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**POLICE DEPARTMENT
KERALA**

U6-133885/2016/PHQPolice Headquarters, Kerala
Thiruvananthapuram-695010

Phone:0471-2721547

Email:phq.pol@kerala.gov.in

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**Sub:-Early Access to Justice Protocol – ensuring legal assistance
to the suspects and arrestees – instructions – reg.**

Access to justice is a basic principle of the rule of law. It has been recognised by the United Nations and it is accepted that legal aid should be made available at all stages of the criminal justice system as required by fair trial standards on arrest, investigation, trial and post trial stages. Later pre-arrest stage has also been added to the stages identified above. This mandates the necessity of early access to justice protocol for all suspects and arrestees.

02. In India, right of an arrested person to legal assistance is enshrined as a fundamental right under **Article 22(1)** of the Constitution which provides that every arrested person has the right to consult, and to be defended by, a legal practitioner of his choice. **Section 41-D** of the Code of Criminal Procedure, 1973 relates to the right of arrested person to meet an advocate of his choice during interrogation and provides that when any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, **though not throughout interrogation**. **Section 303 CrPC** allows every alleged convict/criminal the right to be defended by a lawyer of his choice even if the criminal proceedings against him have already been instituted. **Section 304 CrPC** provides the very significant right of every accused to free legal aid.
03. Hon'ble Supreme Court in Nandini Sathpaty v P.L Dani [1978 AIR 1025], observed that the spirit and sense of Art. 22 (1) is that it is fundamental to the rule of law that the services of a lawyer shall be available for

consultation to any accused person under circumstances of near-custodial interrogation. Moreover, the observance of the right against self-incrimination is best promoted by conceding to the accused the right to consult a legal practitioner of his choice.

04. In order to provide legal assistance to the needy suspects and arrestees during interrogation and early stages of investigation, to decrease vulnerabilities of suspects and arrestees, to avoid unnecessary arrests and to assist the arrestees in filing bail applications and furnishing bail bonds, NALSA (National Legal Services Authority) has introduced a protocol namely "Early Access to Justice Protocol". It ensures that poor and vulnerable people are treated with due respect and fairness. It helps to strengthen the criminal justice system and makes the system more responsive to the needs of citizens. It is envisaged that the protocol will contribute to strengthening the rule of law, by enhancing the capacity of the Legal Aid institutions in delivering access to justice for all citizens. The KELSA (Kerala State Legal Services Authority), hence, as directed by NALSA, is providing free legal aid to the needy suspects/arrestees prior to arrest. It is incumbent, hence, on the Police to Co-operate with the KELSA in implementing the protocol in letter and spirit.
05. The State Police, as the most important stake holder, has a key role in implementing the Protocol at Pre-arrest, Arrest and Remand Stages. Police is required to intimate the suspect and arrestee, of his right to have legal assistance at the pre-arrest and arrest stages.
 - 5.1 All police officers having the power to arrest a person under Sec.41 and 41A CrPC, are covered by the protocol.
 - 5.2 Section 41A CrPC creates the pre-arrest stage when a person is called for questioning as a suspect pursuant to a notice of appearance. Whenever a person (suspect) is summoned to the Police station or a designated place for questioning, the officer has to give him the pamphlet (Annexure 1) supplied by KELSA (rights of a person before arrest) and also inform him clearly that he can avail the services of a lawyer of his choice. If he cannot avail the service of a lawyer on his own, he shall also be informed that free legal assistance can be availed from the

DLSA (District Legal Services Authority) provided he is willing to accept such legal assistance.

