

POLICE & YOU: KNOW YOUR RIGHTS

Legal Aid & Advice



Police reforms too important to neglect,
too urgent to delay...

This booklet has been developed by the **Commonwealth Human Rights Initiative (CHRI)** for the **Ministry of Home Affairs** as a part of a series called Police & You: Know Your Rights.

CHRI is an international, independent, non-profit, non-governmental organization headquartered in New Delhi. Its objectives are to promote the practical realization of human rights in the countries of the Commonwealth. CHRI educates on human rights issues and advocates for greater adherence to human rights standards. For more details please visit <http://www.humanrightsinitiative.org>.

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Kamla and her family were poor daily wage labourers, working in Kamla Nagar. One day her daughter Reema was arrested by the police on charges of theft. Reema was released on bail. The police told her that the trial for the case would begin after some time. Kamla didn't know what to do then - no one in her family knew anything about the court system. So Kamla and Reema decided to visit Neeta didi, and asked her for her help.



LEGAL AID IS YOUR RIGHT

"Namaste didi, how are you?" said Kamla. "I'm fine. I'm glad to see that you're out of the lock-up, Reema." said Neeta. "That's what we came to talk to you about, didi." said Kamla, "The police have told us that the trial will begin in 6 weeks. We can't afford to hire a lawyer. We don't know what will happen to us in court without one." Looking very tense.

"Don't worry so much about the lawyer, Kamla. Haven't you heard of legal aid?" said Neeta. "No, I haven't heard of it."

What is legal aid?" asked Kamla.

"When free help is provided by lawyers to those who can't afford the services of a lawyer for a case or any legal proceeding in a court or tribunal or any such authority, it is called legal aid. Legal aid is provided by the Legal Services Authority." replied Neeta.

"What do they do when they give you legal aid?" asked Kamla. "Well, with legal aid, the accused gets the services of a lawyer, who will represent the case in court and his/her services will be paid by the Legal Services Authority." She continued, "The Legal Services Authority will also pay for all court fees, any charges to prepare or file any legal proceedings, any costs incurred to obtain court papers such as decrees, orders and other legal documents as well as the cost of any paperwork like printing or translation." answered Neeta.

"Receiving legal aid would be very good...but how do I know that I will get it?" said Reema.

"Legal aid is definite for those who can't afford a lawyer because they are too poor. This right is according to the Constitution, which says that it is the duty of the State to

provide legal aid." answered Neeta, "This means, that 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. If the person is not aware of this right then it is the duty of the Magistrate to inform the person about this." She went on "it is the duty of the police to inform the nearest legal aid committee also about the arrest of an accused seeking legal aid for the first time and this goes on whenever the person is brought in for questioning." She informed.

"What about cases of appeal, Neeta didi?" said Reema. "Every person is entitled to appeal a sentence, and in the process has the right to ask for legal aid." replied Neeta.

"Neeta didi, I have a question." said Kamla "**who can receive this aid?** "

"Any person can get legal aid, as long as they belong to one of the ten groups that the Supreme Court has laid out." said Neeta, "Reema can get legal aid because she belongs to the first three groups, which are, that the accused is:

1. **A woman or child**
2. **Poor, i.e. with an annual income of not more than**

Rs.50,000 for Supreme Court cases and not more than Rs.25,000 for cases in other courts.

3. Facing a charge that might result in imprisonment.

The other grounds on which a person qualifies for legal aid," she continued, "are that the accused is:

- 1. A member of a scheduled caste or tribe**
- 2. A victim of trafficking in humans or beggar**
- 3. Disabled, in any way, including mentally disabled**
- 4. A victim of mass disaster, ethnic violence, caste violence, flood, drought, earthquake, industrial disaster etc**
- 5. Is an industrial workman/woman**
- 6. Is in custody, including protective custody, and**
- 7. Is unable to engage a lawyer because of reasons such as poverty, is being held in isolation where the person is unable to communicate etc.**



VICTIMS OF MASS DISASTER CAN APPLY FOR LEGAL AID

There are certain exceptions, under which legal aid may be granted, such as in cases of great public importance

and other special cases considered deserving legal services."

