

## CHAPTER IV

### FREE LEGAL AID

#### *NOTIFICATION*

#### LAW AND JUDICIARY DEPARTMENT

Mantralaya, Bombay 400 032, dated the 12th April 1979

1. *Amended by G.N., L. & J.D., No. LAB-1081/(118)-XIV, dated 10th July 1981.*
2. *Amended by G.N., L. & J.D., No. LAB-1081/(233)-XIV, dated 19th August 1981.*
3. *Amended by G.N., L. & J.D., No. LAB-1083/(191)-XIV, dated 17th September 1983.*
4. *Amended by G.N., L. & J.D., No. LAB-1084/(153)-XIV, dated 17th July 1984.*
5. *Amended by G.N., L. & J.D., No. LAB-1084/(4)-XIV, dated 4th April 1985.*
6. *Amended by G.N., L. & J.D., No. LAB-1086/(65)-XIV, dated 10th July 1986.*
7. *Amended by G.N. L.J. & L.D., No. LAB-1089/(2)-XIV, dated 28.3.1989*  
*M.G.G. IVA p.606*
8. *Amended by G.N.L. & J.D., No. LAB-1490/(51)-XIV, dated 12.12.1990*  
*M.G.G. IVA p.783*
9. *Amended by G.N. L. & J.D., No. LAB-1494/168/XXII, dated 30.5.1994,*  
*M.G.G. IVA Extra p. 280.*

No. LAB 1078/689/(127A)-XIV.- Whereas, under Government Resolution, Law and Judiciary Department, No. DFS. 1076/976/(525)-X, dated the 14th February 1977, a Legal Aid and advice Board to be called " the Maharashtra State Legal Aid and Advice Board" was constituted for the purpose of setting up and implementing a legal aid programme for providing free legal service to the weaker sections of the community in the State in accordance with the scheme formulated by it with the approval of the State Government;

And Whereas, the said Board has formulated a scheme prescribing the method and manner of providing free legal services to weaker sections of the community, and forwarded the same to the State Government, for its approval;

And Whereas, the State Government has approved the scheme so formulated by

the said Board with certain modifications;

Now, therefore, the said scheme as so approved, is hereby published for information of the public.

## PART I

### PRELIMINARY

**44.** (1) This Scheme may be called the Maharashtra State Legal Aid and Advice Scheme, 1979.

(2) It shall come into force on such date as the Board may be notification in the *Official Gazette*, appoint.

**45.** *Definitions* - In this Scheme unless the context otherwise requires :-

(a) " aided person " means a person to whom legal aid is provided or legal advice is given in accordance with the provisions of this Scheme ;

(b) " Board " means the Maharashtra State Legal Aid and Advice Board ;

(c) " Committee " means the Greater Bombay Legal Aid and Advice Committee, or the Nagpur Legal Aid and Advice Committee or the Aurangabad Legal Aid and Advice Committee or the District Legal Aid and Advice Committee, or as the case may be, the Taluka Legal Aid and Advice Committee, constituted in accordance with this Scheme and also includes Sub-Committees and Legal Aid Centres constituted under sub-clause (4) of clause 12 of the said Scheme.

(d) " Court " includes any Tribunal or Authority in the State ;

(e) " Form " means a form appended to this Scheme ;

(f) " Government Resolution " means the Government Resolution, Law and Judiciary Department, No. LAB. 1080 (208)-XIV, dated the 30th October 1980 ;

(g) " High Court " means the High Court of Judicature at Bombay including the permanent Bench of that High Court at Nagpur provided by section 41 of the Bombay Reorganisation Act, 1960 and the Bench of High Court at Aurangabad :

(h) " legal advice " means oral legal advice or written legal advice as the nature of the case may require ;

(i) " legal aid " means legal aid in any or all of the modes provided in clause 22 of this scheme ;

(j) " legal practitioner " shall have the meaning assigned to that expression in the Advocates Act, 1961 ;

(k) " legal proceeding " means any proceeding in any Court, including any preparatory steps in connection with such proceeding.

## PART II

### CONSTITUTION, POWERS AND FUNCTIONS OF COMMITTEES

**46.** *Committees* - For the purpose of administering and implementing the legal aid programme in the State, the Board shall constitute the following Committees, namely :-

(1) The Greater Bombay Legal Aid and Advice committee, in relation to the provision of legal services in Greater Bombay ; 1[ and also separate Committies for one or more class or classes of Courts in Greater Bombay according to their jurisdiction ')

(2) The Nagpur Legal Aid and Advice Committee in relation to the provision of legal services in the City of Nagpur and for supervision of legal services in the Nagpur district ;

(2A) The Aurangabad Legal Aid and Advice Committee in relation to the provision of legal services in the City of Aurangabad for supervision of legal services in the Aurangabad district ;

(3) The District Legal Aid and Advice Committee, for every district (other than

Greater Bombay, Nagpur district and the Aurangabad District) in relation to the provision of legal services at the headquarters of the District and for supervision of legal services in the district;

(4) The Taluka Legal Aid and Advice Committee for every taluka, except talukas in Geater Bombay and talukas having headquarters at district places in relation to the provision of legal services in the taluka.

**47.** *Composition of Committee for Greater Bombay.* - The Greater Bombay Legal Aid and Advice Committee shall consist of the following members, namely :-

(1)	A sitting Judge of the High Court of Maharashtra, who is the Vice-President of the Board, nominated by the Chief Justice.	Chairman.
(2)	The Advocate-General of Maharashtra...	Vice-Chairman.
(3)	One representative of the Bar Council of Maharashtra residing in Bombay to be nominated by the Bar council.	Member.
(4)	One representative of the Bombay Bar Association, High Court, Bombay, to be nominated by that Association.	Member.
(5)	One representative of the Advocates' Association of Western India, High Court, Bombay to be nominated by that Association.	Member.
(6)	One representative of City Civil and Sessions Court Bar Association, Bombay, to be nominated by that Association.	Member.
(7)	One representative of Bombay Advocates' Association of the Court of Small Causes, Bombay, to be nominated by that Association.	Member.
(8)	One representative of the Metropolitan Magistrate Courts Advocates' Association (Esplanade), Bombay to be nominated by that Association.	Member.
(9)	Two members of the State Legislature residing in Greater Bombay, to be nominated by the State Government.	Members.
(10)	Two persons representing voluntary legal aid bodies in Greater Bombay, to be nominated by the State Government.	Members.

(11)	One person representing Scheduled Castes and Scheduled Tribes to be nominated by the State Government.	Member.
(11 A)	One person representing agricultural labour to be nominated by the State Government.	Member.
-12	One person representing women to be nominated by the State Government.	Member.
(13)	One representative of Social Service Organisations in Greater Bombay, to be nominated by the State Government.	Member-Secretary
(14)	Two members of the Bombay Municipal Corporation to be nominated by the said Corporation.	Member.
(15)	One Under Secretary to Government , Law and Judiciary Dpartment (Legal side ) to be nominated by the State Government.	Member-Secretary
(16)	A Joint Secretary to be suggested by the Committee from amongst its lawyer members.	Member.
(17)	Member or Members of the Board residing in Greater Bombay.	Ex-Officio Member.
(18)	Joint Director of Information and Public Relations, Mantralaya, Bombay or his nominee.	Ex-Officio Member.
(19)	A Principal of one of the Law Colleges within greater Bombay to be nominated by the State Government or his nominee.	Ex-Officio Member
(20)	The Government Pleader, High Court (Appellate Side), Bombay.	Ex-Officio Member.
(21)	The commissioner of Police, Greater Bombay (or his nominee)	Ex-Officio Member.
(22)	The Superintendent, Bombay Central Prisons, Bombay.	Ex-Officio Member.
(23)	The District Probation Officer, Bombay	Ex-Officio Member.
(24)	The commissioner of Labour, Bombay (or his nominee).	Ex-Officio Member.
(25)	The District Social Welfare Officer, Bombay.	Ex-Officio Member.

**48.** *Composition of Committee for Nagpur.* - The Nagpur Legal Aid and Advice Committee shall consist of the following members, namely :-

(1)	A sitting High Court Judge to be nominated by the Chief Justice.	Chairman.
(2)	The District Judge, Nagpur.	Vice-Chairman.
(2A)	Collector, Nagpur or his nominee not below the rank of Deputy Collector.	Ex-Officio Member.
(3)	Government Pleader, High Court, Nagpur.	Vice-Chairman.
(4)	District Government Pleader, Nagpur.	Member-Secretary.
(4A)	Joint Secretary, Law and Judiciary Department, Nagpur.	Ex-Officio Member.
(5)	One representative of the High Court Bar Association, Nagpur to be nominated by that Association.	Member.
(5A)	Additional Government Pleader, High Court, Nagpur.	Ex-Officio Member.
(6)	One representative of the District Bar Association, Nagpur to be nominated by that Association.	Member.
(7)	President, Zilla Parishad, Nagpur.	Ex-Officio Member.
(7A)	The Chief Executive Officer of Zilla Parishad or his nominee.	Ex-Officio Member.
(8)	One person representing Women to be nominated by the State Government.	Member.
(9)	One person representing Scheduled Castes and Scheduled Tribes to be nominated by the State Government.	Member.
(9A)	One person representing agricultural labour to be nominated by the State Government .	Member.
(10)	One person representing voluntary legal aid bodies in Nagpur to be nominated by the State Government.	Member.
(11)	One person representing Social service Organisations in Nagpur to be nominated by the State Government.	Member.
(12)	One Member of the Nagpur Municipal Corporation to be nominated by the said Corporation.	Member.

(13)	One representative of the State Legislature from the district of Nagpur to be nominated by the State Government.	Member.
(14)	Member or Members of the Board residing in Nagpur.	Ex-Officio Member.
(15)	One representative of the Bar Council of Maharashtra residing at Nagpur to be nominated by the Bar Council.	Member.
(16)	A Joint Secretary to be suggested by the Committee from amongst its lawyer members.	Member.
(17)	Deputy Director of Information, Divisional Information Office, Nagpur or his nominee.	Ex-Officio Member.
(18)	Principal of one of the Law Colleges within the City of Nagpur to be nominated by the State Government or his nominee.	Member.
(19)	The District Social Welfare Officer, Nagpur.	Ex-Officio Member.
(20)	The Commissioner of Police, Nagpur (or his nominee).	Ex-Officio Member.
(21)	The Superintendent, Nagpur Central Prisons, Nagpur.	Ex-Officio Member.
(22)	The District Probation Officer, Nagpur.	Ex-Officio Member.
(23)	The Deputy Commissioner of Labour, Nagpur.	Ex-Officio Member.

