

**PRAYAS**

Report of the



*India*

# **Seminar on Role of Duty Counsels and Legal Aid Lawyers: Issues and Suggestions**

Organised by

**Prayas**

(A Field Action Project of the Centre for Criminology and Justice,  
School of Social Work, TISS)

&

**Thane District Legal Services Authority**

In Collaboration with

**V. P. M.'s TMC Thane Law College**

Date: 5<sup>th</sup> October, 2007, Friday

Venue: TMC Thane Law College, Thane

Supported by

**UNDP, SAJI, Project, Phase – 1**

&

**Department of Justice, Ministry of Law and Justice, G.O.I.**

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## **Acknowledgements:**

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Hon'ble Shri. H. S. Deshpande, District and session Judge Thane

Hon'ble Shri. S. R Mehta Principal Judge – 1

Hon'ble Shri. A. C. Bachao Principal Judge – 2

Hon'ble Smt. M. R Sharma, Member Secretary, Thane District Legal Services Authority.

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### **Government and Non Government Organizations:**

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Shri. Bhate, Superintendent, Thane District Legal Services Authority

Shri R.K. Saksena, Retired I.G. Prisons, Rajasthan and Consultant, SAJI  
– I

Adv. Shri S. R. Parad, *Duty Counsel*, Thane

Adv. Shri. Vishal Kanade, Advocate, High Court

Shri Swarnjeet kumar M. A. Social Work, Sr. Student, CCJ TISS

All the Faculty and staff of Thane law College

All the Staff of the Thane District Legal Services Authority

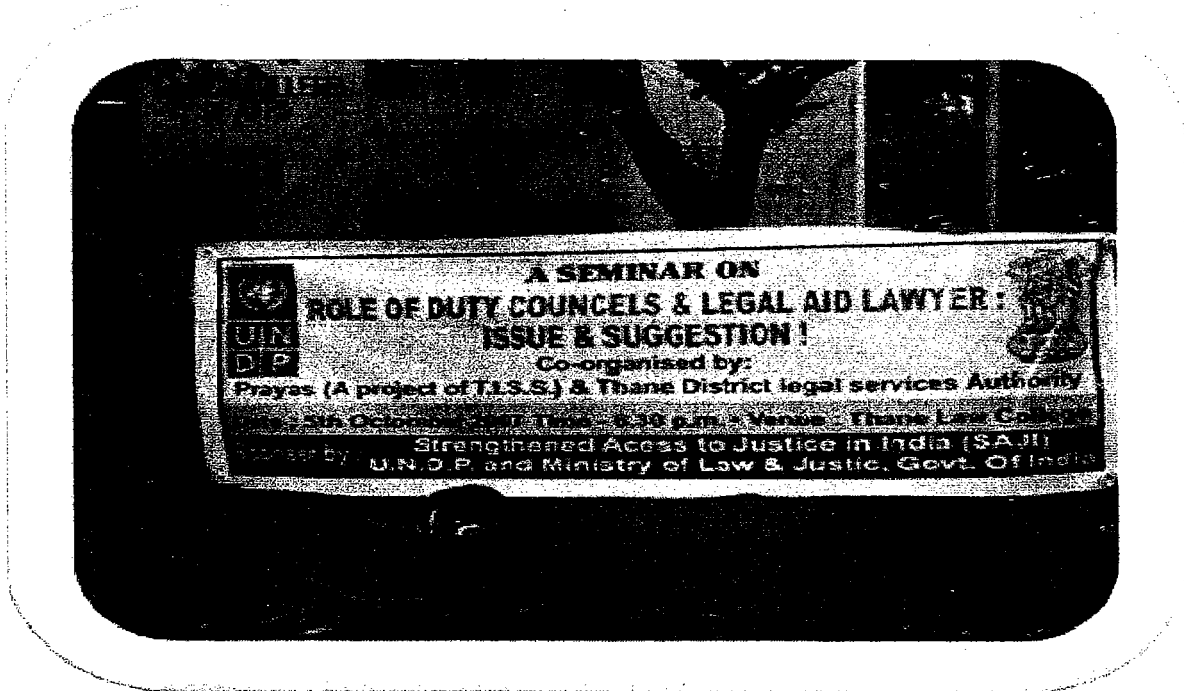
Staff of Prayas

Students of Thane Law College

(SAJI) – UNDP, Ministry of Law and Justice Government of India

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## Introduction

**PRAYAS**, established in 1990, is a Field Action Project of the Centre for Criminology and Justice, School of Social Work, at the **Tata Institute of Social Sciences, Mumbai**. Presently, the project is based in Mumbai and Thane Districts (Maharashtra), and Bharuch District (Gujarat) working with vulnerable groups i.e. youth and women in crime or prostitution, or those being processed by the criminal justice system, towards the protection of their legal rights and rehabilitation.

It has been observed by Prayas (through its years of experience of working within the criminal justice system), that there are gaps in the implementation of correctional laws and provisions relating to legal aid for vulnerable sections in custody. People are losing faith in the criminal justice system for a variety of reasons such as lack of information about the laws, absence of effective structures, staff shortage and financial resources required to implement the laws.

