

**GENERAL STANDARD OPERATING PROCEDURE TO BE READ ALONG  
WITH THE SCHEME CLAP**

1. Court which includes any statutory authority, tribunal or forum shall appoint a CSL from the approved panel either suomotu or on application filed by any party to the proceeding.
2. The order appointing the CSL shall be communicated to the DLSA concerned by the court.
3. The CSL shall also issue an intimation to the DLSA concerned regarding the appointment.
4. Court on appointing the CSL shall serve necessary documents and issue necessary directions to the CSL.
5. Family Courts while appointing CSL shall serve a Referral order as per form attached as Appendix A.
6. DLSA concerned on receiving request from CSL for assistance of Expert professionals, ie social workers and /or psychologists/counselors shall coordinate with District Child Protection Unit and District Resource Centre and ensure assistance of the Expert Professionals.
7. CSL shall conduct the assessment of the child as per the work profile mentioned in the CLAP Scheme.
- 8.** CSL shall submit the report before the Court with a brief note on the facts elicited from the child during the interaction, home environment of the parties concerned, background and surrounding of the child, relationship of the child with the parents and extended family, opinion of Expert professionals.
9. Court may at its discretion provide copies of the reports of the CSL to the parties on their application.
10. After filing the report before the Court, the CSL shall intimate the DLSA regarding the same. DLSA shall not seek for a copy of the report.
11. The CSL shall interact with the child in the venue/place decided by the court or such child friendly space at the discretion of the CSL or in extreme circumstances where the child resides.

- 12.** DLSA being intimated about filing of the report, shall arrange and disburse timely payment of honorarium to CSL on case basis at the earliest.

## **CHILD LEGAL ASSISTANCE PROGRAM(CLAP),2023**

### **STATEMENT OF OBJECTS AND REASONS**

The proposal for formulating an Independent Children's Lawyer scheme was suggested by the Amicus Curiae in OP(FC) 360/2023 before the Honourable High Court of Kerala. The High Court by its order dated 4.9.23 in OP (FC) 360/2023 has directed the Kerala State Legal Services Authority (KeLSA) to frame a scheme for Child Legal Assistance in guardianship matters and also in matters involving child sexual offences. In the light of the direction, the present scheme is formulated, to appoint lawyers who are willing to independently represent children who will be hereinafter referred to as 'Child Support Lawyer' in custody matters and all such litigations where child rights are involved in the Courts/Authorities concerned in the State of Kerala. The Project, Child Legal Assistance Program (CLAP) will thus function under the aegis of the Kerala State Legal Service Authority (KeLSA) constituted under the Legal Services Authorities Act,1987, to extend legal and psychological support to children, and facilitate them to express their views and concern and enable the Courts/Authorities concerned to take a decision to secure the paramount welfare and best interest of the children in the litigation.

### **INTRODUCTION**

Children are the future of the society and the promise of humankind. Though children are full rights bearers, they are impressionable, and in need of guidance. Legal proceedings immutably alter the lives of children and therefore, their best interests need to be voiced and protected. When parents dissolve the marriage or sever their relationship, courts are vested with the obligation to determine the custody and rights of such

children. The universal standards mandated by legislatures to determine child custody disputes is the "best interests" standard. While the substantive law pertaining to custody, giving children the right to determination made in their "best interest," children generally do not have the right to express their views or voice their concerns regarding in Courts, in view of their legal disability. Child custody cases are now countered with multifarious defences, including the allegation that the male relatives have committed the POCSO offences against the child. The children are the ultimate victims of such family disputes and they suffer severe mental agony, pain and trauma, especially when they are subjected to sexual assault and to even more drastic emotional turbulence if they are tutored to make false allegations. The concept of independent legal representation for children in parenting matters and in litigations where the better interest are involved, thus becomes relevant and would help to protect their paramount welfare.