**49.** *Composition of Committee for Aurangabad.*- (1) The Aurangabad Legal Aid and Advice Committee shall consist of the following members namely :-

(1)	A sitting High Court Judge to be nominated by the Chief Justice.	Chairman.
(2)	The District Judge, Aurangabad.	Vice-Chairman.
(3)	Collector, Aurangabad or his nominee not below the rank of Deputy Collector.	Ex-Officio Member.
(4)	Government Pleader, High Court, Aurangabad.	Vice-Chairman.
(5)	Joint Secretary, Law and Judiciary Department, Aurangabad.	Ex-Officio Member.
(6)	One representative of the High Court Bar Association, Aurangabad, to be nominated by that Association.	Member.

(7)	Additional Government Pleader, High Court, Aurangabad.	Ex-Officio Member.
(8)	One representative of the District Bar Association, Aurangabad, to be nominated by that Association.	Member.
(9)	President, Zilla Parishad, Aurangabad.	Ex-Officio Member.
(10)	Chief Executive Officer of the Zilla Parishad or his nominee.	Ex-Officio Member.
(11)	One person representing Women, to be nominated by the State Government.	Member.
(12)	One person representing Scheduled Castes and Scheduled Tribes, to be nominated by the State Government.	Member.
(12-A)	One person representing agricultural labour, to be nominated by the State Government.	Member.
-13	One person representing Voluntary Legal Aid bodies in Aurangabad, to be nominated by the State Government.	Member.
(14)	One person representing Social Service Organisations in Aurangabad, to be nominated by the State Government.	Member.
(15)	One member of the Aurangabad Municipal Corporation, to be nominated by the said Corporation.	Member.
(16)	One representative of the State Legislature from the district of Aurangabad, to be nominated by the State Government.	Member.
(17)	Member of Members of the Board residing in Aurangabad.	Ex-Officio Member.
(18)	One representative of the Bar Council of Maharashtra, residing at Aurangabad, to be nominated by the Bar Council.	Member.
(19)	Deputy Director of Information, Divisional Information Officer, Aurangabad or his nominee.	Ex-Officio Member.
(20)	Principal of one of the Law Colleges within the City of Aurangabad, to be nominated by the State Government.	Member.
(21)	District Government Pleader, Aurangabad.	Member-Secretary.
(22)	The District Social Welfare Officer, Aurangabad.	Ex-Officio Member.
(23)	The Superintendent of Police, Aurangabad.	Ex-Officio Member.



(24)	The Superintendent, Aurangabad Central Prisons, Aurangabad.	Ex-Officio Member.
(25)	The District Probation Officer, Aurangabad.	Ex-Officio Member.
(26)	The Deputy Commissioner of Labour, Aurangabad.	Ex-Officio Member.

One Joint Secretary to be suggested by the Committee from amongst its lawyer members.

**50.** *Composition of district Legal Aid and Advice Committee.*- (1) The District Legal Aid and Advice Committee for each district (other than Greater Bombay, Nagpur and the Aurangabad districts) shall consist of the following members, namely :-

(1)	District Judge.	Chairman.
(2)	The Collector.	Vice-Chairman.
(3)	The District Government Pleader and Public Prosecutor of the district.	Vice-Chairman.
(3A)	The seniormost Member of the concern Industrial Court.	Member.
(3B)	The seniormost Labour Judge of the concerned Labour Court.	Ex-Officio Member.
(3C)	The President Labour Law Practitioners Association.	Ex-Officio Member.
-4	The President District Court Association.	Member.
(4A)	The Secretary District Court Bar Association.	Member.
(5)	President, Zilla Parishad.	Member.
(5A)	Chief Executive Officer of the Zilla ,Parishad.	Ex-Officio Member.
(6)	One person representing Women, to be nominated by the State Government.	Member.
(7)	One person representing Scheduled Castes and Scheduled Tribes, to be nominated by the State Government.	Member.
(7A)	One person representing agricultural labour to be nominated by the State Government.	Member.
(8)	One representative of the State Legislature from the district to be nominated by the State Government.	Member.

(9)	Member or members of the Board residing at the District Head quarters.	Ex-Officio Member.
(10)	One representative of the District Bar Association shall be the Joint Secretary of the District Legal Aid and Advice Committee to be suggested by the Committee from amongst its lawyer members.	Member.
(11)	District Information Officer.	Ex-Officio Member.
(12)	A Principal of one of the Law Colleges within the District to be nominated by the State Government (or his nominee.)	Member.
(13)	Member of the Bar Council who is the resident of the District. If there are more than one member coming from one district then the senior member who is willing, to be nominated by the State Government).	Member.
(14)	The District Social Welfare Officer.	Ex-Officio Member.
(15)	The Commissioner of Police or the Superintendent of Police, as the case may be.	Ex-Officio Member.
(16)	The Superintendent of Prisons.	Ex-Officio Member.
(17)	District Probation Officer.	Ex-Officio Member.
(18)	The Government Labour Officer.	Ex-Officio Member.

Provided that, where in any district there is a large population of persons belonging to the Scheduled Castes and Scheduled Tribes then, notwithstanding anything contained in entry (7) above, there shall be separate representatives one each for the Scheduled Castes and Scheduled Tribes, as may be nominated by the State Government.

Provided further that, in any district if the Government has appointed a Project Officer (ITDP) then he shall be taken as an Ex-officio Member of that District Committee.

(2) One Assistant Government Pleader and Additional Public Prosecutor of the District, to be nominated by the State Government shall be Member-Secretary of the District Committee.

**51.** *Composition of Taluka Legal Aid and Advice Committee.*- (1) The Taluka Legal

Aid and Advice Committee shall consist of the following members, namely :-

(1)	The senior most Judicial Officer at the Taluka Head-quarters.	Chairman.
(2)	President of the Taluka Bar Association.	Vice-Chairman.
(3)	Tahsildar of the Taluka	Ex-Officio Member.
(4)	One member of the Taluka Bar Association, to be nominated by that Association.	Member.
(4A)	The Sub-Divisional Officer at the Taluka Head Quarters.	
(4B)	The seniormost Assistant Government Pleader and Additional Public Prosecutor at the Taluka Head Quarters	
(4C)	The seniormost Officer at the Taluka Head Quarter.	
(5)	Sub-Government Pleader.	Ex-Officio Member.
(6)	Chairman of the Panchayat Samiti of the Block comprised in the taluka and where there are more than one Blocks in any taluka, the Chairman of the Panchayat Samiti of such Block, as may be nominated by the State Government.	Ex-Officio Member.
(7)	One person representing women to be nominated by the Chairman of the concerned District Legal Aid and Advice Committee.	Member.
(8)	One person representing Scheduled Castes and Scheduled Tribes to be nominated by the Chairman of the concerned District Legal Aid and Advice Committee.	Member.
(9)	One person representing agricultural labour to be nominated by the Chairman of the concerned District Legal Aid and Advice Committee.	Member.
(10)	One representative of the State Legislature from the Taluka, to be nominated by the Chairman of the concerned District Legal Aid and Advice Committee.	Member.
(11)	A Member or members of the Board residing at the Taluka Headquarters.	Ex-Officio Member.

Provided that, where in any taluka there is a large population of persons belonging

to the Scheduled Castes and Scheduled Tribes then, notwithstanding anything contained in entry (8) above, there shall be separate representatives one each for Scheduled Castes and Scheduled Tribes as may be nominated by the State Government.

(2) The Block Development Officer of the Block comprised in the taluka shall be the Member-secretary of the Taluka Committee :

Provided that, where there are more than one Block Development Officers in any taluka, such Block Development Officer at the taluka headquarters as may be nominated by the State Government shall be the Member-Secretary of the Committee :

(Provided further that, the Seniormost Assistant Government Pleader, and Additional Public Prosecutor (whenever available) shall be appointed as the Joint Secretary of the Taluka Legal Aid and Advice Committee or in his absence) the sub Government pleader if available or in his absence one of the members of the Taluka Legal Aid and Advice Committee may be appointed as Joint Secretary. The Joint Secretary so appointed shall discharge such duties and perform such functions of the Member Secretary of the said Committee as may be assigned to him by the said Committee).

**{7A. Composition of the Bombay High Court Legal Aid and Advice Committee -**  
The Bombay High court Legal Aid and Advice Committee shall consist of the following members, namely -

1)	The Advocate General of Maharashtra	Chairman
2)	The Registrar (appellate Side), High Court Bombay.	Vice-Chairman
3)	The Chairman of the Bar Council of Maharashtra	Vice-Chairman
4)	The Government Pleader(Appellate Side) High Court, Bombay	Vice-Chairman
5)	The President of the Advocates Association of Western India, High court, Bombay	Ex-Officio Member
6)	The President of the Bombay Bar Association High Court, Bombay	Ex-Officio Member
7)	One person representing women to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Member

8)	One person representing Scheduled Castes and Scheduled Tribes to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Ex-Officio Member
9)	One representative of the State Legislature from Greater Bombay to be nominated by the Chairman of the Greater Bombay to be co-opted by the Bombay High Court Legal Aid and Advice Committee.	Member
10)	One retired Judge of any Court who is associated with Legal Aid work and who is residing in Greater Bombay to be co-opted by the Bombay High Court Legal Aid and Advice Committee.	Member
11)	One Social Worker, who is associated with Legal Aid work and who is residing in Greater Bombay, to be Co-opted by the Bombay High Court Legal Aid and Advice Committee.	Member
12)	The Member-Secretary of the Greater Bombay Legal Aid and Advice Committee.	Ex-Officio Member
13)	The Establishment Officer, Office of the Government Pleader (Appellate Side), High Court Bombay	Joint Secretary
14)	The Secretary, Bar Council of Maharashtra High court, Bombay	Member-Secretary

**(7B) Composition of the Bombay City Civil and Sessions Court Legal Aid and Advice Committee** - The Bombay City Civil and Sessions Court Legal Aid and Advice Committee shall consist of the following members namely -

1)	The Principal Judge of the City and Sessions Court, Bombay	Chairman
2)	The President of the City Civil and Sessions Court Bar Association, Bombay	Vice-Chairman
3)	The Government Pleader, City Civil and Sessions Court, Bombay	Ex-Officio Member
4)	One person representing women to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Member

5)	One person representing Scheduled Castes and Scheduled Tribes to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Member
6)	One representative of the State Legislature from Greater Bombay to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Member
7)	One Principal of one of the Law Colleges within Greater Bombay to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Member
8)	The Member-Secretary of the Greater Bombay Legal Aid and Advice Committee, Bombay	Ex-Officio Member
9)	Three persons representing legal professions to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Member
10)	One retired Judge of any court who is associated with the Legal Aid work and who is residing in Greater Bombay to be co-opted by the Bombay City civil and Sessions Court Legal Aid and Advice Committee.	Member
11)	One social worker who is associated with the legal Aid work and who is residing in Greater Bombay, to be co-opted by the Bombay City civil and Sessions court Legal Aid and Advice Committee.	Member
12)	The Deputy Registrar, City Civil and Sessions Court, Bombay	Member Secretary

Provided that, one of the Members of the Bombay City Civil and Sessions Court Legal Aid and Advice committee may be appointed as Joint Secretary of the Said Committee, and the Joint secretary so appointed shall discharge such duties and perform such functions of the member-Secretary of the said Committee as may be assigned by the said Committee.

