



Commonwealth Human Rights Initiative



October 4, 2018

JAIL MAIL: SAFEGUARDING RIGHTS OF THE ARRESTED

“A nations greatness is measured by how it treats its weakest members”

- Mahatma Gandhi

“The rule of law should be respected so that the basic structure of our democracy is maintained and further strengthened.”

- Lal Bahadur Shastri

Dear Friends,

Greetings from CHRI!

October 2nd, 2018 marked the 150th birth anniversary of Mahatma Gandhi, revered in India as the father of the nation, and the 114th birth anniversary of Lal Bahadur Shastri, India’s second prime minister, both of whom, strongly believed in a fair justice system and the rule of law. Throughout their lives, they fought against arbitrariness and promoted the idea of democracy, peace and non-violence.

On this day and to further the need to protect and safeguard the rights of accused persons, CHRI puts forth two publications exploring possible models for legal aid clinics at police stations and a guidance document that provides relevant information that can guide the setup and functioning of such clinics. These documents are an outcome of consultations held with various stakeholders including state legal services authorities, academicians and experts in this field.

Arrested persons are particularly at risk of being abused and tortured during the investigation stage of the criminal justice process. Many of these are poor, ill-educated or disadvantaged. They may lack the knowledge needed to understand and navigate the criminal justice system apart from having limited financial resources. Absence of a lawyer, while in custody of detaining authorities, often leads to abuse that encompasses ill-treatment, demand for bribes, coercion, forced confessions and unlawful detention.

Article 22(1) of the Constitution states that- “No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.” Further, Section 41D of the Code of Criminal Procedure 1973 lays down the right of arrested person to meet an advocate of his choice during interrogation. It states 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.’ Further, Article 39A of the Constitution states that “the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other

disabilities." S 12 (g) of the Legal Services Authorities Act 1987 identifies 'persons in custody' as one of the beneficiary groups for legal aid. This essentially means that the right to legal aid shall go hand in hand with the right to a lawyer, and thus necessitates that legal services should be provided at police stations. However, even with this constitutional and statutory framework in place, lawyers are mostly absent during interrogation, and the arrested persons are not provided with a legal aid lawyer until taken to court, leaving them extremely vulnerable in the early stages of police custody.

Prompt access to a lawyer in the arrest and interrogation stages can curtail the number of arbitrary arrests, thereby reducing the pre-trial population of India's prisons considerably. The Law Commission of India in its 2017 report noted "Over 60 per cent of arrests were unnecessary and such arrests accounted for 42.3 per cent of jail expenditure", further stating that this was a major reason why the prisons were buckling under the weight of the inmate population.

Legal aid is an essential element of a fair, humane and effective criminal justice system which is based on the rule of law. It lays the foundation for other crucial rights, including the right to fair trial, and it ensures fairness and public trust in the criminal justice system. Thus, prompt access to legal assistance is the key to guaranteeing a fair trial. The early stages of any criminal justice process - the first hours or days in police custody - are crucial for those who have been arrested. The treatment of the accused at this stage reflects enormously on the effectiveness of the entire criminal justice system. Access to legal aid during such early stages of the process secures people from ill-treatment, and also ensures that the vulnerable people are treated fairly. Presence of a lawyer at this phase is important to safeguard the rights accorded to them.

In April 2018 the National Legal Services Authority (NALSA) wrote to all the State Legal Services Authorities to explore the feasibility of setting up legal services clinics in police stations to facilitate legal services to arrested persons under section 41D of the Code of Criminal Procedure. To further this discussion, CHRI undertook this exercise to put together different models of legal aid clinics that can be constituted at police stations across the country. In furtherance to this, CHRI has published two resources, viz.

- *Legal Aid at Police Stations (Guidebook)* - The first few hours of contact with the criminal justice system are among the most crucial for those arrested and/or detained. This four-page guidebook suggests possible models of legal aid delivery at police station, as well as some important guidance on their setup; the procedures for when to arrest and what to do on arrest are routinely ignored by the police. Click [here](#).
- *Legal Aid Clinics in Police Stations (Recommendations)* - This document provides guidance on the setup of legal aid clinics at police station, including the requirements and considerations. It also provides formats for ensuring proper documentation and reporting of the functioning of the clinics. The document is based on consultations held with various stakeholders including state legal services authorities, academicians and experts in this field. Click [here](#).

(Do let us know if you require hard copies of the publications).

'An ounce of practice is worth more than tons of preaching' is what Mahatma Gandhi would say.

No matter how small your effort, October 2nd is a day about respecting the rule of law and the fundamentals of a democratic and just society, just as Mahatma Gandhi and Lal Bahadur Shastri had envisioned. Thus, CHRI calls upon its readers to:

1. *as responsible citizens*, write to your nearest police station and legal services authorities enquiring whether they have set up a legal aid clinic to ensure prompt and effective access to legal aid for those arrested and also to provide assistance to victims. You may share our documents, or suggest any of the recommendations provided by CHRI in order to help the police and legal services authority establish the clinics.
2. *as a representative from the police, judiciary or legal services institution*, ensure that the clinics are functional in all police stations within your jurisdiction, or write to the appropriate authorities to ensure that the clinics are setup.

3. *as a lawyer and a human rights defender*, promptly visit your clients at the police station, to provide legal representation during interrogation. Also ensure that appropriate facilities are being made available by the police officers to enable lawyer-client interactions.
4. *as members of university based legal aid clinics*, write to the legal services authorities for setup of legal aid clinics at police stations and offer assistance in their setup and functioning.
5. *as civil society organisations*, write to or approach any of the legal services authorities, at the state or district levels, to ensure that they work towards the implementation of this early access legal aid delivery system at the police stations and render your assistance in the same.

Write to us at chriprisonsprog@gmail.com with your comments and suggestions. Please send us an email if you wish to subscribe to these updates.

Best Regards,

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About *Jail Mail*

Jail Mail is a regular series of Prison Reform Updates from CHRI for readers interested in the rights of prisoners and the reform of prisons as a matter of public concern. The engagement of civil society in the management and monitoring of prisons and the rights of prisoners is vital to the transparency of this traditionally closed institution and to ensure the practical realisation of the rights of those behind bars. *Jail Mail* invites discussion between civil society members and those entrusted to oversee and manage prisons.

Evidence-based research and watch reports of CHRI's Prison Reforms Programme, interviews with critical stakeholders, topical issues and developments concerning the liberty of prisoners, and health of prisons in India and around the world will form the sources of *Jail Mail*. Its periodicity will depend on the urgency of issues and the interest they generate.

About CHRI and the Prison Reforms Programme

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-profit, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI, with the conviction that there was little focus on the issues of human rights within the Commonwealth although the organisation provided member countries a shared set of values and legal principles from which to work.

The Prison Reforms Programme of CHRI is more than 15 years old. The programme focuses on improving prison monitoring through the strengthening of undertrial review mechanisms and prison visiting system nationally, and ensuring early safeguards against unnecessary pre-trial detentions, specifically in Rajasthan and West Bengal. The programme also advocates for timely repatriation of foreign national prisoners and immediate release of asylum seekers. Evidence-based research, advocacy, capacity-building of actors of the criminal justice system including prison officials, welfare and probation officers, criminal defense lawyers, magistrates, legal aid functionaries and civil society actors are the regular activities of the programme

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