

informed to the applicant.

- ☛ 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:

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

### **When can Legal services be rejected?**

Legal services can 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.

### **When can the legal services be withdrawn?**

The legal services committee can withdraw the services if,

- ☛ the aid is obtained through misrepresentation or fraud;
- ☛ any material change occurs in the circumstances of the aided person;
- ☛ there is misconduct, misbehavior or negligence on the part of the aided person;
- ☛ the aided person does not cooperate with the allotted advocate;
- ☛ the aided person appoints another legal practitioner;
- ☛ the aided person dies, except in civil cases;

- ☛ the proceedings amount to misusing the process of law or of legal service.

### **Recovery of the Aid:**

Where legal services are withdrawn, the Committee is empowered to recover the cost of legal services granted

- ☛ Cases for which legal aid is not available
- ☛ Cases 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.

### **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 organization headquartered in India. Its objectives are to promote the practical realisation of human rights in the Commonwealth. CHRI advocates for greater adherence to human rights standards.

Presently we work in the following areas:

- ★ Police Reforms
- ★ Prison Reforms
- ★ Right to Information
- ★ Strategic Initiatives Programme
- ★ Reports to the Commonwealth Heads of Government Meeting (CHOGM)



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# **Legal Aid and Advice**

## **Police and You Know Your Rights**



**Commonwealth  
Human  
Rights  
Initiative**



Thousands of people in our country cannot afford a lawyer when they are accused of a crime or want to take a matter to court. As a result they are denied any meaningful access to the justice system. 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.

To protect the rights of such persons the Indian law has established that an accused person who cannot afford a lawyer with his/her own resources is entitled to free legal aid at the State's expense. This right is enshrined under article 22(1) and 39(A) of the Constitution of India.



### RIGHT TO LEGAL AID:

- ☛ If the accused can't afford to hire a lawyer then the court must provide one, at the expense of the State. Infact the right to get legal aid starts from the time the accused is arrested and continues whenever he is produced for remand up to the end of the trial.

- (S304, Code of Criminal Procedure)

- ☛ A person entitled to appeal against his/her sentence has the right to ask for a counsel, to prepare and argue the appeal.  
- (M H Hoskot v. 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.
- ☛ 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.

In 1987 Parliament passed the Legal Services Authority Act, which would enable people who because of their poverty, caste, creed, gender and vulnerability do not have the means to either file a case or defend a case to get lawyers and to be eligible for legal aid.

### UNDER THIS ACT:

- ☛ A National Legal Services Authority will be constituted at the central level
- ☛ A State Legal Services Authority will be constituted at the state level and
- ☛ A District Legal Services Authority will be constituted at the district level

The State Authority will constitute a committee called the *Taluk Legal Services Committee* for each *taluk*.

These authorities will have the responsibility of

providing free and competent legal services to the weaker sections of society.

### Services offered by the Legal Services Authority:

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

### WHO IS ENTITLED TO FREE LEGAL AID?

Under this Act every person who has to file or defend a case will be entitled to legal aid if he/she is:

1. A member of the Scheduled Castes and Scheduled Tribes
2. Poor – this includes people who earn Rs 50,000/- or less for cases to be filed in the Supreme Court and Rs 25,000/- or less for cases in other courts
3. A victim of human trafficking or beggars
4. Physically and mentally disabled persons
5. Women and children
6. A victim of mass disasters, ethnic violence, caste atrocity, flood, drought or earthquake.
7. An industrial workman
8. In custody, including custody in a protective home, juvenile home or psychiatric hospital.

- (Section 12 of the Legal Services Authority Act)

### Securing legal aid

However it is not enough to fall into one of the eligible categories. In order to secure legal aid the appropriate Legal Services Authority must decide

whether a valid case to prosecute or defend exists or not.

### Who 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 taluk. The request can be made to:

- ☛ the Senior Civil judge nominated as the chairperson of the Mandal/Taluk 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 the Authority?

- ☛ A written application can be made to the concerned authority
- ☛ 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:

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