

**JAMMU AND KASHMIR STATE LEGAL SERVICES AUTHORITY,
JDA COMPLEX, JANIPORA, JAMMU.**

Order No. 105-

SLSA(LS) of 2010 Dated 21-12-2010.

Sanction is accorded to the issuance of the following Schemes by the Jammu and Kashmir State Legal Services Authority with immediate effect, namely:—

- (1) The Jammu and Kashmir State Legal Services Authority (Legal Aid Clinics) Scheme, 2010;
- (2) The Jammu and Kashmir State Legal Services Authority (Legal Services to the Mentally Ill Persons and Persons with Mental Disabilities) Scheme, 2010; and
- (3) The Jammu and Kashmir State Legal Services Authority (Legal Services of the Works in the Unorganised Sector) Scheme, 2010.

By order.

(Sd.) G. H. TANTRAY, IAS,
Member-
Secretary (Secretary to Government)
, Department of Law, Justice and
Parliamentary Affairs.

THE JAMMU AND KASHMIR STATE LEGAL SERVICES AUTHORITY (LEGAL AID CLINICS) SCHEME, 2010.

THE JAMMU AND KASHMIR STATE LEGAL SERVICES AUTHORITY (LEGAL AID CLINICS) SCHEME, 2010.

1. *Introduction:*

Legal aid clinics are intended to provide legal relief easily accessible to the indigent and backward sections of our society. They are almost on the lines of primary health centres where a doctor and other auxiliary medical staff provide basic health care to the people situated in village areas affected with poverty and social squalor. Like the doctors rendering health services to the people of the locality in the primary health centre, a lawyer manning the legal services like legal advice and assisting in drafting of notices, replies, applications, petitions etc. The lawyer manning the legal aid clinic will also attempt to resolve the disputes of the people in the locality, preventing the disputes from maturing into litigation. This provides the lawyer in the legal aid clinic to understand the difficulties faced by people in the distant villages for access to justice. Legal aid clinics have to be manned by lawyers with a sense of commitment, sensibility and sensitivity to the problems of common people.

Legal aid clinic is one of the thrust areas envisioned in the SLSA's Policy and Strategy document. SLSA plan to set up legal aid clinics in all villages in the State.

2. *Name of the Scheme:*

The Scheme shall be called the Jammu and Kashmir State Legal Services Authority (Legal Aid Clinics) Scheme, 2010.

3. *Objective:*

The objective of the Scheme is to provide legal services to the poor, marginalised and weaker sections of the society as categorised in section 12 of the Jammu and Kashmir State Legal

Services Authorities Act, 1997, especially to the people living in faraway places including the places with geographical barriers, away from the seats of justice and the offices of the legal services institutions (“legal services institutions”) means Tehsil Legal Services Committees, District Legal Services Authorities, High Court Legal Services Committee and State Legal Services Authority established under the Jammu and Kashmir State Legal Services Authorities Act, 1997.

The aim of the Scheme is to provide an inexpensive local machinery for rendering legal services of basic nature like legal advice, drafting of petitions, notices, replies, applications and other documents of legal importance and also for resolution of disputes by making the parties to see the reason and thereby preventing disputes reaching courts. In cases where legal services of a higher level is required, the matter can be referred to the legal services institutions established under the Jammu and Kashmir Legal Services Authorities Act, 1997.

4. *Location of Legal Aid Clinic:*

The legal aid clinics established by the Legal Services Authorities shall be located at a place where the people in the locality can easily access. A room within the office building of the local body institutions like panchayat shall be ideal.

5. *Sign-board exhibiting the name of the Legal Aid Clinic:*

There shall be a sign-board both in English and the local language, depicting the name of the legal aid clinic. The board shall display the working hours and the days on which the clinic will be opened. The working hours shall be decided by the Legal Services Authority.

6. *Assistance of the local body institutions in obtaining a convenient room for the Legal Aid Clinic:*

The Legal Services Authorities shall persuade the local body institutions like Halqa Panchayat, Block Development Council, District Development Board, Municipal Corporation and Municipality etc. to provide a room for the functioning of legal aid clinic. Since the legal aid clinic is for the benefit of the people in the locality, the local body institutions should be impressed upon to cooperate with the functioning of the legal aid clinics and to realise that the legal aid clinic is aimed at promoting peace and welfare of the people in the locality.

7. *Publicity:*

The local body institutions shall be persuaded to give adequate publicity about the functioning of the legal aid clinic. The elected representatives of the local body institutions shall be persuaded to spread the message of the utility of the legal aid clinic to the people in his/her constituency/wards.

