

NATIONAL LEGAL SERVICES AUTHORITY

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Standard Operating Procedure for Representation of persons in custody

One of the core areas of activity of the Legal Services Institutions is providing legal aid. Under Section 12 of the Legal Services Authorities Act, 1987, all persons in custody are entitled to legal aid. However the system of providing representation to those in custody is not uniform across the country. The frequency of visits by jail visiting lawyers to the jails is also not standardised with lawyers visiting only once a month in some places while at others, they may visit twice a week. The jail visiting lawyers are often not clear what is expected of them to do. Clearly the system of interaction with the inmates in jails and their representation in courts needs to be strengthened.

In several districts across the country, the persons in custody are not produced before the courts for days together. This happens even at the stage where the charge sheet has still not been filed. There are many cases where the accused was produced before the court after arrest and was remanded to custody but thereafter was not produced on several dates meant for remand. The reasons given for the same are generally non availability of sufficient number of armoured vehicles and of personnel to produce the persons in custody before the courts and that at times the accused are required to be produced in other courts. This is contrary to the mandate of Code of Criminal Procedure and also violates the basic rights of the persons in custody as enshrined in the Constitution and enunciated by the Hon'ble Apex Court in several landmark cases and most importantly is an impediment to their liberty. Due to non-production of the persons in custody before the courts at regular intervals, the courts are unable to consider whether the persons in custody are facing any problems. Legal representation to them cannot also be ensured in such circumstances.

The persons in custody continue to languish in jails without bail applications being moved on their behalf. Even where bail orders have been granted, they continue to languish in jails as bail bonds are not furnished and the courts find it difficult to communicate with the persons in custody due to their non-production before the courts. Such cases need to be brought to the notice of the court. Further the persons in custody do not get timely information about the status of their cases and their rights. As such, there is an urgent need to bridge the gap between the accused persons and legal services to them.

Several initiatives have already been taken such as setting up of Legal Services Clinics in the Jails across the country, identifying and training PLVs who could communicate with the inmates in the prisons but much more needs to be done.

For this purpose, the District Legal Services Authorities should take the following steps:

- 1) Panel lawyers should be deputed as remand advocates in each of the Magisterial courts and also, in the Courts of Sessions where required.

- 2) Work of the Legal Service Clinics in the jails should be streamlined with clearly demarcated space for such clinics. Requisite infrastructure should be made available, if need be as per the Regulations in this regard for the efficient functioning of such clinics.
- 3) From amongst the panel lawyers, some lawyers should be earmarked as jail visiting lawyers. Visits to the jails must be made at least twice every week.
- 4) The possibility of taking the services of retired judicial officers as jail visiting lawyers may be explored and honorarium for them can be fixed by the Hon'ble Executive Chairmen of the SLSAs.
- 5) Sufficient number of PLVs, from amongst the convicts serving long sentences should be identified and they should be trained suitably, where not already done, so that they interact with the inmates, especially the new entrants and can bring to the notice of the jail visiting lawyers or the Secretary of the District Legal Services Authority, the cases requiring attention.
- 6) The PLVs should maintain the record mentioning the date a person was brought into the jail, the offence alleged against him, stage of case, next date of hearing and the name of the court.
- 7) The Jail visiting lawyers from the District Legal Services Authorities shall regularly interact with the inmates and especially the new inmates to find out if they are represented by any lawyer and if not, they should inform the inmate about their right to get a legal aid lawyer. They should also inform the District Secretary so that a legal aid lawyer can be appointed to represent the inmate in court.
- 8) The Jail visiting lawyers should prepare a brief summary of each interaction and send the same to the Secretary, District Legal Services Authority along with contact details of the family of the accused, if available so that the panel lawyer can coordinate with them.
- 9) The Secretary, District Legal Services Authority may take up a case brought to his notice which needs immediate attention with the District Judge or the Jail Inspecting Judge.
- 10) The Jail Superintendent should be called upon to send a list of inmates in jail every fortnight which should be reviewed by the Secretary of the District Legal Services Authority, who can take up the cases requiring attention with the concerned authorities.
- 11) The PLVs and the Jail visiting lawyers should also keep track of non-production of any inmate in the court as per the date given or of the cases where no next date is available and inform the Secretary, District Legal Services Authority.
- 12) If it comes to the notice of the District Secretary that for certain reasons, the persons in custody are not produced before the court on a particular day, he should bring the same to the notice of the concerned Chief Judicial Magistrate or the Chief Metropolitan Magistrate who may take appropriate action and for the time being may designate a Magistrate to go to the jails for doing the remand work for that day.
- 13) The matter of making available requisite armoured vehicles and personnel for taking the persons in custody to the courts for production should be taken up with the appropriate government.
- 14) The Jail visiting lawyers shall communicate to the Secretary, District Legal Services Authority whenever bail application has to be filed on behalf of an inmate or if subsequently, it comes to their notice that an undertrial is not being represented by a lawyer in the court, who shall issue appropriate directions for a lawyer to be appointed

in the case. They should also bring to the notice of the Secretary, District Legal Services Authority cases where bail orders have been issued but bail bonds could not be furnished due to various reasons.

- 15) The Secretary, District Legal Services Authority shall place the cases of undertrial prisoners who are eligible under Section 436A Cr.P.C. before the Undertrial Review Committee of the District promptly.
- 16) The panel lawyer who is appointed to represent a person in custody in the court should interact with the person in custody to have a better understanding of the case in hand. The panel lawyer assigned a particular case shall inform the next date of hearing and the purpose of the same to the Secretary, District Legal Services Authority within 3 days of the date of hearing in the court.
- 17) The Legal Services Clinic in the jail shall coordinate with the Jail Superintendent and the panel lawyer through the Secretary, District Legal Services Authority to keep itself updated on the status of the legal aided cases of each inmate, including the next date of hearing and the purpose. The status of the case shall be recorded in the registers to be maintained by the Clinic and shall also be communicated to the concerned inmate and the Jail Superintendent.
- 18) Regular awareness camps should be organised in the jails to create awareness on legal issues and specifically on the rights of the persons in custody.
- 19) Suggestion/complaint box should be available in each Legal Service Clinic in the jail which should be opened once every week in the presence of the panel lawyer and the Jail Superintendent and the cases requiring attention should be brought to the notice of the Secretary, District Legal Services Authority.
- 20) Where possible, Video Conferencing may be used to enable communication with the jail inmates.

The Member Secretaries are requested to take up the above issue urgently.

It would be appropriate if the Member Secretaries of all the States get an inspection done of all the jails in their States to identify cases of persons who have not been produced in courts for several dates and thereafter to direct the Secretaries, District Legal Services Authorities to get applications moved in that regard in the concerned courts. Similar steps should be taken where bail applications have to be moved or for modification of bail conditions etc. The Member Secretaries should review the working of the legal service clinics in the jails on a regular basis.

All out efforts should be made to ensure that the persons in custody are effectively represented in the courts and to make them aware of their rights and availability of legal aid.