

# The Orissa Legal Aid to the Poor Rules, 1975

ODISHA

India

## The Orissa Legal Aid to the Poor Rules, 1975

### Rule THE-ORISSA-LEGAL-AID-TO-THE-POOR-RULES-1975 of 1975

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The Orissa Legal Aid to the Poor Rules, 1975Published vide Notification Orissa Gazette Extraordinary No. 2019/23.12.1975ResolutionSubject - Legal Aid to the PoorIt is common knowledge that the Poorer sections of society are handicapped in enforcing their lawful rights and are often defenceless against the prejudice to their rights caused by inimical and affluent persons. Many of the latter thrive on continued exploitation of working class interests and can mobilize superior legal assistance in their favour. Yet another common experience is the tardy implementation of social welfare legislation's and legislation's designed to protect the interest of economically and socially backward sections. The cost of obtaining legal assistance is one of the contributory factors.

**2. The concept of equality before the law is of little practical value unless access to legal remedies is available to every citizen irrespective of caste, sex, religion or income. With a view to facilitating the access of economically and socially underprivileged sections to legal remedies, the Government of Orissa have formulated a scheme of providing legal aid to them. The scheme is contained in a set of rules called the Orissa Legal Aid to the Poor Rules, 1975. The Orissa High Court have been consulted and they have concurred in the issue of these rules.**

**3. It is, in the view of the Government of Orissa, the duty of the executive, the judiciary and members of the legal profession to work with a common purpose and ensure that the common man is not denied the protections of law and has equal opportunities of moving the machinery for dispensation of justice in his favour. They accordingly hope that the Orissa Legal Aid to the**

## **Poor Rules, 1975 shall elicit enthusiastic co-operation from all concerned.**

### **1. Short title and commencement.**

(1) These rules shall be called the Orissa Legal Aid to the Poor Rules, 1975. (2) They shall come into force at once.

### **2. Forms of legal aid.**

(1) Legal aid may be given in one or more of the following manners : (a) Court-fees, process fees and application fees payable or incurred in connection with proceedings in any Court ; or (b) representation by a legal practitioner ; or (c) cost of obtaining certified copies of the judgements, decree and order or preparation of appeal paper books, including printing and translation of documents wherever necessary; (d) [ consultation fee to a legal practitioner for investigating into the merits of the case and giving advice as to whether a case should be filed.] [Inserted vide Notification No. 12635-LAP/27.7.1978.] (2) Notwithstanding anything in Sub-rule (1), the District Magistrate may, with the prior approval of the Revenue Divisional Commissioner, appoint a legal practitioner from out of the panel as envisaged in Rule 5 on a consolidated fee of Rs. 400 per month to appear on behalf of parties in cases of the nature referred to in Clauses (b), (c), (d) (e), (h) and (i) of Sub-rule (1) of Rule 3 or in any of these elapses. The proposal of the District Magistrate should be justified by the number of cases and it should be established that the retention of a legal practitioner is more economical to Government. Where the number of cases is very large and the cases have to be pursued in Courts situated at different places, more than one legal practitioner may be retained. The number of such legal practitioners shall however not exceed three in any district. (3) A person retained as a legal practitioner in pursuance of Sub-rule (2) shall not appear, advise or assist in any case in which legal aid has been sanctioned. He shall also not render any assistance to any party if, on going through the facts of the case, he has reasonable grounds to believe that the opposite party is likely to receive legal aid under this scheme. (4) The retention of a legal practitioner in pursuance of Sub-rule (2) shall ordinarily be for a year. It may however be terminated earlier at the discretion of the District Magistrate. A legal practitioner retained in any year may also be retained in any subsequent year.

### **3. Cases in which legal aid may be given.**

(1) Legal aid may be given in the following categories of cases and to the following categories of persons namely : (a) a wife in maintenance cases both in Civil and Criminal Courts where her annual income does not exceed Rs. 3,000; (b) tenants resisting proceedings for eviction (except where the raiyat is a person under disability or is a privileged raiyat within the meaning of Sub-clauses (a) and (f) of Clause (24) of Section 2 of the Orissa Land Reforms Act, 1960) or applying for occupancy rights under Section 26 (2) or 36-A of the said Act : Provided that no legal aid shall be given in such cases if the tenant is, in any capacity whatsoever, in possession of land exceeding two standard acres as defined in the said Act; (c) debtors in proceedings under the Orissa Money Lenders Act, 1939 where the annual income of the debtor does not exceed Rs. 2,500; (d) Scheduled Tribe transferrors in

