to the needs of those who require it. The situation with regard to undertrial prisoners is particularly precarious given the fact that once a person is remanded to judicial custody, his/her general roots with society are severed in many respects. It is in this context that the role of Para-Legal Volunteers (PLVs) becomes very important. PLVs can act as a bridge between the legal aid system and the people who are in need of legal aid services. The National Legal Services Authority (NALSA) has been making consistent efforts to strengthen the role of PLVs at the ground level and has been working towards suggesting various measures including capacity building, development of curriculum and SOPs about the role of PLVs in the legal aid system. This handbook is a humble attempt to work in this direction by providing guidelines for strengthening the role of PLV vis a vis under trial prisoners.

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[1] Biju, R., 2022. *India Justice Report 2019: Only 15 million out of 1 billion eligible Indians provided legal aid services in last 14 years*. [online] Bar and Bench - Indian Legal news.

[2] https://cjp.org.in/free-legal-aid-must-mean-quality-service-sc-justice-uu-lalit/

CHAPTER I

OVERVIEW OF LEGAL AID SYSTEM IN INDIA

The year 1851 saw the start of the first ever legal aid movement and this happened in France when a law was passed in favor of the poor enabling them the access to legal assistance. Also in 1876, the Legal Aid Society of New York sought out to provide legal help to those in need.[3] Efforts were made in the United Kingdom too in 1944, when the State put some efforts to provide legal help to the poor people. In fact, Lord Chancellor Viscount Simon had himself appointed the Rushcliff committee in order to look into the facilities that were available in the UK for the poor seeking legal help and to forward any such recommendations that will help ensure the poor are provided with the legal advice by the State whenever needed.[4]

In 1952, the Government of India began to take charge of the questions arising regarding legal aid and by 1960, the guidelines with regard to legal aid schemes were introduced. Legal Aid Boards, law departments and societies were responsible for proper functioning of the legal aid schemes in various states. The change in role of the welfare state ensured that social goals were expanded to reach out to weaker and marginalised sections of society. Several mechanisms were introduced that helped the poor and needy in getting legal help to access the justice system.

In 1950, Justice Bhagwati led a Committee on Legal Aid and Advice, set up by the Government of Bombay, which suggested that the legal aid fund should be responsible to bear the court fees and other cost related to the proceedings of the assisted parties. Bhagwati J was also appointed as the Chairman of the Legal Aid Committee that was introduced by the Government of Gujarat and he worked towards finding new mechanisms that helped the poor and backward society grat and is regarded as the originator of Legal Aid Programmes in India.[5] et free legal aid and advice. He was successful in building the legal aid programme in Gujarat.

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[3]Pious R, and Johnson E, 'Justice And Reform: The Formative Years Of The OEO Legal Services Program.' (1974) 89 Political Science Quarterly.

[4] 'About Us' (*Nalsa.gov.in*, 2022) <https://nalsa.gov.in/about-us>

[5] Dr J.S.Singh, 'Right to legal aid. A human right perspective'(2007) 8 ND 32.

The Law Commission Report in 1958 for the first time shed light on equal justice and free legal aid. The report pointed out that the law does not have any protective value in it, if it fails to provide equality of opportunity to seek justice to every section of the society and unless there is some action taken to exempt poor men from paying court fees and other costs of litigation, they are not given an opportunity to seek justice.

In 1972, Justice V Krishna Iyer was appointed the Chairman of the Legal Aid Committee. The Committee conducted a survey and submitted a report on "Professional Justice to Poor" which stated that there is a need for the Law to reach the people rather than people to reach the Law. The year 1973 saw the first major report concerning legal aid from the Committee of Legal Aid of the Ministry of Law and Justice and it emphasized that legal aid is a very crucial part of the legal system and it is not supposed to be confined within the four walls of the court building.[6]

In 1976, a Juridicare Committee was formed under the Chairmanship of Justice P. N. Bhagwati and Justice Krishna Iyer which submitted a report to the then Law Minister. The report was titled "National Juridicare Equal Justice and Social Justice" and the primary aim of the Committee was to revise, update and re-evaluate the reports of the expert committee and concentrate more on conditions of the legal aid programs. The Committee was of the view that the main purpose of legal aid should be used to radically transform the socio-economic structure and law should be used as an instrument to eradicate poverty and provide equal distribution of material resources to all citizens.[7]

In 1980, under the Chairmanship of Justice P. N. Bhagwati, a Committee was constituted at the national level to acquire data about the legal aid services that were running throughout the country. This Committee was known as Committee on Implementation of Legal Aid Schemes (CILAS) and looked after the activities related to legal aid in the country. Thereafter in 1987, the Legal Service Authorities Act was introduced to form a statutory base for legal aid in the country. The idea was to establish a uniform pattern throughout the Nation so that all the sections of society can avail legal aid.[8]

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[6] (1973) Report Of The Expert Committee On Legal Aid: Processual Justice To The People.
[7] (1977), Report on National Juridicare: Equal Justice- Social Justice.
[8] Introduction' (*Nalsa.gov.in*, 2022) <https://nalsa.gov.in/about-us>

