

## An Article by the Meghalaya State Legal Services Authority

Article 39A-Equal Justice and free Legal Aid -"The State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities"

Articles 14 and 22(1) also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all.

The earliest Legal Aid movement appears to be of the year 1851 when some enactment was introduced in France for providing legal assistance to the indigent. In Britain, the history of the organised efforts on the part of the State to provide legal services to the poor and needy dates back to 1944, when Lord Chancellor, Viscount Simon appointed Rushcliffe Committee to enquire about the facilities existing in England and Wales for giving legal advice to the poor and to make recommendations as appear to be desirable for ensuring that persons in need of legal advice are provided the same by the State. Since 1952, the Govt. of India also started addressing to the question of legal aid for the poor in various conferences of Law Ministers and Law Commissions. In 1960, some guidelines were drawn by the Govt. for legal aid schemes. In different states legal aid schemes were floated through Legal Aid Boards, Societies and Law Departments. In 1980, a Committee at the national level was constituted to oversee and supervise legal aid programmes throughout the country under the Chairmanship of Hon'ble Mr. Justice P.N. Bhagwati then a Judge of the Supreme Court of India. This Committee came to be known as CILAS (Committee for Implementing Legal Aid Schemes) and started monitoring legal aid activities throughout the country. The introduction of Lok Adalats added a new chapter to the justice dispensation system of this country and succeeded in providing a supplementary forum to the litigants for conciliatory settlement of their disputes. In 1987 Legal Services Authorities Act was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern. This Act was finally enforced on 9th of November, 1995 after certain amendments were introduced therein by the Amendment Act of 1994. Hon. Mr. Justice R.N. Mishra the then Chief Justice of India played a key role in the enforcement of the Act.

### **Legal Awareness**

India is the largest democracy in the world. The Constitution of our country guarantees absolute equality to all its citizens regardless of caste, creed, community and religion. India has accepted a 'welfare state' and hence it has to work for the

welfare of the general public. It is the function of the State to establish a just social order by enacting just laws and by providing equal opportunity to all to grow. Around 70 % of India's population live in rural areas who are illiterate and are not aware of the rights. Even the literate also are not fully aware of the rights as enshrined in our Constitution.

Therefore, dissemination of information on the Rule of law, other laws enacted by the Legislature and various schemes of the Government is in need of the hour. Thus taking this task and ensuring justice for all, Legal awareness programmes were held from time to time and promoting legal empowerment of the society. Unless the people are aware of their rights, they cannot live in consonance with the firm dictates of democracy and rule of law.

## Services

### Activities of Legal Aid

- > Providing free Legal Aid in the nature of counselling and providing free legal services in the conduct of any case or legal proceedings before Court/Tribunal/ Authority.
- > Holding of Lok Adalats for settlement of Pending Cases as well as disputes which have not been brought before the court.
- > Settling Matrimonial disputes and others through mediation and conciliation
- > Spreading Legal awareness amongst public.
- > Rendering free legal aid to the prisoners and under trial prisoners(UTP)

Who is entitled to free Legal Services?

- (a) A member of Scheduled Caste or Scheduled Tribe.
- (b) A victim of trafficking in human beings or begar as referred to in Article 23 of the Constitution.
- (c) A woman 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 mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster.
- (f) an industrial workman.
- (g) An under-Trial in custody including a Juvenile.
- (h) A person with an annual income of less than 1 Lakh as revised from time to time.

## Services

What is the subject in which legal services may be availed?

- (a) All cases of a civil nature such as property disputes, matrimonial and custody matters, labour matters, compensation in motor accident cases, consumer disputes.
- (b) Cases involving criminal offences.
- (c) Cases involving violation of fundamentals rights as guaranteed by the Constitution of India.

In what cases Legal Aid cannot be availed?

- (a) Defamation
- (b) Malicious prosecution
- (c) A person charged with contempt of court proceedings or perjury.
- (d) Proceedings relating to any election.
- (e) Proceedings in respect of economic offences and offences against social laws, such as complaints against untouchability or caste basis or prejudices.

How to apply for Legal Aid?

- (a) By filing an application in writing stating in Form 'A' in brief the grievances or the case for which legal aid is required.
- (b) If the applicant is illiterate or is not in a position to write, the Member Secretary or an officer of the Legal Services Authority/ Committee shall record his verbal submission and obtain his thumb impression on the record.
- (c) The applicant shall be required to execute an affidavit in the prescribed form available without fee as to verify the eligibility criteria for seeking legal services
- (d) The applicant may also be examined by the Member Secretary of the Legal Services Authority /Committee/Counsel/Para Legal Volunteer to verify the facts stated in the affidavit.

## Services

The nature of Legal services provided.

- (a) All relevant charges payable or incurred in connection with any legal proceedings.

- (b) Charges for drafting, preparing filing of any legal proceedings and presentation by a legal practitioner in legal proceedings.
- (c) Cost of preparation of paper book (including paper, printing and translation of documents) in legal proceedings and expenses incidental thereto.