cases under the Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956;(e)Scheduled Tribe/Scheduled Caste debtors in cases, under the Orissa (Scheduled Areas) Money Lenders Regulation, 1967;(f)a plaintiff or a defendant in a suit for declaration of title or possession, where-(i)his total annual income does not exceed [Rs. 2,000] [Substituted vide Notification No. 12635-LAP/27.7.1978.]; and(ii)it appears from enquiry that he has, prima facie, a valid title in the property :Provided that no Legal Aid shall be given in cases where the opposite party is the State or a Co-operative Society or a Scheduled Bank or a Government Company or a Corporation established by law or a Public Financial Institution or a Local Authority;Note - The expressions 'Scheduled Bank' and 'Public Financial Institutions' shall have the meaning assigned to them in Clause (29) and Clause (25) respectively of Section 2 of the Orissa Land Reforms Act, 1960.(g)[ any accused before a Criminal Court including any person against whom proceedings have been initiated under Chapter VIII of the Code of Criminal Procedure, 1973 where the annual income of such accused or persons, as the case may be, does not exceed Rs. 2,000 : [Substituted vide Notification No. 9032-LAP/1.6.1979.]Provided that where a person belonging to Scheduled Castes or Scheduled Tribes is charged for the first time with offences under Sections 324 and 325 of the Indian Penal Code and the offence is prima facie committed under grave provocation, Legal Aid may be given irrespective of the amount of annual income of such persons;](h)a wife or wife's parents or guardian in cases under the Dowry Prohibition Act, 1961 where the annual income of the wife or her parents or her guardian does not exceed Rs. 2,500/-; and(i)a complainant belonging to any Scheduled Caste in cases under the [Protection of Civil Rights Act, 1955] [Substituted vide Notification No.12635-LAP/27.7.1978.] where his annual income does not exceed Rs. 2,500.(2)If, in cases of the type referred to in Clauses (b), (f), and (g) of Sub-rule (1), the opposite party too is eligible for legal aid, no aid shall be given to either party.

#### 4. Application for legal aid.

(1)Applications for legal aid with full details of the case and supporting documents, if any, may be addressed to the District Magistrate.(2)Except in cases of the nature referred to in Clauses (b), (d) and (e) of Sub-rule (1) of Rule 3, applicant shall indicate his annual income. If the case is of the nature referred to in Clause (b) thereof, the applicant shall indicate the total extent of land held by him.(3)Every application shall contain a certificate from a Gazetted Officer of the Union or the State Government or a Chairman of a Panchayat Samiti that the applicant's case appears to be genuine and that he is deserving of Legal Aid. The certificate shall also indicate the approximate annual income of the applicant where the case is of any category other than that specified in Clause (b), (d) or (e) of Sub-rule (1) of Rule 3. In respect of cases of the nature referred to in Clause (b) thereof, the certificate shall indicate the total extent of land held by the applicant.(4)The following categories of non-Gazetted Officers may issue certificates of the nature referred to in Sub-rule (3) in respect of the categories of cases indicated against their names :

Revenue Supervisors and Revenue Inspectors	Cases referred to in Clauses (b), (c), (d) and (e) of Sub-rule(1) of Rule 3.
Welfare Extension Officers	Cases referred to in Clauses (d), (e) and (i) ibid.

(5)Whether or not a certificate of the nature referred to in Sub-rules (3) and (4) should be issued should be decided within two weeks from the date of receipt of the application requesting the grant

of the same or of the oral request to that effect. In cases where the application is sent to any of the authorities referred to in these sub-rules by the District Magistrate, the period of two weeks shall be reckoned from the date of receipt of the application by these authorities.(6)The District Magistrate may, before sanctioning legal aid, enquire or cause an enquiry to be made into the application. He may also require the applicant to appear before him or any other officer or any legal practitioner selected by him to explain his case and produce relevant documents. As far as possible, such enquires shall be conducted at camps close to the applicant's place of residence.(7)The applications for legal aid shall be disposed of with utmost expedition, preferably within six weeks of their filing.(8)[ (a) In the case of an under-trial prisoner an application for legal aid shall be made or cause to be made through the Superintendent of the concerned jail and addressed to the District Magistrate giving full details of the case and supporting documents, if any.] [Inserted vide Notification No. 9032-LAP/1.6.1979.](b)The provisions of Sub-rule (3) shall not apply to an application referred to in this sub-rule.(c)The application by or on behalf of an under-trial prisoner for legal aid shall be disposed of within two weeks of its receipt by the District Magistrate.

