



November 7, 2015

Dear Friends

The enforcement of Legal Services Authority Act turns 20 on 9th November 2015. Every year 9th November is celebrated as **Legal Services Day** in the country. This was the day the Legal Services Authority Act, 1987 came into force in 1995. The Act makes statutory the right to free legal aid and assistance for various vulnerable sections like women, scheduled castes, scheduled tribes, persons with disability, industrial workmen, persons in custody, and other indigent sections, who do not have the socio-economic standing, have limited access to the court of law and the crucial safeguards for a fair and speedy trial.

A significant proportion of people in custody is entirely dependent on the courts, the prison officials, the legal aid system or the jail visiting lawyers not only to identify their legal requirements at the earliest stage of pre-trial detention, particularly at the time of arrest and interrogation, but also to provide effective legal representation and advice that would safeguard liberty and prevent their unnecessary detention.

The promise of the Legal Services Authority Act is that no person in custody should go unrepresented. This year when the enforcement of the Act turns 20, CHRI observes **Legal Services Day** with a reality picture of the access to legal aid inside prisons.

Are there people in prison who need legal aid?

Undertrials form more than 65% of India's prison population. The Prison Statistics (NCRB) show that a large proportion of India's prison population is illiterate and 64% is from scheduled castes, scheduled tribes and OBC backgrounds. The period of their detention in prison has been rising over the years, particularly for undertrials whose cases are pending for more than one year.

The proportion of prisoners who have spent less than three months in prison has decreased from 40% in 2001 to 34% in 2014, indicating that undertrials are spending longer periods in jail. The proportion of prisoners who have spent more than one year in prison has increased from 19% in 2001 to 25% of the total undertrial population in 2014. At the same time, the number of undertrials in prisons in the detention period of 1-3 months, 3-6 months and 6-12 months continues to remain high. CHRI believes that access to effective access to counsel at the early stages of one's trial can prevent prolonged and unnecessary detention and thus bring down the average time spent by an undertrial in prison.

How has the Legal Services Authority reached out to persons in custody so far?

The legal aid delivery system in India is stratified into the National Legal Services Authority as the apex body, the

State Legal Services Authority heading the legal aid machinery of District Legal Services Authority and Taluka/Sub Divisional Legal Services Committee in each state. These bodies are responsible for the formulation, implementation and monitoring of various legal aid schemes. In addition, the High Court Legal Services Committee and Supreme Court Legal Services Committee too have been constituted to deal with appeals or cases arising under the original jurisdiction of the High Court and Supreme Court respectively.

In India, prisoners form less than 3% of the persons benefited through legal aid schemes. According to the latest Supreme Court's annual report, since the 1987 Act was enacted, out of the total list of 1.77 crore beneficiaries of various schemes of the legal services authority, only 4.68 lakh prisoners have been provided with legal aid. Given the number and profile of the prison population in the country, the numbers are extremely low. Moreover, prisoners in Delhi form almost a quarter of these 4.68 lakh prisoners.

While prisoners from Delhi and Madhya Pradesh top the charts as beneficiaries of legal aid, not many prisoners have benefited in the prisons of Bihar and Karnataka though large undertrial prisoners are housed there.