"I understand, Neeta didi. I wanted to know **who should be approached for legal aid?**" said Reema. Each **taluq, district, state and at the national level there is a Legal Services Authority (LSA) which can be approached by a person needing legal aid. The request can be made to:**

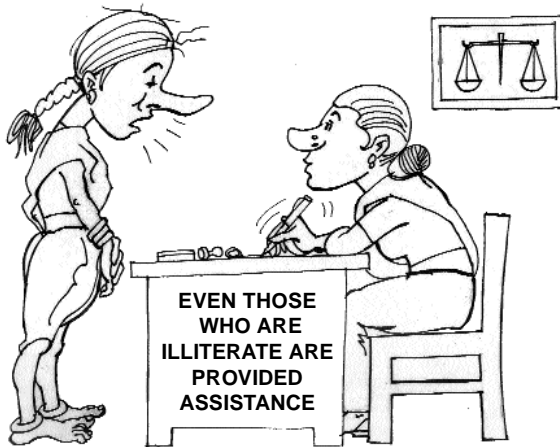
1. **The Senior Civil Judge nominated as the chairperson of the Mandal or Taluq Legal Services Authority.**
2. **The Secretary of the District Legal Services Authority.**
3. **The Member Secretary of the State Legal Services Authority.**
4. **The Secretary of the High Court Legal Services Committee.**
5. **The Secretary of the Supreme Court Legal Services Committee.**
6. **The Magistrate before whom the accused is produced.**
7. **The custodial authorities, such as the police, if the accused has been detained by them."** said Neeta.

"And didi, how should we approach these people? How will they decide if Reema gets legal aid or not? asked Kamla.

"You have to make a written application to one of the concerned authorities that I just mentioned and file an official

declaration of your income which is also called an affidavit."

Neeta replied. "But we can't read or write, didi. What should we do?" Reema said.



"Well, if a person does not know how to read or write, then the Legal Services Authority that is approached will record the persons's statement and take a thumb impression on it." Neeta explained.

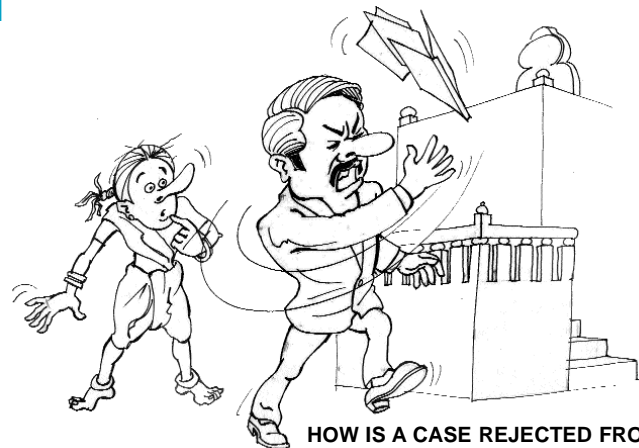
"What happens next?" asked Kamla. **"The authority**

that has been approached will go through the application and the facts of the case."

"How do they decide whether to reject a case?" asked Reema.

"A case is rejected if:

- 1. The applicant has enough money and**



HOW IS A CASE REJECTED FROM RECEIVING FREE LEGAL AID?

- can afford a lawyer.
2. Does not fulfill any of the eligibility criteria or
 3. the case does not deserve legal action." answered Neeta.

"What happens if the application is rejected?" said Kamla.

"If the application is rejected, then the reasons that it was rejected must be recorded and informed to the applicant. The applicant also has the right to appeal against the rejection to the Chairman of the authority." Neeta replied.

"Didi, if I get legal aid, is there anything that I need to do?" asked Reema.

"Yes, there are certain duties that must be performed as a person receiving legal aid. You must:

1. Follow the directions given by the Secretary of the Legal Services Authority



DUTIES OF A PERSON RECEIVING LEGAL AID

2. Attend the office of the committee, the court or the lawyer assigned, when you are supposed to.
3. Tell the complete truth to your lawyer, and
4. Not pay your lawyer any fees or expenses." explained Neeta.

"Can the committee take away the legal aid if they want to?" said Kamla.

