

# **Delhi State Legal Services Authority**

**Patiala House Courts, New Delhi**



## **STANDARD OPERATING PROTOCOL** **FOR** **'SCRUTINY AND EVALUATION COMMITTEES'**

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## **CONTENTS**

<b>S.NO.</b>	<b>TOPIC</b>	<b>PAGES</b>
1.	'Scrutiny and Evaluation Committees' at the DSLSA & DSLAs	1
2.	Application for seeking legal services	1-2
3.	Establishment of Front Office in the Legal Services Institution	2-3
4.	Consequences of false or untrue details furnished by the applicant	3
5.	Scrutiny and evaluation of the application for free legal services	3-5
6.	Checking of Eligibility of Legal Aid Seeker	5-7
7.	Institution of a case of legal aid seeker on merit	7-8
8.	Procedure for providing legal services	8-9
9.	Disentitlement for Grant of Legal Aid	9-10
10.	Withdrawal of Legal Aid Services	10-11

**1. 'Scrutiny and Evaluation Committees' at the DSLSA & DSLAs-**

In exercise of powers conferred by Section 29 of the Legal Services Authorities Act, 1987 (39 of 1987) and in pursuance of provisions of Section 4 of the Act to make available free and competent Legal Services to the persons entitled thereto under Section 12 of the said Act, the National Authority notified "National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010". Scrutiny and Evaluation Committees have been established in the Central Office of DSLSA and all the 11 District Legal Services Authorities to scrutinize the eligibility of the legal aid seeker to avail free and competent legal services and also to evaluate merits of the case of the legal aid seeker.

The constitution & working of the "Committees for Scrutiny and Evaluation of applications" at the State and Districts Level for free Legal Services is governed by several Regulations.

**2. Application for seeking legal services-**

In order to seek free and competent legal services, the applicant is supposed to present simple application. This requirement has been laid in Regulation 3 of NALSA (F&CLS) Regulations, 2010. This regulation provides as under:

**Application for seeking legal services-** (1) An application for legal services may be presented preferably in Form-I in the local language or English.

(2) The applicant may furnish a summary of his grievances for which he seeks legal services, in a separate sheet along with the application.

(3) An application, though not in Form-I, may also be entertained, if reasonably explains the facts to enable the applicant to seek legal services.

- (4) If the applicant is illiterate or unable to give the application on his or her own, the Legal Services Institutions may make arrangement for helping the applicant to fill up the application form and to prepare a note of his or her grievances.
- (5) Oral requests for legal services may also be entertained in the same manner as an application under sub-regulation (1) and (2).
- (6) An applicant advised by the para-legal volunteers, legal aid clubs, legal aid clinics and voluntary social service institutions shall also be considered for free legal services.
- (7) Requests received through e-mails and interactive on-line facility also may be considered for free legal services after verification of the identity of the applicant and on ensuring that he or she owns the authorship of the grievances projected.

### **3. Establishment of Front Office in the Legal Services Institution-**

In order to facilitate the process of providing free legal services, all the legal services institution are duty bound to establish the Front Office at State as well as District level. This Front Office acts as a first line of interaction of a legal aid seeker with the legal services institution. Its establishment is regulated under Regulation 4 of NALSA (F&CLS) Regulations, 2010, which is as under:

**Legal Services Institution to have a front office.-** (1) All Legal Services Institutions shall have a front office to be manned by a panel lawyer and one or more para-legal volunteers available during office hours.

- (2) In the case of court based legal services, such lawyer shall after consideration of the application, forward the same to the Committee set up under regulation 7 and for other types of legal services, the panel lawyer in the front office may provide such legal services.

- (3) The panel lawyer in the front office shall render services like drafting notices, sending replies to lawyers' notices and drafting applications, petitions etc.
- (4) The panel lawyer in the front office may obtain secretarial assistance from the staff of the Legal Services Institutions.
- (5) In case of urgent matters, the panel lawyer in the front office may in consultation with the Member-Secretary or Secretary of the Legal Services Institutions provide legal assistance of appropriate nature:

Provided that the Committee set up under regulation 7 may consider and approve the action taken by the panel lawyer in the front office.

**4. Consequences of false or untrue details furnished by the applicant-**

Every legal aid seeker is duty bound in law to furnish correct and true information in his/her application moved for availing free legal services. This directive is governed by Regulation 6 of NALSA (F&CLS) Regulations, 2010, which is as under:

**Consequences of false or untrue details furnished by the applicant-** The applicant shall be informed that if free legal services has been obtained by furnishing incorrect or false information or in a fraudulent manner, the legal services shall be stopped forthwith and that the expenses incurred by the Legal Services Institutions shall be recoverable from him or her.

**5. Scrutiny and evaluation of the application for free legal services-**

Upon receipt of an application for seeking free legal services, the same is supposed to scrutinize and evaluate before a decision is arrived on whether or not to provide or decline free legal services to the applicant.