8. *The infrastructure in the Legal Aid Clinic:*

Every legal aid clinic shall have at least the basic and essential furniture like a table and three or four chairs. The local body institutions shall be requested to provide the essential furniture for use in the legal aid clinic. Only in those places where legal aid clinics are not functioning in the office building of the local body institutions, the Legal Services Authorities need to purchase furniture.

If the Legal Services Authority has its own building to run the legal aid clinic, the infrastructural facilities shall be provided by such Authority.

9. *All villages to have Legal Aid Clinic:*

The District Legal Services Authority shall establish legal aid clinics in all villages, especially in those villages where the people face geographical, social and other barriers for access to the legal services institutions.

10. *The personnel manning the Legal Aid Clinic:*

Every legal aid clinic shall have one or more para-legal volunteers available during the working hours of the legal aid clinics.

11. *Frequency of visit by lawyers in the Legal Aid Clinic:*

Subject to the local requirements, the District Legal Services Authority may decide the frequency of the lawyer's visit in the legal aid clinics. If the situation demands for providing continual legal services, the District Legal Services Authority may consider arranging frequent visits of the lawyer in the legal aid clinic.

12. *Selection of lawyers for manning the Legal Aid Clinic:*

Qualified legal practitioners with skills of amicable settlement of disputes may be selected from the local bar for empanelment for serving in the legal aid clinic. With the prior approval of the State Legal Services Authority the selection/appointment of lawyers shall be done by the nearest legal services institution having territorial jurisdiction. Preference shall be given to women lawyers having practice of three years or more. A list of the panel of lawyers shall be sent to the District Legal Services Authority.

Para-legal volunteer(s) trained by the Legal Services Authorities and holding the identity cards issued by the Legal

Services Authorities may be engaged to assist the lawyer in providing legal services in the legal aid clinics.

13. *Legal Services in the Legal Aid Clinic:*

The legal services rendered at the legal aid clinic shall be wider ranging in nature. Besides legal advice, other services like preparing applications for job cards under the MGNREGS Scheme, liaison with the Government offices and public authorities and helping the common people who come to the clinic for solving their problem with the officials, authorities and other institutions also shall form part of the legal services in the legal aid clinic (the list given is only indicative, not exhaustive).

Legal aid clinic shall work as a single-window facility for helping the disadvantaged people to solve their problems where the operation of law comes into picture.

14. *Administrative Control of Legal Aid Clinic:*

Legal aid clinics shall be under the direct administrative control of the nearest legal services institution having territorial jurisdiction. The District Legal Services Authority shall have supervisory and advisory power on all legal aid clinics functioning within the district.

The State Legal Services Authority shall have the power to issue guidelines on the working of the legal aid clinics.

15. *Honorarium for the lawyers and para-legal volunteers rendering services in the Legal Aid Clinic:*

The lawyers and para-legal volunteers rendering service in the legal aid clinics shall be entitled to a daily honorarium of Rs. 300/- per day for lawyers and Rs. 150/- for para-legal volunteers. Special consideration will be given in cases where

the legal aid clinic is situated at difficult terrains and distant areas where transport facilities are scarce and in such cases an additional allowance not exceeding Rs. 150/- per day may be paid by the legal services institution:

Provided that no honorarium shall be admissible to any lawyer who has been appointed as retainer by legal services institution in the State.

16. *Maintenance of Records and Registers:*

Lawyers and para-legal volunteers rendering service in the legal aid clinics shall record the attendance in the register maintained in the legal aid clinic. There shall be a register in every legal aid clinic for recording the name and address of theseekers of the legal services, name of the lawyer who renders services in the legal aid clinic, nature of the service rendered, remarks of the lawyer and signatures of seekers of legal aid and the lawyers. The para-legal volunteers engaged in the legal aid clinics shall be the interim custodians of the records. However, the records shall be under the ultimate control and custody of the nearest legal services institution having territorial jurisdiction.

The nearest legal services institution having territorial jurisdiction shall be the custodian of all registers and it shall be the duty of the lawyer in the legal aid clinic to hand over the register to such legal services institution, when called for.

17. *Change of Lawyers:*

The nearest legal services institution having territorial jurisdiction may maintain a panel of lawyers preferably from the local bar association. The lawyers may be deputed to the legal aid clinic on a rotation basis. If a matter handled by a lawyer requires follow up and continuous attention for a long duration,

thesamelawyerwhohadhandledthe'mattermaybetrustedtocontinue thelegalservices.

