

Submission to The Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice On Three NALSA Schemes

"There can be no equal justice where the kind of a trial a man gets depends on the amount of money he has." - United States Supreme Court Justice Hugo Black, 1964



**Submitted by the
Commonwealth Human Rights Initiative
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This submission by the Commonwealth Human Rights Initiative (CHRI) points out the gaps (in the structure and processes) in the legal aid delivery mechanism in Rajasthan under three legal aid schemes devised to provide early and effective access to legal aid for prisoners. Our submission is based on an examination of responses to RTIs filed to DLSAs and SLSA Rajasthan on the implementation of legal aid schemes in Rajasthan up to January 2015, our legal aid clinic experience in Jodhpur Central Jail from August 2012 to August 2015, and training of legal aid lawyers and prison paralegals undertaken collaboratively with Rajasthan SLSA and DLSA Jodhpur.

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The Legal Services Authorities Act 1987 created the infrastructure of the legal aid machinery for the entire country. Later National Legal Services Authority (NALSA) Model Scheme¹ and NALSA's 2010 Regulations² provided two models for legal aid delivery and formulated the processes and duties of each actor to ensure competent lawyering. Going further, on the understanding that certain sections of the population would have barriers to access these legal aid actors/institutions, NALSA formulated the 2011 Regulations³ on legal aid clinics. Rajasthan SLSA with the aim to ensure fair trial rights and access to justice to all formulated the Model Scheme and the Legal aid clinic scheme in jails. While well intentioned and fairly comprehensive, in practice the schemes fall short of assuring legal representation for the deserving.

We point out that the need for effective representation begins at the time any person suspect or accused first comes in contact with the police. This is well established as per the Article 22(3) and 39A of the Constitution and 12(g) of the LSA Act and recently, it has been reiterated in the form of S.41D of the CrPC. The need for legal aid at the early stages of trial has also been asserted internationally. However it is rare that the right to legal representation is made known to the suspect when being interrogated nor is there a public defender or legal aid lawyer at hand at this stage.

It is also commonplace for there to be no legal representation at the stage of first appearance. By this time much of the suspect's ability to defend himself has been compromised. We point out that whatever the difficulties of assuring legal representation may be – and they are constantly repeated to us when we tax the administration, Bar and Bench on the point – it is fatal to fair trial that the suspect is left without representation. Even when legal representation is provided, the quality of the representation due to complete non-implementation of the mechanisms for reporting and monitoring, and the lack of discomfort of the authorities in allowing this, needs attention.

We therefore urge that the Committee lays down in detail the arrangements that must be made under the Legal Aid regime to ensure early and effective legal representation to everyone and anyone from the point of first contact with the police to the end of the legal process including appeal with necessary guidance to various bodies responsible to safeguard this right of the suspect/accused as he/she passes through different forms of custody.

¹ NALSA's Model Scheme For 'Legal Aid Counsel' In All Courts Of Magistrates

² National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010

³ National Legal Services Authority (Legal Aid Clinics) Regulations, 2011

I. NALSA (FREE AND COMPETENT LEGAL SERVICES) REGULATIONS, 2010

The NALSA 2010 Scheme has been formulated to provide quality legal services by creating a panel of legal aid lawyers to take up legal aid cases which would be monitored by the legal services institutions.

A. CONSTITUTION OF A PANEL OF LEGAL AID LAWYERS:

MANDATE

1. Legal services institutions shall constitute a panel of legal aid lawyers.
2. Legal services institutions may maintain separate panels for dealing with different types of cases.
3. Legal services institutions may prepare a list of Retainers among panel lawyers. Retainers shall devote their time exclusively for legal aid work.
4. Legal services institutions shall maintain separate panel of senior lawyers, law firms, retired judicial officers, mediators, conciliators and law professors for providing legal advice and other legal services.
5. Legal services institutions shall maintain a list of such agencies, institutions or persons who have willingness to render free legal services

GAPS

1. As per CHRI study, only 21 districts have appointed panel lawyers. 11 of the 21 districts have a panel of less than 20 lawyers.
2. The separation in the panel is usually only between civil and criminal lawyers. As we have observed in Jodhpur, cases are usually assigned as per the alphabetical list of lawyers and not based on the kind of case and thus expertise required for the same.
3. As per CHRI study, Retainer lawyers have been appointed in only two districts.
4. Only three districts maintain a separate panel of senior lawyers, law firms, retired judicial officers, mediators, conciliators and law professors for providing legal advice and other legal services.
5. The monetary compensation for Retainer lawyers and none for the Panel lawyers makes the appointment process complicated when there is no distinction either in their eligibility or role and responsibility. This has been our observation in Jodhpur.

