

Legal Aid implies giving free legal services to the poor and needy who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any court, tribunal or before an authority.

### Right to Legal Aid:

It is the duty of the State to see that the legal system promotes justice on the basis of equal opportunity for all its citizens. It must therefore arrange to provide free legal aid to those who cannot access justice due to economic and other disabilities.

—(Art.39 A of the Constitution of India)

If the accused does not have sufficient means to engage a lawyer, the court must provide one for the defense of the accused at the expense of the state.

—(Sec. 304, Criminal Procedure Code)

The Constitutional duty to provide legal aid arises from the time the accused is produced before the Magistrate for the first time and continues whenever he is produced for remand.

—(Khatri II Vs. State of Bihar, (1981) 1SCC; 1981 SCC (Cri) 228; 1981 Cri. LJ 470)

A person entitled to appeal against his/her sentence has the right to ask for a counsel, to prepare and argue the appeal.

—(Madav Hayavadanrao Hoskot Vs. State of Maharashtra (1978)3 SCC 544) (Art. 142 of the Constitution r/w 21 and 39A)

### Duties of the Police and the Courts:

The police must inform the nearest Legal Aid Committee about the arrest

of a person immediately after such arrest.

—(Sheela Barse, V. State of Maharashtra)

The Magistrates and sessions judges must inform every accused who appears before them and who is not represented by a lawyer on account of his poverty or indigence that he is entitled to free legal services at the cost of the State.

Failure to provide legal aid to an indigent accused, unless it was refused, would vitiate the trial. It might even result in setting aside a conviction and sentence.

—(Suk Das Vs. Union Territory of Arunachal Pradesh (1986) 2 SCC 401; 1986 SCC (Cri) 166)

### Services offered by the Legal Services Authority:

- 1 Payment of court and other process fee;
- 1 Charges for preparing, drafting and filing of any legal proceedings;
- 1 Charges of a legal practitioner or legal advisor;
- 1 Costs of obtaining decrees, judgments, orders or any other documents in a legal proceeding;
- 1 Costs of paper work, including printing, translation etc.

### When can Legal services be rejected?

If the applicant

- has adequate means to access justice;
- does not fulfill the eligibility criteria;
- has no merits in his application requiring legal action.

### Who is entitled to free legal aid?

Any person, who is:

- § a member of the scheduled castes or tribes;
  - § poor (with an annual income of not more than Rs.50000/- for cases in the Supreme Court and Rs.25000/- in other courts);
  - § a victim of trafficking in human beings or beggar;
  - § disabled, including mentally disabled;
  - § a woman or child;
  - § a victim of mass disaster, ethnic violence, caste atrocity, flood, drought, earth quake, industrial disaster and other cases of undeserved want;
  - § an industrial workman;
  - § in custody, including protective custody;
  - § facing a charge which might result in imprisonment;
- (Khatri II Vs. State of Bihar, (1981) 1SCC); and
- § unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence, and incommunicado situation;

### In addition to the above, legal service may be granted:

- 1 in cases of great public importance;
- 1 special cases considered deserving of legal services.

### When can the legal services be withdrawn?

The legal services committee can withdraw the services if,

- 1 the aid is obtained through misrepresentation or fraud;
- 1 any material change occurs in the circumstances of the aided person;
- 1 there is misconduct, misbehavior or negligence on the part of the aided person;
- 1 the aided person does not cooperate with the allotted advocate;
- 1 the aided persons appoints another legal practitioner;
- 1 the aided person dies, except in civil cases;
- 1 the proceedings amount to misusing the process of law or of legal service.

### Cases for which legal aid is not available

- § Cases in respect of defamation, malicious prosecution, contempt of court, perjury etc.
- § Proceedings relating to election;
- § Cases where the fine imposed is not more than Rs.50/-;
- § Economic offences and offences against social laws;
- § Cases where the person seeking legal aid is not directly concerned with the proceedings and whose interests will not be affected, if not represented properly.

### Recovery of the Aid:

Where legal services are withdrawn, the Committee is empowered to recover the cost of legal services granted.

### Whom to approach for free legal aid?

The person who needs free legal aid can approach the Legal Services Authority at any level- national, state, district or taluq. The request can be made to:

- the Senior Civil judge nominated as the chairperson of the Mandal/Taluq Legal Services Authority;
- the Secretary, District Legal Services Authority at the district level;
- the Secretary, High Court Legal Services Committee at the state level;
- the Secretary, Supreme Court Legal Services Committee at the higher level;
- the member secretary of the state legal services authority;
- the magistrate before whom s/he is produced; or
- the custodial authorities, if under detention.

### How to Approach?

- A written application can be made to the concerned authority (See Annexure I for proforma of the application form)
- Where the person cannot read or write, the legal services authority will record his/her statement along with thumb impression. Such a statement is treated as an application.
- The person who claims legal aid has to file an affidavit of his income.

### Steps involved in the process:

- 1 The eligibility criteria and the merits of the case are examined.
- 1 If the application for legal aid is rejected, reasons shall be duly recorded and also informed to the applicant.

- 1 The applicant has the right to appeal before the chairman for a decision against such rejection.

### Duties of the aided person:

The aided person must:

- 1 comply with directions given by the Secretary of the Legal Services Authority;
- 1 attend the office of the committee or Court as well as of the advocate assigned, as when required;
- 1 furnish full and true information to the advocate rendering legal service; and
- 1 not pay any fee or expenses to the advocate rendering legal service.

### Lok Adalats

Lok Adalats are judicial bodies set up for the purpose of facilitating peaceful resolution of disputes between the litigating parties. They have the powers of an ordinary civil court, like summoning, examining evidence etc.

Its orders are like any court orders, but the parties cannot appeal against such orders. Lok Adalats can resolve all matters, except criminal cases that are non-compoundable.

Either one or both the parties to litigation can make an application to the court for transferring the case to a lok adalat.

Where no compromise or settlement is made by the lok adalat, such a case is transferred to the court and that court deals with the litigation from the stage the lok adalat had reached.

### 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 educates on human rights issues and advocates for greater adherence to human rights standards.

Presently it is working in the following areas:

- J Police Reforms
- J Prison Reforms
- J Human Rights Commissions
- J Right to Information
- J Human Rights Advocacy
- J Constitutionalism
- J Biennial Report to the Commonwealth heads of Government meeting on Human Rights Issues.



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## Police and You

### Know Your Rights



Legal Aid  
&  
Advice