

2013-2014

WORKSHOP REPORTS

[LEGAL REFRESHER COURSE ON PRE-TRIAL JUSTICE]

*Organized by Commonwealth Human Rights Initiative (CHRI) in collaboration with
State Legal Services Authority (SLSA), Rajasthan, the District Legal Services
Authority (DLSA), Jodhpur, in co-operation with Rajasthan High Court Advocates*



CHRONOLOGICAL OUTLINE OF THE COURSE

Workshop on Arrest and Remand

8th - 9th November, 2013

Workshop on Bail, Bonds and Legal Aid

14th - 15th December, 2013

Workshop on Women and Juveniles in Custody

30th - 31st January, 2014

Talk, Interaction and Exposure Programme on Pre-Trial Justice

27th - 28th February, 2014

Workshop on Alternatives to Imprisonment: Juvenile Justice and Probation Offenders Act

30th - 31st March, 2014

Workshop on Monitoring - Mentoring Plan

29th -30th April, 2014

Talk & Interaction: Ethics of The Legal Profession

Roundtable: Improving The Legal Profession In Jodhpur Through A Guided Pre-Trial Justice Programme

29th -30th May, 2014





ARREST AND REMAND

1st WORKSHOP

LEGAL REFRESHER COURSE ON PRE TRIAL JUSTICE

Purpose of the Course

The Legal Refresher Course has been inducted primarily for the legal aid advocates by the Prison Reforms Programme of the Commonwealth Human Rights Initiative (CHRI) in collaboration with State Legal Services Authority (SLSA), Rajasthan, the District Legal Services Authority (DLSA), Jodhpur, in co-operation with Rajasthan High Court Advocates Association, Rajasthan High Court Lawyers Association and the Rajasthan Prison Department.

The course intends to help legal aid advocates to find solutions to unnecessary and long detention of persons in police and judicial custody. Through a revisiting of constitutional values and legal safeguards of writs and bail; re-familiarizing with skills of opposing unnecessary custody, argumentation, cross examination, evidence-building; reiterating the core principles of legal aid, ethics of the advocate's profession and lawyer-client relationship, the course attempts to refine courtroom practices towards reaching the high goal of rule of law.

Inaugural

The Legal Refresher Course on Pre-Trial Justice was launched with much anticipation and fervor on 8th November, 2013 at Mapple Abhay, Jodhpur. The occasion witnessed the gracious presence of Mr. Tan

Singh, Secretary of District Legal Services Authority, Jodhpur, Hon'ble Justice Govind Mathur, Chairman, Rajasthan High Court Legal Aid Committee, Hon'ble Justice Anuradha Sharma, District Judge, Jodhpur, Advocate Ranjeet Joshi, President, Rajasthan High Court Advocates Association,



Advocate Dalip Singh Rajvi, President, Rajasthan High Court Lawyers Association and *Senior Advocate Mahesh Bora*, Rajasthan High Court. The programme also observed the presence of the long term mentors of the course namely *Mr. RK Saxena*, *Advocate Abha Singhal Joshi* and *Advocate Ajay Verma*. It was hosted by *Ms. Sana Das*, Programme Coordinator, Prison Reform Programme, Commonwealth Human Rights Initiative, New Delhi.



Prologue: Guest Speakers

Shri Tan Singh

The scholarly panel took ahead the charge of addressing 61 legal aid and pro-bono lawyers from Jodhpur and Alwar and sensitized them towards the significance of providing effective representation to indigent accused. Mapping the history of legal aid in our country, Mr. Tan Singh apprised the audience with the formation of various committees over the time to promote and provide free legal aid and emphasized on the constitutional mandate which demands that every citizen is bound as a matter of right to draw on quality and effective representation. Relying on various landmark Supreme Court judgments, he highlighted that the right to effective legal representation is not exclusive to trial but also exists during the time of first production and remand. He further discussed the various schemes of National Legal Services Authority (NALSA) which have been successfully implemented by the District Legal Services Authority (DLSA), Jodhpur and SLSA, Rajasthan. Mr. Tan Singh very approvingly recognized the efforts and dedication of Commonwealth Human Rights Initiative (CHRI), New Delhi in bringing together such healthy and fruitful association of all the stakeholders of criminal justice system.

Advocate Ajay Verma

Advocate Ajay Verma introduced the Legal Refresher Course to the lawyers. After citing the guidelines that were given by the court in the cases of *Suk Das* and *DK Basu*, he asserted that the objective of this course is to create a wave of lawyers who believe that mere representation of an accused is not enough, it has to be significantly effective. He also identified the lack of a holistic system to train and educate young lawyers regarding the practical legal problems. While doing so, he conveyed that the primary objective of this course is to sensitize young lawyers through a series of extensive and resourceful workshops.

Progressing to the structure of the workshop, he asserted that a combination of court skills, elements of fair trial, international standards, local Rajasthan practices and a voluminous study of Supreme Court and High Court Judgments would be thoroughly discussed to create a legal aid movement amongst the lawyers. He communicated that the course intended to focus on the skills required for cross examination, efficient client interaction, building strong arguments and evidence collection. A short clip of a *Qawwali* session that was conducted in one of CHRI's earlier workshops in Jaipur Central Prison was showcased to the lawyers to discern the importance of lawyer-client interaction. He identified the protagonist of this whole cause to be the voice of that one person who comes to the



court to get relief and is forced to leave because of lack of understanding and sensitivity on the part of the functionaries of the Criminal Justice System.

Hon'ble Justice Govind Mathur

Following suit, Hon'ble Justice Govind Mathur voiced the struggles of those belonging to rural families bearing paltry resources, when compelled to face the court practices by way of litigation. He very aptly labored the point that the mammoth financial loss which these people incur in order to keep up with the court hearings which continue for years at a stretch render them



mentally, physically and monetarily fatigued. Many of them, who are innocent, submit to their charges just to escape from this ordeal and end up suffering in jails (*Common Cause Judgment, 1994*). This heart-wrenching reality comes as a big blow to the basic essence of our Constitution as it very glaringly violates Articles 14, 20, 21, 22, 26 of the Constitution of India which bear a direct link to the freedom of these people.

He further highlighted the appalling conditions of the police stations where these legal provisions are just words in law books and their implementation is yet to see the light of the day. Another problem that he drew attention to is the arbitrary denial of parole to the convicts especially to those who do not belong to Rajasthan. 99% of the parole applications are heard in absence of lawyers making the applicant vulnerable to the prejudices of the authorities. To bring the lawyers closer to the poignant state of our

criminal justice system he cited two of his real life experiences which had resulted in gross violation of the accused person's human rights and had eventually rendered the procedure of justice toothless and inconsequential. In conclusion, he suggested that bringing in sensitivity and understanding towards the suffering of an accused would lead to creation of a healthier and more cooperative criminal justice system.

Mr. R.K. Saxena

Owing to absence of Mrs. Maja Daruwala, Mr. RK Saxena, Retired I.G., Prisons took the responsibility of addressing the lawyers on her behalf. He concentrated on alternatives to imprisonment which are possible and already present but seldom exercised. He conceded that the entire criminal justice system struggles to jail the accused person. Collective efforts are taken to imprison the person accused of an offence without actually realizing the true spirit behind the very provisions which give them the right to arrest a person. Hence, it is imperative to essentially deliberate upon the necessity of exercising these provisions at the first place.



Talking about his personal experience, he spoke about the 'undue' process of law which generally prevails in the jails and police stations. He also made it a point to straighten out that the aim of

this workshop is not to impel the lawyers to sympathize with the accused but to create a mindset that centers on administering justice to both the parties by proper implementation of Section 167 of CrPC. The Legal Refresher course will aim at creating a thought process amongst the lawyers which will be instrumental in erasing the practical and systemic difficulties witnessed by them in carrying on their work on legal aid. Appreciating the efforts of Rajasthan Legal Services Authority, he voiced the successful appointment of 450 remand and bail lawyers under the NALSA scheme in Rajasthan. However, in the same breath he also lamented that obstacles still exist in the form of non-availability of these lawyers during the first encounter of the accused person with the justice system. He reiterated Justice Mathur's concern that it is a common process to mechanically remand the accused persons to custody. Therefore, it becomes pertinent to ensure that in the garb of discharging the legal technicalities, the process of seeking justice for a person is not turning into the process of seeking punishment.

While discussing the aforementioned, it was laid out that a victim has the legislature, executive, judiciary and all social welfare departments' sustenance whereas an accused is no one's baby. He is a neglected entity who will always have to primarily come above the bias of the society before preparing his defence. To eradicate these unhealthy notions, the movement has seen its commencement from Jodhpur over which he expressed his elation. He encouraged the lawyers to contribute to the cause by taking up as less as one pro-bono case as opposed to twenty paid cases.

Mr. Ranjeet Joshi

Mr. Joshi apprised the participants about the legal provisions which are present in Code of Criminal Procedure and Constitution of India that have been included to aid the procedural transparency. He cited Article 21 of the Constitution of India, Section 100, 167, 172 of CrPC that can be used to curb illegal detention and custodial torture. He further delved into judicial precedents which have time and again asserted that the sanctity of human rights have to be maintained at the time of arrest the case of *Bhim Singh*, *Hussainara Khatoon* and *DK Basu* including the right to lawyer, right to have access to a telephone and right to speedy trial etc. He appealed to the lawyer to present 'forceful' arguments, make regular visits to the police station and acquaint themselves with the minutest nitty-gritty of law.



Mr. Dalip Singh Rajvi

Mr. Rajvi very correctly pointed out the problem of sketchy implementation of the plethora of provisions that we have in various statutes for enabling proper investigation. The solution to such shoddy implementation, he asserted, is to keep a check on the functionaries of criminal justice system. The same can be done by visiting prisons and keeping the clients (accused) as the top priority. The ethics of lawyers are of paramount importance and such propriety demands the lawyers to steer ahead with full dedication and commitment to a case.

Mr. Mahesh Bora

The evening was further illuminated when Senior Advocate Mahesh Bora termed the workshop as a bright opportunity for a healthy interaction between Bar and Bench. Working on his statement, he requested the Bar to put accent on the urgent necessity of 'application of judicial

mind' while deciding remand applications. He laid emphasis on the fact that not every case requires the remanding of accused person to police or judicial custody which can be proved by the number of remand orders, FIR and chargesheet which get quashed at a later/ appellate stage. Therefore, it would be convenient and useful if the magistrates deliberate upon the necessity of a remand order at the first production of the accused, thereby eliminating the 'routine' approach of giving remand and consider the option of discharging the accused person at the time of first production.

Moreover, he centered his address on the lack of police escorts which remains a never ending malaise for the accused. He insisted exercising the Supreme Court directions on this matter which very clearly state that lack of police escorts for court production of the accused can and shall never be taken as an excuse for not producing the accused in the court.

Methodology

9th November, 2013

1st Session

The Workshop on 'Arrest and Remand' began in full swing on 9th November, 2013 with the first session on "Listing of Illegalities in the Criminal Justice System" which was moderated by Advocate Ajay Verma. To break the ice between the participants, Mr. Ajay Verma started with a group activity for which they were divided into three groups and each group was given a theme which centered on 1) illegalities committed till the time of filing the chargesheet hardships, 2) illegalities committed in prison, 3) faced by family of the accused.



Each group was then provided with ten minutes to deliberate upon their respective topics. Enumerated below are the illegalities and problems they identified, vis-à-vis their topic:-

S. No.	Arrest to Chargesheet	Prison	Family
1)	There is often delay in first production.	The prison authorities offer no explanation for the lack of facilities and resources to bring in facilities in prison.	It disrupts the financial and social standing of the prisoner's family.
2)	Cases of custodial torture are rampant in Police custody and even in judicial custody.	Visiting hours too restricted. Even in those hours all the visitors are made to meet their advocates and family. Due to the congestion and paucity of time, the whole purpose of lawyer-client meeting gets defeated.	Mental harassment is caused.
3)	Family of the accused is generally kept into oblivion and not informed about the whereabouts of	There is a massive lack of medical facilities. The admission of a patient in the	Mostly the children get affected in terms of their education and general upbringing.

the accused which is illegal.	hospital is delayed till the situation becomes fatal.	
4) Police has a mandatory duty to provide the accused or his/her relative or any known person to the accused with a copy of the Remand Application and it has been often observed that the lawyers also don't take the initiative of demanding the remand application.	Unequal treatment is given to different prisoners.	The family members have to face constant harassment at the hands of police and other authorities. The family along with the accused is treated like a criminal.
5) It is a common grievance of the lawyers that the Magistrates turn a deaf ear to their pleas of obtaining remand application.	The allotment of prisons to the prisoners should be based on the nature and gravity of their offence. Petty offenders should not be made to live along with the habitual or serious offenders.	Quite often, money is extorted from the family of the accused giving hopes that the accused would be released.
6) Lawyers themselves are oblivious to the charges against which the accused was detained.	Petty quarrels break out amongst prisoners due to constricted basic facilities.	
7) The Magistrates fail to ask the accused about whether they have legal representation.	In general, there is a lack of honesty amongst the system.	
8) Physical Production is mostly avoided on lack of police escorts.	The prison authorities offer no explanation for the lack of facilities and resources to bring in facilities in prison.	
9) Erratic application of judicial mind.	There have been instances when mobile phones and other electronic gadgets are discovered in the jail premises.	
10) Visiting facilities are improper.	Visiting hours too restricted. Even in those hours all the visitors are made to meet their advocates and family. Due to the congestion and paucity of time, the whole purpose of lawyer-client meeting gets defeated.	
11) It has been noticed that even for local investigation the police demands three days of Police Custody		



it is

After listing out the illegalities, Advocate Ajay Verma insisted on sifting out the illegalities which violate the human rights of a person. All the advocates collectively voiced that all of the above is violation of the human rights of a person.

Response of the Panelists

Subsequent to the activity, the panelists were invited to clarify the concept of human rights and differentiate between violation of human right and legal right of a person. Mr. Mahesh Bora and Shri Mukesh, Chief Judicial Magistrate addressed the issue by saying that it would be wrong to call all of the above a human rights violation. They emphasized upon the fact that till the time a functionary acts within his/her legal parameters by following the prescribed procedure then he/she cannot be said to violate the human rights of a person. Mr. R.K. Saxena stressed on the fact that the illegalities which transpire in prisons are mostly due to lack of management on the part of the prison authorities to facilitate the meetings between the prisoners and their lawyers. Shri Tan Singh Charan recommended that he would try to convene a meeting with the Bar, Mr. Mahesh Bora, Shri Mukesh, the Superintendent of Prison and other legal aid as well as independent lawyers to come up with solutions to this problem.

2nd Session

The second session was an interactive discussion that was moderated by Advocate Abha Singhal Joshi. The objective of this session was to give a new outlook to the legal aid lawyers with regard to the legal provisions mentioned in Code of Criminal Procedure, 1973 for arrest, especially Section 41, new amendments and other safeguards.



Knowledge

Ms. Joshi apprised the lawyers of the human rights violation that take place due to sketchy implementation of the legal provisions which lead to illegal detention of a person and unreasonable remand extensions. She emphasized upon how not even a single violation of human rights can be ignored if we have a clear understanding of law and its scope. She began the discussion with jurisdiction and effective use of Section 482, CrPC. Mapping the stages of criminal procedure which follows when a person is detained for committing an offence, she apprised the audience with different aspects of FIR, arrest, investigation/interrogation, evidence collection.

