



# ACCESSING REMEDIES IN LAW



**National Human Rights Commission  
India**



# Accessing Remedies in Law



TRAINING & RESEARCH DIVISION  
**NATIONAL HUMAN RIGHTS COMMISSION**  
**INDIA**

## Accessing Remedies in Law

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**National Human Rights Commission**

Manav Adhikar Bhawan, C-Block

GPO Complex, INA, New Delhi - 110 023

Email : [covdnhrc@nic.in](mailto:covdnhrc@nic.in)

Website : [www.nhrc.nic.in](http://www.nhrc.nic.in)

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Ph.: 9810520802

E-mail: [smatforms@gmail.com](mailto:smatforms@gmail.com)

## ACCESSING REMEDIES IN LAW

**Rights without remedies are meaningless.** If a person has a right to something, but another person can violate this right and get away with it, then this is not really a right. Rights must be **enforceable**. This means that there should be some mechanism to protect rights. This mechanism should ensure that people can enjoy their rights, and that action can be taken against those who violate another's rights. This is called a **remedy** – what one can lawfully do if someone tries to trample on our rights.

Kamini is a domestic worker. She sweeps and swabs the floor of Mrs. Malhotra's house on a daily basis. They have both agreed that Kamini will be paid fifteen hundred rupees a month for this. Kamini has the right to be paid this amount every month. She also has the right to be treated with respect and not to be abused in her workplace. If Mrs. Malhotra does not pay her salary, Kamini can take legal action against her.

*Mithu has the right to enjoy his property. His neighbour Golu often causes mischief and tries to damage Golu's property, and sometimes claims that he is the owner of Mithu's land*

*Mithu has the remedy of complaining to the police for any criminal disturbance to his property. He can also approach the court for protecting his right to enjoy his property without disturbance*

## THE FRAMEWORK FOR ACCESSING REMEDIES IN LAW

In India, the legal framework for redress can be divided in two categories:

### **The Court System**

and

### **Quasi – Judicial Commissions and other Authorities**

(i) **The court system:**

The court system (or the judicial system) is the system of law courts that administers justice and constitutes the judicial branch of government.

(ii) **Quasi – Judicial Commissions and other Authorities :**

Some authorities have been set up by law to help vulnerable sections of society to protect and uphold their rights. The National and State Human Rights Commissions, National and State Commissions for Women, National and State Commissions for Protection of Child Rights, etc. are examples of such authorities which have been established by special statutes to protect the rights of various sections of society who might be suffering from deprivation or oppression. They are called ‘quasi – judicial’ as they have a partly judicial character – they have the right to hold hearings, conduct investigations, and pass orders. However, their orders do not have the same force of law as decisions of formal courts. Their mandate is also usually restricted to certain specified subjects, but within these areas they have broad powers of functioning, including policy review and recommendations.

## THE COURT SYSTEM

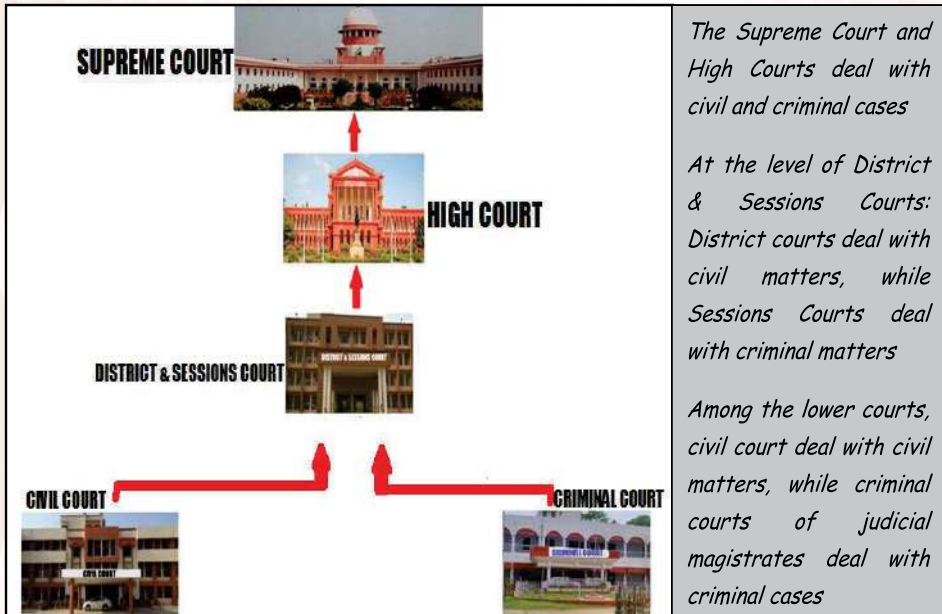
The court system refers to the formal system of justice where issues and disputes are heard and decided by courts of law. It is the third arm of government, also called the judiciary. In India the highest court of law is the Supreme Court. Below the Supreme Court are the various High Courts. Below the High Courts are the various lower courts (District and Sessions Courts, Courts of Judicial Magistrates, etc).