**7C. Composition of the Bombay Small Causes Court Legal Aid and Advice Committee** - The Bombay small Causes Court Legal Aid and Advice Committee shall consist of the following members, namely :-

1)	The Chief Judge of the Court of Small Causes Bombay.	Vice-Chairman
2)	The President of the Bombay Advocates Association of the Court of Small Causes, Bombay	Ex-Officio Member
3)	The Government Pleader, Small Causes Court Bombay.	Member
4)	One person representing women to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Member
5)	One person representing Scheduled Castes and Scheduled Tribes to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Member
6)	One representative of the State Legislature from Greater Bombay to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Member
7)	One Principal of one of the Law Colleges within Greater Bombay to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Member
8)	The Member-Secretary of the Greater Bombay Legal Aid and Advice Committee, Bombay	Ex-Officio Member
9)	Three persons representing legal profession to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Member
10)	One retired Judge of any Court who is associated with the Legal Aid work and who is residing in Greater Bombay to be co-opted by the Bombay City Civil and Sessions Court Legal Aid and Advice Committee.	Member
11)	One social worker who is associated with the legal Aid work and who is residing in Greater Bombay, to be co-opted by the Bombay Small Causes Court Klegal Aid and Advice Committee, Bombay.	Member
12)	The Additional Registrar, City Civil and Sessions court, Bombay	Member Secretary

Provided that, one of the Member of the Bombay Small Causes Court Legal Aid

and Advice Committee may be appointed as Joint Secretary of the Said Committee, and the Joint Secretary so appointed shall discharge such duties and perform such functions of the Member-Secretary of the said Committee as may be assigned by the said Committee.

**7D. Composition of the Bombay Industrial and Labour Courts Legal Aid and Advice Committee** - The Bombay Industrial and Labour Courts Legal Aid and Advice Committee shall consist of the following members namely :-

1)	The President, Industrial Court, Bombay	Chairman
2)	The President of the labour Law Practitioners Associations.	Vice-Chairman
3)	The Member-Secretary of the Greater Bombay Legal Aid and Advice Committee.	Ex-Officio Member
4)	One person representing Trade Unions to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Member
5)	One person representing women to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Member
6)	One person representing Scheduled Castes and Scheduled Tribes to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Member
7)	One representative of the State Legislature from Greater Bombay to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Member
8)	One Principal of one of the Law Colleges within Greater Bombay to be nominated by the Chairman of the Greater Bombay legal Aid and Advice committee.	Member
9)	Three persons representing legal profession for be nominated by the Chairman of the Greater Bombay Legal Aid and Advice committee.	Member



10)	One retired Judge of any Court who is associated with the Legal Aid Works and who is residing in Greater Bombay to be co-opted by the industrial and Labour Courts Legal Aid and Advice Committee.	Member
11)	One Social Worker who is associated with the Legal Aid Work and who is residing in Greater Bombay to be co-opted by the Industrial and Labour Courts Legal Aid and Advice Committee.	Member
12)	The Deputy Registrar, Industrial Court, Bombay	Member Secretary

Provided that, one of the Members of the Bombay Industrial and Labour Courts Legal Aid and Advice Committee may be appointed as Joint Secretary of the Said Committee, and the Joint Secretary appointed shall discharge such duties and perform such functions of the Member-Secretary of the Said Committee as may be assigned by the said Committee.

**7E. Composition of the Bombay Motor Accidents Claims Tribunal Legal Aid and Advice Committee -** The Bombay Motor Accidents Claims Tribunal Legal Aid and Advice Committee shall consist of the following members, namely :-

1)	The President of the Motor Accidents Claims Tribunal, Bombay.	Chairman
2)	The President of the Motor Accidents Claims Tribunal Bar Association, Bombay	Vice-Chairman
3)	The Government Advocate, Motor Accidents Claims Tribunal, Bombay.	Ex-Officio Member
4)	The Member-Secretary of the Greater Bombay Legal Aid and Advice Committee.	Ex-Officio Member
5)	One person representing women to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Member
6)	One person representing Scheduled Castes and Scheduled Tribes to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Member

7)	One representative of the State Legislature from Greater Bombay to be nominated by the Chairman of the Great Bombay Legal Aid and Advice Committee.	Member
8)	One Principal of one of the Law Colleges within Greater Bombay to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Member
9)	Three persons representing legal profession to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Members
10)	One retired Judge of any court who is associated with the Legal Aid Work and who is residing in Greater Bombay to be co-opted by the Bombay Motor Accidents Claims Tribunal Legal aid and Advice Committee.	Member
11)	One Social Worker who is associated with the Legal Aid Work and who is residing in Greater Bombay to be co-opted by the Bombay Motor Accidents Claims Tribunal Bombay.	Member
12)	The Registrar, Motor Accidents Claims Tribunal, Bombay.	Member Secretary

Provided that, one of the Members of the Bombay Motor Accidents Claims Tribunal Legal Aid and Advice committee may be appointed as Joint Secretary of the said Committee, and Joint Secretary so appointed shall discharge such duties and perform such functions of the Member-Secretary of the said Committee as may be assigned by the Said Committee.

**7F. Composition of the Bombay Metropolitan Magistrates Court Legal Aids and Advice Committee** - The Bombay Metropolitan Magistrates Courts Legal Aid and Advice Committee shall consist of the following members, namely -

1)	The Chief Metropolitan Magistrate, Esplanade Court, Bombay.	Chairman
2)	The Additional Chief Metropolitan Magistrates Court, Esplanade, Bombay	Vice-Chairman
3)	The President of the Metropolitan Magistrates Courts Advocates Association (Esplanade), Bombay	Ex-Officio Member

4)	The Member-Secretary of the Greater Bombay Ex-officio	Ex-Officio Member
5)	One person representing women to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Member
6)	One person representing Scheduled Castes and Scheduled Tribes to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Member
7)	One representative of the State Legislature from Greater Bombay to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Member
8)	One Principal of one of the Law Colleges within Greater Bombay to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice Committee.	Member
9)	Three person representing legal profession to be nominated by the Chairman of the Greater Bombay Legal Aid and Advice committee.	Members
10)	One retired Judge of any court who is associated with the Legal Aid work and who is residing in Greater Bombay to be co-opted by the Bombay Metropolitan Magistrates Courts Legal Aid and Advice Committee.	Member
11)	One Social Worker who is associated with the Legal Aid Work and who is residing in Greater Bombay to be co-opted by the Bombay metropolitan Magistrates Courts Legal Aid and Advice Committee.	Member
12)	The Registrar, Chief Metropolitan Magistrates Court, Esplanade, Bombay.	Member Secretary

Provided that, one of the members of the Bombay Metropolitan Magistrates Courts Legal Aid and Advice Committee may be appointed as Joint Secretary of the Said Committee, and the Joint Secretary so appointed shall discharge such duties and perform such functions of the Member-Secretary of the said Committee as may be assigned by the said Committee.

{ Provided further that until the said Committee is constituted the Greater Bombay Legal Aid and Advice Committee shall discharge all the duties and perform all the functions of the Bombay Metropolitan Magistrates Courts Legal Aid and Advice Committee.

**52.** *Term of Office of Members of Committees, etc.* - (1) The term of Office of a Member of the Committee, other than ex-officio Members, shall be two years :

Provided that, if any such Member fails without sufficient cause to attend three consecutive meetings of the Committee, he shall cease to be such Member, and the decision of the Chairman on the question, whether he has ceased to be such Member or not, shall be final.

(2) Whenever any person is nominated as a Member of the Committee by virtue of the post or office held by him, he shall forthwith cease to be a Member of the Committee if he ceases to hold such post or office.

(3) A non-official Member of the Committee may at any time resign his office by submitting his resignation signed and addressed to the Chairman of the Committee. No such resignation shall take effect until it is accepted by the Chairman of the Committee.

(4) Any vacancy in the office of a Member of a Committee shall be filled up as early as may be practicable, in the same manner as the original appointment and the person so nominated shall continue to be a member for the duration of the term of office of the Member in whose place he is nominated.

(5) On the expiry of the term of office of a Member, other than ex-officio member, he shall continue to be a Member of the Committee till new Member is appointed in his place. Such Member shall also be eligible for re-nomination.

**53.** *Cells of the Committees.* - (1) Every Committee shall have a Conciliation Cell consisting of such number or members of the Committee and other respectable members of the community, as the Committee may appoint. The Committee while selecting non-members on such cell shall have due regard to the fact whether such persons enjoy the confidence of the community and will be able to discharge the functions of bringing about conciliation in a proper and satisfactory manner :

Provided that in no case the Chairman of the Committee, shall be a member of any cell.

" (2) Whenever any person seeking legal aid approaches the committee and after due counselling the committee is of the opinion that he is eligible for legal aid and his case is fit to be considered by the Conciliation Cell, it shall refer the matter to the Conciliation Cell and the Cell shall issue notice to the opposite party and try to bring about the conciliation between the parties :

Provided that, -

(a) If the settlement suggested by the Conciliation Cell is not accepted by the applicant or the opposite party or by both; or

(b) the Conciliation Cell is unable to bring about a settlement within the period of one month from the date of reference of the dispute to it;

then the applicant shall immediately be granted requisite legal aid for redressing his grievances.

(3) The Court or authority before which any legal proceeding is pending may, if it so thinks fit, refer the dispute forming the subject-matter of the legal proceeding to the relevant Conciliation Cell for the purpose of bringing about settlement between the parties. If the Conciliation Cell is unable to bring about a settlement within a period of one month from the date of reference of the dispute to it, the matter shall go back to the court or the authority for disposal according to law.

**54. Cell for Women.** - (1) Every Committee shall have a Cell for Women consisting of such number of members of the Committee and such other persons who are engaged in social work within the area of the Committee, as the Committee may appoint. The Committee while selecting non-members on the cell shall have due regard to the fact whether such persons are social service minded and have experience of working for the welfare of women and are otherwise capable of looking after the interests of women. The Committee shall, as far as possible, try to give preference to women in selecting persons on this Cell.

(2) The Cell shall act as liaison between the Committee and the women residing within the area of the Committee and try to ascertain the problems and difficulties which

the women may be facing and bring them to the notice of the Committee and take all such steps and make all such recommendations as may be necessary for the purpose of resolving the problems and grievances of women by resort to the legal process. The Cell may also undertake socio-legal surveys and researches into the conditions of women and make recommendations for legal reform to the Board through the Committee.

(3) The Cell shall also look after the interest of women residing within the area of the Committee and protect and further their interests and ensure that the benefit of the legal aid programme reaches them.

