

CHRI 2018

LEGAL AID AT POLICE STATIONS



CHRI

Commonwealth Human Rights Initiative

working for the *practical* realisation of human rights
in the countries of the Commonwealth

Commonwealth Human Rights Initiative

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.

CHRI's objectives are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member Governments and civil society associations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's approach throughout is to act as a catalyst around its priority issues.

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The threat to human dignity, bodily integrity and fair trial safeguards at police station is higher when there is no lawyer. Cases of torture and death in police custody are an unfortunate reality.¹ Use of force for recovery or to extract information is extremely common. Complaints of delays in first production of the accused before the magistrate within 24 hours equally abound. These illegalities and malpractices impinge on the constitutional safeguards to a fair trial and the right to life with dignity.

Effective presence of a legal representative as soon as the person comes in contact with the criminal justice system reduces the possibility of such violations and helps the accused assert his/her rights so they do not remain mere paper rights. It also has a dissuasive effect upon those perpetrators who are likely to ill-treat detained prisoners and disregard arrest procedures to suit their convenience.

Article 22(1) of the Constitution of India 1950 guarantees the right to counsel to all arrested persons. The 2010 amendments to section 41 of the Code of Criminal Procedure 1973 (Cr.P.C.) further expound this right. S. 41D Cr.P.C. states that when any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during the interrogation, though not throughout the 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 Act 1987 (LSA) 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.

It is very rare for arrested/detained persons to be able to meet lawyers at the police station, mainly because the police do not facilitate this even though they have a duty to inform all about the right to consult a lawyer. Access to legal aid lawyers is even harder as no legal aid scheme/regulation has been formulated to ensure that access to a legal aid lawyer prevails at the time of arrest and interrogation. This fails to protect those who, either in ignorance of their rights or incapable of hiring a private lawyer, might fall through the cracks.

¹ Table 16A.3, Crime Statistics India, 2016 of the NCRB records 92 deaths of persons in police custody during 2016 available at <http://ncrb.gov.in/StatPublications/CII/CII2016/pdfs/Table%2016A.3.pdf>.



NATIONAL STANDARDS

PROVISIONS

The Constitution of India 1950: Articles 20(3), 22(1), 22(2); 39A
The Code of Criminal Procedure 1973: S. 41B, 41D; 50; 54 ; 57; 163
The Legal Services Authorities Act 1987: S. 12(g)

RELEVANT JUDGMENTS



- State of M.P. v Shobharam 1966 AIR SC 1910
- Nandini Satpathy vs Dani (P.L.) 1978 AIR 1025
- Sheela Barse v State of Maharashtra 1983 AIR SC 378
- Joginder Kumar v State of Uttar Pradesh 1994 AIR 1349
- D.K Basu v. State of West Bengal 1997 AIR SC 610
- State v. Navjot Sandhu alias Afsan Guru 2005 AIR SC 3820
- Smt. Selvi & Ors Vs. Karnataka 2010 7 SCC 263
- Arnesht Kumar vs State of Bihar & Anr (Crl. No. 9127 of 2013)



INTERNATIONAL STANDARDS

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2002):

"The possibility for persons taken into police custody to have access to a lawyer during [the period immediately following deprivation of liberty] is a fundamental safeguard against ill-treatment. The existence of that possibility will have a dissuasive effect upon those minded to ill-treat detained persons; further, a lawyer is well placed to take appropriate action if ill-treatment actually occurs."

UNODC Handbook on Early Access to Legal Aid in Criminal Justice Processes, 2014

also lays down the need for early access in the following words: "The early stages of the criminal justice process—the first hours or days of police custody or detention—are crucial for those who have been arrested or detained in respect of a criminal offence. Decisions made and actions taken, or not taken, will determine their ability to effectively defend themselves, the length of their detention, whether and when they are produced before a court, whether appropriate decisions are made about prosecution or diversion from the criminal justice system and, ultimately, whether they receive a fair trial. During this period, suspects and accused persons are at greatest risk of torture or other forms of ill-treatment, ranging from neglect and demands for bribes, to coerced confessions and unlawful detention."

UN Human Rights Committee, CCPR (General Comment 32, 2007)

"The right to communicate with counsel requires that the accused is granted prompt access to counsel. Counsel should be able to meet their clients in private and to communicate with the accused in conditions that fully respect the confidentiality of their communications."

The UN Principles and Guidelines on Access to Legal Aid for Persons in Criminal Justice Systems (UNPGLA 2012)

calls member states to take measures to 'ensure that police and judicial authorities do not arbitrarily restrict the right or access to legal aid for persons detained...' and more importantly 'to facilitate access for legal aid providers assigned to provide assistance to detained persons in police stations.'

The Basic Principles on the Role of Lawyers (Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, 1990)

mentions the obligation of the State to inform the public of "their right to be assisted by a lawyer of their choice upon arrest or detention or when charged with a criminal offence".