RECOMMENDATIONS

1. The scheme could specify a standardised schedule/calendar for appointment of panel and retainer lawyers in the entire state to help SLSA monitor the appointment of lawyers under the schemes.
2. The minimum eligibility criteria to be appointed as Retainer lawyer needs to be revisited. Currently it is the same as that of the Panel lawyers which is three years.
3. The policy needs to make a clearer distinction in the role and responsibilities of the Panel lawyers and the Retainer lawyers to justify the remuneration to Retainer lawyers.
4. The panel lawyers list prepared should mention which lawyers have expertise knowledge of specific laws for example- NDPS Act⁴, Excise Act⁵, POCSO Act⁶, Foreigners Act⁷ etc.

⁴ Narcotic Drugs and Psychotropic Substances Act, 1985

5. There should be an assessment of the real obstacles in the appointment of Retainer lawyers, whether it is monetary, or simply impractical to expect their 'exclusive' time for legal aid as expected under regulation 8(10) of the scheme. An alternative could be to decide fixed hours for Retainer lawyers with payment commensurate to those hours, the city or taluka in question, and the years of experience of the lawyer.

B. APPOINTING A LAWYER TO AN INMATE

MANDATE

The legal services authority receives the application for legal aid and it has to decide within eight weeks from the date of receipt of application whether the applicant is entitled to legal services or not.

GAPS

Rendering the accused unrepresented for eight weeks which essentially means continued detention for the said period merely to decide whether the person is eligible for legal aid is unreasonable and against the principle of liberty guaranteed under Article 21.

RECOMMENDATIONS

When a legal aid application is received from prison, the legal aid lawyer should be appointed the same day and the legal services institution should ensure that the lawyer visits the inmate in prison the within 24 hours. Any verification from the prison or the court should be done right away.

C. APPOINTING A LEGAL AID LAWYER TO REPRESENT THE ACCUSED

MANDATE

1. The Lawyer is expected to defend the inmate in court.
2. Lawyer should not ask for or receive any fee or consideration from her legal aid client.

GAPS

1. The scheme does not categorically mention that the lawyer should visit the inmate in prison and police station.
2. The scheme does not provide any mechanisms to ensure that lawyers do not ask for or receive any fee from their client

⁵ The Rajasthan Excise Act, 1950

⁶ Protection of Children from Sexual Offences Act

⁷ The Foreigners Act, 1946

RECOMMENDATIONS

1. The scheme should make it mandatory for the lawyer to visit the inmate at least twice a month and the police station as soon as she is intimated by the paralegal volunteer stationed in the police station.
2. The appointment letter for the panel lawyer should lay down the duties she is expected to perform. This should include jail and police station visits.
3. The posters in the jail should clearly mention that inmates are not expected to pay any fees to their legal aid lawyer and that they can give their feedback to the DLSA regarding the same through letters. The paralegal volunteers and jail visiting lawyers, and the magistrate should also advise the inmates about this.

D. REPORTING BY THE PANEL LAWYERS

MANDATE

1. Panel lawyers shall submit the report of completion of proceedings upon which the Legal services Institution shall pay the fee to the lawyer
2. The Monitoring committee shall keep a watch of the day to day proceedings of the cases by calling for reports from the panel lawyers within such time as may be determined by the committee.

GAPS

1. As per CHRI study, only in one district (Dungarpur), panel lawyers submitted these reports.
2. CHRI has observed the practice of using a copy of the judgment as a 'proof' of completion of proceedings in Jodhpur. So, it is possible that the 'proof' has substituted the 'report' of the completion of proceedings.

