

2015

WORKSHOP REPORT

[ORIENTATION OF ALWAR REMAND AND BAIL LAWYERS]

*Jointly Organized by District Legal Services Authority (DLSA), Alwar and
Commonwealth Human Rights Initiative (CHRI)*



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PURPOSE

The Orientation workshop for Alwar Remand and Bail Lawyers was conducted on 28th January 2015 at Bar Association Hall, Alwar. The workshop centered on training of advocates about their responsibilities under the Model Scheme: Legal Assistance to Person in Custody in Rajasthan which envisions providing free legal aid for the purpose of bail/remand to every person in judicial or police custody. The workshop was organized for the newly appointed legal aid advocates under the Model Scheme from all the talukas in Alwar. Group discussions were conducted for a better understanding of the scheme.

THE INAUGURAL

The Inaugural session was graced by the presence of the Additional District Judge, Smt. Rita Tejpal; the Chief Judicial Magistrate, Shri. Zamir Sayed Hussain and Retd. IG Prison, Shri. R.K. Saxena

Advocate Manoj Yadav from the Alwar Bar Association started the session by introducing the panelists of the inaugural session. He also explained the objective of the orientation programme. Adv. Yadav has been a part of trainings conducted by CHRI for the past three years.



CHRI representative, Advocate Raja Bagga introduced CHRI and discussed its work in Rajasthan through a power point presentation. Through the presentation, CHRI's Prison Reform work in training stakeholders such as lawyers, jail warders, and convict paralegal volunteers were discussed. The work on the Legal Aid Clinics of the organization, *Shadhinota* and *Swadhikaar* were explained. Also the research studies undertaken by the organization in Rajasthan which have culminated into publications

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and strategic litigation were shared. Especially the ones based on Alwar.

Shri. R.K Saxena, Retired IG, Prisons talked about the spirit of Article 39A and the objectives it intended to realize. He discussed that the schemes flowing from the Article and the various judicial pronouncements ensure that systems and processes to enable access to legal aid are in place. However, that is not enough. The execution of these schemes, the gaps in the processes formulated, the lack of mechanism to monitor these processes need our urgent attention. Without plugging these gaps, the implementation of the entire scheme falls flat.



Smt. Rita Tejpal, the guest speaker for the session shared her insights about the system. She said that people today are scared of the law and its agencies especially the courts. The accused faces an alien system, with an antagonistic prosecution and a magistrate who may not have the time to hear his/her story. This is where the role of Remand & Bail Lawyers becomes crucial. Their role is to become the voice of the accused and fight for their rights in a rather hostile adversarial system. Legal aid lawyers need to be sensitive to the plight of the accused to ensure that the trial is fair. At the same time, fair trial also demands that the systems and structures should be in place to ensure access to legal aid. She took the example of 'specific remand hours' (which is one of the controversial provisions of the Remand & Bail Scheme) and shared that she took up the initiative to introduce fixing remand hours in Alwar in the year 2000.

By allocating remand hours, it was easier to ensure the presence of lawyers at the time of production. However, the system faded as administrative convenience overpowered.

Shri. Zamir Sayed Hussain, the Chief Metropolitan Magistrate, Alwar talked about the lack of training of Remand & Bail lawyers. An orientation about their roles and responsibilities would help the lawyers perform their duties effectively. Mr. Hussain also shared that the DLSA plans to put up boards with their contact details outside the court rooms. He urged the lawyers to make themselves available whenever asked by the court.



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Additional district judges and magistrates from Alwar, Shri Sudir Punia, Alwar Jail Superintendent; Advocate Abha Joshi, and the newly appointed remand and bail lawyers were part of the programme as well. The details of the Remand and Bail lawyers are annexed to the report.



Before closing the inaugural session, CHRI's Readers on Remand, Bail and Legal Aid were distributed among the participants. The readers are a compilation of legal provisions, judicial pronouncements and law commission reports on the remand, bail and legal aid.



THE LAW & PRACTICE SESSION

After the inaugural, the workshop centered on 'Law & Practice'. The objective of the session was:

- a) To familiarize the participants with their duty as legal aid lawyers and remand and bail lawyers, and
- b) To acquaint the participants with the scheme and its objects,
- c) To give an opportunity to the participants to demonstrate their understanding of remand and bail provisions through case studies.