Legal aid is also recognised by the Constitution of India under Article 39A.[9] The primary aim of this article is to provide assistance to those people who are not capable of affording legal representation and to make sure that they have proper access to the court system. Article 39A however, cannot be called a fundamental right; this is particularly so because the Directive Principles of State Policy cannot be enforced in a court of law as provided in Article 37 of the Constitution of India. However in keeping with the jurisprudence of Constitutional courts, Article 39A has to be read along with Article 21 in order to achieve its status of fundamental right. The Apex Court in the case of Madhav Hayawadanrao Hoskot v State of Maharashtra[10] observed that it is important for the poor people to have more awareness about their constitutional and statutory rights. If an accused is unable to exercise his rights upon his imprisonment, then under Articles 21 and 39A, there is implicit in the court to provide legal aid to the accused so that that the individual can avail complete justice. The Apex court came to the conclusion that the legal aid will come under the ambit of the Constitutional right. The accused, if unable to avail legal services on his own, then he should be assigned with a competent counsel for his defense and other necessities and these services are to be paid by the State itself.

[9] Constitution of India, Article 39A.
[10] Madhav Hayawadanrao Hoskot v State of Maharashtra (1978) 3 SCC 544.

CHAPTER II

ROLE OF LEGAL AID INSTITUTIONS VIZ WORK IN PRISON

Article 21[11] read with Article 39A[12] of the Indian Constitution provides recognition to legal aid as a fundamental right under the Constitution of India and it has been observed that the statutory enactments do not provide the necessary foundation to properly establish this right. The programmes that were brought forward by the legal aid services have failed to provide proper access to the legal aid and judicial system.[13]

The Legal Services Authorities Act, 1987, was implemented in order to include the aims and objectives of Article 39A and its amendment in 1995 took care of the establishment of a comprehensive network throughout the nation to provide free legal aid to backward sections of the society. The core objective of this Act stands to provide social justice to all those citizens who due to their social or economic status are not able to reach the judicial and administrative authorities. There are various bodies introduced by the Judiciary who are responsible for upholding the objectives of this Act. The National Legal Service Authority (NALSA) is tasked with monitoring the actions of legal aid programmes throughout the country. The Supreme Court Legal Services Committee was also introduced under the aforesaid Act. The State Legal Services Authority and District Legal Services Authority were created as a result of this law. Lastly, the Taluka Legal Service Committee has been constituted in order to widen the reach of legal aid services to every section of society.

The NALSA is a statutory body which is entrusted with the responsibility of implementing and analyzing the actions of all the legal programmes in the country. It is considered to be the apex authority which ensures that the policies and principles of the Act are properly laid down. It also tries to promote legal literacy, introduces legal clinics and provides funds and grants to NGOs and other bodies for the better implementation of the Act.

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[11] Constitution of India, Article 21.

[12] Constitution of India Article 39A.

[13] Dr Jeet Singh Mann, Impact Analysis of the Legal Aid Services Provided By the Empaneled Legal Practitioners on the Legal Aid System in City of Delhi (2017).

The Legal Services Authority Act, 1987, also constituted the Supreme Court Legal Services Committee which works to provide legal aid in the Apex Court. The citizens who belong to Schedule Caste, Schedule Tribe, mentally ill, disabled persons, women, children, industrial workmen having an annual income of less than 1.25 lakhs, or those in custody are eligible to get free legal assistance under this law. In order to get assistance from these bodies, a person has to write an application addressed to the Secretary of the DLSA or the TLSC, or the High Court of Supreme Court Legal Services Committee and submit necessary documents available to them.

There is a State Legal Service Authority (SLSA) established in every state so that it can look after the policies and follow directions provided by NALSA to achieve the maximum outcome. Its functions include providing free legal assistance to the people and managing and coordinating the Lok Adalat in their respective states. The SLSA is headed by the Chief Justice of respective High Court and its Executive Chairperson is often a serving judge of the High Court (usually the senior most judge of the High Court next to the Chief Justice).

Every district has a DLSA which is tasked with implementation of legal assistance programmes for those who require it. The District Judge of that district is the head of DLSA and it is mandatory for each district to have one. In addition to the above, the Taluka Legal Service Committee was added to the LSA Act, 1987 under Section 11A[14] and 11B[15], in order to work collectively by taking the rules of different states into consideration. It was first introduced by the talukas and mandals so that proper legal assistance could be provided in the taluka and Lok Adalats can be conducted. It is headed by the senior civil judge who is in charge of the jurisdiction of that committee.