Access to justice and justice remedies are indispensable means for the citizenry to protect their socio-economic, cultural and political wellbeing. In order to find ways to implement legal rights and improve access to justice, there is an urgent need for the authorities concerned to come together under a common platform to discuss issues and work out solutions to address the problems. In the past Prayas, has been involved in organizing such meetings/seminars with various authorities to share their experiences and to suggest practical suggestions.

Currently, Prayas is implementing a project focusing on improving access to legal rights of under trial prisoners in Mumbai and Thane districts under the “**Strengthened Access to Justice in India Phase - I (SAJI-I)**”, funded and supported by the **UNDP and the Department of Justice, Ministry of Law and Justice, Government of India**. Prayas is one of the agencies under SAJI-I working as a project partner. The project supports Government of India’s integrated approach to justice reforms to strengthen both the demand for and supply of justice. This implies people’s legal empowerment to claim their right to redress, as well as the capacities of those mandated to respond to fulfill their obligations.

The **SAJI-I** Project looks at various aspects of improving the justice delivery system in India and is currently being implemented in four States including Maharashtra. The project objective is to address the information gaps in the capacity of justice seekers to seek a remedy and the capacity of duty bearers to provide effective remedies while accessing the justice systems. The focus of this project is to work towards the implementation of the social laws towards the neglected and disadvantaged groups in the Prison.

## **Rationale**

Article 21 of the Indian Constitution provides for the protection of life and liberty of the citizens. Right to fair trial in the court of law is integral facet of this article. An important impact of this article read with Article 39A has been to reinforce the right of a person involved in a criminal proceeding to legal aid. The crux of the Article 39A is that the state should ensure that no body is denied the access to justice by reason of economic or other disabilities.

