

**DISTRICT CONSULTATION MEETING ON
TRAINING, COACHING AND MENTORING
OF PARALEGALS OF SANTHAL PARGANA
DEVELOPMENT CLUSTER
(SPDC), PRADAN**

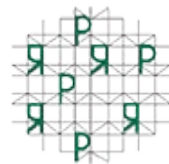
Date: 19th September 2020

Venue: Google meet link in Dumka, Jharkhand

Organized by,



Human Rights Law Network



Agenda for the meeting on Training, Coaching and Mentoring of paralegal of SDPC

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AGENDA:

Session1: Introduction to law, Court, Police, legislative, executive, National Commission for SC, ST, OB, Women, Human Rights and Child.

Session2: FIR, How to lodge FIR, Court complaint, different process after filing cases.

Session3: victim compensation, Bail, anticipatory bail, how to write letter to SP, DGP etc Public Interest Litigation, writ in High Court

Session 4: Law relating to women and child Criminal law, property right, domestic, sc at prevention of atrocities act violence act, sexual harassment act, maternity benefit act etc.

OBJECTIVE OF THE MEETING: In Santhal Pargana Development Cluster (SPDC), PRADAN has been working in 4 districts of two states directly in the grassroots. Godda, Dumka, Jamui, and Banka are the direct engagement districts of PRADAN. We have been working in this SPDC for more than the last two decades in livelihood and other development indicators. Promotion of CBOs and their nurturing is the fundamental process to address any developmental need and is our basic approach to reach to the community. There are several CBOs promoted, and to some extent, they have been bringing impactful changes in their and villagers life. PRADAN has been only playing the facilitating role to help these institutions to achieve their collective aspiration for their survival.

The Session was conducted by Advocate Sonal Tiwari, Advocate Mrinalini Adela Tete, and Advocate Rashmi Lal.

Why legal awareness and aids are required

We need to update the context of our women-led CBOs to extend our services for this region. Women's position in this region is most disadvantaged in the society across tribes, non-tribes, and minorities irrespective of their family economic condition. Women are engaged in multiple works in households, livelihoods activities, and child care, but hardly have any say in the decision-making process in the family, village, and society. Women say men being the earning members have more say in the family, and they are household heads and make final decisions. If women earn, then also hardly spend any money for them and men decide where to expend it. The name and relation generally identify them with their children, husband, and father-in-law. The self-view of women about themselves is low, and they have accepted the norms in the society that women are less equal. The degree of women's freedom, ability to make her own choices, mobility, etc. varies among different castes like Ghatwar, Santhals, Paharia, Yadav, and Muslim. Tribal women have greater freedom, versatility, and ability to make choices. They choose their life partners and get into physical intimacy with mutual consent even before marriage. Male partners of Santhal women consult their spouse in the decision-making process and allow them to visit the market, banks, Panchayat, Block or for wage-earning in and around the village, which is not permitted in Yadav, Muslim, and other general castes. In the non-Tribal family, marriage is the only accepted institution for staying with a partner. Non-tribal women

mostly Yadav, koiry, Muslim, and Ghatwar remain within their house or work in their agriculture fields within the village. But they have the least say in the decision-making process in the family. The women from the non-tribal community usually have food at the end, after feeding to all family members. They typically do not migrate, unlike tribal women. Women at large have limited control over their bodies, on dress selection, don't have control of their earnings, and are usually less paid as wage labor compared to males in the society. Women don't have assets in their names like land, houses, or any other assets. They are not aware of their legal rights, assurances, and related reservation. Hardly they assault against their violence and merely go to the police station. Child marriage is prominent in the area and due to which girls become mothers at an early age. During the pregnancy and even after one week of delivery, women have to work in the household, which adds to their drudgery further and severely affects health.

Women's mobility is much higher, in the case of Santhal and Paharia (PVTG) community, as compared to the non-tribal community like Yadav, Ghatwal sub-caste. Women do not participate in Gram Sabha meetings, except SHGs women recently started raising their issues in such a forum. Mostly both tribal and non-tribal women are not able to influence their society and cannot challenge the social norms which are oppressive and unjust. Women neither are given space to participate in the village development process and to express their issues and problems nor are their views heard. Women are self-view and their aspiration is low because of their long experiences of living in a patriarchal society, little exposure, low literacy, and following its structures and its norms without challenging it.