RECOMMENDATIONS

1. SLSA should create a standardised format for submitting these reports.
2. The Monitoring committee should seek monthly reports from the lawyer about the progress of the case. This report should include the dates on which the lawyer met the accused in prison.

E. THE ROLE OF THE MONITORING COMMITTEE

MANDATE

1. The legal services institution shall set up a monitoring committee to oversee the progress of the cases taken up by panel lawyers
2. The legal services institution shall provide adequate staff and infrastructure to the monitoring committee to maintain day to day progress of legal aid cases
3. The committee shall maintain a register to record for day to day progress of legal aid cases and the end result
4. Legal services institutions shall send the details of the legal services provided in Form-II to the monitoring committee immediately

5. The committee shall submit bi-monthly reports to the Executive Chairman or Chairman of the Legal Services Institution
6. The committee may engage senior advocates in appropriate cases
7. Legal services institutions may request the presiding officer of the court to have access to the registers maintained by the court to ascertain the proceedings of the case
8. The committee may advise the Legal Service Institution to take appropriate steps if the progress of the case is not satisfactory
9. The committee shall submit the register to the Chairman of the committee every month

GAPS

1. As per CHRI study, only 8 of the 35 DLSA's and 25 of the 182 TLSCs have constituted a monitoring committee
2. As per CHRI study, only two Monitoring committees (Hanumangarh and Sikar) was provided a separate staff.
3. As per CHRI study, only one Monitoring committee (Sikar) maintained a register. CHRI found this register to be inappropriate to fulfil the mandate of the committee as it only mentioned the details of the cases taken up and the remuneration without mentioning anything about the progress of the case/ even a single proceeding.
4. As per CHRI study, not even a single district legal service institution sent the Form-II to the monitoring committee.
5. As per CHRI study, only one Monitoring committee (Jhunjunu) stated that they submitted bi-monthly report to the Chairman of the Legal Services Institutions
6. As per CHRI study, only two Monitoring committee (Sikar & Jhunjunu) engaged a senior advocate
7. CHRI does not have a status of the implementation of the mandate mentioned in point 6, 7, 8 and 9; however without maintaining any registers, it would not have been possible for the monitoring committee to perform these activities.

RECOMMENDATIONS

1. The SLSA needs to step in to create the entire infrastructure of the monitoring mechanism by ensuring constitution of the committees in every DLSA and TLSC, appointing separate staff, maintaining registers and issuance of bi-monthly reports.
2. As the DLSAs are already short staffed, the committee can function as mandated only when adequate staff is allocated specifically for the working of the committee
3. Standardised formats for the monitoring registers and bi-monthly reports should be formulated by the SLSA
4. LSI shall pay fees and expenses to the panel lawyer as soon as the report of completion of the proceedings is received

F. THE ROLE OF THE SLSA and NALSA

MANDATE

1. SLSA should receive bi-monthly reports from the monitoring committee
2. SLSA shall decide course of action to be taken in each case & to give orders based on the report of the monitoring committee

3. SLSA shall send consolidated half-yearly reports of the monitoring committee to NALSA indicating the success and failure of each of legal aid case
4. NALSA may nominate and authorise NALSA members to supervise, monitor or advice the legal services institution for effective and successful implementation of these regulations in appropriate cases.

GAPS

1. The SLSA is expected to advice the monitoring committee on the course of action in each legal aid case. As only one DLSA has sent these bi-monthly reports, by not sending these monitoring reports, the monitoring committees have excluded the SLSA from the entire process.
2. It also does not appear to be practicable for the SLSA to give its advice on each legal aid case in the state.
3. As per CHRI study, the SLSA had not sent the half yearly reports to NALSA till the date of our enquiry.
4. CHRI does not have information whether NALSA has authorised any member to supervise, monitor or advice any legal services institution in Rajasthan.