## **THE CONSTITUTIONAL MANDATE**

Act, Article 39 A of the Constitution of India is a provision relating to citizens' rights to have free access to the legal process without any discrimination on account of class, sex, race, and creed. It means that legal services should be made available to the weaker section of society. Further, it also enacts that full opportunity be given to women, children, the elderly, and persons with disabilities.

Sec 12 (c) of the Legal Services Authorities 1987 clearly states that a child is entitled to legal services. As per section 2 (c) of the Legal Services Authorities Act, 1987, "legal service" includes the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and giving advice on any legal matter.

Since a child is entitled to legal services and free legal aid, he/she is entitled to the services of a lawyer to speak for him/her in court proceedings. All children under the age of 18 are entitled to their rights to be advanced and protected in court proceedings as well. The Legal Services Authorities in the country are thus legally bound to extend legal aid services to the children by providing independent lawyers to help them take an unbiased stand in custody matters between warring parents before Courts of Law.

#### **OTHER RELEVANT AND STATUTORY PROVISIONS:**

1. Sec 17 (3) of the Guardian and Wards Act, which reads that, if the minor is old enough to form an intelligent preference, the court may consider that preference while appointing a guardian for the child.
2. Sec 26 of the Hindu Marriage Act states that when it comes to child custody, guardianship, maintenance, and education of minor children, the court can impose interim orders and decree provisions that it believes are fair and right, as long as they are as close to the children's wishes as possible.
3. Sec 43 and Sec 44 of the Divorce Act which deal with the power of the Court to make orders as to custody of children in suits for dissolution or nullity and also after passing of decree or confirmation.
4. Sec 38 Special Marriage Act which deals with the power of the Court to pass orders on custody of children.
5. Section 12 of the Family Courts Act which enables Family Courts to seek assistance of medical and welfare experts in order to discharge the functions imposed by the Family Courts Act.
6. Proviso to Rule 30 of Family Court (Kerala) Rules 1989.
7. Rule 36 of Family Court (Kerala) Rules 1989.
8. Order 32 CPC

## INTERNATIONAL CONVENTIONS

Article 3 of the United Nations Convention on the Rights of Child, 1989 reads *“When adults make decisions, they should think about how their decisions will affect children. All adults should do what is best for children. Governments should make sure children are protected and looked after by parents, or by other people when needed. Governments should make sure that people and places responsible for looking after children are doing a good job”*.

Article 12 of the Convention further reads that *“Children have the right to give their opinions freely on issues that affect them. Adults should listen and take children seriously.”* Article 12(2) of the Convention further reads that *“the child shall be in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly or through a representative or an appropriate body in a manner consistent with the procedural rules of national law.”*

Paramount welfare theory is followed by Courts of Law in India when it comes to deciding guardianship and custody matters. There are several other areas of litigations involving children’s rights. There should be a balance between the wishes of the child and its best interest.

### **AIM of CLAP is as follows:**

- (a) Safeguard and protect the mental health and physical well-being of children who are adversely affected by disputes between their parents and/or disputes in their families.
- (b) Effective mentoring of children to face the adversities in their life and to take an independent decision in the matter.
- (c) Ensuring accountability on the part of the parents/families to protect the holistic welfare and better interest of the child.

## **OBJECTIVES**

The CLAP scheme has been introduced under the NALSA (Child-Friendly Legal Services to Children and their Protection) Scheme, 2015 to ensure the protection of the rights of children in legal proceedings involving them.

1. To provide a sense of emotional security to the children and their freedom to express and discuss their genuine wishes and concerns with the assistance of the 'Child Support Lawyer' under CLAP and help them to have a practical approach to the litigation between their parents/families.
2. To help the child to express his wish/concern without any bias or prejudice.
3. To guide the child to make an advanced decision in custody disputes and/or all litigations, where its interest are involved.
4. To effectively implement and introduce the scope for co-parenting which will result in the overall development of the child.
5. To extend child friendly justice.

## **SCOPE OF WORK**

CLAP is intended to deal with litigations where child rights are involved, particularly in custody and such other matters in the High Court of Kerala, Family Courts, and all other courts of competent jurisdiction in the State of Kerala. The 'Child Support Lawyer' (for brevity referred to as 'CSL') shall extend its services to children involved in child rights matters right from the first stage of the litigation before the above Courts till its culmination.