Why do we have so many courts? And what cases are dealt with in different courts? To understand this, we must first understand the basic division of cases into the categories of *civil* and *criminal*.

### *Civil and Criminal Cases*

A *criminal case is one that involves an offence*. An offence is any action that has been specified in law to be a punishable offence. Unless an act is specified to be an offence, it will not be considered a crime and will not be punishable. In India the act of committing murder or theft are specified in the Indian Penal Code to be offences. This is what makes these acts punishable. If anyone commits murder or theft, the person can be tried and punished in a criminal case by a criminal court.

A *civil case is a case that does not involve an offence*. A civil case can be about such things as non – payment of salary, breach of contract, marital disputes, property disputes, removal of defaulting tenants, etc.



At the level of lower courts, some courts deal only with civil matters and others with criminal matters. Among the higher courts, the jurisdiction is broader, and High Courts and the Supreme Court deal with both civil and criminal cases.

As has been discussed in detail in Booklet No. 5, *criminal courts come into action when an offence is committed.*

Anand is a resident of Raipur where he is employed as a sales executive in a private company. He often travels on work. One day, when he returns after a 2 week tour, he finds that his house has been burgled. Two colour TV sets, one air conditioner, and a computer are missing. He goes to the police to report the matter. The police register an FIR.

The police begin investigation. They suspect Mohan who is a habitual offender and operates in the neighbourhood. When the police arrest him, Manoj can approach the criminal court for bail. When the police complete their investigation, the framing of charges and the trial of the accused Mohan will take place in a criminal court.


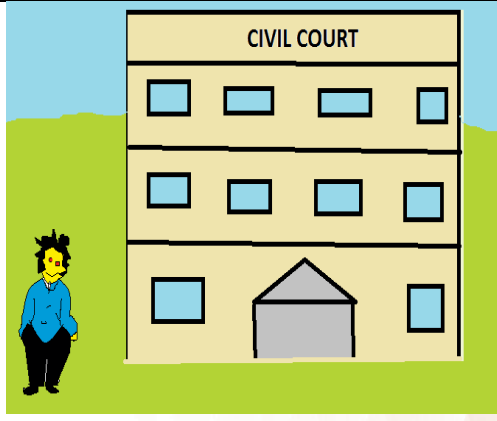
The Criminal Procedure Code specifies which offence will be dealt with in which court. Serious offences such as murder and rape are dealt with directly by the Sessions Court. Lesser offences such as theft and unlawful assembly are dealt with by judicial magistrates. The Supreme Court and High Courts are usually approached for appeals and revisions in criminal cases.

	
<p><i>Less serious offences such as theft and unlawful assembly are dealt with by judicial magistrates.</i></p>	<p><i>Serious offences such as murder and rape are dealt with directly by the Sessions Court</i></p>



In the case of **civil matters** (i.e. where the case is not about seeking punishment for commission of a crime), the case starts with filing of a **civil suit**.

*Different states have different provisions as to in which court the suit can be filed*, depending on the 'pecuniary value' of the case i.e. the monetary value of the dispute. For example, in Delhi, suits valued at under 2 crore rupees are to be filed in the District Court, while cases involving more than 2 crore rupees should be filed in the Delhi High Court. In Kolkata, suits up to 1 crore rupees can be filed in the District Court. In Karnataka suits valued at less than 5 lakhs are filed in the Civil Court Junior Division, while suits valued at over 5 lakhs are to be filed in the Civil Court Senior Division.

