

CHRI 2013



COURT WATCH

A narrative on how production of
accused persons takes place in 5
sub divisional courts in West
Bengal

COMMONWEALTH HUMAN RIGHTS INITIATIVE

working for the practical realization of human rights in the countries of the Commonwealth

COURT WATCH: PRODUCTION OF ACCUSED PERSONS

Written by: Madhurima Dhanuka

Survey Conducted & Data Collected by: Smita Chakraborty & Rishi Ray

ACKNOWLEDGMENTS

The Commonwealth Human Rights Initiative (CHRI) wishes to thank all the individuals who assisted us in conducting the court observations and helped in understanding the court practices where the court observations were conducted.

CHRI would like to thank the judicial officers who showed their eagerness to explain the process of the court and provide the data to add to the study.

CHRI would also like to extend its gratitude to the officers of the court including the police escorts, lock up incharge who helped in conducting the study.

Last but not the least, CHRI would like to thank Open Society Initiative for their generous grant to help us conduct this study.

Table of Contents

A. INTRODUCTION.....	4
B. METHODOLOGY	9
C. COURT PRACTICES IN REALITY	10
D. CONCLUSION.....	17
E. RECOMMENDATIONS.....	19
F. ANNEXURES	21

A. INTRODUCTION

The Indian Constitution provides for several safeguards and/or rights to a person to protect his personal liberty against any unjustified and unlawful action by the State. Personal liberty is a sacred and cherished right under the Constitution. The expression life or personal liberty envisages the right to live with human dignity and thus includes within itself a guarantee, against torture and assault by the State or its functionaries. In particular and primarily, Article 22 guarantees every individual protection against arrest and detention in certain cases and directs that all persons arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the Magistrate. This article also declares that no person who is arrested shall be detained in custody without being informed of the grounds of such arrest and he shall not be denied the right to consult and defend himself by a legal practitioner of his choice.

In addition to the constitutional guarantees for prompt production of arrested persons, statutory law too provides for the framework within which remand must be carried out. Section 167 (2) (b) Cr.P.C. read with the explanation appended at the end of sub-clause (c) of Section 167 (2) of the Code, mandates that it is obligatory on the Magistrate concerned granting remand to insist on the physical production of the accused before him before granting any remand. Proviso (b) of section 167 (2) in very clear terms provides that no Magistrate shall authorize detention in any custody (police or judicial) unless the accused is produced before him. Not only this but there is an explanation appended after proviso (c) to section 167(2) which contemplates that if any question arises whether an accused person was produced before the Magistrate as required under paragraph (b), the production of the accused may be proved by his signature on the order authorizing detention.

This explanation manifestly reveals the legislative intent that the actual physical production of the accused before the Magistrate at time of making an order for remand is mandatory. The primary purpose and object of the explanation is that the requirement of actual and physical production of the accused may not be evaded by the prosecuting agency. It affords a guarantee against any infraction of the valuable right of a person to liberty as well as it provides an access in person to the judicial authorities to advance his grievances, if any, and to make any representation if so desired.

Thus, from a perusal of the constitutional and statutory provisions it is evident that production before a Magistrate shall always imply physical production. The Hon'ble Supreme Court of India as well as various High Courts in the country have observed the same in a number of judgments and have directed that physical production of a person before the Magistrate is mandatory unless extremely difficult. In *Raj Narain Vs. Superintendent, Central Jail, New Delhi*¹ the Court has observed as follows:

¹ AIR 1971 SC 178.

"It stands to reason that an order of remand will have to be passed in the presence of the accused. Otherwise the position will be that a magistrate of court will be passing orders of remand mechanically without having heard the accused for a considerably long time. If the accused is before the magistrate when a remand order is being passed, he can make representations that no remand order should be passed and also oppose any move for a further remand. For instance he may rely upon the inordinate delay that is being caused by the prosecution in the matter and he can attempt to satisfy the court that no further remand should be allowed. Again it may be that an accused on a former occasion may have declined to execute a bond for getting himself released; but on a later occasion when a further remand is being considered, the accused may have reconsidered the position and may be willing to execute bond, in which case a remand order will be totally unnecessary Such an opportunity to make a representation is denied to a person concerned by his not being produced before the magistrate. As the magistrate has to apply his judicial mind, he himself can take note of all relevant circumstances when the person detained is produced before him and decide whether a further remand is necessary".

The question of physical production of the accused person before the Magistrate, especially at the stage of investigation and remand becomes even more significant when one links it to an accused person's right to legal representation, especially for those, who cannot afford to engage a private lawyer. An individual's entitlement to legal aid has been elucidated by the apex court in the recent judgment of *Mohammed Ajmal Mohammad Amir Kasab @ Abu Mujahid Vs. State of Maharashtra*.² The court observed,

"...We 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.....according to our system of law, the role of a lawyer is mainly focused on court proceedings. The accused would need a lawyer to resist remand to police or judicial custody and for granting of bail; to clearly explain to him the legal consequences in case he intended to make a confessional statement in terms of Section 164 CrPC; to represent him when the court examines the

²(2012) 9 SCC 1.

chargesheet submitted by the police and decides upon the future course of proceedings and at the stage of the framing of charges; and beyond that, of course, for the trial.

Every accused unrepresented by a lawyer has to be provided a lawyer at the commencement of the trial, engaged to represent him during the entire course of the trial. Even if the accused does not ask for a lawyer or he remains silent, it is the Constitutional duty of the court to provide him with a lawyer before commencing the trial. Unless the accused voluntarily makes an informed decision and tells the court, in clear and unambiguous words, that he does not want the assistance of any lawyer and would rather defend himself personally, the obligation to provide him with a lawyer at the commencement of the trial is absolute, and failure to do so would vitiate the trial and the resultant conviction and sentence, if any, given to the accused”.