The availability of legal aid to those who require it is further strengthened in Code of Criminal Procedure under Section 304.[16] It says that the person who is indicted is to be provided with legal assistance from a legal professional and the expense of that should be taken up by the state. It falls as an obligation of the state to make sure that section 304 is complied with in the duration of pendency of case in sessions court. If section 304 is violated,

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[14] Legal Services Authorities Act, 1987, Section 11A.
[15] Legal Services Authorities Act, 1987, Section 11B.
[16] Code of Criminal Procedure, 1973, Section 304.

then the judgment provided in that case will stand to be null and void.[17] The Apex Court in the case of Khatri and Ors v State of Bihar[18] observed that providing free legal aid to the person who is accused falls under constitutional mandate of the state and the state has to provide legal service and whatever necessary for the accused's cause. Perusal of sub-section (h) of section 12 of the LSA Act[19] entitles under trial prisoners legal aid services irrespective of the fact that he or she may be financially sound. It was further looked after by the court that the obligation of the state to provide legal assistance does not only arise when the accused is undergoing a trial. The accused is to be provided with legal aid when he is first presented before the magistrate. Therefore it can be concluded that the state not only has a constitutional obligation to provide legal advice in the duration of the trail but also when the accused is brought in front of the magistrate.

The provisions of LSA state that legal aid can be provided to the eligible person for the purpose of filing as well as defending a case and such benefits are made available to only specific sections of the society. These include persons who belong to SC, ST, women, children, industrial workmen, person with disability, and human trafficking victims. Section 12 of LSA speaks of persons who are eligible to get legal aid under this law and the Supreme Court has set INR 1.25 as the pecuniary limit for getting the legal aid assistance.[20] Sub-section h of section 12 of the LSA provides for persons in custody as one of the eligible groups legal aid. Hence, unlike section 304 of the said CrPC, which only provides for an obligation to provide free legal aid to persons being tried by the sessions court; the legal aid institutions are obligated to provide persons in custody irrespective of the fact as to the case being triable by magistrate or sessions court.

[17] The Code of Criminal Procedure, Section 304.
[18] Khatri and Ors v State of Bihar (1981) 1 SCC 635.
[19] Legal Services Authorities Act, 1987, Section 12.
[20] Legal Services Authorities Act 1987, Section 12.

CHAPTER III

CONSTITUTION OF CRIMINAL COURTS AND TYPES OF OFFENSES

The Indian judicial system is considered to be among the most efficient and effective in the world as it has the ability to look after specific requirements of every citizen. It has set up a very complex and deep rooted system with the hierarchy of courts to facilitate its reach even to the most remote areas of the country. Section 6 of the CrPC provides the class of criminal courts in each state except the High Court and Supreme Court. The section states that except the High Court and Supreme Court, each State should have the court of sessions, Judicial Magistrates of first class, Judicial Magistrate of second class and the Executive Magistrates.[21] In the case of metropolitan areas, there should be the presence of Metropolitan Magistrates in place of judicial magistrates.

According to the Indian judicial system, there is a hierarchy in criminal courts so that all citizens have the ease of approaching it. The Supreme Court has appellate jurisdiction over the criminal cases and can hear matters which revolve on substantial questions of law involving the interpretation of the Constitution. An appeal on criminal case lies before the Supreme Court in three scenarios: one, if the High Court has an appeal reversed on an order of acquittal of an accused person and provides with him a death penalty or imprisonment for not less than 10 years of period or two, if the High Court has withdrawn from a trial in a case that is decided by the court which is subordinate to its authority and in such a trial, the accused was given a death penalty or imprisonment of not less than 10 years, or three, if the case that is certified fits perfectly for an appeal before the Supreme Court.

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[21] Code of Criminal Procedure, 1973, Section 6.

The next in the hierarchy is the High Court and section 482 of the CrPC provides the court with inherent powers.[22] This section allows the court to pass any order that in made to ensure justice, to quash the proceedings of the lower courts or to quash any FIRs which it deems fit. After the High Court, the lower courts diverged into Metropolitan Courts and District Courts. The district judiciary is further classified into Sessions Court, Chief Metropolitan Magistrate's, First Class Metropolitan Magistrate's and the District Court is classified into Sessions Court, First Class Judicial Magistrate, Second Class Judicial Magistrate and Executive Magistrate's courts. According to Section 12(1) of the CrPC, the High Court is supposed to appoint a Judicial Magistrate of First Class to the Chief Judicial Magistrate in every state and every session division is supposed to have one CJM.[23] One of the duties of CJM is the proper distribution of business among all the courts of the Judicial Magistrate. Section 14(1) of the CrPC[24] specifies that it is the duty of the CJM to define the local limits of the areas through which the Magistrates who are appointed under Section 11[25] and Section 13[26] of the CrPC can exercise their jurisdiction. The CJM is also called the' Ilaka magistrate' due to his power to determine the area limit for Judicial Magistrate of first class and Judicial Magistrate of second class.

Section 3 of the CrPC states that any class of magistrate who is having any relation to the metropolitan area is entitled to be called as the metropolitan magistrate and has nearly the same powers as that of the judicial magistrate of first class.[27] The Chief Metropolitan Magistrate can pass any sentence except that of death sence and the maximum imprisonment of seven years. The Metropolitan Magistrate can pass a sentence of imprisonment that cannot exceed three years and a fine which should not exceed ten thousand rupees.