	
<p>Raju told Murugan to return the 3 lakh rupees he had lent him. Murugan says he doesn't owe Raju any money. This disagreement is not an offence. So Raju cannot approach the police for help. However, he can approach a civil court to decide the matter</p>	<p>Raju files a suit in the civil court for recovery of the amount. Since his suit is valued as 3 lakh rupees, he has to file the case in the civil court which has the jurisdiction (power) to deal with a suit of this amount. If Raju loses the case, he can appeal in higher courts.</p>

## *Writ Petitions*

A **writ** is a special type of order that can be passed by the Supreme Court or the High Courts. They are particularly useful for enforcement of fundamental rights. Fundamental rights have been discussed at length in Booklet No. 3. When a person's fundamental rights have been violated, they can file a writ petition in the Supreme Court or a High Court for redress.

***A writ petition can be filed in the Supreme Court under Article 32 of the Constitution. A writ petition before the High Court can be filed under Article 226 of the Constitution.*** The jurisdiction of the High Court under Article 226 is actually wider than that of the Supreme Court as a writ petition can be filed in the High Court not only for violation of fundamental rights, but also for the violation of legal rights (i.e., rights which are not fundamental rights mentioned in the Constitution, but are guaranteed and enforceable under other law e.g. rights under the Factories Act, Motor Vehicle Act, etc).

*The following writs are commonly issued to protect fundamental rights:*



### **MANDAMUS**

Mandamus literally means “we command”. This writ is a command issued by the Supreme Court or High Court directing a public official, public body or a lower court to do their duty. When a person or body fails to do their public duty and this results in the violation of a person's fundamental rights, the remedy is to approach the Supreme Court or High Court in a writ petition. These courts can then direct the performance of the duty by issuing a writ of mandamus.<sup>1</sup>

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<sup>1</sup> The actual term used is writ “in the nature of” which gives greater flexibility to cover a range of issues. Thus, strictly speaking, it is “writ on the nature of mandamus” that is passed rather than writ of mandamus



*Suraj is a government school teacher. Although he has been teaching regularly for the last 20 years, he was not paid any salary for the last 18 months. This was leading to great financial hardship. He filed a writ petition in the High Court as the non - payment of his salary is a violation of his fundamental rights to life and equality. The High Court heard the matter and then directed the authorities to clear Suraj's dues.*



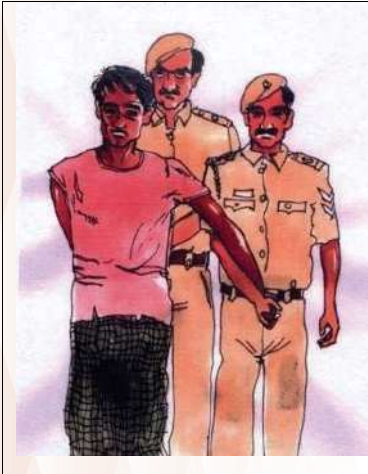
*There is no doctor in the government hospital in Ashokganj. The sweeper Anoop has started playing the role of a doctor - taking people's blood pressure, giving injections and even prescribing pills! Ajanta and some other residents of the town file a writ petition in the High Court as the absence of doctors in the government hospital is a violation of their fundamental right to life and health. The High Court directs the government to appoint the required number of doctors there immediately.*

This writ is also available against a private person or company if they are performing a public function or discharging a public duty.