The duty of magistrates in this regard has also been explained by the Supreme Court in the case of *Khatri & Others Vs. State of Bihar & Ors*³,

“...the (sic) right to free legal services would be illusory for an indigent accused unless the magistrate or the Sessions Judge before whom he is produced informs him of such right. It is common knowledge that about 70 per cent of the people in the rural areas are illiterate and even more than that percentage of people are not aware of the rights conferred upon them by law. There is so much lack of legal awareness that it has always been recognised as one of the principal items of the programme of the legal aid movement in this country to promote legal literacy. It would make a mockery of legal aid if it were to be left to a poor ignorant and illiterate accused to ask for free legal services. Legal aid would become merely a paper promise and it would fail of its purpose. The magistrate or the Sessions judge before whom the accused appears must be held to be under an obligation to inform the accused that if he is unable to engage the services of a lawyer on account of poverty or Indigence, he is entitled to obtain free legal services at the cost of the State.”

However, in practice, as is prevailing in most courts across West Bengal, it is only after a substantial period of detention, if it comes to the notice of the concerned Magistrate that the accused person had remained unrepresented by a lawyer, the concerned Magistrate informs the concerned legal aid services authority for engagement of a lawyer at the state's expenses. Thus, vitiating an individual's right to legal aid at State's expenses at the earliest, more specifically, right from the date of first production before the Court.

Therefore, one can argue that until and unless the accused persons are physically produced before the concerned Magistrate it would not be possible for the learned Magistrates to identify those in need of legal aid. Taking into consideration the propositions of the law and the interpretations and observations laid down in a plethora of judgments delivered by the Supreme

³AIR 1981 SC 928.

Court of India, such task of identification of persons in need of legal aid ought to be done on the very first day of his production before the Court and steps ought to be taken so as to ensure that a person in need of legal aid is provided with the same on the very first day of his production.

The jurisprudence discussed above makes it clear 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. However, this can only be possible if accused persons are physically produced before magistrates, and the magistrates spare a moment to interact with the accused persons directly.

However, the ground realities and the prevailing practices on court production are far away from the constitutional guarantees to accused persons. In a survey conducted by the Commonwealth Human Rights Initiative in October-November 2012 amongst inmates of Dum Dum Central Correctional Home, Kolkata, majority of inmates complained that they were never physically produced before the magistrate. They claimed that they were kept in the court lock up and the magistrates did not interact with them at all. Of the 111 inmates interviewed, only 11 inmates claimed to have been physically produced before the magistrate, of whom only 9 inmates claimed that the magistrate interacted with them. 5 inmates claimed that they were not taken into the court at all, while 93 claimed that they were kept in the court lockup. Amongst these 15 inmates claimed that they were unrepresented at their production and the magistrate did not offer them legal aid.⁴

Armed with this information, CHRI then filed a writ petition in the Calcutta High Court (WP 56 of 2013) seeking directions upon magistrates to enforce the constitutional mandate on physical production of accused persons. In its order dated 22 January 2013, the Calcutta High Court observed,⁵

"In the event of failure to comply with the directions there is a penal consequences of violation of the order of the Hon'ble Supreme Court for which appropriate action can be taken. It is incumbent.....to follow the provisions contained in section 167 of the criminal procedure and also guidelines laid down by the apex court in the aforesaid decision.

With respect to free legal aid at the time of remand, obviously the Magistrate has to apprise the accused persons of his/her right to be defended and in case he/she has no means to engage a lawyer, a lawyer is to be made available at the expenses of the state through legal services authority/committee. It is the bounden duty of the concerned Magistrate, while making remand to carry out the aforesaid obligation also. It is also to be pertinent to mention that the availability of pane, of lawyers should also be ensured by the concerned bodies/committees."

⁴ Annexure II.

⁵ Annexure III.

The present study was conducted by CHRI in April - May 2013 to assess the impact, if any, of the high court order, upon the process of production of accused persons. The study goes on to highlight the vast gaps between the written and practiced law on production. The study shows how 'anything goes' in the district courts with no adherence to rights that the Indian Constitution guarantees to all individuals.

B. METHODOLOGY

There are 19 districts in West Bengal. The court observations were carried out in five sub divisional courts falling within three districts South 24 Parganas, North 24 Parganas and Kolkata, viz. City Sessions Court, Alipore Sadar, Bidhannagar, Barasat and Sealdah. Emphasis was laid on the process of production, availability of legal aid lawyers and the extent of interaction of magistrates with the accused persons. Interactions were also made with some of the judicial officers, lock up incharges and lawyers who were present on the day of the court observations.

In addition to general observations on procedures adopted for the court observation, details were noted down under the following headings:-

Basic Information	Number of Cases
Physical Production	
Number of cases of first production	
Within 24 hours	
Defence counsel asked for documents	
Medical Report Submitted	
Medical Exam requested by accused	
Magistrates Role	
Magistrate ordering Medical test	
Magistrate asked time of arrest	
Magistrate checked police Documents/Files	
Magistrate asked whether UT has lawyer	
Magistrate informed UT of Right to Lawyer	
Magistrate appointed Legal Aid Lawyer	
Magistrate checked compliance with Sec 50 A Cr.P.C.	
Orders Passed	
Extended Police Custody:	
Ordered Judicial Custody:	
Granted Bail:	
Discharged:	
Unclear:	

C. COURT PRACTICES IN REALITY

I. General observations on court environment:

Bidhannagar court is rather small and as such productions take place in one courtroom only. There are in total 5 police stations under its jurisdiction including Salt Lake and Lake Town. Majority of population under this sector is affluent and have the means to afford an effective defence. Based on appearance the lawyers seemed to be of better standard than other courts that were observed. Lawyers and police officer were quite courteous when compared with our experiences in other courts. The lock up incharge and public prosecutor were eager to share information on the process of production.