Legal Strategies

- If the matter does not consist of the substance that it is required, one should not hesitate in moving to the High Court for quashing the FIR, order etc.
- She commented that as lawyers, we don't give sufficient importance to 'search and seizure' which needs to be changed.
- Talking about legal strategies, she talked about the importance of writ, appeals, revision that can be taken resort to for rendering justice.
- She encouraged the lawyers to consider law as their weapon to bring about a revolution in the criminal justice system and insisted that money is nevertheless important but it should not overshadow our passion for fighting for justice.

Subsequent to the discussion, Ms. Sugandha Shankar introduced the Reader which was prepared for helping the lawyers with jurisprudence and legal provisions on arrest and remand. The Reader comprises of summaries of important case laws, legal



provisions, and important guidelines given by National Human Rights Commission, National Police Commission and other Commissions.

10th November, 2013

1st Session

The morning session on 10th November, 2013 began with the introduction of the lawyers present in the workshop. Ms. Abha Joshi continued the discussion by centering her deliberation over arrest without warrant.

Knowledge

She illustrated that primary aim of legal aid is to bring and treat a well settled, well spoken person and a shabbily dressed, impoverished, beggared person on the same platform vis-à-vis legal procedure. For that, it is primarily imperative for the lawyers to take the received idea of profiling out of their minds and understand that the recipient of legal aid would always be someone who is impoverished.



- *Cognizable/Non cognizable offence*
 - She reasoned that arrest with warrant has to come through judicial action and it can be safely assumed that there has been an application of judicial mind in formulating that warrant which renders that arrest legal.
 - While discussing the procedure of arrest, she clarified that the age old notion that the difference between cognizable and non-cognizable offence is based on the quantum of punishment that every offence carries is flawed and the same can be corroborated with certain non cognizable offences which carry shorter punishments as well. Therefore, only that, which is in accordance with procedure and law will be called arrest and everything beyond that will be termed as illegal.
 - There occurs a flagrant violation of law when the procedure used for arresting a person contradicts the philosophy behind the intention of the legislation providing for arrest of a person.
 - The classification of offences based on their cognizability is not always clear for every statute and legislation, for example Protection of Children from Sexual Offences (POCSO), 2012. Therefore, it would be erroneous to call an offence 'heinous' based on whether it is non cognizable or not.
- *Preventive Detention*
 - Ms. Joshi substantiated the arbitrary arrests that police generally make by citing a hypothetical example of a poor Muslim laborer named Mohd. Amin. He is found sleeping on a bench in an inebriated form around the time of Independence Day. A discussion ensued about the legality of the arrest with the some of the lawyers terming the arrest as



illegal and some of them calling legal. However, after giving a careful reading of Section 42 and 107, it was concluded that the arrest was unlawful, arbitrary and uncalled for.

- She enlightened the audience as to how Sections 107, 109, 151 and 42 have become a complete package in themselves for gross misuse and how only poor and downtrodden folks come under the scanner.
- Moving on to handcuffing of the accused or

applying force on the accused while arresting him, Mr. R.K. Saxena simplified the Section by stating that the objective of force is to incapacitate him. Unnecessary restraint is not prescribed by law and the amount of force should be of that quantum that is required to get the accused under control.

Legal Strategies

The discussion took a more participative course when Ms. Joshi took up various case studies to elucidate the proper application of law at the time of arrest. Five groups were formed and each group was a case study which consisted of facts and a legal problem. Ten minutes were given to the groups to discuss and come up with a solution to the problem. The case studies took up illustrations of preventive detention, juvenile delinquency, custodial torture, and self-incrimination, procedure to be followed while arresting a person and a juvenile and centered upon how a lawyer can effectively intervene. These cases were taken up from the Reader which was circulated before for training purpose to acquaint them with the beneficial judgments the Court has given on arrest.

- Concluding the session, Ms. Joshi examined the special provisions for arrest of MP/MLA and armed forces and underlined the significance of medical examination of the accused.
- She also enlightened the lawyers about the intention of legislature regarding the filing of chargesheet which has seen a change with time. The original time limit that was given to the police to complete investigation was 24 hours which has now been extended to 60/90 days considering the overburdening of cases.
- She appealed to all the lawyers to intervene at the earliest and ensure that all the procedural formalities have been followed without discriminating any person on the basis of his/her financial status and social standing in the society.

2nd Session

Ms. Jaishree Suryanarayan took over the second session aimed to throw some light upon Section 167 of CrPC, which provides for first production and remand. She quoted the study of National Police Commission that 60% of total arrests are unnecessary and has no effect on crime prevention. She emphasized upon the intervention that a legal aid lawyer can make to prevent such unnecessary arrest. In the beginning of the session, Ms. Jaishree circulated pink and yellow colored chits amongst the participants. The pink chit had topics related to first production written on it and the yellow chit had topics related to remand written on it. The participants were then requested to cite their court experience they have had with first



production and remand depending upon their respective chits. Enumerated below are some responses from the lawyer:

First Production

- *Duty of Magistrate*
 - 1) To ensure that the accused has legal representation, if not private then legal aid.
 - 2) To properly enquire into the grounds for demanding police custody.
- *Case Diary*
 - 1) Section 172 of CrPC makes it mandatory for the police to maintain a case diary for every case and produce it when the accused is produced in the Court.
 - 2) It should consist of arrest memo, FIR, medical report.



- *Arrest Memo*
 - 1) It consists of details of the accused person including his height, weight, the clothes he was wearing, his background and his health condition.
- *Remand Application*
 - 1) The remand application is not given to the counsel of accused even when it is categorically asked for by the counsel.
- *Application of Judicial Mind*
 - 1) It is one of the most important aspects of trial. However, the application

of judicial mind is not very common.

Response of Panelist

Knowledge

Mr. Mahesh Bora put forth certain significant elements of Section 167 and very efficiently segregated the various ingredients of the provision.

- He took special notice of Sub clause (2) of section 167 and stated that the section very efficiently ropes in the magistrate who has jurisdiction to try a case and the magistrate who doesn't have jurisdiction to try a case. However, the intention of the legislature is to give power of discharging the accused to the magistrate who has the jurisdiction to try the case.



Legal Strategies

- *Application of Judicial Mind*
 - The application of judicial mind is necessary for three things:
 - a) Whether the detention of an accused is necessary or not?

- b) If the detention is necessary, whether the accused should be remanded to Police Custody or Judicial Custody?
- c) Ensure that the custody is for fifteen days.

- *60/90 days*

- Considering the number of cases that are quashed in High Court, it becomes imperative for the Magistrates to look into their orders and apply the 'judicial mind' efficiently.
- Coming to the 60/90 days part of Section 167, Mr. Bora clarified that the counting of 60/90 days is not from the date of arrest but from the date of first production when he was remanded for the first time.
- Further, he stated that physical production is necessary for first production which can be ensured through video conferencing as well. In case that is not followed, the remand order given by the Magistrate becomes illegal which guarantees the right to be released to the accused as the custody becomes illegal.

- *Copy of Remand Order*

- Mr. Bora also clarified that the certified copy of a remand order can be obtained on request from the court by the counsel of the accused and there is no restriction on the same. Illuminating a bit more on this aspect, he stated that the only restriction is on obtaining a copy of the case diary.

- *Bail at First Production*

- He also emphasized upon the significance of lawyers when it comes to moving bail application at the time of first production which most of the time doesn't take place. It is the duty of the lawyer to oppose the demand of police custody for the accused.
- Subsequent to Mr. Bora's comprehensive intervention, Ms. Sugandha Shankar requested the lawyer participants to share their court experiences while moving bail application at the time of first production. The lawyers very actively shared their experiences and apprised the panelists of their interventions regarding bail application.
- However, they stated that the Magistrates generally don't entertain such applications and



very routinely remand the accused to police/judicial custody even when there is no prima facie case made out against the accused.

- Mr. Tan Singh Charan appealed to the lawyer participants that they should present strong and brilliant arguments to the Magistrates.

- He further stated that they should primarily look into the jurisdiction of the Magistrate to try the case.

- Secondly, the lawyers should ensure the compliance of Section 41A, B, C, D of the CrPC by the Police.

- Lastly, they should have a careful study of

the grounds of arrest and remand. With that as the end note, the 1st workshop saw a scholarly closing.

CONCLUSION

Feedback forms that were prepared by the CHRI team were circulated amongst the lawyers for their valuable response to the workshop. They were asked to give their comments and critique on the Reader that was provided to them in the beginning of the session. To facilitate the training, they were also handed over a copy of Criminal Procedure Code, Indian Evidence Act and Indian Penal Code.

At the end of the workshop, Ms. Sugandha Shankar requested the participants to aid CHRI in obtaining the data from all the Magistrate Courts in Jodhpur metropolitan regarding:

I. At the time of First Production:

1. Total Number of First productions
2. Total Number of Persons released on bail with/without sureties at the time of first production
3. Total Number of Persons whose bail applications were rejected at the time of first production and out of them:
 - i. Total number of remanded to police custody
 - ii. Total Number of Persons remanded to judicial custody
4. Total Number of Persons released on bail but could not furnish surety
5. Total Number of Persons appointed with legal aid lawyer by the Court at the time of first production
6. Total Number of Persons represented by a legal aid lawyer appointed under the Model Scheme of DLSA at the time of first production
7. Total Number of Persons represented by a private lawyer

II. At the time of Subsequent Remand Hearings:

1. Total Number of Persons released on bail with/without sureties
2. Total Number of Persons whose bail applications were rejected and out of them:
 - i. Total number of remanded further to police custody
 - ii. Total Number of Persons remanded further to judicial custody
3. Total Number of Persons released on bail but could not furnish surety
4. Total Number of Persons appointed with legal aid lawyer
 - i. by the Court at a later stage
 - ii. by the District Legal Services Authority at a later stage
5. Total Number of Persons represented by a legal aid lawyer appointed under the Model Scheme of DLSA during further remand

III. Other Information:

1. Total Number of times defense counsel:
 - i. was present at the time of hearing
 - ii. was not present at the time of hearing
2. Total Number of times accused was:
 - i. physically produced before the Magistrate

- ii. was not physically produced before the Magistrate

Enumerated below is the list of participants, who actively volunteered to obtain the aforementioned data for the time period of 1st November to 30th November, 2013 from various courts.

S. No.	Name of the lawyer	Court
1.	Naresh Saraswat	ACJM 1
2.	Akhil Gupta	ACJM 2
3.	Deen Dayal Purohit	ACJM 3 and MM 1, 2, 3, 4
4.	Mahipal Singh Rajvir	ACJM 4, ACJM 6 and MM 8
5.	Naresh Kumar Sharma	ACJM 5

BAIL, BOND AND LEGAL AID

2nd WORKSHOP

LEGAL REFRESHER COURSE ON PRE TRIAL JUSTICE

PURPOSE

The second workshop of Legal Refresher Course on Pre-Trial Justice for Legal Aid Advocates was conducted on 14th-15th December, 2013 at Hotel Mapple Abhay, Jodhpur. The workshop centered on training of advocates regarding the legal provisions of Bail, Bond and Legal Aid. It discussed 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 and struggles to avoid such person to be remanded again to custody.

The two day workshop was organized for the legal aid advocates appointed under the Model Scheme for Remand and Bail Lawyer Scheme as well as Panel Lawyers appointed under NALSA's Retainer Lawyers Scheme. It also marked the presence of certain lawyers from Alwar who have been associated with CHRI's previous workshops on legal aid.

The aim of this workshop was to find necessary amendments in the subject scheme for effective and efficient working of the guidelines of the scheme so as to make it more adaptable to the ground realities.

Group discussions were conducted for a better understanding of the scheme focusing on the stage at which legal assistance is required and to what kind of people. The panelists also contributed to find the best possible way to fulfill the mandate under the scheme.

METHODOLOGY:

The agenda of the workshop was primarily to hold a discussion to dwell upon the implementation of Remand and Bail Lawyer's scheme. Further, it concentrated on the recognition of an institution whose co-operation is required along with copious resources to provide relief to the beneficiaries of this scheme. It was aided by a short presentation summarizing the guidelines of the scheme. Sr. Adv. Mr. Mahesh Bora, Adv. Ms. Abha Joshi, *Visiting Faculty, National Police Academy*, Adv. Mr. Ajay Verma, *Fellow, International Bridges to Justice*, and Mr. R.K. Saxena, *Retd. I.G. Prisons* formed the core panel to guide the participants on various facets of the scheme.



The next day focused more on comprehending the statutory framework that exists on Bail and formulating effective strategies that would efficaciously facilitate the disposal of lawyers' services under these two schemes.

The participants were asked to share their observations on court practices and their experience on obtaining bail. This kind of an interaction was aimed at devising various methods that would prove rewarding in improving court and legal aid practices and curbing illegal detention and violation of legal safeguards against such detention. Further, an exercise on perception and discussion was conducted for gauging the conceptual knowledge of the participants regarding bail provisions which was followed by case studies and discussion on the landmark cases.



RECOMMENDATIONS AND SUGGESTIONS:

14/12/2013

Plenty of conundrums regarding the Model Scheme were addressed and it was proposed that an official document shall be drafted by CHRI to seek clarification from respective authorities. Enumerated below are certain suggestions which were made during the discussion:

- 1) Guideline 7 of the model scheme that says 'to remain present during remand hours' requires elucidation on what is meant by the mentioned "remand hours". As there are no defined 'remand hours' in the court

proceedings, it was recommended by Mr. R.K. Saxena that either the subject remand hours should be fixed keeping into consideration the flexibility of a lawyers' schedule so that they don't compromise on other cases or the detainee should be produced without the need of remand lawyers.

- 2) It was suggested by the participants that the six months timeline set by the scheme under Guideline 12 is not adequate. Sr. Adv. Mahesh Bora recommended that the duration of the scheme should increase and it should enroll at least 50 lawyers, if not more.



- 3) It was suggested that a clarification should be sought regarding the fate of a case after the expiration of the associated lawyer's term, i.e. 6 months. Adv. Abha Joshi commented that it is a hassle for the accused as he has to start from the scratch with every new lawyer. She further added that clarification is required for the continuity of the services of the respective lawyer on rotation (Guideline 12) of the legal aid lawyers within 6 months. Sr. Adv. Mahesh Bora recommended that the scheme should not be limited only to the charge-sheet period, as bail and remand lawyers are limited to that stage and then it is taken up by the panel lawyers. The role of the lawyer should not be limited to the stage of bail and remand but the entire case should be dealt by them. He also added that this Model Scheme should be included in the Free and Competent Legal Services Scheme of National Legal Services Authority (NALSA) rather than acting as a separate scheme. It is a fantastical scheme as it unnecessarily creates an omnibus provision where there need not have been. It was argued that panel lawyer scheme should be the primary scheme which should encompass the Bail and Remand scheme.