- 5.3 In the case of police taking somebody into custody for questioning, then also the procedure as above has to be followed. If the suspect demands free legal assistance from the DLSA, the officer has to inform DLSA (over phone normally) and may also directly inform the Lawyer on duty as per the daily duty roster supplied in advance by DLSA. (All Police stations & Crime Branch field offices to collect them every month.)
- 5.4 If the officer is proceeding to arrest the person (suspect) then the officer has to give the second pamphlet (Annexure – II) supplied by KELSA (rights of a person at the time of arrest).
- 5.5 In *D.K. Basu Vs. State of West Bengal* [AIR 1997 SC 610] the Apex Court laid down that an accused person has the right to meet his lawyer during interrogation, though, not throughout. Going by the above ruling of the Apex Court, Sec.41D CrPC and the protocol, suspect/accused is entitled to meet an advocate of his choice during interrogation, though not throughout the interrogation. So, in POCSO cases and in other highly sensitive cases where confidentiality and privacy are to be maintained, or the interest of the victim to be protected, the accused cannot insist on the presence of a lawyer throughout the interrogation; the lawyer can meet the suspect or accused and keep away during interrogation.
- 5.6 The Police need not wait more than a reasonable time for an advocate's arrival.
- 5.7 They must invariably warn the arrestee- and record that fact about the right to silence against self-incrimination [*Nandini Satpathy Case*]
- 5.8 To give the suspect the right to remain silent and consult the lawyer after interrogation would not be sufficient. He has got a right to consult a lawyer before interrogation and to insist on the presence of a Lawyer during interrogation, without the lawyer being privy to all "discussions" concerning the case and "investigation"; his presence is required during the interrogation.

- 5.9 The Lawyer deputed from DLSA has no right to interrupt or obstruct interrogation in any manner. In cases where confidentiality has to be maintained, the presence of a Lawyer cannot be insisted by the suspect/accused throughout the interrogation. The panel Lawyers will be given proper instructions in this regard by DLSA. Any undue interference should be reported in writing to DLSA.
- 5.10 The lawyers, whether from DLSA or otherwise shall be given due respect in Police Stations.
- 5.11 Every police station and every field office of Crime Branch has to maintain a register to be known as "Lawyers' Visiting Register" regarding the visit of panel Lawyers deputed by DLSA. Whenever a Lawyer deputed by DLSA visits the police station, he has to be treated as an officer of DLSA and given all respect. He shall be provided a seat and be allowed to interact with the suspect/accused.
- 5.12 In the case of a witness, this protocol is not applicable. But, once the Police officer decides to treat him as an accused and proceeds to arrest, then the protocol applies. The officer has to give the pamphlet (rights of a person at the time of arrest) to the accused and inform him of his right to have a lawyer of his choice or from DLSA. Before proceeding for further questioning, the accused shall be allowed to consult the Lawyer and may also have the presence of the Lawyer throughout interrogation, except in cases, wherein matters are "confidential" in nature (as mentioned above). During interrogation (examination of the accused), over and above the cases wherein confidentiality has to be maintained, sensitive cases wherein victims' safety, national security internal security are involved, the lawyers' presence may be dispensed with. The justifiable reasons for denial of the DLSA lawyers' presence during interrogation have to be put on record and the lawyers' visiting register as mentioned above has to be maintained for the same by the SHO.
- 5.13 It is understood that the Lawyers will be deputed after giving proper instructions and training in this regard by DLSA/KELSA. The dos and don'ts are clearly mentioned in the protocol itself. The lawyers' role is confined to providing legal advice, taking steps for bail etc. He shall not interrupt the investigation in any manner. In the case of any illegal arrest,

he can just point out the same to the police officer. He is not supposed to argue or quarrel with the police officer.

5.14 If the police officer feels that a person is to be arrested as per law, then he can proceed with the arrest. Then the Lawyer can challenge the arrest only in court. In the case of violation of confidentiality or any misconduct from the side of the Lawyer, the same shall be reported to the DLSA, for appropriate action.

5.15 Going by the Protocol issued by the National Legal Services Authority (NALSA) based on the rulings of the Apex Court, all cases are covered under the Protocol. The present pandemic protocol mandates that in the case of bailable offences, the Panel Lawyer need not come to the Police Station and he can give legal advice and assistance online/telephone. But, in the case of non bailable offences the Lawyer needs to come to the Police Station physically after observing relevant COVID Protocol and give legal aid and legal assistance. The question of legal aid/legal assistance as per the Protocol arises only when there is a demand /consent from the side of the suspect/accuse; he/she can refuse the services of lawyer. Whenever a suspect/accused is summoned to the Police Station or taken into custody, the Police Officer has to give him the pamphlet already supplied by Kerala State Legal Services Authority (KeLSA); there it is clearly mentioned that suspect/accused has got a right to get free legal aid/assistance. If the suspect demands free legal aid/assistance, then the Police Officer has to inform the Panel Lawyer/DLSA. It is also clarified that in the cases with offences coming under the Motor Vehicles Act, (Section 279, 337, 338 IPC etc.) and petty cases where only formal arrest is required (and there is no need of physical arrest) the Protocol need not be applied as of now.