At Bankshall court, like in all other courts there is no information centre, thus making it difficult for a layperson to understand the process. Locating the main entrance to the building took time. Being an old building with iron staircases, it is rather inaccessible for the differently abled and the aged. As soon as one enters the gates one is flocked by persons seeking to prepare affidavits and notarise documents. Even though the lawyers were rude and unwilling to help, the court staff and policemen were helpful and provided information.

At Sealdah Court, the lawyers soliciting for affidavits and notaries were very aggressive, in as much as upon refusal they prevented entry into the court premises from one of the gates. The court compound was dirtier than the rest, with spit marks everywhere and people smoking endlessly. Even though court room proceedings are open to all, entry was not allowed into the courtroom for general public including the members from CHRI. Generally people around the courthouse seemed clueless of what was taking place. With proper physical production not taking place, family members of accused persons looked perturbed at the lack of understanding of the process. At the end of the day dejectedly they were told to return home after being informed by their lawyers that the case is over. The police personnel were rude, uncooperative and ill-behaved. Flouting of laws seemed apparent with some accused persons openly using cell phones inside the lock up.

As with other courts it was difficult to find ones way around the Alipore Court too. No information booth is there nor are the courtrooms numbered or marked. It was difficult to locate the room where production was taking place. Flouting of laws was commonplace with lawyers openly stating that there is a vast difference between the written and practiced law, a lawyer eating ice-cream in front of the magistrate, instances of money changing hands, court records lying in the open, a child below the age of 12 years selling lime juice to the lawyers,

court officers as well as the judge himself, police harassing transgender accused persons by passing lewd comments upon them.

VIOLATIONS

Access to legal system: The Indian Constitution provides equal protection of laws to all persons. This necessarily means that every person must also be given ample opportunity to access law, thus making it the responsibility of the functionaries to facilitate easy access to legal remedies. This necessitates the setup of all necessary amenities within court compounds which would facilitate any person in his court related queries. General observations across the five courts reflect that any layperson that goes to court would invariably get lost and unable to find his way, lest he ask around.

Handcuffing: The practice of handcuffing of accused persons, despite specific directions against its routine use by the Supreme Court, was seen in all the five courts where the court observations were conducted. In Barasat Court it seemed customary, whilst in the four other courts it was learnt to be an occasional affair. There didn't appear to be any authorization for the use of handcuff from the concerned Magistrate or Court. In addition to handcuffing, it was learnt that in some other courts in West Bengal the practice of roping accused persons is also followed, wherein the accused persons hands are tied together by one single rope and they are made to walk in a straight line from the lock up to the courtrooms.

The use of handcuffs is in contravention to the judgment laid down by the Supreme Court in *Sunil Batra v Delhi Administration & ors*,

"We declare, direct and lay down a rule that handcuffs or other fetters shall not be forced on a prisoner-convicted or under trial-while lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to court and back. The police and the jail authorities, on their own, shall have no authority to direct the handcuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to court and back."

And

"In all the cases where a person arrested by police, is produced before the magistrate and remand-judicial or non-judicial is given by the magistrate, the person concerned shall not be handcuffed unless special orders in that

respect are obtained from the magistrate at the time of the grant of the remand."

Though it could not be verified but the likelihood is that the police officers did not approach the magistrate to take permission to handcuff the accused persons. Upon enquiry, a constable stated that they use handcuffs to prevent escape of the detenu in the best interest of public security. This line of thought is against the Supreme Court order in *Prem Shankar Shukla v Delhi Administration*,⁶ wherein it observed

"Insurance against escape does not compulsorily require handcuffing. There are other measures whereby an escort can keep safe custody of a detenu without the indignity and cruelty implicit in handcuffs or other iron contraptions. Indeed, binding together either the hands or feet or both has not merely a preventive impact but also a punitive hurtfulness. Manacles are mayhem on the human person and inflict humiliation on the bearer".

It is, therefore, necessary to take appropriate action against this malpractice.

II. Process of Production

In Bidhannagar court, the accused persons are brought into the court by uniformed policemen by who hold the hands of accused. Accused persons are kept in a full cage at the back of the court room. The magistrate neither identified the accused persons when their cases are being heard, nor did he interact with the accused persons. The public prosecutor informed that accused persons are brought to court every 14 days, but during long holidays such as puja vacations production also stops. In cases which are triable by the sessions court, they are sent to Barasat Sessions Court.

In one peculiar case in Bidhannagar Court, a boy was produced before the magistrate. Looking at the boy the magistrate asked if he was below 18, but the lawyer refuted the same, claiming to have a birth certificate as proof. Even so the magistrate asked for a copy, and upon perusal found that the boy was 17 years old. Still, to our dismay, the magistrate stated that the boy is nearly 18 years old so he is almost a major and he should be considered a major and continued hearing the case!

⁶AIR 1980 SC 1535.

At Bankshall court proper physical production was seen to be carried out. The infrastructure was the best among the courts that were observed for this study. The lockups in the court rooms are directly connected to the central lock up. This facilitates in securing physical production of accused persons in all cases, as they can be directly brought to the courtrooms through the centrally connected passage. This also prevents the use of handcuffs or other means of restraint. A half cage is made in the courtroom at the rear end where the accused are kept. The magistrate properly identifies accused persons at time of hearing and also interacted with them where necessary. It was informed that earlier there were instances wherein accused persons were not being produced even after three days of arrest. Subsequently a complaint was made to the magistrate who ordered an enquiry against the police officer in charge, thereafter prompt productions have been taking place.