Ms. Abha Joshi starting the session by revisiting the *dhukti rag* (the crucial nerve) touched by Ms. Tejpal in the previous session- i.e. the sensitivity towards those who are most vulnerable to injustices. Through her presentation she went through various aspects of legal aid lawyering. She explained the importance of Article 39A and Article 21 of the constitution and the importance of a fair trial. Given the complexity of the legal system, she explained the target group for legal aid lawyers should be vulnerable sections of the society i.e. those who are too poor to afford lawyers, women, suppressed communities, children and others.

Then through a small snapshot of history of legal aid in India, Ms. Joshi talked about the multiple committees, judicial pronouncements and enactments that have been formulated in furtherance of ensuring access to free legal aid. Despite these, the state of legal aid bodies in India is extremely problematic. Ms. Joshi also touched upon the special importance of legal aid lawyers for a criminal trial as it impacts personal liberty, and given the deplorable conditions in which jails operate, the violation of dignity of the inmates is a serious concern. In order to protect the accused from bodily violations such as custodial death, torture, handcuffing, it is again the lawyer, who has to come to his rescue. Lawyers, especially legal aid lawyers need to stand for the accused like a *chattan* (rock) to ensure that they get a fair trial. Ms. Joshi summed it perfectly as *Inke liye hum nahi bolonge to koi nahi bolega* (If we don't talk about them, nobody else will)

Then Mr. Raja Bagga talked about the Model Scheme through a power point presentation. He explained the responsibilities of the lawyers under the scheme and also touched upon the grey areas in the scheme which required more discussion. Mr Saxena structured these as follows:

1. How does the court come to know who the remand lawyers are?
2. How does the lawyer come to know the time when the unrepresented lawyers are presented?
3. How does the accused come to know that he has the right to a legal aid lawyer?
4. Who is responsible for the co-ordination between all these actors to collectively perform their obligations?
5. What documents are required by the lawyer to perform their duties as Remand & Bail Lawyers? When should these documents be made available to the lawyer appointed?

After the modalities of the scheme were discussed, case studies pertaining to issues of Remand & Bail lawyers designed by CHRI were shared with the participants. These case studies were based on actual reported cases. The participants were divided into 4 groups and each group was asked to analyze one case.



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All the four groups presented the case studies and brought out multiple layers of issues set out in the cases. While some chose the twist the facts to their convenience, some came with detailed observations. Also, after each group presentation, the rest participants and the panel shared their opinion. The case studies touched upon eligibility of legal aid, bail under bail-able offences and Unlawful activities Act , Juvenile Justice Act and NDPS Act; reasonability of surety amounts; bail application on personal bond and responsibilities after bail jumps.



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Towards the end of the session CJM, Shri. Sayed joined the panel. As he is also the presiding officer of the Juvenile Justice Board, he discussed the provisions of the Juvenile Justice Act and the practical problems faced. He also talked about the misuse of the Act. After the discussion, the participants were given certificates of participation by the CJM.



The feedback of the workshop was gathered from the participants (format attached) and the programme concluded with a vote of thanks.



Post Workshop

A week after the orientation, new boards with the names and details of the respective lawyers were put up outside every court in Alwar District.