18. *LawyerintheLegalAidClinicshallattempttoresolvethedisputelocally:*

Duringthe courseof legalservices,ifthe lawyerin the legalaidclinicfeelsthatthedisputebetweentwolocallyavailablepartiescanberesolvedthroughproperadviceorbyemployingADRtechniques,he/sheshallmakeanefforttodoso,withoutpermittingthedisputetomatureintolitigation.

InappropriatecasesthelawyersmayrequestthenearestlegalservicesinstitutionhavingterritorialjurisdictiontoreferthedisputetoLokAdalatforapre-litigationsettlement.

In suchcasesthelawyer renderinglegalservicesinthe legalaidclinicsshallensurethattheprocedureprescribedin sub-section (2)ofsection19 oftheJammuand Kashmir LegalServicesAuthoritiesAct,1997iscompliedwith.

Thenearestlegalservicesinstitutionhavingterritorialjurisdiction/DistrictLegalServicesAuthoritymayorganiseLokAdalatatthelegalaidclinicorneartoitspremises.

19. *Para-LegalVolunteers intheLegalAidClinics:*

Para-LegalVolunteersselectedandtrainedbytheLegalServicesAuthorities maybedeputedtoworkinthelegalaidclinicsforassistingthelawyerand theseekersofthelegalaid.Astheygainexperience,theservicesofparalegalvolunteerscanbeusedfordraftingsimplepetitions,applicationsandforaccompanyingtheseekersoflegalaidtotheGovernmentofficesforinteractingwiththeofficialsforsolvingtheproblemsofsuchseekers oflegalaid.

Para-legal volunteers may be encouraged to obtain diplomas and degree in law for betterment of their prospects in the long run.

20. *Legal Aid Clinics run by the Law Students:*

The provisions in the above paragraph shall *mutatis mutandis* be applicable to the student legal aid clinics set up by the law colleges and law faculties in the universities also. However, in such clinics the students in the final year classes may render legal services and the junior students may assist them.

The student legal aid clinics shall always be under the supervision of a faculty member who shall be present in such clinics for immediate consultation.

The students of law colleges and law faculties in the universities also may make use of the other legal aid clinics established under this scheme.

21. *Student may use the Legal Aid Clinics setup under this scheme:*

Law students of the law colleges/law faculties in the universities may be engaged to adopt villages especially in the remote areas and organize legal aid camps. Such students may make use of the legal aid clinics set up under this scheme in consultation with the legal services institution having territorial jurisdiction in that area.

The students in the legal aid clinics may seek the assistance of the para-legal volunteers in the legal aid clinics.

22. *The student legal aid clinics may conduct surveys and prepare reports.*

The student legal aid clinics working in the remote villages may conduct surveys of the legal services required for the people

of that are including identification of the problems which call for a social justice litigation. For conducting the surveys: members of the student legal aid clinic may seek the assistance of the para-legal volunteers and voluntary social welfare institutions working at the grass-root level.

The student legal aid clinics shall send reports to the State Legal Services Authorities with copies to the legal services institutions having territorial jurisdiction and also to the District Legal Services Authorities concerned.

23. *Permanent Legal Aid Clinics attached to the Law Colleges and Law Faculties in the Universities:*

Beside the student legal aid clinics in the rural areas, law colleges and law faculties in the universities may also set up permanent legal aid clinics attached to their institutions. The State Legal Services Authority shall be informed about the establishing of such legal aid clinics. The State Legal Services Authority shall render the required technical assistance for such legal aid clinics and shall coordinate with the legal aid clinics so established.

24. Services of para-legal volunteer trained by the Legal Services Authorities may be made available in the Legal Aid Clinics run by the Law Colleges and Law faculties in the Universities.

Trained para-legal volunteers may be deputed to the legal aid clinics in law colleges and law faculties in the universities for assisting the seekers of legal aid and for interacting with the students and the members of faculty.

25. *The State Legal Services Authority to conduct periodical review of the functioning of Legal Aid Clinics:*

The State Legal Services Authority shall collect monthly reports from the District Legal Services Authorities, the law colleges and law faculties in the universities to review the functioning of legal aid clinics working in their jurisdiction.

The State Legal Services Authority shall conduct periodical review

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orefrequently.

TheStateLegalServicesAuthorityshallissuedirectionsfromtim
etotimeforimprovingtheservicesinthelegalaidclinicstoensurethatm
embersoftheweakersectionsofthesocietyareprovidedlegalservicesin
anefficientandjustmanner.