CrPC classifies offenses under it into six categories, namely cognizable & non-cognizable, bailable & non-bailable and compoundable & non-compoundable offenses.

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[22] Code of Criminal Procedure 1973, Section 482.
[23] Code of Criminal Procedure 1973, Section 12(1).
[24] Code of Criminal Procedure 1973, Section 14(1).
[25] Code of Criminal Procedure 1973, Section 11.
[26] Code of Criminal Procedure 1973, Section 13.
[27] Code of Criminal Procedure 1973, Section 3.

A cognizable offense is said to have taken place when the police officer in accordance with the first schedule has the power to arrest the accused person without the presence of a warrant. This generally takes place in cases of murder, rape kidnapping or dowry death etc. The accused is supposed to be presented before the court within 24 hours in these situations But in order to facilitate the collection of evidence, the police office under section 154 of the CrPC has to file a FIR to note down the commission of the cognizable offense.[28] Sections 157[29] to Section 173[30] of the Cr.P.C. establish the authority and responsibilities of a police officer conducting an inquiry. When it is essential to summon someone to an investigation, the Investigating Officer can do so by issuing a written order in the specified form. However, no male or female under the age of 15 years old shall be asked to attend a place other than the residence of such person. The Investigating Officer's role of examining the crime or incident scene is crucial. Without the permission of a Magistrate, any officer-in-charge of a police station may investigate any cognizable case that a court with jurisdiction over the local region within the confines of such station would be required to look into or try under the requirements of Section 156(1) Cr. PC.[31]

Every cognizable offence committed within the jurisdiction of a police station is investigated by the officer in charge of that police station. It cannot be questioned if a police officer investigates a cognizable offence recorded in his police station outside of that jurisdiction. On behalf of the Station house Officer, police officers above the rank of Head Constable deployed at the police station are authorized to investigate cognizable cases.

The police also have the power to investigate suo moto in the case of cognizable offences. It should be noted that the Police have the authority to investigate only cognizable offences as defined in Section 4(f) of the CrPC;[32] however, under Section 202, a Magistrate may order a local investigation to be conducted by a Police Officer if he sees reason to destroy evidence of an offence of which he is authorized to take cognizance (or other person).[33] Magistrates should scrupulously adhere to the limitations on this power of

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[28] Code of Criminal Procedure 1973, Section 154.
[29] Code of Criminal Procedure 1973, Section 157.
[30] Code of Criminal Procedure 1973, Section 173.
[31] Code of Criminal Procedure 1973, Section 156(1).
[32] Code of Criminal Procedure 1973, Section 4(f).
[33] Code of Criminal Procedure 1973, Section 202.

reference set forth in the directions for the examination of complainants. Sections 156[34] to 158[35] provide for the procedure for the police to follow when they receive information on the commission of a cognizable offence, as well as the submission of reports to the Magistrate with jurisdiction.

In cognizable cases, the F.I.R. should be delivered to the Magistrate concerned as soon as possible in his Court and at his residence thereafter. The F.I.R. in a cognizable matter should be filed to the duty Magistrate if the Magistrate concerned is out of station. A Magistrate should affix his initials to the F.I.R. in cognizable cases as soon as it is received by him and mark the date and hour at which the report was received by him. If he disagrees with the Police Officer's reasons for the delay, he should explain his own reasons, if any, for the delay. If, on the other hand, the evidence appears to be sufficient, the police officer must deliver the accused to the Magistrate with jurisdiction, either in detention or on bail, if the offence is bailable (Section 170).[36]

In the absence of a special order of a Magistrate under Section 167, no Police Officer shall detain in custody a person arrested without warrant for more than twenty-four hours, exclusive of the time necessary for the journey from the place of arrest to the Court, according to Section 61 of the Code.[37] When it appears that the police investigation will take longer than twenty-four hours and there are reasonable grounds to believe that the accusation is well-founded, the police officer must forward the accused to the nearest Magistrates, as well as a copy of the case entries in the police station's diary. Whether police officer has or does not have jurisdiction, the Magistrate before whom the accused is brought may order the accused to be held in whatever custody he deems appropriate for a term not exceeding fifteen days.

If police officer does not have jurisdiction in the case and believes that continued detention is unnecessary, he may order the accused to be forwarded to a Magistrate who does under section 167(1) of CrPc.[38] A Magistrate who orders the detention of an accused person as described above must keep a record of his reasons, and if he is not a District or Sub-Divisional Magistrate, police officer must provide a copy of his order and reasons to the

[34] Code of Criminal Procedure 1973, Section 156.
[35] Code of Criminal Procedure 1973, Section 158.
[36] Code of Criminal Procedure 1973, Section 170.
[37] Code of Criminal Procedure 1973, Section 167.
[38] Code of Criminal Procedure 1973, Section 167(1).