The expectation of our engagement

Here are the few steps that can be jointly explored to reach the CBOs and their legal needs.

- Legal awareness of the BLFs/CLFs (Block level federation/Cluster level federation) about the system of law exists in their surroundings how women can collectively know about requirements, their system, and access it.
- Awareness on kind of laws is prevails considering their contextual needs explained above, and collectively the CBOs can work on it

grooming the women-led collectives through a different system to assist their members around legal aids.

SESSION 1:

The session started with the introduction of the speakers, wherein the speaker greeted the participants and introduced himself as an activist of HRLN, Jharkhand. He spoke of the work done by HRLN and its network across the country and across the globe, the objectives and functioning of HRLN as a pro-bono legal support organization. The objective of the introduction was also for the participants to understand and get a grasp of the current scenario and how HRLN, can help them with their various issues. Works done by the Advocates of HRLN was also explained to all the participants.

Advocate Sonal Tiwari

The speaker introduced himself as an advocate of HRLN, practicing in the Jharkhand High Court, he discussed about the working of HRLN, its aims and objectives. He talked about how HRLN has always organized Workshop on Human Rights and Law, Women and Law, Child and Law programme. HRLN has always supported victims through litigation and preparing reports which have been used by the standing committee of the Parliament for drafting of laws. He also discussed about HRLN taking up the cause of the women, children and mostly the deprived sections of the society on a pro bono basis. And the network of HRLN in Jharkhand, which covers almost all the districts, having advocates in almost all the districts unlike other states.

Advocate Mrinalini Adela Tete

The speaker introduced herself as an advocate of HRLN, she greeted the participants, and talking about the working of HRLN, she gave a brief overview of the two day training, coaching and mentoring of the paralegals.

Advocate Rasmi Lal

The speaker introduced herself as an advocate of HRLN, practicing in the Jharkhand High Court.

The speaker greeted the participants, and firstly, asked them as to how many are involved in providing legal aid to the people, or helping the needy to access legal aid, and fight for their rights, to which almost everyone gave a positive answer, and also showed their interest in working in that field, only if they get some support and or training in legal aspects. Seeing their response, the speaker was pleased to know that, there are people who want to fight for the common cause, and the rights of the people.

The speaker explained to them that, a paralegal is not a lawyer, but is typically employed by various legal institutions to provide immediate relief to the victim. He also made them to understand that, the advocates get involved in the later stage, when the right has been infringed, offence has been committed, it is then that they come in picture, fighting for their rights, helping them to access justice. Similarly, he also explained to them, that how their role is important over here, as they will be associated with the people from the very beginning, keeping watch on the slightest wrong done to the people, making them aware of their rights. Because when the person is not even aware of his rights, then how is he supposed to understand that his right is being infringed. A paralegal basically works in a legal environment, however they do not provide proper law-related services to the people. They may have to travel to various parts of the state/districts reaching out to people, helping them, guiding them, winning their trust, giving them a ray of hope, in this cruel world. They are also sometimes needed to visit courts to accompany their organization's lawyers, supporting them in a particular case, as they have done the ground work, and are aware of every facet of the case. This requires knowledge of legal concepts and are not exclusively performed by a lawyer.

The speaker greeted the participants, and giving a brief overview of the work expected of the paralegals, he talked about the job satisfaction that they will get if they do the para legal volunteering, because through this they get a chance to help the people at the ground level, making them aware of their rights, helping them claim their rights and fight for their rights. He further explained it to them about their work that how they work on the back end of any legal institution, and assist the advocates in getting valuable information, processing the documentation and performing other subsidiary tasks like research and investigation for a case. They are someone who knows things from scratch. Whether it is identifying the witnesses,

conducting that difficult deposition or getting into the minutest details of each element involved. This puts the paralegals in a position where they can almost always suggest the advocate which way to go when in trouble with the case.