## **5. Preparation of the District Panel of legal practitioners.**

(1)The District Magistrate shall, in consultation with the District and Sessions Judge, prepare a panel of legal practitioners who may be engaged in connection with cases in which legal aid is given for submission to Government for their approval under Sub-rule (2). The legal practitioner included in the panel shall ordinarily have at least five years' experience at the Bar.(2)A copy of the panel shall be forwarded to the Legal Remembrancer. In any case where the Legal Remembrancer feels that the panel has not been properly constituted, he shall obtain the orders of Government. If any alteration in the panel is ordered by Government, he shall communicate the same to the District Magistrate and the panel shall stand altered accordingly with effect from the date of receipt of the orders of Government by the District Magistrate.

## **6. Constitution of the District Legal Aid Committee.**

(1)There shall be, for each district, a Legal Aid Committee consisting of : (a)the District Magistrate; (b)the Additional District Magistrate or where there are more than one Additional District Magistrate, the Additional District Magistrate nominated by the District Magistrate; (c)the Chief Judicial Magistrate; (d)the Superintendent of Police; (e)the Government Pleader; and (f)a social worker to be nominated by Government.(2)The District Magistrate shall be the Chairman of the Committee and the others shall be members. The nomination of the member referred to at (f) above shall be valid for one year and he shall be eligible for renomination.(3)The Officer-in-charge of the Judicial section of the Collectorate shall be the Secretary of the Committee.

## **7. Procedure for disposal of business by the Committee.**

(1)On receipt of an application for legal aid, the Secretary shall if it refers to any litigation of the nature referred to in Rule 3, enter its contents in a Register nominated in the form set forth in Annexure 'A' and shall also assign to the application the serial number and date of its registration (Columns 1 and 2 of the Register). He shall then submit it to the Chairman who shall consult the

Government Pleader and shall-(i)sanction legal aid ; or(ii)refer it for enquiry and report in pursuance of Sub-rule (6) of Rule 4 ; or(iii)refuse legal aid.(2)The Committee shall meet as often as necessary but not less than twice every year. The Secretary of the Committee shall place before it an account showing particulars of each application received since the last meeting of the Committee shall also indicate in respect of each application, whether legal aid was given or the reasons which weighed with the Chairman in declining legal aid. The Secretary shall also apprise the Committee of the results of each case where legal aid was given.(3)The Committee shall consider the report and may suggest -(i)ways and means of improving administration of the scheme;(ii)allotment of work to different legal practitioners included in the panel prepared in pursuance of Rule 5;(iii)expediency of retaining a legal practitioner in pursuance of Sub-rule (2) of Rule 2.(4)The Secretary shall record summary of the deliberations of the Committee in a Register and copies of the record shall be sent to each member of the Committee as soon as may be after the conclusion of the meeting.

## **8. Remuneration of legal practitioner and procedure of payment.**

(1)A legal practitioner other than a legal practitioner retained in pursuance of Sub-rule (2) of Rule 2 engaged in connection with litigation in which legal aid is given shall be paid -(a)if the litigation is of the nature referred to in Clause (f) of Sub-rule (1) of Rule 4, Rs. 1.50 per case inclusive of remuneration for preparation and drafting of pleadings irrespective of the number of days the legal practitioner is required to appear in the Court; and(b)in all other cases-(i)Rs, 25 for each day of appearance if the duration of work exceeds three hours; and(ii)Rs. 12 for each day of appearance if the duration of work is three hours or less, subject to the condition that the total fees shall be limited to Rs. 75 in each case;(c)[ Rs. 10 for investigating into the merits of the case and giving advice as to whether a case should be filed.] [Inserted vide Notification No.12635-LAP/27.7.1978.](2)In addition to the fees, the legal practitioner shall be entitled to reimbursement of the expenses incurred by him in connection with items referred to in Clauses (a) and (c) of Sub-rule (1) of Rule 2. The fees referred to in Clause (b) of the preceding sub-rule include remuneration for preparation and drafting of pleadings, wherever necessary.(3)The claim of the legal practitioner shall be furnished in the form set forth in Annexure 'B' and shall be countersigned by the District Magistrate, or the Additional District Magistrate referred to in Clause (b) of Sub-rule (1) of Rule 3. The claim shall contain the certificate of the Court concerned and shall be accompanied by bills if reimbursement of expenses in connection with items referred to in Clause (a) and (c) of Sub-rule (1) of Rule 2 is claimed.(4)The claim shall be drawn in fully vouched contingent bill form (Schedule LIII, Form No.208) duly signed by the Nizarat Officer and after filling in the allotment column. It shall then be endorsed in favour of the legal practitioner concerned and the procedure laid down in S. R. 256 of the Orissa Treasury Code, Volume I shall be followed with regard to the despatch of advice to the Treasury/Bank. The charge on account of fees and reimbursement of expenses shall be met out of "Demand No. 4-214-Administration of Justice-(a)-Legal Advisors and Counsels-4-Payment for Professional and Special Services".(5)In cases where costs have been awarded in favour of the party provided with legal aid, payment to the legal practitioner should ordinarily await realisation of the cost by the State. If the time taken for realisation is likely to be so long as to cause hardship to the legal practitioner, the claim may be passed for payment at the request of the legal practitioner who shall also undertake to pursue realisation of the cost diligently and if necessary, to report the matter to the District Magistrate for recovery of the amount as an arrear of public demand in accordance

