

Proceedings of 8th March 2016 meeting of Parliamentary Standing Committee on
Personnel, Public Grievances, Law and Justice and directions on legal aid-
Confirmation of Recorded Oral Evidence vide letter no. RS. 5/13/2015-P& L
dated 1st June 2016

WITNESSES:

Commonwealth Human Rights Initiative (CHRI):

Ms. Sana Das, Coordinator; and
Shri Raja Bagga, Project Officer

**Ministry of Law and Justice (Department of
Justice):**

Shri V.K. Tripathi, Director

National Legal Services Authority:

Shri Rajesh Kumar Goel, Director

CHAIRMAN: Good afternoon. We are happy that we have an opportunity of discussing it with you. We have already gone through your write up. You have prepared it very excellently and given it in Hindi version also. After having an elaborate discussion, we visited Nagpur Jail and discussed it with the freelance writers of the journals, like The Hindu, Frontline, who are specialised in the Bihar Jail issues and you were also present in the earlier meeting also.

(Contd. by YSR/1K)

-BHS/YSR-GS/4.15/1K

CHAIRMAN (CONTD.): Some of you were also present in Jodhpur. The National Legal Services Authority is more or less managed by the judiciary. It is

guided by the Ministry of Justice only to a certain extent. But it is wholly managed as per the National Legal Services Authority Act. Therefore, we can give certain suggestions to them. The Ministry can guide them on how they can approach certain issues. But we cannot command them, because they are manned by sitting judges. They have their own way of thinking. We think NALSA and the Ministry of Justice as the Nodal Ministry can play an important role in assisting the stakeholders. You can take the example of prisoners who do not get proper legal aid. We visited Nagpur Jail, Jaipur and other locations. There are a panel of lawyers. You have specifically mentioned it through your inputs. You said that the panel of lawyers should not be there in alphabetical order. Instead, it should be on the basis of the cases in which they have expertise, so that they are in a position to help them. You said that the law firms should also be associated with it. You said that a panel of senior lawyers should be there. These things can be considered by the concerned Ministry. We have had this random thought. Just like the Assistant Public Prosecutor, who sits on behalf of the State in a court of Magistrate, at the time of remand and at the time of conducting of cases, why can't we

have a National Legal Services Authority led full-time lawyer? He can sit in a particular court at the time of remand and subsequently at the time of filing of charge-sheet to see whether charges are framed properly or not, the procedural aspect of the cross-examination and other things. He would be having the right of visiting that particular person in jail and getting the instruction directly from him just like a private lawyer who has to get the instruction from the client. He should not act on his own. He should get the consent of the party before making a submission in the court. I feel you need to do some homework on that. You think about it and find out, so that we can help the Department to come out with some budgetary allocation as to how much it will cost. On an experimental basis, we can have three or four locations. We cannot say that all the magistrates will have the defence lawyers from the legal services. We cannot say like that. But what we can say is that on an experimental basis, allocate five crore rupees for that purpose and do it in certain ways and then go for next allotment and enlarge that proposition. This is part of the job of the Ministry of Justice. As far as administrative side is concerned, they can help the judiciary.

(Contd. by VKK/1L)

-YSR/VKK/4.20/1L

CHAIRMAN (CONTD.): But, they cannot sit on how the NALSA can work and other things. It is in the purview of judiciary. Therefore, we want to be very careful when we are making suggestions. I hope our senior Members will straightaway like to have some clarifications and then you can come out with your response.

SHRI MAJEED MEMON: I just want to supplement what the hon. Chairman has said. In criminal courts particularly, when we talk about prisoners, we have several grievances about our failure to deliver justice to prisoners. Now, who remains in prison for longer time? It is only poor. Of course, the rich people can hire the best of the lawyers. The rich people can twist the law and manage to get bail. Majority of the inmates of prisons or undertrial prisoners are poor. Our basic principle or purpose of promoting this system of legal aid is bearing in mind the interest of poor. This is a foregone conclusion. As the hon. Chairman rightly said, legal aid at the time of trial when the witnesses step into the box, etc., does not serve the purpose wholly or substantially it permits miscarriage of justice to creep in because by the time you provide a lawyer, who would protect the