When can Legal Services be withdrawn?

- (a) Where the aided person is possessed of sufficient means.
- (b) Where the aided person obtained legal services by mis-presentation or fraud.
- (c) Where the aided person does not cooperate with the Legal Services Authority/Committee or with the Legal service advocate.

## Lok Adalat

Lok Adalat or people's Court is not a new concept in our country and evolution of this system can be traced back even during the ancient and medieval period till the advent of the British rule. During the British period all the legal system has been changed which has disturbed the old system of dispensation of justice. The Institution of Lok Adalat was developed in India to provide relief from delays, tardy procedures and high cost of litigation. Lok Adalats seeks to resolve the disputes through conciliation and persuasive methods.

Lok Adalat is an effective means of amicable settlement of dispute and is a part of ADR Mechanism. Section 19 (5) of the Legal Services Authorities Act, 1987 lays down the jurisdiction of the Lok Adalat which has the power to settle the dispute for cases which are pending, or such matters which are falling within the jurisdiction of and are not brought before any court for which the Lok Adalat is organised. The Lok Adalat can take cognizance of those cases where the parties mutually agree to bring the matter to the Lok Adalat or where one party by moving an application to the Court seeks its permission for referring the case to the Lok Adalat. The approach of the judges of the Lok Adalat is based in the principles of justice, equity and fair play and common sense.

With a view to speedily resolve the cases of the people easily and without any expenses, Lok Adalats are being held frequently in all the Districts of Meghalaya including District Council Courts. For getting resolved their cases through the Lok Adalat, there is no limit as to the income of the applicant. Once the dispute is settled by the Lok Adalat, its orders are final and binding upon both the parties u/s 20 (1). The Court fees paid in such a case shall be refunded.

## Mediation Centre

### ADR Centre

During the ancient period and medieval period the disputes were being resolved in an informal manner by a neutral third person, who would be either an elderly person or a village Chief or panchayat. The Legal system has since then been changed right from the advent of the British to India. This present legal system has proved to be costly and time consuming due to over procedural wrangles, technicalities of law and the inability of large number of litigants to engage lawyers. Due to the long process of justices delivery system, people started to lose their trust and confidence in the judicial system. The search for a simple, quick, flexible and accessible dispute resolution system has resulted in the adoption of Alternative Dispute Resolution mechanism. The techniques used in the Alternative Dispute Resolution are negotiation, conciliation, mediation, arbitration and Lok Adalat. The basic purpose is to try to resolve dispute between parties litigating with the most minimum effort and cost. Under the provisions of Section 89 of the Civil Procedure Code, the court is empowered to direct the parties to choose among different ADR modes provided therein for resolution of their dispute outside the Court.

What are the functions of ADR?

1. ADR is not to supplant altogether the traditional legal system, but it offers an alternative form to the litigating parties.
2. ADR tends to settle the disputes in a neutral and amicable fashion.
3. ADR can be seen as integral to the process of judicial reform signifying the "access to justice approach".
4. ADR can be view as a compromise where non loses or wins, but everyone walks out as winners.

### LIST OF MEDIATION AND CONCILIATION CENTRE IN MEGHALAYA

Sl No	Centre	Address
1	Shillong Centre	Mediation and Conciliation, Shillong Centre, Room No 115, MATI Building, Additional Secretariat, Shillong-793001.
2	Williamnagar	Mediation and Conciliation, C/o Deputy Commissioner, East Garo Hills District, Williamnagar-793111.

**DETAILS OF CASES TAKEN UP IN THE MEDIATION AND CONCILIATION,  
SHILLONG CENTRE**

<b>Year</b>	<b>No of Cases Taken</b>	<b>Disposed/ Settled</b>	<b>Remarks</b>
2009	<b>2 Nos. of Cases taken up</b> (a) One pre-litigation case (maintenance) (b) Title Suit case (referred by District Court)	2 Nos.	
2010	<b>7 Nos. of Cases taken up</b> (a) 6 Nos. Pre-litigation cases (maintenance) (b) One Title Suit case (referred by High Court)	3 Nos.	3 Nos. of Pre-litigation cases were referred to Court on appointment of Legal Aid Counsel. One T. S. Case was referred to Court
2011	<b>17 Nos. of Cases taken up</b> (a) 17 Nos. Pre-litigation cases (maintenance)	10 Nos.	7 Nos. of Pre-litigation case (maintenance) were referred to Court on appointment of Legal Aid Counsel.
2012	<b>9 Nos. of Cases taken up</b> (a) 9 Nos. Pre-litigation cases (maintenance)	5 Nos.	4 Nos. of Pre-litigation cases were referred to Court on appointment of Legal Aid Counsel.
2013 up to May	<b>6 Nos. of Cases taken up</b> (a) 6 Nos. Pre-litigation cases (maintenance)	4 Nos.	(a) One Pre-litigation case (maintenance) were referred to Court on appointment of Legal Aid Counsel.  (b) One land dispute case was referred to Court.