Annexures

I. Agenda

28TH JANUARY 2015

NEW BAR ASSOCIATION HALL, ALWAR

<p>1.00 pm - 1.45 pm:</p>	<p>Inaugural Session</p> <ul style="list-style-type: none"> ❖ Introducing the program; Bar Representative (7 minutes) ❖ Felicitation of the Chief Guest, Smt. Rita Tejpal; Additional District Judge, Alwar & Shri. Zamir Hussain Sayed ;CJM, Alwar by the Bar Representative (3 minutes) ❖ Introducing CHRI's work; CHRI Representatives (Shri. R.K.Saxena & Adv. Raja Bagga) (15 minutes) ❖ Laying out the Objective & Role of R&B Lawyers; CJM, Shri. <i>Zamir Hussain Sayed</i> (10 minutes) ❖ Address by the Additional District Judge, Smt. Rita Tejpal (10 minutes)
<p>1:45 pm – 2.15 pm</p>	<p>Lunch</p>
<p>2.15 pm - 4.15pm:</p>	<p>The Law & Practice</p> <ul style="list-style-type: none"> ❖ Opposing un-necessary Remand ❖ Bail & Bonds ❖ Intervention at Police Station ❖ Juvenile Justice <p>Method: Case Study <i>Speakers: Adv. Abha Joshi and Shri. R.K.Saxena</i> <i>Moderator: Adv. Raja Bagga</i></p>
<p>4.15 pm – 4:45pm:</p>	<p>Remand & Bail Lawyers: Monitoring & Interaction</p> <ul style="list-style-type: none"> ❖ Queries and Suggestions from the Remand & Bail Lawyers ❖ Maintaining Registers <p><i>Speakers: Adv. Abha Joshi and Shri. R.K.Saxena</i></p>
<p>4.45 pm Onwards</p>	<p>High Tea</p>

II. List of Participants who attended the Workshop

S. No.	Name	Enrolment No.	Mobile No.
1	Manoj Kumar Yadav	R/729/05	9828316508
2	Adarsh Kishore Yadav	258/04	9414366636
3	Virendra Mehra	1148/05	9460367185
4	Dharmendra Kumar	1792/09	9887544641
5	Chandrabhan Yadav	R/208/2004	9413992769
6	Ajit Singh	3451/07	9414641771
7	Virendra Kumar Yadav	3085/07	9772801705
8	Nopendra Kumar Sharma	3327/06	9413400511
9	Manisha Devi	1309/2000	8502879334
10	Mahender Singh	1538/04	9413907229
11	Ashish Vijay	1307/03	7737431844
12	Bharat Singh Chauhan	1101/09	9784800521
13	Hemant Jain	1914/10	9828806525
14	Isab Khan	2523/10	9983914128
15	Vinod Kumar	2255/10	9983056843
16	Rajesh Kumar Verma	3874/07	9784797914
17	Ram Karan Chopra	500/97	9929165274
18	Madan Singh	35/1991	9414277156
19	Virat Kumar	655/06	9785949391

III. Evaluation Form

आपके द्वारा दी गयी प्रतिक्रिया हमें आगे के कार्यक्रमों को आपके लिए अधिक उपयोगी बनाने में सहायता करेंगे.

A. Information about the Participant

- a. Name of the participant (प्रतिभागी का नाम)
- b. Enrolment Number (एनरोलमेंट संख्या)
- c. Court for which R&B Lawyer appointed (नियुक्ति कोर्ट का नाम)
- d. Primary Practice (मुख्य रूप से वकालत का क्षेत्र/विषय)
 - i. Civil Cases (दीवानी - किस प्रकार के मामले, विस्तार से बताएं)
 - ii. Criminal Cases (अपराधिक - किस प्रकार के मामले विस्तार से बताएं)
 - iii. Family Court Cases (पारिवारिक)
 - iv. Juvenile Cases (किशोर न्याय)
 - v. Others (अन्य)

B. Learning from the Orientation:

- a. What were the new elements you learnt about Remand and Bail provisions?
रिमांड और बेल कानून के विषय में आपने क्या नया सीखा ?

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- b. Mention one key area discussed during the workshop which changed your knowledge/views on remand/release powers and duties of the Magistrate?
इस कार्यक्रम की चर्चा के दौरान रिमांड/रिलीज़ या मजिस्ट्रेट की शक्तियों से सम्बंधित कोई एक ऐसी चीज़ जिसने आपकी जानकारी / दृष्टिकोण बदला है?

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c. Is there any new duty of a legal aid lawyer you discovered through the workshop? इस कार्यक्रम के दौरान एक विधिक सहायता अधिवक्ता के रूप में क्या आपको कोई नयी जिम्मेदारी समझ आई है?

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d. Which judgments discussed during the workshop will help you in your practice? इस कार्यक्रम के दौरान चर्चित किये गए कौन से न्यायिक फैसले आपकी वकालत में काम आएंगे ?