with Sub-rule (2) of Rule 9.(6)Where the legal practitioner is engaged in a Court situated at a place more than ten kilometres away from his usual place of practice, he shall be paid fees at twice the rate specified in Clause (b) of Sub-rule (1). No travelling or halting allowance shall be paid in such a case.(7)Where the legal practitioner retained in pursuance of Sub-rule (2) of Rule 2 has to appear in Courts situated more than ten kilometres away from his usual place of practice he shall be paid, for each day of such appearance, a daily allowance of Rs. 15 inclusive of the cost of travel in addition to the consolidated fee. He shall also be reimbursed the expenses referred to in Sub-rule (2).(8)Where the District Magistrate engages, in pursuance of Sub-rule (6) of Rule 4 a legal practitioner to enquire into the applicant's case, a consolidated fee of Rs. 25 shall be paid to the legal practitioner. If at the enquiry is held at a camp more than ten kilometres away from the legal practitioner's usual place of practice the consolidated fee shall be Rs. 35.

## **9. Realisation of costs awarded.**

(1)Every such person shall also be liable to repay to the Government only to the extent of the cost, if any, awarded by the Court in his favour in the case. Before legal aid is given, the person who has been sanctioned such aid shall enter into an agreement in the form set forth in Annexure 'C' to the effect that in case of his failure to pay the amount within the time aforesaid the same will be recoverable as an arrear of Public Demand under the provisions of the Orissa Public Demands Recovery Act, 1962. Within one month from the date of receipt of the cost from the opposite party, he shall deposit with the legal practitioner an amount equal to the cost awarded by the Court in his favour.(2)The legal practitioner shall, on receipt of the amount referred to in Sub-rule (1), credit the same without delay into the Treasury under the head "065-Other Administrative Services-A-Administration of Justice-(C)-Other receipts" and in case of failure of the person to deposit the said amount within the period stated in Sub-rule (1), report the fact to the District Magistrate for recovery of the same from the person as an arrear of public demand.

## **10. Legal aid in cases of appeal and revision.**

(1)No legal aid shall be given for appeals or revisions against orders of lower Courts.(2)Legal aid may be given where the party sanctioned legal aid succeeds in the lower Court but is forced to go to a higher Court in pursuance of the appeal or revision filed by he opposite party. In such cases, the District Magistrate may either-(a)engage one of the legal practitioners in the district panel to contest the opposite party's case; or(b)engage any other legal practitioner; or(c)pay a lump sum-(i)of Rs. 75 where the litigation is in any Court other than the High Court, and(ii)of Rs. 200 where the litigation is in the High Court, to the party for defraying his expenses in connection with the litigation.(3)The lump sum grant referred to in Clause (c) of the preceding sub-rule shall not be given, unless the party encloses with his application for legal aid a letter from the legal practitioner engaged by him to the effect that he will contest the case in the party's behalf and that he will -(a)not charge the party anything more towards his fees, or(b)reduce his fees by the lump grant.He shall, in the event he writes in the manner indicated in Clause (b), also indicate the balance of the fees the party would pay him.(4)In the event a legal practitioner is engaged in pursuance of Clauses(a)and (b) of Sub-rule (2), the payment of fees to him shall be in accordance with the provisions of Rule 8 except when the case is pursued in the High Court. In that event, the fees shall be at twice the rates specified in

Clause(b)of Sub-rule (1) of Rule 8. For cases of the nature referred to in Clause (f) of Sub-rule (1) of Rule 3, the legal practitioner engaged in the High Court shall receive a consolidated fee of Rs. 200 inclusive of remuneration for preparation and drafting of pleadings irrespective or the number of days the legal practitioner is required to appear in the Court.(5)Costs awarded in favour of the party sanctioned legal aid shall be credited into the Treasury by the legal practitioner in the manner specified in Rule 9.