RECOMMENDATIONS

1. SLSA could take stock of the current status in the districts if monitoring committees have been constituted and seek their bi-monthly reports accordingly. CHRI could assist in the preparation of reporting formats.
2. SLSA could consider sending periodic reminders to the monitoring committees to ensure the submission of their bi-monthly reports to DLSAs and to itself. This may need to be preceded by a circular to DLSAs asking, first and foremost, for the constitution of monitoring committees in districts and Talukas where they do not exist.
3. Regulation 12⁸ of the NALSA 2010 scheme mandates the Executive Chairman of the SLSA to decide the course of action in each legal aid case brought before it by the monitoring every fortnight. To remedy the impractical provision of the Executive Chairman of the LSI giving advice on each and every legal aid case, it is suggested that only two types of cases be sent from the Monitoring Committee to the SLSA :
(i) As the Executive Chairman of the SLSA is part of the appointing authority for Panel and Retainer lawyers, the first type of cases could be those that require action on their non-performance and continued lack of progress on their cases; (ii) The second category of cases could be those whose progress can be ensured effectively through intervention at High Court level as the Executive Chairman is empowered under this scheme to specially engage special advocates.

⁸ The Monitoring Committee shall submit bi-monthly reports containing its independent assessment on the progress of each and every legal aid case and the performance of the panel lawyer or Retainer lawyer, to the Executive Chairman or Chairman of the Legal Services Institution. “

II. NALSA (LEGAL AID CLINICS) REGULATIONS, 2011 & RLSA GUIDELINES 2012

NALSA 2011 Scheme mandates establishment of legal aid clinics where there are barriers to access legal services institutions. The Rajasthan SLSA in 2012 have formulated guidelines based on the NALSA Scheme which includes establishing legal aid clinics in jails.

A1. CONSTITUTION OF LEGAL AID CLINICS IN JAILS AND POLICE STATIONS

MANDATE

NALSA Regulations mandate “Establishment of legal aid clinic: especially where the people face geographical, social and other barriers for access to the legal services institutions.”⁹

GAPS

The NALSA 2011 scheme recommends the constitution of the legal aid clinics (LACs) in places with barriers to access to legal services however it does not explicitly mention legal aid clinics in police stations and jails.

RECOMMENDATIONS

The NALSA Regulations should be amended to clearly specify that legal aid clinics should be constituted in jails and police stations. The NALSA 2011 scheme recommends the constitution of the legal aid clinics (LACs) in places with barriers to access making police stations and jails the most eligible place to set up a legal aid clinic. In jails, it is well known that most of the population comprises of undertrial prisoners. It is also well known that they are from the lower economic strata. They have little or no awareness of rights nor of legal process. They do not know that they are entitled to effective representation. Because there is no explicit mandate to hold legal clinics in police stations and jails most legal aid authorities do not in fact hold clinics in these places and a major aim of the statute is defeated.

A2. CONSTITUTION OF LEGAL AID CLINICS IN JAILS AND POLICE STATIONS

MANDATE

1. The Legal services institution shall constitute legal aid clinics in all central, district and sub jails
2. The legal aid clinics in central and district jails are mandated to be working twice a week whereas the sub-jails should be operational once a week.

GAPS

1. The Guidelines does not provide for constitution of legal aid clinics in women reformatories.

⁹ “Establishment of legal aid clinic.-, Subject to the financial resources available, the District Legal Services Authority shall establish legal aid clinics in all villages, or for a cluster of villages, depending on the size of such villages, especially where the people face geographical, social and other barriers for access to the legal services institutions. “

2. Only 44 of the 93 jails (Central, District and Sub-jail) in Rajasthan have a Legal Aid Clinic. Out of 60 sub jails, only 21 have LAC
3. Only 3 of the 44 jails were operational as mandated (twice a week/once a week). 10 of them were not operational at all.

RECOMMENDATIONS

1. The guidelines should include constitution of legal aid clinics in women reformatories.
2. The SLSA should ensure that every central, district, sub-jail and women reformatories have legal aid clinics which are operational as per the mandate.

B. APPOINTMENT OF PARALEGAL VOLUNTEERS AND THEIR TRAINING

MANDATE

1. Legal services institutions shall appoint convict paralegal volunteers in each jail legal aid clinic to manage the clinic
2. These paralegals shall be trained by the legal services institutions to provide legal assistance to the inmates and maintain the registers and reports of the clinic

GAPS

1. As per CHRI study, DLSAs have appointed convict paralegal volunteers to only 12 of the 44 jail legal aid clinics (JLAC).
2. As per CHRI Study, DLSAs have trained convict paralegal volunteers of only 6 jail legal aid clinics.