Magistrate to whom he is directly subordinate. (Section 167).[39] Every page of the case diary or duplicates thereof must be signed and dated by the Magistrate as evidence that he has seen them. When a police officer arrests a person in a summons case and the investigation is not completed within 6 months, regardless of whether the person is on bail or in custody, the magistrate has the authority to order the investigation to be closed, and further investigation is not allowed unless the session court orders it, as per section 167(5)[40]. In such instances, it is necessary to ensure that the investigation is completed within that time frame.[41]

In the situation of a "non-cognizable offence," a police officer not only lacks the authority to arrest the offender without a warrant, but he also lacks the authority to file a FIR or investigate the matter without the permission of the Jurisdictional Magistrate, as stipulated in subsection (2) of Section 155 Cr.P.C.[42] If a police officer receives information claiming the commission of a "non-cognizable offence," he must record or enable the information to be recorded in a book approved by the State Government, and then report the complainant to the appropriate Magistrate under Section 155 (1) Cr.P.C.[43] The Magistrate in question is the Magistrate who has the authority to try the case or commit it to the Court of Session for trial.

A bailable offense is one in which the accused has an absolute and irrevocable right to bail, which can be granted by the police officer detaining him or a magistrate. Being a part of an unlawful assembly, providing false evidence in a court of law, inciting a commotion in an assembly, and so on are examples of such offenses. Under this offense, bail is granted on the basis of a bail bond which requires the fulfillment of a few conditions. The accused has to be available to report before the police whenever it is required. He can neither leave the territorial jurisdiction without having prior permission by the court nor tamper with the evidence. Murder, rape, and other offences are examples of non-bailable offences where bail is not a question of right and can only be provided at the court's discretion. In the case of State of Maharastra vs. Ramesh Taurani,[44] it was decided that, in addition to other factors, the nature and severity of the crime must be considered when determining whether or not bail

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[39] Code of Criminal Procedure 1973, Section 167.
[40] Code of Criminal Procedure 1973, Section 167(5).
[41] Dr. M.N. Bhatt, “Police Science and Law Enforcement”(2020).
[42] Code of Criminal Procedure 1973, Section 155(2).
[43] Code of Criminal Procedure 1973, Section 155(1).
[44]State of Maharashtra vs. Ramesh Taurani (1998) 1 SCC 41.

should be provided for a non-bailable offence. In this case, a "Bail Bond" is used to provide bail with stricter restrictions than a bailable offense.

The next category of offenses are compoundable offenses where the complainant decides to let go of the charges against the defendant and enter into a state of compromise. The condition is that the compromise is supposed to be bonafide in nature and not something that the complainant is not entitled to. The court provides permission for settlement only when it is convinced that the offense is completely personal and it has no effect on the public peace. Non-compoundable offenses cannot be compounded; instead, they must be quashed since they are usually of a severe and criminal nature, and the accused cannot be let off the hook. Non-compoundable offenses include any offenses not specifically mentioned in section 320 of the Criminal Procedure Code.[45]

The complaint is usually filled out by the state, such as the police, so the question of dropping charges does not arise, and the court does not have the authority to compound such offenses. The trial comes to the conclusion with an acquittal or conviction of the offense, and the criminal trial concludes with the final order. The question before the Supreme Court in B.S. Joshi V State of Haryana[46], was whether the High Courts had any ability to quash proceedings involving non-compoundable offenses under Section 482 of the Code in order to attain justice for the parties concerned. The court has responded affirmatively, stating that the High Courts do have the authority to use their inherent jurisdiction to intervene in instances involving non-compoundable offenses in order to serve the interests of justice. Further under section 227, the Code of Criminal Procedure provides that if after hearing the submissions provides by the prosecution the judge comes to the conclusion that there is no sufficient ground present for continuing the proceeding against the accused, then he shall be discharged.[47]

The CrPC provides different types of trials in the criminal court and among those the most basic classification is ‘summons case’ and ‘warrant case’. Summon cases are ones in which the maximum penalty is two years in prison. It can be claimed that summons matters are not serious in nature, so they must be resolved quickly without losing the rights to a fair

[45] Code of Criminal Procedure 1973, Section 320.
[46] B.S. Joshi V State of Haryana, (2003) 4 SCC 675.
[47] Code of Criminal Procedure 1973, Section 227.

trial. The definition of a summons case is found in Section 2(w) of the CrPC, 1973; a summons case is one that involves a crime but is not a warrant case.[48] The summons procedure is outlined in Chapter 20 of the CrPC. A summons case is one in which an offense is penalized by a punishment of Rs. 50/-.A warrant case is one involving an offense punishable by death, life imprisonment, or a sentence of more than two years in jail. They are frequently cognizable offenses of a serious or heinous character that the police arrest without a warrant.

