

## REPORT ON PROCEEDINGS<sup>1</sup>

**Event:** Three Day Training Programme for Welfare Officers on Law and Legal Aid

**Venue:** Regional Institute of Correctional Administration, Dum Dum, Kolkata (RICA)

**Organisers:** RICA, Commonwealth Human Rights Initiative & Human Rights Law Network

**Date:** 2-4 December 2012

**Session:** Interactive discussion on liaising with the Legal Services Authority and ensuring legal aid for all prisoners at the earliest stage i.e. at time of first production

**Participants:** Mr Mir Dara Sheko, Member Secretary, State Legal Services Authority, Mr Ranvir Kumar, Inspector General of Correctional Services, Mr DK Basu, retired district and sessions judge, Mr Ramakrishnan, Director, RICA, Chairpersons, District Legal Services Authority for Howrah, Hooghly & North 24 parganas and ACJMs of 4 districts viz. south 24 parganas, north 24 parganas, howrah and Hooghly, Ms Madhurima Dhanuka, Consultant, CHRI and Ms Nivedita, HRLN.

The session started with Mr S. Ramakrishnan, Director RICA, welcoming the judicial officers and welfare officers to RICA and outlining the agenda. This was followed by an introduction to the interactive session by Ms. Madhurima Dhanuka, CHRI. She laid out the background for the meeting stating that the primary reasons for conducting the workshop is because the welfare officers are constantly receiving complaints from prisoners about non-appointment of legal aid lawyers, non-appearance of lawyers and also that legal aid lawyers are asking for money. She further stated that in August 2012, the Hon'ble Supreme Court in the famous case of Ajmal Kasab's has observed that the right to legal aid kicks in from the time the accused is first produced before the magistrate. An air tight obligation has been cast upon the magistrate and in case of failure the magistrate may face harsh consequences.

Further she stated that prisoners are constantly complaining that they are not being physically produced in court, someone of them have claimed that they have not seen the face of their magistrate for years at a stretch. Physical production of an accused is not only a statutory but a constitutional obligation as well.

### ISSUES OF CONCERN

After the backdrop was set, Mr Mir Dara Shekho, Member Secretary, SLSA moderated the session and initiated the discussion stating that we need to find a solution to this and implement it, as this is related to the legal right of the prisoners. We have the police and the magistrate in place, but there still exists loop holes in the functioning and the judicial body is to be made aware of this.

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<sup>1</sup> Written by Ms Tanya Sahay, Intern CHRI, Edited by Ms Madhurima Dhanuka, Consultant, CHRI

With these words he invited participants to initiate the discussion. The discussion revolved around two focus points, availability of lawyers and physical production of the accused. On these issues a number of experiences were shared:-

Judicial Officers:

1. Sometimes the magistrate asks the accused whether a lawyer is needed or not, but the accused says it is not needed, claiming that the lawyer is on his way. However at the end of the day it is learnt that he/she has no lawyer and thus goes into custody.
2. Even if they have a list of panel lawyers, however, it is seen that the lawyers are not interested in taking up cases of people whom they don't know. This is a wrong practice on their part as their service is voluntary. Thus changing the attitude of lawyers is very important.
3. As for production, 175-200 people are produced every day and the court lock up can hardly accommodate 15-20.
4. There is a dire shortage of staff, even having written 10 letters to the authorities, nothing has been done.
5. We hear 75-100 bail petitions every day, some are represented and some are not.
6. Many of the accused are produced very late because of the unavailability of the vehicle and at times, because one vehicle has to make a couple of rounds, the UTPs reach the court at or after 2pm.
7. We are doing our duty and checking all those present in the court (record) and check their identification. If he is not represented then we write to the DSLA for a lawyer, we have even asked the accused to file a petition.
8. Because of low staff strength, the accused hurl themselves on others and there are not any robust among the staff to handle them.
9. Many times the prisoners complain that they are not getting sufficient food in the prisons and demand home cooked food, but, through this they receive stuff from home and vice versa.