RECOMMENDATIONS

1. A standardised schedule/calendar for appointment of convict paralegal volunteers in all the jails in the state could be formulated to help SLSA monitor their appointment.
2. The prison in-charge of every prison must assist the DLSA in identifying convict paralegal volunteers keeping in mind the educational qualifications and stay in prison.
3. SLSA could issue directions that the PLVs be trained within two weeks of their appointment.
4. The handing over of the responsibilities of the former PLV should be a part of the training.

C. APPOINTMENT OF JAIL VISITING LAWYER AND THEIR VISITS

MANDATE

1. Legal services institutions shall appoint jail visiting lawyers.
2. These lawyers shall visit the jail once in a fortnight.

GAPS

1. As per CHRI study, only 20 of the 44 JLACs have appointed a jail visiting lawyer

2. As per CHRI study, only 3 jail visiting lawyer have visited the jail as per the mandate (twice a month)
3. As per CHRI study, Jail visiting lawyers have only visited 2 of the 60 sub jails
4. Every day new inmates are admitted into the prison and the fortnightly visits for the jail visiting lawyer is not sufficient to meet the need of these inmates

RECOMMENDATIONS

1. A standardised schedule/calendar for appointment of jail visiting lawyers in all the jails in the state could be formulated to help SLSA monitor their appointment.
2. The appointment letters of the Jail visiting lawyer should detail their responsibilities under the scheme.
3. The RSLSA Guidelines should be amended to mandate jail visiting lawyers to visit prisons at least twice a week
4. The prison in-charge must make proper arrangements for the lawyers to work at the prison which includes providing them with a table and chair and a designated place to carry on their tasks.
5. If the prison is located far from the court complex, then the lawyer may visit the prison once a week and interact with the inmates through video-conferencing once a week

D. RECORDING PROCEEDINGS OF THE CLINIC

MANDATE

1. The PLV shall maintain attendance registers to record the working of the Legal Aid Clinic
2. The PLV shall maintain a work register recording the names and addresses of the persons seeking legal services, name of the lawyer or para-legal volunteer who renders services in the legal aid clinic, nature of the service rendered, remarks of the lawyer or para-legal volunteer and signature of persons seeking legal services
3. The PLVs shall submit a monthly report for the work done in the clinic

GAPS

1. As per CHRI study, Registers have been maintained by only 14 JLAC
2. As per CHRI study, while the formats in the registers are standardised and the features in the format are sufficient for fulfilment of the mandate of the scheme vis-a-vis the registers, the PLVs do not fill all the columns of the register. Especially the most important one- detail the action taken by the clinic/authority
3. As per CHRI Study, monthly report has been submitted by only 1 of the 44 JLAC

RECOMMENDATIONS

1. The legal services institution should review the registers every month to check whether they are being maintained properly.
2. During the training of the PLVs, recording the cases on the registers in detail as well as systematically should be given attention as the entire functioning of the clinic hinges on the registers. Also, proper filing of the 'action taken column' helps the LSI to suggest the PLVs and JVLs what course of actions can be taken in future.
3. The legal services institutions should ensure through the jail visiting lawyers that monthly reports regarding the work done in the clinic is received from the PLVs.

III. RLSA LEGAL ASSISTANCE TO PERSON IN CUSTODY SCHEME GUIDELINES 2012

This Rajasthan SLSA scheme is based on NALSA's Model Scheme For 'Legal Aid Counsel' In All Courts of Magistrates. The scheme mandates appointment of lawyers to be attached to each magistrate court to oppose unnecessary remand and apply for bail for unrepresented inmates.

A. INFORMATION ABOUT THE RIGHT TO A LAWYER /LEGAL AID

PRINCIPLE: Every person has a right to be defended by a lawyer at the time of arrest¹⁰. It is the responsibility of the Legal Services authority to actualise this right through the remand and bail lawyer and paralegals. When produced in court at the time of first production, it is the responsibility of the magistrate to inform¹¹ the accused that she has a right to legal aid lawyer.