**55. Cell for Scheduled Castes, Scheduled Tribes, Vimukta Jatis and Nomadic Tribes.-**

(1) Every Committee shall have a Cell for Scheduled Castes, Scheduled Tribes, Vimukta Jatis and Nomadic Tribes consisting of such number of members of the Committee and such other persons who are engaged in social work within the area of the Committee, as the Committee may appoint. The Committee while selecting non-members on the Cell shall have due regard to the fact whether such persons are social service minded and have experience of working for the welfare of Scheduled Castes, Scheduled Tribes, Vimukta Jatis and Nomadic Tribes and are otherwise capable of looking after the interest of persons belonging to Scheduled Castes, Scheduled Tribes, Vimukta Jatis and Nomadic Tribes. The Committee shall, as far as possible, try to give preference to the persons belonging to Scheduled Castes, Scheduled Tribes, Vimukta Jatis and Nomadic Tribes in selecting persons on this cell.

(2) The Cell shall act as liaison between the Committee and the members of the Scheduled Castes, Scheduled Tribes, Vimukta Jatis and Nomadic Tribes residing within the area of the Committee and try to ascertain the problems and difficulties which the persons belonging to Scheduled Castes, Scheduled Tribes, Vimukta Jatis and Nomadic Tribes are facing and bring them to the notice of the Committee and take all such steps and make all such recommendations as may be necessary for the purpose of resolving the problems and grievances of members of Scheduled Castes, Scheduled Tribes, Vimukta Jatis and Nomadic Tribes by resort to the legal process. The Cell may also undertake socio-legal surveys and researches into the conditions of persons belonging to Scheduled Castes, Scheduled Tribes, Vimukta Jatis and Nomadic Tribes and make recommendations for legal reform to the Board through the Committee.

(3) The Cell shall also look after the interests of persons belonging to Scheduled Castes, Scheduled Tribes, Vimukta Jatis and Nomadic Tribes residing within the area of the Committee and protect and further their interests and ensure that the benefit of the

legal aid programme reaches them.

**56. Duties, powers and functions of Committees.**-(1) It shall be the duty of the Committee to set up, administer and implement the legal services programme within the area for which it is constituted, and for this purpose to take all such steps as may be necessary having regard to paragraph 4 of the said Government Resolution and in accordance with the provisions of this scheme and the directions which may from time to time be issued by the Board.

(2) Without prejudice to the generality of the foregoing provisions, the Committee shall exercise the following powers and perform the following functions, namely :-

- (a) to receive and investigate applications for legal aid and advice;
- (b) to provide for giving of legal advice ;
- (c) to maintain panels of legal practitioners and others for giving legal aid or advice ;
- (d) to decide all questions as to the grant of, or withdrawal of, legal aid ;
- (e) to arrange to make payment of honorarium to legal practitioners on the panel for legal aid or advice provided by them and generally to provide for other costs, charges and expenses of legal aid from the grants placed at the disposal of the Committee;
- (f) to take proceedings for recovery of costs, charges and expenses recoverable under sub-clause (2) of clause 31 and to ensure that the same are credited to Government;
- (g) to provide for other legal services to the weaker sections of the community within its area ;
- (h) to submit recommendations and suggest improvements in the working of the legal service programme ;
- (i) to prepare, consolidate and submit such returns, reports and statistical information in regard to the legal service programme with its area, as the Board may call for ;
- (j) irrespective of the means test, to initiate proceedings or grant aid -
  - (i) in cases of great public importance ; or
  - (ii) in a test case, the decision of which is likely to affect cases of numerous other persons belonging to the weaker sections of the community;
  - or
  - (iii) in a special case, which for reasons to be recorded in writing, is

considered otherwise deserving of legal aid.

(3) The District Legal Aid and Advice Committee shall, in addition to the aforesaid powers and functions -

(a) supervise, guide and direct the working of the Taluka legal Aid and Advice Committees within the district; and

(b) call for from the Taluka Legal Aid and Advice Committees in the district such periodical reports, returns and other statistics or information as it may think fit or as are required to be submitted by the Board.

(4) Every Committee may constitute sub-committees or Legal Aid Centres) for the more convenient transaction of its business.

(5) Subject to the general superintendence and control of the Board, every committee shall exercise the powers and perform the functions conferred or imposed upon it by or under this Scheme.

**57. Functions of Chairman of Committee.-** (1) The Chairman of a Committee shall be in overall charge of the administration and implementation of the Legal Aid Programme within the area for which the Committee is constituted:

Provided that, the Chairman of any Committee shall not directly or indirectly be concerned with or associated with the decision of any question in regard to grant or withdrawal of legal aid or the manner of legal aid to any person.).

(2) In the absence of the Chairman, the Vice-Chairman shall perform the functions of the Chairman.

**58. Functions of the Member-Secretary.-** (1) The Member-Secretary shall be the principal officer of the Committee and shall be the custodian of all assets, accounts, records and funds placed at the disposal of the Committee.

(2) The Member-Secretary shall maintain true and proper accounts of the receipts and disbursements of the funds of the Committee.

(3) The Member-Secretary shall convene meetings of the Committee with the previous approval of the Chairman and shall also attend meetings and shall be



responsible for maintaining a record of the minutes of the proceedings of the meetings :

Provided that, if the staff of the Committee is posted from the Judiciary, then such staff shall work under the administrative control, guidance and supervision of the Chairman of the Committee.

**59. Meetings of the committee.** - (1) Every Committee shall ordinarily meet once a month on such date, and at such place, as the Member-Secretary may, in consultation with the Chairman decide.

(2) The Chairman, and in the absence of the Chairman, the Vice-Chairman, shall preside at the meetings of the Committee and in the absence of both, a person chosen by the members present from amongst themselves shall preside at the meeting of Committee.

(3) The procedure at any such meeting shall be such as the Committee may determine.

(4) The minutes of the proceedings of each meeting shall be truly and faithfully maintained by the Member-Secretary and such minutes shall be open to inspection at all reasonable times by the Members of the Committee. A copy of the minutes shall, as soon as may be after the meeting, be forwarded to the Board, and in the case of a meeting of the Taluka Legal Aid and Advice Committee, a copy of the minutes shall also be forwarded to the District Legal Aid and Advice committee.

(5) The quorum for the meeting of the Greater Bombay, Nagpur and Aurangabad Legal Aid and Advice committees shall be five and four, respectively including the Chairman, and that of the District and Taluka Legal Aid and Advice Committee shall be three, including the Chairman.

(6) all questions at the meeting of the Committee shall be decided by the majority of the Members present and voting and in case of a tie, the person presiding shall have a second or casting vote.

**60. Travelling and Daily Allowances of Members of Committees and the Members of any Cell.** - (1) No Member of any Committee shall be entitled to any remuneration for any work connected with the functions of the Committee.

(2) The Member of the Committee who is nominated from amongst the Members of the State Legislature shall be paid travelling and daily allowances as may be admissible to him as such Member of State Legislature.

(3) The ex-Officio Members of the Committee shall be entitled to travelling and daily allowances according to the rules applicable to them.

(4) The other Members of the Committee and the Members of any Cell not being Member of a Taluka Legal Aid and Advice Committee shall be paid travelling and daily allowances as are admissible to Grade I Officers of the State Government and the Members of Taluka Committees and the Members of any Cell constituted by the Taluka Committee shall be paid travelling and daily allowance as are admissible Grade II Officials of the State Government . s

(5) The Chairman of the Greater Bombay Legal Aid Advice Committee the Chairman of Nagpur Legal Aid and Advice Committee and the Chairman of Aurangabad Legal Aid and Advice Committee shall be entitled to draw travelling and daily allowances as are admissible to sitting Judges of the High Court, according to the rules in force.

**61. Funds of Committees.** - (1) The Board shall from time to time allocate funds to each Committee out of the amounts placed at its disposal by the State Government for the purpose of enabling the Committee to carry out its functions under the Scheme.

(2) For the purpose of meeting the incidental minor charges such as Court-fee stamps and expenditure necessary for obtaining copies of documents from a Court a permanent advance of the amount specified below shall be placed the disposal of the Member-secretary of the Committee, namely :-

Rs.

- |   |     |
|---|-----|
| (a) The Member-Secretary of the Greater Bombay Legal Aid and Advice Committee, of the Nagpur Legal Aid and Advice Committee and of the Aurangabad Legal Aid and Advice Committee. | 500 |
| (b) The Member-Secretary of a District Legal Aid and Advice Committee   | 250 |
| (c) The Member-Secretary of a Taluka Legal Aid and Advice Committee   | 100 |

(3) All expenditure on legal aid or legal advice, travelling and other allowances, accommodation and staff of the Committee and provision of other legal services as also expenditure necessary for carrying out the various functions of the Committee under the Scheme, shall be made out of the funds provided by the Board, and in accordance with such rules as may be made by the Board. The Chairman or in his absence the Member-Secretary shall operate the account of the Committee in accordance with the directions of the committee.

(4) The Committee shall cause to be kept and maintained true and correct accounts of all receipts and disbursements, and furnish quarterly returns to the Board and in the case of the Taluka Legal Aid and Advice Committee, such quarterly returns shall also be furnished to the District Legal Aid and Advice Committee.

(5) The Accounts of every Committee shall be audited annually by Accountant General, Maharashtra. A copy of the audit report shall be forwarded to the Board.

**62.** *Staff, Office accommodation, etc.* - The State Government will make the necessary arrangements for staff, office accommodation and other facilities as are necessary for the proper discharge of the functions of the Committees under this Scheme.

### PART III

#### LEGAL AID AND ADVICE

**63.** *Eligibility for legal aid and advice.* - Legal aid or advice may be given to all persons who are bonafide residents of the State of Maharashtra and whose total annual income from all sources whether in cash or in kind or partly in cash and partly in kind, does not exceed rupees 6,000 :

" Provided that the limitation as to annual income shall not apply to the parties belonging to Scheduled Casts, Scheduled Tribes, *Vimukta Jatis*, Nomadic Tribes, Nav *Budhas*, Women and children :

Provided further that, the limitation as to annual income shall not apply to the parties having disputes relating to motor vehicle accidents claims.

Provided further that when the cause of action has arisen within the limits of Maharashtra State the applicant seeking legal aid shall be deemed to be the bonafide resident of the State of Maharashtra :

Provided also that, the Committee may grant legal aid,

(i) in cases of great public importance;

(ii) in a test case, the decision of which is likely to affect cases of numerous other persons belonging to the weaker sections of the community; or

(iii) in a special case, which for reasons to be recorded in writing, is considered otherwise deserving of legal aid even where the means test is not satisfied.

**64.** *Proceeding in which legal aid is admissible.* - Subject to the provisions of clauses 19 and 23 and sub-clause (5) of clause 25, the Committee shall give legal advice as also legal aid in all proceedings in any Court.