TheStateLegalServicesAuthorityshallsendquarterlyreportsab
outthe functioning of the LegalAidClinics to
NationalLegalServicesAuthority.

(Sd.).....

Member-Secretary(SLSA).

THE JAMMU AND KASHMIR LEGAL SERVICES AUTHORITY (LEGAL SERVICES TO THE MENTALLY ILL PERSONS AND PERSONS WITH MENTAL DISABILITIES) SCHEME, 2010.

THE JAMMU AND KASHMIR LEGAL SERVICES AUTHORITY (LEGAL SERVICES TO THE MENTALLY ILL PERSONS AND PERSONS WITH MENTAL DISABILITIES) SCHEME, 2010.

Persons, with disability, especially those suffering from mental illness and other barriers like mental retardation do not get proper attention from the authorities in the matter of access to justice. The result is that they are sidelined and are viewed only from the prism of the paternalistic “social welfare” which looks upon them as merely as persons who are in need of special protection by the State and the society. India being a signatory to the UN Convention on the Rights of Persons with Disabilities (CRPD), 2008, it is obligatory for our legal system to ensure the human rights and fundamental freedoms of persons with disability are enjoyed by them including mental illness and mental disabilities on equal basis with others and to ensure that they get equal recognition before the law and equal protection of the law. The Convention further requires ensuring effective access to justice for persons with disabilities on an equal basis with others.

In this background, the following guidelines are issued for the legal services institutions (District Legal Services Authorities, Tehsil Legal Services Committees, High Court Legal Services Committee) to be followed while they deal with legal services to the mentally ill and persons with mental disabilities:—

Part-I

Matters to be considered while rendering legal services to mentally ill persons

1. *Mental illness is curable.*—The legal services institutions shall keep in mind the fact that mental illness is curable on proper medication a

ndcare.

2. Mentally ill persons are entitled to all human rights and fundamental freedoms.—

While dealing with mentally ill persons for rendering legal services it shall be the prime concern of the legal services institutions to promote, protect and ensure the full and equal enjoyment of human rights and fundamental freedoms of the mentally ill persons.

3. Respect for the inherent dignity of mentally ill persons.—

The legal services institutions shall promote respect for the inherent dignity, individual autonomy including independence of mentally ill persons.

4. Non-discrimination.—

The legal services institutions shall not discriminate any mentally ill persons merely because of his state of mental health. It shall be always borne in mind that they are entitled to be treated without any discrimination, on equal basis with others and are entitled to equal protection and equal benefit of the law.

5. Reasonable accommodation.—

The legal services institutions providers shall ensure that the mentally ill persons are afforded situation with appropriate modification and adjustments, where needed in a particular case, to ensure that the mentally ill persons enjoy on an equal basis with others of all human rights and fundamental freedoms (see Article 2 of CRPD).

6. The right of mentally ill persons to get treatment.—

Right to treatment and to get proper healthcare, emanating from Article 21 of the Constitution of India read with section 24 of the Constitution of Jammu and Kashmir is equally applicable to all mentally ill persons.

Mentally ill persons deprived of treatment either due to illegal confinement or superstition or lack of means shall be ensured to get treatment facilities available in the psychiatric hospitals or psychiatric nursing homes. The provisions in Chapter IV of the Mental Health Act, 1987 may be invoked in appropriate cases.

7. Informed consent for treatment.—

Legal services institutions shall ensure that when a person is subjected to treatment for mental illness, his/her informed consent has been obtained. If the person is incapable of giving such consent the informed consent of his/her relatives or friend, and if there is no relative or friend, the satisfaction of the court under Part-II, chapter V of Mental Health Act, 1987 shall be ensured.

8. Legal services during the proceedings for reception orders.—

It shall be the duty of the legal services institution to depute its retainer lawyer to the court which deals with the application for a reception order under Part III of Chapter IV of the Mental Health Act, 1987. The Legal Services Authorities may request the Magistrates who deal with such application that the legal services institutions having jurisdiction in that area may be given notice in all cases for protecting the interest of the mentally ill persons in relation to whom an application for reception order is made.

The retainer lawyers shall gather the details of the circumstances and shall liaise with the relatives of the alleged mentally ill persons, Doctors in the Psychiatric Hospitals or Psychiatric Nursing Homes or any other competent person to ensure that the condition of the persons against whom the application for reception order has been made warrants such an order from the Court.