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e. What are the new skills and strategies you learnt that are required for Remand and Bail Lawyers?

इस कार्यशाला से रिमांड एवं बेल अधिवक्ता के रूप में आपने क्या कोई नयी कार्यविधि या कौशल सीखे?

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C. Kindly mention how often you have used these strategies in your legal practice before.

Strategies/Interventions available / useful	Used – Never, Once, Rarely, Often
उपलब्ध / उपयोगी हस्तक्षेप / रणनीति	उपयोग किया - कभी नहीं, एक बार, शायद ही कभी, अक्सर
<input type="checkbox"/> Assisted client during interrogation in police station <input type="checkbox"/> पुलिस थाने में पूछताछ के दौरान मुक्किल की सहायता की	
<input type="checkbox"/> Sought bail in police station (bailable offences) <input type="checkbox"/> पुलिस स्टेशन में जमानत की कोशिश की जमानती अपराधों में	
<input type="checkbox"/> Moved application against illegal detention <input type="checkbox"/> अवैध हिरासत के खिलाफ याचिका दायर की	
<input type="checkbox"/> Moved application against unreasonable arrest (S.41A) <input type="checkbox"/> अनुचित गिरफ्तारी के खिलाफ याचिका दायर की (धारा 41A)	
<input type="checkbox"/> Moved application against ill treatment in police custody <input type="checkbox"/> पुलिस हिरासत में दुर्व्यवहार के खिलाफ समावेदन किया	

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<input type="checkbox"/> Moved application to check arrest memo details (S.41B) <input type="checkbox"/> गिरफ्तारी मेमो के विवरण की जांच के लिए समावेदन किया (धरा 41B)	
<input type="checkbox"/> Moved application to demand a copy of remand application <input type="checkbox"/> रिमांड आवेदन की प्रति की मांग करने के लिए समावेदन किया	
<input type="checkbox"/> Opposed unnecessary police remand <input type="checkbox"/> अनावश्यक पुलिस रिमांड का विरोध किया	
<input type="checkbox"/> Moved application against non-production of client during hearing <input type="checkbox"/> सुनवाई के दौरान मुवक्किल को पेश नहीं किये जाने के खिलाफ समावेदन किया	
<input type="checkbox"/> Sought bail on personal bond <input type="checkbox"/> निजी मुचलके पर जमानत मांगी	
<input type="checkbox"/> Challenged high surety amount or other conditions for bail <input type="checkbox"/> जमानत की उच्च राशि या अन्य शर्तों की चुनौती दी	
<input type="checkbox"/> Moved bail application when chargesheet not filed within 60/90 days <input type="checkbox"/> जमानत के लिए आवेदन दिया जब 60/90 दिनों में आरोप पत्र दाखिल नहीं हुआ	
<input type="checkbox"/> Moved bail application under S.436A CrPC <input type="checkbox"/> सीआरपीसी की धारा 436A के तहत जमानत के लिए आवेदन किया	
<input type="checkbox"/> Moved application to get medical examination done <input type="checkbox"/> चिकित्सीय परीक्षा कराने के लिए समावेदन किया	
<input type="checkbox"/> Moved application for age determination <input type="checkbox"/> उम्र निर्धारण के लिए समावेदन किया	
<input type="checkbox"/> Moved writ petition <input type="checkbox"/> रिट याचिका दायर की	
<input type="checkbox"/> Use of Probation of Offenders Act <input type="checkbox"/> अपराधी परिवीक्षा अधिनियम की परिवीक्षा का इस्तेमाल किया	
<input type="checkbox"/> Compensation Sought <input type="checkbox"/> मुआवजे की मांग की	
<input type="checkbox"/> Any other institution/ authority/Court approached for relief <input type="checkbox"/> राहत के लिए किसी अन्य संस्था/प्राधिकारी/कोर्ट से संपर्क किया	

IV. The Rajasthan' Remand and Bail Lawyers' Scheme

RAJASTHAN STATE LEGAL SERVICES AUTHORITY RAJASTHAN HIGH COURT CAMPUS, JAIPUR BENCH, JAIPUR

No. RLSA/ Legal Aid Council Scheme/ 13th F.C./2011

Date: 17-2-2012

To,

The Chairman
District Legal Services Authority
(District & Sessions Judge)
All Rajasthan.

