



Commonwealth Human Rights Initiative's Submission: **Remand and Bail Lawyers' Scheme,** **Rajasthan State Legal Services Authority**

Introduction:

The Rajasthan' Remand and Bail Lawyers' Scheme or the 'Model Scheme for Legal Aid Counsel in Rajasthan' or the 'Legal Assistance to Person in Custody Scheme' was drafted by the Rajasthan State Legal Services Authority. The circular/notice dated 17th February, 2012, directed all the District Legal Services Authorities and Taluk Legal Services Committees to comply with the directions/instructions.

The scheme is a positive and progressive step taken by the Rajasthan State Legal Services Authority in compliance with the provisions of the Legal Services Authority Act, 1987. The guidelines provided will be improved by certain further measures that will help it become a practical benefit to those who need it the most.

Components of the Scheme:

I. Why was Remand and Bail Lawyers' Scheme formulated?

The scheme was formulated in exercise of the powers conferred by Section 2(g)¹, Section 7(2)(a)² and Section 12(g)³ of the Legal Services

¹ Section 2(g) defines 'scheme' as any scheme framed by the Central Authority, a State Authority or a District Authority for the purpose of giving effect to any of the provisions of this Act.

² Section 7(2)(a) provides that the State Authority shall give legal service to persons who satisfy the criteria laid down under this Act

³ Section 12(g) provides for the criteria for giving Legal Services - Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is in custody, including custody in a protective home within the meaning of clause (g) of Section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956); or

Authorities Act, 1987 (hereinafter 'the Act'). It furthers the mandate of the Legal Services Authorities in the country – "...to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities..."

The purpose of the scheme is in keeping with Article 22(1) of the Constitution which provides that no person who is arrested shall be detained in custody without being informed 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.**

The rationale of introducing a specific legal aid scheme on remand and bail is that from the rights perspective pre-trial is a significant stage, keeping liberty as paramount. It is the responsibility of the various agencies of the criminal justice system to ensure no unnecessary violation of one's rights.

II. Who is a beneficiary under the scheme?

Guideline 2(c) of the present scheme provides – 'Person in custody shall have the same meaning as defined in Section 12(g) of the Act.' This means that legal assistance be provided to persons both in police and judicial custody as beneficiaries of this scheme. Also, Section 12(g) reaffirms what Article 22(1) of the Constitution provides and therefore a beneficiary under this scheme would be **an indigent person who is arrested.**

III. When can one get a lawyer?

Everybody is entitled to a lawyer. The Act clearly provides that a legal aid lawyer must be provided at arrest while in police custody a lawyer could be with his client. Thus, the two requirements to apply this scheme are – indigence and arrest.

The principle is very simple. When a person walks into a police station, unless he is arrested, or asked to comply to a notice of appearance under Section 41 A of the CrPC, he is free to walk away

in a juvenile home within the meaning of clause (j) of Section 2 of the Juvenile Justice Act, 1986 (53 of 1986); or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of Section 2 of the Mental Health Act, 1987 (14 of 1987).

anytime. He may be assisting the police in an enquiry or could be a person of interest or could be a witness. But as long as he is able to assert his decision to leave the police station, his liberty is not curtailed. It is only when he is not allowed to leave the police station he is under the charge of the state. It is at this stage, he gets entitled to a lawyer.

Also, as soon as a person is arrested or detained by the police there is actual chance of harm, loss of life, or imposition of a grave disability in the absence of representation in police custody. The increasing number of **cases of custodial violence by police**⁴ places a larger sense of responsibility on the Legal Services Authorities to ensure effective legal representation to the accused in custody. Yet, one of the shortcomings of this innovative and impact filled scheme is that it does not lay down any procedures for legal assistance at police custody.

The circular introducing the scheme states that “the names of the Legal Aid Counsel may be displayed outside the Court to which he is attached”. While it also mentions to “affix hoardings in the Police Stations and Jails”, the scheme is silent on the extent of the duties of a Legal Aid Counsel, so appointed, vis-à-vis police stations and prisons.