Sl No.	State/ UT	No. of persons in custody benefitted through Legal Aid and advice since inception till November 30, 2014 (Supreme Court Annual Report 2014-15)	No. of prisoners to whom legal aid was provided in 2014 (NCRB)
1	DELHI	110075	41637
2	MADHYA PRADESH	55940	3516
3	PUNJAB	38479	1987
4	HARYANA	36544	3640
5	TAMIL NADU	32320	4951
6	CHHATTISGARH	31566	2597
7	MAHARASHTRA	26382	1817
8	RAJASTHAN	21607	1647
9	KERALA	19590	1019
10	UTTAR PRADESH	16596	2955
11	WEST BENGAL	14480	3036
12	GUJARAT	12181	1591
13	ANDHRA PRADESH	10193	1846
14	CHANDIGARH	5738	523
15	ODISHA	4324	412
16	MIZORAM	4176	204
17	JHARKHAND	3871	1142
18	GOA	3493	126
19	SIKKIM	3189	490
20	NAGALAND	2047	58
21	BIHAR	1649	614
22	TRIPURA	1481	19
23	UTTARAKHAND	1474	767
24	A & N ISLANDS	1183	25
25	MEGHALAYA	922	226
26	PUDUCHERRY	861	8
27	ASSAM	544	821
28	JAMMU & KASHMIR	365	70
29	TELANGANA	354	799
30	KARNATAKA	239	189
31	HIMACHAL PRADESH	220	384
32	ARUNACHAL PRADESH	54	5
33	DAMAN & DIU	40	0
34	D & N HAVELI	19	0
35	MANIPUR	6	0
36	LAKSHADWEEP	1	0
	Supreme Court Legal Services Committee	6430	-
TOTAL (ALL-INDIA)		468633	79121

What are CHRI's observations on the need for legal aid in prisons?

Through its legal aid clinics inside six jails, CHRI has been working in the area of early and effective access to legal aid inside prisons. It has interviewed hundreds of prisoners in jails till date. CHRI has also been assisting the State Legal Service Authority (SLSAs) to improve the timely delivery of their schemes for prisoners, the quality of representation by legal aid lawyers, and overall monitoring of legal aid services for prisoners.

CHRI's experience in ensuring effective access to legal aid for prisoners over the last six years shows that often prisoners do not know if they have a lawyer; or in a large number of cases it is found that they are unrepresented at the time of arrest, first production before magistrate and subsequent trial proceedings; or are unable to afford a lawyer mid-way due to lack of economic means and thus are forced to remain unrepresented for the rest of their trial. Women prisoners are particularly in the dark regarding the status of representation and stage of their cases and many continue in jail without bail applications being moved on their behalf. Most lawyers do not meet their clients in jail. Prisoners fall back on the meagre resources of their families and often unaccountable and ineffective private lawyers. Several even forego their right to a lawyer entirely only because of their socio-economic circumstances and lack of legal awareness.

In such a situation, there is a dire need for the legal services authority to be the first line of defense for undertrial prison population.

What can the Legal Services Authority do to fulfil the goal of access to justice for persons in custody?

The Legal Services Authorities should:

Constitution of Mandated Bodies and Effective Coordination

- Develop mechanisms for effective co-ordination between the Legal Service Authorities, court, police, prisons and prisoners to eliminate delays in identification of a person in need of legal aid
- Ensure that legal aid clinics are constituted and made operational in all central, district and sub-jails
- Attend to representation requests as soon as possible so no person is deprived of their access to court or liberty unnecessarily
- Intimate the prisoners regarding appointment of lawyer and details so that prisoner or his/her family may contact him
- Provide adequate means to prisoners to air their grievances against legal services rendered

Appointments, Remuneration and Training

- Appoint and train remand and bail lawyers for effective opposition of unnecessary remand at the time of first appearance and subsequent productions and timely applications for bail
- Appoint able and committed jail visiting lawyers and jail paralegals for the early identification of persons in custody in need to legal aid and provide representation and advice at the earliest stage of their cases
- Provide specialised training to the paralegals manned to maintain these clinics
- Remunerate lawyers and paralegals appropriately and in time

Reporting and Monitoring

- Monitor the regularity of visits by jail visiting lawyers, the work of paralegals, the maintenance of work registers, seek timely work reports, and ensure effective reporting mechanisms are set in place

- Review the work of jail visiting lawyers and paralegals on a quarterly basis and seek feedback from prisoners and prison staff in order to monitor their performance
- Constitute Monitoring Committees as per NALSA Regulations 2010 to ensure accountability of legal services rendered
- Monitor the implementation of the Supreme Court order in “In Re-inhuman conditions in 1382 prisons” (April 2015) where directives have been issued to National Legal Services Authority (NALSA) and the SLSAs:
 - for the constitution and healthy functioning of Undertrial Review Committees in every district to prevent long and unnecessary detentions,
 - to appoint and entrust panel lawyers to identify and represent in cases where detentions persist due to poverty and inability to pay bail or provide sureties in spite of bail being granted, and
 - the early disposal of compoundable offences

The dynamic role that legal services bodies need to perform in the face of these realities will ensure that the closing of the prison gates do not close access to the constitutional right to legal aid and fair trial.