9. Privacy and dignity of mentally ill persons.—

Mentally ill persons are entitled to right to privacy and dignity emanating from the right to life under Article 21 of the Constitution of India. The legal services institutions shall always uphold and ensure the privacy and dignity of mentally ill persons during the

spelloftheirillness.Thisshallbespeciallyobservedinthecaseofwom
enwhoarementallyillandincapableoftakingcareofthemselves.

10. *Protectionoftheotherfundamentalrightsofthementallyillp
ersons.*—

Legalservicesinstitutionswhiledealingwithanymentallyillpersonsh
allensurethatbecauseofhis/herbeingmentallyill,his/herhumanrights
orfundamentalrightsarenot violated.

11. *Humanelivingconditionsinthementalhospitalsandotherpl
aceswherementallyillpersonsareconfined.*—Thelegalservices
institutions shallin consultation withthe
StateAuthorityforMentalHealthorganizevisitstoPsychiatricHospita
lsorPsychiatricNursingHomesandotherplaceswherementallyillarec
onfinedtoensurethatthereishumanelivingconditionatsuchplaces.Th
elegalservicesinstitutionsshalltakeupthematterwiththeStateMental
HealthAuthorityandtheStateGovernmentincasesoflackofhumaneli
vingconditions.

12. *LegalservicestothementallyillpersonsconfinedinPsychiat
ric HospitalsorPsychiatric NursingHomes.*—The
LegalServicesInstitutionsshallorganizefrequentvisitstoPsychiatric
HospitalsorPsychiatricNursingHomesandotherplaceswherethe
mentallyill persons are confinedand shall gather
informationabouttheexistenceofanylegalproblemsforanymentallyi
llpersonswhichhe/shecannotdealwithonaccountofmentalillness.Th
einformationsogatheredshallbeutilizedbythelegalservicesinstitutio
nsforprovidinglegalaidtosuchmentallyillpersonsforprotectionofhis
/herrights.Forgatheringsuchinformation,
thevisitorsfromlegalservicesinstitutions
shallinterviewthementallyillpersons,hospitalauthoritiesandtherelat
ives/friend,ifany,ofthementallyillpersons.

13. *LegalservicesincaseofforcedadmissionintothePsychiatric HospitalsorPsychiatricNursingHomes.—*

Legalservicesinstitutionsshallattempttogatherinformationduringits visitstothePsychiatricHospitalsorPsychiatricNursingHomesastowh etheranyofthepersonsadmittedtherearevictimsofforcedadmissionor not.Insuchcases,legalserviceshallbegiventosuchpersonsfortheirrel easefromthePsychiatricHospitalsorPsychiatricNursingHomes.

14. *LegalServicesInstitutionstofollowuptheconditionsofthem entallyillpersonsagainstwhomareceptionorderhasbeenpassed.—*

Thelegalservicesinstitutionshavinglocaljurisdictionshallkeepalistof tementallyillpersonsagainstwhomreceptionordershavebeenpassed bytheCourtunderPart- IIIofChapterIVofMentalHealthAct,1987andshallmonitortheprogre ss oftreatment of thementally ill personsin PsychiatricHospitalsorPsychiatricNursingHomeswherethementall yillpersonsissetainedasper thereceptionorder.

ThelegalservicesinstitutionsshallbringtothenoticeoftheMagist rateconcernedaboutanycuredmentallypersonremaininginthePsychi atricHospitalsorPsychiatricNursingHomeswheresuchmentallyillpe rsonhasbeensentasperthereceptionorder.

15. *Legalservicesduringinquisitionproceedings.—*

Whereanallegedmentallyillpersonispossessedofpropertyandifnope rsonsmentionedinclauses(a)to(d)ofsub- section(1)ofsection50ofMentalHealthActiscomingforwardwithana pplicationforholdingjudicialinquisitionunderChapterVIofMentalH ealthAct,1987thelegalservicesinstitutionsinconsultationwithDistri ctLegalServicesAuthoritiesconcernedshalltakeappropriatestepsfor initiatingjudicialinquisition

regarding the mental condition of the alleged mentally ill persons, custody of his/her person and management of his/her property.

For this purpose the legal services institutions may contact any of the aforesaid persons referred to in clauses (a) to (d) of subsection (1) of section 50 of Mental Health Act, 1987 in writing and may also take up the matter with the Advocate General of the State.

16. *Legal services institution to step in when there is attempt to misappropriation of property of mentally ill persons.*—

On getting information about the misappropriation or fraudulent dealing with the properties of mentally ill persons by any person, the legal services institutions in consultation with the District Legal Services Authority concerned shall invoke the provision in Chapter VI of the Mental Health Act, 1987.