- 4) The qualification for the Legal-Aid Counsel of 5 years' experience under Guideline 5 was also found inappropriate considering that fresh lawyers are more interested in the concept of legal aid. It was suggested that the National, State and District Legal Services Authorities should be training all the fresh law graduates. Moreover, those lawyers who have taken up practice which includes arguing bail and remand should be appointed. A good concoction of qualifications and term of practice should be taken into the criteria of appointing lawyers in the scheme to attract the crème de la crème.



- 5) 5) The advocates further suggested that the present communication gap between a lawyer and the detainee should be diminished. Data should be exchanged on a procedural basis (daily/ weekly/ monthly) for the lawyer to keep abreast of the cases. Even the courts should be active and should not ignore the pleas of the accused person's

lawyers. It was recommended that legal aid authority should organize monthly meetings to keep a check on the progress of the lawyers. Moreover a 'Legal Aid Diary' should be maintained in every court for all lawyers, present or future, so as to follow up on the past cases.

- 6) It requires more clarity regarding the presiding officers so as to ascertain which lawyer to be called from both the schemes and at what stage. There was a demand for more legal awareness about the provision of legal aid services under the model scheme.
- 7) It was also pointed out that in some courts remand and bail lawyers are called only at the stage of presenting evidence and not before the filing of chargesheet (pre-trial stage). Courts frame the charges themselves without holding any formal hearing. Therefore, it was recommended to request the acting District Judge to call the lawyer when the accused is found to have no form of legal representation. Ideally, however, the accused should be asked whether he has legal representation at the time of first production itself and if not, he should be informed of his right to avail legal aid on behest of the State.
- 8) It was brought into notice that the scheme is not executed in Alwar and still remains merely a documentary scheme and the appointed lawyers mostly don't appear in their respective cases. Adv. Abha Joshi lamented that this kind of a practice is a clear reflection of how as we approach the grass root level, the relevance of such schemes diminishes. While discussing the remuneration of the lawyers appointed under this scheme, she contended that a fixed honorarium of Rs. 1000/- per month for discharging their functions is a negligible amount. The government should respect the spirit of such lawyers and reconsider their remuneration as it eventually affects the quality of their work. Mr. Bora shared the same view and stated considering the earnestness of legal aid services, the disposal such services should either be made pro-bono or a respectable honorarium should be fixed. On a related note, Mr. R.K. Saxena recommended that orientation training should be conducted for remand and bail lawyers and the monetary compensation should be such that should inspire the lawyers.

15/12/2013

SESSION 18*

On second day of the workshop, a training exercise was conducted for ushering in clarity on various concepts relating to bail which included release on personal bond, station bail, bailable offences, non-bailable offences, and



bail under special laws like Narcotics, Drugs and Psychotropic Substances Act (NDPS), Prevention of Atrocities against SC/ST and preventive detention etc. The advocates were asked to share their experiences on the cases they have dealt with regarding bail. The panelists rectified the mistakes, if any, made by the advocates.

Adv. Abha Joshi highlighted the significance of the duty of the advocates through a PowerPoint presentation. She explained that it is paramount to have a strong grip on factual situation of a case and the corresponding sections to be applied. There is also a requirement of good knowledge of a precedent's key features as it helps in broadening

a lawyer's horizon. On the importance of bail, she asserted that bail is a right and jail will always remain an exception.

SESSION II

In the second session some key judgments were analyzed for clarity and better understanding of the advocates. The panelists shared their experiences on various cases.

Adv Mahesh Bora pointed out the importance of the knowledge of the key cases such as *Maneka Gandhi v. Union of India* and the diverse use of the subject judgment. The judgment of *Moti Ram & Ors vs. State* was discussed in detail by Adv. Ajay Verma by drawing attention on the philosophy or principle behind bail, the reason behind its discriminatory application and the measures to be taken to rectify the same.

Ms. Mrinal Sharma shared through a presentation (attached as *Annexure II*), the bail reform projects from other countries which were conducted to find an alternative to expensive bail provisions. The presentation encompassed the Manhattan Bail Project, London Bail Project, Canada Bail Project, South Africa Bail Project and Malawi Bail Project which were conducted mostly by VERA Institute of Justice. It showcased how these bail projects aimed at reforming the bail provision in their respective nations.

They took notice of various factors like employment history, accommodation, family and local ties to build a trust factor of the accused persons. London Bail project introduced the concept of bail hostels for providing accommodation to accused person. Canada Bail Project initiated a four step process comprising of interview, verification, selection, supervision to ascertain the chances of an accused to run away from the Justice System. Malawi Bail Project pioneered a Paralegal Advisory Scheme for better legal representation and self help. The main aim of the presentation was to make the participants aware that such schemes can also be introduced in India to curb the current crisis which the undertrial prisoners have to suffer. Further, it mainly highlighted that monetary compensation or financial loss on part of the accused person is not the only method which would ensure the presence of such person throughout the trial.



FEEDBACK:

Evaluation and suggestion forms were distributed to the present advocates to gather their viewpoint. All of the advocates were of the opinion that it is a guaranteed right of the weaker section to get free legal aid and to provide such free legal aid to the poorer section is a matter of delight for the advocates.

Most of the advocates present under the free legal aid enroll themselves for the mere compassion of helping the weaker section and for broadening the scope of their legal practice. Mostly, all of them were aware of the information regarding the Model scheme.



All of them felt that they were not provided sufficient training after joining the free legal aid scheme and were of the opinion that there is a dire need for such training programmes.

They stated that the workshop organized by CHRI has increased their knowledge on the difficulties faced by the weaker section, on the rights of the weaker section and certain crucial aspects of criminal law.

WOMEN AND JUVENILES IN CUSTODY

3rd WORKSHOP

LEGAL REFRESHER COURSE ON PRE-TRIAL JUSTICE

Introduction

The third workshop of Legal Refresher Course on Pre-Trial Justice for Legal Aid Advocates was conducted on **30th-31st January, 2014** at Hotel Mango, Jodhpur. The two day workshop was organized for the legal aid advocates appointed under the Model Scheme for Remand and Bail Lawyer Scheme as well as Panel Lawyers appointed under NALSA's Retainer Lawyers Scheme. It also marked the presence of certain lawyers from Alwar who have been associated with CHRI's previous workshops on legal aid.

The workshop centered on training advocates on strategies specific to juveniles and women and their children in custody. In order to do justice to the complexities involved with the theme of the seminar, experts from the multiple agencies involved in safeguarding the rights of juveniles and women in custody were invited and we were fortunate to have their presence.

The Seminar was divided into three themes:

- Access to Justice in the Criminal Justice System: Shaping Empathy and Strategy for Women & Juveniles in Custody was discussed on the
- Legal Representation for Women & Juveniles in Custody: The Issues, Challenges & Strategies
- Custodial Treatment, Care and Rehabilitation for Women & Juveniles in Correctional Institutions: Policy, Practice and Solutions

The panelists who graced the occasion were:

- ❖ *Prof B.B. Pande, Academic expert in Criminal Law and Juvenile Justice*
- ❖ *Mr. M.K. Devarajan, Member, State Human Rights Commission*
- ❖ *Mr. Mukesh, Chairperson, JJB, Jodhpur*
- ❖ *Shri Tan Singh Charan, Member Secretary, DLSA Jodhpur*
- ❖ *Mr. R.K. Saxena, Retd. I.G. Prisons*
- ❖ *Dr. Upneet Lalli, Deputy Director, Institute of Correctional Administration, Chandigarh*
- ❖ *Ms. Kavita Srivastava, PUCL, Rajasthan*



- ❖ *Senior Adv. Mahesh Bora*
- ❖ *Adv. Abha Joshi*
- ❖ *Ms. Manmeet Kaur, Probation Officer, Jodhpur*
- ❖ *Mr. Rakesh Mohan, Superintendent, Jodhpur Central Jail*
- ❖ *Dr. Lad Kumari Jain, Chairperson, Women's Commission, Rajasthan*
- ❖ *Mr. Anil Vyas, Deputy Director, Social Justice & Empowerment Department, Jodhpur*
- ❖ *Ms. K.B. Vandana (IPS), Sardar Patel University of Police Security & Criminal Justice, Jodhpur*
- ❖ *Ms. Mitu Yadav, Jodhpur Women's Jail*
- ❖ *Adv. Manjoo Choudhary*
- ❖ *Adv. Meena Gharu, DLSA Jodhpur*
- ❖ *Ms. Mintoo Choudhury, Undertrial, Jaipur*



The two day workshop involved bringing together the voices working on juveniles and women in custody at the grass root level, understanding the gaps in the practices and simultaneously seeking guidance and advice from the experts to formulate strategies to resolve these problems and leakages.

Recommendations on skills and strategies required to be developed by legal aid lawyers:

Among multiple recommendations which were discussed in the workshop, the ones which deserve special mention with regard to skills and strategies required to be developed by legal aid lawyers were:

- Give special attention to women in custody keeping in mind the Supreme court's judgement in R.D. Upadhyay vs State Of A.P. & Ors
- Avail benefit of reforms undertaken by Mahila Thanas for women clients in custody
- Make use of Justice Verma Committee recommendations on medical examination for women in custody
- Ensure that a woman in custody gets an effective hearing in court
- Improve lawyer-client relationship by speaking to their women clients in private and with sensitivity to get a better understanding of their offences and to effectively assist them

- Take due cognizance of Section 11 of the Juvenile Justice Act in ensuring release of juvenile offenders. The Section limits police powers and prevents them from apprehending a juvenile in offences under 7 years of imprisonment.
- Use liberal bail provisions for women in custody, particularly the elderly and physically challenged
- Use provisions of the Probation of Offenders Act like Section 3 where accused is released with admonition only and frees youth of the stigma of a criminal record
- Use Section 4 and Section 6 of the Act for release of first time offenders, petty offenders, offenders below the age of 21, and women
- Bring to the notice of the SHRC cases of torture by police, be it in case of confessional statement or a petty traffic case, or excesses in cases dealt with by Executive Magistrates
- Check the conditions in the custodial institutions housing women and juveniles when they handle their cases
- Check if their client in custody is benefitting from the Palanhaar scheme which applies when one parent is dead or in custody
- Use PILs in instances of human rights violations where SHRC recommendations are not being complied with by criminal justice agencies
- Uphold right to counsel by refraining from refusals to represent accused persons even in heinous offence cases
- Make judicious use of habeas corpus petitions and complaints to SHRC with an ascertainment of genuineness of cases.

Other recommendations for institutions of the Criminal Justice System and its officers:

- Organise surprise checks by CJMs in police stations to keep illegalities of police in check
- Implement liberal sentencing provisions for women in custody already available in the Cr.P.C
- Release elderly and physically challenged women in custody using liberal bail procedures
- Increase women's force in police
- Install CCTV cameras in police stations
- Build more Open Jails for women as in Yerawada and Kerala
- Have separate kitchens for women as provided for in the Model jail Manual
- Improve sports and vocational facilities in women's jails to improve their overall well-being
- Improve rehabilitation and re-integration schemes for women prisoners
- Improve 'mulaqat' system for women prisoners by introducing travel allowances for prisoners' families
- Appoint more women Non-Official Visitors
- Initiate Juvenile Police Units in all police stations who will be trained to inform and assist with early legal aid facilities

- Make available 'fit institutions for fit persons' so that CJMs are empowered to act in the spirit of the Act
- Regularise oversight of prison conditions by judicial officers and the non-official visitors appointed by Home Department
- Improve internal monitoring over jail conditions and custodial treatment with grievance redressal mechanism
- Regularise the reporting by Jail Superintendents to the DG Prisons on prison conditions and problem cases for early detection and action
- Raise the problem of jail conditions before judicial and non-official jail visitors
- Prepare checklists for judicial and civilian officers to guide effective jail visits
- Solve the problem of delayed court production of women undertrials by weekly court by remand magistrate in jail premises to further speedy trial
- Build separate reserve force for escorting prisoners to court and hospitals
- Raise questions in the Assembly regarding shortage of basic facilities for women in custody to ensure life and dignity in jail
- Ensure psychiatric facilities in women's jails and mobilize visiting allowance for counselors and psychiatrists
- Improve allocations for jail and other custodial institutions like women's homes and juvenile observation homes
- Need to link up information through e-governance for effective coordination between court, probation officer, police station and jails
- Ensure viable and low cost telephone facilities inside the jails
- Conduct monthly coordination meetings involving all agencies to arrive at rehabilitation solutions/alternatives for homeless women released on permanent parole; for parole rejected cases where unfair criteria has been used such as 'participation in vocational activities'
- Provide 'meaningful' work inside the jails that will improve rehabilitation and reintegration
- Make categorical mention in probation officers' report regarding the merit of a parole case, so that Parole Committee may not reject parole in any case mechanically on the plea of an 'unanimous' opinion/decision
- Improve and train capacities of jail staff for sensitive administration and problem solving with a correctional approach
- Monitor Victims Compensation Scheme under Section 357 and 357 A of the Jail Manual and also improve prisoners' wages
- Separate the premises for observation homes and balkalyan centres for juveniles
- Segregate juvenile in 8-10 years category from serious juvenile offenders in observation homes

- Resolve the problem of determining appropriate custodial institution for 18 year old offenders. Age of innocence in the JJA is still dependent on the IPC and adult criminal justice system
- Train police in the requirements of the Juvenile Justice Act and Probation of Offenders Act for their effective implementation
- Improve capacities of lawyers and magistrates to better understand and implement the laws of protection for women and children in custody and conflict with law
- Increase and improve jail visits by legal aid lawyers to the jails in number and quality for more openness, transparency and effective representation

Important Outcomes:

- Shri Tan Singh Charan, Member Secretary, DLSA Jodhpur committed towards formulating a legal aid framework for improving jail visits by lawyers and timely socio-legal assistance. He proposed that a set of 30 volunteer lawyers could devote at least 1 day a month for jail visits, and so, pledge 12 days a year for socio-legal assistance to men and women prisoners at Jodhpur Central and Women's Jail. He committed to remove all bottlenecks before this volunteer set of advocates vis-à-vis government departments to ensure that Jodhpur Central Jail becomes a Model Jail with regard to legal aid and assistance. A list of 30 lawyers was immediately drawn up in the Seminar with the following outline and mandate:
- Weekly visits: 30 lawyers to go into Women's Jail and Men's Jail in Jodhpur Central Jail facilities every Saturday
- Duration: 2 hours to be given to men's jail and 1 hour in women's jail
- Timetable & Responsibilities: Calendar and Roster Plan to be prepared by DLSA for these 30 lawyers. Diary to be maintained by lawyers and DLSA regarding visits, cases taken up and action taken
- Authorisation: Identity Cards to be prepared by issued to the volunteer lawyers by DLSA, Jodhpur
- Tasks: (a) Identifying the new undertrials entered the day before lawyer's visit in jail and requiring representation; (b) Identifying problems in jail conditions, facilities, and difficulties of jail authorities in addressing them
- Legal Awareness: DLSA to print judgments on prisoners' rights on flex sheets and put them up inside both women's jail and men's jail
- Legal Aid Jail Register: DLSA to place a register at the entry point of the jails to note the requirement of lawyers by new entrants

- Shri Tan Singh Charan, Member Secretary, DLSA Jodhpur also sought another set of advocates as volunteers for the JJB as well. This list will be prepared soon.
- Mr. Devarajan, Member, State Human Rights Commission (SHRC) committed to strengthening jail visits in collaboration with CHRI and Sardar Patel University of Police, Security & Criminal Justice, Jodhpur
- Shri Tan Singh Charan, Member Secretary, DLSA Jodhpur entrusted CHRI with the responsibility to conduct a special training of Jodhpur legal aid lawyers on the Juvenile Justice Act and Probation of Offenders Act as a follow-up to the Seminar.