As per records of Sealdah Court, 12 cases of production were to be heard on that particular day. However, only 5 persons were produced. Upon enquiring about this, it was informed that due to lack of escorts to take them from the court lock up to the concerned courts for production, all accused persons are not physically produced before the magistrate, and remain in the court lock up. Even of the 5 accused persons who were produced, the magistrate made no effort to interact with them, or even identify if they were indeed the persons mentioned in the records. Accused are kept in the full cage at one end of the courtroom.

At Alipore Court it was learnt that physical production of accused persons was taking place by virtue of the Calcutta HC order. Prior to that accused persons would only be kept in lock ups and would not be taken to the court room. Accused persons were brought into the courtroom by police officers by holding hands. However, use of ropes and handcuffs was seen during transfer of accused persons from police lock ups to police vehicles. Though on record it appeared that persons were produced within 24 hours of arrest, off the record conversations with the lock up in charge revealed otherwise, but his statements could not be substantiated by any evidence.

In Barasat Court there is a court room assigned only for first production. This was not the case in the other courts. However, here too the magistrates did not interact with the accused persons or identify whether they are indeed the persons mentioned in the police records. All accused persons were kept in a cage which was within visible distance of the magistrate. The production process was being conducted mechanically and more so as a formal obligation. A police officer kept on showing all the records to the magistrate, who was signing them

after hearing him. It was apparent that the accused were unable to understand what was going on in front of them.

VIOLATION

Lack of Physical Production of Accused: Physical production of accused persons is mandatory under both constitutional and statutory law. The state of affairs in all courts observed is clearly in violation of these as well as of the plethora of Supreme Court judgments which lay down the duty of magistrates while presiding over production hearings.

III. Access to Legal Aid Services at the Time of Production

In Bidhannagar Court there is a legal aid cell which is headed by the Additional Chief Judicial Magistrate. If any accused person does not have a lawyer the magistrate informs the accused persons if s/he requires one. If yes, then the accused must write an application to the superintendent of correctional home who will then forward the same to the ACJM. Once the application is received the ACJM appoints the lawyer from a panel of lawyers. However, when asked around in general about legal aid, very few people including lawyers, police officers and court staff seemed to know about it or the process of application. Majority persons stated that since most of accused persons are well-off financially, so legal aid lawyers are not required that much. The public prosecutor however mentioned that when a bail application is not moved by an accused for a considerable amount of the time, then a legal aid lawyer is appointed as per Section 304 of CrPC.

At Bankshall court it was learnt that there is an Active Standing Defence counsel, which is appointed by the District Legal Services Authority, who is obligated to provide legal aid at the time of production and during trial. However, in reality, most of the time the counsel failed to be present in court and often accused persons go unrepresented in their hearings. In cases where accused is not represented by a lawyer, the magistrate requests the DLSA to appoint a legal aid lawyer. The accused can also apply directly to the DLSA for appointment of legal aid lawyers. Upon interviews, people were of the opinion that the pitiable condition of the legal aid system is not because of infrastructure but because insufficient man power and non-payment of fees to legal aid lawyers by the state.

There was no legal aid cell in Sealdah Court. The magistrates did not inform accused persons about their right to be represented. Where accused persons did

not have a lawyer, the magistrates have to send applications to the legal aid cell in Alipore Court. Where an accused person directly applies, he first has to apply to the magistrate, who will then forward the application to the Legal Aid Cell in Alipore Court.

At Alipore Court, accused persons were represented by private lawyers in all the cases that were observed. In general, it was learnt that accused persons are represented at the time of production and it was usually during the course of trial that accused persons were unable to afford lawyers and thus remain unrepresented thereafter. After interactions with court clerks, police officers and lawyers present in the courtroom, it was apparent that knowledge regarding the right to legal aid for accused persons was poor.

At Barasat District & Sessions Court, it is only upon the request of the accused person that the magistrate sends an application to the DLSA. There is no legal aid panel or list of panel lawyers with the magistrate. It is presumed that while in police lock up other accused persons esp. hardened criminals or recidivists inform the accused person of their legal rights hence the lawyers have no duty as such. Some lawyer opined that since the legal aid lawyers are incompetent, thus a person is better off by appointing a private lawyer. They felt that the pay of legal aid lawyers was also inadequate, which resulted in their incompetency.

Violations:

Non-compliance with Legal Aid Counsel at Magistrate Court Scheme, West Bengal: The scheme envisages the following,⁷

- a. Legal aid counsel to remain present in the court of magistrate attached to him during remand hours and or on holidays during the remand hours
- b. The legal aid counsel has to appear in the case of undefended accused who is in the custody and is produced before the magistrate with the consent of the accused concerned.
- c. The name and address of the legal aid counsel may be displayed outside the court to which he is attached with requisite information as to who is eligible for legal aid.

⁷ Annexure IV.

Table 1.1: General Information

Name of Court	Date of Collection of data	Police Stations covered	Total no. of cases observed	No. of cases of first production	No. of Lawyers interviewed
Bidhannagar Sub Division Court	24-May-13	5	31	6	3
Bankshall	23-May-13	20	26	17	0
Sealdah	17-May-13		12	12	6
Alipore Police Court	03-May-13		37		
Barasat	27-May-13	7	22	22	2

Table 1.2: Outcome of hearing

Name of Court	Total no. of cases observed	No. of cases of first production	Extension of police custody	Extension of Judicial custody	Bail granted
Bidhannagar Sub Division Court	31	6	1	23	7
Bankshall Court	26	17	8	11	6
Sealdah	12	12	5	2	5
Alipore Police Court	37		7	16	14
Barasat	22	22	3	12	6

Table 1.3: Duties of Magistrate

Name of Court	Total no. of cases observed	Magistrate interacted with accused directly	Were cases being heard simultaneously	Magistrate checked documents/records	Magistrate checked compliance with Sec 50 CrPC	Time spent hearing the case
Bidhannagar Sub Division Court	31	7	No	All	None	2-15 min - varied
Bankshall Court	26	3	No	All	All	2-3 min max
Sealdah	12	0	No	All	None	2-3 min max
Alipore Police Court	37			All	None	
Barasat	22	0	No	All	None	8-10 min max

D. CONCLUSION

An evaluation of what was seen during the court observations makes it clear that the procedure followed in courtrooms is far from what the legislators had intended while framing the laws. One silver lining, that remained common, was magistrates were very supportive and were the most cooperative people in every court. The other functionaries however appeared stressed and overburdened.