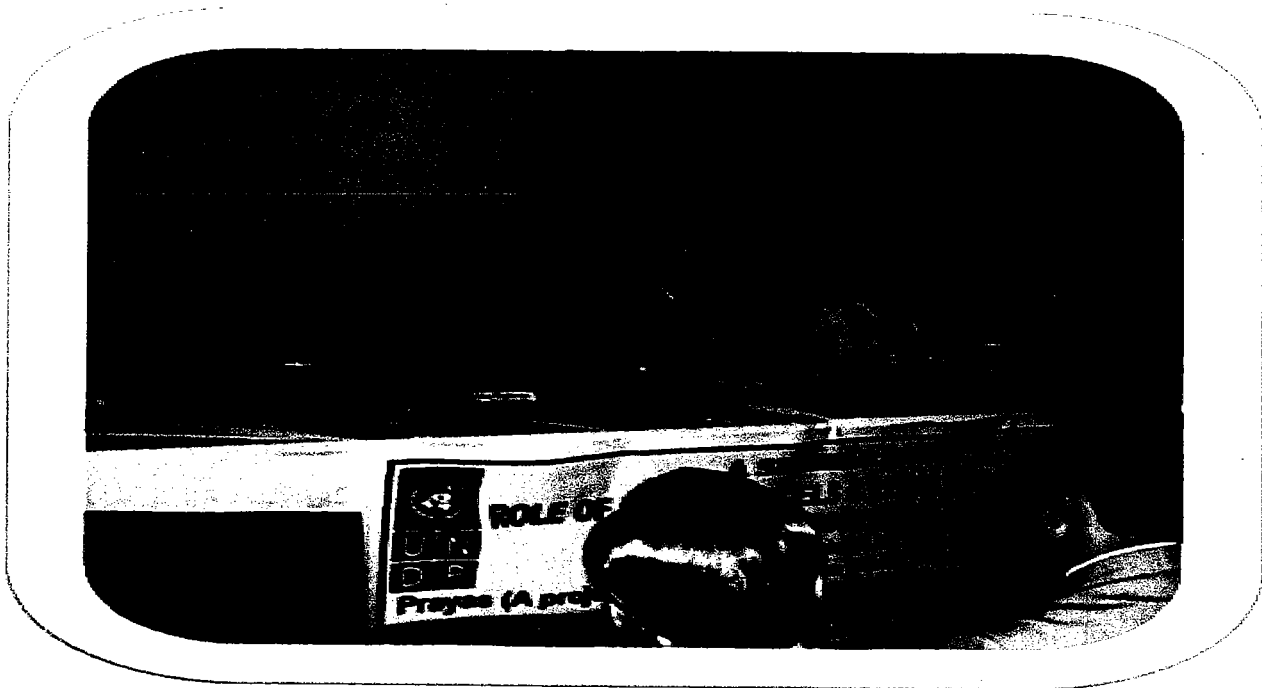
With the above aim, the Government of India introduced The National Legal Services Authorities Act in 1986. Various authorities were formed for the implementation of the provisions of the Act. In Maharashtra, the State has enacted the Maharashtra State Legal Services Authorities Act under which legal services have been constituted at the State, district and taluka levels. Thane District Legal Services Authority is one such implementing body.

Experience has shown that most under trials in prison come from a socially and financially backward class. They are depended on the legal services provided by the authority. There is also evidence that there are many obstacles faced by these accused in order to access legal services, and consequently, justice. The system is working to fulfill it duties and functions, but at the same time its various wings are facing practical problems in performing their duties. Prayas believes that solutions towards any problem can only come from the people who are involved in the implementation process.

### **The Participants of the seminar were:**

- Hon'ble Judges and Magistrates in Thane district;
- Legal aid lawyers of the Thane District Legal Services Authority;

- *Duty Counsels* appointed in the two prisons in Thane district;
  - Superintendent, Thane Central Prison and Senior Jailor, Kalyan District Prison.
  - Faculty and students, TMC Thane Law College
- Social Workers of Prayas working in prisons and courts.



**Keynote address: Hon'ble Shri H.S. Deshpande, District & Session Judge, Thane**

Hon'ble Shri Deshpande talked about the importance of society in an individual's life. The individual have to live in the society, therefore the role of society is very crucial in the overall well being of the individuals.

He laid emphasis on the fact that the prisoners need help form the civil society in order to know and protect their rights. Most of them are poor and need advocates and their valuable services. He talked about the importance of legal aid within the prison and use of newly introduced amendments in the Cr.P.C., especially sections 436 and 436A and section relating to plea bargaining.

He suggested that the legal aid lawyers should use the provision of plea bargaining effectively in order to provide maximum relief to the poor inmates who are languishing in prison in petty offences. Further, the lawyers and *Duty Counsels* can help in speeding up of the trial by helping the court to reach the truth. They should consider the process as a reformative one and provide quality defense services to the accused.



The process is not restricted to the trial and defense but upto the reform of the accused.

**Advocate Shri S.R. Parad, *Duty Counsel*, Thane Central Prison**

Shri Parad spoke about the ethics and role of legal profession. He called it a noble profession. He talked about the purpose of appointment of *Duty Counsels* in prison. He said that the purpose is to ensure that there is fair process of justice. The role of D.Cs is to help the poor inmates in making applications to the court.

According to him, the criminal should be looked upon in more positive manner by advocates and the justice system. Criminals have got separated from the mainstream. Therefore, the efforts of legal aid lawyers should be bring them back to the mainstream.