17. *Legal Services for non-criminal mentally ill persons confined in jails.*—

Legal services institution through the panel lawyers deputed for jail visits or otherwise shall attempt to identify whether any non-criminal mentally ill person is detained in any of the prisons. If any such person is found, necessary legal aid may be given to such mentally ill person for transferring him to the Psychiatric Hospital or Psychiatric Nursing Homes for treatment as per law.

18. *Legal services for making available the benefits of the Jammu and Kashmir Persons with Disabilities, (Equal Opportunities, Protection of Rights and Full Participation) Act, 1998.*—

The definition of “disabled” under clause (d) of section 2 of the Jammu and Kashmir Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1998 includes mentally ill persons. Therefore, the legal services institutions shall provide legal services to mentally ill persons for availing of the benefits under the PWD Act, 1998 in appropriate cases.

19. *Legal aid to mentally ill persons under section 91 of Mental Health Act, 1987.*—Legal services institutions can play an effective role in the situation mentioned in section 91 of Mental Act, 1987 provided that the mentally ill person is in custody in a Psychiatric Hospital or Psychiatric Nursing Home, irrespective of his/her proof of means. However, in all cases under section 91 where the mentally ill person has no sufficient means to engage a legal practitioner, the legal services institutions shall provide legal services to such mentally ill persons.

20. *Legal awareness programmes and public advocacy relating to mental illness and the rights of mentally ill persons.*—The legal services institutions shall organize awareness programmes especially in rural areas to educate people that mental illness is curable and the need for equal treatment of mentally ill with other persons in the society. Such awareness camps may be organized for the cured mentally ill persons and also for the relatives of the mentally ill persons in a particular locality to educate them about the aforesaid matters for changing the minds of the society towards mentally ill persons. In such special legal awareness camps the presence of psychiatrists, lawyers and social workers can help the participants to clear their doubts and misconception about mental illness. The lawyer in such camps may educate on the property and other legal rights and the other provisions of law relating to the mentally ill persons.

21. *Special legal awareness programmes for sensitizing Judicial Officers and panel lawyers.*—The District Legal Services Authority or High Court Legal Services Committee may organize training programmes in association with State Judicial Academy to sensitize the Judicial Officers about the socio-legal problems faced by the mentally ill persons, their parents, relatives and family members. Similar programmes may be organized with the help of the Bar Association to sensitize the panel lawyers and the other members of the legal profession.

22. *Setting up of legal aid clinics for dealing with the problems of mentally ill persons.*—

The District Legal Services Authorities may set up special legal aid clinics in association with the Psychiatric Hospitals or Psychiatric Nursing Homes to sensitize the family members of the persons with mental disabilities and for discussing the issues relating to inheritance, guardianship, family pension benefits, properties belonging to the mentally ill persons and to take steps for institutional care for destitute and wandering mentally ill persons.

23. *Organizing rehabilitation measures for the cured mentally ill persons.*—

The legal services institutions in consultation with District Legal Services Authorities shall assist the persons cured of mental illness for their rehabilitation. For this purpose, the Legal Services Authorities may liaise with the Social Welfare Department. The District Legal Services Authority shall make frequent visits to the places where such rehabilitated persons are accommodated to ensure that they are given proper shelter with humane conditions, proper food, continued medication and vocational training.

24. *Co-operation with NGOs and Volunteer Social Organization.*—

The legal services institutions shall co-ordinate with NGOs and volunteer social organizations for dealing with the issues relating to mentally ill persons.

25. *Observance of the World Mental Health Day on 10th October every year.*— All legal services institutions may organize programmes on 10th October every year for observing it as the World Mental Health Day. The programmes shall focus on creating awareness about the mental illness and promote mental health advocacy and to spread the message that the mentally ill persons have to be accepted entitled to human rights and other legal rights, as persons living in the inherent diversity in the society and as persons before the law on an equal basis with others in all aspects of life.

Matterstobeconsideredwhilerenderinglegalservicestomentallyretardedpersons

1. *Mentally retarded persons are not mentally ill persons.*— There is confusion even amongst the legal community that mentally retarded people are mentally ill. Mentally ill persons are suffering from mental disabilities due to developmental disorders. Mental retardation of permanent nature is not curable. They are, therefore, treated as persons with disabilities under section 2 of the Jammu and Kashmir Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) (PWD) Act, 1998 (PWD Act). The statutory provisions for the welfare of mentally retarded persons are (i) PWD Act, 1998 and (ii) National Trust for Persons with Autism, Cerebral Palsy, Retardation and Multiple Disabilities Act, 1999 (National Trust Act, 1999). They come under the purview of the UN Convention on the Rights of Persons with Disabilities (CRPD), 2008.