MANDATE

1. Any person in custody is entitled to legal services for filing or defending a case
2. Hoardings, Informative posters should be placed outside police stations to publicise the scheme

POLICY AND IMPLEMENTATION GAPS

1. Neither the NALSA Scheme nor the RLSA Guidelines specifically/categorically mentions that a person is entitled to legal aid in police stations.
2. The NALSA Scheme and the RLSA Guidelines mention that hoardings should be placed outside police stations, but do not explicitly mandate either a lawyer or a paralegal volunteer to be appointed/attached to the police station to inform her about her right to a lawyer.
3. While the Supreme Court has unambiguously mandated the magistrate to inform the arrestee about her right to a legal aid lawyer, neither the Scheme nor the Guidelines specifically makes a mentions this.

RECOMMENDATIONS

1. The Scheme and Guidelines should be amended to clearly specify that persons are entitled to legal aid at the police station. Person in custody should mean person in pc. The policy of placing hoardings on the police stations indicates the intent of the policy to enable access to legal aid in pc
2. The Scheme and Guidelines should be amended to mandate appointment of PLVs at police station under the NALSA PLV Scheme so that they can inform the person about their right to legal aid.
3. The Scheme and Guidelines should be amended to mention that Magistrates will inform the arrestee about her right to a legal aid lawyer
4. The revised guidelines need to be disseminated to all LSIs with emphasis on PLV in police stations

B. TENURE OF APPOINTMENT

¹⁰ Article 22(1): No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice

¹¹ Khatri And Others vs State Of Bihar & Ors 1981 SCC (1) 627

MANDATE

1. Lawyers under the scheme are appointed for 6 months.

GAPS

1. The short tenure disadvantages the client if she has to find another lawyer mid-way during her trial.
2. Given that the term of the lawyers is only six months, the appointment of a new batch of lawyers should be done frequently.
3. As per CHRI study, in the 28 months in question, there should have been five batches of lawyers. Only one district had appointed five batches. Only 4 districts had appointed 4 batches of lawyers.

RECOMMENDATIONS

1. The State Legal Services must clarify the role and tenure of Counsels under the scheme - should it be ad hoc, should it be only till first production, should it be for the entire trial; when does the duty of a remand and bail lawyer begin and when does it end.
2. A standardised method where process of appointment- from receiving applications, selecting the lawyers and confirmation of the list is initiated a month in advance.
3. A standardised schedule/calendar for appointment of lawyers in the entire state could be formulated to help SLSA monitor the implementation of the schemes.

C. DEFENDING PERSONS IN CUSTODY:

MANDATE

1. One legal aid lawyer should be nominated to each court of Magistrate or more for defending persons in custody
2. The legal aid lawyer attached to the court should be present during "remand hours" and such as may be directed by the court
3. The name and details of the lawyers should be put up at outside the court and at police stations.

GAPS

1. Courts usually do not have a specific remand hour and persons are produced in court at different points on time in the day
2. No mandate for presence of lawyer when the production of persons in custody takes place after court hours or during court holidays
3. Magistrates are usually not aware of the specific details of the scheme. There is usually a lack of co-ordination between the lawyer and the court therefore calls are not made to the lawyer when an unrepresented person is produced.
4. There are no remand and bail lawyers appointed to Executive Magistrates courts where people arrested under section 151 CrPC and related provisions are produced

RECOMMENDATIONS

1. The lawyer should visit the court every day and as and when called by the magistrate
2. Fixing 'remand hours' has been considered and attempted in some jurisdictions and its viability should be seriously considered as it will streamline the processes to ensure effective production and representation
3. When an unrepresented person from custody is produced, the court reader should be duty bound to call the lawyer attached to the court.
4. A register should be maintained in court by DLSA to document the lawyers' attendance in court and representation details, which the reader should do, if the occasion arises
5. The lawyer should nominate a back- up lawyer which should be informed to the DLSA and the court. When a person is produced at the Magistrate's residence, first the R&B lawyer of his court is to be informed by him, and if he can't be reached or is unable to appear, the backup lawyer may be informed.
6. During court holidays productions take place in a few courts. A roster system for presence in the production court be set up for this by the DLSA.
7. The legal services authority should ensure that the magistrates are oriented about their duties with regard to the scheme. CHRI issued Responsibility notes for each actor under the scheme
8. Remand and bail lawyers should be appointed to Executive Magistrate courts

D. INFORMING THE LSI ABOUT THE PRESENCE IN COURT AND WORK DONE (REPORTING & MONITORING)

PRINCIPLE: When aided persons have no say in the remuneration of the lawyer representing them constant monitoring of their work is required to ensure quality. Remuneration should be made on timely submission of monthly reports.