## HABEAS CORPUS

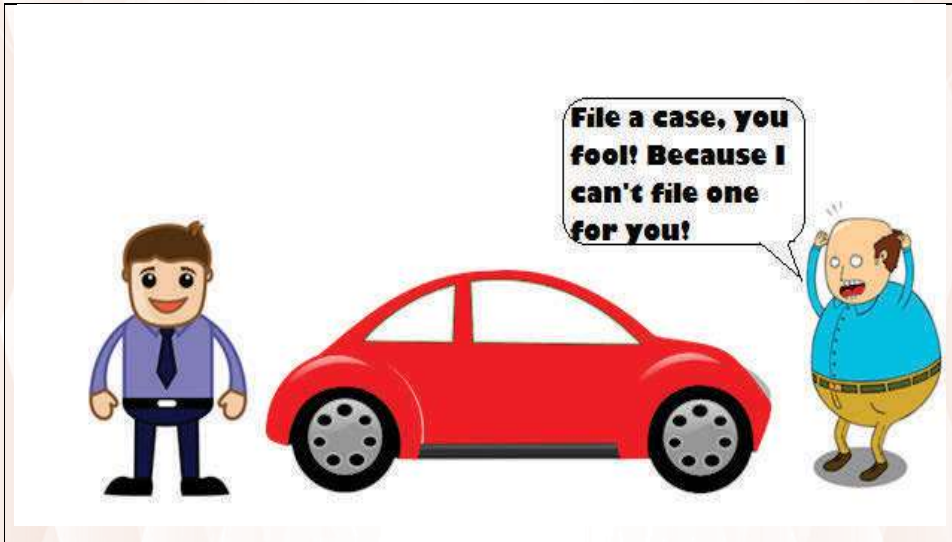
Habeas Corpus literally means 'to have the body'. Through this writ, the court can cause any person who has been detained or imprisoned to be **physically brought** before the court. The court then examines why the person has been detained. If there is no legal justification for the detention, the court can set the detainee free.



*After the police picked up Hari, there was no news of him for many days. Hari's brother Govind went to the police station to inquire about his brother, but he was threatened and told to leave. Govind then approached the High Court in a writ petition praying for a writ of habeas corpus. The High Court summoned the police officers and inquired about the basis of the arrest. On finding that the police were holding Hari in violation of arrest laws, the court directed that he be released at once.*

### Public Interest Litigation

Litigation, or the filing of cases, is only done between persons who are directly affected in a problem or a dispute. The courts do not allow third parties who are unaffected to meddle in the matter, as this could lead to confusion and a waste of the court's time. Only those who have a '*locus standi*' are allowed to file a case or appear before a court in any matter. '*Locus standi*' literally means 'a place to stand'. If a person is not affected in a particular matter, the person is said to have no *locus standi* in the case, i.e. the person has no right to appear before the court in this matter.

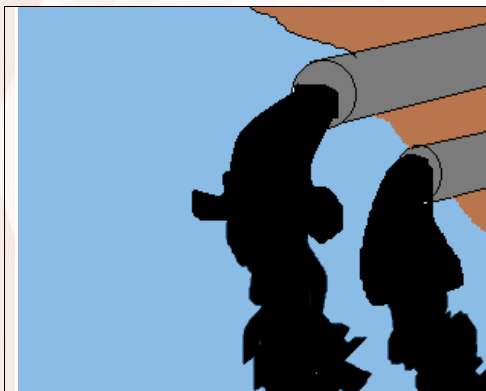


*Rajiv has bought a second-hand car from the company SecondCarsCo. His father is furious with the product and thinks the company has passed off an inferior car to his son. He wants Rajiv to file a consumer case against SecondCarsCo. Rajiv refuses. He is quite happy with the vehicle. There is nothing the father can do as he has no locus standi to file a case himself.*

**Public Interest Litigations (or PILs) are an exception to the locus standi rule.** A PIL can be filed by a person who may not be directly affected, provided there is some public interest involved in the matter. The courts are strict about rejecting cases that are filed as PILs but are actually only serving someone's private interest.

*Atul Kumar filed a PIL against the government move to acquire some land to build a railway track. He said that the move was a danger to the life and limb of the public as trains would be passing nearby and there would be unmanned crossings. It later came to be known that Atul Kumar ran a business of passenger buses, and he was afraid that the train would lower his profits! As this is a case of private interest, the PIL was dismissed, and Atul Kumar had to pay a fine for wasting the court's time.*

*The key factor in a PIL is that the case should involve some public interest. Issues of public interest include women's rights, child rights, environmental pollution, abuse of prisoners, cruelty to animals, etc*



In the PIL *MC Mehta v Union of India*, the Supreme Court passed important orders to stop the pollution of the Ganga. Pollution of the environment is clearly a matter of public interest



In the PIL *Vishaka v. State of Rajasthan*, the Supreme Court gave important directions to protect women from sexual harassment in the workplace. Women's rights and women's safety are important matters of public interest.