2. *Legal services to mentally retarded persons (MRs).*— The legal services institutions shall get in touch with the Social Welfare Department of the State Government and find out the different beneficiary schemes for the MRs. Indian Railways has schemes for travel facility for MRs. The Income Tax Act also gives some benefits to the parents of MRs. The legal services institutions shall attempt to make available the benefits under various schemes to the MRs and their family members.

3. *Legal services for ensuring the health care of MRs.*— MRs like any other citizens are entitled to right to health services as a part of the fundamental rights.

4. *Legal services for ensuring the fundamental rights of MRs.*— The legal services institutions shall provide assistance to the MRs for protecting their fundamental right, equality and equal treatment.

5. *Right to education.*—

The policy in CRPD is an inclusive policy providing respect for MRs, evolving capacity of MRs, for preserving their identity, respecting their inherent dignity and individual autonomy. The Convention envisages the right of MRs to get education on the basis of equal opportunity and for the development of their mental, physical abilities and creativity to their fullest potential. Therefore, the legal services institutions shall always attempt to safeguard the above mentioned rights of MRs whenever they are found to be deprived of such rights.

6. *Legal services for the benefits under PWD Act, 1998.*—

Legal services institutions shall assist the MRs for obtaining benefits under the PWD Act, 1998.

7. *Prevention of exploitation and abuse of MRs.*—

MRs are one of the vulnerable groups likely to be exploited. Female MRs are the most vulnerable of the group. Therefore, the legal services institutions shall come to the assistance of MRs in preventing their exploitation including sexual abuse and also for taking legal action against the abusers and exploiters.

8. *Legal services of MRs for owning and inheriting properties and to have financial rights.*—

Legal services institutions shall come to the help of MRs in protecting their rights of inheritance, owning properties and enjoying financial rights.

9. *Appointment of guardians under the National Trust Act, 1999.*—

Loss of both parents often leads to a situation that the MRs become orphans. Therefore, appointment of guardian as contemplated under National Trust Act, 1999 is of great importance. Legal services institutions shall come to the assistance of MRs in the matter of appointment of guardian.

10. *Need for setting up of a supported network.*—

The legal services institutions with the help of the Social Welfare Department of the State Govt., NGO's, Charitable Trusts, relatives of the MRs and social workers encourage to set up a supported network at the local level for the welfare of MRs. The supported network in each locality shall take care of the MRs to ensure

that the MRs are not becoming destitute and their food, health and other essential needs are taken care of uninterruptedly.

11. *Creating awareness campaigns amongst the other school children.—*

It is important that the normal children are made aware of the fact that MRs and other persons with disabilities are also equally entitled to the rights provided by the laws and the protection of laws like any other persons. Therefore, the Legal Services Authorities shall on the World Disability Day organize special awareness programmes in the primary school to create awareness amongst the young children to change the mind set towards MRs.

Video films, charts, picture, skits and thematic presentations can be used in such programmes.

12. *Awareness camps for educating the family members of MRs.*

The legal services institutions in association with the schools in their locality can organize awareness camps for the family members of MRs. Services of specialists in counselling, psychiatric, psychological, social work and lawyers also can be made use of in their programmes. Siblings of MRs also may be included in such programmes.

13. *Awareness programmes for the general public.—*

Awareness programmes may be conducted for the general public to educate the public that MRs and other disabled persons also have the rights at par with the other normal persons.

14. *Sensitization programme for Judicial Officers and Lawyers*

Special sensitization programmes can be organized with the assistance of State Judicial Academy and Bar Associations for sensitizing Judicial Officers and lawyers about the MRs and their rights.

(Sd.).....

Member-Secretary(SLSA).

THE JAMMU AND KASHMIR STATE LEGAL SERVICES AUTHORITY (LEGAL SERVICES TO THE WORKERS IN THE UNORGANISED SECTOR) SCHEME, 2010.

THE JAMMU AND KASHMIR STATE LEGAL SERVICES AUTHORITY (LEGAL SERVICES TO THE WORKERS IN THE UNORGANISED SECTOR) SCHEME, 2010.

In the Regional Conference of the State Legal Services Authorities of the Western Region organized by the National Legal Services Authority (NALSA) at Ahmadabad on 28-29 August, 2010 the topic of deliberation was 'Workers in the Unorganized Sector and the Role of Legal Services Authorities'. Detailed discussion took place on the plight of unorganized workers in securing their statutory rights and availing of the benefits of the various schemes put in place by the State Governments.

