

## LEGAL AID AND LEGAL ASSISTANCE ACT

Act 57 of 1973 – 1 January 1974

### ARRANGEMENT OF SECTIONS

#### SECTION

1. Short title	10. Payment of fees or rewards
2. Interpretation	11. Process to be signed by attorney
3. Application of Act	12. Costs
4. Application for legal aid	12A. Giving false or misleading information
5. Legal aid in criminal appeals	13. Rules
6. Power to make inquiry	14. Regulations
7. Grant of legal aid	FIRST SCHEDULE
7A. Grant of legal aid to minors	SECOND SCHEDULE
7B. Legal assistance	THIRD SCHEDULE
8. Exemption from taxes and fees	
9. Assignment of barrister and attorney	

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## LEGAL AID AND LEGAL ASSISTANCE ACT

### 1. Short title

This Act may be cited as the Legal Aid and Legal Assistance Act.

[S. 1 amended by s. 3 of Act 13 of 2012 w.e.f. 5 November 2012.]

### 2. Interpretation

In this Act—

“application” means an application for legal aid or legal assistance;

“Authority” means—

- (a) in respect of proceedings before the Supreme Court or a Court of Appeal, the Chief Justice or a Judge designated by him;
- (b) in respect of proceedings before any other Court, a Magistrate of that Court;

“earnings” means any source of income;

“civil proceedings” includes proceedings in extrajudicial matters;

“disciplinary law” has the same meaning as in section 111 of the Constitution;

“legal assistance”—

- (a) means legal assistance provided under section 7B; and
- (b) includes—
  - (i) legal advice and counselling during the recording of a statement under warning from detainee or accused party;

- (ii) legal representation, during a bail application.

[S. 2 amended by s. 4 of Act 13 of 2012 w.e.f. 5 November 2012.]

### **3. Application of Act**

This Act shall not apply—

- (a) to Courts established by a disciplinary law;
- (b) in respect of criminal proceedings at first instance except for offences specified in the First Schedule.

[S. 3 amended by s. 5 of Act 13 of 2012 w.e.f. 5 November 2012.]

### **4. Application for legal aid**

Subject to section 5, any person who wishes to obtain legal aid to be a party to civil or criminal proceedings shall—

- (a) make an application in writing to the Authority in the form set out in the Second Schedule;
- (b) make a sworn statement in the form set out in the Second Schedule that—
  - (i) excluding his wearing apparel and tools of trade and the subject matter of the proceedings, he is not worth 500,000 rupees; and
  - (ii) his total monthly earnings are less than 10,000 rupees.

[S. 4 amended by GNs 97 of 1985; 113 of 1990; 242 of 1990; 111 of 1994; s. 13 of Act 18 of 2003 w.e.f. 21 July 2003; GN 10 of 2012 w.e.f. 1 February 2012; s. 6 of Act 13 of 2012 w.e.f. 5 November 2012.]

### **5. Legal aid in criminal appeals**

(1) Any person who has a right of appeal against a conviction or order of a Magistrate under the District and Intermediate Courts (Criminal Jurisdiction) Act or the Industrial Court Act and who is unable to exercise that right owing to poverty, may, on the day of judgment—

- (a) inform the Magistrate, orally or in writing, of his intention to appeal; and
- (b) apply through the Magistrate for the grant of legal aid.

(2) The Magistrate—

- (a) shall, on receipt of an application under subsection (1), order that execution of judgment be stayed pending a decision on the application for legal aid; and
- (b) may, depending on the circumstances of the case, by order—
  - (i) remand the applicant;
  - (ii) release the applicant on parole with or without a requirement that the applicant report to a police station at specified intervals.

(3) Where after inquiry made by him, the Magistrate is satisfied that the applicant satisfies the requirements of section 4 (b), he shall transmit the record of the case to the Authority.

(4) The Magistrate may issue execution where—

- (a) after inquiry, he is satisfied that the applicant is not qualified for legal aid; or
- (b) the applicant fails to comply with any order made by him under subsection (2) (b) (ii).

(5) This section shall be in addition to, and not in derogation from, any other enactment relating to a criminal appeal from a District Court, the Intermediate Court, the Industrial Court or the Court of Rodrigues.

## **6. Power to make inquiry**

On receipt of an application, the Authority may—

- (a) cause such inquiry as it thinks fit to be made as to the means of the applicant; and
- (b) in case of an application for legal aid, refer the applicant to a barrister or attorney, or both, to give their opinion as to its apparent merits.