TALK, INTERACTION & EXPOSURE PROGRAMME ON PRE-TRIAL JUSTICE

4TH WORKSHOP

LEGAL REFRESHER COURSE ON PRE-TRIAL JUSTICE

Introduction

On 27th-28th February, 2014, Commonwealth Human Rights Initiative (CHRI), New Delhi along with Rajasthan Legal Services Authority (RLSA) and District Legal Services Authority (DLSA), Jodhpur organized a 'Talk, Interaction & Exposure Programme on Pre-Trial justice'. Mr. B.L. Soni, Director, Rajasthan Police Academy and Mr. Vishnu Kant, DCP (HQ) were invited over a course of two days to brief the legal aid lawyers of Jodhpur on the developments that have taken place in the law and police practices vis-à-vis police reforms and pre-trial justice in Rajasthan. Exposure to these practices was provided to the lawyers by way of visits to five different police stations of Jodhpur district, namely, *Pratap Nagar, Shastri Nagar, Khanda Phalsa, Mandor (rural) and Mahila Thana (East)*.

The two days workshop witnessed three major attractions, namely:

- 1) Interaction with Shri B.L. Soni, Director, Rajasthan Police Academy
- 2) Exposure visits to Police Station
- 3) Interaction with Shri Vishnu Kant, DCP (HQ)

Commencing the workshop, Advocate Abha Joshi introduced the concept of prison reform and brilliantly explained the significance of correctional administration. She spoke briefly about the participation of all the agencies of the criminal justice system to ensure that justice is administered to the needy. While discussing the structure of police, she explained the importance of understanding the scope and necessity of police powers. To elaborate on all these aspects, she invited Mr. B.L. Soni to acquaint the lawyers with the role of police as an agency of criminal justice system.

Mr. B.L. Soni's honest and unbiased approach towards illustrating the practices followed by the police organization was informative to say the least. Enumerated below are certain significant points that he made during the discussion.

Importance of 'Due process of Law'

- 1) He began with stating India's attitude towards 'due process of law'. He cited the example of Kasab's trial to affirm that aim of all the agencies is to administer justice to all notwithstanding the character of the person at the receiving end; justice should be

delivered to him. Further, he asserted that it is paramount for a democratic country like India where independence and indiscrimination is very important to render fair and reasonable procedure.

- 2) A strict compliance of the legal and procedural regime is expected from the Police officers. Since the very beginning they are conditioned to view the accused as an antagonist and they primarily aim to provide relief to the victim. However, the emphasis should always be on the delivery of justice.

Procedure and fallacies

- 3) He spoke at length on the kinds of arrest the CrPC mandates. They are:

Substantive Arrest

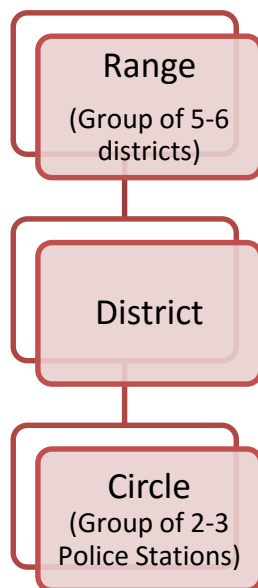
- a) This kind of arrest is covered under Section 154 and 156 (3) of the CrPC. These sections mandate a compulsory registration of FIR and an order of arrest from a Senior Officer or Magistrate.
- b) He threw light upon Section 41A which mandates a notice of appearance instead of arrest. According to him, the police interpret this section to cover the offences for which a person can be punished between 3-7 years. While discussing the same, he didn't hesitate in saying that the implementation of Section 41A remains a gray area. As there is no prescribed time limit for keeping the person in custody in the name of appearance, he hoped for some clarity on it by way of an amendment in times to come.
- c) However, he cleared the air on the aspect of those offences which carry punishment of more than 7 years by saying that they are arrested and not given a notice of appearance. In such cases, grounds of arrest have to be recorded and informed to the arrested person.
- d) Further, the compliance of the guidelines given in the DK Basu judgment is ensured by the Senior Police officers. And if it is seen that the compliance is erratic, a chargesheet is filed immediately against the erring officer.

Preventive Arrest

- a) Speaking on Preventive Detention, he enlightened the lawyers about the 'should be' procedure and 'as it is' procedure. He stated that ideally a detainee under Section 151 has to be produced before the Executive Magistrate, Commissioner or the SDM within 24 hours and the grounds of arrest have to be recorded.
- b) If there is found to be an imminent danger against the release of the accused person then he is not given bail immediately, instead he is given a conditional bail.

- c) After hearing the statement of the other party, the accused is not sent to judicial custody and is temporarily kept in jail.
- d) Talking about the application of the subject section, Mr. Soni apprised the lawyers that most of the times the cases in which Section 151 is invoked are related to family feuds or clashes between two parties that are known to each other. It has been generally observed that police notices the aggressor between the two parties, detains the person under this section and by the time he is produced before the Magistrate the fight gets resolved. Therefore, there is a bit of discretion involved in identifying the aggressor for which the police always receives condemnation.

Structure of Police



- 1) Taking on the structure of police, Mr. Soni acquainted the lawyers that on grass root level there is a 'circle' which consists of two or three police stations. Various circles come under one 'district' and five or six districts come under a 'range'.
- 2) A DySP (Deputy Superintendent) is the Circle Officer. He is also the first supervisory level officer.
- 3) An SHO (Station House Officer) is the head of a police station and is also the compliance officer.
- 4) A Head Constable is the Chief Record Keeper of a Police Station who maintains all the registers (*roznamcha*, *maalkhana* register, history sheeters etc) and the lowest rank is that of a Beat Constable who patrols the streets. All the constables have to undergo a mandatory training of 45 days with respect to information technology.
- 5) A District is further divided into two branches, namely: Crime and Special. The Special Branch deals with passport verification or character verification etc.
- 6) Superintendent of Police (SP) is in charge of police functions and responsible for all the cases of custodial violence. If the SP is not available, one can approach the Crime Assistant (CA). A CA has all the records of the crime in the district and related information.
- 7) The micro level policies have to be monitored by the Deputy Superintendent of Police (DSP).
- 8) Inspector General (IG) is in charge of many districts and is mainly accountable for any human rights violations in that district.
- 9) Director General (DG) is assisted by Additional DGs who hold certain specific profiles namely civil rights, crime, vigilance, intelligence, training, welfare, armed battalion, academy etc.

- 10) Mr. Soni acknowledged that investigation remains the sketchiest part of police functions as most of the Investigating Officers are of Sub-Inspector or Inspector levels. Due to plethora of cases, erratic work schedule and lack of training, their capacities and skills are not honed to the required extent.
- 11) There is also grievance redressal machinery by the name of *Sugam* Portal in Rajasthan wherein any person can lodge his complaint electronically and a reply has to be mandatorily generated.
- 12) Every district has a control room. All calls made to 100 get directly connected to the control room. All the data regarding arrest is recorded in a proforma.
- 13) In cases under Information Technology Act, a written permission of SP is required before arrest as mandated by a recent circular of Rajasthan Police.
- 14) There is a programme called Crime and Criminal Tracking Networking System (CCTNS) which was started in Jaipur (west) wherein an online *roznamcha* is maintained for better accountability.

Areas that need judicial intervention

- 1) The stage at which the accused has an absolute right to lawyer does not have much deliberation upon it. There is a need of some clarity on the same.
- 2) Section 41A of CrPC provides for issuing a notice of appearance to a person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence remains an incoherent provision. There is no prescribed time limit within which a police officer has to complete his identification process, therefore, hinting that a police officer has complete discretion to call a person again or keep him for as long as he thinks fit in the police station. Besides, it also needs attention of the judiciary to carve out more apparent criteria for serving a notice.

Recommendations

Lawyers

- 1) Talking about the Criminal Justice System, Mr. Soni stated that there are four pillars to the CJS, namely: Police, Prosecution, Judiciary and Defence Lawyer. The last pillar, i.e. the lawyer community is the most important part of the entire justice system. Emphasizing on the responsibilities of a lawyer, he suggested that if there are strong reasons to believe that 'due process of law' has not been followed, then one must challenge it.

While discussing matters of paramount importance, he claimed that matters related to national security, gruesome bodily offences, serious breach of law and order and those involving women, children and elderly should always be on priority for a lawyer. A certain level of sensitivity is required for such cases on part of the lawyers. Giving an instance of best practices around the world, he acquainted the lawyers about an Australian programme called 'Building Trust' that

works on community policing and appeals everyone to come together and advocate for zero tolerance of crime against women and children.

- 2) He urged the lawyers to accustom themselves with the latest developments in evidence law regarding admission of electronic evidence etc as it might be highly beneficial to the lawyers for strengthening their cases.
- 3) Further, to reduce the pendency in court, he suggested the lawyers to bring forth the violations committed by police before the senior police officials before approaching the courts as the courts are already overburdened.
- 4) He ascertained that at present there is a wave which is producing some really brilliant and honest officers. Therefore, the stereotypical perception which one has towards the police forces needs to change. There has already been a significant amount of change that one can see from the number of police officers who are being prosecuted and are now behind bars for violating human rights.

Police

- 1) Record not maintained for those who are called in for investigation and arrested later. There is no legal requisite for such but Mr. Soni urged that for administrative purposes it should be maintained so that illegal detention is curbed.
- 2) CCTV cameras should be installed at three places in a police station, namely, entrance of a police station, the place where the SHO sits and lock up.

Briefing

Mr. Soni took charge of briefing the lawyers on the exposure visit that they were to make on 28th February, 2014. He primarily concerned himself with the code of conduct that one was to follow in a police station. He urged that as a lawyer, one should visit a police station with an open and liberal mind and not with an investigative mind. Further, he insisted on knowing more about the functioning of a police station like seeing the kinds of registers that are maintained to record every minute detail of an event that transpires within the premises of a police station. On a related note, he advised the lawyers to look into specific cases of a particular beat and take a look at the infrastructure of a police station.

He assured the lawyers that the visit to a police station would prove fruitful and informative for their future discourse with the agency. Mr. Mahesh Bora's dynamic moderation could be seen by the efficiency of the discussion.

Exposure Visits

The morning of 28th February, 2014 witnessed exposure visits to different police stations. Following is the list of lawyers who went to their allotted police stations:

S. No.	Police Station	Name of the Lawyers
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1)	Pratap Nagar	Narendra Bhansali Ranjana Mertia Deen Dayal Purohit Manoj Yadav Abida
2)	Shastri Nagar	Krishna Chand Laxmi Ramawat Kshama Purohit Virat Sunita
3)	Khanda Phalsa	Sunil Ojha Dharmendra Virendra Suresh P Arikh
4)	Mandor (Rural)	Sheetal Sharma Ghanshyam Saraswat Chandra Bhan Mahesh Kumar Saini
5)	Mahila Thana (East)	Tahir Ahmad Arvind Yadav Ranjana Sharma Harendra Rinwa Mithun Sharma

Each group was given a certain set of question to focus on apart from the general discourse that they would have with the SHO of the Police Station starting from procedure related to registration of crime, procedure related to arrest and corresponding record, court production, police remand, right to lawyer, bail, facilities and amenities in jail, investigation and search and seizure.

Importantly, the Station House Officers were very cooperative and cordial towards quelling the queries of the lawyers. A tour of the entire police station was given by the respective SHOs and a deep insight into the computer software and other related programmes was also given. Decidedly, this exposure visit helped all the lawyers in breaking the kind of barrier that one has with the police force.

De-briefing

For a de-briefing session, Mr. Vishnu Kant (DCP, HQ) was present to address the questions of the lawyers regarding their experience and clarity on certain matters. The session was moderated by Senior Advocate Mahesh Bora. Following is the discourse that transpired between the lawyers and Mr. Vishnu Kant vis-à-vis certain specificities of the police station they visited:

a) *Accountability*

The lawyers stated that they learnt about certain programmes that are being run by the Rajasthan Police Department namely Computer Integrated Programme Application (CEPA) and Crime and Criminal Networking Tracking System (CCTNS). The former is a programme that feeds a handwritten complaint into the computer, making it an online database of FIRs. The latter is a flagship programme of Rajasthan which has seen an investment of Rs. 2000 Crore. It is to maintain an online *roznamcha* for better accountability. It has been running successfully in more than 16,000 police stations all across Rajasthan through which all the senior police officer will remain connected.

b) *Maalkhana Register*

The *Maalkhana* register can be used as evidence under Section 123 of Indian Evidence Act in cases related to excise and imported material.

c) *Stopping the maintenance of Roznamcha*

- There were questions from lawyers who visited the *Shastri Nagar* police station about bringing the maintenance of daily diary to a halt in certain situations. Mr. Vishnu Kant clarified that in no situation can the maintenance of the daily diary be stopped, however, in certain cases the record keeping can be deferred up to a certain time.
- He further enlightened the lawyers about the possibility of deferment in the situations that turn out to be catastrophic and require more police force than generally needed. In these situations the constables who are primarily responsible for record keeping are compelled to join the force in field which eventually leads to the deferment of making entries in the daily diary.
- While illustrating on the use of Daily Diary, he stated that all the details regarding routine of a police station, starting from recording messages from senior police officials, control room, information regarding recovery, filing of chargesheet, the details of the accused person who is brought in, information regarding any incident that occurs in the vicinity of the police station etc.
- Further, he explained us that in a day the entries are made twice a day, once in morning at 6:00 and other at 8:00 in the evening when the diary is closed for the day.

As the discussion took an informal course, he said that in certain cases where there are found to be certain kind of complications the entry is delayed. The primary reason for the same is that the Station House Officer is liable for every detail that finds mention in the Daily Diary. Therefore, for his scrutiny sometimes the record is delayed. Also, the multiplicity of events during fast changing scenarios sometimes demands that recordings be done separately and then a 'fair' version goes into the Daily Diary.