interest of the prisoner according to law and prevent him from the excesses of the executive or abuse of authority by policemen or whosoever the investigators are, it is too late. In that event, the aid must reach him or her on the day of his or her arrest. The hon. Chairman has rightly asked that point. When the man is being just brought before the court under Section 167 of the Code within 24 hours from arrest, are we successful in reaching such person within 24 hours? This is the first question which I am asking. If not, what steps are required to be taken to see that our system, which means to dispense justice to the poor and the needy, does, whatever system we are following, reach such person within 24 hours as Section 167 mandates? Before he or she is produced before the court, you have to take a brief or you have to take instructions, which is very difficult. Of course, time constraint is there. A lot of crowd is there. There are a number of hazards. As the hon. Chairman said, we should have somebody from NALSA present there already, whether he has office or space to be accommodated, whether he is also recognised by the people that here is the man, etc. All these things will have to be done to practically implement this particular notion. Now, the lawyer, who is provided by the aid committee,

must have access to the arrestee before he is first produced before the learned magistrate. If it is not done, then remand is automatically granted in most of the cases because there is no good lawyer to oppose it. Remand application is read ordinarily by the magistrates in 99 per cent of cases and because there is no good lawyer, the magistrate asks the accused whether he has been ill-treated or he has to say anything, that poor fellow says nothing and miscarriage results. All over, it does not happen. Ninety-nine per cent cases of this type result in miscarriage of justice which we have to fight. If NALSA has to be successful in its operations, it must prevent miscarriage of justice at that crucial point. Why? I will tell you. Suppose you have not reached and the man is produced and the magistrate has mechanically, more or less, without much application of mind or *ex parte*, by reading only remand application, grants seven-day or 14-day custody, then damage is done. Because in those 7-14 days, the police will use all their methods of either violating the fundamental rights of the prisoners or foisting some kind of evidence, fabricating evidence or tampering evidence. They will do whatever they want to suit their own convenience. And, then, after 7-14 days when the diary is already prepared and the case has

moved in some direction, it becomes very difficult to undo that even at the end of the trial. When we conduct the trial, we find that the trial judge would say that on the very second day you have said this or that has happened or at your instance, the weapon of assault has already been recovered, which is false. In most of the cases, the policemen do not follow the law under the Evidence Act or under the Code of Criminal Procedure. They do not do recovery, etc., honestly. In most of the cases in our experience, we say that everything is foisted. They would call the relatives of the prisoner and tell something. I will give you an example.

(Contd. by KR/1M)

-VKK/KR-LP/4.25/1M

SHRI MAJEED MEMON (CONTD.): I will give you an example. Suppose it is a case of chain snatch. The boy was picked up wrongly. The policeman has produced him before the court, and taken for remand for seven days. His mother, wife and sister would come to the police station crying and request the police, "Sir, please get him bail." They would say, "We will help you. You will get a bail on one condition, get the chain." They tell the police, "We don't have the chain. He has not stolen the chain." The police man tell them, "Buy it from the jewellery shop." Every time this is happening. My

experience of 42 years in criminal court show that there is so much of injustice at the lowest level which needs to be arrested, or, at least contained, if we can't eliminate it. With the efforts of the NALSA if a lawyer stands up, a lawyer of average intelligence, to match APP who will stand up with the investigating officer and support the remand application. Let the truth be known. Let the court be not swayed by unilateral submission. For that purpose if we succeed in providing the legal aid to the arrestee soon after arrest, we would have successfully operated our mission by 60 or 70 per cent. I would only emphasise on that. Later on, of course, we have enough time, breathing space, all arrangements can be made. But this is urgent and most exigent situation where NALSA test is there, how much do we successfully dispense with justice. Thank you.

SHRI SUKHENDU SEKHAR ROY: We are grateful to him that he has shared his concern. Probably the story of Bansi is the reply.

SHRI K.T.S. TULSI: I would like to congratulate the CHRI for having got into the spirit of the system. On page 16, your finding on-the-spot on the system is not geared for upholding the law nor is it for the benefit of poor people who get caught up in it, but for the convenience of the officials who run

it. If it is running only for the convenience of the officials, then, where is the justification for spending Rs.600 crores or Rs.700 crores? It has long ago lost the purpose behind the legal aid statutes which is to ensure a fair trial. You have given us only one example, but we saw those four examples in Nagpur. I also believe that perhaps for 20 or 25 years even the accounts of NALSA have not been audited, or, till a couple of years ago have not been audited. They may have been audited later. The accounts for more than 20 or 25 years have not been audited.

SHRI RAJESH KUMAR GOEL: They have been audited and laid on the Table of the House.

SHRI K.T.S. TULSI: Since when?

SHRI RAJESH KUMAR GOEL: I am aware of the last two or three years. I think they have been audited for the last so many years.