## **Shri S.N. Chavan, Superintendent, Thane Central Prison**

Mr. Chavan began by discussing the provisions of The National Legal Services Authority Act, 1986. He also discussed various problems faced by prisons administration in implementing the provisions of the Act:

- In the District Authority, there is no representation of prison officials.
- There is unnecessary delay in delivery of Govt./Court circulars.
- Number of legal aid lawyers is very less as compared to numbers of inmates demanding aid.
- There is misuse of legal aid provision by the habitual elements. The aid is not reaching the needy and poor inmates.
- There should be fixed timings for visits by *Duty Counsels*.
- Most of the lawyers are inexperienced and many a time are unable to provide justice.
- There are no legal aid camps organised in prison, because unavailability of lawyers.

He invited students to visit the prison and help prison authorities in providing legal aid to accused. He further suggested that students can help in drafting applications and petitions.

## **Shri Vikas Kadam, Senior Social Worker, Prayas**

According to Shri Kadam, providing legal aid to poor in the prison is a very important issue. The main problem of the scheme is the poor honorarium paid to legal aid lawyers and the delay in payment of fees to them. The need of the hour is to form a panel that has free access to prisons and is paid appropriately by govt. for their services.

Initially, lawyers agree to take up the cases forwarded by courts and prison authorities, but they do not follow up the cases properly. The lawyers on the panel should have adequate experience (3-5 years) in order to enhance the quality of services. Students can play an important role in providing services to the accused. They can act as bridge between govt. and NGOs.

Prison authorities can also play a more participatory role by making list of accused that need aid and by providing speedy information.

## **Adv. Shri Vishal Kanade**

Shri Kanade spoke about his experiences as the Student Coordinator of the Legal Aid Project being conducted by the senior students of the Government Law College in Mumbai Central and Byculla District Prisons. In every social movement students have always played a crucial and important role. In the legal aid system, students, particularly law students can play an effective role. He shared his experiences about the Govt. Law College legal Aid Project and suggested that this model could be implement by Thane Law College. He felt that the various wings of criminal justice system are overburdened. Therefore, students can work towards the enhancing coordination among them and improving access to justice for those in need.

**Shri R. K. Saksena, Retired I.G. Prisons, Rajasthan and Consultant,  
SAJI – I**

Shri Saksena shared his experiences as a prison officer in implementing the legal aid scheme towards increasing access to justice for under trial prisoners. He emphasized that most under trial prisoners have already been granted bail and are unable to go out due to lack of suitable sureties. This problem could be overcome if prison authorities coordinate with the Legal Services Authorities and take effective steps to get those arrested under petty offences released on Personal Bond or Probation. He felt that NGOs and students of law colleges could play a very important role in reducing overcrowding of prisons, by doing legal guidance work with under trial prisoners.

He reiterated that law students could identify cases (under the new amendments in Cr. P.C.) who are eligible for release on P.R. Bond and those willing to go for plea bargaining and present them before the Legal Service Authority or the judiciary for speedy disposal. He strongly felt the need for prison, judiciary, legal service authority, law students and NGOs to work together towards increasing access to justice for under trial prisoners.

**Shri Vijay Raghvan, Faculty, Centre for Criminology and Justice,  
TISS & Project Director, Prayas**

Shri Raghavan shared his experiences of working with under trial prisoners over the last 17 years. He felt that the problems relating to legal access were rooted in the poor implementation of the legal aid scheme. He pointed out to the extremely poor honorarium paid to legal aid lawyers and to *Duty Counsels*, as the primary reasons why legal aid for the poor had largely remained on paper. Yet he felt that there was some hope if the judiciary, prison authorities, legal aid authorities and civil society organizations could come together and work towards increasing access to justice for under trial prisoners. He stressed on the need to consider release of under trial prisoners who had been granted bail on P.R. Bond. The judiciary could look into alternative options to sureties such as moral guarantee of a local respectable citizen, an NGO or a social worker for release on bail or P.R. Bond.

He also felt the need to strengthen the implementation of the P.O. Act, which could lead to decongestion of prisons and also avoid criminalisation of first time and young offenders in prison. He urged law students to get involved in legal guidance and aid work along the lines of the students of the Government Law College. He expressed the hope that as an outcome of this Seminar, all the participants of this Seminar could jointly launch such a project. He expressed his deep gratitude to Hon'ble Shri Deshpande, Smt. Srividya and Shri Chavan for their valuable support in organizing the Seminar.