The warrant case procedure is outlined in Chapter 19 of the CrPC. In warrant cases, the accused is charged with a crime. The warrant case is defined under Section 2 (x) of the CrPC.[49] In any case, the granting of a summons or a warrant does not alter the character of the case. If a warrant is issued in a summons case that does not necessarily change it into a warrant case. A warrant is issued with the intent of bringing an accused to court who has failed to appear in court despite being summoned. Trials of warrant cases are more extensive and severe than Trials of Summons cases. Even within warrant trials, cases involving higher-level offenses are handled by the Sessions Court, while cases involving lower-level offenses are handled by the Magistrates. To determine whether an offense is triable by the Magistrate or the Court of Sessions, Section 26 of the Code is to be referred, labeled "Courts by which offenses are triable," and Schedule I of the Code, titled "Classification of Offenses. Even in circumstances where an offense is prosecuted only by Sessions Court, it cannot take notice of the offense.[50] A competent Magistrate may take cognizance of such an offense and subsequently commit the case to the Court of Sessions for trial, according to Section 209 of the Code.[51]

[48] Code of Criminal Procedure 1973, Section 2(w).
[49] Code of Criminal Procedure 1973, Section 2(x).
[50] Code of Criminal Procedure 1973, Section 26.
[51] Code of Criminal Procedure 1973, Section 209.

CHAPTER IV

ROLE OF PLV IN THE PRISON SYSTEM

The community Para-Legal Volunteers should at least twice a week, hold or conduct legal assistance clinics inside jails. They should begin the process of identifying inmates who require legal aid. This would entail reaching out to all inmates, particularly newcomers. PLVs are to obtain authorization from the prison officials to visit prisoners' wards in order to ensure nobody is left unrepresented. The legal aid application forms are to be completed and transmitted to the appropriates DLSA/SDLSC as soon as possible. They are also required to guarantee that the convicts contact with the jail visiting lawyer during his next visit to the prison.

In addition to this, PLVs are to organize and assist the visiting lawyers in offering legal advice and assistance to the inmates. They also provide an update on the inmates' situation. Inmates should be counseled and any legal provisions related to their case should be explained and also refer the case to the Jail Visiting Lawyer if there are any doubts. Legal assistance lawyer appointment letters, responses from legal service institutions, and other authorities are to be received and kept track of them, and send copies to the relevant prisoner. They shall create an application to bring the case to the attention of the concerned Legal Services Authority, Juvenile Justice Board, and Child Welfare Committee if they come across a prisoner who claims to be a juvenile at the time of the crime or arrest. They should also file monthly reports with the DLSA and the Undertrial Review Committee on cases that fall into any of the 14 categories listed in the NALSA SOP on UTRC Functioning. PLVs must write to the concerned LSI with any questions, grievances, or a lack of any basic requirements for the clinic's smooth operation. In the instance of a community PLV, they are to contact the prisoners' family members to inform them of their imprisonment and, if necessary, coordinate meetings with family members.

The PLVs are responsible for keeping track of any inmate who fails to appear in court on the scheduled date and informing the Secretary, DLSA/SDLSC/TLSC, as well as assisting the inmate in filing any complaints or grievances related to their time in jail. The PLVs should also keep track of the clinic registries. Name, father's name, age, date of admission,

offences charged under, case ref & concerned court, details of counsel, status of case, and date of next production should be maintained in registers and updated on a regular basis.

There should be documentation of each case in the jail clinic, keep track of cases, and aid with case follow-up such as case status, bail, lawyer appointments, next hearing date, and communicating client instructions are also included in their duties.

They should keep track of letters, applications, and petitions written in prison and sent to relevant agencies, as well as documents received, and send reminders/ letters to the corresponding Legal Services Authority to request information about the condition of the case and the name and contact information of the assigned legal aid lawyer.

By the 5th of the next month, PLVs must submit a monthly report of their work to the DLSA/SDLSC/TLSC Secretary.

They should send a duplicate copy of the legal aid registry for review to the Secretary of the DLSA/ SDLSC/TLSC every month, and they should never ask inmates or their families for money or benefits for the services they do.[52]

[52]Handbook of Formats: Ensuring Effective Legal Services (*Nalsa.gov.in*, 2022) <https://nalsa.gov.in/library/handbook>.

CHAPTER V

EXPERIENCES OF PRAYAS AND SUGGESTIONS

I. PLVs can provide support by visiting the prison on a regular basis and interacting with prisoners about their needs. Many of the prisoners get detached from their families and friends due to social stigma. The PLVs can work towards rejuvenating the roots of the prisoner's family who got disrupted due to the imprisonment and focus on developing relationships with among the prisoners and their families. This would help the prisoner in getting some relief and support both mentally and financially. Upon the establishment of family roots, the PLVs can also guide the family in making arrangements for surety.

II. On the basis of Prayas's experience, it was understood that home visit acts as an important tool to know the circumstances upon which the arrest of accused was made and bring out the necessary documents required to build a proper defense. There are situations when the age and citizenship of the accused remains undetrmined. This paves the way for them to be treated in a harsh manner even after belonging to the juvenile category. According to Juvenile Justice Act, 2015, section 9 if a person is juvenile at the time of arrest, he is supposed to be transferred to the juvenile court.[53] But this process becomes difficult to navigate if the age of the accused remains unknown. The PLV upon acquiring the information has to present the same to a legal aid lawyer to be presented in the court effectively.