CHAIRMAN: Do you have a regular auditor or is CAG doing it?

SHRI RAJESH KUMAR GOEL: We have regular auditing from CAG.

SHRI K.T.S. TULSI: We can find out whether there was a gap. I have been informed that there was a gap of 20 years.

CHAIRMAN: We came across in another Committee that the Food Corporation of India accounts were not

audited for ten years. It is the most corrupt system available in the FCI. It was not audited properly.

(Followed by

KS/1N)

-KR/KS/4.30/1N

SHRI K.T.S. TULSI: In Food Corporation, a loader gets more money than a Class-I officer.

SHRI RAJESH KUMAR GOEL: Sir, since the last two years this subject has been transferred to the Department of Justice and the two Reports, of 2013-14 and 2014-15, have been laid. The Report of 2014-15 was placed recently, on the 3rd, in the Lok Sabha and on 26th in the Rajya Sabha.

CHAIRMAN: You may give a small note on that. We would circulate it to all our Members.

SHRI K.T.S. TULSI: Also mention whether there was a gap of more than 20 years.

CHAIRMAN: We could raise it after getting a note from them. We would raise it when we deal with the demand for grants. You need not present it again. You could straightaway deal with this question. You have already presented a very excellent brochure. It is very, very useful, but we need some more time to study it.

SHRI MAJEED MEMON: Mr. Chairman, Sir, when we visited Jodhpur, the hon. Chairman was pleased to

make arrangements to have a meeting and interaction with the learned Judges of the High Court. It is very important and this information must be conveyed to you. There we met them and told them that we would request the President of the Bar, the Advocate-General of the State, and say, the important head of the legal aid locally in their High Court, these three-four gentlemen, to be instrumental in persuading well-reputed senior counsels, practising regularly in a High Court, District Courts or trial courts, to afford one day, say fortnightly, if not weekly, and if the Judges of the High Court could call and request them, probably they would not refuse. So, if their services are available and if we can identify some complicated cases where an ordinary lawyer may not be able to deliver, that would help. We may try to empanel some senior counsel with, on their days of availability, say throughout the working days of a particular month. I think that way the system would flourish and it would give desired results.

CHAIRMAN: How many States are you covering? Within the States also you are covering specific districts. But how many States are you covering?

MS. SANA DAS: Sir, actually this study is based on all the 33 districts of Rajasthan, but we also work in West Bengal, where there are 39 districts.

There, we take note of, or monitor the delivery of, legal aid in the jails. But we have an eye on the functioning of legal aid schemes across States. We have filed RTIs in different States to find out actually what the access to legal aid is at the police stations, and whether, in fact, different State Legal Services Authorities have taken some measures to appoint counsels, like under the public defender system where they would definitely be present, at least, within a radius where they can be called and immediately provide services. We found out that these schemes are operational, perhaps in five States, but their actual implementation needs to be studied further. Assam, Haryana and Gujarat are three States where actually legal aid services are available at police stations and there are two other States as well. But this really needs to be studied further as to how the selection and the appointment happens and, in fact, whether the lawyer is present at all times, how the lawyer is informed, whether the District Legal Services Authority is first informed and then the lawyer appears, and so on. The entire chain needs to be studied -- whether it is a workable model, whether it is an ideal model, something that can be replicated by other SLSAs, and so on. So, that is something that needs to be looked into. In fact,

in this particular study and our submission we have made it apparent. The Committee did take note of the concern in Jodhpur about how early should early access to legal aid be; if we have Section 41D, the amendments that have been made to Section 41 of the CrPC, which now provide for the presence of a lawyer, for instance at the time of interrogation, what is the scope for the Legal Services Authority to feel an obligation to provide counsel there at that time, using the provisions of Section 41-D, etc. I think that would be an area to work on. I believe, perhaps, the NALSA should be developing well-laid out plans in terms of what interventions can be made at the police station level to implement Section 41D of the CrPC. The statutory provision is very clear.

SHRI MAJEED MEMON: All these rights of the prisoners should be displayed at the police station. That is what the Supreme Court has mandated. We would have to implement it and get it done.