From a laypersons perspective, finding ones way around the court is a steep task itself, which is by no way benefited by lack of an information point/help point inside the court premises. This is followed by the difficulty in understanding courtroom procedures. Which court is taking up which cases, where can one meet the accused person, where can one meet the lawyers, what is the status of the case, when is the next date all this information needs to be provided at the information point so that it makes it easy for the relatives of the accused persons to keep informed of the court process.

It appeared that every court has a different production practice, given the logistic situation of the particular court. Interaction of the magistrates with the accused was minimal, mostly being thought as a time consuming process, which the ever so burdened magistrate thought best not to spare. Magistrate individually identifying accused only happened in Alipore Court, thus making misuse of laws by policemen and violation of an individual's rights very easy.

The right to legal aid seemed to be a farce, with lack of compliance with the NALSA as well as the SLSA guidelines.⁸ There were no list of panel lawyers outside the courtroom, legal aid lawyers did not seem present at the time of any of the hearings, and magistrates too did not seem inclined to inform them of their right to legal aid. It was always presumed by all, that the accused will be aware of his rights including his right to legal aid. Meeting legal aid lawyers was difficult and public prosecutors were unavailable. It is due to this that the so called *muhuries*– men who cheat accused persons by assuring them of procuring bail, take money and then disappear – can carry on exploiting the indigent, illiterate accused persons.

Physical production of accused persons is mandatory. Even then, merely producing accused persons in the courtrooms is irrelevant unless that the Magistrate individually identifies the accused and interacts with him. Lack of interaction opens the doors for abuse of process by the police, prolonged

⁸ Annexure IV.

detention of accused, torture of accused etc. Adhering to constitutional mandates on production seeks to assure transparency, accountability and the viability of access to justice. The law prescribes that the magistrates must interact with the accused persons to ascertain their identity as well as to give the accused persons an opportunity to ventilate their thoughts/grievances if any.

In other words, the mandate of law is that routine remands have to be deprecated. Courts have a duty to strictly observe the mandate and rule of law, and they have a further duty to scrupulously see that the statutory obligations are truly followed and fulfilled. It is unfortunate that the Magistrates are taking a light note on physical and actual production of the accused before the Courts and do not insist upon the physical production of the accused persons so that the accused persons had a direct access to him to have their say and advance their grievances, if any.

This study provides proof that court practices in reality are far from the rights the Indian constitution guarantees to all individuals. Physical production is only a small step towards a much larger goal, but it is of great relevance since it is the first interaction of the accused with the judicial system. It is the impact of this 1st impression that will leave its mark and decide whether the accused will develop faith in the system of justice.

E. RECOMMENDATIONS

The following recommendations are made to ensure that the constitutional mandates are followed to the letter and rights of accused are preserved. These recommendations are based on the discussions made during a one-day interactive session held in December 2012 between judicial officers, welfare officers and members of the state legal services authority.⁹

1. Magistrates must carry out their obligations as mandated by the constitutional and statutory laws.
2. Magistrates must ensure that every accused person is produced physically before him for each production hearing. Where accused is not so produced it is the duty of the magistrate to enquire into the reasons.
3. Magistrate must interact with the accused person and give him a chance to ventilate his grievances/ask questions regarding his case, if any.
4. 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.
5. 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.
6. Magistrates to prima facie review case record themselves in cases where no bail petition has been moved due to lack of lawyer.
7. 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.
8. Appointment of legal aid lawyers/formation of legal aid panel based on recommendations of the judicial officers based on their competence and commitment
9. List of panel of lawyers with details may be kept at the correctional homes so that they can appoint lawyers forthwith.
10. Welfare officers to send applications for appointment of lawyer to DLSA with copy of concerned courts

⁹ Annexure V.

11. Courts to denote name and details of legal aid lawyers in court/production warrant itself.

F. ANNEXURES

ANNEXURE I: RIGHTS OF ACCUSED PERSONS AT A GLANCE

RIGHTS AFTER ARREST

- Must be informed of grounds of arrest
- Arrest memo must be provided to accused person
- Person having custody to take reasonable care of the health and safety of the person accused.
- Accused to be examined by Medical Practitioner within 24 hours of arrest
- Arrested person to be produced before Magistrate within 24 hours of arrest
- Not to be detained beyond 24 hours of arrest without the permission of a Magistrate

RIGHT TO MEDICAL EXAMINATION

- Arrested person may be medically examined at the request of police officer if reasonable grounds exist to believe that the examination will afford evidence of commission of the offence .
- Medical examination includes: blood, blood stains, semen, sputum sweat, hair, etc.

