

Legal Aid

Police and You Know Your Rights



CHRI
Center for Human Rights Initiatives

LEGAL AID AND YOU

Thousands of people in our country cannot afford a lawyer when they are accused of a crime, or want to take a matter to court. This means they are denied any meaningful access to the justice system.

It is the State's duty to ensure that the legal system promotes equal access to justice for all its citizens through various means, including legal aid. Article 39(A) of the Constitution of India enshrines the right to free legal aid to secure justice for any citizen who may be disadvantaged by economic or other disabilities. It is the duty of the State to provide free legal aid. This pamphlet tells you about the right to legal aid and how you can access legal aid services.

Right to Legal Aid

- The Constitution provides every arrested person with the right to consult and be defended by a legal practitioner of his/her choice [Article 22(1), Constitution of India]. This right to legal counsel begins from the time of arrest, not just at the trial stage. It continues not only to the end of trial but until you have exhausted all legal avenues to challenge the verdict.

- Article 39(A) read with Article 21 of the Constitution infers that legal aid is a matter of right for anyone eligible for legal aid who cannot afford legal counsel.

The Legal Services Authorities Act, 1987

- In 1987, Parliament passed the Legal Services Authorities Act, which creates legal services authorities at different levels to, *“provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities”*.
- This law actualizes the right to free legal aid. It enables people who do not have the means to hire a lawyer to either file or defend a case, whether due to poverty or vulnerabilities owing to caste, creed or gender, to access legal aid so they too can be represented by a lawyer.

The Act establishes Legal Services institutions at several levels. These are the institutions which facilitate the provision of legal aid services:

- There is a National Legal Services Authority at the central level. The National Authority is to set

up a Supreme Court Legal Services Committee.

- There is a State Legal Services Authority at the state level. The State Authority is to set up a High Court Legal Services Committee for the state High Court, and Taluk Legal Services Committees for each taluk.
- There is a District Legal Services Authority at the district level.

Services offered by a Legal Services Authority:

- Payment of court and other process fees.
- Payment/reimbursement of charges for preparing, drafting and filing of any legal proceedings.
- Payment of fees/honorarium to the legal practitioner or legal advisor.
- Payment/reimbursement of costs of obtaining decrees, judgments, orders or any other documents in a legal proceeding.
- Payment/reimbursement of costs of all paperwork, including printing and translation.

Who is eligible for free legal aid?

The Act puts down criteria for who is eligible. Section 12 of the Act states every person who has to file or defend a case will be entitled to legal aid if s/he is:

- A member of a Scheduled Caste or Scheduled Tribe.
- **Poor:** this includes people whose income does not exceed Rs 50,000 per annum for cases to be filed in the Supreme Court; prescribed income levels for cases in other courts are fixed by state governments and vary across states.
- A victim of trafficking in human beings or beggars.
- Physically or mentally disabled.
- A Woman or child.
- A victim of mass disasters, ethnic violence, caste atrocity, flood, drought or earthquake.
- An industrial workman.
- In custody, including custody in a protective home, juvenile home or psychiatric hospital. This means **any** person in custody—whether an undertrial or convict— is entitled to free legal aid.

To Note: Even if you fall into an eligible category, the appropriate Legal Services institution must decide whether a valid case to prosecute or defend exists or not. If there are no merits in your application requiring legal action, legal services will not be given.

Who to approach for free legal aid?

A Legal Services institution at any level-national, state, district or taluk-can be approached. It is for that legal services institution to forward your request to the appropriate legal services authority for your case, if necessary. The request can be made to:

- the Senior Civil Judge nominated as the Chairperson of the Taluk Legal Services Committee;
- the Secretary, District Legal Services Authority;
- the Secretary, High Court Legal Services Committee;
- the Secretary, Supreme Court Legal Services Committee;
- the Member Secretary of the State Legal Services Authority;
- the judicial magistrate before whom an arrested person is produced; or
- police and jail authorities, if under detention, who can facilitate contacting the appropriate legal services authority.

If you are in custody, the Court has a duty to ensure you have legal representation, whether you are in the pre-trial or trial phase. The Court must ask you if you have a lawyer when you are first produced, and if you do not, then the court should immediately appoint a lawyer at state expense.

How to request legal aid?

- Submit a written application.
- If you cannot read or write, the legal services authority will record your statement with your thumb impression. This can be treated as an application.
- If you are applying on the basis of income, you have to submit an affidavit of your income.

What are the duties of the person who receives legal aid?

- To comply with all directions given by the Secretary of the Legal Services Authority;
- To attend the office of the Authority or Court as well as of the legal aid lawyer assigned, when required;
- Give full and true information to your legal aid lawyer;
- Not pay any fee or expenses to your legal aid lawyer.

ABOUT CHRI

The Commonwealth Human Rights Initiative (CHRI) is an international, independent non-profit organisation headquartered in India. Its objectives are to promote the practical realisation of human rights in the Commonwealth. CHRI advocates for greater adherence to human rights standards.

Our programmes are:

- ❖ Access to Justice (Police Reforms)
- ❖ Access to Justice (Prison Reforms)
- ❖ Access to Information
- ❖ International Advocacy and Programming



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