Welfare Officers:

1. Each UTP must have a lawyer, which is not the case and hence a common grievance of the prisoners.
2. It is a prisoners right to have a lawyer and the onus lies on the magistrate.
3. Prisoners complain that their legal aid lawyers don't appear in court or interact with them
4. Legal aid lawyers never come to visit the prisoner in correctional home
5. Legal aid lawyers do not inform the prisoners regarding their case status
6. We send petitions on behalf of the UTPs for legal aid, but there is no answer, therefore the UTPs do not know whether any legal aid lawyers have been appointed or not.

7. The UTP has a right to know the lawyer, so that the relatives can contact him and move bail applications and expedite the trial.
8. Some UTPs say that they have a lawyer on record, but, can't continue with him because of a poor financial status. They also want legal assistance
9. The appointed lawyers are not working for the accused, they rarely come to visit. They have good experience but a bad attitude.
10. DLSA lawyer comes regularly, but does not get remuneration, so then, he often complains - why he should come.
11. Prisoners who have filed appeals in the High Court wish to withdraw their appeals as their terms of sentence are almost complete and if their appeal is still pending they would be unable to pay their fine and would have to serve imprisonment in default.

## SOLUTIONS

1. On Production: The august gathering discussed various probable solutions on the issue of production. Mr Ranvir Kumar suggested that where the staff is less, there the escorting officers can be utilised for ensuring production in the courts. They are not for policing but only for taking the prisoners to court and back. This suggestion was supported by Mr Sheko as well as other judicial officers. Mr Ramakrishnan was of the opinion that the strength of the courts should be increased but this proposal can only be pushed by the SLSA. Members from the DLSA supported this suggestion.

One of the judicial officers felt that this was not a permanent solution to this problem of escorts, as they also have to ensure production in session's court. To this Mr Sheko replied that one must utilise the available resources to the fullest and that the escorts shouldn't be reluctant to do their duty properly.

Another recurrent problem was non-production of accused persons due to lack of police escorts. One judicial officer pointed out that sometimes neither is the accused is not produced nor is the magistrate informed about this. To this Mr Sheko suggested that a show cause notice be sent to the concerned authority. The judicial officer responded that even when the show cause order is passed, no action is taken by the Superintendent. At this juncture Mr Kumar, IG Correctional Services clarified that the Superintendent is not responsible for production but the police escorts are.

Another judicial officer stated that the accused should be produced by 10.30am latest. To this Mr Sheko responded that even in his days he would sit from 2pm onwards and there was no problem in production. It is one's duty and they should fulfil this without excuses.

2. Legal Aid: It was suggested by the chairperson, DLSA that a panel of legal aid lawyers for each court in that particular district should be kept with the welfare officers, so that the accused can choose his/her lawyer. One of the welfare officers suggested that paralegal volunteers can also help with legal aid. The paralegal volunteers can be chosen from amongst the inmates itself and trained by a good panel of lawyers who can equip them on basic criminal procedural law, drafting of bail application etc.

Another common problem that was raised was the reluctance in lawyers to issue no objection (NOC) letters where the prisoners decide to discontinue their services. Mr Sheko suggested that in such cases, upon refusal of the lawyer to give NOC, a letter mentioning the same should be submitted to the court and the court shall acknowledge the same and take the new lawyers vakalatnama on record.

Majority of Welfare Officers complained that they receive no response from the DLSA regarding appointment of lawyers. To this it was suggested that welfare officers should send applications for appointment of legal aid lawyers to the Chairperson/Secretary, DLSA with a copy marked to the concerned court. Upon appointment of lawyer, the DLSA should respond back to the welfare officer with details of the lawyer. It was also suggested that the concerned court may also denote the name and address of the lawyer on the production warrant itself.

It was suggested by Mr Kumar, that the superintendent should keep list of prisoners who do not have lawyers and discuss it at the District Coordination Meetings that are held every month.