RIGHT TO BAIL

- Right to be released on bail immediately in bailable offences
 - Person accused of non-bailable offence may be released by Magistrate under certain conditions
 - Person accused of non-bailable offence not to be released on bail if accused of offence punishable by death or life term, or having record of previous convictions
 - Woman, sick or infirm person in above category may be released
 - Amount of bond to be in keeping with circumstances and not to be excessive
 - May be released on bond when evidence deficient
- (Sections 59, 169, 436, 436A, 440 CrPC)

REMAND

- Police remand not to exceed 15 days in the whole
 - Remand to be extended only upon physical production of the accused
- (Section 167, 309)

RIGHT TO TRIAL

- Right to be free from restraint within the court premises
- Right to be physically produced before Magistrate for remand
- Copies of all documents to be supplied to accused by Magistrate free of cost
- Right to an effective defence
- Right to free legal aid

(Sections 167, 207,303, 304 CrPC)

ANNEXURE II: SURVEY ON COURT PRODUCTION IN DUM DUM CCH

A total of **111 inmates** from the *amdani* ward of Dum Dum Central Correctional Home were interviewed on 30/10/12, 02/11/12, 05/11/12, 06/11/12, 08/11/12 and 9/11/12. All inmates upon admission to the correctional home spend their first night in the *amdani* ward. The next day they are then allocated to different wards based on court, type of case etc. The survey was conducted amongst these inmates.

First Production before the Magistrate

- Number of inmates physically produced before the Magistrate – 11 out of 111
- Number of inmates physically produced but not spoken to, by the Magistrate – 2 out of 11
- Number of inmates not taken to court at all – 5 out of 111
- Number of inmates taken to court but not produced physically before the Magistrate (Kept in the court-room lock up with many other accused persons) – 92 out of 111
- Number of inmates taken to court and kept in GR lock-up without being produced physically before the Magistrate – 1 out of 111

Hygiene at court-room lockup

Number of inmates taken to court – 106 out of 111

- Number of inmates who reported access to water, food, fan and fresh air – 97 out of 106
- Number of inmates who reported absence of one or more of the above facilities – 7 out of 106
- Information not available – 2

Availability of lawyer private/legal aid at the time of Production

- Number of inmates who had private lawyers during first production in court - 88
- Number of inmates who had private lawyers but not taken to court for production - 2
- Number of inmates who did not have a lawyer and was not offered legal aid lawyer by the Magistrate – 15
- Number of inmates who were without a lawyer and weren't taken to court - 2
- Information not available – 5

**ANNEXURE III:
ORDER OF THE CALCUTTA HIGH COURT DTD 22.1.2013**

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

WP 56 OF 2013
COMMONWEALTH HUMAN RIGHTS INITIATIVE

Versus

THE STATE OF WEST BENGAL & ORS.

BEFORE:

The Hon'ble CHIEF JUSTICE MR. ARUN MISHRA

The Hon'ble JUSTICE JOYMALYA BAGCHI

Date : 22nd January, 2013.

Mr.D.Banerjee, Advocate
Mr.Debrup Bhattacharyya, Advocate
...for petitioner
Mr.P.Sinha, Advocate
Mr.S.Chakraborty, Advocate
...for State

The Court :- A prayer has been made in the writ petition to issue a Writ of Mandamus upon the respondents to ensure that all persons arrested or detained are mandatorily produced before the Magistrate or Court concerned in person that is physically produced before the Court than a mere paper production, when an order of remand is passed. An accused may also be apprised that he/she has right to consult and be defended by a legal practitioner and in case he has no means to engage a lawyer of his/her own choice then one would be provided at the expenses of Legal Aid Services authority. Prayer has

an

85

also been made that in all concerned Courts panel of legal aid lawyers is made available on a daily basis during remand being made.

We have heard the Counsel for the parties.

As Section 167(2) proviso (b) of the Code of Criminal Procedure makes a provision that accused has to be produced before the concerned Magistrate. Explanation II of Section 167 of the Code of Criminal Procedure also provides that the production of accused person may be proved by his signature on the order authorising detention or by the order which is certified by the Magistrate the production of the accused person through the electronic media linkage is also permitted.

However, at the same time when accused is not produced through video linkage his physical presence is necessary, it cannot be made merely on the paper production. For that concerned Magistrate has to ensure that remand is made as per provisions contained in Section 167 Cr. P.C. Explanation II makes it clear when any question arises whether the accused has been produced before the Magistrate or not as required under Clause (b) of Sub section 2 of Section 167 the signature of the accused on the order authorising detention is sufficient proof.

In D.K.Basu Versus State of West Bengal the Hon'ble Supreme Court (1997) 1 Supreme Court Cases 416 Hon'ble Supreme Court has decided on various safeguards which should be observed by the concerned Magistrate in paragraph 35 thus;

"35. We, therefore, consider it appropriate to issue the following *requirements* to be followed in all cases of arrest or detention till legal provisions are made in that behalf as *preventive measures*:



communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board."

12.

In the event of failure to comply with the directions there is a penal consequences of violation of the order of the Hon'ble Supreme Court for which appropriate action can be taken.

It is incumbent on the part of respondents to follow the provisions contained in Section 167 of the Code of Criminal Procedure and also the guidelines laid down by the Apex Court in the aforesaid decision.

With respect to free legal aid at the time of remand obviously the Magistrate has to apprise the accused persons of his/her right to be defended and in case he/she has no means to engage a lawyer, a lawyer is to be made available at the expenses of the State through Legal Services Authority/Committee. It is bounden duty of the concerned Magistrate, while making remand, to carry out the aforesaid obligation also. It is also to be pertinent to mention that the availability of the panel of lawyers should also be ensured by the concerned bodies/committees.

Since no affidavit-in-opposition has been called upon to be filed we make it clear that the averments contained in the petition are not admitted.

In view of the decision of the Apex Court and the Statutory Provisions let all Magistrates observe all legal formalities aforestated.

Let photostat/certified copy of this order be made available to the parties, if applied for, upon compliance of all requisite formalities.

