

LEGAL AID

Act 57 of 1973 – 1 January 1974

Amended 18/03

ARRANGEMENT OF SECTIONS

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1 Short title

This Act may be cited as the Legal Aid Act.

2 Interpretation

In this Act –

“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;

“civil proceedings” includes proceedings in extra-judicial matters;

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

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, other than proceedings under an enactment, or for an offence listed in the Schedule.

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 a written application to the Authority, stating his cause of action or ground of defence or appeal, or the nature of the extra-judicial matter in respect of which the application is made;
- (b) make a sworn statement that –
 - (i) excluding his wearing apparel and tools of trade and the subject matter of the proceedings, he is not worth 75,000 rupees; and
 - (ii) his total monthly earnings are less than 5,000 rupees.

[Amended GNs 97/85; 113/90; 242/90; 111/94; 18/03]

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) refer the applicant to a barrister or attorney, or both, to determine the apparent merits of the applicant's cause of action, ground of defence or appeal, or application.

[Amended 15/94; R 5/94]

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 6, 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.

[Added 15/98]

8 Exemption from taxes and fees

Where the Authority has approved the grant of legal aid 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.

9 Assignment of barrister and attorney

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

- (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 may be determined by the Chief Justice;
 - (c) not be bound to make any disbursement out of his own money.

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 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 1,000 rupees and to imprisonment for a term not exceeding 3 months.

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

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

11 Process to be signed by attorney

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

12 Costs

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

(b) The Attorney-General shall take such steps as he thinks fit 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 has been granted subject to such conditions as it thinks fit to impose.

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

13 Rules

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

14 Amendment of Schedule

The Attorney-General, on the recommendation of the Chief Justice, may, by regulations, amend the Schedule or the amount specified in section 4(b).

SCHEDULE

(section 3)

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 death or penal servitude;

(b) excluded from the jurisdiction of a District Magistrate.