MANDATE

1. The lawyer should maintain a record of work done and submit a report to the court at the end of the month
2. The court should forward the work report submitted by lawyer to the LSI
3. The LSI may insist upon certificate from the court about the regular attendance of the lawyer
4. The payments may be made to the lawyer after submitting monthly report regarding attendance of the lawyer
5. The LSI is mandated to send statistical quarterly reports about the functioning of the scheme to the SLSA

GAPS

1. As per CHRI study, work reports were maintained only by 7 of the 33 districts and attendance certificates were issued only by 11 of the 33 districts
2. Most of the reports and certificates submitted/issued in these are either 3 monthly or 6 monthly
3. All the reports and certificates were submitted to the DLSA after the completion of their term as Remand & Bail Lawyers

4. The work reports are not standardized.
5. No registers are maintained at the court to record the work done so as to verify the attendance and work at the end of the month (Jodhpur)
6. As per CHRI study, statistical reports were sent to SLSA only by 2 districts. The reports from these two districts were not quarterly but were only submitted once. The report only mentioned the number of cases represented and remuneration disbursed under the scheme.

RECOMMENDATIONS

1. The LSI should provide registers to each court as soon as the new batch of remand & bail lawyers are appointed.
2. The court should maintain the register (CHRI has devised a format)¹² for recording the daily presence and work done. The register should be filled in by the lawyer and checked by the reader.
3. There should be a standardised report(CHRI has devised a format)¹³ which records both the work done and the attendance of the lawyer
4. The appointment letter issued by the LSI should mention the format of the report and issue directions for the report to be received by the first week of the next month. The letter should also lay down the responsibility of the lawyers
5. The lawyers should be oriented about their specific responsibilities under the scheme within the first week of their appointment
6. If the reports are not submitted within the first week of the next month for two months, the lawyer may be removed from the panel.
7. The statistical report should also include information about the people released under the scheme

¹² Refer page 76 of CHRI STATUS REPORT ON LEGAL AID

¹³ Refer page 76 of CHRI STATUS REPORT ON LEGAL AID

BANSI'S LONG JOURNEY TO GET A LEGAL AID LAWYER

Bansi Gets Legal Aid – Or Not – The Unfortunate but Typical Story of So Called Legal Aid

Day 0

Bansi was arrested on charges of theft on 3th January 2016 and was produced in front of the magistrate on 4th morning. Bansi signed the order sheet and then was taken to the jail. Bansi was a daily wage earner. In jail, Bansi was housed in the *nayi amad* (new admission) ward. He had never been to a jail before and did not talk to anyone for the first two days. Then on the third day he started talking to people around him and they asked him if he had a lawyer. He told them that he does not have the money to afford a lawyer. They asked him to meet Sanjay, the paralegal volunteer who could get him a '*sarkari vakil*' (legal aid lawyer) for free. Bansi recalled that the magistrate did mention the words *sarkari vakil* but in that five seconds *peshi*, he did not understand anything the magistrate said.

Day 4

On 7th January, Bansi met Sanjay and told him that he didn't have a lawyer. Sanjay suggested that he should till Saturday and check with his family at *mulakat* (visit) if they have appointed a lawyer for him. On Saturday Bansi's mother visited him in jail and mentioned that they had gone to several lawyers but could not afford any of them.

On Sunday, Bansi requested Sanjay to help him get a *sarkari vakil* and Sanjay filled his application form, got his signature on the form. But when he went to get the necessary attestation and signature from the jailor on the form, the jailor was not in the office. The assistant jailor was busy. By the time the jailor came back it was time for Sanjay to be back and locked up in his barrack.