"The Legal Services Authority can't arbitrarily take away the legal aid that they have given you. But **legal aid can be withdrawn if:**

1. You lied in your application for it.
2. You are able to afford a lawyer.
3. You misbehave with any person.
4. You do not cooperate with your lawyer.
5. You hire another lawyer.
6. The process of law or the services of the lawyer are being misused.



CAN LEGAL AID BE DISCONTINUED TO A PERSON?

7. You die - this applies only to criminal cases and not civil ones." answered Neeta.

"Besides the removal of the lawyer, does anything else happen if legal aid is withdrawn?" said Kamla. "Yes, there is. **If legal aid is withdrawn, then the committee can ask you to pay for the legal services that were provided until then, if they choose to.**" replied Neeta.

"I wish I had known this earlier, Neeta didi." said Reema. "Didn't the police tell you about your right to legal aid?" asked Neeta. "No, they didn't tell me anything except the fact that my trial will begin in court on June 15th." answered Reema.

"It's the duty of the police to inform the accused about the right to get legal aid. As soon as a person is arrested, the police must tell the Legal Aid Committee." said Neeta, and continued, **"The Magistrate and Sessions Judge must also inform every person who doesn't have a lawyer due to lack of finances that the person has a right to get free legal aid."**

"What happens if a person goes to trial without a lawyer?" asked Kamla.

"If a poor person doesn't get a lawyer then the trial becomes meaningless. This could even lead to a sentence."

Neeta replied.

"Is there anything else that you think we should know about legal aid, before we make the application?" said Reema.

"I wanted to tell you that **legal aid is not available for certain cases, such as cases related to:**

1. **Cases in respect of defamation, prosecution done out of vengeance, contempt of court, lying under oath.**
2. **Proceedings related to elections**
3. **Cases where the fine imposed is not more than Rs. 50.**
4. **Economic offences and offences against social laws.**
5. **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.**

"Oh, I understand now, Neeta didi. Thank you so much for telling us about my right to free legal aid. I don't know what would have happened to me otherwise." said Reema.

"That's alright, Reema. I'm glad I could help you in some way." said Neeta, "If you like, I can come with you when you apply for legal aid." "Thank you, we would be very grateful if you would come." said Kamla. And with that mother and daughter said goodbye and began to walk home.

In Hoshiarpur, a small village very close to Kamla Nagar, a notice was put up in the village post office. It said that a Lok Adalat would be set up there within the next 6 months. Though the villagers knew that a Lok Adalat was like a court, none of them were certain what exactly it would do. So, they decided to call a meeting and have Dadaji, from Kamla Nagar, talk to them. A few days later, Dadaji met the people at the post office where they had gathered. Javed, the postman, got up and asked, "Dadaji, could you tell us about the Lok Adalat? All of us have only a vague idea of what it is."

"Lok Adalats are bodies like courts. They are set up to settle disputes peacefully between the parties who are involved in the dispute." said Dadaji, **"Like ordinary civil courts, they can issue summons, examine evidence etc."** he explained.

"Is there any difference between ordinary courts and Lok Adalats?" asked Salma. "Yes, there are some differences between Lok Adalats and ordinary courts." Dadaji said. "Firstly, though the orders of the Lok Adalat are like any court orders, the parties can't appeal against such orders. Secondly, Lok Adalats can resolve all matters, except criminal cases that are non-compoundable." Dadaji said.

"What are non-compoundable cases?" asked Salma.
Dadaji answered, **"These are cases where a compromise is not possible between the two parties. An example of such a case would be attempt to murder."**

"But who can apply to the Lok Adalat?" asked Kamla

"Either one or both the parties can apply to the court to transfer the case to a Lok Adalat." Dadaji replied.
"What happens if the Lok Adalat can't resolve the dispute before it?" asked Majid.

"When no compromise or settlement is made by the Lok Adalat, then the case is transferred to the ordinary court which deals with it, from the point it had reached in the Lok Adalat." Dadaji explained.

"Thank you for explaining all of this to us, Dadaji." Javed said, "I'm sure we all understand the basic principles of the Lok Adalat now."

The Series **“Police & You: Know Your Rights”** includes:

- First Information
- Arrest and Detention
- Police Interrogation
- Legal Aid Services
- SC/ST Atrocities Act
- Bail
- Fundamental Rights

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Human Rights Division
Government of India