- He confessed that it is most definitely illegal to do so, however, to curb further repercussions this kind of practice has been followed.
- He clarified that at maximum a delay for five to six hours is acceptable but not beyond that. However, such practice cannot and is not encouraged.

d) *Misuse of Section 151*

- On conversing with the SHO, the lawyers learnt that at times when there is no other alternative left with the Police to prevent breach of law and order, Section 151 is invoked. They also learnt that the order of preventive detention do not state the offence which was thought could be committed if not detained for prevention of the same offence. This leaves a wide scope of discretion with the police to detain someone for prevention of certain offence.
- Mr. Vishnu Kant, while describing the structure of police tried to explain the ways by which it has been ensured that blatant misuse do not take place. There has been a layering of SP-DSP-DySP-SHO which provides for supervision of SHO by a DySP, DySP by DSP and DSP by SP. Besides, there is also a media layering and social pressure which puts the Investigating Officer at risk of getting caught very easily.
- Senior Advocate Mahesh Bora also pitched in stating that in cases of communal violence, the invocation of Section 151 is still acceptable, however, in trivial matters where Section 151 is invoked seems quite disheartening. To this, Mr. Kant assured that preventive detention of persons is not a blatant practice and only in very complicated and serious cases is Section 151 invoked.

e) *Arrest Memo*

- There was a group of lawyers who pointed out the discrepancy of not filling out the arrest memo in cases where an accused person gets station bail.
- Mr. Vishnu Kant emphasized on the fact that there has to be a recording of reasons for arresting a person or not arresting the person. If arrest is made and the accused person is given bail at the police station only then the arrest memo is not filled because he normally is not detained for a longer period of time. Also, in cases of Section 438 of CrPC, which provides for anticipatory bail the arrest memo is not required to be filled.

f) *Notice*

Mr. Vishnu Kant stated that in his knowledge, no notices of appearance have been filed till now. However, a circular must have been issued from the State Headquarters regarding the amendment of Section 41A which requires the issuing of notice of appearance. He further said that lack of compliance cannot be excused on grounds of absence of a circular and the law should be binding enough.

- Talking about best practices, he states that the state of Kerala has been quite a champion in implementing Section 41A.

g) *Counselling in cases of Section 498A*

- The lawyers who visited the Mahila Thana noticed that in cases where the victim does not want to go to the procedure of counselling and feels that she has been grossly aggrieved, even in those cases the process of counselling is mandatory for both the parties. This becomes a problem as there is no filing of FIR before counselling which makes it just an informal complaint. In cases where the counselling turns out to be successful, an entry is made into the *Samjhauta/Parivaad* Register and when the counselling proves to be futile only then an FIR is filed. This seemed like an obstacle for cases where the violence is of high quantum.
- Mr. Vishnu Kant explained our social structure and affirmed that a woman who is approaching the police station has already gone through counselling a number of times by her relatives and friends. However, it is a final attempt on behalf of Police to effectuate a compromise between the husband and wife as the norm has been to prevent the breakdown of marriage.

e) *Juveniles*

- The lawyers who went to *Pratap Nagar* Police Station noticed that there were certain accused persons who were just brought in and some of them seemed like juveniles (under 18).
- Mr. Kant assured that he will look into the matter and ensure that juveniles are not brought in police station.

f) *Custodial Torture*

- The same group also spoke about the accused persons in the lock up who were kept in their undergarments. The sight was very uncomfortable for the lady lawyers. Mr. Kant clarified that this is not the usual practice, however in certain cases the accused person are kept in their basic clothing. The same has to be controlled and curbed eventually.

g) *Disclosure*

- Mr. Kant also assured the audience that measures would be taken to disclose the names of the legal aid lawyers who could be available at the Police Stations. Also, efforts regarding the maintenance of register comprising the details of availability of those lawyers and their attendance will be taken.

h) *Good Practices*

It was noted in the Mandor Police Station that a monthly crime report was maintained which encapsulated a comparative analysis of the crime record of the present month with the last month and that with the same month of preceding year as well. For example, a monthly crime report of February, 2014 would consist of a comparative

analysis of the crime occurrence in January, 2014 and February, 2013. It was maintained on a computer and was also published on the Rajasthan Police Website.

Outcome

- The interaction/exposure with esteemed police officers of Rajasthan cadre gave the lawyers a window through which they could understand the procedural aspects of the functioning of a police station. There was a sense of clarity which was provided to them regarding a police action.
- After the culmination of the workshop, it could be witnessed that the interaction/exposure gave flesh and blood to the future work of duty counsels in Police Stations by way of recognition by the police officers of the need of lawyers at police stations.
- There was a demystification of the status of police reform and police station.
- Most importantly, it gave the lawyers a platform for confidence building and persuaded them to engage fearlessly with the police system.
- Lastly, it provided us with the opportunity of creating synergy between the crucial institutions of the Criminal Justice System namely, police and lawyers.

Conclusion

In the end, Mr. Vishnu Kant appealed to all the lawyers to do away with the mental block of police force being a ruthless body. He lamented the poor conditions in which a police officer works from day to night with heavy workload and absolutely no perks. He further assured us that there have been certain positive developments in the functioning of police force and there are many more to come in the future.

ALTERNATIVES TO IMPRISONMENT-JUVENILE JUSTICE AND PROBATION OF OFFENDERS ACT, 1958

5TH WORKSHOP

LEGAL REFRESHER COURSE ON PRE-TRIAL JUSTICE

Introduction

Continuing with the Legal Refresher Course on Pre-Trial Justice for legal aid lawyers, Commonwealth Human Rights Initiative (CHRI) conducted a workshop on *Alternatives to Imprisonment: Juvenile Justice and Probation of Offenders Act, 1958* on **30th-31st March, 2014** at Sardar Patel Conference Hall, Police Lines in Jodhpur, Rajasthan.

The workshop aimed at exploring alternatives to imprisonment in the context of Indian Criminal Justice System and apprising the lawyers of the possible interventions from their end and application of rarely used legal strategies in their practice. While doing so, it acquainted the lawyers with the intricacies of Juvenile Justice Act and Probation of Offenders Act for both the legislations emphasize on the rehabilitation and reintegration of the offenders instead of rendering custodial and capital punishment.

The workshop was conducted over a period of two days that witnessed the presence of legal intelligentsia across the field of juvenile and probation law. A core group of mentors was formed before the induction of the course that included profound senior lawyers who have gained experience in various fields of criminal law and retired bureaucrats who served the administration in the most erudite and scholarly way. The group includes Shri Tan Singh Charan, Member Secretary, DLSA, Shri R.K. Saxena a retired Inspector General (Prisons), Senior Advocate Mahesh Bora, Advocate Abha Singhal Joshi, a seasoned lawyer, social activist and former faculty at National Police Academy and Advocate Ajay Verma, Senior Fellow and Country Manager to International Bridges to Justice.

Besides our scholarly and learned mentors, those who were present to guide the lawyers were Professor B.B. Pande, a renowned law teacher and an expert in criminal law and juvenile justice, Advocate Anant Asthana, a legal activist in the field of juvenile justice, Retired Justice Mr. Panachand Jain, a retired judge of High Court of Rajasthan and an expert on Probation of Offenders



Act and Shri Mukesh, Principle Magistrate, Juvenile Justice Board, Jodhpur and Chief Metropolitan Magistrate, Jodhpur District.

Methodology

The workshop concentrated on having detailed discussions on history, evolution and need of juvenile justice law on the first day with a special focus on legal aid and access to justice. A case study method was used to understand the role of various institutions related to juveniles in conducting a fair trial process at every stage of the trial. The context of the discussion was formed by conducting a short exercise at the very beginning to understand the sensitivity of lawyers towards children. Questions regarding their approach towards capital punishment being meted out at children, child labour being a consequence of poverty, social efficiency of Right to Education Act and understanding of sexual offences against children.

The second day emphasized more on understanding the rarely used Probation of Offenders Act and attaining clarity over its various provisions. This type of a discussion aimed at widening the horizon of the lawyers for using the subject Act on a frequent basis. A Question and Answer session was conducted to understand the receptivity of the lawyers.

Training Material

For the better understanding of the participant-lawyer, CHRI prepared comprehensive training materials that included:

1. **Readers** – Two readers were prepared by the team of CHRI on Juvenile Justice Act and Probation of Offenders Act. They consist of a brief overview encompassing the history and evolution of the subject legislation, its strengths and weaknesses along with corresponding judicial precedents. The overview is followed by the related statutory provisions and international standards. Further ahead, it consists of certain important judgments coalesced in the form of a table with name of the case, citation, brief facts, issues and decisions. The table is for the reference of the lawyers; however emphasis is laid on reading the original judgment. Lastly, it consists of extracts from relevant reports of Law Commission, guidelines of National Human Rights Commission, schemes and guidelines of National and State Legal Services Authority and national advisories of Ministry of Home Affairs.
2. **Pamphlets** – They provide a short glimpse of the subject legislation in a page or two by looking at its development along with landmark judgments.

JUVENILE JUSTICE ACT

History, Concept and Approach

1. *Children in Trouble*

So as to form a background and context of the lawyer regarding the theme of juvenile justice, Professor B.B Pande addressed them on the introduction, history and evolution of Juvenile Justice Act. He stated that children are physically, psychologically socially and economically different. For tending their needs, the principle of '*parens patriae*' governs the juvenile justice in India, meaning thereby the parents are the ultimate guardian of the children. This concept was contested in the case of *Aarushi Dhasmana vs. Union of India*, 2013(6) SCC475 where the right to live of two conjoined twins came up for decision. The Supreme Court, however, upheld the sanctity of the principle and prioritized the wishes of the parents over the life of the conjoined twins. For uniform implementation of Juvenile Justice Act, state should be considered as the guardian of children instead of parents. The parents wished against the surgery of children and instead asked for monetary compensation for the survival of the twins. Ideally, these children should have instead been taken into the category of 'children in trouble'. This makes it pertinent to understand the concept of 'children in trouble'.

2. *The Mindset Problem*

It was pointed out that in the year 1994; Myron Weiner once wrote that 'it is the middle class mindset to view other people's children as mere 'hands' to be trained'. The same thinking is plaguing Indian society for years wherein children are looked at as means of accomplishing the end of survival by a lot of people. On a related note, it was discussed that the Right to Education Act speaks volumes for the right of every child between the age group of 6-14 to education; however it is mute on the future of these children after the age of 14. In an economy where graduates are not able to land respectable jobs how does this country expect an 8th grade student to survive by himself.

3. *Tender Justice*

Further, it was discussed that it requires a complete divergence from the usual thought process to understand the concept of 'juvenile justice'. The essence of juvenile justice lies in the fact that perceiving a juvenile as an adult would be a violation of juvenile justice. It requires a different view of things. Therefore, the word used in the Act is not 'trial' but 'inquiry' because trial finds out guilt and inquiry finds out what transpired. The aim of Juvenile Justice Act is to find out what transpired and according to Section 14 the inquiry should satisfy the Juvenile Justice Board. The whole concept of 'beyond reasonable doubt' does not find mention in Juvenile Justice Act thereby, making it different than the rest of the legislations. For further clarity, it was noted that as equality is the essence of gender justice, similarly difference is the essence of juvenile justice. Administering tender justice is the aim of juvenile justice act.

Importance of Legal Aid

1. The notion of a separate law for children was first incepted in Report of the Indian jails Committee that was published in 1919. Taking the idea forward, legislation was enacted in 1920 and that marked the entry of the concept of Juvenile Justice in Indian scenario. Considering that the concept of juvenile justice is almost a hundred years old, it becomes pertinent to assess how the concept has fared, what are its strengths and weaknesses and how can it be further strengthened.

2. ***Inappropriateness of Adult Law***

Children in conflict with law, children in care of need and protection, children who are wronged and children who are witnesses form four major categories of children that require special attention of law and lawyers. It was time and again noted by various authorities that adult law was both inappropriate and insufficient to deal with children. Therefore, a specialized act was enacted for addressing these deficiencies.

3. ***Guidelines for Best Interest of the Child***

However, as children who generally come in conflict with law belong to lower strata of society, it becomes highly pertinent to understand the receptivity of the legal procedures towards such children. Mr. R.K. Saxena took upon himself to acquaint the lawyers with the guidelines of National Legal Services Authority (NALSA) that were formulated after Supreme Court's order in the case of *Sampurna Behrua vs. Union of India*. These 19 guidelines throw light upon the role of lawyers and the procedure to be followed as to facilitate early access to counsel to the children who come in conflict with law. These guidelines pave the way for young lawyers towards furthering the concept of juvenile justice. It further directs the establishment of legal aid centres in the premises of juvenile justice board and constant training should be given to the young lawyers who will constitute these centres. All these rules and procedures have been laid out in the 'best interest of the child'. This principle has its essence in rehabilitating, reinstituting and reintegrating the child into the society.



4. ***Juvenile Justice Board & Special Police Juvenile Unit***

Combining the concept of social and legal justice, the Juvenile Justice Board under Section 5 should consist of judicial magistrate and two social workers and in case of difference of opinion, majority shall prevail which will be of social workers. This is also because

juvenile justice requires collective thinking. Similarly, the formulation of Special Police Juvenile Unit that is conducive to the needs of the children is mandated in the Act.

Legal Aid in practice: the Experience of Delhi

1. Representation and Remuneration

Advocate Anant Asthana who has worked extensively on juvenile justice in Delhi High Court, majorly taking up legal aid cases shared that at one point in time there was a pendency of 4 Lac cases in one Juvenile Justice Board. There was a dire need of legal aid lawyers for representation of juveniles. However, due to paucity of timely remuneration hardly attracted any legal aid lawyers. This also led to the creeping on of corruption in the legal aid practice.

2. Parallel Legal Aid

A separate team was formed with interested and experienced lawyers to provide free legal aid to the clients. This ran parallel to the dysfunctional governmental legal aid system.

3. Distance between Juvenile Justice Board & Court

Conforming to the non-adversarial standards of juvenile justice, the buildings of JJB are generally built at a considerable distance from the regular court premises. With scanty wages and heavy quantum of work, it becomes a difficult for legal aid lawyer to provide free legal aid to the poor. At places like Ranchi, where the remuneration is



extremely low it has been seen that only one legal aid lawyer takes up such cases thereby making the practice of legal aid dysfunctional and obsolete.

4. Problem of Case based Payment & Availability of Legal Aid Lawyers

The system of case based payment dominates legal aid. This is detrimental as it reduces the availability of legal aid lawyers. Case Based payment allows lawyers to come to Juvenile Justice Board for only those cases that have been already allotted to them. Once they argue the allotted cases, they continue with their normal practice in other courts. This means there remains a dearth of legal aid lawyers for all the fresh daily cases that come in the JJB. However, with efforts of Mr. Asthana and other social activists, this type of practice has been changed in Delhi.

Important provisions of the Act

1. **Non Adversarial Proceedings: Rule 14(1)** - 'Proceedings before the Board shall be conducted in a non-adversarial environment'. This signifies that there is no guilt determination that will take place. Although, the due process of law has to be followed, right to counsel is a ramification. It is the responsibility of the Board that it oversees whether SLSA is providing legal aid lawyer to every indigent juvenile. Therefore, Rule 14(2),(3),(4),(5) forms a platform for the legal aid lawyers.
2. **Age Determination** - This remains the most vital part of Juvenile Justice Act. Wide powers have been rendered to the courts to determine the age of the juveniles. It clearly states that even if the plea of juvenility was not taken up in the Juvenile Justice Board, it can be taken up at the appellate stage. In cases where the age of juvenility is taken up when the delinquent has become an adult, the age at the time of the commission of offence is taken as the age for the determining the plea of juvenility. Similarly, the result of the medical examination of a juvenile to determine his age is not taken to be absolute and a margin of two years on either side is taken. However, the result leaning in favour of the juvenile would be taken as the final result.
3. **Release: Section 12** - Deviating from the concept of juvenile justice, certain courts including Supreme Court started considering the severity of the crime for granting bail to an accused. This is against the mandate of Section 12 that very specifically says that a juvenile 'shall' be released notwithstanding anything contained in Code of Criminal Procedure Code, 1973. Although, the proviso to the section 12 contains the exceptional situations in which a juvenile may not be released on bail, the last proviso is exploited the most against the juvenile delinquent. It states that if granting him bail will "defeat the ends of justice" and he shall be in contact with a known criminal then he shouldn't be granted bail. However, both these aspects have to be dealt from the perspective of the juvenile. In the sense that the known criminal should be named in the report of the Probation officer and a lot of other socio-economic factors should be considered in forming the Social Investigation Report. Similarly, the interpretation of 'defeat the ends of justice' should be in correspondence with the framework and intention of the Juvenile Justice Act that is for the protection and care of the juveniles. Hence, 'ends of justice' should be interpreted in the 'best interest of the child'. The only thing that has to be determined is whether the child is safe and secure in judicial custody or outside in the society.

