

Further though the insistence on the universal conscription of the legal profession in this social service may at first sight appear to be attractive it has great drawbacks. Legal assistance to the poor litigant may be rendered effectively by a member of the legal profession voluntarily undertaking such work. But such assistance given by an unwilling lawyer on whom this duty is compulsorily imposed may not be satisfactory. It may well be therefore that a system of conscripting lawyers for this work even if it could be based on some principle may fail of its true purpose. It is probably for this reason that we do not find in any of the Anglo-American and Continental States where provision for legal aid exists, a system of legal aid which throws the responsibility for it on the legal profession by making it obligatory on them to render free legal aid.

#### Conscription of Lawyers or Compulsion Undesirable

12. The Bhagwati Committee while rejecting the suggestion that the profession should be compelled to do all legal aid work gratuitously recommended a certain amount of compulsion. It proposed that maximum of six free cases every year should be done by every lawyer without payment of fees.\* An element of compulsion is also to be found in the rules of the Bombay High Court on its original side which provide for the assignment of an advocate or an attorney or both to assist a person who is permitted to sue or defend as a pauper and that the advocate or attorney so assigned shall not be at liberty to refuse his assistance unless he satisfies the court or judge that he has good reason for refusing. We are on principle opposed to the imposition of any measure of compulsion in the matter of legal aid. A lawyer is in the same position as a qualified doctor or engineer permitted to practise his profession. If members of these latter professions or other professions may not be compelled to do professional work without payment for poor persons, there appears to be no reason why a discriminatory compulsion of any kind should be imposed on the legal profession.

#### Duty of Lawyers

13. But it by no means follows that the legal profession does not owe a moral and social obligation to poor members of society. In our view, every member of the profession including the busy senior members at its top should make it a rigid rule to do a certain number of cases of poor persons every year. This obligation is owed in a greater degree by the senior members of the Bar who

\* Report of the Committee on Legal Aid and Legal Advice in the State of Bombay, p. 87.

can better afford the sacrifice involved and whose example in assisting poor persons is likely to be followed by the junior members. In this connection we might refer to the observations of Viscount Buckmaster, then Lord Chancellor:

"What steps are we to take to remove from our profession the reproach that the poor man cannot get the same even handed justice as the rich? It does not mean that he does not get justice before the Bench. That I never heard said . . . That the scales of justice are heavily weighed against the poor litigant is not an accurate statement, but nobody can deny that the rich litigant by being able to get help of the best man has an advantage. How are we going to meet that? It is something that needs to be met. I believe myself it could be met both here and at home, if everybody engaged in law—either where the branches are divided into counsel and solicitors or where they are one, just simply as lawyers—if every person took a certain number of worthy poor person's cases in the course of a year and dealt with them exactly as he would with the case of a rich client and that we should have thus gone a long way to remove the reproach."\*

Lawyers in India would not be worthy of the great traditions of the profession if they failed to render this social service which can be so usefully and appropriately rendered by them. A true welfare State can function only if every citizen renders some service at a sacrifice and the lawyer working in his professional capacity is not an exception.

#### Voluntary Aid Insufficient, Payment at Reduced Rates

14. It will be realized, however, that even if all lawyers performed this social duty and did a number of cases every year without charging fees there will yet remain a large mass of litigation of persons without adequate means for which advice and representation in court will be needed. Such cases will have to be distributed amongst the members of the profession who have volunteered to lend their services for legal aid and agreed to their names being put on panels maintained by legal organisations. These lawyers will have to be remunerated for the work done by them on certain fixed scales which may be two-thirds or half of the fees payable on taxation in civil cases and the fees prescribed by the appropriate authority in criminal cases. We have no doubt that

\* Address delivered to the Canadian Bar Association on the 27th August, 1925.

a large number of members of the profession will readily come forward to be put on these panels and thus help to relieve the burden on the State of rendering legal aid to deserving poor persons.

#### Adoption of Bombay & West Bengal Schemes Recommended

15. The comprehensive study made by the Bhagwati Committee of the problem of legal aid was undoubtedly made with special reference to the conditions prevailing in the State of Bombay. However, in our view with certain modifications arising out of what has been said above and in regard to the suggested deductions in arriving at the disposable income and the disposable capital (paras 68 and 69 of the Report) the scheme laid down by the Committee can well serve as a working model which can be adapted to the local needs and conditions of each State. We may also advert to the Report of the Trevor Harries Committee on Legal Aid in West Bengal which consists of concise recommendations under various heads. The scheme embodied in these recommendations though less comprehensive than the Bombay scheme is simple and capable of being quickly put into execution.