J. A. B. O

alc

Speed Post

Mir Dara Sheko, WBHJS
Member Secretary
STATE LEGAL SERVICES AUTHORITY
WEST BENGAL



City Civil Court Building (1st Floor)
2 & 3, Kiron Sankar Roy Road
Kolkata - 700 001, India
Phone : 033 - 2248 3892 / 4234
Fax : 033 - 2248 4235
E-mail : wbstatelegal@gmail.com
Website : www.wbslsa.org
Cell : 94342 50102

No. 939 (19) /SLSA-286/2006

Date : 24.04.2013

To

The Chairman

District Legal Services Authority,

&

The Chief Judge/District & Sessions Judge,

Kolkata, Howrah, Hooghly, Burdwan, Purba Medinipur, Paschim Medinipur, Birbhum, Bankura,
Purulia, North 24-Parganas, South 24-Parganas, Nadia, Murshidabad, Malda, Uttar Dinajpur, Dakshin
Dinajpur, Jalpaiguri, Coochbehar and Darjeeling.

Ref: Earlier letter No. 2327(96)/SLSA-286/2006, dt. 20.11.2012.

Sir,

I am directed to state that this Authority is still in a dilemma to ensure itself as to whether each and every Magistrate Court is having any Ld. Advocate, deputed by the local Legal Services Institution/Committee to stand for rendering advocacy in favour of the Under Trial Prisoner/Accused in custody, who is not having lawyer of his own.

It is needless to mention that by the mandate of the Hon'ble Supreme Court, the acts and activities of the Legal Services Institutions have been stretched to such an extent, so that the Authority can oversee the implementation of the guidelines through its districts or Sub-divisional outer-parts.

Therefore, once again by enclosing the scheme for Legal Aid Counsel in all the Court of Magistrates framed by the State Legal Services Authority, West Bengal in addition to the Model Scheme framed by NALSA, and the **consolidated rate of fees** of the **Legal Aid Counsels** of the Court of Magistrates situated at different districts of West Bengal, of course **for attending the UTPs/Accused in custody**, who is not having lawyer of his/her own, I do request to circulate the same to each and every Court of Magistrates at the Headquarters, and in Sub-Division, or Chowki, for information, for compliance, as regards engaging lawyer in the situation mentioned above, and to remove confusion about the payment of fees in favour of Ld. Advocates appearing on behalf of the accused persons of aforesaid status, which, of course, will have no semblance with the Government rate chart, as already circulated for dealing with stage-wise several cases by the categorized Lawyers.

Thanking you,

Yours faithfully,

Mir Dara Sheko

(Mir Dara Sheko)

Member Secretary

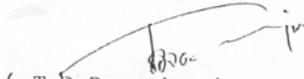
State Legal Services Authority, W.B.

Enco: As above (3 pages).

Scheme for " Legal Aid Counsel " in all
the Courts of Magistrates framed by the
State Legal Services Authority, W.B., in
addition to the Model Scheme framed by
the N A L S A . ,

1. Legal Aid Counsel has to remain present in the Court of Magistrate attached to him during remand hours and or on holidays during the remand hours.
2. The Legal Aid Counsel has to appear in the case of undefended accused who is in the custody and is produced before the magistrate with the consent of the accused concerned, for challenging the remand application, if the remand application is given by the investigating agency or he has to file a bail application.
3. Payment to the Legal Aid Counsel may be made after obtaining a certificate from the concerned Judicial Officers regarding attendance of the Counsel at the time of remand hour.
4. To ensure that the Legal Aid Counsel remains present in the Court during the remand hour or any other hour of the day as directed by the court, the Legal aid functionaries may insist for an attendance certificate issued by the Court to legal aid Counsel before making his payment for remand hour.
5. Certificate of merits / awards may be given to those Legal Aid Counsels whose performance is found to be outstanding.
6. The name and address of the Legal Aid Counsel may be displayed outside the Court to which he is attached with requisite information as to who are eligible under the Legal Services Authorities Act and no payment is required to be made by them to legal aid counsel.
7. In case of any complaint against Legal Aid Counsel regarding demand of fee or any other charges from an aided person, prompt action by way of removal of his name from the panel may be taken after making due inquiry and give a reasonable opportunity of hearing to the legal aid Counsel.
8. For the appointment for filing a complaint or defending the case or for filling appeal or revision the existing procedure be followed and the Advocate appointed for filing complaint or defending case or filing revision or appeal or writ may be paid at the prescribed rate, irrespective of the fees of legal aid counsel, as stated above.

As directed & approved by the
Executive Chairman, S.L.S.A.,
West Bengal.

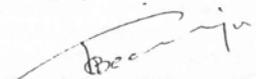

(T.D. Banerjee)
Member-Secretary,
State Legal Services Authority,
West Bengal.

Consolidated Rate of fees of the Legal
Aid Counsels of the Courts of Magistrate
situated at different districts of
West Bengal.

1. Upto 15 cases per month	...	Rs. 500/-
2. From 15 cases to 30 cases per month..		Rs.1,000/-
3. From 30 cases to 60 cases per month..		Rs.2,000/-
4. Above 60 cases per month	...	Rs.3,000/-

The number of cases shall be assessed and the payments would be made on the attendance certificate of each days work to be issued by the Magistrate in which the Legal Aid Counsel is attached.

Approved in the meeting of the
State Legal Services Authority
held on 7.04.2000.


(T. D. Banerjee)
Member Secretary,
State Legal Services Authority,
West Bengal.

**ANNEXURE V:
REPORT OF INTERACTION BETWEEN REPRESENTATIVES OF
JUDICIARY, LEGAL AID AND CORRECTIONAL HOMES DTD.
2.12.2012**

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.