- *CHRI suggests that State Legal Services Authority must prepare roster of lawyers to be connected to police stations. It must display their contact numbers and other relevant information at the police stations so that a lawyer is instantly available at arrest or detention under Section 41A CrPC. This information should be updated to reflect new appointments as and when made. This would give practical meaning to the scheme.*

Hon'ble J. Chauhan strongly believed that the role of a defense counsel begins at the police station. He suggested the following:

- 1) Names of appointed remand and bail lawyers must be displayed at the police stations.*

⁴ The Crime Statistics 2012 of the National Crime Records Bureau provide that 57,363 complaints were reported against police personnel during the year 2012. 205 cases of Human Rights Violation by Police were reported during 2012 out of 6 which 19 were charge-sheeted. 109 Custodial Deaths were reported in the country. 7 policemen were charge sheeted and no policeman was convicted during the year. 1 case of Custodial Rape was reported in the country. 24 cases of custodial deaths were on account of suicide.

- 2) *Hon'ble Justice Chauhan was categorical that every advocate should be attending to the police stations attached to the court to which he is appointed. There may be more than one police station per court, and that was also a justification for appointing more lawyers under this scheme.*
- 3) *It should be the duty of the police officer in-charge to inform the arrested person about his/her right to call the remand and bail lawyer.*
- 4) *A letter must be sent from the State Legal Services Authority to the Deputy Commissioner of Police (at Jaipur & Jodhpur) and the Superintendent of Police (in other districts) to direct all the police stations about the scheme and their duty to inform. (This could be drafted by CHRI and submitted to SLSA for perusal.)*
- 5) *Similarly, an order must be sent to all the Magistrates on their role to inform the person about the right to legal aid at the time of first production. (This could be drafted by CHRI and submitted to SLSA for perusal.)*

IV. Which courts does it apply to?

Guideline 3 and 5 uses the term '**for each Court of Magistrate or more**'. It clearly means that the present scheme applies to all the Courts of Magistrate of every district across the state of Rajasthan. It would include Magistrate courts in metropolitan areas as well.

The intent of adding 'or more' indicates that if the matter is argued for remand and bail, a legal aid lawyer will also be available at the District & Sessions court to appeal. In case, the appeal is sought at the High Court, the remand & bail lawyer must provide all the relevant information to the legal aid lawyer so appointed by the High Court Legal Services Committee.

- *CHRI suggests that in addition to the magistrate courts, the scheme could also enable Remand & Bail lawyers to be appointed to the courts of the Executive Magistrate to represent in cases of detention under Sections 107, 108, 109, 110 and Section 151 of the CrPC.*

V. Who can be appointed as a 'Legal-Aid Counsel'?

Guideline 4 provides that, "Legal Aid Counsel should have put **at least 5 years of practice at the Bar**". There have been different views

on the eligibility of legal aid counsel to be appointed under the scheme.

Guideline 7 requires a legal aid counsel “to remain present during remand hours and such as may be directed by Courts concerned”. However, in practice there is no formal time of day in a magistrate’s court as ‘remand hours’ which means a lawyer has to be present throughout the day. However, lawyers with 5 years of experience have a busy practice and therefore are not available at the instant to attend to an individual’s needs. The option then would be to allow lawyers of 1-2 years experience to represent indigent folk as ordered by the Magistrate.