The speaker also talked about the various governmental schemes, that the government introduces for the weaker sections of the society, for their betterment and their upliftment. And in this lakhs and crores of rupees are funded by the government to the various concerned departments. And the problem here arises because, the poor innocent people for whom these schemes are introduced, are only unaware of the beneficiary schemes, so how can they even claim it. So here also the paralegals play an important role as they are updated with the various governmental schemes, and they see to it that the actual beneficiaries reap the benefits of such schemes.

Advocate Mrinalini Adela Tete

The speaker in continuation with the speaker's discussion on "dalits", discussed about the Prevention of Atrocities against SC/ST Act. The speaker discussed that how the Government of India has attempted on several occasions to legislate specifically to address the issue of caste related violence that affects SCs and STs. Aside from the Constitutional abolition of untouchability, there has been the Untouchability (Offences) Act of 1955, which was amended in the same year to become the Protection of Civil Rights Act. It was determined that neither of those Acts were effective, so the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act of 1989 (POA) came into force.

The speaker further discussed that how the Prevention of Atrocities Act designated specific crimes against SCs and STs as "atrocities", a criminal act that has "the quality of being shockingly cruel and inhumane", which should be prosecuted under its terms rather than existing criminal law. Its purpose was to curb and punish violence against Dalits, including humiliations such as the forced consumption of noxious substances, forced labour, denial of access to clean drinking water and other public amenities, and sexual abuse from upper caste. The Act permitted Special Courts exclusively to try Prevention of Atrocities cases. The Act called on states with high levels of caste violence said to be "atrocities-prone" to appoint qualified officers to monitor and maintain law and order.

The speaker talked about how the Act lists 22 offences relating to various patterns of behaviours inflicting criminal offences for shattering the self-respect and esteem of SCs and STs, denial of economic, democratic and social rights, discrimination, exploitation and abuse of the legal process, etc. It signifies “crimes which have ingredients of infliction of suffering in one form or the other that should be included for reporting”. This is based on the assumption that “where the victims of crime are members of Scheduled Castes/Tribes and the offenders do not belong to Scheduled Castes/Tribes caste considerations are really the root cause of the crime, even though caste considerations may not be the vivid and minimum motive for the crime. The Act envisages protection from, social disabilities (denial of access to certain places and to use customary passage and to get water from any spring, reservoir or any other source), personal atrocities (forceful drinking or eating of inedible or obnoxious substance, against stripping, outrage of modesty, sexual exploitation, injury or annoyance), atrocities affecting properties (land, residential premises, existing properties), malicious prosecution, political disabilities, economic exploitation.

That the speaker discussed about the punishment for the offences against the sc/st, in chapter two of the Act, as that whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, willfully neglects his duties required to be performed by him under this Act, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year. Whoever, having already been convicted of an offence under this Chapter is convicted for the second offence or any offence subsequent to the second offence, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence. And also the offences committed by the non-sc/st persons, and its punishment. Hence making the participants aware that if an offence is committed against them, and the Officer incharge fails to register their case, they can move to the court as it is punishable.

Further explaining the provisions of the Act, the speaker talked about how for speedy trial, the Act provides, for a Court of Session to be a Special Court to try offences under this Act in each district. The Judge in a special court be sensitive with right aptitude and understanding of the problems of the SCs and STs. However, that is seldom the case. For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or

appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

Accordingly investigation of an offence committed under the SC/ST Act cannot be investigated by an officer not below the rank of Deputy Superintendent of Police (DSP). The rule is to ensure that the investigations are of high quality, and the assumption is that senior officials would not be as biased, or as vulnerable to other pressures, as those in the lower rungs of the police force. One of the reasons why atrocities are committed against the sc/st is to cripple them economically. Every riot, every arson case, every discrimination case, every exploitation case, every torture case cripples them emotionally, socially and also economically. Therefore, it is important that the State must immediately rush in social and economic measures for the rehabilitation of those who have suffered through these atrocities, which the Act talks about, but nothing has been done for the same. The government has prescribed a schedule for compensation for Relief Amount, which is periodically updated.

The statement of object and reason of the SC/ST Act clearly reveals that the Act, in its letter and spirit, desires that Dalits lead a dignified life. However, even after 20 years of its existence in the statute book, it has not shown its desired effect. The majority of the beneficiaries of this Act are unaware of the legitimate claims of leading a dignified way of life or are unwilling to enforce it intensively. Even the Police, prosecutors and judicial officers are unaware of this Act. Misapplication of the Act by police and the courts aggravates the problem, which ultimately leads to acquittals.