## **QUASI – JUDICIAL COMMISSIONS AND OTHER AUTHORITIES**

The formal court system has played a critical role in providing justice to people. However, weaker sections of society sometimes find it difficult to access this system. This happens due to various reasons, ranging from poverty, lack of awareness of rights, and ignorance of the avenues of redress. It is for this reason that some commissions and authorities have been established to help the vulnerable access justice.

The National and State Human Rights Commissions, National and State Commissions for Women, National and State Commissions for Protection of Child Rights, etc. have been established to protect the rights of different sections of society. These commissions are called 'quasi – judicial' as they have

powers and procedures resembling those of a court of law. Though their directions do not have the same force of law as that of a court, these quasi – judicial bodies also decide on disputes and pass orders affecting the rights and duties of the parties concerned.

### ***Human Rights Commissions***

Human Rights Commissions have been set up in India under the Protection of Human Rights Act (1993). There is the National Human rights Commission (NHRC) in New Delhi, and various State Human Rights Commissions (SHRCs) at the state level. The Human Rights Commissions are responsible for the protection and promotion of human rights in India.

*The NHRC is made up of:*

- Chairperson.... a former Chief Justice of India
- Secretary General
- 4 members:
  - 1 sitting or former judge of the Supreme Court
  - 1 sitting or former Chief Justice of a High Court
  - 2 experts on human rights
- Ex officio members:
  - Chairperson of the National Commission for Women
  - Chairperson of the National Commission for Minorities
  - Chairperson of the National Commission for Scheduled Castes

The structure of SHRCs at the state level is similar to that of the NHRC.

*The duties of the Human Rights Commissions include:*



Inquire into complaints about alleged human rights violations, or negligence in the prevention of a rights violation by a public servant.



Inspect and make recommendations on the living conditions inside prisons and other state run institutions where persons are detained or lodged for treatment, reform or protection.



Review and make recommendations for effective implementation of safeguards provided under the Constitution or laws for the protection of human rights.



Undertake and promote research in the field of human rights.



Spread understanding of human rights among all sections of society.



Promote awareness of safeguards and measures for the protection of rights.



Submit annual reports and recommendations to the Central or State Governments, which are then to be placed before Parliament or the State Legislature.

If there is any situation of violation of human rights, the injured party can file a petition a Human Rights Commission. A Commission can also *suo motu* (on its own) take up a case based on any newspaper report or any other probable source of information. The Commission then examines the matter by hearing all sides concerned, and then passes orders. Although violation of a Human Rights Commission's order is not punishable under the law of contempt, the fact that the order is passed by high level dignitaries (Supreme and High Court judges), gives it great credence and legitimacy.

***The Human Rights Commissions do not intervene in the following cases:***



Vague, anonymous or pseudonymous petitions



Trivial or frivolous complaints





Matters which are pending before another Human Rights Commission (e.g. NHRC will not take up a case pending before the Assam State Human Rights Commission, the Assam SHRC will not take up a matter pending before the West Bengal SHRC) or any other Commission



Any matter involving a violation which occurred over a year ago, and there is no continuity in the violation



Allegations do not make out any specific violation of human rights



The matter is already before a Court or Tribunal or being considered for trial (subjudice)

*The NHRC has made important interventions in various areas of human rights including:*

<i>Bonded labour</i>	<i>Child labour and exploitation</i>	<i>Refugees in India</i>
<i>Manual scavenging</i>	<i>Extra judicial killings</i>	<i>Atrocities on Dalits</i>

## Women's Commissions

The National Commission for Women (NCW) is a statutory body for women set up by in 1992 under the National Commission for Women Act, 1990.

*The functions of the NCW include:*



Investigating and examinig matters related to women



Preparing recommendations to improve the condition of women through legal and other reforms



Taking up matters related to violation of laws related to women



Evaluating the progress of women across the country

State Commissions for Women are set up by State Governments with similar functions and powers.