5.16 Going by Section 41 D of CrPC, suspect/accused is entitled to have a Lawyer during interrogation, (though not throughout the interrogation). In cases where presence of Lawyer at the time of interrogation is detrimental to the interests of the victims/survivors, the Police Officer by recording the reasons can very well request the Lawyer to move away.

5.17 This Protocol will not apply in the cases of accused who are already in judicial custody. If, a Police Officer summons or takes into custody a

person in connection with a crime for questioning, then the Protocol applies. Of course, there may be cases where the persons so summoned as a witness later gets transposed as an accused. In such cases, the Protocol applies only when the Police Officer treats him as an accused/suspect. There may also be cases where an accused can be transposed as a witness after interrogation. In such cases, the Protocol applies since the person was initially summoned or taken into custody as a suspect/accused.

5.18 Arrangements have been made by KELSA to avoid delay on the part of Lawyer appearing in the Police Station. At present, instructions have been given to Lawyers to reach the Police Station within a reasonable time i.e. 30 minutes to one hour maximum. If there is any inconvenience for the Lawyer who is posted as per the roster, the DLSA concerned has to make necessary arrangements to send another Lawyer.

5.19 In serious cases involving national security and terrorism also the Protocol has to be complied with. But, of course, the Investigating Officer, by recording reasons, can interrogate the accused without the presence of the Lawyer. But, the accused has to be given an opportunity to interact with the Lawyer. Section 41 D CrPC does not exclude cases involving national security and terrorism.

5.20 In the case of cyber crimes, if the Police Officer is of the opinion that presence of the Lawyer throughout the interrogation is against the interests of the complainant, he can very well record the same, and dispense with the presence of the Lawyer. But, there also the accused has to be given an opportunity to interact with the Lawyer before interrogation.

06. Principle and the action to be taken in respect of this Protocol are as below.

Various situations which the SHO or the investigating officer actually encounters in the implementation of the advance legal protocol in police stations may be enumerated as follows.

1. A known accused in a crime surrenders before the investigating officer
2. A known accused surrenders before the court
3. A known accused is arrested outside after pursuit/investigation

4. A witness on interrogation becomes an accused
5. A suspect on interrogation becomes an accused
6. An unknown accused comes and makes a voluntary disclosure about a crime he has committed, to an officer.
7. A known witness in one case becomes an accused in another on interrogation, beyond the jurisdiction of the investigating officer, or in a case wherein a different Police officer or agency is investigating.

In all the above situations, the advance legal protocol norms have to be adhered to while the person is examined/interrogated. The SOP for each of these situations are being enumerated as hereunder.

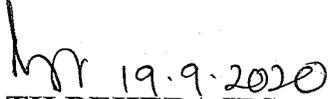
- 6.1 The investigating officer shall inform the accused arrested through the pamphlets of his rights to engage a lawyer and offer to bring in the DLSA lawyer if he/she wishes so. The IO shall bear in mind that the accused has right to refuse presence of the lawyer. In such case, the IO shall record the same and dispense with the presence of lawyer. In case of the accused person requesting the presence of the lawyer, the officer shall intimate the same to the duty lawyer as per the roster provided by the DLSA and wait for the lawyer to come which shall not exceed maximum one hour from the time he intimated the same to the lawyer. The lawyer shall be allowed to interact with the accused and apprise him of his legal rights, and in cases wherein the officer concerned has no reservations as per the nature of the case, in letting the lawyer sit through the interrogation he shall facilitate the lawyer to be present during the interrogation. In case, the officer concerned, decides in the interests of justice, that the lawyer cannot be privy to the whole process of interrogation, on account of victim safety, confidentiality, national security or any other matter likely to compromise successful prosecution, the same shall be reduced into writing, and the presence of the lawyer can be dispensed with by the officer, after his initial interaction with the accused/arrestee/suspect. The intimation to the lawyer should be sent by electronic/digital means as far as possible, and in situations where the same is not possible, the reasons for the same may be recorded. The whole procedure of informing the accused, intimating the lawyer, requisitioning the presence of the lawyer and his presence shall all be entered appropriately in the General Diary of the police station and in the CD file, if the interrogation happens in the police station. If it is in any other place as decided by the investigating agency, the CD file shall be updated accordingly. If at all, the lawyer, does not turn up after intimation, the same shall be recorded after waiting for the requisite time post intimation, which shall be one hour from the time of intimation.

