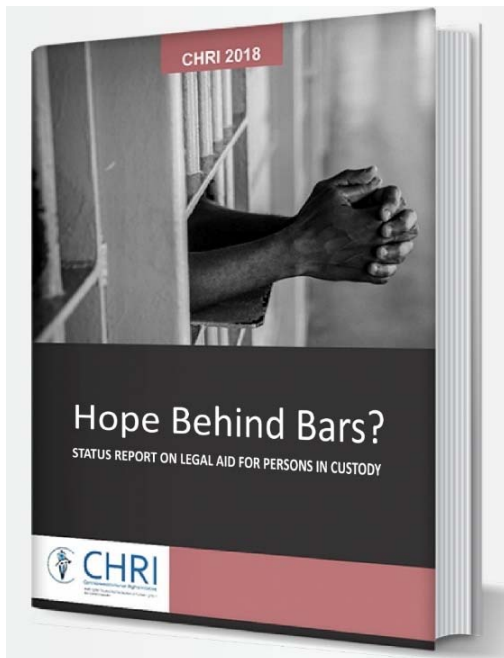


# HOPE BEHIND BARS?

## REPORT ON LEGAL AID FOR PERSONS IN CUSTODY IN INDIA

### ABOUT THE REPORT



The role of a competent lawyer is crucial particularly for persons in custody. For those who cannot afford a lawyer, legal aid is the “hope” to get a fair trial. This report, published in two volumes, identifies policy and implementation gaps in the legal aid system and suggests ways to improve legal aid delivery, particularly for those who are in jail. Based on responses to RTIs received from 29 states and union territories over the past year, the report also identifies certain good practices in states which can be replicated across the country.

The report addresses two vital areas of legal aid delivery: **early access to legal aid for persons in custody** and **quality of legal representation**. It looks at legal aid delivery at police stations, courts and prisons. The report also looks at international standards on legal aid delivery. The report includes both theme-wise and state-wise analysis of the existing system. It also brings together relevant state-wise statistics on prisons, police and courts.

### KEY FINDINGS OF THE REPORT

1. Every jail in India should have a legal aid clinic. 92% of the 659 jails, for which information was received, had constituted a jail legal aid clinic. More than 50% of the clinics were constituted between 2015 and 2016. The responsibility for the functioning of these clinics lies essentially with convict paralegals and jail visiting lawyers. While only three-quarters of the clinics appointed jail visiting lawyers, convict paralegals were appointed in only a third. Registers are crucial to record, monitor and follow up on requests made by inmates in the clinics. Only 35% of the districts (93 of 251 districts) maintained registers in the jail legal aid clinics. Khagaria district in Bihar stood out as it maintained nine registers.
2. Monitoring committees are mandated to review each case to ensure the quality of legal aid provided by lawyers. Only 60% of the districts which responded to the RTI constituted a monitoring committee. More than half of these were constituted in 2015 and 2016. Maintaining records and registers and keeping a dedicated staff to manage monitoring committees are crucial for its working. Only 23% of the committees maintain registers.

3. There is at present no national or state scheme/regulation which establishes a mechanism to provide legal aid at the police station. None of the states which responded to CHRI's RTIs said they have any scheme to provide legal aid at the police station.

4. The RTI responses point to a 14% under-utilisation of funds allocated to State Legal Services Authorities, wherein states like Bihar, Sikkim and Uttarakhand utilised less than half of their allocated funds. On the other end of the spectrum, Delhi, Gujarat, Punjab, Rajasthan and few others spent more funds during the year than were allocated to them. On average, one-sixth of the funds utilised by the states have been on lok adalats, legal awareness and legal representation. The biggest chunk of expenditure, and rightly so, was on payments made to lawyers, which accounted for 28% of the total expenditure. Only 3% was spent on training.

5. Every district legal services authority is mandated to have a full time secretary. Only 339 of the 520 DLSAs, for which information was received, have full time secretaries at the helm, to manage legal aid delivery in each district.

6. Legal services institutions assign legal aid lawyer on receipt of a legal aid application. While in many cases, this process was completed in a day, in some cases it took a few days, and in others, it took months. Analysing details of 804 cases from 170 districts in 21 states, the average number of days between application and assignment was 11 days. Rajasthan, where assignment takes the longest, on average, assigns lawyers in 48 days.

7. Client feedback is an important element to gauge the quality of legal representation. In total, 256 complaints were received by the legal services institutions for fees/consideration sought by legal aid lawyers. Of these, 179 complaints were from Delhi. These complaints led to the removal of 65 lawyers from the panel. Given the number of legal aid providers, the number of legal aid cases taken up and the oral complaints from the inmates, the number of complaints is minuscule. This could be because either the inmates are not aware of the grievance redressal mechanism or cannot access the mechanism.

8. Most legal services institutions do not maintain any data on representation and outcome of legal aided cases. Of the districts where panel lawyers were appointed, only two-thirds provided information about the representation of cases. Only half the institutions provided information on the outcome of cases. Most either chose to not respond to the query or said that they did not maintain this data. The outcome of the legal aid provided may not be reflective of the quality of legal representation at the level of individual cases. However spatial and temporal analysis of the supply of legal aid and its outcome would help LSIs ascertain the standard of delivery and the progress made over time and jurisdictions.

9. The per capita spending on legal aid in India is just Rs 0.75 (\$0.008 USD). In Australia, it is \$23 and in Argentina \$17.

10. About 80% of India's 1.32 crore population is eligible for legal aid. This is by far the biggest coverage of legal aid in the world and India has made provisions to ensure that those who cannot afford it, have legal representation.