*Imelda is a young woman from the northeast living in a rented flat in Delhi. Her work as a bartender involves late hours and this makes her landlords suspicious. One night when she returns from work she finds her belongings thrown outside the house, and a new lock on the door. The landlord tells her to get out of the premises. They refuse to return her security deposit saying it is enough that they are not reporting her to the police.*

*Imelda an approach the NCW or the Delhi Commission for Women to help her get justice in the case. They can help her find shelter and also help her in filing a court case against the landlords. The Women's Commission itself can hear the matter and pass orders against the landlord.*

## *National Commission for Scheduled Castes*

The National Commission for Scheduled Castes was set up under the Constitution to provide for the better protection of the rights and interests of Scheduled Caste persons.

*Its functions include:*

- Investigating and monitoring all matters related to safeguards provided for Scheduled Caste persons under any law
- Inquiring into specific complaints with respect to the deprivation of rights and safeguards of Scheduled Caste persons
- Evaluating the progress and development of Scheduled Caste persons



*The National Commission for Scheduled Castes was set up under the Constitution to provide for the better protection of the rights and interests of Scheduled Caste persons. Persons from the Scheduled Caste community suffering any rights violation can approach this Commission for help in accessing justice*

## *National Commission for Scheduled Tribes*

The National Commission for Scheduled Tribes was set up under the Constitution to provide for the better protection of the rights and interests of persons belonging to the Scheduled Tribes.

### *Its functions include:*

- Investigating and monitoring all matters related to safeguards provided for the Scheduled Tribes under any law
- Inquiring into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes
- Evaluating the progress and development of the Scheduled Tribes
- Taking measures to confer ownership rights on the minor forest produce for ST's living in forest areas
- Safeguarding the rights of the tribal communities over mineral resources, water resources etc. as laid down by law



*The National Commission for Scheduled Tribes was set up under the Constitution to provide for the better protection of the rights and interests of persons belonging to the Scheduled Tribes. Persons belonging to the Scheduled Tribe community suffering any rights violation can approach this Commission for help in accessing justice*

## *Commissions for Protection of Child Rights*

The National Commission for Protection of Child Rights (NCPCR) was set up under the Commission for Protection of Child Rights Act, 2005. State Commissions for Protection of Child rights (SCPCR) were also established in each state. These Commissions were set up to protect, defend and promote the rights of children in the country.

*The functions of the Commissions for Protection of Child Rights include:*

- Examining any law or constitutional provisions to ensure that they protect child rights
- Providing the governments with recommendations to safeguard child rights
- Inquiring into child right violations. These Commissions have been specifically tasked with attending to complaints under the Right to Free and Compulsory Education Act
- Examining the risk factors for children affected by terrorism and communal violence, riots, natural calamities, domestic violence, HIV/AIDS, trafficking, maltreatment, torture, pornography and prostitution, and recommending remedies
- Looking into the special care and protection of children from distressed, marginalised and disadvantaged backgrounds



*The National and State Commissions for Protection of Child Rights were set up to protect, defend and promote the rights of children in the country. They can be approached for help in getting justice for children*

## Minorities Commissions

The National Commission for Minorities was set up under the National Commission for Minorities Act, 1992. Similar State Commissions for Minorities have also been set up in various states. the Six religious communities have been notified in as minority communities by the Union Government all over India:

☪ 🌙 🕌 Muslims

☪ 🗳️ 🇸🇰 Christians

☪ 🗳️ 🇸🇰 Sikhs

☪ 🗳️ 🇸🇰 Buddhists

☪ 🗳️ 🇸🇰 Zoroastrians (Parsis)

☪ 🗳️ 🇸🇰 Jains

*The functions of the Minorities Commissions include:*

☪ 🌙 🕌 Evaluating the progress and development of minorities

☪ 🗳️ 🇸🇰 Monitoring the legal safeguards for minorities and making recommendations to make them better.

☪ 🌙 🕌 Dealing with specific complaints of deprivation of rights of minorities



*Aziza is a 10 year old Muslim girl living in Madhya Pradesh. Her parents insist that she cover have threatened to expel her from school if she insists on dressing like this. Aziza's parents are form a poor family. They do not have money to litigate against the school. They can approach the State Commission for Minorities iin Madhya Pradesh, or the National Commission for Women in Delhi for help in the matter.*

## *Legal Services Authority*

The Legal Services Authorities (LSAs) were set up under the Legal Services Authorities Act, 1987. The prime reason for setting up these LSAs was to *ensure free and competent legal services to the weaker sections of the society* so that all may enjoy access to justice.