In the context of the POCSO Act, 2012, the speaker explained that the interviews of the victim, be conducted by a variety of professionals, including police or investigative agencies. These are forensic rather than therapeutic interviews, with the objective being to obtain a statement from the child in a manner that is developmentally-sensitive, unbiased, and truth-seeking, that will support accurate and fair decision-making in the criminal justice and child welfare systems. Information obtained from an investigative or forensic interview may be useful for making treatment decisions, but the interview is not part of a treatment process. The speaker also talked about the medical care of the victim, the medical compensation, the emergency medical help and counselling of the victim. The reporting of the offence within 24 hrs to the concerned police or

the child welfare committee, the role of the social workers, and also that the punishment in such cases is a minimum of five years and a maximum of hang till death.

Before the commencement of this act, all such cases which involved sexual offences against child were to be dealt with the Indian Penal Code. But the increasing rate of offences against children and the loopholes that were found under IPC paved way for developing and introducing provisions that could exclusively deal with sexual offences against children and overcome the shortcomings of the Indian Penal Code with respect to such offences been made punishable under this Act.

The POCSO Act, 2012 is an excellent legislation and it recognizes almost every known form of sexual abuse against children as punishable offence. A multi-dimensional, multi-agency team and multi-tier approach including access to psychosocial support is to be made available to deliver holistic comprehensive care under one roof for victims of child sexual abuse. The speaker also discussed in brief sections, 19(1); 20; 21; 21(1)(2); 21(3), which talks about people aware of incident but not reporting the matter, institutions involved in commission of the offences, identity of the victim, not to be disclosed.

The speaker further discussed that how the statement of the victim is to be recorded, in a place where the victim is comfortable, by a woman officer, in presence of the person whom the victim trusts, may include a translator provided by DCPU, may be video recorded.

The speaker further discussed about the reporting of the offences, under sections, 24; 24(2); 24(3); 24(4); Rule 4 (1); Section 164 Crpc, how the police officer shall not be below the rank of sub inspector, police should be in plain dress in such situation, child shall not come in contact with the accused, child should not be detained in the police station at night, police shall share his details with the informant, the statement of the child must be recorded in simple language.

The speaker further discussed about the medical examination and treatment of the victim, and the provisions laid down in the CrPc as well as the POCSO Act, section 164, 166 B of CrPc; section 27(2); 27 (3), Rule 5 (3) of POCSO Act.

The speaker also discussed about the Child Welfare Committee and the POCSO Act, sections 19(6); Rule 4(3) of the Act, which states that the police will have to report the matter to the Child Welfare Committee within 24 hrs of the matter being reported, produce the child before the committee.

The speaker also gave them pointers on getting the FIR registered. That it must be filed immediately. If there is any delay, mention it in the form. If given orally, it must be taken down in writing and explained to the informant by the officer in charge, at a Police Station within the jurisdiction of which the offence has taken place. Being very specific in reporting the matter. There should be four copies recorded simultaneously, with carbon sheets in place. It must be recorded in first person. Do check in which language this needs to be done. Avoid complicated, technical words, terminologies and unnecessary details. Try not to overwrite or score out words. Ensure that the arrival/departure time is mentioned in the F.I.R and in the Daily Diary (DD) Register at the Police Station. It must contain authentic information, including these necessary bits of information: What information do you want to convey? In what capacity are you providing the information? Who is the perpetrator of the crime? Who has the crime been committed against: victim/complainant? When was it committed (time)? Where was it committed (specific place/locality/area)? Why do you think it was committed? Which way (actual process involved) was it committed? Were there any witnesses? (Names will be required here.) What were the losses? (Money/valuables/ possessions /physical damage etc.) What were the traces at the scene of the crime? (Weapons/evidence if any.) After completion, the informant must carefully read the document and sign it. It must be recorded by the officer in the book maintained for this purpose by the State Government. The informant has the right to and must get a copy of it for his records, he is not required to pay for the same, nor required by law to give an affidavit. And the speaker further emphasized that to never file a false complaint or give wrong information to the police, as one can be prosecuted under law for giving wrong information or for misleading the police. (Section 203, Indian Penal Code 1860) Having known all these facts, we can generally succeed in a court of law by simply putting in required information and get the accused behind the bars.