## KEY RECOMMENDATIONS

1. At the time of appointment, along with the appointment letters, duty notes should be given to the legal aid providers. Duty notes assist legal aid providers in legal aid delivery. Suggested formats have been appended in the report.
2. Legal aid lawyers should be mandated to meet their clients in prisons/courtroom regularly. The legal service institutions may provide vehicles to ferry lawyers from the court complex to the prison once in a day so as to ensure that panel lawyers may meet their clients in prison. This may be most relevant for places where the distance between the court and prison is considerable.
3. There should be a standard letter to the legal aid beneficiary in custody specifically mentioning contact details of lawyer and that they are not expected to pay any fees to the panel lawyer. Also, the letter should mention that they can complain regarding the same and should also provide the process for registering the complaint.
4. A comprehensive standard operating procedure on the functioning of Jail Legal Aid Clinics and the role of the legal aid providers in these clinics must be formulated.
5. Legal Aid clinics shall also be constituted at police stations in line with Regulation 4 of the NALSA (Legal Services Clinics) Regulations, 2011.
6. Legal services institutions should also act as resource centres for legal aid lawyers. They should tie up with local law colleges appoint an adequate number of law students to assist the panel lawyers with case law research and use their services for front office work.
7. The tenure of Remand and Retainer Lawyers needs to be defined. Currently, there are huge variations in their term across and even within states.
8. The frequency of the visit of jail visiting lawyers to jails should be based on the prison population. The frequency of visits of lawyers in jails has been mandated by NALSA as twice a week for all jails big and small. These lawyers, while providing legal advice and drafting various applications, should specifically identify cases in which bail has been granted but the inmates are unable to secure bail due to lack of surety.
9. The training/orientation of the legal aid providers (Panel Lawyers, Retainer Lawyers, Remand Lawyers, Paralegal Volunteers) should be conducted, preferably, within the first month of their appointment.
10. Standard formats should be followed for monitoring the work of legal aid providers. This can be done through regular progress reports and completion reports by panel lawyers. NALSA's Legal Services Card for each case may be kept at the front office for this purpose. The paralegals/retainers may call the panel lawyers or the panel lawyers may visit the front office to inform and record the progress of the case after every hearing.

The report can be downloaded at <http://www.humanrightsinitiative.org/publication/hope-behind-bars-status-report-on-legal-aid-for-persons-in-custody>

To request a hard copy email us at [chriprisonsprog@gmail.com](mailto:chriprisonsprog@gmail.com)

## CHRI PROGRAMMES

CHRI believes that the Commonwealth and its member countries must be held to high standards and functional mechanisms for accountability and participation. This is essential if human rights, genuine democracy and development are to become a reality in people's lives. CHRI furthers this belief through strategic initiatives and advocacy on human rights, access to justice and access to information. It does so through research, publications, workshops, information dissemination and advocacy. It has three principal programmes:

### 1. Access to Justice

**Police Reforms:** In too many countries the police are seen as an oppressive instrument of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that the police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilizing public support for police reform. In South Asia, CHRI works to strengthen civil society engagement on police reforms. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

**Prison Reforms:** CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractices. A major area is focused on highlighting the failures of the legal system that result in terrible overcrowding and unconscionably long pre-trial detention and prison overstay, and engaging in interventions to ease this. Another area of concentration is aimed at reviving the prison oversight systems that have completely failed. We believe that attention to these areas will bring improvements to the administration of prisons as well as have a knock-on effect on the administration of justice overall.

### 2. Access to Information

CHRI is acknowledged as one of the main organizations working to promote Access to Information across the Commonwealth. It encourages countries to pass and implement effective Right to Information laws. It routinely assists in the development of legislation and has been particularly successful in promoting Right to Information laws and practices in India, Sri Lanka, Afghanistan, Bangladesh and Ghana. In the latter CHRI's is the Secretariat for the RTI civil society coalition. CHRI regularly critiques new legislation and intervenes to bring best practices into governments and civil society knowledge both at a time when laws are being drafted and when they are first being implemented. Its experience of working in hostile environments as well as culturally varied jurisdictions allows CHRI to bring valuable insights into countries seeking to evolve and implement new laws on right to information. In Ghana, for instance, it has been promoting knowledge about the value of Access to Information which is guaranteed by law while at the same time pushing for the introduction of an effective and progressive law.

### 3. International Advocacy and Programming

CHRI monitors commonwealth member states' compliance with human rights obligations and advocates around human rights exigencies where such obligations are breached. CHRI strategically engages with regional and international bodies including the Commonwealth Ministerial Action Group, the UN and the African Commission for Human and People's Rights. Ongoing strategic initiatives include: advocating for and monitoring the Commonwealth's reform; reviewing Commonwealth countries' human rights promises at the UN Human Rights Council, the Universal Periodic Review; advocating for the protection of human rights defenders and civil society space; and monitoring the performance of National Human Rights Institutions in the Commonwealth while advocating for their strengthening.

<b>CHRI Headquarters, New Delhi</b> 55A, Third Floor, Siddharth Chambers Kalu Sarai, New Delhi 110 017, India Tel: +91 11 4318 0200 E-mail: <a href="mailto:info@humanrightsinitiative.org">info@humanrightsinitiative.org</a>	<b>CHRI London</b> Room No. 219, School of Advanced Study South Block, Senate House Malet Street, London WC1E 7HU, UK E-mail: <a href="mailto:london@humanrightsinitiative.org">london@humanrightsinitiative.org</a>	<b>CHRI Africa, Accra</b> House No.9, Samora Machel Street, Asylum Down, Opposite Beverly Hills Hotel Near Trust Towers, Accra, Ghana Tel/Fax: +233 302 971170 Email: <a href="mailto:chriafrika@humanrightsinitiative.org">chriafrika@humanrightsinitiative.org</a>
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