**65.** *Matters on which legal advice admissible, etc.* - Legal advice may be given in all matters and such advice shall be aimed at, -

(a) amicable settlement of the dispute by bringing about conciliation between the parties to the dispute ;

(b) rendering assistance in complying with various legal requirements in order to secure the benefits under various schemes sponsored by or on behalf of the central or State Government or any other public authority for the welfare of the general public or any sections thereof.

**66.** *Modes of legal aid.* - Legal aid may be given in all or any one or more of the following modes, namely :-

(a) payment of court-fees, process fees, expenses of witnesses and all other charges payable or incurred in connection with any legal proceedings ;

(b) representation by a legal practitioner in legal proceedings ;

(c) supply of certified copies of judgments, order, notes of evidence and other documents in legal proceedings ;

(d) preparation of Appeal Paper Book, including printing and translation of documents, in legal proceedings ; and

(e) drafting of legal documents.

(f) payment of cost or preparing documents for litigation before the Supreme court in which legal assistance is granted by the Supreme court Legal Aid Committee, New Delhi.

**67.** *Legal aid not to be given in certain cases.* - Legal aid shall not be given in the following cases, namely :-

(1) proceedings wholly or partly in respect of -

(a) defamation ; or

(b) malicious prosecution ;

(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 punishable with fine only ;

(5) proceedings in respect of economic offences and offences against social laws, such as the Protection of Civil Rights Act, 1955, and the Suppression of Immoral Traffic in Women and Girls Act, 1956 ;

(6) Where a person seeking legal aid -

(a) is concerned with the proceedings only in a representative or official capacity ; or

(b) is concerned with proceedings jointly with some other person or persons whose interests are indetical with his and such person or any of such persons is adequately represented in the proceedings ; or

(c) is a formal party to the proceedings, not materially concerned in the outcome of the proceedings and his interests are not likely to be prejudiced on account of the absence of proper representation.

## PART IV

### PROCEDURE

**68.** *Form of application for legal aid or advice.* - (1) any person desiring legal aid or advice may make an application in Form A, addressed to the member-Secretary of the Committee concerned. Such application shall be accompanied with an affidavit in respect of the annual income of the applicant, if however, such applicant is unable to bear the expenses for making affidavit, the committee shall pay such expenses. But if the applicant is illiterate or not in a position to fill in the particulars required in the application, the Member-Secretary shall gather the necessary particulars from the applicant and fill up the application form on his behalf and after reading it out and explaining it to him, obtain his signature or thumb mark on it.

(2) the Committee shall maintain a register of applications wherein all applications for legal aid and advice shall be entered and registered.

**69.** *Disposal of applications.* - (1) On receipt of an application under clause 24, the Member-Secretary or a lawyer on the Panel of Legal Practitioners, who is assigned the particular duty, shall scrutinise the application for the purpose of deciding whether the applicant is deserving of legal aid in accordance with the provisions of this Scheme and for the purpose of arriving at such decision he may require the applicant to supply further information as may be necessary and also discuss the matter personally with the applicant and in doing so he shall have regard to the fact that the applicant belongs to a weaker section of the community and is required to be assisted even in the matter of obtaining legal aid. The application shall be processed as early as possible and preferably within

fifteen days.

(2) The decision of the Member-Secretary or the lawyer on the Panel of Legal Practitioners, who scrutinizes the application as provided in sub-clause (1) above, to give legal aid shall be final, subject to confirmation by the Committee at its next meeting. If the Member-Secretary or the lawyer concerned is of the opinion that the applicant is not deserving of legal aid, he shall place the matter before the Committee whose decision shall be final.

(3) where it is decided not to give legal aid to an applicant, the reasons for not doing so shall be entered in the Register of applications maintained by the Committee and information in writing to that effect shall be communicated to the applicant.

(4) Before giving actual legal aid, the matter shall be referred by the Member-Secretary to the Conciliation Cell for the purpose of bringing about settlement between the parties. If for any reason not connected with the intransigence or obduracy of the applicant, the settlement cannot be arrived at the Conciliation Cell shall make a failure report to the member-Secretary and the Member-Secretary shall then assign the case to a lawyer out of the panel of Legal Practitioners approved by the Committee. While assigning the case to lawyer, the Member-Secretary shall have regard to the nature of the case, the experience of the lawyer and also the willingness and capacity of the lawyer to handle the matter and as far as possible the case may be assigned to the lawyer on the Panel by rotation.

(5) No application for legal aid or advice shall be granted, or continued after the legal aid is granted, if the Committee is satisfied that -

- (a) The applicant has knowingly made false statement or furnished false information as regards his means or place or residence ; or
- (b) in a proceeding, other than the one relating to criminal prosecution, there is no prima facie case to institute, or as the case may be, to defend the proceeding ; or
- (c) the application is frivolous or fictitious ; or
- (d) the applicant is not entitled to the same under clause 23 or any other provision of this Scheme, or
- (e) having regard to all the circumstances of the case, it is otherwise not reasonable to grant it.

**70.** *Certificate of Eligibility.* - When an application for legal aid or advice is allowed,

the Member-Secretary of the Committee shall make a note on the application to the effect that legal aid is granted. This note shall constitute the Certificate of Eligibility.

**71. Panels for legal aid and advice.** - (1) Every Committee shall form such number of Panels of Legal Practitioners having practice of not less than five years as it may consider necessary.

(2) Every such Panel shall be constituted for a period of one year from the date of its constitution.

(3) Appointment of a Legal Practitioner for legal aid or advice under this Scheme shall be made from the Panel of Legal Practitioners constituted by the Committee.

(4) Every person included in the Panel shall be required to communicate in writing to the Chairman of the Committee concerned, his willingness to serve on the Panel.

(5) Any person on the Panel may tender his resignation in writing to the Chairman of the Committee.

(6) Any vacancy in the Panel caused by resignation or otherwise, may be filled up by the Committee, as soon as possible.

(7) If any person after having agreed to serve on a Panel, neglects or refuses to discharge his duties properly, the Committee may delete his name from the Panel after giving him opportunity to be heard.

(8) If any person after having agreed to serve on a Panel, neglects or without sufficient cause refuses to accept an assignment, or is otherwise guilty of misconduct or is guilty of breach of any of the provisions of this scheme, he shall be liable to be removed from the Panel, after he has been given an opportunity of being heard.

(9) Save as otherwise directed by the Committee, a legal practitioner who ceases to be on the Panel, whether on account of resignation or otherwise, shall as soon as practicable, after he so ceases to be on the Panel, deliver up all the papers pertaining to cases entrusted to him to the Member-Secretary of the Committee.

**72. Duties of Panel Members.** - (1) Where the Committee has extended legal aid or



advice, then -

(a) Where it is a case of legal advice, the legal practitioner shall hear the aided person or any other person representing him, examine the papers and documents relating to the case and tender in writing his opinion on the merits and his advice thereon ; and

(b) where it is a case of legal aid, the legal practitioner shall represent the aided person and act and plead for him in the legal proceeding.

(2) (a) Where action is taken by a legal practitioner under sub-clause (a) of clause (1), he shall give his opinion and advice to the aided person and also send a copy of the same to the Member-Secretary of the Committee.

(b) Where action is taken by a legal practitioner under sub-clause (b) of clause (1) he shall forth-with make a report to the Member-Secretary of the Committee on the action taken by him and also make monthly reports to the Member-Secretary in regard to the progress of the legal proceeding. The legal practitioner shall act in accordance with such instructions as may be given to him, from time to time, by the Committee.

**73.** *Information to be kept confidential.* - Any information furnished or instructions given to the Committee or any legal practitioner by any aided person in respect of his case shall be kept confidential by the Committee, or as the case may be, by the legal practitioner and shall be used only in the due performance of the function of providing legal aid or advice to the aided person, but with the consent in writing of the aided person, it may also be used for any other purpose. No such information shall, however, be used against the interest of the aided person, unless required by law.

**74.** *Honorarium payable to Legal Practitioners on the Panel.* - (1) The legal practitioners on the Panel shall be paid following honorarium namely :-

(a) in all legal proceedings in the High Court, at Bombay, at Nagpur and at Aurangabad and in the City Civil and Sessions Court, Bombay, Rs. 75 per effective hearing, subject to a maximum of Rs. 450 in any one case.

(b) in all legal proceedings in Court at the headquarter of the districts other than Courts referred to in clause (a) above and in the Courts of Small Causes in Bombay, Pune and Nagpur and in the Courts of Metropolitan Magistrate, in Greater Bombay, Rs. 50 per effective hearing, subject to a maximum of Rs. 300 in any one case.

(c) in all legal proceedings in Courts in Talukas other than talukas in Greater Bombay and talukas having headquarters at District places, Rs. 25 per effective hearing, subject to a maximum of Rs. 200 in any one case, and

(d) the legal practitioner to whom the case is referred only for legal advice and

where legal advice alone is required to be given, the legal practitioner may be paid a fee not more than Rs. 25 per such legal advice.

(2) No legal practitioner to whom any case is assigned either for legal advice or for legal aid shall receive any fee or remuneration whether in cash or in kind or any other advantage, monetary or otherwise, from the aided person or from any other person on his behalf.

(3) The legal practitioner on the Panel, who has completed his assignment, shall submit a statement showing the honorarium due to him in connection with the legal proceeding conducted by him on behalf of the legally aided person to the member-Secretary of the Committee, who shall after due scrutiny and counter-signature, place the same before the Committee for sanction and on such sanction being given by the Committee, the amount shall be paid by the Member-Secretary to the legal practitioner. It shall, however, be open to the legal practitioner to waive the honorarium wholly or partially.

**75. Duties of aided person.** - (1) A person seeking legal aid or advice shall comply with any requisition or direction that may be made upon him by the Committee or any of its Members from the date the application for legal aid or advice is made till the completion or cessation of legal aid.

(2) (i) Notwithstanding anything contained in the first and second provisions under clause 19, every such person shall agree, -

(a) in the event of the court passing a decree or order or award in his favour awarding costs or compensation or other monetary benefits or advantages to him, or

(b) he ceases to be entitled to legal aid under the Scheme ;  
to pay by way of reimbursement to the Committee all costs, charges and expenses incurred by the Committee in giving him legal aid.

(ii) The agreement clause contained in paragraph of the Application Form 'A' shall be treated as an authority authorising the Member-Secretary of the Committee to do all such acts and things as may be necessary for recovery or realisation of the amount decreed or ordered or awarded to be paid to him.

(iii) The costs, charges and expenses which may be recovered by the Committee as aforesaid shall be credited to the State Government.

(3) Every aided person or his representative shall attend the office of the Committee as and when required by the Committee or by the legal practitioner rendering

legal aid to him and shall furnish full and true information and shall make full disclosure to the legal practitioner concerned and shall attend the Court, as and when required at his own expenses.