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)

(UN General Assembly Resolution 43/173) provides that "[a] detained person shall be entitled to have the assistance of a legal counsel. He [or she] shall be informed of his [or her] right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it,"

POSSIBLE MODELS OF LEGAL AID DELIVERY

A legal aid cell at the police station with DLSA appointed and trained lawyers who are stationed on rotational basis 24x7 for the purpose of providing basic legal advice and representation.



A legal aid cell at the police station with DLSA appointed and trained paralegal volunteers who are stationed on rotational basis 24x7 mandated to inform the legal services institution and/or call the designated lawyer upon request.



No legal aid cell in the police station. The police must inform the nearest legal aid authority immediately upon reaching the police station after arrest. The paralegal and the lawyer, if required, must reach the person in custody.



No legal aid cell in the police station. DLSA appointed and trained lawyer, on rotational basis, must make daily visit/s to the police station.



No legal aid cell in the police station. However, DLSA appointed and trained paralegal volunteers, on rotational basis, must make daily visit/s to the police station and must inform the legal services institution and/or call the lawyer in all cases where person is unrepresented.



ROLE OF LEGAL AID PROVIDERS AT POLICE STATION

1. Re-iterate to the person in custody their rights.
2. Provide legal advice to the person in custody.
3. Assist the police in contacting the family or friend of the person in custody.
4. Document arrest details and all interventions made.
5. Inform the legal service institutions of legal services provided at police station.
6. Supplement but not hinder the work of the police.
7. Report any illegalities or irregularities observed to the legal services institutions & other legal aid providers to take further action.

POINTS FOR CONSIDERATION

1. The total number of community para legal volunteers and lawyers assigned to each police station should be determined by the case load for that particular police station.
2. Measures should be taken to counter any risk of building of nexus between police and legal aid providers. This may include fixing short duration of assignment for legal aid providers and regular rotation.
3. As far as practicable, the legal aid lawyer providing assistance at the police station, should also continue to assist the accused at first and subsequent productions.
4. Legal Services Institutions must hold meetings with senior police officials in each district to facilitate the setup of the clinics.
5. Duty Notes and formats must be made available to standardise reporting and documenting of work carried out by legal aid providers at the police stations.

GLOSSARY

Legal Aid: Legal Aid is the provision of free and competent legal services to ensure opportunities for securing justice are not denied to any person by reason of economic or other disability.

Legal Services Institutions (LSI): Legal Services Institutions are bodies responsible to provide legal aid. In India these include the Supreme Court Legal Services Committee, a State Legal Services Authority, the High Court Legal Services Committee, District Legal Services Authority or the Taluk Legal Services Committee (or Sub Divisional Legal Services Committee), as the case may be. National Legal Services Authority is the nodal agency for legal aid in India. Every state has a State Legal Services Authority to carry out the activities as formulated by NALSA. The District Legal Services Authority and Taluka Legal Services Committee at the district and taluka level, respectively, ensure that the legal aid schemes and regulations of the SLSA are implemented.

Legal Aid Providers: Legal Aid Providers are institutions, individuals and groups appointed by the legal aid institutions to provide legal aid. These include lawyers, paralegals and organisations.

Paralegal Volunteers: Paralegal Volunteers are appointed and trained by the Legal Services Institution to provide legal services.

The early phase of the criminal justice process is the most crucial period for those arrested or detained for an offence. Presence of a lawyer at this phase is important to safeguard the rights accorded to them. 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". Section 12 (g) of the Legal Services Act enlists "persons in custody", which includes persons in police custody, as intended beneficiaries of legal aid.

While the National Legal Services Authority (NALSA) has formulated the Para-Legal Volunteers Scheme which requires paralegal volunteers (PLV) to provide legal representation at police station, it does not mandate them to be stationed at police stations. Instead they are to take action only "when the PLV receives information about the arrest of a person in the locality".

However in April 2018 NALSA has written to all 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 Cr.P.C. This guidebook suggests possible models of legal aid delivery at police station, as well as some important guidance on their setup.

CHRI Publications on Legal Aid

- Monitoring the Monitors – A Micro Study on Monitoring Committees in West Bengal, 2018
- Prison Legal Aid Clinics in West Bengal: Bringing Justice Closer? 2017
- Legal Aid for Prisoners: Status Report on Implementation of Three Schemes in Rajasthan, 2016
- Legal Aid Services in Correctional Homes of West Bengal, 2014
- Legal Aid Services in Correctional Homes of West Bengal, Joint Study by CHRI & Directorate of Correctional Services, WB, 2015
- Submission to The Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice On Three NALSA Schemes, 2016
- Reader on Legal Aid for Lawyers, 2013
- NALSA SOP Precipis (English, Hindi & Bengali)
- Poster on Legal Aid (English, Hindi, Bengali & Urdu), 2015
- Poster on Steps from Arrest to Appeal (English, Hindi, Bengali & Urdu), 2015
- Pamphlet on Legal Aid Clinics in Prisons, 2014
- Pamphlet on a) Legal Aid & You, b) Arrest & Detention, c) Police Interrogation & You, and d) FIR



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