3. Legal Aid lawyer at the time of Production: Mr Sheko suggested that 2-3 legal aid lawyers from the panel must be present in the court during production. The court clerk/assistant can segregate all accused persons who do not have lawyers in one group and the legal aid lawyer on duty in that particular court shall represent the accused at the time of first production. To this one judicial officer stated that many a time accused doesn't want a lawyer, to this Mr Sheko responded that it is the duty of the judicial officer to sensitize the accused of their rights.

Ms Madhurima suggested that to identify accused persons who do not have lawyers, a register should be maintained at the Correctional Homes - which can be filled up at the time of case table - a monthly report of the same should be sent to the DLSA & SLSA to ensure proper monitoring.

4. Accountability of legal aid lawyers: Mr Sheko suggested that the DLSA must ask the lawyers to change their attitude. He informed the participants that the last body meeting decision was to increase the honoraria but that is still pending with the government, however, there are some lawyers who are devoted to their work and are sincere. It is the chairman of the DLSA who is to approve the lawyers not SLSA. The Judicial Officer is to assist DLSA to set up a panel (revised panel), free from any political influence, based solely on the commitment and competency of the lawyers.

Ms Nivedita, HRLN, suggested that the legal aid lawyer needs to be more professional, and provide a monthly report on the case and give an account of work that is being done. If they are taking money as court fees, then that should be monitored by a body. Mr Sheko responded that though it is a difficult task to keep an eye on everyone, but SLSA shall send a format to collect feedback reports from the litigants who are represented by legal aid lawyers. Ms Madhurima suggested that there are indeed lawyers who do their work with commitment, and many accused persons have been all praise for their lawyers. Thus, the DLSA should shortlist such select lawyers, and appoint them to the correctional homes within their districts. A list of these lawyers should be provided to the welfare officers and they must be directed to visit the correctional homes on a regular basis.

After the interactive discussion Mr Sheko concluded the session by emphasizing that physical production of the accused is a must. Also ensuring that every accused is represented by a lawyer at every proceeding is of prime importance. Dereliction in this duty will entail severe consequences. Problems will always be there, but one has a duty to deliver justice and should always keep that as their primary objective. The welfare officers too must be vigilant and should report all such problems immediately to the concerned DLSA. Where they receive no response they should meet the concerned authority and even still if nothing works report to the SLSA.

#### **SUMMARY OF RECOMMENDATIONS**

- The court clerk/staff to separate all accused who are unrepresented at the time of production itself, so that it is easy to identify those who are unrepresented and need legal aid lawyers
- 2-3 legal aid lawyers can be empanelled/retained at every production court - they shall be responsible to *suo moto* take up cases of an accused who is unrepresented,
- Magistrates to prima facie review case record themselves in cases where no bail petition has been moved due to lack of lawyer

- To ensure accused persons are physically produced escorts can be utilised for taking accused from lock-ups to court rooms where there is lack of court staff to fulfil this duty
- Appointment of legal aid lawyers/formation of legal aid panel based on recommendations of the judicial officers based on their competence and commitment
- List of panel of lawyers with details may be kept at the correctional homes so that they can appoint lawyers forthwith.
- Welfare officers to send applications for appointment of lawyer to DLSA with copy of concerned courts
- Courts to denote name and details of lawyers in court/production warrant itself

Md. Ajmal Md. Amir Kasab @Abu Mujahid vs. State Of Maharashtra, CRIMINAL APPEAL NOS.1899-1900 OF 2011, Judgment dtd. 29 August, 2012, Hon'ble Supreme Court observed:-

*"484. We, therefore, have no hesitation in holding that the right to access to legal aid, to consult and to be defended by a legal practitioner, arises when a person arrested in connection with a cognizable offence is first produced before a magistrate. We, accordingly, hold that it is the duty and obligation of the magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, that one would be provided to him from legal aid at the expense of the State. The right flows from Articles 21 and 22(1) of the Constitution and needs to be strictly enforced. We, accordingly, direct all the magistrates in the country to faithfully discharge the aforesaid duty and obligation and further make it clear that any failure to fully discharge the duty would amount to dereliction in duty and would make the concerned magistrate liable to departmental proceedings."*