**76.** *Cancellation of Certificate of Eligibility.* - The Committee may either on its own motion or otherwise cancel the Certificate of Eligibility granted under clause 26 in the following circumstances, namely :-

(a) in the event of it being found that the Certificate of Eligibility was obtained 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, mis-demeanour or negligence on the part of the aided person in the course of receiving legal aid ;

(d) in the event of the aided person not co-operating with the Committee or with the legal practitioner assigned by the Committee ;

(e) in the event of the aided person engaging a legal practitioner other than the one assigned by the Committee ;

(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 externment under any law for the time being in force, of the aided person, from the area or place of his residence or business :

Provided that, no such Certificate of Eligibility shall be cancelled 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 Certificate should not be cancelled.

**77.** *Power to give directions.* - The Board may, from time to time, issue directions to the Committees to carry out the purposes of this scheme and the Committees shall be bound to carry out such directions.

FORM A

(See Clause 24)

Form of Application for legal Aid

To,

The Member-Secretary,  
.....District/Taluka Legal Aid and Advice Committee.  
.....  
.....

Sir,

I, ..... aged.....  
son/daughter, wife/widow of .....beg to apply for Legal  
Aid/Advice. My particulars are as detailed below :-

- (i) Present Address.
- (ii) Nature of employment.
- (iii) Average annual income from all sources.
- (iv) Nature of case in which legal Aid/Advice is sought.

(Please attach separate sheet, if necessary, giving nature of dispute, claim or right.  
Sate documents in support thereof and other relevant particulars.)

2. I am willing to furnish such further information as may be required for the  
purpose of enabling you to consider the application.

3. I am not in a position to pay Court costs and costs of miscellaneous  
proceedings or engage a legal practitioner for me.

4. I pray that I may be granted Legal Aid/Advice.

5. I agree to reimburse the State Government all costs, charges and expenses

incurred by the Committee in giving me legal aid if the Court passes a decree or order in my favour awarding costs to me or other monetary benefits or advantages or if I cease to be entitled to legal aid under this Scheme.

6. The above statements are true to the best of my personal knowledge and belief.

Date :-

Signature of Applicant.

Place :-

-----  
 Recommended for grant of legal aid .....Member-Secretary.....  
 Panel Counsel.

For Office use only

(1) Nature of Advice	...	...	...	
(2) Eligibility for Legal Aid	...	...	...	Ves/No
(3) Legal Aid	...	...	...	Granted/Refused.
(4) anticipated expenditure				
(i) Court Fees	...	...	...	
(ii) Counsel Fee	...	...	...	
(iii) Miscellaneous	...	...	...	
(5) Documents received	...	...	...	
(6) Lawyer appointed				
Name	...	...	...	
Address	...	...	...	
(7) Final result	...	...	...	
(8) Recovery of cost, if any	...	...	...	

Signature of Member-Secretary

## **Maharashtra State**

### **Visit to Jails and Homes for Children Project rules, 1993**

Whereas, Article 39A of the Constitution of India provides that 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;

And whereas, under Government Resolution, Law and Jusidicary Department, No. LAB 1080/(208)-XIV, dated the 10th October 1080, the State Government has enunciated a Legal Aid Programme for providing free legal Services to the weaker sections of the community in the State and for the purposes of effective administration and implementation of the said Legal Aid Programme, the Government of Maharashtra has constituted a Board called “ the Maharashtra State Legal Aid and Advice Board”.

And whereas, according to sub-clause (j) of clause (2) of paragraph 4 of the said Resolution, it is the duty of the said Board to take steps to establish legal aid programmes in the State for rendering assistance to the members of the weaker sections of the Society in complying with necessary legal requirements in order to secure the benefits under the various schemes sponsored by the Central or State Government for the welfare of public in general, or of any section thereof;

And whereas, the question of establishing a project for assisting the prisoners, under-trials or other persons confined in jails including persons in police lock-ups or children confined in the Jails or Children's Homes was under consideration of the Government of Maharashtra for sometime past;

Now, therefore, in pursuance of the provisions of Article 39A of the constitution of India and of all other powers enabling it in that behalf, the Government of Maharashtra in super session of all the previous orders issued by the Maharashtra State Legal Aid and Advice Board in this behalf is pleased to make the following rules in that respect, namely :-

## **CHAPTER I**

## **PRELIMINARY**

1. Short title, commencement and application :- (1) These rules may be called the Maharashtra state (Visits to Jails and Homes for Children Project Rules, 1993.

(2) They shall come into force from the date of publication of these rules in the Maharashtra Government Gazette.

(3) They shall apply to all the District Legal Aid and Advice committees and all the Taluka Legal Aid and Advice Committees in the State.

(4) These rules shall not apply to the cases mentioned in clause 23 of the Maharashtra State legal Aid and Advice Scheme, 1979.

2. Definitions :- In these rules unless the context otherwise requires :-

(1) "Appendix" means the Appendix appended to these rules;

(2) "Board" means the Maharashtra State Legal Aid and Advice Board;

(3) "Board Rules" means the Maharashtra State Legal Aid and Advice Board Rules, 1981;

(4) "Children's Home" means the Children's Homes, Remand Homes, Observation Homes, Correctional Homes, Approved Schools, and includes Borstal Schools, Juvenile Institutions and Reception Homes for both boys and girls run by the State Government or supported or recognised by the State Government, and all institutions connected with Housing of delinquents or destitute children;

(5) "Code" means the Code of Criminal Procedure, 1973 (Act No.2 of 1974);

(6) "Committee" means the Greater Bombay Legal Aid and Advice Committee or the Nagpur Legal Aid and Advice Committee or the Aurangabad Legal Aid and Advice committee or the district Legal Aid and Advice Committee or the Taluka Legal Aid and Advice Committee, or as the case may be, the courtwise committees in Greater Bombay constituted in accordance with the provisions of the Maharashtra State Legal Aid and Advice Scheme, 1979.

(7) "Duty Counsel for Jail Visits" means an Advocate or Senior Legal Adviser who has been appointed to work on the Jail Visits Project;

(8) "Form" means a form appended to these rules;

(9) "High Court Rules" means;

(i) the Legal Aid to Unrepresented Accused Persons in cases before the Court of Sessions Rules, 1982, or

(ii) the Legal Aid to Unrepresented Accused persons in Criminal cases other than those before the court of Sessions Rules 1982;

framed by the bombay High Court under sub-section (2) of section 304 of the Code of

Criminal Procedure 1973;

(10) “High Court Committee” means the Bombay High Court Legal Aid and Advice Committee and includes the Nagpur Legal Aid and Advice Committee and as the case may be, the Aurangabad Legal Aid and Advice Committee;

(11) “Jail” means any place declared as a Jail under the Prisons Act 1894, and includes Central Prison, District Prison, Taluka Sub-Jail, Police Lock up Judicial Custody or any place where under-trial prisoners or convicted prisoners are kept;

(12) “Jail Authorities” means the officers or the Authorities in charge of the Jails and includes the officers or Authorities in charge of the Children's Homes;

(13) “Jail Visits” means the visits of the duty Counsels to the Jails and includes the visits to the Children's Homes;

(14) “Jail Visits Project” means the project undertaken for extending legal aid to the persons confined in Jails and includes legal aid to the children confined in the Jails or in the Children's Homes;

(15) “Legal Aid Scheme” means the Maharashtra State Legal Aid and Advice Scheme, 1979;

(16) “Member-Secretary” means the Member-Secretary of the committee;

(17) “ Maharashtra Prison Rules” means the Rules framed by the Government of Maharashtra under section 59 of the Prisons Act, 1894;

(18) “ Office bearer of the Committee” means and includes the Chairman or Vice-Chairman or Member-Secretary or the Joint Secretary of the Committee;

(19) “Prisons Act” means the Prisons Act, 1894 (Act 9 of 1894);

(20) “Prisoners” means the persons confined in Jails and includes the children confined in the Jails or in the Children's Homes;

(21) The words or expressions use in these rules but not defined shall have the meanings respectively assigned to them in the Maharashtra State Legal Aid and Advice Scheme, 1979 or the Maharashtra Prisons Rules or the Prisons Act or the Juvenile Justice Act, 1986 or the Code;

Provided that, in the event of any conflict with the words and expressions use in the Maharashtra State Legal Aid and Advice Scheme, 1979, or the Maharashtra Prisons Rules, or the Prisons Act, or the Juvenile Justice Act, 1986 or the code, the words and expressions used in the Criminal Procedure Code, 1973 shall prevail.

## **CHAPTER II**

### **ESTABLISHMENT OF JAIL VISITS PROJECTS**

**3. Formation of Jail Visits Projects :-** Every committee shall constitute a Jail



visits Project for the purpose of extending legal aid and advice to the prisoners.

**4. Composition of Jail Visits Projects :-** Every Jail Visit Project shall consist of one or more Duty Counsels appointed under these rules by the Committee for administering the Jail Visits Project.

**5. Qualifications for the Duty Counsels :-** The person to be appointed as Duty Counsel for Jail Visits shall possess the following qualifications namely:- (a) he shall either be a legal practitioner whose name has been included in the panel of legal practitioners prepared by the Committee in accordance with the provisions of rule 32 of the Board Rules or fit to be included in the panel of Advocates under the said rule 32 of the Board Rules, or

(b) He shall either be a Senior Legal Advisor whose name has been included in the panel of Senior Legal Advisors Prepared by the Committee in Accordance with the provisions of rule 33 of the Board Rules or fit to be included in the Panel of Senior Legal Advisors under the said rule 33 of the Board Rules; and

(c) he shall be conversant with Marathi, Hindi and Local language.

**6. Panel of Advocates :-** The Committee shall constitute a panel of Advocates for being appointed as Duty Counsels for Jail Visits from the persons possessing the qualifications specified under rule 5.

7. appointment of Duty Counsels :- (1) The Duty Counsel for Jail visits shall be appointed from the Panel of Advocates by the Member-Secretary;

Provided that, the lady Duty Counsel may be appointed for lady prisoners;

Provided further that, if any advocate qualified under rule 5 desires to serve as a Duty Counsel in the Jail Visits Project, without charging any fees or honorarium etc, and if the request is genuine and if his services are considered, to be useful and the Member-Secretary is satisfied about that such Advocate may with prior approval of the committee be appointed as Duty Counsel for the Jail Visits Projects by the Member-Secretary.

(2) The notice of appointment of Advocates as Duty Counsels for Jail visits shall be exhibited on the Notice Board of the Committee, the Court and of the local bar Association at least one month before the commencement of the year for which the appointment is made.

(3) A copy of notice of appointment shall also be sent to the concerned Jail Authorities.

(4) Every person before his appointment as Duty Counsel for Jail Visits shall express in writing to the Member-Secretary, his willingness to serve in the Jail Visits Project and abide by these rules.