[S. 6 amended by Act 15 of 1994; repealed and replaced by Act 5 of 1994; amended by s. 7 of Act 13 of 2012 w.e.f. 5 November 2012.]

## **7. Grant of legal aid**

(1) Where the Authority is of opinion that—

- (a) an application for legal aid satisfies the requirements of section 4 (b); and
- (b) the application for legal aid is well founded,

the Authority shall approve the grant of legal aid.

(2) The Authority shall communicate its decision to the applicant and make such orders consequential on its decision as it thinks fit.

### **7A. Grant of legal aid to minors**

Notwithstanding sections 3 to 7, where an application for legal aid is made to the Authority in respect of a minor charged with a crime or misdemeanour, the Authority shall approve the grant of legal aid.

[S. 7A inserted by Act 15 of 1998; amended by s. 9 of Act 13 of 2012 w.e.f. 5 November 2012.]

### **7B. Legal assistance**

(1) Notwithstanding section 3, legal assistance shall be provided to a person in accordance with this section.

(2) Any detainee or accused party, being suspected of having committed an offence specified in the First Schedule, shall, upon arrest, be informed by the police officer in charge of the police station that he may make an application for legal assistance during police enquiry and for bail applications.

(3) Any detainee or accused party who wishes to obtain legal assistance shall—

- (a) make an application, in writing, to the Magistrate in the form set out in the Third Schedule; and
- (b) declare that—
  - (i) excluding his wearing apparel and tools of trade, he is not worth 500,000 rupees; and
  - (ii) his total monthly earnings do not exceed 10,000 rupees.

(4) The detainee or accused party making an application under subsection (3) (a) shall be—

- (a) brought before a Magistrate within 24 hours of his application; and
- (b) asked to swear or make solemn affirmations as to the correctness of all the information provided in the application form before the Magistrate.

(5) Where a detainee or accused party satisfies the requirements set out in subsection (3) (b), the Magistrate shall—

- (a) forthwith grant the application for legal assistance and make such orders, consequential on his decision, as he thinks fit; or
- (b) request such additional information as may be required from the detainee or accused party before granting the application.

[S. 7B inserted by s. 10 of Act 13 of 2012 w.e.f. 5 November 2012.]

## **8. Exemption from taxes and fees**

Where the Authority has approved the grant of legal aid or legal assistance, the applicant shall not, in the proceedings to which his application relates, be liable to pay any sum payable under any enactment relating to stamp duty, registration dues, usher's fees, witnesses' fees or Court fees.

[S. 8 amended by s. 11 of Act 13 of 2012 w.e.f. 5 November 2012.]

## **9. Assignment of barrister and attorney**

(1) The Authority shall assign a barrister or an attorney, or both, to assist any person who is granted legal aid or legal assistance.

(2) A barrister or an attorney assigned under subsection (1) shall—

- (a) not refuse his assistance unless he satisfies the Chief Justice of some good reason for refusing;
- (b) receive out of funds to be provided from the Consolidated Fund such sum as the Chief Justice may determine;
- (c) not be bound to make any disbursement out of his own money.

[S. 9 amended by s. 12 of Act 13 of 2012 w.e.f. 5 November 2012.]

## 10. Payment of fees or rewards

(1) (a) No person shall take or agree to take or seek to obtain from a person to whom legal aid or legal assistance has been granted any fee or reward for the conduct of his business in Court.

(b) Any person who contravenes paragraph (a) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding one year.

(2) (a) No fee shall be paid to a barrister or an attorney by a person to whom legal aid or legal assistance is granted.

(b) Where a person to whom legal aid or legal assistance is granted gives or agrees to give any fee or reward to another person, the grant of legal aid or legal assistance shall be revoked by the Authority and that person shall not be granted legal aid or legal assistance again to be a party in the same proceedings.

[S. 10 amended by s. 13 of Act 13 of 2012 w.e.f. 5 November 2012.]

## 11. Process to be signed by attorney

No process shall be issued on behalf of a person to whom legal aid is granted unless it is signed by his attorney.

## 12. Costs

(1) (a) Where in any proceedings in which legal aid is granted to a person an order for costs is made against any other person, the order shall, unless the Court otherwise orders, be deemed to have been made in favour of Government and the costs shall accrue to the Consolidated Fund.

(b) The Attorney-General shall take such steps as he may determine for the recovery of any costs awarded under paragraph (a).