- *Since opposing remand and applying for bail requires certain degree of skill, CHRI suggests that in order to effectively provide legal aid, 1-2 years experienced lawyers should not be debarred from opposing remand with the appropriate training. A short intense course on the importance of fair trial, its various stages, laws on arrest, duty of lawyer at remand, law on bail and bonds, etc., will benefit both lawyers and clients.*
- *An additional suggestion from CHRI is that the Scheme must spell out explicitly how the courts or the Legal Aid authorities would make the lawyers accountable to timely ‘appearance’ and also detail the consequences, of ‘non-appearance’ and/or repeated ‘non-appearance’, on payment of fees or continuity of appointment.*

Hon’ble J. Chauhan disagreed to appoint young lawyers with 1-2 years of experience under the scheme as he thought that it is a specialised job and even training would not help much. Instead he suggested that more number of experienced lawyers must be appointed for each court.

On the issue of specific remand hours, he mentioned that remand hours in district courts are well known to lawyers - that bails are taken in the morning; that on Saturdays and Sundays, Magistrate holds court at home and he mentions the timing beforehand. So, the lack of knowledge of remand hours cannot be an excuse for lawyers not to be present, and nor does it require specific mention or a court order.

VI. How are legal aid counsels appointed?

Guideline 3 and 5 provides that “the District Authority or Taluk Committee, as the case may be, shall prepare a Panel of counsels for nomination of Legal Aid Counsel and shall nominate one Legal Aid Counsel from the panel of Counsels prepared by them, for each Court of Magistrate or more, depending upon the quantum of remand cases received each day, for defending persons in custody.

Though Legal Aid Counsels have been nominated in many districts of Rajasthan but it is not clear if it has been done ‘depending upon the quantum of remand cases received each day’ by a particular court. For example, in Jodhpur, one Legal Aid Counsel has been nominated to each Magistrate’s court irrespective of the number of police stations attached to the court.

- *If the guideline has to be effective in assuring representation, then the present scheme has to be augmented with more lawyers and a constant revision of the numbers is done so that there is more than one lawyer at any magistrate’s court.*

Hon’ble J. Chauhan agreed to the above mentioned suggestion. He recommended that each District Legal Services Authority must nominate a number of lawyers to ensure such availability.

VII. What are the duties of the Legal Aid Counsel?

The present scheme provides that:

- a) It would be the duty of the Legal Aid Counsel so nominated to oppose remand, apply for bail and move miscellaneous applications as may be required. (Guideline 6)
- b) It shall be the duty of the Legal Aid Counsel so nominated to remain present during remand hours and such as may be directed by Courts concerned. (Guideline 7)
- c) It would be the duty of the Legal Aid Counsel so nominated to assist concerned authority or committee for implementation of legal services programmes or schemes. (Guideline 13)
- d) The Legal Aid Counsel will keep details of the case in which he has extended his legal services in the concerned Court in this

regard and by the end of the month, he will submit it to the concerned Presiding Officer of the Court, which will be forwarded to the Chairman, Taluk Committee or Chairman, District Authority as the case may be. (Guideline 15)

Since it is a specific scheme, it would be valuable to clarify when the role of legal aid counsel ends. Guideline 14 mentions that, "After the stage of bail/remand, if the accused desires and entitled for legal aid, his application form, for providing legal aid, can be sent to concern District Legal Services Authority/ Taluk Legal Services Committee for necessary action." The present understanding is that the role of the Counsel ends as soon as the first 60/90 days period of remand is over. Two possible scenarios are - (i) when the person is in custody; and (ii) when the person is not in custody. In the first case, the Counsel must be watchful about the 60th/90th day of detention and must be prompt in applying for bail under section 167.

It is not clear whether lawyer has to represent client in all the things that may come up during the clients' remand or whether it is strictly related to opposing remand and applying for bail. Once the bail is given, is the lawyer to do more? If the bail gets rejected, is he permitted to appeal?

Furthermore, the present scheme overlook some key tasks of a Legal Aid Counsel like, whether counsel's role include giving of legal advice to the client, where should the counsel interview/meet the client.