The same is governed under Regulation 7 of NALSA (F&CLS) Regulations, 2010, which provides as under:

**Scrutiny and evaluation of the application for free legal services- (1)**

There shall be a Committee to scrutinise and evaluate the application for legal services, to be constituted by the Legal Services Institution at the level of Taluk, District, State and above.

- (2) The Committee shall be constituted by the Executive Chairman or Chairman of the Legal Services Institution and shall consist of, -
  - (i) the Member Secretary or Secretary of the Legal Services Institution as its Chairman and two members out of whom one may be a Judicial Officer preferably having working experience in the Legal Services Institution and;
  - (ii) a legal professional having at least fifteen years' standing at the Bar or Government pleader or Assistant Government Pleader or Public Prosecutor or Assistant Public Prosecutor, as the case may be.
- (3) The tenure of the members of the Committee shall ordinarily be two years which may be further extended for a maximum period of one year and the Member Secretary or Secretary of the Legal Services Institution shall, however, continue as the ex-officio Chairman of the Committee.
- (4) The Committee shall scrutinise and evaluate the application and decide whether the applicant is entitled to the legal services or not within a period of eight weeks from the date of receipt of the application.
- (5) If the applicant is not covered under the categories mentioned in section 12, he or she shall be advised to seek assistance from any other body or person rendering free legal services either voluntarily or under any other scheme.

- (6) The Legal Services Institution shall maintain a list of such agencies, institutions or persons who have expressed willingness to render free legal services.
- (7) Any person aggrieved by the decision or order of the Committee, he or she may prefer appeal to the Executive Chairman or Chairman of the Legal Services Institution and the decision or order in appeal shall be final.

**6. Checking of Eligibility of Legal Aid Seeker-**

On receiving an application for Legal Services, first of all it shall be entered into a Register (Digital) as per Regulation 12 (2) of Delhi Legal Services Authority Regulations, 2002. Thereafter, the Panel Lawyer at the Front Office or the Member Secretary/Officer on Special Duty of DSLSA or the Secretary of the DLSA or an officer nominated by them shall examine the eligibility of the applicant in terms of Section 12 of the Legal Services Authorities Act, 1987.

***Section 12 of the LSA Act, 1987***

***12. Criteria for giving legal services – Every person who has to file or defend a case shall be entitled to legal services under this Act if that person, is-***

- (a) A member of a Scheduled Caste or Scheduled Tribe;***
- (b) A victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;***
- (c) A women or a child;***
- (d) A mentally ill or otherwise disabled person;***
- (e) A person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or***
- (f) An industrial workman; or***
- (g) In custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956),***

***or in a juvenile home within the meaning of clause (j) of section 2 of the Juvenile Justice Act, 1986 (53 of 1986), or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987 (14 of 1987); or***

- (h) A person whose income is below Rs.1 Lac per annum;***
- (i) Transgender whose income is below Rs.2 Lac per annum;***
- (j) Senior Citizen whose income is below Rs. 2 Lac per annum.***

This exercise shall be carried out to ensure:-

- a. That in case the applicant belongs to SC/ST category, there shall be a self attested copy of certificate issued by the Competent Authority along with the application;
- b. That in case the applicant is a child, he or she *prima facie* appears below the age of 18 years. In case of any doubt, a conclusion favouring the applicant shall be preferred till such time there is proper inquiry or adjudication, if any, by the Competent Court;
- c. That where on bare observation it is noticed that the applicant is suffering from any disability in the nature of blindness; low vision; leprosy-cured; hearing impairment; locomotor disability; mental retardation or mental illness, that shall be sufficient ground for him to be entitled to free legal services unless the contrary is established.
- d. However, when it is not possible to ascertain the nature of disability by bare look, documents from the Competent Medical Authority may be demanded which *prima facie* demonstrate that the applicant is suffering from any disability, permanent or temporary, as the case may be;
- e. That in case of a workman, the applicant is one who is not working in any supervisory or managerial capacity;



- f. That in case the applicant seek free legal services on economic criterion, an affidavit produced by the applicant claiming that his income is less than Rs.1 lacs or Rs.2 lacs; in case of Senior Citizens/Transgenders may be sufficient for entitlement to free Legal Services unless there are reasonable grounds to disbelieve the contents of the affidavit;
- g. That in case of doubt an “Income Certificate” issued by a Competent Authority showing earning less than Rs.1 lacs or Rs.2 lacs, as the case may be may be asked.
- h. That in case the applicant is a victim of Human Trafficking or Begar, mere references to FIR number or Daily Diary Number of the concerned Police Station would be sufficient to provide Legal Services.
- i. That in cases when applicant is in custody, the term “Custody” shall be construed as all nature of detention viz., in Police Station, Jail, Observation Home, Shelter Home, After Care Homes, Mental Health Family, Orphanage, Old Age Homes, Drug Addiction Centres, Protective Homes, Beggar Home or any other such Private & Government run Institution.