(Followed by RL/10)

-KS/RL-SCH/4.35/10

MS. SANA DAS: But, the lacuna that we have pointed out, Sir, in the three schemes that we have looked at are, The NALSA 2010 Scheme which is based on free and competent legal services, The NALSA (Legal

Aid Clinics) Regulations, 2012 and The NALSA Model Scheme based on which Rajasthan has actually elaborated a Remand and Bail Lawyers' Scheme. These three schemes, actually, are quite unclear about the role of panel lawyers or the role of remand and bail lawyers at the time of arrest or even now again with Amendments to Section 41 where you have now Section 41(A) and under that a person can be called to police custody under notice of appearance. That area is completely left grey, what the possible role of The Legal Services Authority and the panel of lawyers could be at the time when the notice of appearance is issued to a person and the person is called for interrogation without being arrested.

SHRI MAJEED MEMON: So long as you have not arrested any citizen of this country, nobody prevents him from being accompanied by a lawyer or anybody. Only when you are under arrest, when you are in custodial charge by a policeman, then you know, the permission of law is required. If you are a free citizen and you are only summoned for the purpose of questioning, you can always be accompanied by even your political boss or leader. Nothing can prevent. They can't tell you that, no, you can't come with this man. Of course, if they have to make some questioning privately, then they can take

you inside and question you. But, as far as the accompaniment of a lawyer or a friend is concerned, it is only post-arrest that the law applies.

SHRI K.T.S. TULSI: Have you seen this movie Gideon's Trumpet?

MS. SANA DAS: I am sorry, Sir. I haven't.

SHRI K.T.S. TULSI: You must watch this. It changed the law in the whole world.

CHAIRMAN: You have made certain recommendations which are very interesting. On page 3 and everywhere you have made very good observation by highlighting the mandate, gaps, and then recommendations. You have made it very excellently. Why don't you make it in a compiled manner? I mean the recommendations, and you can sit with the officials and NALSA and you can come out with certain suggestions.

SHRI RAJESH KUMAR GOEL: Sir, it appears that their report is based upon the RTI information which they have received till January, 2015. I think, Sir, on one aspect, I can say that they have not updated the report. As per our report which was compiled by us recently pursuant to the order of hon. Supreme Court, as on 31st December, 2015, as far as the State of Rajasthan is concerned, we have 2,452 panel lawyers and we have the panel lawyers in all of the 35 districts. We have the panel of lawyers

of around 122 in one district. We also have a panel of lawyers of 141. We will see, Sir, again if there is a requirement. The Supreme Court was of the opinion that we have to appoint sufficient number of panel lawyers and we had collected this information from our SLSA. We are, in the process of compiling that information and we are going to submit a report to the Supreme Court. We will share it with this hon. Committee also. As on date, I have the information about Rajasthan. They have mentioned that only 11 out of the 21 districts are having a panel of less than 20 lawyers. The position is altogether different. We will see it. We will go through their report and submit.

MS. SANA DAS: Sir, may I reply? I think you are perfectly right that the time when we collected the information their report is updated. The implementation gaps are updated up to January, 2015.

CHAIRMAN: What actually, we want to impress upon you is that we can't have a very in-depth study of this issue because we want to see that the letter and spirit of the law is to be implemented. That is the only way by which we can look at the issue. The data are helping us to find out that they are using the RTI and you are using the Supreme Court Judgements and other things.

(Contd. by VK/1P)

-RL/VK/4.40/1P

CHAIRMAN (CONTD): In that way, we are getting the data. Whether it is properly implemented or whether there are some deficiencies or whether some barriers are created and how to go about in these matters, you see that part also. You sit together and study the recommendations. Sometimes, it may be so academic and it may not be possible for you to do. Then you can come out with a *via media* as to how we can do it in a time-bound manner. I am repeating it. The Committee cannot say that you have to implement it throughout India within three years' or five years' time. But on a pilot basis you can do it with the help of NGOs. You can do the evaluation and then finally the Government can come out that this is the way we are going to do it. NALSA, as an authority, can come out with a suggestion that this is how we are going to do it. Already, our Committee has made an observation in a formal discussion with the High Court judges and also in formal discussions with various office bearers of NALSA that, first of all, you look at the issue; how many people are in custody, so to say illegal custody; those who are not getting the bail, and when they get the bail, they are not in a position to give a bond. If they are not ready

to give the needed bond, then according to judicial interpretation, whether they are entitled to get bail. We have requested you that, at least, in certain areas you try to take it up in association with the judiciary and get them released and then watch them. We are not saying that you have to go and release all the hard criminals or terrorists. We are talking about the people who are innocent and they have been caught unnecessarily. You watch them, apply the probation system and give us a report on that. Then we can recommend that this is the way you can expand the working. I hope you are already busy in research-oriented work. We congratulate you and your organization. Give us some more inputs so that we can understand it quickly.