- *A Counsel must keep details of all the remand cases not only for the purposes of reporting to the District Authority or Committee but to take prompt action as and when required and also to assist the successor counsel about the ongoing remand cases. For this purpose, CHRI suggests that a diary of cases be maintained in the Court itself having all details which will act as a quick reference.*

Hon'ble J. Chauhan suggested that maintenance of diary of cases (required for effective continuity of representation) be done at the level of the DLSA aided by a computerised system, where possible, as this simply could not be done by the courts. He agreed that a proforma for this could be developed by CHRI. To ensure effective

representation, the following duties must be laid down for remand & bail lawyers:

- (i) mandatory presence of advocate and accused during remand hour;*
- (ii) mere presence of advocate at the time of remand-production does not assure effectiveness, for example, need to oppose 'recovery' related remand;*
- (iii) timely filing of bail application on 60th and 90th day by advocate;*
- (iv) arguing on the basis of FIR and asking questions on arrest memo (special provisions made under Section 41B of the CrPC) and other police documents to prevent police custody;*
- (v) ensuring special and prepared defense to first time offenders irrespective of multiple charges.*

VIII. What are the don'ts for a legal aid counsel?

Guideline 10 provides that, "The Legal Aid Counsel shall not prepare and display any personal board or name plate at anywhere and misuse his capacity as Legal Aid Counsel." Guideline 11 further provides that, "Any Legal Aid Counsel demanding remuneration from the aided persons or misuse his capacity shall be liable to be removed from panel and his nomination shall be cancelled immediately."

This reminds a legal aid counsel of their larger responsibility towards the idea of justice to all and to adhere to the highest standards of the noble profession working in the best interests of the client.

- *However, it is not clear how the SLSA aims to monitor this or how it intends to get feedback from clients regarding this. CHRI's suggestion is that this be clarified in the scheme or its guidelines.*

IX. What is the tenure of a legal aid counsel?

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

This means that a new Legal Aid Counsel would be appointed every six months for a Magistrate's Court. There are positive and negative implications of having a short tenure. While it would attract those lawyers who are interested in providing legal assistance to the poor and would be able to do so on a short-term basis, and it would also help to curb malpractices between court staff and lawyers, there are certain disadvantages.

Short tenure brings out various challenges to the accused as well as defense counsel. One would be disadvantaging the client if he has to change horses mid-stream and find another lawyer. On the other hand, a specially trained lawyer will actually be able to take up the trial complications. The choice must be given to the client.

- *The State Legal Services must weigh all the pros and cons and clarify the role and tenure of Counsels under the scheme - should it be ad hoc, should it be only for first production, should it be for the entire trial; what cases to stay with lawyers under this scheme and what to go to Panel lawyers, whether this distinction is necessary at all, should lawyers be appointed as full time, what happens to the case when remand and bail lawyer finishes his tenure - should it be transferred or continued. CHRI suggests that this must find mention in the scheme.*

Hon'ble J. Chauhan agreed that it is difficult for an accused to change his lawyer after the remand stage or once the trial starts and suggested that the option must be given to the client whether he wants to continue the same lawyer or appoint a new one.

X. What kind of remuneration is paid to a legal aid counsel?

Guideline 9 provides that, "A Legal Aid Counsel so nominated shall be paid a fixed honorarium of Rs. 1000/- per month for discharging his functions, in addition to incidental charges." The circular introducing the scheme states that, "all payments to the Legal Aid Counsel may be made after submitting monthly report regarding attendance of the Legal Aid Counsel at the time of remand bail or miscellaneous application as the case may be to the concerned judicial officer. Remuneration will be paid from the funds allocated to your District Legal Services Authority under recommendation of the

Finance Commission under head Legal Aid to eligible persons". Further, the remuneration for trial of the case, fee schedule for acting as a defense counsel, appointed by District Legal Services Authority/ Taluk Legal Services Committee, as the case may be, for added person, shall be separately as per Regulation 22 of the Rajasthan State Legal Services Authority Regulations, 1999.