## **HUMANRESOURCESREQUIREMENTS:**

### **1. STEERING COMMITTEE**

A Steering Committee headed by an Honourable Judge, High

Court of Kerala consisting of a Judicial Officer and a practicing lawyer will provide guidance and strategic assistance to KeLSA for the proper implementation of the scheme. The Honourable Judge, High Court of Kerala, judicial officer, and the practicing lawyer mentioned above will be nominated by the Executive Chairman, KeLSA. The Member Secretary Kelsa to convene the meetings of the steering committee as and when directed by the chairman Steering committee.

## **2. NODAL OFFICER**

- There shall be a Nodal Officer in each district who will be the point of contact for the Courts, CWC, litigants, Child Support Lawyers, Psychologists, Counselors, and Social Workers.
- The Secretary, District Legal Services Authority (DLSA), or such other authorized person by the Secretary, DLSA shall be the Nodal officer of each district.

## **3. STATE COORDINATOR**

There shall be a State Coordinator who will coordinate with the empanelled Child Support Lawyers of the State in consultation with Member Secretary Kelsa and assist KeLSA in the implementation of the Scheme. The State Coordinator shall be a practicing lawyer nominated by the Executive Chairman, KeLSA.

## **4. CHILD SUPPORT LAWYERS**

Applications will be invited for eligible lawyers to get empaneled as 'CSL' under CLAP through a selection process to be adopted by DLSA as instructed by KeLSA and as per the norms herein below laid down.

- (a) A minimum of 3 and a maximum of 20 CSL shall be selected for every

District, on application and by open merit by the Selection Committee.

- (b) The CSL shall have a minimum standing of three years at the Bar.
- (c) The Chairman, DLSA is permitted to nominate a CSL, whose services in the opinion of the Chairman, is necessary to safeguard the best interests and paramount welfare of children in graver and important matters.
- (d) The selection of CSL shall be on the merit, knowledge, expertise, integrity, reputation, and experience of a candidate in the specific field. The communication skill of a candidate will also be a parameter for selection. .
- (e) The Selection committee shall be constituted by the Executive Chairman, KeLSA.
- (f) The panel of CSL selected by the Selection Committee shall come into force only on its approval by the Executive Chairman, KeLSA.

**5. PSYCHOLOGISTS/COUNSELORS/SOCIALWORKERS** who are hereinafter referred to as EXPERT PROFESSIONALS in order to provide emotional support to the children involved in the litigation.

- The children being the victims of matrimonial disputes between their parents and disputes within their families need complete emotional and psychological support from experts to help them overcome their difficulties, trauma, and agony to openly express their wishes and concerns and also to help them to take an appropriate and correct decision.
- The District Resource Centre functioning under the District Child Protection Unit, Women and Child Department, Government of Kerala, shall provide the services of Psychologists/Counselors /Social Workers to assist the Child Support Lawyers, in assessing the mental health and psychological status of the child.

## **INFRASTRUCTURE REQUIRED**

1. A child-friendly consultation room in close proximity to the office of the District Legal Services Authority/Taluk Legal Services Committee/Family Court, which shall be convenient and accessible to the child/parties and CSL shall be arranged by the District Legal Services Authorities or the child-friendly premise presently functioning for the District Resource Centre under the Department of Women and Child, Government of Kerala can be used for the purpose of interactions relating to this project.
2. Necessary arrangements shall be provided in the said room for extending counseling sessions to the child and/or parties concerned to protect their privacy.