**7. Institution of a case of legal aid seeker on merit-**

Apart from ascertaining social, educational and economic background of the applicant, the following Merit Test shall be applied for instituting/filing of Civil cases and/or filing of Criminal complaints:

- a. That the applicant has a subsisting legal right to pursue a cause of action.
- b. That the claim or legal right/cause of action is not barred by the Law of Limitation;
- c. That the applicant is not guilty of any delay or laches or waived his right in any manner;

- d. That the applicant has *prima facie* not abdicated or waived his right in any manner;
- e. That the applicant has a reasonable chance of getting appropriate relief from the Court of Law;
- f. That the evidence for the applicant can be obtained from any Public Authority by way an application under the Right to Information Act or otherwise by way of summoning of records during the Judicial/Quasi Judicial proceedings;
- g. That the applicant is ready and willing to devote sufficient time and energy for the purpose of litigation;
- h. That there are reasonable chances of matter getting settled by resorting to Alternative Dispute Resolution (ADR) Mechanism by way of mediation, Lok Adalat or Conciliation.
- i. That the claim of the applicant is not actuated with malafide or ulterior motive;
- j. That the applicant is willing to provide full and true disclosure to the Legal Services Advocate empanelled with the Authority.

**8. Procedure for providing Legal Services -**

- (a) Notwithstanding anything contained in the present protocol, it shall be the prerogative of the Member Secretary of the Delhi State Legal Services Authority or Secretary of the District Legal Services Authorities or any other officer nominated by them to provide free legal aid services to an entitled person on a *prima facie* satisfaction of the merits of the case on receipt of an application as per Form – I which a decision shall be taken within three working days on receipt thereof.

Provided further that Secretary shall place before the Committee all such applications which involve complicated facts and/or application of laws that require consultation or expert legal advice on the matter or the facts are such that it is a borderline case for grant or refusal to provide free legal services and a decision on the application shall be taken up by the Committee preferably in 3 days thereof but not later than 7 days.

Provided further that in case a person has availed legal services counsel by virtue of him being in custody in Jail/ Psychiatric Home/Observation Home etc. but is later released on Bail/Parole/Furlough, he/she shall continue to receive free legal services in case he/she falls under any of the eligibility categories of Section 12 of the Legal Services Authorities Act, 1987.

- (b) Similar consideration shall be given in scrutinizing any application for filing of any civil appeal or revision etc;
- (c) The present protocol shall be interpreted in such beneficial manner so as to provide free, timely and competent legal aid services to poor, needy, deprived and under privileged classes. In case of any doubt, decision shall be taken to advance the cause of justice rather than to subvert it.

#### **9. Disentitlement for Grant of Legal Aid-**

As per Regulation 11 of the Delhi Legal Services Authority Regulation, 2002, shall not be provided in certain circumstances:

- (1) Proceedings wholly or partly in respect of :-
  - (a) Defamation; or
  - (b) Malicious prosecution;
  - (c) A person charged with contempt of court proceedings;
- (2) Proceedings relating to any election;
- (3) Proceedings incidental to any proceedings referred to in items (1) and (2);

- (4) Proceedings in respect of offences where the fine imposed is not more than Rs. 50/-
- (5) Proceedings in respect of economic offences and offences against social laws, such as the Protection of Civil Rights Act, 1955 and the Immoral Traffic (Prevention) Act, 1956. Provided that the Executive Chairman may in appropriate case grant legal aid even in such proceedings for reasons to be recorded in writing.
- (6) Where a person seeking legal aid :
  - (a) is concerned with the proceedings only in official capacity; or
  - (b) if a formal party to the proceedings, not materially concerned in the outcome in the proceedings and his interests are not likely to be prejudiced on account of the absence of proper representation.

#### **10. Withdrawal of Legal Aid Services-**

As per Regulation 16 of District Legal Services Authority Regulations, 1998, Legal Services provided to an entitled legal aid seeker may be withdrawn in either of the following circumstances of District Legal Services Authorities Regulation:

- 1) The District Authority may either on its own motion or otherwise withdraw legal service granted to any aided person in the following circumstances namely:-
  - a) in the event of it being found that the aided person was possessed of sufficient means or that he obtained legal service by misrepresentation or fraud;
  - b) in the event of any material change in the circumstances of the aided person;

- c) in the event of any misconduct, or negligence on the part of the aided person in the course of receiving legal service. (It is clarified that an act of aided person of paying money to the Legal Services Counsel on any pretext whatsoever, would be treated as misconduct);
- d) in the event of the aided person not co-operating with the District Authority or with the legal service advocate assigned by the District Authority;
- e) in the event of the aided person engaging a legal practitioner other than the one assigned by the District Authority;
- f) in the event of death of the aided person; except in the case of civil proceedings where the right or liability survives;
- g) in the event of the application for legal service or the matter in question is found to be an abuse of the process of law or of legal service :
  - i) provided that legal service shall not be withdrawn without giving due notice thereof to the aided person or to his legal representatives in the event of his death, to show cause as to why the legal service should not be withdrawn.
  - ii) Where the legal services are withdrawn on the grounds set out in clause (a) above, the District Authority shall be entitled to recover from the aided person the amount of legal service granted to him.

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