It is estimated that the workers in the unorganized sector contribute more than 60 percent to the national economy. Unlike their brethren in the organized sector, they are generally reluctant to come to the forefront and demand for the benefits under the various schemes and other welfare measures put in place by the Labour Department and other institutions because of their sheer unorganized or loosely organized nature. Such workers are generally not confined to any particular area as their place of work has no permanent status. Quite often their work is seasonal and when the work at once place is finished they migrate to other places in search of work. They do different kinds of work depending on the availability of work. Some stick to certain vocations on the basis of caste and tradition and yet remain unorganized.

In this scenario, the general problem the authorities and welfare institutions face is that the workers in the unorganized sector are not identifiable. Illiteracy, poverty and the concern for earning their daily bread compel these workers to forsake the benefits of the various social welfare measures. It is the duty of the legal services institution to reach out to the workers in

the unorganized sector for making available the benefits of various schemes and to provide them the protection of law.

Most of the schemes and welfare laws for the benefits of the workers in the unorganized sectors are dispensed through the institutional mechanisms of Boards and Corporations, such schemes and laws are in the nature of social security measures and provide assistance to the unorganized workers, at least to tide over their difficult times. Legal services institutions should come to the help of this disadvantaged group to make available the benefits though small in quantum, to ease their struggle against the odds of life.

Legal Services Authorities can come to the help of the workers in the unorganized sector in the following manner:—

Identifying the unorganized workers within the jurisdiction of each legal services institution by conducting surveys;

Legal services institutions may take steps for conducting surveys for identifying unorganized workers. Services of law students, NGO's and para-legal volunteers also can be availed for conducting such surveys. Surveys can be conducted in a phased manner, gradually covering entire area within the jurisdiction of the legal services institutions concerned. The beneficiaries may be categorized into groups depending on the different welfare schemes of the State Government implemented through the Boards and Corporations etc. The surveys should indicate whether the workers belonging to each category have made efforts to avail of the benefits of the scheme or scheme/legislation/programme of the Government. The next step shall be to liaise with the Boards/Corporations etc. concerned to make available the benefits of the schemes/programmes. Every effort shall be made to ensure that all deserving unorganized workers are brought to avail of the benefits.

(2) Conducting legal awareness programmes for the identified groups of unorganized workers:—

After identification of the unorganized labourers in each category, legal awareness programmes may be organized for creating awareness among them about the different welfare schemes and social security measures available.

For this purpose, awareness programmes may be organized, as far as possible, at the place of work of the workers itself (e.g. construction work sites, market places in the case of street-vendor etc.). Legal awareness classes can be conducted in other places like community halls also. Care shall be taken that the timing of the awareness programmes does not conflict with the work of workers. Lunch intervals and holidays can be utilized for the awareness campaigns.

(3) Persuading and assisting the workers in the unorganized sector to avail of the benefits under the different social welfare legislations, administrative programmes and schemes put in place by the State Government:—

Workers in the unorganized sector may be temperamentally not inclined to undergo the hassles for availing of the benefits of the schemes, programmes etc. Most of them being poor, illiterate and belonging to the lower strata of the society may not have the mental capacity to demand for their entitlements. Migrant workers being eager to go back to their villages after the work are unlikely to have support from the local people where they work. Any such situation demanding individual care will have to be given due attention and, if necessary, legal aid can be given.

(4) Reaching out to the unorganized labourers and facilitating their bargaining capacity with the employers and the institutional mechanisms for their welfare:—

Unorganised workers seldom have bargaining capacity for securing their rightful entitlements. This leads to exploitation

by the employers. Temporary nature of their work also disables them from using the collective bargaining techniques. Support by the legal services institutions to the unorganized workers will empower them for demanding for their legal rights and entitlements.

Providing legal assistance in appropriate cases:

If any particular case requires legal action, the legal services institutions shall provide necessary legal assistance. For cases of Court based legal services the eligibility criteria prescribed under section 12 of the Jammu and Kashmir Legal Services Authorities Act, 1997 shall be kept in mind. The provisions of the Contract Labour (Regulation and Abolition) Act, 1970; The Bonded Labour System (Abolition) Act, 1976; The Inter-State Migrant Workmen Act, 1979; The Child Labour (Prohibition and Regulation) Act, 1986 and other major labour legislations also may be made use of in appropriate cases.

(Sd.).....

Member-Secretary(SLSA).