Advocate Sonal Tiwari

The speaker greeted the participants, and explained to them that how there are two things that they need to keep in mind before initiating a criminal proceeding anywhere in the world. Explaining to the participants as to how to report such cases online, as most people, who want to register a complaint, dread entering a police station since lodging a complaint seems like an arduous task or there is a constant fear that the authorities might not be cooperative. However, that shouldn't stop anybody from taking a strict action against a crime. As India is moving towards digitalisation, how to file an online FIR/police report or complaint has become one of the most searched queries.

A complaint simply means an allegation which is filed in the form of a registered report against any person accusing him/her of committing an offence which needs to be presented in front of the magistrate. It can either be orally or in writing, however, it does not include an FIR. Secondly, FIR (First Information Report) is the report which is prepared by a police officer in furtherance of receiving any information in regards to a commission of any cognizable offence. The procedure for filing an FIR is stated under the Section 154 of Criminal Procedure Code, 1973. Moreover, usually, a person needs to visit the police station in order to file a complaint or an FIR. That said, when it comes to e-FIR, it can be filed only for cognizable offences. In these cases, the police can even make the arrest without the need of a court order. In the case of non-cognisable offences such as assault, stalking, cheating, etc, only a complaint can be filed online. After the complaint is filed, it can be later escalated into an FIR after seeking permission from the Magistrate.

The speaker explained to the participants, how to file a complaint using the online format. First they have to visit the online website, <https://jofs.jhpolice.gov.in/open.php> of the Government of Jharkhand, where after, the page opens and displays, a fresh form for registering a complaint, which only asks for the basic information of the complainant, id proof, to select the type of the complaint, the crime committed, the site also provides for the option of uploading a scanned copy of the complaint, which bears the signature or the thumb impression of the complainant. If the informant has filled in all the details and submitted, he will then receive a copy of the FIR via an email on the registered email address, and also a text message in the provided mobile number.

And even after that if the Police does not register the same, then, one can approach the concerned SP, referring the text message that was sent to their mobile number, to get the concerned Police Station to register the FIR.

That the speaker further discussed the Lalita Kumari case, in which the Supreme Court had held that in cases of cognizable offences, the concerned Police Station has to register the FIR. And the speaker further explained that if all fails, then the aggrieved party can also file a complaint case, or a Writ in the concerned High Court.

The speaker further discussed about the Right to Information Act 2005 which mandates timely response to citizen requests for government information. He explained to the participants that it is an initiative taken by the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions to provide a RTI Portal Gateway to the citizens for quick search of information on the details of first Appellate Authorities, PIOs etc. amongst others, besides access to RTI related information / disclosures published on the web by various Public Authorities under the government of India as well as the State Governments. He also discussed as to how to file an RTI through online process and through offline process. In which, one only has to visit the official website <https://rtionline.gov.in/>, one can proceed with the application, which requires him to click on the submit request tab, and then proceed with the guidelines of the RTI, and after understanding that, one can proceed with his application, by selecting the department from which he needs information, then giving his details, and describing the request for RTI. And also if the person belongs to BPL, then he has to annex a document in that support. Otherwise the person has to pay Rs. 10, through online transaction. Thereafter, a reference number is issued against the request, which can be kept for future use.

The speaker further discussed about the various commissions set up by the government, like human rights commission, women commission, disability commission, pollution control commission, which are there to address the matter, but they do not solve the matter, and try to settle the matter between the parties, it is more like a mediation. But the order given by such commissions is not final and one can approach the concerned High Court or the Supreme Court for justice. The representation made through letters, to these commissions can be annexed in the petition filed before the Hon'ble High court or the Supreme Court. He also explained, how a

single letter to the Supreme Court can also be treated as a PIL, citing the incident of 1990, when the condition of RINPAS was very bad, and a letter was sent to the Justice, who treated the matter as a PIL, because of which many institution reaped the benefit of the same.