- 6.2 In the second situation, the accused should be taken over from the court, the arrest formalities may be completed and then the procedures as mentioned in sub proviso 6.1 shall be adhered to,(prior to the interrogation.)
- 6.3 The accused should be brought to the nearest place of interrogation as per the convenience of the investigating officer, the formalities of arrest shall be completed, and then the protocol shall be applied and procedure as mentioned in sub proviso 6.1 shall apply.
- 6.4 In situations where a witness turns an accused post interrogation, the suspect shall be told that he is here onwards termed as an accused in the case and that he is entitled to all his legal rights as an accused in the case and is entitled to legal assistance. The pamphlets supplied by DLSA shall be given to him, and his inclination to employ the DLSA lawyer may be verified. If he expresses his willingness to engage the DLSA lawyer, the protocol applies, and all procedure enunciated in sub proviso 6.1 shall apply.
- 6.5 In situations where a known suspect is summoned for interrogation, he should be apprised of his legal rights and his rights to hire a lawyer or resort to the legal facility provided by KELSA. If he opts for the latter, the lawyer from the DLSA shall be invited to be present prior to interrogation. After the suspect turns up, the interrogation can maximum be delayed only for an hour, in waiting for the lawyer. If the lawyer fails to turn up, the legal procedures as mandated for interrogation and arrest shall be followed scrupulously. The procedure shall be followed as mentioned in sub proviso 6.1 again.
- 6.6 In such situations, the same protocol applies, and while the FIR and other related documents are drawn up and uploaded in the system, the officer in charge of the Police station shall inform the duty lawyer as per the roster provided by DLSA and requisition him, after being requested for the same by the accused. The accused shall be told about his legal rights and the pamphlets as prescribed by the DLSA shall be supplied to him. The rest of the procedure shall be followed as detailed in the sub proviso 6.1.
- 6.7 In all such cases, the same protocol as detailed in sub proviso 6.1 shall apply. The only difference would be that all decisions regarding legal assistance, presence of the lawyer, dispensation of the same, interests of the victim, confidentiality to be maintained and the degree of involvement of the lawyer in the process shall be decided only in consultation with the concerned investigating agency/officer. The same shall be recorded in the CD file of the case for which the suspected accused is a witness and also in the General Diary, if in a Police station.

In all the above situations, whenever the lawyer from the DLSA or a lawyer employed by the suspect or accused is present, the name of the advocate present shall be entered in all relevant records including the CD file. The suspect/accused enjoys the right to refuse the services of a lawyer.

- 7.1 Training will be imparted to the SHOs and other police officers having the power of arrest, and to the panel Lawyers, detailed by KELSA. Initially, the training will be for the SHOs and officers in Police Stations. The training will be on procedure of arrest, bail and also on the "early access to justice protocol". It will be done by DLSA concerned. DPCs & ADGP (CB) to take proactive steps and arrange these in next 30days.
- 7.2 While it is the responsibility of SHO/investigating officer concerned to comply with the Protocol, problem solving part has to be played by the concerned SDPO in Local Police and SP of the Crime Branch in Crime Branch cases. During inspections or visits of Police Stations/CB offices by senior officers a comprehensive review shall be done about the compliance of the Protocol by the SHO/IO. It is the responsibility of the DPC/CB SP concerned to develop a good relationship with DLSA. Similarly the SPC, ADGP L&O, ADGP CB and the State Nodal officer must keep good relations with KELSA so that this Protocol is followed properly.
- 7.3 All officers are instructed to strictly comply with the above guidelines. If any laxity or negligence is noticed on the part of officers concerned in complying with the above directions, strict disciplinary action will be initiated against such officers.

NB: The word "interrogation" used in this Circular means examination of the accused.


LOKNATH BEHERA IPS,
Director General of Police &
State Police Chief.

To

1. All SHOs in all Police Stations including the Crime Branch, All SPs of CB – for information and urgent necessary action.
2. All Officers in List A and B - for information and urgent necessary action.
3. CAs to all Officers in PHQ/DD, PR/LA PHQ

Copy to: Circular Register, Kerala Police Website, Secretary KELSA with C/L