In cases of special laws like NDPS and Prevention of Atrocities (SC&ST) where there are provisions barring the benefit of bail, however, the presence of the non-obstante clause in Juvenile Justice Act, the subject Act overrides any prohibition in any law thereby making every juvenile entitled to the benefit of bail. It can be seen that the interpretation of provision of JJ Act has to be very liberal.

Also, if there is a high possibility that the person brought before the court is not a juvenile, then Court may restrict its power of granting bail to the person. Hence, the word 'apparently' is used in the section. It is to give a hint of caution to the Magistrates for judicious use of this section.

One should also keep in mind that there is no need of moving a bail application in the cases of juveniles unlike adult criminal cases.

4. **Court in its own Cause: Section 4(3)** - No magistrate shall be appointed as the magistrate in a juvenile justice board. This strictly makes it a case of court in its own cause.
5. **Physical Age Verification: Rule 7(1)** casts a responsibility on the Court and prima facie every Magistrate has an obligation on physical verification of the accused. In a 1988 case of *Sanjay Suri vs. Delhi Administration*, it was held that there is an obligation on the warrant Magistrate who issues warrant and makes it mandatory for the prison officials to take up the process of age verification before issuing warrant. Therefore, there is an obligation on the Magistrate, police officials and prison officials to not keep any juvenile in custody.
6. **Application for Age Determination: Rule 7A** states that the application for age determination should come from the juvenile. In the 1994 case of *Gopinath Ghosh vs. State of West Bengal* and a recent judgment of *Abozar Hussain*, the Supreme Court held that the plea of juvenility can be raised even after the final conviction of the accused. However, the burden of proof will lie on the juvenile making such plea.
7. **Restrictions in Powers to Apprehend: Rule 11 (7)** - There is a restriction on the power to apprehend those juveniles who have committed an offence that carries less than 7 years of punishment. This is to ward off the time that takes to get bail and keeps a check on the discretionary power of the magistrate to not grant bail. This rule renders the apprehension illegal which is against the language of this rule. And in case of illegal detention, the punishment of the offence that had been committed is forgone.
8. **No Criminal Record: Rule 11(11)** - No need of filing an FIR or a charge sheet in the cases against juveniles apart from serious offences. This was done to keep the history sheet of these juveniles clear.

Legal Strategies

1. Sharing his own experiences, Advocate Ajay Verma stated that the aim of a lawyer should primarily be to convince oneself that the juvenile delinquent in custody is below 18 years of age. Posterior to one's confidence, two major hurdles arise:

Apprehension Stage

Firstly, at the apprehension stage when the Investigating Officer shows the age of the juvenile to be above 18 and presents him in a Court for the reason of avoiding the procedures of presenting the juvenile in a Juvenile Justice Board.

First Production

Secondly, at the stage of first appearance in the Court where the lawyer should move the Court to take the plea of juvenility and get the case transferred to JJB. This kind of an effective and active representation will form a strong background for the lawyer to defend the juvenile in conflict with law.

2. **Taking Prima Facie Evidence**

Most of the cases that a legal aid lawyer will come across would not be of those juveniles who have a school certificate or a birth certificate from the municipality. These clients

would be the ones who would have the most informal idea of their age. For these types of cases, the Court has the option of ordering a medical examination for the accused. The predicament here is the long periods of time that one has to wait for the result of the medical examination to be released and that might not even be in the favour of the delinquent juvenile. To alleviate this hurdle, in the recent case of *Abozar Hussain vs. State*, the Supreme Court held that the Court has to be moved for prima facie satisfaction that there exists persuasive factors to believe that the accused was a juvenile at the time of committing the offence. To form a prima facie defence, a lawyer can take clues from the age of the family members and link it with the age of the accused. If the accused doesn't have any of the three documents required, the affidavits of other family members can be taken into consideration as well for the prima facie satisfaction of the Magistrate. The mere satisfaction is enough for the accused to be taken into the category of juveniles. Also, the lawyer can file a writ praying plea of juvenility after the final decision by the Supreme Court as well. It is the duty of the lawyer to ascertain the age of the accused by asking the family of the accused about his age.

3. Age Memo

Delhi High Court took cognizance of 25 cases in Tihar Jail, New Delhi where the age of juveniles were shown to be above 18 and sent to adult jails. The petition was moved by legal aid lawyers who noticed discrepancies. After inquiry was directed by the Court, it was



comprehended that 23 out of 25 such accused were juveniles at the time of commission of offence. Considering this gross illegality, the Delhi Court ordered for setting up legal aid clinics so that people from poor background can also get effective representation. The concept of Age Memo, which was an extension of the provision of Arrest memo, was invented. The police officer will have to submit a preliminary report regarding the age of the juvenile within 24 hours of arresting/apprehending a possible juvenile. Another significant step that was taken was that all the accused between the age of 18-21 will be presented before the Secretary, Legal Aid Services Authority for preliminary ascertainment of age. The jail officials were directed to keep a regular check on the profile of their inmates and ensure that awareness is being spread regarding juvenile justice act. Further, it directed government hospitals to establish permanent medical boards so that every pending juvenile case can be disposed in 2 months vis-a-vis the medical examination of the accused. For ensuring strong impact of the order, the Court directed that strict disciplinary inquiry will be conducted against the official on whose part fault is discovered.

4. Conditions of Detention

On close examination, it has been discovered that the conditions of Observation Homes were far worse than that of Adult Jails. Lawyers can challenge this in the Court for bringing in more recreational facilities. Another issue that comes up is generalization of certain communities labelling them as born criminals. This has to be strongly condemned and challenged in the Court referring to the intention of the Juvenile Justice Act.

5. Delays in Medical Examination

In the infamous *Ashiyana* rape case the medical examination was pending for the past 9 years. However, the standard has been set as 30 days for the completion of the medical examination. As a lawyer, one should always remember that expedition is the essence of juvenile justice. Rule 13 (7) clearly state that 4 months that can be further extended for another two months is the maximum time period for the completion of inquiry. One can make the most of this section by filing writs.

6. Torture

In cases of torture in police custody, it is always advisable to write applications to the Court apprising them about the inhuman treatment that is meted out at the juveniles. The Magistrates may not take cognizance of the application at the beginning; however a lawyer should as a rule always submit such applications. Constant reminder plays an important role in moving the conscience of the judiciary. This approach was found productive in the instance of Delhi where children were sexually abused in the custody, the cognizance of which was taken by the Courts as a result of regular feeding of information to the judiciary (*State vs. Rameez & Ors.*).

Case Studies

The lawyers were divided into five groups and each group was given a case study that dealt with different provisions of Juvenile Justice Act. It consisted of brief facts stating the legal situations and citing issues to be solved. This approach was meant for the lawyers to brainstorm on practical legal problems (Case studies attached as annexure to this report). Certain important points that came up during the discussion are mentioned below:

1. As a lawyer, one must be conscious of the stages where illegalities can be committed starting with a police station to a Magistrate.

2. Role of Magistrate

It is the mandate of *Section 7* that a Magistrate shall refer the case to the Juvenile Justice Board immediately on taking cognizance of the juvenility of the accused. In cases of juveniles, the jurisdiction of the Magistrate is only restricted to refer the case to the JJB. Cognizance can be taken on the physical appearance of the accused. By cognizance, it means that a prima facie opinion has to be formed by the Magistrate. This section acts as tool to prevent children belonging to an age that may induce doubts in the minds of the officials.

3. JJB's competence

Once the Magistrate has been satisfied that the accused is a juvenile and has forwarded him to the Juvenile Justice Board, the JJB then may not and cannot send him back to the Magistrate holding that the accused is not a juvenile. The JJB is cast with the responsibility of ascertaining the accurate age of the juvenile but not to determine whether he is a juvenile or not. Section 49 of the Act only states that the competent authority may take up an inquiry independent of the Magistrate's inquiry on age determination of the juvenile so that findings can be duly recorded for other purposes of the Act.

4. Three years of custodial punishment as given in the Act for juveniles who have committed heinous offences is certainly not meaningful either for the purpose of rehabilitation and deterrence both.

5. ***Application of Judicial Mind***

Personal dissatisfaction of the Magistrate over a document that has been presented as a proof of juvenility cannot be said to be legal. A reasonable doubt should override the authenticity of the document.

6. ***Section 12***

If there is discrepancy in the documents and certificates presented to the Court, then there is no need to go towards medical examination. Other types of evidence may be recorded like the testimony of the family and other witnesses to ascertain the age. However, medical examination as a consequence of inconsistency in the documents is not mandated under law.

7. JJ Act does not have a category of non-bailable offences. All the offences are bailable offences and every juvenile shall be entitled to be released on bail. However, there are certain exceptions that are mentioned in Section 12 on the basis of which a juvenile may not be granted bail. But the reasons have to be recorded by the Juvenile Justice Board.
8. Section 25 is a vital section where juveniles who are given drugs, intoxicating or
9. Other narcotic substances; they should be categorized as children in need of care and protection. This section could be used for those juveniles who are wrongfully accused under NDPS Act for possession of narcotic substances.



10. Rule 32

A clear finding has to be made regarding the place where a juvenile would most safe and secure. There should be concrete proof to show that the guardianship of parents is detrimental to the safety and security of the juvenile. It has to be proved that a family is a broken home. Such material proof is required because the primary principle of juvenile justice is to reinvigorate the familial ties of a juvenile and first preference of institution is given to the family.



11. When the police have prima facie determined that the person is a juvenile and has brought him to JJB, then the Magistrate of JJB doesn't have the power to recall police's decision on the juvenility of the accused. That's because the jurisdiction of the JJB begins only when it has been ascertained that the person who is brought before it is a juvenile.

The Probation of Offender's Act, 1958

Alternatives to Imprisonment

Probation is an alternative to the notion of discarding the prisoners in the social dustbins called jails. Probation of Offender's Act is one of those very few legislations that attempt to not send a person to jail unlike other legislations. The history of probation law can be mapped from Section 562 of Code of Criminal Procedure, 1898 that dealt with releasing offenders on probation. However, they were very sketchily used. Post-independence, the research on probation was heavily undertaken to invent alternatives to imprisonment. In Code of Criminal Procedure Code, 1973, Sections 362 and 363 deal with probation of offenders. The concept of probation is an anti-thesis to the principle of eye and for an eye.

Important provisions of the Act

1. **Section 3** - In offences that carry a punishment of 2 years or less than that including sections 379, 380, 381, 404 and 420; they may be released on probation under this section. The word 'may' used in the section should be interpreted as 'must' for the purpose of this section.
2. **Section 4** - This section only has two exceptions that include those who have committed offences punishable with death and life imprisonment. Other than these offenders all the others are liable to get the benefit of probation. It encompasses serious and habitual offenders as well. However, good conduct is of paramount importance. Also, any offender who had been given probation earlier under Section 3 and he committed another offence afterward could still be considered under this section for getting released on probation.

3. **Section 6** – This section furthers the intention of juvenile justice act, that young offenders should be rehabilitated. Power is given to the court to release young offenders on probation. The age group of 18-21 is covered in this section and if in case the Court decides to award him with imprisonment then it shall record reasons in writing.
4. **Section 12** – The purpose of this section is to reintegrate the offender with the society by erasing the taboo of committing an offence. It states that any person who has been given the benefit of probation shall not suffer any type of disqualification that comes from the obligation of conviction. This section aims at maintaining a status quo vis-a-vis the professional duties of the offender. It was clarified that a departmental inquiry may take place on the offender as a consequence of bad conduct as per special laws but it is distinct from suffering disqualification because of conviction under some law.
Police makes a criminal record and uses that record to exploit and harass the offenders. Therefore, Section 12 looks at reducing these kinds of practices.

Role of Probation officer

1. ***Holistic Justice***

The role of a probation officer is very crucial in this process. They have been appointed to add tenderness in the procedure of administering criminal justice. Their role is to look into the socio-economic background of the offender and put it in a report. This report is highly instrumental in entitling a person on probation. Moreover, the responsibility of supervising the probationer is also given to the probation officer.

2. Finding a suitable employment and helping the offender to reintegrate into the society is one of the major responsibilities of Probation Officer.

3. ***Social Investigation Report***

Probation Officer prepares the Social Investigation Report (SIR) that come to the Court in a sealed envelope and is only opened at the time of passing the judgment. As a lawyer, one should always insist on calling for the report of Probation Officer. However, if there is sufficient evidence to state that the offender should be released on probation then calling for the report is not necessary, meaning thereby, calling for report is not mandatory however it should be called in on a routine basis (Section 6)

Legal Strategies

1. Lawyers should always take it upon themselves to insist on releasing their client on probation. The problem with sketchy implementation of Probation of Offenders Act is that lawyers do not even raise the plea of granting probation. Hence, this Act is slowly biting the dust.
2. Factors like the social circumstances and economic conditions of the offender should be conveyed to the Court in order to build a strong case for probation.

Conclusion

It was quoted at one point of time in the workshop that a society gets as many criminal as it deserves, thereby making it pertinent to understand the dire need of making this society conducive to rehabilitation of offenders. The two days that this training covered induced the idea of alternatives to imprisonment in the minds of the legal aid lawyers very strongly.

The same could be proved by the positive feedback that was received from the participant lawyers.

MONITORING – MENTORING PLAN
6TH WORKSHOP
LEGAL REFRESHER COURSE ON PRE-TRIAL JUSTICE

Introduction

CHRI through its Legal Refresher Course has trained legal aid lawyers in Jodhpur on various facets of criminal law in the six months from November 2013 to April 2014. During the course of these trainings, the lawyers suggested that they would require the assistance and guidance of senior lawyers from the bar to improve their skill sets and make best possible use of the learning from the trainings received. Thus CHRI formulated a mentoring programme on **29th and 30th April** wherein senior lawyers would be a part of this training process and assist the trained legal aid lawyers in their regular legal practice.

The first day of the mentoring programme was graced by the presence of Advocate Abha Singhal Joshi, Mr. Mahesh Bora and Mr. RK Saxena. Ms. Sana Das started the first day by recapitulating about the discussions in the previous sessions, regarding the prevailing problems in the system, particularly from the perspectives of probation, police, magistrates and prisons. She went on to emphasize the importance of the brainstorming session as a mode of redressing the problems faced by novice lawyers and of developing the skills required by them in the criminal justice system and then zeroed in on the central theme of the session-the mentoring programme.