## 11. Withdrawal of legal aid.

(1)Legal aid sanctioned in any case may be withdrawn by the District Magistrate on any or more of the following grounds, namely : (a)lack of diligence on the part of the person provided with such aid in pursuing the case;(b)improper conduct which shall include habitual involvement in litigation or conduct prejudicial to public order or public interest;(c)increase in income resulting in the cessation of his eligibility under Rule 3; and(d)evidence that his case is without merit or is false.(2)It shall be the duty of legal practitioner to bring, as soon as possible, to the notice of the District Magistrate cases of the nature referred to above.

### 11A. [ Delegation of certain powers by the District Magistrate. [Inserted vide Notification No. 12635-LAP/27.7.1978.]

- The District Magistrate may, delegate all or any of his powers under the provisions of this rules, except the power of preparation of District Panel of Legal Practitioners under Rule 5, to the Sub-divisional Officers with his jurisdiction.]

## 12. Miscellaneous.

(1)In case of any doubt about interpretation of any of these rules or difficulty in the implementation thereof, the matter shall be referred to the Legal Remembrancer, Orissa.(2)Nothing contained in these rules shall affect the provisions of the appointment of State Defence Counsel in Sessions Cases Rules, 1974 issued by the Orissa High Court in pursuance of Sub-section (2), of Section 304 of the Code of Criminal Procedure, 1973.Annexure 'A'Form[See Rule 7 of the Orissa Legal Aid to the Poor Rules, 1975]Register of applications for legal aid

Serial No.	Date of receipt of the application	Applicant's name and address	Nature of the case (the law and the relevantsection should be mentioned)	Whether the application was referred for enquiryand to whom	No. and date of the letter authorising enquiry	Date of receipt of the enquiry report
1	2	3	4	5	6	7
Decision of the District Magistrate on	Name of the legal practitioner engaged and No.and date of	Result of the case	Payment to the legal practitioner	Whether legal aid for appeal/revision given	Remarks	

Calendar No. of cases	Reference to the Collectorate letter assigning the case to the legal practitioner	Registration No. of the case in the Collectorate	Nature of the case (the law and the relevant section should be mentioned)	Name of the party given legal aid	Plea of the opposite party	Dates of hearing (each date separately)
1	2	3	4	5	6	7

Hours when hearing began and ended	Result of the case	Fee	Remuneration claimed	Total	If costs awarded in favour of the party, the amount and particulars of credit thereof	Remarks
Reimbursement of expenses						
8	9	10	11	12	13	14

(Signature of the legal practitioner)Date.....Place.....(Seal).....Signature of the District  
Magistrate/Additional District MagistrateDate.....Place.....

## 8



of the cost awarded in favour of a person granted legal aid This agreement made this day the.....between the Governor of Orissa (hereinafter referred to as "the Government") of the one part and Shri....., S/o.....Village P.S. District.....(hereinafter called the "Grantee" which expression shall include his heirs, successors-in-interest and legal representatives) of the other part; Whereas the guarantee applied, to the Government for grant of legal aid under Rule 4 of the Orissa Legal Aid to the Poor Rules, 1975 in the case, details of which are given in the Schedule hereto annexed; And whereas the Government has agreed to give legal aid to the grantee subject to the condition that the Grantee shall repay to the Government only to the extent of the cost, if any, that may be awarded by the Court in his favour in the above-mentioned case in the manner hereinafter provided; And whereas the grantee has agreed to the said condition; Now, therefore, in consideration of legal aid received by the grantee under the aforesaid condition the parties hereto have agreed to give and receive the said legal aid under the said rules and conditions hereunder provided :

- 1. that the Government will give legal aid to the grantee in accordance with the provisions of the Orissa Legal Aid to the Poor Rules, 1975, contents whereof have been gone through and understood and/or are known to the grantee;**
- 2. that the grantee shall diligently assist the legal practitioner engaged on his behalf in all matters required for conducting the case property failing which the Government will be at liberty to withdraw the legal aid at any stage of the case**
- 3. that in the event the Court awards costs to the grantee in the above-mentioned case, the grantee shall deposit with the District Magistrate through the legal practitioner engaged on his behalf in the said case an amount equal to the cost awarded in his favour within one month from the date of its realisation from the opposite party;**
- 4. that in case the grantee makes any default in making such deposit within the time stated above the amount so lying unpaid shall be recovered from him as a public demand under the provisions of the Orissa Public Demands Recovery Act, 1962.**

In witness whereof the parties hereto set their hands hereunto this day the.....

Witnesses-

1. Signature of the DistrictMagistrate/AdditionalDistrictMagistrate Acting forand on behalf of the Governor

2.

Witnesses-

1.               Signature of the grantee,

2.

Place.....Date.....

## **Schedule**