## **Smt. Srividya J. In-Charge Principal, TMC Thane Law College**

Smt. Srividya expressed her heartfelt thanks to all participants and organizers of the Seminar for agreeing to collaborate with TMC Thane Law College. She specially expressed her gratitude towards Hon'ble Shri Deshpande for agreeing to grace the occasion. She mentioned that this was the first time that the College was a host to such a galaxy of judicial luminaries and it was a proud moment for the College. She urged the students present in the seminar to take inspiration from the speakers and start a legal aid project in prisons in Thane. She assured her full support and cooperation if the judiciary and the prison authorities gave permission for such a project.

### **Conclusion:**

As an outcome of the Seminar, the following decisions were taken:

1. TMC Thane Law College would start a Legal Guidance Clinic in Thane District, with a focus on providing legal guidance to prisoners in Thane district.
2. Superintendent of Thane central Prison would allow and facilitate students of law from TMC Thane Law College to do legal guidance work for under trial prisoners.
3. Prayas would provide support and guidance to the law students involved in the project.
4. The Thane District Legal Service Authority would give the necessary support and cooperation to this initiative, by providing lawyers from their legal aid panel, as and when required.
5. Adv. Vishal Kanade would provide his guidance and support to the law students and help liaise with Government Law College if required.

## **Recommendations:**

### **Judiciary: (TDLA):**

Judiciary should play role of the facilitator as far as functioning of Legal Aid Services is concerned. The judiciary should reduce the age limit for becoming a member of legal aid panel.

Duty counsel, TDLA, Prison officers and social workers must meet once a month to discuss the issues related to the implementation of the scheme.

Judicial officers must ask the counsels before assigning a case to them.

### **Prison Authorities:**

The prison authorities should maintain proper records of the cases related to legal aid. Proper documents help the social workers to pursue the case with the concerned lawyers' effectively. Further, they should maintain a list of the accused those who need legal or other kind of support.

The Prison authorities can take support of the NGOs willing to work in Prison to effectively implement the Probation scheme.

### **Thane Law College:**

Since the TLC has taken this initiative to start a legal Aid Cell, they should provide necessary infrastructure, human resources and student volunteers for it.

The Students should be picked up carefully considering the seriousness of the work. Further, the college has to maintain full confidentiality of the information gather.

### **Vote of Thanks:**

Shri Ashish Srivastava, Student Social Worker placed through the Centre for Criminology and Justice, School of Social Work at TISS proposed the vote of thanks, on behalf of Prayas. First of all he profusely thanked Hon'ble Shri H.S. Deshpande, District and Sessions Judge, Thane for all his support and cooperation in organizing this seminar and

for agreeing to give the keynote address. He thanked the other members of the judiciary who participated in the Seminar. He also thanked Hon'ble Smt. Sharma, Civil Judge for her support and guidance in organizing the Seminar. He thanked the staff of Thane District Legal Services Authority, specially Shri Bhate, Superintendent, TDLSA for organizational and logistical support.

Shri Srivastava thanked the D.I.G. Prisons (Southern Region), Shri S.P. Yadav in permitting the prison officials from Thane to participate in the Seminar. He thanked Shri S.N. Chavan for agreeing to be a resource person for the Seminar. He also thanked Shri R.K. Saksena for his words of inspiration.

He expressed his deep gratitude to Smt. Srividya, In-Charge Principal, TMC Thane Law College for all her support and cooperation in organizing the Seminar and to the faculty and students and volunteers of the College for participating in the seminar with such enthusiasm.

He thanked Adv. Parad and Adv. Kanade for agreeing to be resource persons and sharing their experiences with the participants. He also thanked his fieldwork supervisor, Shri Vikas Kadam for his guidance and support in organizing the seminar.

He also thanked UNDP and Department of Justice, Ministry of Law and Justice, G.O.I. for their support in organizing the Seminar, under the SAJI-I Project.

At the end he extended his special thanks to the student volunteers of Thane Law College, for their active participation in the organisation of the seminar.