III. Upon the conviction of a person, a PLV can contact NGOs who have social workers as their disposal and can also take the help of legal aid PLVs who have specialization in social work to look into the mitigating circumstances like family background, age etc. It can be proved before the court that the circumstances of the case are such that there is some amount of leniency ought to be shown by the court. Section 4[54], section 5[55] and section 6[56] of the Probation of Offenders Act can also be applied in this scenario.(who can apply for probation).

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[53] Juvenile Justice Act, 2015 section 9.
[54] Probation of Offenders Act 1958, Section 4.
[55] Probation of Offenders Act 1958, Section 5.
[56] Probation of Offenders Act 1958, Section 6.

IV. It is important that while working in such an adverse environment, the PLVs should act with humility and compassion towards the prisoner. Prayas has the experience of working in one of the cases, where in a murder case, bail was granted for INR 25000/- But the judge revised the bail to INR 15000/- in this case looking into the circumstances of the case. The fact that the accused was getting legal aid services helped in grant of the bail for a minimum of Rs. 15000/-. One of main duties of PLVs in these situations is to facilitate the availability of legal aid services, provide inputs regarding the jail visits to the representing legal aid lawyer and have favorable conditions imposed after looking into the circumstances of each and every case. Also most of the time the accused has no connection with their family. The PLV can therefore step into the shoes and provide the mental support that is required by the accused in such a time.

V. There is a gap in the criminal justice system and numerous problems arise when a person wants to present their case before the High Court from the District Court. Prayas has observed that the papers regarding the cases are usually not present in the higher court when it is shifted from the lower court. It falls under the duty of the PLVs to follow up and recover such documents from the court and provide it when required. Therefore, integrity and sincerity is expected from the PLVs while handling such documents. In doing so, a mutually conducive relationship is required with the concerned authorities which will help the PLVs in recovering the documents with greater ease.

VI. Merely the presence of legal aid services is not enough; effective legal aid services are required to be established. The purpose of law is not limited within bail and acquittal; it is to be interpreted in a much broader and comprehensive manner. Legislations such as Probation of Offenders Act, provision of plea bargaining in the CrPC, Juvenile Justice Act, 2015, etc. should be used as tools to provide relief to the accused person. Such laws should be regularly referred to increase the base of knowledge and senior lawyers, panel officers and secretaries should be consulted so that a PLV gains required experience and is able to provide solutions whenever the need arises.

VII. As mentioned before, the accused upon their release into the society faces a lot of hostility due to social stigma. The legal aid lawyer should try to raise awareness regarding the same and to take measures which work towards the de-stigmatization of accused persons upon their release. It is necessary to make people understand that merely being accused of a crime does not amount to being guilty of a crime. PLVs

represent the social side of access to legal aid and should carry goodwill measures with a social purpose while dealing with such situations. This can help in reintegration of the person into the society so that in the long run they do not reoffend.

VIII. Social workers often may have to deal with prejudice on two fronts i.e. society and some members of the judiciary. The clientele of social workers are often comes from the most underprivileged sections of society. Judges sometimes tend to believe that the accused may commit additional offenses if relief is provided. One way to address this situation is to present the mitigating circumstances of the accused person so that the judge is able to assess the situation in a balanced manner and provide some relief. In order to facilitate this, the PLVs can develop a connection with the family of the accused to gain insights about the problems they face. The PLV need to develop their writing and speaking skills so that they can contribute effectively in the field of social work.

IX. A PLV can facilitate networking with other NGOs as at certain times, a person may not be in a position to arrange for any surety. In that case, there are certain NGOs which provide cash bail support. The PLV can apply for modification of bail conditions through the legal aid lawyer to get the accused released on bail under the provisions of Section 445 of CrPC.[57] In addition to this, numerous times identity certificates and other documents are issued by the authorities, hence the PLVs need to form a good relation with those working in the institutions so that the documents can be provided with ease as they help immensely for the purpose of bail.

X. The PLVs should work towards raising awareness in the community regarding social stigma faced by prisoners. It happens often that people are unable to approach the legal aid office on account of lack of awareness or hesitation to approach legal aid authorities. To do this, legal aid camps and other activities should be organsied to raise awareness among the marginalised sections of society. This will enable them to come forward and seek guidance when an accused undertrial. This helps the accused person in accessing justice in a proper manner.

XI. If PLVs are given access to list of undertrial prisoners who are considered for release by the UTRC, they can speak to the prisoners and thereafter bring the relevant facts to the notice of legal aid officers to facilitate the release of such inmates in accordance with law.

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[57] Code of Criminal Procedure 1973, Section 445.

XII. PLVs, while working with various institutions like prisons and legal aid offices, should ensure that the rules of prisons are meticulously followed. The duties are to be carried out in a professional and sincere manner so that there is no bias towards any of the inmates. Further, the PLVs should also be mindful of the other jail visiting lawyers and assist them accordion. It is strictly advised to not give into the proposed gratification of the inmates.