(5) Any Duty Counsel for Jail Visits may tender his resignation in writing to the Member Secretary.

(6) Any Vacancy caused by resignation or otherwise may be filled in by the Member-Secretary immediately in the same manner as the original appointment and the Advocate so appointed shall continue to be the Duty Counsel for the duration of office of the Duty Counsel in whose place he is appointed.

(7) If any Advocate after having agreed to serve in the jail Visits Project neglects or refuses to accept an appointment or acts in such a manner which is unbecoming of his position as a Duty Counsel, he shall, if found unsuitable by the Committee after due enquiry by the Member-Secretary forthwith cease to be a Duty Counsel under these rules and shall be debarred from being reappointed as Duty Counsel for the Jail Visits Project.

(8) If any Advocates after accepting an appointment neglects or refuses to discharge the duties properly or resigns from the post of Duty Counsel the Committee shall remove the name of the Advocate from the Panel of Advocates and the Roster of Duty Counsels and appoint another Advocate in his place.

(9) Subject to the provisions of sub-rules (7) and (8) any person serving as a Duty Counsel of the Jail Visits Project shall be eligible for reappointment.

**8. Roster of Duty Counsels :-** For the purpose of visiting Jails and Children's Homes every Committee shall prepare a Roster of Duty Counsels drawn from the Panel of Advocates prepared by the Committee under rule 6 for a period of one year at a time. The Roster shall be reviewed after every three months.

**9. Report of the Duty Counsel :-** (1) If more than one Duty Counsel is appointed for a Jail Visits Project the work may be distributed among them equitably by the member-Secretary.

(2) Every Duty Counsel shall prepare and submit to the Committee every month a Report on Each person assisted by him during the period of his duty.

(3) No Duty Counsel or any person associated with him in the practice of law shall knowingly act in the same matter for a person whom he has represented or advised as Duty Counsel except with the prior approval of the Committee.

(4) Where prior advocate and client relationship existed between a person and the Duty Counsel or any one associated with him in the practice of law, such Duty Counsel or anyone associated with him, shall not act for such person.

**10. Maintenance of list of Jails :-** Every Committee shall maintain a list of Jails and Children's Homes situated and functioning under its jurisdiction and shall cover all such jails and Children's Homes under project enunciated under these rules.

### **CHAPTER III**

#### **LEGAL ASSISTANCE TO THE CONVICTED PRISONERS**

**11. Legal literacy among the Prisoners :-** (1) The Duty Counsel shall prepare a chart of legal rights and explain them to the prisoners through the Jail Authorities or personally.

(2) The committee may prepare pamphlets and booklets on the legal rights of prisoners and distribute them to the prisoners through the Jail Authorities.

(3) Arrangements may be made to put the posters or well-hangings exhibiting the legal rights of the prisoners at conspicuous places in the Jails and Children's Homes.

**12. Ascertainment of grievances of convicted prisoners in respect of Legal Aid:-**

(1) The Jail Authorities shall make arrangement to bring the prisoners at one place for enabling the Duty Counsel to contact them all within a short period.

(2) During his visit to the prison, the Duty Counsel shall try to ascertain the grievances of prisoners. If there is a grievance of any prisoner connected with legal rights he shall prepare an application addressed to the Member Secretary of the Committee and obtain the signature or thumb impression of the prisoner and hand it over to the Member - Secretary alongwith his opinion for further necessary action in the matter.

(3) In respect of other applications from the prisoners the Duty Counsel for Jail

Visits shall perform the duties of the Duty Counsel of Counselling Centres under the Maharashtra State Legal Aid Counselling centre Rules, 1996.

**13. Appeals:-** (1) A convicted prisoner who was a right to appeal under the statutes shall be afforded facilities for the same under the Legal Aid Scheme if he is handicapped for want of means to engage a lawyer.

(2) In the matter relating to appeal the prisoner shall be assisted by extending necessary legal advice also.

(3) The prisoner shall also be helped to draft a proper petition of appeal and assisted for arguing his appeal.

(4) If at the trial stage the accused was defended by a lawyer appointed under the High Court Rules and the accused has been sentenced to imprisonment and the appeal is required to be filed in the High Court, then the said prisoner shall be assisted in preparing the necessary memorandum of appeal. The Duty Counsel shall interview the prisoner for this purpose and send the papers to the Member-Secretary for onward transmission to the High Court Committee, for assigning an Advocate for arguing the matter in the High Court.

**14. Special instructions in respect of appeals:-** (1) When a Duty Counsel interviews the prisoners and the prisoner wants assistance for filing appeal, the Duty Counsel may entertain an application from him and get instructions for the appeal on his behalf. Where a convicted prisoner gives an application in this way for assistance for filing an appeal, the material supplied to the Duty Counsel as above may be treated as instructions for filing the appeal and the committee on receiving the papers from the Duty Counsel may readily arrange for the preparation and presentation of the appeal on the prisoner's behalf through Panel lawyer and if the appeal is to be filed in the High Court then through the panel lawyer of the High Court Committee.

(2) The material supplied by the prisoner may be processed by the Duty Counsel in the form of grounds of appeal wherever lit is convenient to do so, after interviewing the prisoner, or he may send the papers in the case with a report of the substance of the interview as well as the instructions given by the prisoner to the committee in important cases, and also in cases where it is found necessary to supplement the instructions or the material thus received in the first instance.

(3) The Duty Counsel engaged by the committee may have to visit the jail or children's home and obtain further instructions from the prisoner if necessary.

(4) In pursuance of the provisions of section 382 of the Code relating to jail appeals the Duty Counsel shall inform the Jail Authorities about the prisoner having approached the Legal Aid Committee and the fact of his having processed an appeal through the Duty Counsel subject to the provisions of the Code.

(5) When Duty Counsel has prepared the grounds of appeal and forwarded to the committee alongwith the prisoner's application, the grounds drafted may be used by the panel lawyer assigned by the concerned committee.

**15. Submission of Appeal by the Jail Authorities:-** (1) When a prisoner wants legal assistance for filing appeal in respect of his indictment, the Duty Counsel shall prepare a petition of Appeal and send it to the concerned Jail Authorities for forwarding the same to the concerned Appellate Court under Section 383 of the Code.

(2) The Jail Authorities shall forward the petition of Appeal received under sub-rule (1) above to the concerned Appellate Court under intimation to the concerned Legal Aid Committee.

Explanation:- The concerned Legal Aid Committee means the District Legal Aid and Advice Committee when the appeal is filed in the District Court, the High Court Committee when the appeal is filed in the High Court and the Supreme Court Legal Aid Committee when the Appeal is filed in the Supreme Court of India.

(3) The concerned Committee may ascertain from the concerned Court as to whether any Advocate has been appointed under the High Court Rules.

(4) If the matter is forwarded to the High Court by the Jail Authorities under section 383 of the Code and if the intimation is received by the High Court Committee under sub-rule (2) above, the concerned High Court committee of the District Legal Aid and Advice Committee shall arrange to appoint a panel lawyer on behalf of the concerned convict prisoner and intimate the same to the concerned Jail Authorities. The Jail Authorities shall inform the concerned convicted prisoner accordingly.

**16. Filing of Appeal in the Supreme Court:-** (1) When a prisoner wants legal

assistance for filing an appeal in the Supreme Court in respect of his indictment the High Court Legal Committee shall forward the following documents to the Supreme Court Legal Aid Committee, New Delhi, for extending the legal assistance in the Supreme Court to the concerned convicted prisoner:-

- (1) Certified copy of the High Court Judgment and order.
- (2) High Court paper book.
- (3) Grounds taken in the Appeal in the High Court.
- (4) Objection of the Opposite Party.
- (5) Order/Judgment in the Trial Court.
- (6) Other connected documents such as Evidence, FIR etc.
- (7) Evidence in support of the facts alleged in the application.
- (8) Application for Legal Aid in Form I.
- (9) Affidavit in form II on non-Judicial Stamp Paper of appropriate value under the Bombay Stamp Act, 1958 and sworn before any competent authority.
- (10) Affidavit of facts in Form III.
- (11) Vakalatnama in Form IV.

**Explanation :-** (1) The documents at serial numbers 8 to 11 shall be signed by the prisoner in the presence of the Jail Authorities. Normally the petition for Special Leave to appeal is to be filed in the Supreme Court within 90 days of the date of the judgment/order of the High Court excluding the time taken in obtaining the Certified copy of the impugned order. Therefore, approaching the Committee for agitating the matter in the Supreme Court, the delay shall be suitably explained and duly supported by properly sworn affidavit; so that an application for condonation of delay is properly filed in Supreme Court alongwith the petition.

(2) Before forwarding the above documents the Committee shall examine and see whether the prisoner possesses a prima-facie cause and whether he eligible for legal aid from the Supreme Court Legal Aid Committee, for agitating his case before the Supreme Court.

17. Information to the Prisoner :- (1) After processing the application the prisoner shall invariably be informed by the concerned Legal Aid Committee through the Jail Authorities about the action taken such as :-

- (a) Whether an application or an appeal, as the case may be moved,
- (b) the order of the court passed thereon,
- (c) details of appeal preferred, and

(d) nature of disposal of appeal.

(2) The Committee shall maintain a register to keep a watch over the appeals of prisoners.

**18. Guidelines for finding out the Justiciable Right of the convicted prisoners :-**

The Constitution of India, the Code, the Prisons Act, the Maharashtra Prisons Rules, and decisions of various High Courts and the Supreme Court of India provide for the justiciable right of the convicted prisoners in respect of remission of unexpired portion of sentence. Every Committee while dealing with the applications regarding justiciable rights of the convicted prisoners in respect of remission of unexpired portion of sentence shall verify the applications with reference to the guidelines specified in Appendix 'A'.

**19. Guidelines for Enforcement of Justiciable Rights of the convicted Prisoners :-**

Every Committee shall extend assistance to the convicted prisoners in respect of enforcement of Justiciable Rights of the convicted prisoners on the basis of the guidelines specified in appendix 'B'.

**20. Precautions to be taken before moving the Authorities for remission of sentence of convicted Prisoners :-** Every committee shall take into consideration the factors specified in Appendix 'C' before moving the Government to grant premature release to life convicts.

**21. Other legal problems of the Prisoners :-** If the prisoner has legal problems other than those arising out of indictment, such as problems relating to his family or property, etc., worrying him in such cases, when the cases are either referred by the Jail Authorities or when the requests are received from the prisoners, the Duty Counsel may contact the prisoner, within the sight of the jail Authorities but out of hearing and examine his request and suggest remedy. Necessary further steps may be taken by the Committee in this respect ever by contacting the concerned committees.

## CHAPTER IV

### LEGAL ASSISTANCE TO THE UNDER-TRIAL PRISONERS

**22. Assistance to the under-trial prisoners :-** The Duty Counsel shall visit the jails, police lock-ups, located in the jurisdiction of the committee and shall interview all the under trial prisoners and find out whether they have any problems which can be solved by the committee by extending legal assistance.