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 everyday 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. **Production of accused:** 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 to 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

ANNEXURE VI: A PERSONAL ACCOUNT OF THE COURT OBSERVATION SURVEYS¹⁰

The court observation sessions were conducted in 5 courts. I was accompanied by our intern Rishi Ray, who is a 1st year law student, from NUJS. For a month we frequented the courts and gathered data. It was our 1st experience in court, so we spent the initial few days awed by what we saw, as it took us some time before we could adapt to the ways of the court.

1st Impression

As soon as we stepped into a court we were struck by its momentum, extreme urgency was visible on every face that stormed past us and we were like invisible objects stranded in a state of inertia. None paid any attention to our simple queries and we were greeted by cold shoulders. What amazed us most is that it was expected by everyone that anyone present in a court should be invariably aware of where is what and who is who? There were no sign boards that gave any directions and none had the time to direct us.

I had fixed an appointment with a famed criminal lawyer who was a senior counsel at the court. But when we reached, the lawyer and his assistants/juniors were in court rooms and we were asked to wait till they return for lunch. Lunch was still a few hours to go, so we decided to navigate our way on our own. We wanted to go to the court room where 1st production was happening and discovered that the very term "1st production" was unheard of, lawyers, policemen and all others included.

Lost, we strolled through corridors and allies, tea stalls and *serestas*, stood and stared, absorbing and acquainting ourselves with the unfamiliar court. We were pushed from one court room to the other but most of the time people saw through us and we were left completely unnoticed. We spent the time in a daze for hours at a stretch, till lunch time arrived and with it came our lawyer.

Affluence and influence

The lawyer we met is well known and he offered us his guidance and support. He introduced us to the Chief Judicial Magistrate, Lockup Incharge, Public Prosecutor and asked two of his juniors to help us out in our court observation. Suddenly, we felt the change in attitude of the very people who had seen through us during the 1st half of the day. Now we were promptly escorted to the police production court room by the two junior lawyers and seated at the front row, right in front of the judge. Though the junior lawyers explained to the best of their ability, we barely understood what was happening. Whether it was fatigue or the overwhelming sense of being an outsider I cannot explain, but we could not sit through the production process and stepped out of the court room as soon as the two lawyers went away.

We sat on the steps in front of the court lockup and gulped down glasses of lemonade as we planned the next days work. The day had a strange effect on us, we had remained silent through most part of the day and now we were trying to

¹⁰ Written by Smita Chakraborty.

make sense of it all. It was as if we were watching a retro movie and strolled passes different scenes. In other words the court was everything we weren't anticipating.

The indifference with which we were greeted at first, then the blatant shift of attitude had left us confused. Our thoughts were flooded by images from the day. We had seen paan chewing people spitting inside court rooms, kids way below the age of 14 working at a tea stall situated inside the court serving tea even to the magistrate. Disturbing sight of transgender accused harassed by policemen, muhuries, and peshkars openly accepting bribes and lawyers, fighting with clients for fees. Appalling sight of people tied to each other from the waist, getting pulled out of police vans and pushed inside lock up had shaken us. We had also come across people handing out bundles of notes and lawyers flocking outside big cars.

That day we had experienced arrogance of affluence and influence and kept wondering what fate awaits people who had neither. The question that haunted us was that the accused were at the receiving end of the inequality of power, where as the law summons every citizen the right to equality, in spirit of an egalitarian society as protected by the Article 14 of the Indian Constitution.

Commonwealth Human Rights Initiative

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. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

CHRI's objectives are to promote awareness of and adherence to the Commonwealth Harare Principles, 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.

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, Member Governments and civil society associations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's approach throughout is to act as a catalyst around its priority issues.

CHRI is based in New Delhi, India, and has offices in London, UK and Accra, Ghana.

International Advisory Commission: Yashpal Ghai - Chairperson. Members: Clare Doube, Alison Duxbury, Wajahat Habibullah, Vivek Maru, Edward Mortimer, Sam Okudzeto and Maja Daruwala

Executive Committee (India): Wajahat Habibullah – Chairperson. Members: B. K. Chandrashekar, Nitin Desai, Sanjoy Hazarika, Kamal Kumar, Poonam Muttreja, Ruma Pal, Jacob Punnoose, A P Shah and Maja Daruwala - Director.

Executive Committee (Ghana): Sam Okudzeto – Chairperson. Members: Akoto Ampaw, Yashpal Ghai, Wajahat Habibullah, Neville Linton, Kofi Quashigah, Juliette Tuakli and Maja Daruwala - Director.

Executive Committee (UK): Clare Doube – Chairperson. Members: Richard Bourne, Katherine O'Byrne, Meenakshi Dhar, Joanna Ewart-James, Frances Harrison, Sadakat Kadri, Neville Linton, Sashy Nathan, Rita Payne, Michael Stone.

© Commonwealth Human Rights Initiative, 2013. Material from this report may be used, duly acknowledging the source.

CHRI Headquarters, New Delhi 55A, Third Floor Siddharth Chambers Kalu Sarai, New Delhi 110 017 India Tel: +91 11 4318 0200 Fax: +91 11 2686 4688 E-mail: info@humanrightsinitiative.org	CHRI London Room No. 219, School of Advanced Study, South Block, Senate House Malet Street, London WC1E 7HU, United Kingdom Tel: +44(0) 207 664 4860, Fax: +44(0) 207 862 8820, E-mail: chri.admin@sas.ac.uk	CHRI Africa, Accra House No.9, Samora Machel Street, Asylum Down, Opposite Beverly Hills Hotel, Near Trust Towers, Accra, Ghana Tel/Fax: +233 302 971170 Email: chriafrika@humanrightsinitiative.org
--	---	---