
**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 and care.

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 health care, 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 institutions to depute its retainer lawyer to the court which deals with every application for a reception orders under Part III of Chapter IV of the Mental Health Act, 1987. The Legal Services Authorities may request the Magistrates who deals with such application that the legal services institutions having jurisdiction in that area or 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 lawyer 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

spell of their illness. This shall be especially observed in the case of women who are mentally ill and incapable of taking care of themselves.

10. *Protection of the other fundamental rights of the mentally ill persons.*—Legal services institutions while dealing with any mentally ill person shall ensure that because of his/her being mentally ill, his/her human rights or fundamental rights are not violated.

11. *Humane living conditions in the mental hospitals and other places where mentally ill persons are confined.*—The legal services institutions shall in consultation with the State Authority for Mental Health organize visits to Psychiatric Hospitals or Psychiatric Nursing Homes and other places where mentally ill are confined to ensure that there is humane living condition at such places. The legal services institutions shall take up the matter with the State Mental Health Authority and the State Government in cases of lack of humane living conditions.

12. *Legal services to the mentally ill persons confined in Psychiatric Hospitals or Psychiatric Nursing Homes.*— The Legal Services Institutions shall organize frequent visits to Psychiatric Hospitals or Psychiatric Nursing Homes and other places where the mentally ill persons are confined and shall gather information about the existence of any legal problems for any mentally ill persons which he/she cannot deal with on account of mental illness. The information so gathered shall be utilized by the legal services institutions for providing legal aid to such mentally ill persons for protection of his/her rights. For gathering such information, the visitors from legal services institutions shall interview the mentally ill persons, hospital authorities and the relatives/friend, if any, of the mentally ill persons.

13. *Legal services in case of forced admission into the Psychiatric Hospitals or Psychiatric Nursing Homes.*—Legal services institutions shall attempt to gather information during its visits to the Psychiatric Hospitals or Psychiatric Nursing Homes as to whether any of the persons admitted there are victims of forced admission or not. In such cases, legal services shall be given to such persons for their release from the Psychiatric Hospitals or Psychiatric Nursing Homes.

14. *Legal Services Institutions to follow up the conditions of the mentally ill persons against whom a reception order has been passed.*—The legal services institutions having local jurisdiction shall keep a list of the mentally ill persons against whom reception orders have been passed by the Court under Part-III of Chapter IV of Mental Health Act, 1987 and shall monitor the progress of treatment of the mentally ill persons in Psychiatric Hospitals or Psychiatric Nursing Homes where the mentally ill persons is detained as per the reception order.

The legal services institutions shall bring to the notice of the Magistrate concerned about any cured mentally person remaining in the Psychiatric Hospitals or Psychiatric Nursing Homes where such mentally ill person has been sent as per the reception order.

15. *Legal services during inquisition proceedings.*—Where an alleged mentally ill person is possessed of property and if no persons mentioned in clauses (a) to (d) of sub-section (1) of section 50 of Mental Health Act is coming forward with an application for holding judicial inquisition under Chapter VI of Mental Health Act, 1987 the legal services institutions in consultation with District Legal Services Authorities concerned shall take appropriate steps for initiating judicial inquisition

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 sub-section (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 institutions 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 institutions 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 Hospitals 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 a 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 Hospitals or Psychiatric Nursing Homes, irrespective of his/her proof of means. However, in all cases under section 91 where the mentally ill persons 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 the matters for changing the mindset 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 Associations 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.

Part-II

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

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 beneficial 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 preserve their identity, respect 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 owing 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 schools to create awareness amongst the young children to change their mindset 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 19 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 deliberations was 'Workers in the Unorganised Sector and the Role of Legal Services Authorities'. Detailed discussions 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 per cent 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 on to certain avocations 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 institutions 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 of 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 survey 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 the liaison 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 amongst 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-vendors 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

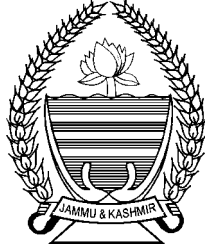
by the employers. Temporary nature of their work also disables them from using the collective bargaining techniques. Support by the legal services institutions to the unorganized workers will empower them for demanding for their legal rights and entitlements.

Providing legal assistance in appropriate cases :

If any particular case requires legal action, the legal services institution 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).



GOVERNMENT OF JAMMU AND KASHMIR

STATE LEGAL SERVICES AUTHORITY

1. THE JAMMU AND KASHMIR STATE LEGAL SERVICES AUTHORITY (LEGAL AID CLINICS) SCHEME, 2010.
2. THE JAMMU AND KASHMIR LEGAL SERVICES AUTHORITY (LEGAL SERVICES TO THE MENTALLY ILL PERSONS AND PERSONS WITH MENTAL DISABILITIES) SCHEME, 2010.
3. THE JAMMU AND KASHMIR STATE LEGAL SERVICES AUTHORITY (LEGAL SERVICES TO THE WORKERS IN THE UNORGANISED SECTOR) SCHEME, 2010.

STATE LEGAL SERVICES AUTHORITY

**JDA Complex, Janipora, Jammu. Ph. No. 0191-2539962
Old Secretariat, Srinagar. Ph. No. 0194-2480408**

INDEX

1. The J&K State Legal Services Authority Act, Rules, Regulations.
2. The J&K State Legal Services Authority (Free and Competent Legal Services) Regulations, 2010.
3. The J&K State Legal Services Authority (Lok Adalats) Regulations, 2010.
3. The J&K State Legal Service Authority ;
 - (i) Legal Aid Clinic Scheme, 2010.
 - (ii) Legal Services to the Mentally ill Person and Persons with Mental Disabilities) Scheme, 2010
 - (iii) Legal Services to the Workers in the Unorganised Sector) Scheme, 2010