

MODEL PROSECUTION SCHEME

(As Amended in 2022)

Under Section 12 of the Legal Services Authorities Act, 1987 read with rule 19 of Haryana State Legal Services Authority Rules, 1996 women and children are entitled for Legal Services irrespective of their income.

Women and Children are vulnerable section of society. Victims want decent treatment, quick investigations, speedy and effective trials of the culprits sans hassles of their repeated appearance before the police and in Courts.

The rape victim is generally shaken when she reaches police station. She is put to questioning by the police. Acute trauma and mental distress visit the victims. Right from the start, such victims need social, psychological and legal support in continuum.

Even though there are public prosecutors in all the trial courts but due to numerical deficiency and over busy schedule of the public prosecutors, in cases of crimes against the woman and child there is dire need of additional legal support to provide succour to the victims.

Similarly there are children who have gone missing and are not traceable even after all necessary efforts of the parents. When they reach police station, they need a responsive treatment. The efforts to find the missing child should be spontaneous. Assistance of panel advocates, PLVs and law students can be more helpful in such scenarios

The Model Prosecution Scheme is based upon the 2 judgements of the Hon'ble Supreme Court in Delhi Domestic Working Women's Forum versus Union of India 1995(1) R.C.R.(Criminal) 194 and Bachpan Bachao Aandolan Vs Union Of India (CWP no. 427/2022).

In Delhi Domestic Working Women's Forum versus Union of India 1995(1) R.C.R.(Criminal) 194 judgement, the Hon'ble Supreme Court laid the following broad parameters:

1. The complainants of sexual assault cases should be provided with legal representation. It is important to have some one who is well acquainted with the criminal justice system. The role of the victim's advocate would not only be to explain to the victim the nature of the proceedings, to prepare her for the case and to assist her in the police station and in Court but to provide her with guidance as to how she might obtain help of a different nature from other agencies, for example mind counselling or medical assistance. It is important to secure continuity of assistance by ensuring that the same person who looked

after the complainant's interests in the police station represent her till the end of the case.

2. Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.
3. The police is under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed.
4. A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable..
5. The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the Court was sought or obtained.
6. In all rape trials anonymity of the victim must be maintained, as far as necessary
7. It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatized to continue in employment.
8. Compensation for victims shall be awarded by the Court on conviction of the offender any by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy as a result of the rape.

In *Bachpan Bachao Aandolan Vs Union Of India* (CWP no. 427/2022 order dated 01.09.2022), the Hon'ble Supreme Court held that

“The scheme for empanelment of PLVs in Police Stations for missing children framed by the Delhi State Legal Service Authority may be circulated to all State Legal Services Authority and Legal Services Authority of U.T so that appropriate schemes can be formed for appointment of PLVs in Police Stations for children and other offences against the children using the scheme as a Model Scheme with appropriate modifications appointment of PLVs in Police Stations for children and other offences against the children using the scheme as a Model Scheme with appropriate modifications.”

(As in the State of Haryana, Model Prosecution Scheme was already in force since 2013, therefore, instead of devising a new Scheme, the Model Prosecution Scheme is hereby amended in 2022 by HALSA.)

Mechanism for Missing Children

The following mechanism can be adopted by Legal State Authorities to keep a watch and participate in the process in which complaints regarding missing children and other offences against children, are dealt with.

Constitution of Core Committee:

For the purpose of carrying out the scheme for missing children, each DLSA shall have a Core Committee headed by CJM-cum-Secretary consisting of female Police Officer not below the rank of DSP (including IPS trainee officers) who shall also be the Nodal Officer from Police Department, 2 Panel Advocates (1 of which be female), Chairman of District Child Welfare Committee and Programme Officer, Women and Child Development Office.

- * Flexes shall be affixed in all the police stations which shall name and provide phone numbers of all the Core Committee members.
- * Further, the Superintendent of Police shall appoint a female Police Officer not below the rank of DSP (including IPS trainee Officer) to be the Nodal Officer for the purpose of this Scheme to coordinate between the DLSA and Police Stations.
- * Superintendent of Police shall also instruct the Nodal Officer to coordinate with Core Committee and Police Stations effectively.

Role of Panel Advocates when a child goes missing

- * Legal assistance to the parents, guardians and family members of missing children to set the State mechanism into motion for their help.
- * They would submit their report on weekly basis to DLSAs mentioning therein the complete details of cases they attended in police stations including FIR/DDR No., name of child/parents/guardian, kind/nature of assistance provided to them. Such report shall be stamped and undersigned by the SHO concerned and then be submitted to the office of DLSA.