ADVOCATE ABHA SINGHAL JOSHI

The session started with a talk by Advocate Abha Singhal Joshi. Advocate Joshi explained the importance of mentoring process in the legal fraternity. She discussed how pro-bono lawyers need to have an out of the box, innovative approach to be able to help indigent clients. She appreciated the mentoring programme proposed by CHRI and expressed that such a programme would help in bridging the gap between the experienced and the inexperienced lawyers. She remarked that the Bar should also take responsibility to take such an initiative.



MR. MAHESH BORA

Mr. Mahesh Bora initiated by reminding the audience of the desirability of developing a peer support mechanism for skill development in the lawyers' fraternity. Admitting the individual nature of advocacy marked by cut-throat competition, he highlighted the social responsibility of the lawyers' collective, calling it a pious duty towards the society. He noted that the gaping difference between the brackets of age and experience in the bar and in firms is the cause of stunted growth of new lawyers. Excellence at the law not being the only prerequisite for success, he observed that a lawyer must also be adept at court mannerisms and gauging the judges' psyche. He comprehensively described the knowledge-sharing aspect of legal practice and laid the foundation for the necessity of this mentoring programme.

"The better the bar, the better will be the bench", he said.

MR. R.K. SAXENA

Mr. R.K. Saxena, retired IG, pointed out that though the law is same for all, the differentiating factor between adept and inept lawyers is the application of the law. Using the invaluable teachings of Buddha, he stressed on the need for sharing of knowledge, which is extremely pertinent to the field of law.

MS. SUGANDHA MATHUR

Orienting the young lawyers towards the course, Ms. Sugandha Mathur, CHRI sensitized the participating advocates about the qualms of pre-trial detention. She systematized the inefficiencies and bottlenecks in the system, categorizing them into institutional problems and attitudinal problems.

Heralding the mentoring programme, she noted that mentoring is all about advice, support, guidance and assistance. The mentoring programme organized by CHRI, in collaboration with the DLSA is sought to be accomplished in gradual stages. The first of the steps being that of idea-sowing, or sensitizing. Next step being connection-- creation of



a nexus between the mentor and the mentee. This proceeds into the next stage of role-modeling, where the mentor leads by setting an example. The mentor-mentee relationship then undergoes a phase of motivational guidance and it finally culminates into a review session.

Ms Mathur also introduced *Vakil a-ri- Dhani* (Lawyers' Hamlet), a concept drawn up by CHRI, which will act as a regular discussion forum for the young lawyer participants.

The salient features of the innovative mentoring programme are its individual-oriented, mentee driven and informally interactive approach, and its commitment of confidentiality. The programme also promises a quarterly assessment scheme spanning a year, wherein the progress of the participating lawyers will be scrutinized.

The orientation witnessed an enthusiastic response from the participants, who laid bare the ground-level difficulties of lack of guidance, reliance, and practical knowledge faced by them.

TALK & INTERACTION: Ethics of the Legal Profession
ROUNDTABLE: IMPROVING THE LEGAL PROFESSION IN JODHPUR
THROUGH A GUIDED PRE-TRIAL JUSTICE PROGRAMME

7th WORKSHOP

LEGAL REFRESHER COURSE ON PRE-TRIAL JUSTICE

Ethics of the Legal Profession

INTRODUCTION

On 30th May, 2014 Commonwealth Human Rights Initiative (CHRI) organized a Talk on “Ethics of Legal Professionalism” along with Rajasthan High Court Advocate Association and District Legal Services Authority (DLSA), Jodhpur. Mr Ranjeet Joshi, President of Rajasthan High Court Advocate Association and Ms. Maja Daruwala, Director of Commonwealth Human Rights Initiative were present to address the legal aid lawyers on the need of bracing their code of conduct. The key speaker for the occasion was Hon’ble Justice Govind Mathur of Rajasthan High Court who illuminated the lawyers with the significance of following certain ethical codes of professional responsibility.

Ethics: An inherent part of our lives

Justice Mathur began with stating that honesty is a natural inheritance that one acquires by the virtue of being born. It can’t be taught; it is a way of life that leads to development of a conscious sense of just and unjust. Serving justice has been the basic essence of survival and a quick look at the historical battles that have been fought may prove that most of them were to preserve a sense of justice and equality in the society. Winston Churchill once stated that a nation cannot collapse till the time a person has faith in administration of justice.



Lawyer: A weapon of Justice

He insisted that an advocate is an integral weapon for fighting the battle of justice. Honesty combined with a sound grasp on legal knowledge determines the power of such weapon. Therefore, he emphasized on possession of a strong legal groundwork and a thorough familiarity of a lawyer with the relevant laws and its provisions before appearing in Court. He further accentuated this by stating that such legal propriety is the most indisputable and non-negotiable

aspect of professional ethics because the character of a lawyer is known by the justice he serves to people and society in general.

Profession vs. Business

While beginning to equip the lawyers with the understanding of the required code of conduct, he distinguished between 'profession' and 'business'. He reasoned conducting a business leads to *production* whereas working in a profession results in *productivity* which explains why it is called a legal profession and not business. Therefore, infusing professionalism in the day to day functioning of a lawyer is paramount.

SUGGESTIONS

Reducing pendency

Such professionalism should primarily begin with learning to say 'No'. As a practice it has been witnessed that some of the lawyers incite the clients to bring a certain dispute to the court of law knowing that it holds no real merit and will most likely be disposed off by the court. Despite being aware of the triviality of the issue they knock the doors of judiciary and argue to absurdity which ultimately wastes the time of the court, gives no relief to the parties and also increases pendency.

Litigant: Person without distinction

He constantly called attention to the eradication of prejudice from the perception of a lawyer regarding the riches or poverty of a litigant. A lawyer's concern should always be to value the cause of a litigant on the scales of law and justice, thereby maintaining his standing as an 'officer of court' who has an equal share of participation in administering justice to those who are wronged and violated.

Reminding the lawyers of the significance of the looped cloth attached behind an advocate's gown, he reminisced that it is meant for the litigant to put whatever he deems appropriate as a token of consideration for the legal services provided to him without seemingly bothering the lawyer. Such was the nonchalance that was expected from the lawyers towards monetary compensation and the price of their services.

Substantiating his perspective, he highlighted the famous Supreme Court case of *A.S. Mohammed Rafi vs. State of Tamil Nadu*¹ where a bench of justices Markandey Katju and Gyan Sudha Mishra deprecated the action of certain Bar associations prohibiting its members from defending the accused in certain cases and said such resolutions violate professional ethics. Reiterating Justice Katju's words, he stated that "the action of any Bar association in passing a resolution that none

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of its members will appear for a particular accused on the grounds that he is a policeman or a suspected terrorist, rapist, mass murderer, etc., is against all norms of the Constitution, the statute and professional ethics”.

Combating pendency

Delving into the unhealthy practice of lawyers seeking unreasonable adjournments, Justice Mathur discussed that certain cases do not require a lengthy trial and can be decided in a short period of time or at the very commencement. But the tendency to postpone the hearing by seeking adjournments is detrimental to the functioning of the Courts as it adds to arrears of the Court and obstructs the path towards administration of justice.

Lawyer-Client Relationship

Sharing his personal experience, he lamented that criminal practice mirrors the grisly reality of the society and the gaps in the social structuring are prominently seen. Talking of statistics, he apprised us of the fact that 99% of the criminal cases come from rural set ups and a further filtering would lead us to know that 90% of them involves populace from backward classes.

Therefore, to serve justice to his/her client a lawyer has to understand the context and social background of the violator or victim. Similarly, knowledge of the objective conditions of the society will further help a lawyer in persuading the Court to understand a point of contention.

Lawyers as Leaders

A lawyer is the closest link between the society and nation. Owing to the constant interface with a myriad of people, a lawyer develops a strong ability to read and study the social structure. Therefore, his defence should always emphasize on harmonizing the needs of the society and the nation.

Custodians of Rule of Law

The historical background of India is a witness to the role of lawyers in protecting the idea of rule of law and not rule by law. The reason behind India’s sustainable and laudable constitution is the strong presence of lawyers in the constituent assembly that was responsible for drafting the constitution. This is symbolic of the role that lawyers play in shaping up the social structure of a nation. They are the custodians of rule of law which is responsible for strengthening the democracy of a nation. However, the reality is that the concept of rule by law is gradually overpowering the concept of rule of law. Rule by law denotes the rule by a class of people who have been able to create, mend and annihilate law.

One of the disturbing practices that have become fashionable and well-accepted in the field of legal profession is that of conducting a strike as a mark of protest against anything and everything. The quantum of this problem has increased to alarming levels with lawyers holding

strikes on weather changes, positive amendments in law, death in a family, blast in Supreme Court even when Supreme Court is unperturbed and continues to function. These kinds of strikes act as a virus in upholding rule of law and stands as a tall fence in timely functioning of courts. It has become pertinent to find an anti-virus for this fatal virus.

He clarified that he is not vehemently against the concept of strikes. He believes that strikes are a powerful weapon that can be used to voice the opinions of a community to acquire justice. He cited an instance where the lawyers went on a strike in the year 1981 protesting against the hike in stamp duty as it directly affected the litigants by way of increased monetary liability. Strikes that are held in the interest of public strengthens rule of law.

Justice Mathur concluded his illuminating session by saying that we should believe in and encourage the rule of law. A lawyer's struggle should be to constantly sharpen and hone her skills for the betterment of the society. As a parallel step, there should be induction of professional ethics in the legal education for giving the lawyers a sense of cause and justice before they enter the practice.

Catalyst to Justice

Reaffirming Justice Mathur's thoughts and words, Mrs. Daruwala stated that lawyers have to act as catalyst to strengthen access to justice. Lawyers are the words and voice of those who go unheard and unseen. Therefore, it is pertinent for them to work collectively and gradually to bring about changes in the inadequate and ineffectual practices of Courts and for working towards this process, professional ethics come in handy. Ethics are a practical tool which can be used in ensuring fair trial.



Through examples of illegalities that have been committed and deaths that have been caused at the hands of police, she explained how lawyers are equally responsible for such mishandling if they don't use their voice to erase injustice. It is the harsh truth of life that consequences fall on the weakest people of the society. Therefore, lawyers should take it upon themselves to equip with the professionalism and ethics that are required to help serving justice to people.



Conclusion

She concluded the talk that was inspiring to say the least by saying that we are the master of our own fate and we will go forth alone in this world. Every act that we perform will either take us to light or darkness. No religion or ethical system can teach us the difference between right and wrong. We are judged by our own actions therefore the choice of choosing the path of light or darkness is ours and only ours.



ROUNDTABLE: IMPROVING THE LEGAL PROFESSION IN JODHPUR THROUGH A

GUIDED PRE-TRIAL JUSTICE PROGRAMME

INTRODUCTION

Continuing with the Legal Refresher Course on Pre-Trial Justice, Commonwealth Human Rights Initiative (CHRI) organized a roundtable discussion with the mentors for initiating the problem solving chapter of the Course for the legal aid lawyers on **31st May 2014**. The purpose of the roundtable was to acquaint the mentors with the context of CHRI's work with the legal profession. Further, it aimed to discuss the mentoring challenges and concerns vis-à-vis irregularities observed within the legal profession and the contours of the mentoring environment.



The Roundtable began with a brief introduction by Ms. Sana Das about the overview of CHRI's work, its working ethics and the changes they aspire to see in the legal justice system. She discussed CHRI's work in Jodhpur and tried to throw light on the problem of pre-trial detention, need for a mentoring program for legal aid lawyers and also emphasized on the importance of strengthening the legal aid system.

The Panelists of the roundtable included Ms. Maja Daruwala, Shri R.K. Saxena, Ms. Sana Das, Ms. Sugandha Shankar, Ms. Mrinal Sharma and Mr. Raja Bagga from the Commonwealth Human Rights Initiative and Sr. Adv. Mahesh Bora, Adv. Abha Singhal Joshi, Sr. Adv. Suresh Khumbhat, Sr. Adv. Ranjeet Singh Gill, Adv. Ranjeet Joshi, Adv. Devi Singh Bhati and Adv. Kamal Singh in the capacity of mentors.

CONFLUENCE OF VARIED THOUGHTS

To open up the discussion, Ms. Maja Daruwala talked about the malpractices and irregularities that exist in our legal system and CHRI's desire to work towards the elimination of the same. Adv. Ranjeet Joshi apprised the panel about the hooliganism of hardened criminals in Jodhpur jail. Adding to the discussion, Adv. Abha Singhal Joshi talked about the need for bringing back the misplaced ethics in the legal profession and to regain the lost glory of the profession. Mr. R.K. Saxena rightly pointed out the existence of corruption, malpractices in our criminal justice system on one hand and the prevalence of consistent injustice and violation of human rights on the other. He also emphasized on the beauty and clarity of our law but our inability of its proper implementation. Summing up, Sr. Adv. Mahesh Bora elaborated on the purpose of the meeting and the idea behind the mentoring program which according to him is to professionally train a

group of young lawyers to such able heights so that they can become the voice of the most downtrodden sections of the society.

PROFILE OF MENTEES

Ms. Sugandha gave a brief presentation on the profile of mentees who would be attending the program. She explained the different needs of mentees based on their individual capacities and their experience in the legal profession according which they were divided into three broad groups:

- (1) Basic level (those who need very basic mentoring in the field of Law)
- (2) Intermediary level (those who are in the intermediary stage of learning)
- (3) Specialized level (those with specialized needs of mentoring).

MENTORING CHALLENGES

Adv. Abha Joshi pointed out the major challenges that may be faced treading towards productive mentoring of the lawyers. She listed out the following the challenges:

- (1) Gathering the group of lawyers and then keeping their interest alive in the program.
- (2) To ensure institutional help from the District Legal Services Authority (DLSA), Jail authorities, Police Department and rest of the Bar.
- (3) Lack of channels, legal forefather and paucity of opportunities to learn generally act as an obstruction to quality lawyering.

IDEAS, SUGGESTIONS AND COMMITMENTS FROM MENTORS

All the mentors and guests informed as to how they are going to contribute towards the initiative in general and to the mentoring program in particular. They also discussed about the kind of mentors to be looked for and possible structural formations that can be prepared for the mentoring program. Further, they explored the scales on which the real impact of the mentoring program at the ground level can be measured. After this, Mr. Mahesh Bora asked for specific commitment in terms of time, place and skills from the mentors. Listed below are the commitments of the advocates:

1. **Adv. Kamal Singh** committed for two days in a month.
2. **Adv. Ranjeet Joshi** committed for an hour every day from 12:00 pm to 1:00 pm in his Bar Association office on all matters except Income Tax.
3. **Adv. Ranjeet Singh Gill** committed to mentor on every Saturday after 6:00 pm specially on cases related to Narcotics Drugs and Psychotropic Substances (NDPS) Act.

4. **Adv. Suresh Kumbhat** committed to mentor four lawyers every Saturday on problems relating to drafting and bail applications.

Concluding the roundtable, Shri R.K. Saxena summed up that the mentoring programme has a three way purpose. One, that it can be used for thematic help from the mentors regarding the problems on specific points in law. Second, the current office of CHRI at Jodhpur can be used as a resource center for reading material, access to internet and other research. Third, that individual problems related to case can be conveyed to the members of CHRI who can then assign the lawyer with a mentor based on the nature of help she/he requires.