**Explanation :-** For the purpose of this Chapter “Under-trial Prisoners” includes the persons kept in jails and police lock-ups.

**23. Information about the Under-trials :-** (1) The Jail Authorities shall send the information about the following categories of newly admitted under-trial prisoners to the nearest Legal Aid Committee or the Duty Counsel immediately for extending legal aid and assistance, namely :-

(i) under-trial prisoners who are old and infirm including women who are pregnant or have babies to be nursed;

(ii) under-trials who have spent considerable period, say exceeding 3 months, in jail and have no means to engage a counsel;

(iii) persons arrested on suspicion under section 41 of the code and confined in the Jails as under-trials and who have been in jails beyond continuous period of 15 days ; and

(iv) under-trials who are below 16 years of age.

(2) On receipt of the information from the Jail Authorities, if no Duty Counsel has been deputed to the Jail on that day, the committee shall immediately depute a Duty Counsel to visit the jail and interview the prisoners for considering the matter for taking up their cases for extending legal aid.

**24. Responsibilities of Jail Authorities :-** In addition to the provisions of rule 23 the Inspector General of Prisons and the Director of Correctional Service, Maharashtra State shall take care that all the Jail Authorities observe the following requirements, namely :-

(1) to send a list of all under-trial prisoners to the legal aid committee of the district in which the jail is situated giving particulars of the date of entry of the under-trial prisoners in the jail and to the extent possible, of the offences with which they are charged and showing separately male prisoners and female prisoners.



(2) to furnish to the concerned Committee a list giving particulars of the persons arrested on suspicion under section 41 of the Code who have been in jail beyond a period of 15 days.

(3) to provide facilities to the lawyers nominated by the concerned Committee to enter the Jail and to interview the prisoners who have expressed their desires to have the lawyers assistance.

(4) to furnish to the lawyers nominated by the concerned Committee whatever information is required by them in regard to the prisoners in jail.

(5) to put up notices at prominent places in the jail that lawyers nominated by the concerned Committee would be visiting the jail on particular days and that any prisoner who desires to have their assistance can meet them and avail of their counseling service, and

(6) to allow any prisoners who desires to meet the lawyers nominated by the concerned District Legal Aid committee to interview and meet such lawyers regarding any matter for which he requires legal assistance and such interview should be within sight but out of hearing of any jail official.

**25. Responsibilities of Police Authorities :-** The Director General of Police, Maharashtra State shall take care that all the Police Authorities observe the following requirements, namely :-

(1) that four or five police lock-ups should be selected in reasonably good localities where only female suspects should be kept and they should be guarded by female constables. Female suspects should not be kept in a police lock-up in which male suspects are detained.

(2) that interrogation of females should be carried out only in the presence of female police officers or constables.

(3) whenever a person is arrested by the police without warrant, he must immediately be informed of the grounds of his arrest and in case of every arrest it must immediately be made known to the arrested person that he is entitled to apply for bail.

(4) that whenever a person is arrested by the police and taken to the police lock-up, the police shall immediately give intimation of the fact of such arrest to the nearest Legal Aid Committee.

(5) that as soon as a person is arrested, the Police must immediately obtain from him the name of any relative or friend whom he would like to be informed about his arrest and the police should get in touch with such relative or friend and inform him about the arrest.

**26. Production before the Judicial Officer :-** On interview, if the Duty Counsel finds that any arrested person has not been produced before the Judicial Officer within 24 hours of his arrest he shall cause the matter to be brought before the notice of the concerned Court. Simultaneously the Member-Secretary shall assign the matter to an Advocate for filing an application for release of the arrested person on this ground.

**27. Guidelines in respect of the remands :-** The Duty Counsels while considering the cases relating to remands shall take into consideration the obligations of Police Officers as mentioned below :-

(1) When an arrest is made under sub-section (1) of section 41 or under sub-section (1) of section 151 of the Code, relating to a cognizable offence and if a case is registered and there are grounds for believing that the accusation or information against the arrested person is well founded and the investigation cannot be completed within a period of 24 hours, the police officer has to comply with sub-section (1) of section 167 for obtaining further detention of the accused.

(2) When a person is arrested under sub-section (1) of section 41, it is the duty of the police officer to carry out prompt investigation without unnecessary delay, as provided in section 173 of the Code and collect evidence to satisfy the Court that there is sufficient evidence to raise a suspicion that the arrested person may have committed an offence for which a remand is warranted.

(3) In case of arrest made under sub-section (1) of section 41, there is no question of trial of any criminal case and there is no consummation of the case by its ending in any conviction or in acquittal and as such no investigation is required.

(4) If any person is arrested and detained in custody and it appears that the investigation cannot be completed within a period of 24 hours fixed up by section 57 and

there are ground for believing that accusation or information is well founded, the officer in charge of the police station or the officer making the investigation shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary relating to the accused and shall at the same time forward the accused to such Magistrate.

(5) An accused person can be detained by the police for a period of 24 hours without any authority from the Magistrate and for 15 days in the whole under the order of the Magistrate. A Magistrate with or without jurisdiction can order detention of the person - Police detention or judicial detention - for a maximum period of 15 days in the whole, and the Magistrate having jurisdiction can extend the period of judicial detention either to 90 days or 60 days, as envisaged in proviso (a) sub-section (2) of section 167.

(6) The order of remand cannot be made in the absence of the production of the accused before the remanding Magistrate and if such an order is made mechanically contrary to the provision, that order of remand or extension of remand is not legally sustainable, and as such the accused cannot be kept in jail custody even for one minute after the expiry of the period of remand already ordered by the Court and the jail authorities cannot keep them inside any longer.

**28. Delay in filing charge-sheet.-** (1) On interviewing the under-trial prisoners, if the Duty Counsel finds that, in the case of any under-trial prisoner, inordinate delay is caused for filing charge-sheet by the police, he shall prepare his report alongwith his opinion showing the further course of action in the matter and sent the same to the Member-Secretary for immediate action.

(2) If the Member-Secretary after examining the report submitted by the Duty Counsel under sub-rule (1) finds that it is necessary to take the matter to the Court he shall assign an advocate for filing an application in the concerned Court for release of the under-trial prisoner on that count.

**29. Bail :-** After interviewing the under-trial prisoners the Duty Counsel may move for release of under-trial on bail without sureties having regard to the provisions of the Code in case of under-trials who have no means to afford sureties.

**30. Special assistance in bail matters :-** (1) Where an under-trial prisoner seeks legal assistance for bail from the Duty Counsel the Duty Counsel shall prepare the application in duplicate for bail on behalf of the applicant, secure the under-trial's signature on the application as well as on the application for legal aid and shall thereafter forward the

original copy of the application for bail directly to the concerned court for necessary action and the duplicate copy of the application for bail alongwith the application for legal aid to the Committee.

(2) When the application relates to a Court situated at the Headquarters of the District, after presenting the application for legal aid, the District Committee shall entrust the copy of the application to the Counsel engaged, for moving the Court for necessary orders.

(3) Where the application relates to an outlying Court, the copy of the application alongwith the District Committee's direction to assign a lawyer to the proceeding, shall be sent to the committee concerned which shall thereafter assign a lawyer from the panel maintained by the Committee to appear before the Court when the application has to be presented.

**Explanation** :- If the procedure outlined above is pursued expeditiously it may be possible that by the time the application intended for the Court is received and registered in the Court, the lawyer entrusted with the duplicate copy of the application and engaged to argue the petition may also be ready to appear before the Court and present his argument on the petition. Orders on the petition can thereafter be obtained expeditiously.

(4) If the Court to which these applications relate is located in an area where there is neither a Committee nor a panel lawyer, the concerned committee shall forward the duplicate copy of the application to the Presiding Officer of such Court with a request -

- (a) to assign a suitable lawyer;
- (b) to make an endorsement on the duplicate application about the action taken; and
- (c) to forward the same to the nearest Legal Aid Committee. Such committee shall thereafter register the application on its file, watch its course and pay remuneration to the lawyer engaged.

(5) There shall be emphasis on the processing of the applications of the prisoners for bail with utmost expedition.

**31. Information to be incorporated in the Bail Application** :- While preparing the Bail Application referred to in rules 29 and 30 the Duty Counsel shall ascertain from the under-trial prisoner and record the information to be focussed before the Court. The information shall be based on the following factors concerning the under-trial prisoner-

- (1) the length of his residence in the community,
- (2) his employment status, history and his financial conditions,
- (3) his family ties and relationships,
- (4) his reputation, character and monetary condition,
- (5) his prior criminal record including any record or prior release on recognizance or on bail,
- (6) the identity of responsible members of the community who would vouch for his reliability,
- (7) the nature of the offence charged and the apparent probability of conviction and the likely sentence,
- (8) any other factors indicating the ties of the accused to the community or bearing on the risk of willful failure to appear.

**32. Application for Legal Aid :-** If the Duty Counsel finds that the under-trial prisoner is eligible for legal aid he shall supply the application in Form "A" appended to the Legal Aid Scheme to the under-trial prisoner and get the same filled in with signature or thumb impression of the under-trial prisoner on it and return the same to the committee alongwith his opinion and other papers referred to in rule 30.

**33. Other Legal Problems of Under-trials :-** If the under-trial prisoners have legal problems other than those arising out of their indictment, such as problems relating to their family or property etc. worrying them, in such cases when the cases are either referred to by the Jail Authorities or requests are received from the under-trials, the Duty Counsels may contact the under-trial prisoners within the sight of the Jail Authorities but out of hearing, and examine their request and initiate suitable remedial measures.

**34. Written information about the Bail etc :-** (1) The Duty Counsel may supply to the under-trial prisoners through the jail authorities written information about the following matters, namely :-

- (i) the rights and methods of obtaining bail;
- (ii) the rights and methods for filing appeals or revision in respect of their indictment;
- (iii) the rights and facilities made available for legal aid and advice with regard to -
  - (a) proceedings arising out of their indictment before the trial courts and appeals therefrom; and
  - (b) other legal problems relating to the families and property etc.

(2) The above information may also be supplied in the form of a pamphlet through the police at the time of arrest of the person and in any event before the arrested person is brought before the Court.

(3) If the under-trial prisoner is illiterate the above said information may be conveyed to him orally through the concerned authorities.

(4) In addition to the above arrangement the pamphlets, plastic posters and wall hangings etc. about the legal aid and advice shall be displayed at conspicuous places at the jails and the cells in the police lock ups.

(5) At the time of admission of the arrested person in the jail the Jail Authorities shall provides the written information, to the under-trial prisoners about the regulations governing the treatment of prisoners of their category, the disciplinary requirements of the institution and the authorised methods of seeking information etc.