Sub: Regarding Model Scheme for Legal Aid Counsel in Rajasthan.

Sir,

While enclosing copy of the Model Scheme for Legal Aid Counsel in all the Courts of Magistrate, I am directed to request you that as per the Scheme the District Legal Services Authority may prepare a panel of Legal Aid Counsel preferably with a minimum standing of 5 years on criminal side. The Advocates from this panel may be attached to the Courts of Magistrates and may be called the "Legal-Aid Counsel". 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. 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. The names of the Legal Aid Counsel may be displayed outside the Court to which he is attached and also affix hoardings in the Police Stations and Jails. The Printed Proforma of nomination letters to be issued to Legal Aid Counsel is also attached for ready reference. These instructions may be complied with in letter and spirit and compliance report of implementation of the model scheme shall be sent by 24th February, 2012.

Remuneration payable to Legal Aid Counsel under this scheme 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.

Yours sincerely
(K.B.Katta)

Member Secretary

Date: 17-2-2012

Encl.As above

No: 18734-18737

Copy forwarded to the following for information:

1. Registrar-cum-Principal Secretary to the Hon'ble the Chief Justice, Rajasthan High Court, Jodhpur.
2. Secretary, Rajasthan High Court Legal Services Committee, Jodhpur/Jaipur.
3. District & Sessions Judge, Jodhpur District, Jodhpur.

(K.B.Katta)
Member Secretary.

LEGAL ASSISTANCE TO PERSON IN CUSTODY SCHEME

GUIDELINES

In exercise of the powers conferred by clause (g) of section 2 read with clause (a) of sub-section (2) of Section 7 and Section 12(g) of the Legal Services Authorities Act, 1987, the state authority hereby makes the following scheme guidelines, namely:-

1. The Scheme may be called the Legal Assistance to Person in Custody Scheme.
2. (a) Act means Legal Services Authority Act, 1987 (No. 39 of 1987).
 (b) District Authority means District Legal Services Authority constituted under Section 9 of the Act.
 (c) Person in custody shall have the same meaning as defined in the Section 12(g) of the Act.
3. The District Authority or Taluk Committee, as the case may be, shall prepare
 - a) Panel of counsels for nomination of Legal Aid Counsel for each Court of Magistrate or more, depending upon the quantum of remand cases received each day, for defending persons in custody.
4. Such Legal Aid Counsel should have put at least 5 years of practice at the Bar.
5. The District Authority or Taluk Committee, as the case may be, 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.
6. 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.
7. 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.
8. 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.
9. 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.
10. 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 Legal Aid Counsel shall not prepare and display any personal board or name plate at anywhere and misuse his capacity as Legal Aid Counsel.

11. 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.
12. 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.
13. The District Authority or Taluk Committee, as the case may be, can take services of such Legal Aid Counsel for other legal services programmes and schemes implemented by them. 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.
14. 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.
15. The Legal Aid Counsel will keep details of the case in which he has extended his legal services in the concern Court in this regard and by the end of the month, he will submit it to the concern Presiding Officer of the Court, which will be forwarded to the Chairman, Taluk Committee or Chairman, District Authority as the case may be. The Chairman, District Authority will send consolidated statistical information at the end of every Quarter to the State Authority.

(K.B.Katta)

Member Secretary.

ABOUT CHRI

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights in the countries of the Commonwealth. CHRI's objectives are to promote awareness of and adherence to the Harare Commonwealth Declaration, the Universal Declaration of Human Rights, and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

The Prison Reform Programme of CHRI is focused on increasing transparency of a traditionally closed system and exposing malpractice. The programme aims to improve prison conditions, reform prison management, enhance accountability and foster an attitude of cooperation between the various agencies of the criminal justice system in place of the prevailing indifference and discrimination. It seeks to achieve its goals through research, legal analysis and advice, advocacy, capacity building, network building and conference facilitation.