INTERACTIVE SESSION BETWEEN MENTORS AND MENTEES

Adv. Mahesh Bora began the session with explaining the purpose, objective and expectations from the program. He explained that the idea behind the program is to prepare quality lawyers who can help collectively fight injustice and can stand for the cause of the most downtrodden sections of the society. After this, mentees started asking questions to clear their confusions and expressing their own expectations from the Mentors.



- ❖ *Guidance regarding procedural matters and also asked for insight into conducting Research*
 - ✓ Adv. Mahesh Bora recommended a separate session on the same as conducting research forms an integral part of preparing oneself for the case.
- ❖ *Guidelines regarding drafting of a case*
 - ✓ Adv. Mahesh Bora and Adv. Abha Singhal Joshi explained about advantages of self-drafting as per the needs of a particular case and also conveyed the disadvantages of using pre-available formats
- ❖ *Significance of opposing remand and the skill to argue the same*
 - ✓ Adv. Ranjeet Joshi explained the importance of opposing remand in detail and also dealt with the scope and application of Sec 27 of Evidence act. He emphasized on the fact that under Sec 27, only that part of information received from the accused is admissible which leads to recovery of the weapon of offence given that only accused knows about such fact and no one else. He further made it clear that unnecessary remand is violative of Art. 21 of the constitution and therefore needs to be opposed and also talked about importance of using Section 54 of CrPC.
- ❖ *Effective arguments against custodial violence*
 - ✓ Adv. Ranjeet Joshi clarified that a clear and thorough reading of D.K. Basu Judgment is necessary for arguing custodial violence.
- ❖ *Evidentiary value of identification parade*
 - ✓ Adv. Mahesh Bora explained that it has weak evidentiary value and cannot be sole basis of conviction.

- ❖ *Irregularities in proper implementation of Sec 41A of CrPC and its gross violation*
 - ✓ The entire panel agreed that Sec 41A is not being properly implemented and Mr. Bora suggested that a writ petition can be filed in High Court in this regard.
- ❖ *The remedy to the deaf ear given by the Magistrate when the lawyer opposes remand or argues for bail*
 - ✓ Adv. Mahesh Bora suggested that lawyer should not give up and should insist on the Magistrate to listen to him but in case of constant refusal, lawyer should ask magistrate to mention the same in the order sheet so that the same could be argued at the appellate stage.

SPECIFIC CASE PROBLEMS

- ❖ When the complainant gives the call details of conversation between accused and deceased's wife, can it be considered as proof?
 - ✓ Adv. Mahesh Bora answered that it cannot be considered as proof unless there is a certificate (of the person who has gathered the call details from that server) attached with the call details. He also referred to Sec 65B of Indian Evidence Act in this regard.
- ❖ Can the transcript made from the cassette of call recording between the accused and the deceased over phone be proved?
 - ✓ Adv. Mahesh Bora explained that it can only be proved if there is an original memory card available and also one needs to conduct voice test to identify the real voice of those persons.
Further, Adv. Abha Singhal Joshi suggested referring to *Dharamveer vs. NCT of Delhi* case for detailed understanding on this issue.
- ❖ An application is filed in trial court asking permission to give direction to the concerned telecom company for providing the call details. Court dismisses the application saying that they can't give such permission. What is the remedy?
 - ✓ Adv. Mahesh Bora and Adv. Abha Singhal Joshi suggested going for further appeal in higher Courts.
- ❖ Evidentiary value of Dying declaration and effect of other evidences on it.
 - ✓ Adv. Mahesh Bora explained the provision related to dying declaration and said that other evidences have no effect on dying declaration. If dying declaration is admitted and believed, it would be admitted on its own and it requires no corroboration.
- ❖ Admissibility of cassette (CD) made out of CCTV recording. Whether it requires expert view to testify it further?
 - ✓ Adv. Mahesh Bora and Adv. Abha Singhal Joshi explained that cassette can't be proved unless the original chip of CCTV recording is available because cassette is secondary evidence.

- ❖ Lawyer's role in cross examination.
 - ✓ Adv. Ranjeet Joshi explained that lawyer needs to be very alert at the time of cross examination because it acts as a double-edged weapon.
- ❖ What is the remedy if the parole application of a life convict gets rejected by the parole committee and then by the High Court on the ground that the family of the convict refused to take responsibility of the any illegality committed once he is on parole?
 - ✓ Adv. Mahesh Bora suggested to again filing an application in next parole meeting. He also explained that while granting parole, Court takes two things into consideration:
 - His behavior in the jail
 - A report that he won't commit crime after release from jail
- ❖ What should be the lawyer's approach during charge argument and final argument?
 - ✓ Adv. Mahesh Bora explained that approach differs in both arguments and suggested the Mentee to come to Court some day and listen while he is arguing a case.
- ❖ In a thirty year old case of Sec 279 and 304 of Indian Penal Code where the accused is convicted by both trial court and sessions court and a revision is pending in High court, the record of the case goes missing. How to argue in this case in defense of the accused?
 - ✓ Adv. Mahesh Bora and Adv. Abha Singhal Joshi suggested to revive the revision and to argue that, when the file itself is missing, the case should be finished with already undergone imprisonment.
- ❖ The completion of hearings related to presentation of evidence is obstructed by the constant absence of the complainant. What is the remedy?
 - ✓ Adv. Mahesh Bora suggested asking for closing down the evidence.
- ❖ What is civil imprisonment?
 - ✓ Mr. R.K. Saxena explained that civil imprisonment means that a person is in jail for civil liability and the person who complained against such person would be paying for the expenditure of the person in jail.



Closing remarks of Mentors

Adv. Abha Singhal Joshi: Suggested all the mentees to read and understand their files very clearly so that they can ask the questions as per the real needs of their case. She also emphasized on the importance of regularity, sincerity and punctuality on the part of Mentees.

Adv. Ranjeet Joshi: Emphasized on importance of Hard Work.

Mr. R.K. Saxena: Insisted on courtesy and respect towards Mentors.

Ms. Maja Daruwala: Emphasized on the importance of working as a group.

Finally, Ms. Sana Das closed the conference by thanking all the members.



METHODS & SKILLS OF LEGAL RESEARCH

8TH WORKSHOP

LEGAL REFRESHER COURSE ON PRE-TRIAL JUSTICE

Further to our efforts of strengthening the defence preparedness of a group of 33 lawyers, who have opted to be part of the Mentoring Program, a two-day workshop was organised. The lawyers had shown their interest in learning the **Methods and Skills of Legal Research** to aid them in preparing their cases effectively. The aim of the workshop was to refresh the traditional methods of library research as well as acquaint them with new methods of internet research.



DAY 1, 29 JUNE, 2014 (SUNDAY)

VENUE: VAKILARI DHANI, JODHPUR

SESSION 1: STEPS OF LEGAL RESEARCH

The first session took a participative course when *Ms. Sugandha* divided the lawyers present in the workshop into a group of two. Both groups were given a few colored paper slips in which the steps of legal research were written. These groups were required to compile these slips in a correct sequence within a stipulated time. The purpose of the exercise was to gauge their present methods of research and preparing for a case. The various steps of legal research were identified as:



- ✓ Interview client & other relevant persons & prepare detailed notes
- ✓ Read relevant documentation – copy of FIR, seizure report, etc.
- ✓ Separate the relevant facts & prepare time-line
- ✓ Identify main dispute and legal issues
- ✓ Research, Read & Identify legal provisions
- ✓ Apply legal provisions to legal issues in question
- ✓ Read commentaries/digests & research relevant case laws

- ✓ Prepare arguments with the help of supporting case laws
- ✓ Brief and consult client about your intervention
- ✓ Research more, if required, & finalise arguments

Senior Advocate Mr. Mahesh Bora along with *Advocate Abha Singhal Joshi* laid stress on the need of thorough legal research for defense lawyers. Considering the number of accused put in judicial custody, it is the need of the hour for the defense lawyers to be well prepared with their arguments to provide their clients relief from detention. According to them, if a lawyer is not well versed with his research and arguments he/she would not be able to work in the best interest of their client.

The mentors emphasized the importance of the First Information Report (FIR). A lawyer must obtain a copy of the FIR and after a thorough reading of FIR and understanding the facts clearly, he must assess whether any offence is made out or not. If yes, the lawyer must understand the kind of offence and research which evidences shall be required to prove or disprove the offence, as the case may be.

According to *Sr. Adv. Mr. Mahesh Bora*, the main motive of a criminal trial is to get acquittal and a defense lawyer must apply all possible defenses to get the same. He brought to the notice of the lawyers that the method of legal research should be different considering the situation. He stated that research methodology differs 'before challan', 'after challan' and 'at the time of the final argument'.

Adv. Abha Joshi time and again laid stress on the need to understand the ingredients of the offence. Also, a lawyer must start looking into previous cases of similar nature at this stage. While preparing the final arguments, he must go through the evidence again, there must be appreciation of the evidence and every argument must be supported by some law.

SESSION 2: DEMO CASE STUDY

The next session started off with an interactive discussion that was moderated by *Adv. Abha Singhal Joshi*. All lawyers present were asked to undertake a demo criminal case study based on Section 151 of Cr.P.C. *Sr Adv. Mahesh Bora* along with *Adv. Abha Joshi* discussed the main issues of this case study. Describing the present situation, they said that Section 151 is being blatantly misused by the police as they are putting people behind bars for unreasonable reasons but they claim to put people only for the commission of cognizable offence.

Since S.151, Cr PC gives powers to the police to 'Arrest to prevent the commission of cognizable offences', the following must be questioned by the lawyer:

- Under what circumstance was the arrest made which made the police to categorize the offence into a 'Cognizable Offence'
- Constituents of a cognizable offence must come out from the facts itself.

In short, lawyer must check whether the reason for detention is legal or not.

As a general practice, it is seen that people with scarce economic means are detained by Police claiming to detain them under Section 151, but these people do not have a representative who would fight for their acquittal. Thus, Legal Aid is a tool by which these people can get a voice and legal aid lawyers must be sensitized about the plight of these victims.



If the detaining authority does not give an appropriate/reasonable reason for arrest then a writ may be filed in the Court.

Other valuable suggestions given were:

- Advocate Abha Joshi insisted the lawyers to maintain their own case diary as it will act as their own personal Digest and it would greatly benefit them.
- Advocate Bora spoke about the utility of regular reading of law books. It not only makes the concepts crystal clear but also helps in better application of provisions in future cases.
- Commenting on the importance of 'Precedents' Adv. Bora stated that the lawyers must abstain from the practice of handing over the copy of precedent alone supporting their argument to the Judge. Due to acute shortage of time, Judges do not prefer to read that document.
- Lawyers must rather express their arguments citing precedent too in an effective and articulate manner so that it leaves an impact on the Judge's mind. Along with verbal expression, lawyer must hand out the precedent in a hard copy to the Judge.

Post sharing their valuable tips, a group research work was assigned to the lawyers as a part of the event of the next day. With this, Day 1 of the workshop came to an end.

DAY 2 : 30 JUNE, 2014 (MONDAY)

VENUE: UPPER LIBRARY ROOM, HIGH COURT LIBRARY

SESSION 1: STEP BY STEP APPROACH TO LEGAL RESEARCH

Day 2 of the workshop kicked off with the lawyers engaging themselves in library research for the case study which was provided to them the previous day. When they finished off their research work within the allotted time, they were asked to divert their attention to the Power Point Presentations prepared by *Ms. Sugandha* on 'Step by Step Approach to Legal research' and by *Mr. Raja Bagga* on 'The use of Online Resources for Legal Research' respectively.

Detailing the steps of library research, the lawyers were explained what are the primary and secondary sources of law. As a rule of research, primary sources, which are binding, are given precedence over secondary sources which hold persuasive value and used in order to interpret and analyze the primary sources of law & to advance an argument more forcefully.

Emphasis was also laid on how to research and where. A list of commonly used commentaries, digests and law reporters were also provided to the lawyers. They were also explained where to find case laws and how to read a citation and the case. They were advised that though the Head Notes of a case are good reference to find out in short what the judgment deals with but at times it may be erroneous and they should make a practice of reading full judgements. A Lawyer must always refer to the original case, and not place reliance only upon the interpretation of the case by the author of the article or book.

Ms. Sugandha apprised the lawyers about the meaning and usage of Ratio Decidendi and Obiter Dicta. While 'Ratio Decidendi' refers to the reason of the decision, it also has a binding effect. On the other hand 'Obiter Dicta' refers to the extra remarks given by the Court which may or may not be relevant to the case and it does not have a binding effect. A very interesting point laid out by Ms. Sugandha was the application of 'Distinguished Case' by a lawyer. The real skill of a lawyer involves how he uses the distinguished case to his advantage. If applied wisely, then the Judge may consider the point of view of the lawyer.

USE OF ONLINE RESOURCES FOR LEGAL RESEARCH

Mr. Raja Bagga from CHRI gave a live demonstration to the lawyers about how to use the internet for their research purposes. He showed them step by step as to how to fully utilise the resources available online in their daily legal work. A list of important websites to access legal information like laws, amendments, analysis and summary of central legislations was also provided.

For online research of case laws both free (e.g. Indiankanoon - <http://www.indiankanoon.org/>) and paid (e.g. manupatra - <http://www.manupatra.com/>) websites links were shared. The information regarding the status of cases, daily and weekly cause lists and daily orders of the High Courts and Supreme Court can be found at the individual court website or other websites like <http://www.judis.nic.in/> and <http://www.courtnic.nic.in/>.

The lawyers were also informed on how to enhance their research with the help of statistics provided by a number of government websites. For example, National Crime Records Bureau (<http://ncrb.gov.in/>) provides information on Prison Statistics and Crime Statistics and Open Government Data (<http://data.gov.in/>) provides other useful information. Then there are multiple websites which have relevant information about newer case laws, interpretation of statutes, legal principles etc. For example, SUPLIB: Database of Legal Articles (<http://supnet.nic.in/suplib/main.html>); Bar & Bench : Legal News (<http://barandbench.com/>); PRS Blog: Blog on various aspects of law

(<http://www.prsindia.org/theprsblog/>); Vakil Num 1: Legal Super-market (<http://www.vakilno1.com/>), etc.

✚ SESSION 2: GROUP PRESENTATIONS ON SAMPLE CASES AND DISCUSSION

It was followed by presentations of sample cases by all the groups. This session was moderated by *Sr. Adv. Mahesh Bora* and *Adv. Abha Joshi*. The objective was to check the internalization of skills and efficiency of application of research steps and sources. Lawyers presented their research and arguments before the mentors. Detailed discussions took place on each of the four case studies.

After the case presentations, a **Reader on Legal Research**, prepared by CHRI, was given to the lawyers. It contained the legal research frames of each of the case study. The idea was to provide guidelines pertaining to all the cases discussed so that if a similar case comes they could refer the questions that they are supposed to keep in mind while preparing the case and the relevant case laws to support their arguments. In the end, *Adv. Abha Joshi* urged all the participants to follow those guidelines in their future cases.



The two days that this workshop covered induced the idea of methodical legal research in the minds of all the lawyers very strongly with the guidance of *Sr. Adv. Mahesh Bora* and *Adv. Abha Joshi*.