## **ROLE OF DLSAs**

- Office space planning, and providing infrastructure for consultation room preferably in the proximity to the DLSA office/TLSC office/Family Court in each district.
- Assisting KeLSA in selecting CSL.
- Coordinate with District Child Protection Unit and District Resource Centre to ensure the assistance of Expert Professionals ie social workers and psychologists/counselors.
- Function as nodal officer of CLAP by being the point of contact for the Courts/authorities concerned, parties, counsel for the parties, CSL, and professionals.
- Ensuring effective monitoring of panel lawyers functioning as CSL.
- Arrange refresher courses and training programs for 'CSL'.
- Arrange interactive sessions and talks by leading professionals in

psychology, social work, and such other fields for the CLAP team in each district.

- Ensure specific reporting to KeLSA about the functioning of CLAP in general as well as the performance of CSL and Expert professionals through the District Resource Centre.
- Arrange and disburse timely payment of honorarium to CSL on case to case basis, payment to Expert Professionals, and payment for incidental expenses such as traveling expenses of Child support lawyers and expert professionals as fixed by the DLSA and approved by the Member Secretary KeLSA subject to the norms applicable for the same.

### **WHEN SHALL A CHILD SUPPORT LAWYER BE APPOINTED?**

A child support lawyer (CSL) will be appointed by the Court/ any Authority concerned at any stage of the proceedings, if in their opinion the child rights are involved in the litigation and the child needs the assistance of a CSL, namely:

- In cases where the child is mature enough (irrespective of age) to express their views.
- In cases where there are serious allegations of child sexual assault or actual physical assault has occurred.
- In cases where the mental health of the child is or likely to be affected due to disputes between the parties.
- In cases where the child is differently abled or is suffering from such disabilities or is a person falling within the purview of the National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation, and Multiple Disabilities Act, 1999, Right of a person with Disabilities Act, 2016, Mental Health care Act, 2017 or such other enactments that are in force in the country.

### **WORK PROFILE OF THE CHILD SUPPORT LAWYER (CSL)**

- CSL on appointment by the Court/ Authority concerned shall build a rapport with the child and take them into confidence.

- CSL can have private conversations with the child and shall ascertain its wishes and views without coercing the child in any manner.
- The CSL shall interact with the child in the venue/place decided by the court or such child-friendly space at the discretion of the CSL or in extreme circumstances where the child resides.
- CSL can seek the services of an Expert professional for evaluation/assessment of the mental condition/psychological status of the child. and seek the services of expert professionals for counseling of the child, if so required.
- Wishes of the child need not be in the best interests of the child. CSL shall, with the help of the Expert professional guide the child to take independent and correct decisions in the litigation.
- CSL can have private conversations with the parents and relatives of the child and recommend such persons to be referred for counselling by Expert professionals if found necessary.
- CSL shall submit the report before the Court with a brief note on the facts elicited from the child during the interaction, home environment of the parties concerned, background and surroundings of the child, relationship of the child with the parents and extended family, and opinion of Expert professionals.

## **STANDARD OPERATING PROCEDURE FOR THE PROJECT**

1. The court/Authority concerned shall appoint a CSL from the approved panel of CLAP.
2. CSL on being appointed by the Court/authority concerned, shall be served with necessary documents and be given instruction/information, to effectively prepare the report.
3. CSL shall conduct the assessment of the child in a child-friendly surrounding and shall not be judgmental on the circumstances of the litigation and the attitude of the parties.

4. CSL shall deal with the matter with sensitivity and be approachable to the child and instill a sense of security in the child.
5. CSL shall not compel or coerce the child to take a decision.
6. CSL shall avoid wearing robes while interacting with the child.
7. CSL shall not advance legal arguments before the Court concerned.
8. CSL shall submit the report before the Court with a brief note on the facts elicited from the child during the interaction, home environment of the parties concerned, background and surroundings of the child, relationship of the child with the parents and extended family, and opinion of Expert professionals.
9. CSL should develop good understanding of Law involved in the specified field by reading and participating in workshops/trainings on the subject.
10. CSL can raise issues/concerns/problems in the meetings with the District Legal Services Authority.
11. CSL should inspire faith and confidence in children/their families whose cases they take up and should make all possible efforts to get them all possible help.