Apart from the above said judgments, the role of Juvenile Justice Board is also crucial, while dealing with the missing children. The Juvenile Justice (Care and Protection of Children) Act, 2015 deals with the rehabilitation and protection of the child in need and care. Therefore, role of Juvenile Justice Board also comes to the picture under the Scheme for missing children. In case any information is received about missing children, any member of the Juvenile Justice Board available shall be informed first hand.

Mechanism for Woman/Child Victim:

For implementing the Model Prosecution Scheme for woman/child victim, the following points must be kept in mind:

Role of the panel lawyer appointed to help victim (in case of women/child victim)

- (1) explain to the victim the nature of the proceedings; and
- (2) to prepare victim for the case; and
- (3) to assist victim in the police station and in Court
- (4) to provide the victim with guidance as to how victim might obtain help of a different nature from other agencies, for example mind counselling or medical assistance.
- (5) To help the victim in applying for interim compensation in appropriate and fit cases in the appropriate court/authority while assisting the office of District Attorney and Station House Officer for the same. It includes drafting of application, representation in court/authority etc.

Other Important Points

- (1) The complainant of sexual assault cases should be provided with legal representation. It is important to secure continuity of assistance by ensuring that the same person who looked after the complainant's interests in the police station represent her till the end of the case.
- (2) Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this stage and whilst she was being questioned would be of great assistance to her.
- (3) A list of advocates (on duty as per roster) should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.

Instructions to carry out both the mechanisms:

- (1) Appointment of advocates:

Under the scheme for Women/Child Victim, the Secretary, District Legal Services Authority will appoint lady advocates, who will be required to visit the Police Stations falling under the jurisdiction of concerned courts allotted to them under the scheme and will give legal assistance to the victims of rape and other crimes against women and children. For missing children, the Advocate Members of Core Committee shall do the needful.

All the SHO/In charge of Police Stations in the State of Haryana to do the needful and to co-operate with the lady advocates/Core Committee Members appointed by the Chief Judicial Magistrates-cum-Secretaries, District Legal Services Authorities in the State of Haryana, in discharge of the aforesaid duty by them. (Letter No.10681/2009/MS/HSLSA Dated 31.8.2009)

2. SHO to assist :

All the SHOs/In-charge of Police Stations must be directed to immediately intimate the lady Legal Aid Prosecution Counsel (in case of Woman/Child victim or Advocate Members of Core Committee (in case of missing children), appointed by the Chief Judicial Magistrate-cum-Secretary, District Legal Services Authority, whenever a woman/child victim of rape or missing child or any other offence approaches the police station and to co-operate with the Legal Aid Prosecution Counsels in discharging their duties.

(No.11292-313/2012/MS/HALSA Dated, Chandigarh, the 24.7.2012)

3. Travelling allowances:

The Hon'ble Executive Chairman has approved the Model Scheme for Legal Aid Prosecution Counsel for victim's and other crime against women and children and for missing children for implementing in all Districts of Haryana. Under the scheme you may appoint advocates. They will be required to visit the Police Station falling under the jurisdiction of concerned courts allotted to them under the scheme and will give legal assistance to the victims of rape and other crimes against women and children. The Advocate Members of the Core Committee shall be visiting the Police Stations on receiving calls from the concerned Police Stations. They will be paid an amount of Rs.500/- per case for attending Investigations, Remand & Committal Proceedings (if any for both the missing children cases or women/child victims). They will also be entitled to travelling expenses at the following rates.

Upto 20 kilometers : Rs. 100/-

Upto 40 kilometers : Rs. 150/-

Upto 60 kilometers : Rs. 200/-

Upto 80 kilometers : Rs. 250/-

At the stage of trial, if the Secretary, District Legal Services Authority is satisfied that any victim of sexual offence against women and children, needs legal assistance, then Legal Aid Counsel may be provided to her/him and Legal Aid Counsels shall be paid legal fee as per scheduled already fixed by Haryana State Legal Services Authority vide letter No.5015-34/MS/HSLSA dated 8.7.2002.

(Letter No.10643-10661/2009/MS/HSLSA Dated, Chandigarh, the 31.8.2009)

Role of Panel Advocates: Panel Advocates shall be on duty as per roaster which are already being issued by DLSAs under this scheme for women/child victims. For missing Children, the Panel Advocates of Core Committee shall be doing the needful on requirement basis.

Special training for effective implementation: -A special training for advocates, PLVS shall be conducted by DLSAs in association with special juvenile police officer, CWC, DCPU and officials from Bachpan Bachao (NGO). This training shall be for 10 hours divided in as many days as required and practicable and shall include training on all the important laws relating to children.

Quarterly Meetings: The DLSAs shall conduct quarterly meeting of the Core Committee Members to review the time to time progress and issues faced and providing solutions thereof and share the minutes with HALSA.