XIII. PLVs should develop a habit of examining the documents presented in the court against the inmate. They should develop an interest towards reading and understanding the documents under the guidance of the concerned advocate. They give them a chance to serve the client and deliver a better perspective for social workers and legal aid workers in a meaningful manner.

COMMON REMEDIES

- The PLVs can inform the advocate concerned about bail provisions under Section 436[58] to Section 439[59] of the CrPC and present the matter accordingly.
- The PLVs should have detailed knowledge about the Probation of Offenders' Act, 1958, to provide advice whenever necessary.
- In case the PLVs come across a person who is suffering from any kind of disease then the concerned authority should be duly informed.
- If PLVs come across a prisoner who is mentally unsound, then they should assist the advocate in conducting the matter in accordance with Section 329[60] of CrPC and other relevant sections.[61] In the case of Kulwinder Singh v State of Haryana[62], it was pointed out that application filed during trial will be applicable as it concerns the trial of a person with unsound mind.
- If a prisoner claims that they are juvenile under any court, then the PLVs should take action according to the procedure mentioned under Section 9 of the Juvenile Justice Act.[63] In the case of Rishipal Singh Solanki v State of Uttar Pradesh,[64] the Apex Court

[58] Code of Criminal Procedure 1973, Section 436.
[59] Code of Criminal Procedure 1973, Section 439.
[60] Kaliyappan v The Inspector of Police, Crl O.P. No. 4993 of 2018.
[61] Code of Criminal Procedure 1973, Section 329.
[62] Kulwinder Singh v State of Haryana (2015) 6 SCC 674.
[63] Juvenile Justice Act 2015, Section 9.
[64] Rishipal Singh Solanki v State of Uttar Pradesh, LL 2021 SC 667.

pointed out the principles that are to be considered while determining the age of a juvenile. The court states that if any kind of reasonable doubt arises concerning the age of the arrested person, then the Juvenile Justice Board has the right to determine the actual age of the concerned person and that age will be taken into account.

- Actions should be taken in accordance to Section 437 of the Crpc if a prisoner claims to belong to the disable category[65].
- In case a PLV comes across a foreigner arrestee, then appropriate steps should be taken through the legal aid office to provide Counselor access.
- If a prisoner wishes to plead guilty, the PLV can raise awareness under section 3[66], section 4[67] and section 5[68] of Probation of Offenders Act so that appropriate measures can be taken. [69]
- If a person is desirous of getting help at appellate stage, then proper procedure is to be followed and sincere efforts must be taken to acquire all the documents from the concerned court. The PLV should also make proper follow up to enquire if the documents have reached the Supreme Court Legal Service Committee or High Court Legal Services Committee, or the District Legal Services Authority, as the case may be.
- In the case of mental illness, discharge application can be provided after the framing of charge under Section 230 of CrPC. [70]

CONCLUSION

PLVs act as intermediaries in order to bring the common people and the legal aid services closer. They are given the responsibility to ensure that legal aid is able to reach every section of the society and removes the barrier in accessing justice. The PLVs can help in assisting their immediate neighborhood and make it easier for the people to not only understand their rights and duties but also help them in accessing the measures to implement their rights. Any chance to become a PLV presents itself with a lot of opportunity in itself. It is important for a

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[65] Code of Criminal Procedure 1973, Section 437.
[66] Probation of Offenders Act 1958, Section 3.
[67] Probation of Offenders Act 1958, Section 4.
[68] Probation of Offenders Act 1958, Section 5.
[69] Circular by Registrar (Inspector-I) High Court, Appellate Side, Bombay, 26th August 2021.
[70] Miss Veena Sethi v State of Bihar, (1982) 2 SCC 583.

PLV to have concrete knowledge in legal procedures, proper conduct and practices of social workers.

Given that the PLVs working in prisons will have to deal with several challenges including administrative roadblocks from prison authorities, courts and legal aid institutions, the PLV need to develop an aptitude to be unbiased and impartial. When a dispute arises, it is the responsibility of the PLV to communicate the nature of the dispute to the accused and provide them with the information on approaching the Legal Service Authority to resolve such an issue. A constant watch is to be kept on the transgression of the law and if required the PLV should bring this to the notice of the Legal Service Authority.

PLVs should develop a sense of care towards their locality and whenever any information of arrest arises in their locality, they should immediately visit the police station to provide legal assistance to the arrested person. It falls under the duty of the PLV to make sure that the victims of the crime get the care and attention that they require and under Section 357A of CrPC. They should make efforts to secure compensation for the victims. PLVs after receiving proper authorization from the DLSA should make visits to the prisons, psychiatric care hospitals and children's homes to communicate the needs and problems of the inmates. It is important for the PLVs to maintain good relations with the inmates and the prison authorities. This would enable them to fulfill their responsibilities in an efficient manner.

The main objective of the PLV is to create awareness amongst the backward sections of the society and make people aware of the benefits of settling disputes without any expense. PLVs are an essential part of our criminal justice system whose aim is to take the Legal Service Institutions to the doorsteps of the people rather bring people to the Legal Service Institutions.

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