Day 8

The next day Sanjay got the form attested, took it to the guard and asked him to take it to the DLSA office. The DLSA Secretary received the application forms the same day but the office staff was busy preparing for a lok adalat so the form remained on his table. Two days later, the secretary noticed that the forms were still lying on his table and told the staff to take action. The next day the forms were entered in the register and later given to the clerk to take them to the respective courts and check from court files if the person already has a lawyer. The court readers were busy and asked the clerk to come later. The files were in the record room and it would take them time to retrieve the files.

Day 14

Meanwhile in jail Bansi has been following up with Sanjay but Sanjay did not have any answers to give. At the DLSA office, after following up with the court reader for two days, DLSA staff were finally informed that the court records do not reflect any information about Bansi's lawyer. The same day, Bansi was again produced in front of the magistrate. The magistrate asked if he had a lawyer. He nods and began to explain that he had applied for a *sarkari vakil* but... Before he could finish his sentence, the magistrate turned to a witness in another case going on in the court at the same time and asked him a question. Bansi's explanation was left ignored and his moment lost. He was again remanded for 7 days and taken out of court by the police.

Day 17

Its 20th January now, and at the DLSA, the staff made a list of all the applications received along with Bansi's and decide on the lawyer to be assigned. In jail, Bansi again meets Sanjay and shouts at him for giving him false hopes that he would get a lawyer. He now believes what others have told him – that the legal aid system exists only on paper.

At the DLSA office, the next day, the appointment letter is typed out and signed by the Secretary. One copy is sent to the lawyer and one to the inmate. The jail receives the letter the same day but the letters are kept along with other documents at the office section of the jail for two days without informing Bansi that he now has a lawyer. Bansi has been in judicial custody for 17 days and has had two appearances in court without any legal

representation and still understands nothing of the process. No one has heard anything from him in his own defence and he knows nothing of his rights.

Day 21

On 24th when Sanjay asks if any letters have been received from the DLSA, the section incharge hands over the DLSA letters. Sanjay after finishing all his work, goes to the *nayi amad* ward to give Banshi the letter but is told that Banshi has been now shifted to another ward. On 25th a jail visiting lawyer hears Banshi's story for the first time. The jail visiting lawyer fills out the legal aid form, gets it signed and attested and delivers it to the DLSA the next day.

Day 25

Sanjay meets Banshi on 28th January and tells him that the DLSA has assigned him a lawyer and hands over the letter. The DLSA on the other hand is furious that Banshi has again sent a legal aid application form even though they have already appointed a lawyer for him. Does Banshi know anything about the client lawyer relationship; does he know the name of the lawyer; does the lawyer discuss anything with him. Does he get the *vakalatnama* signed; does he take Banshi's next date of hearing; does Banshi even know the next date of hearing.

The story above is true. It is also typical. It points to all that is wrong in the system. The system is geared not for upholding the law nor for the benefit of the majority of poor people who get caught up in it but for the convenience of the officials who run it. It has long ago lost the purpose behind the legal aid statutes which is to ensure a fair trial. While Banshi was struggling to get to the very first essential of a fair trial, getting legal representation several provisions created solely to protect constitutional rights had been breached: he had appeared twice before the magistrate without legal representation; at first appearance he had not been explained to about his rights; he had not been asked if he had a lawyer; if he had been in custody for more than 24 hours; if he had been mistreated. The magistrate had not looked into the memo of arrest to see if the arrest was justified; he had not taken any plea; he could not argue against his remand and there was no justification for a remand of 14 days as opposed to any lesser time. As it was a case of theft in most cases the police would likely have asked for police remand to 'effect recovery' which is a euphemism for rough treatment which substitutes for investigation in our system. Usual practice is to ask for such remand for several days which is cut down by way of a bargain by the magistrate but given nevertheless. In our experience even when there is a lawyer present the lawyer hardly ever protests the remand nor seeks bail at the first instance.

We point out that the system persists because no single functionary, police, lawyer, magistrate, jailor, is held accountable for breaches in procedure and the burden and suffering of delay and dysfunction fall squarely on the accused. For those who say too much attention is given to his rights we point out that if justice is not delivered in accordance with the rules laid down at law it can be - and is - manipulated to the benefit of the most powerful and to the lasting disadvantage of the victims of crime as much as to the accused.