- *There is a need to connect remuneration with reporting and monitoring based on documentation of all appearances made in court on a case. It would help the District Legal Services Authority to ensure competency and to track the performance of Legal Aid Counsels as it has been seen that some of them appear only at the stages where payment is involved, and for remaining instances the courts make do with the aid of private lawyers they consider competent in their courts.*

On being reminded that these new additional responsibilities of lawyers would be too tasking against a fee of Rs. 1500/- a case, Hon'ble Justice Chauhan said the fees could be increased, and the budget/resources was not a problem. In case the same lawyer has to represent at the District & Sessions Court level in appeal, he must be paid separately for the same.

XI. How are the Courts & the DLSA monitoring the performance of legal aid counsels?

Guideline 8 provides that, "the District Legal Services Authority or Taluk Committee, as the case may be, shall insist upon certificate from the Court concerned about the regular attendance of the Legal Aid Counsel concerned."

Under Guideline 15, a Legal Aid Counsel is also duty bound to submit a monthly report "to the concerned Presiding Officer of the Court, which will be forwarded to the Chairman, Taluk Committee or Chairman, District Authority as the case may be".

- *Other than regular attendance, it is important to have prescribed parameters for an "effective hearing" vis-à-vis a "non-effective hearing" to ensure accountability and better standards of performance by Legal Aid Counsels.*

- *The State Legal Services Authority must lay down the consequences when a lawyer fails to represent or appear for a client, just as it does for cases of misuse of free legal aid work and identity.*

On CHRI's offer, Hon'ble J. Chauhan agreed that CHRI could assist the State Legal Services Authority in drafting the set of standards to ensure effective representation by Remand & Bail lawyers.

XII. How can a legal aid counsel be removed from panel?

Guideline 11 states that, "Any Legal Aid Counsel demanding remuneration from the aided persons or misuse his capacity shall be liable to be removed from panel and his nomination shall be cancelled immediately." It is a positive step to ensure accountability on the part of Legal Aid Counsels appointed under the scheme.

- *In addition, the State Legal Services Authority must also provide the procedure for making complaints to the concerned authority and the same must be publicised widely to get the real feedback from the clients and their families.*

XIII. How is the SLSA monitoring the work of the DLSAs?

Guideline 15 provides that, "the Chairman, District Authority will send consolidated statistical information at the end of every Quarter to the State Authority."

- *The State Legal Services Authority must examine these reports and direct the District Authorities for improved and effective implementation of the scheme.*
- *The State Legal Services Authority must also take stock of the possible difficulties the DLSAs might be facing in institutionalising the scheme and assessing the performance of the Remand & Bail Lawyers in their own districts, and the benefits accrued to clients, due to the gaps left in the scheme which must be bridged quickly.*

XIV. What are institutional responsibilities of the DLSA?

Guideline 10 clearly mentions that, “the District Authority or Taluk Committee, as the case may be, shall give wide publicity to this scheme and display boards outside the Court room. The Boards should also disclose the names of Legal Aid Counsel and his address and that no payment is required to be made by the persons in custody for availing of the services of the Legal Aid Counsel.” The circular introducing the scheme states that hoardings must also be affixed in the Police Stations and Jails displaying the names of Legal Aid Counsels.

- *CHRI suggests that daily custody data from police stations and jails could be informed by the respective authorities to the DLSA through a computerized process on an everyday basis for quick institutional response and allocation of responsibilities and roster management.*

Hon’ble Justice Chauhan mentioned that there were institutional ways by which every FIR registered in the police stations could be informed to the DLSA (he cited the Madhya Pradesh model). However, the problem was in cases where arrests were not being shown.

This means that the scheme would need to explicitly place duties on Remand and Bail lawyers to intervene in pre-arrest situations.

As the motto of the Legal Services Authorities is “Access to Justice for all”, they must strive to realise it in the true spirit. The Rajasthan’s Remand and Bail Lawyers’ Scheme is an attempt to strike at the roots of malpractices and offer solutions for better administration of justice.