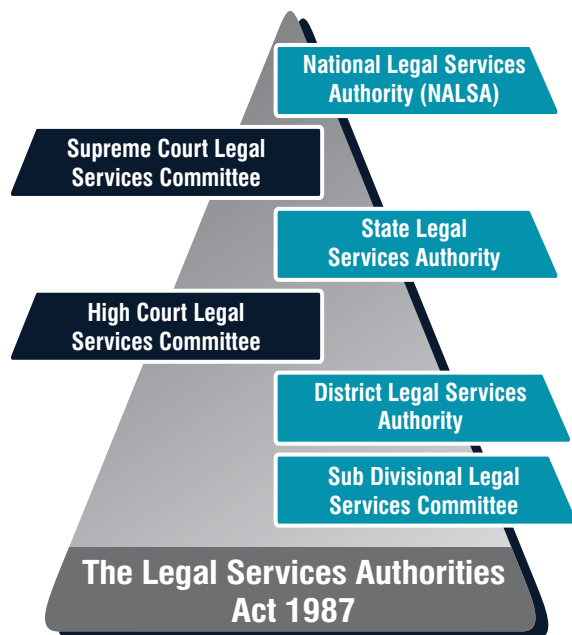


LEGAL AID FOR PERSONS IN CUSTODY IN INDIA

Articles 21 & 39A of the Indian Constitution along with The Legal Services Authorities Act, 1987, govern the functioning of the legal aid system in India

ORGANISATIONAL SETUP



ELIGIBILITY CRITERIA

- a member of a Scheduled Caste or Scheduled Tribe
- a victim of trafficking in human beings or beggar
- a mentally ill or otherwise disabled person
- a woman or a child
- in custody, including juvenile and psychiatric homes
- a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster
- in receipt of annual income less than as may be prescribed by the Government
- an industrial workman

MONITORING OF LEGAL AID

Mentoring and Monitoring Committees for Legal Services Institutions are constituted under NALSA (Free and Competent Legal Services) Regulations 2010. They are mandated to monitor legal aid delivery as well as evaluate the working of legal aid lawyers.



AVAILABILITY OF LEGAL AID AT DIFFERENT STAGES OF CRIMINAL PROCEEDINGS



POLICE STATION

As per Article 22(1) & 39A of the Constitution of India 1950 and S.41D of Code of Criminal Procedure 1973, every person is entitled to legal aid at police station. NALSA's Early Access to Justice at Pre-Arrest, Arrest and Remand Stages Scheme 2019 envisages provision of legal assistance to needy suspects and arrestees during interrogation and other early stages of investigation. A duty roster of panel lawyers is to be kept at each police station, so that immediately upon receiving a request for legal assistance from the suspect or arrestee the deputed lawyer can be informed.



COURT

For unrepresented persons, at first and subsequent productions in court, remand lawyers are to be appointed in all production courts under NALSA's Model Scheme for 'Legal Aid Counsel' in all Courts of Magistrates 1998. For unrepresented persons during trial, panel lawyers are appointed under the NALSA (Free and Competent Legal Services) Regulations 2010 & S. 304 Code of Criminal Procedure 1973.



PRISON

A legal aid clinic is to be constituted in each prison manned by paralegal volunteer and jail visiting lawyer to provide legal assistance to unsentenced and sentenced prisoners under NALSA's Standard Operating Procedure for Representation of Persons in Custody 2016, NALSA (Legal Services Clinics) Regulations, 2011 & NALSA's scheme for Para-Legal Volunteers (Revised). In some prisons convicts are also trained as paralegals.

COMMONWEALTH HUMAN RIGHTS INITIATIVE

ACCESS TO JUSTICE (PRISON REFORMS)

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, non-profit, international non-governmental organisation, mandated to ensure the practical realisation of human rights across the Commonwealth. It was founded in 1987 by Commonwealth professional associations. Headquartered in New Delhi, India since 1993, it has offices in Accra, Ghana and London, UK.

CHRI believes that human rights are a universal value system and good governance is the means to ensure its realization. Its work sits at the transect of civil liberties and governance. CHRI works to reduce violations and promotes transparency, accountability, participation and the celebration of diversity. For more than two decades, CHRI has engaged on issues related to **Access to Justice and Access to Information**. Systemic reform of prisons and policing has always been a focal point. It has had a demonstrable impact in influencing policy change and ensuring fullest compliance by stakeholders.

Prison Reforms Programme

Prisons in most Commonwealth countries are modelled on colonial laws and governed on similar lines. Prisons are generally not a priority area of concern for most governments especially those with budgetary challenges. This means that prisons often suffer neglect, are overcrowded, have acute shortfalls in staff and are poorly regulated. These are places which spawn more criminals than they rehabilitate. CHRI's work in India aims at righting some of these wrongs and its interventions lend themselves to replication in developing country jurisdictions.

CHRI's Prisons Reform Programme, which is now almost two decades old, is focused on increasing the transparency of a traditionally closed system and holding stakeholders accountable. The programme aims to strengthen oversight mechanisms, improve prison conditions, ensure effective access to legal aid for prisoners, enhance accountability and foster an attitude of cooperation between the various agencies of the criminal justice system in place of the prevailing indifference and discrimination.

It seeks to achieve its goals through research, legal analysis and advice, advocacy, capacity building and network building. Apart from these, CHRI has also engaged in strategic litigations both at High Courts and the Indian Supreme Court. Over the years CHRI has successfully obtained orders and directives on improving prison conditions and functioning of oversight bodies and changing court practices.

Bringing systemic change is a continuous process and for that CHRI constantly engages with functionaries of the criminal justice system at all levels. Our evidence-based periodic watch reports which evaluate data procured under Right to Information laws have built credibility for our work in the justice sector. We also engage to build capacity of the functionaries of the criminal justice system, especially judicial officers, prison officials, legal aid lawyers, members of prison oversight bodies, probation officers and paralegals. Such trainings and capacity building exercises are complemented with preparation of resource materials.

KEY PUBLICATIONS ON LEGAL AID

WATCH REPORTS

- Legal Aid for Prisoners: Status Report on the Implementation of Three Schemes in Rajasthan 2019 and 2017
- Legal Aid Services: In Correctional Homes of West Bengal, Joint study by CHRI & Directorate of Correctional Services, West Bengal, 2019 and 2015 and 2013
- Hope Behind Bars? Status Report on Legal Aid for Persons in Custody in India, 2018
- Micro study on the payment of Legal Aid Lawyers 2018
- Bringing Justice Closer: Prison Legal Aid Clinics in West Bengal, 2017
- Monitoring the Monitors – A Micro Study on Monitoring Committees in West Bengal 2017

RESOURCE MATERIALS

- Connecting the Dots - A handbook for paralegals assigned to police stations and prisons
- 101 Questions on Prisons You Didn't Know Whom to Ask
- Guidebook- University Based Legal Aid Clinics and Persons in Custody
- Recommendations on Legal Aid at Police Station
- Poster on legal aid 2015 & Poster on Steps from Arrest to Appeal, 2015
- Legal Aid Clinics in Prisons: A Guidebook for Law Schools

VIDEOS

- Apnar Legal Aid - A play on the right to legal aid of Indian prisoners, 2015
- 'Pehel- Ek Nayee Shuruat' on rights and duties of Indian prisoners, 2010

PAMPHLETS

- Ten things about Legal Aid
- Legal Aid at Police Stations
- Arrest & Detention
- Interrogation
- S 436A Cr.P.C.
- Mentally Ill Undertrials



CHRI
Commonwealth Human Rights Initiative
working for the practical realisation of human rights in the Commonwealth

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