SHRI RAJA BAGGA: Sir, we wanted to explain how there needs to be a separate model which can be used as a pilot and studied. At the same time, given the existing structure in which NALSA has multiple schemes, we have made a lot of recommendations which can improve the current scheme so that you have lawyers at the police station, you have early access where the lawyers are available right away. There are two ways of dealing with it where we can strengthen the current system or have a separate model as pilot. Do we

want to do both? What is the mechanism by which we want to take it forward?

SHRI K.T.S. TULSI: I think there could be both, suggest reforms in the existing system, as well as any other system.

CHAIRMAN: Yes. When we deal with Demands for Grants, we can separately utilize some pages for citing your reports, and also after getting the inputs, we can make certain recommendations. In-between, they can ask for revised Grants. They can ask for that. For that, they need to give justification. They have to convince the concerned Department and the Finance Department and others. Therefore, we have to substantially give the justification and see that the pilot project is accepted by the Cabinet and also by the Finance Ministry.

(Contd. by OM/1Q)

-VK/OM/4.45/1Q

CHAIRMAN (CONTD.) Then only can they implement it within this period. Otherwise, it will only be a part of the recommendations. That is all. We have to work it out. I find the amount, which is now granted, is less. It is not to that extent, isn't it?

SHRI V.K. TRIPATHI: Last year, the B.E. was Rs. 140 crores -- initially, it was Rs.120 crores -- and we

got Rs.94.93 crores in the R.E. But the reason is that it is being transferred to SLSAs in the States, and they are not able to spend even that money fully.

CHAIRMAN: What I feel is that you can select those two areas where they have done the research and implement it as a pilot project and spend that money. Then we will implement it in other States. As a general way, you allot the money, but they may not spend it. So, you try to work it out in certain cases so that we can have some pilot studies. We will discuss it further. Thank you very much.

MS. SANA DAS: Sir, may I just make one last comment on the Supreme Court's order. The Re-Inhuman Condition's case was just mentioned. I just wanted to say that we have been monitoring a Review Committee in Rajasthan for the last five years. This is the kind of Review Committee, which has now been proposed by the Supreme Court and which is to be implemented in all States where the SLSAs have been entrusted with the responsibilities to monitor these Committees and also to send their panel lawyers to periodically check if there is anyone who is indeed in jail because he does not have the surety even though he has been granted bail. There is now a very interesting interface between two different mechanisms and, since we have been

studying both, I just wanted to also suggest that when we are experimenting and developing the pilot projects, if this could be one of the things, that could also be considered, that is, how to make the panel lawyers also more effective in this way along with making the review mechanisms stronger.

SHRI RAJESH KUMAR GOEL: As far as the issue, which has been considered by the hon. Supreme Court, is concerned, it is not a Monitoring Committee as per our regulations. There are two types of Committees, one is the Monitoring and Mentoring Committee under the regulations made by the NALSA. That is, entirely, a different Committee. As far as the order of hon. Supreme Court is concerned, the hon. Supreme Court is referring to the Undertrial Review Committee that has been established pursuant to the directions of the Ministry of Home Affairs dated 17th March 2013. The scope of that Committee has been expanded by the Supreme Court. Now the District Secretary is one of the Members and S.P, D.C. and District Judge are already the Members. Now, that Committee has to review the case of undertrial prisoners, the condition of undertrial prisoners, their release, etc., the way this hon. Committee is concerned about the UTPs who are entitled for bail under Section 436(A). The Monitoring and Mentoring Committee, as proposed

under the regulations of NALSA is to review the cases of legal aid, that is, how the legal aid is reaching to the people, what is the status of the case, whether our penal lawyers are taking interest or not. We are looking into that. We have the Central Authority Meet on 2nd of April. We have the Annual Meet on 2nd and 3rd at Hyderabad and we have included everything in our Agenda. We have included the quality of our panel lawyers, the availability of the Remand Advocates, the choice of applicants to have panel lawyers as per their choice, the fee structure of the panel lawyers, the money which is now being incurred by the SLISA, etc. We are also thinking that we may, on a pilot basis, choose four Districts in one State, one State from each region, and we can have this type of project as a pilot project for six months or for three months and we will have full-time defence lawyers as suggested by this hon. Committee. We are working on this and, probably, we hope that in the Annual Meet and the Central Authority Meet everything is decided.

CHAIRMAN: Very good. Thank you very much. The Meeting is adjourned.

(The witnesses withdrew and the Committee then adjourned at 4.49 p.m.)