## **CODE OF ETHICS**

1. No CSL serving for CLAP shall act/appear in any matter in which he/she has had a direct or indirect personal or financial interest.
2. No CSL shall willfully disclose or use, whether or not for the purpose of pecuniary gain, any information that he/she has obtained, received, or acquired during the discharge of his/her duties as CSL.
3. CSL shall not make use of his/her empanelment for the purpose of promoting their independent professional practice or any outside activity.
4. Persons discharging their duties as CSL shall not solicit, agree to accept, or accept, directly or indirectly, any gift, favour, service, or any other matter of value under circumstances from which it might be reasonably inferred that such gift, service, or other matter of value was given or

offered to influence him/her or rewarding him/her for the discharge of his/her official duties.

5. Persons functioning under CLAP shall extend their services with utmost sincerity, and strive to uphold the paramount welfare of the children in the litigations concerned by safeguarding their paramount welfare and by instilling confidence in them to face life.
6. CSL shall not handle any litigation pertaining to or stemming out of the case in which he/she/they are representing the child at any point of time.

## **MONITORING AND EVALUATION**

- The work and performance of CSL shall be closely monitored by the Secretary, DLSA concerned and a monthly review meeting will be organized under the chairmanship of the Chairman, DLSA. Minutes of the meeting shall be sent to the Member Secretary, KeLSA.
- A quarterly review, assessment, and evaluation of the performance of the 'CSL' shall be made by the Member Secretary, KeLSA with the assistance of the DLSA concerned and the minutes shall be placed before the Executive Chairman, KeLSA.

## **REMOVAL FROM THE PANEL**

1. A lawyer functioning as CSL under CLAP can be removed from the panel at any time, without prior notice in writing, by the Member Secretary, KeLSA as approved by the Executive Chairman on or without the recommendation of Chairman, DLSA.
2. Services of the panel lawyer functioning as CSL under CLAP will be terminated and removed from the panel by the Member Secretary, KeLSA if:
  - a. He/she substantially breaches any duty or service required from them as per the scheme.
  - b. Seeks or accepts any pecuniary gains or gratification in cash or kind from the legal aid seekers or beneficiaries or his friend or relative.

- c. Charged or convicted for any offence by any court of law.
- d. Failure to attend training programmes conducted by KeLSA and DLSAs.
- e. Utilise his/her empanelment as CSL to secure unwarranted privileges or advantages for him/her/them.
- f. Indulges in activities prejudicial to the paramount welfare and interests of the child.
- g. Violation of the code of ethics prescribed under the scheme.
- h. If for other sufficient reasons in the opinion of the Secretary, DLSA, the panel lawyer has acted in violation of the spirit of the Scheme.

## **FINANCIAL OUTLAY**

Payment of honorarium to the empanelled 'CSL' will be according to what is provided as payment to panel lawyers under the NALSA Scheme

**Annexure-A**

**REFERRAL ORDER TO THE CHILD SUPPORT LAWYER (CSL)**

1. **Name of the Court/Authority** :
2. **Case No.** :
3. **Details of parties**
  - (a) **Name & address of the petitioner**

(b) **Name & address of the respondent**

4. **Details of children**

<b>Sl. No.</b>	<b>Name</b>	<b>Age</b>	<b>Address</b>	<b>School</b>	<b>Class</b>
1.					
2.					
3.					
4.					

5. Details of parents, institution, etc.

(a) **Name of father:**

Educational Qualification:

Profession :

Address :

Tel.No. :

Email :

(b) **Name of mother**

Educational Qualification:

Profession :

Address :

Tel.No. :

Email :

(c) Name and address of the Relative/if the child is in custody of the Relative:

(d) The address of the care home/institution of the child is in custody of the care home/Institution under JJ Act:

6. Present address of the Child:

7. Point of contact (Name, address and telephone No.)

8. Nature of court proceedings (GOP/Divorce Act/Hindu Marriage

Act/Special Marriage Act, POCSO Act, etc) :

9. Other Relevant information if any:

Signature of the presiding officer/ Authorised Officer  
Seal of the Court/ Authority