The LSAs are so structured as to reach every part of the country. The structure is:



National Legal Services Authority at the centre



State Legal Services Authority at the state level



District Legal Services Authority in each district



Taluka Legal Services Committee at the taluka level

*The LSAs provide free legal services to a range of persons including:*

- Women and children
- Victims of immoral trafficking or forced labour
- People belonging to the Scheduled Castes and Scheduled Tribes
- People with disabilities
- Victims of disasters caused by industry, nature or conflict
- Industrial workers
- People in custody(jails, mental asylum, protective homes)
- People, who have an annual income of less than the income fixed by the government

The following are among those who are entitled to free legal aid from the Legal Services Authorities. Legal Services Authorities have been set up to ensure free and competent legal services to the weaker sections of society so that all may enjoy access to justice

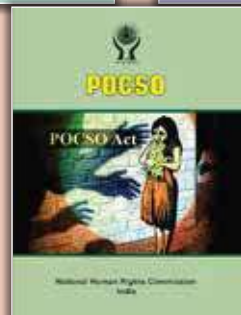
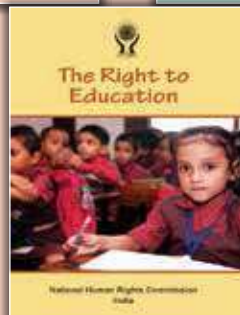
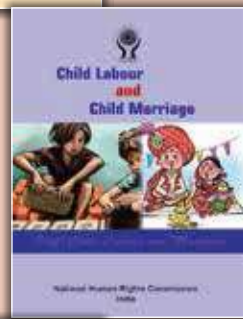
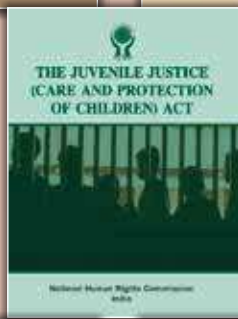
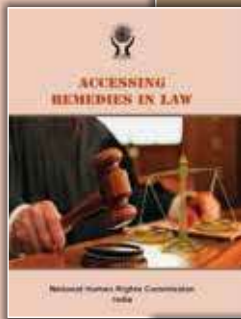
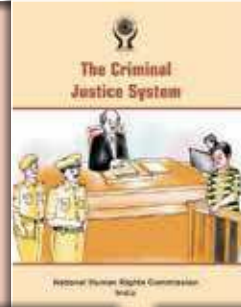
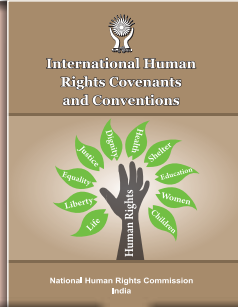
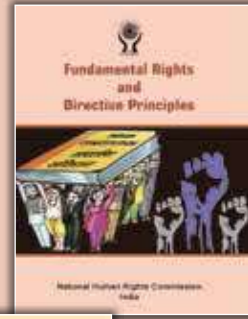
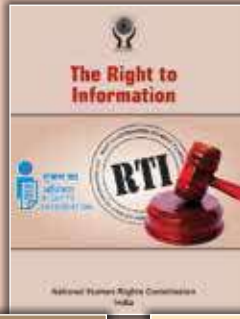
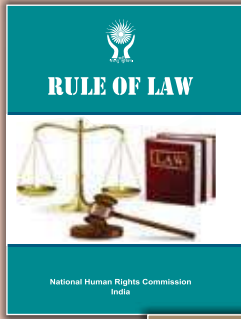
		
<i>Women</i>	<i>Children</i>	<i>Scheduled Castes and Scheduled Tribes</i>
		
<i>The poor</i>	<i>Persons with disability</i>	<i>People affected by natural disasters</i>











## NATIONAL HUMAN RIGHTS COMMISSION

Manav Adhikar Bhawan, C-Block, GPO Complex  
INA, New Delhi - 110 023

Email : [covdnhrc@nic.in](mailto:covdnhrc@nic.in) Website : [www.nhrc.nic.in](http://www.nhrc.nic.in)