(2) (a) The Court may make an order for costs against a person to whom legal aid is granted subject to such conditions as it may determine.

(b) Any costs allowed under paragraph (a) shall be paid out of the Consolidated Fund.

## 12A. Giving false or misleading information

Any person who, for the purpose of, or in connection with an application for legal assistance or for legal aid, wilfully gives any information which is false or misleading, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees or to penal servitude for a term not exceeding 3 years.

[S. 12A inserted by s. 14 of Act 13 of 2012 w.e.f. 5 November 2012.]

## 13. Rules

The Chief Justice may make such rules as he thinks fit for the purposes of this Act.

**14. Regulations**

The Attorney-General may, upon the recommendation of the Chief Justice, make such regulations—

- (a) to amend the Schedules;
- (b) to prescribe a scale setting out the proportion to which a meritorious application may be granted legal aid under section 7 (3).

[S. 14 amended by s. 15 of Act 13 of 2012 w.e.f. 5 November 2012.]

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**FIRST SCHEDULE**

[Sections 3 and 7B]

1. Sections 50 to 79, 82, 83, 86, 88 to 91, 100 (1), 101, 102, 104, 122 to 131, 215 to 223, 228 (3) and (4), 234, 235, 236 (1) and (2), 239 (1), 249 (1) and (4), 251, 257, 259, 276 to 281 (where the offence is committed before the Supreme Court), 283, 284, 291, 346 and 347 of the Criminal Code.

2. Attempts at or complicity in an offence listed in paragraph 1.

3. Offences which are—

- (a) punishable by penal servitude;
- (b) excluded from the jurisdiction of a District Magistrate.

[First Sch. amended by s. 16 (a) of Act 13 of 2012 w.e.f. 5 November 2012.]

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**SECOND SCHEDULE**

[Sections 4]

**APPLICATION FORM FOR LEGAL AID**

Name and surname of applicant .....

.....

Marital status of the applicant .....

National Identity Card no. ....

Address and phone number .....

Name and surname of spouse/partner .....

Name and surname and age of other dependants .....

Name and address of next of kin who could be contacted in case of need

.....

.....

Average monthly income of applicant .....

**SECOND SCHEDULE—continued**

- Employment, trade or occupation .....
- Average monthly income of spouse/partner .....
- Employment, trade or occupation of spouse/partner .....
- Average monthly expenses for dependants .....
- Funds available in cash or in an account in a financial institution .....
- Other sources of income and particulars thereof .....
- Loan contracted and particulars thereof .....
- Net monthly income of applicant .....
- Total household income .....
- Particulars of immovable property other than subject matter of proceedings –
  - (a) extent of land .....
  - (b) nature of buildings .....
  - (c) income derived therefrom .....
- Particulars of motor vehicles owned –
  - (a) brand or make .....
  - (b) year of registration .....
  - (c) capacity – .....

I declare that the information set out above is true to the best of my knowledge and belief.

.....  
Date Signature or mark of applicant

.....  
Name and rank of the representative of the Authority

.....  
Date Signature of the representative of the Authority

[Second Sch. inserted by s. 16 (b) of Act 13 of 2012 w.e.f. 5 November 2012.]

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**THIRD SCHEDULE**

[Section 7B]

**APPLICATION FORM FOR LEGAL ASSISTANCE**

Name and surname of applicant .....

.....

Marital status of the applicant .....

National Identity Card no. ....

Address and phone number .....

Name and surname of spouse/partner .....

Name and surname and age of other dependants .....

Name and address of next of kin who could be contacted in case of need

.....

.....

Average monthly income of applicant .....

Employment, trade or occupation .....

Average monthly income of spouse/partner .....

Employment, trade or occupation of spouse/partner .....

Average monthly expenses for dependants .....

Other sources of income and particulars thereof .....

Net monthly income of applicant .....

Total household income .....

Particulars of immovable property other than subject matter of proceedings –

(a) extent of land .....

(b) nature of buildings .....

(c) income derived therefrom .....

I swear/solemnly affirm that the information set out above is true to the best of my knowledge and belief.

.....

Date

Signature or mark of applicant



**THIRD SCHEDULE**—*continued*

.....  
Name and rank of the representative of the Authority

.....  
Date

.....  
Signature of the representative of the  
Authority

[Third Sch. inserted by s. 16 (b) of Act 13 of 2012 w.e.f. 5 November 2012.]

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