What you can do:

If you are a lawyer, you should get enrolled with the legal services authority in your vicinity and if permissible visit your nearest police station and jail regularly to identify, aid and assist arrestees and prisoners in need of legal help on pro bono basis.

For others, Right to Information is a great tool. We use it to assess/identify if legal aid schemes are working for the benefit of prisoners. So can you in your district/state. We would be happy to assist.

You can read more about NALSA, the foremost authority for legal aid in the country. Contact details for the SLSAs in your states can also be found on their website.

Regards,

Sana Das

Coordinator, Prison Reforms Programme

Behind Bars, Not Beyond Justice

PRISON NEWS



Australian prisons need to improve to measure up to the UN's Mandela Rules

Ruth Barson, *The Age*

Australia is locking up more people than ever before, but many of Australia's prison practices breach the UN's new standards.

Tihar makes it e-say for families

Shiv Sunny, *The Hindu*

Prisoners at Tihar Jail may soon be able to meet their relatives, friends and advocates through video conferencing. However, to prevent misuse of the system, the jail authorities will record their conversation and analyse them if they feel it is necessary.

Telangana jail moves prisoners towards a new life

Ch Sushil Rao, *The Times of India*

In a new decision that could see a fall in the crime graph, the Telangana prisons department is planning to approach corpo rate firms in the city to hire released convicts who have shown good behaviour.

तिहाड़ जेल : नर्सों ने की ट्रांसफर कैंसल करने की मांग

Navabharat Times

देश की सबसे सुरक्षित मानी जाने वाली तिहाड़ जेल के अस्पताल में तैनात नर्सों ने दिल्ली के मुख्यमंत्री अरविन्द केजरीवाल को पत्र लिख कर मांग की कि उनके ट्रांसफर के आर्डर कैंसल होने चाहिए।

Gang war in Mangaluru jail: Two inmates killed

Business Standard (IANS)

Two prisoners were killed and six other inmates injured in a gang war that broke out in the district jail here in Karnataka on Monday, police said.

यूपी की जेलों में बंद 70 साल से ज्यादा उम्र के कैदी रिहा किए जाएंगे: रामूवालिया

Live Hindustan

यूपी की जेलों में बंद 70 साल से ज्यादा उम्र के कैदियों को प्रदेश सरकार रिहा करेगी।

जेल वार्डर की संदिग्ध मौत

Navabharat Times

सुनारिया जेल में जेल वार्डर के पद पर तैनात एक सिपाही की संदिग्ध हालात में गोली लगने से मौत हो गयी।



3 more jail guards suspended for beating up 50 prisoners

Goa News

Three more jail guards from Colvale central jail were suspended today, for violating human rights by mercilessly beating up 50 prisoners almost a month ago.



Prison economics and the gap between different states

Ragini Bhuyan, *Live Mint*

Data from the Prison Statistics India shows that the state spends Rs 51 per inmate daily on food, clothing and medicine.

Labour pulls out big guns in fight to restore legal aid

Solicitors Journal

The leader of the opposition and shadow chancellor both made appearances at Labour's legal aid summit last night to reinvigorate the legal profession in their fight against restrictions on access to justice.

Playing cops and robbers?

Vijay Chavan, *Pune Mirror*

The ritual of protecting the identity of an accused before trial to ensure a fair process, was casually thwarted on Saturday when a head constable was caught riding pillion on his own two-wheeler with an undertrial.

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-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights across the Commonwealth. CHRI was founded in 1987 by Commonwealth professional associations; it is headquartered in New Delhi, India since 1993, and has offices in Accra, Ghana and London, UK.

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.

Leave us an email at chriprisonsprog@gmail.com if you wish to subscribe to these updates.

You could also write to us with your comments and suggestions.

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