#### Financial Aspects

16. While fully emphasizing the great importance of a system of legal aid as a necessary complement to the efficient and equal administration of justice, we are conscious that the full implementation of a scheme such, for example, as has been recommended by the Bhagwati Committee will involve heavy financial burdens upon the States. We have not been able to assess even approximately the cost of working a fully comprehensive legal aid scheme on a countrywide scale, but it is obvious that it must be very substantial. We are also conscious that as in other matters we must in the matter of legal aid proceed by gradual stages and lay down priorities. Legal aid will have first to be extended to persons accused of crime, particularly crimes of serious nature. Members of scheduled castes and scheduled tribes who generally are without means will also have to receive preferential consideration. Legal aid will have next to be extended to really poor persons; and then gradually made available to persons of moderate means who are unable to bear the cost of litigation.

#### Immediate Steps to be Taken

17. Certain measures of legal aid are, however, capable of being implemented forthwith without the need of setting up elaborate legal aid organizations by amending the law or the rules

of the courts. The additional financial burden involved in giving effect to these measures will be very small and in our view these measures should be given effect to immediately. We therefore recommend that:

(1) Representation by a lawyer should be made available at government expense to accused persons without means in all cases tried by a court of session:

(2) Representation by a lawyer should be made available at government expense to applicants without means in proceedings under Section 488 of the Criminal Procedure Code:

(3) Representation by a lawyer should be made available at government expense to an accused person without means at the time of the final hearing of a jail appeal which has been admitted;

(4) The explanation to Rule 1, Order XXXIII of the Civil Procedure Code should be amended so as to entitle a person who is not entitled to property worth Rs. 1,000 to sue as a pauper or alternatively so as to define a pauper as a person who is not possessed of sufficient means, other than the subject-matter of the suit, to enable him to pay the fee prescribed by law;

(5) Order XXXIII of the Civil Procedure Code should be amended so as to enable a person not only to sue as a pauper but to defend a suit or other proceeding as a pauper:

(6) The expression "pauper" used in Order XXXIII should be replaced by the expression "poor person" or "assisted person";

(7) Rules of the High Courts should give power to the High Courts and subordinate courts to provide, in proper cases, counsel to the pauper litigant, such counsel being chosen out of a panel of counsel who have expressed their willingness to be on the panel.

The recommendations made above can all be given effect to by appropriate changes made by the High Courts in their rules; in fact, some High Courts have already made changes in their rules in the direction indicated.

#### Formation of Legal Aid Committee by Bar Associations

18. Apart from State and government action it is essential that the members of the profession should also forthwith take

steps to adopt such measures of legal aid as can be achieved by their voluntary effort. Each bar association in the country may for this purpose form a Legal Aid Committee. The Committee will enlist such members of the association as are agreeable to lend their assistance in rendering legal aid to persons without means. The Committee will have to frame rules for determining the type of cases in which such legal aid should be rendered and also the manner of rendering such legal aid. Members of the panel of lawyers may devote in turn an hour or two every week at the offices of the association in looking into the cases of applicants for aid in order to decide whether their means are such as to entitle them to legal aid and whether their cases are such as to merit assistance. If a person is considered to be eligible for legal aid, legal advice may be rendered to him either in the matter of prosecuting or defending a claim and assistance may be rendered to the person from time to time in the matter of proceedings to be taken in court and ultimately at the hearing of the cause or matter. We have no doubt that in every bar association there will be a substantial number of persons willing to render assistance to indigent litigants and work such voluntary schemes of legal aid.

#### Existing Associations

19. Members of the bar in Bhagalpur in Bihar and in Bangalore in South India have associated themselves together for rendering legal aid and there probably are other bodies of lawyers who have been working in the same direction. There is no reason why an activity of this character should not be considered a duty to be performed by every bar association in the country. Indeed, members of the bar may go further and register themselves in association with other interested persons into societies pledged to the rendering of legal aid, obtaining public and private funds for the purpose as has been done in West Bengal by the foundation in 1952 of the Legal Aid and Advice Society of West Bengal which has been doing useful work.

#### Summary of Recommendations

20. We summarise our recommendations on legal aid as follows:—

(1) Free legal aid to poor persons and persons of limited means is a service which the modern State and in particular a Welfare State owes to its citizens. The State must, therefore, accept this obligation and make available funds for providing such legal aid to poor persons and persons of limited means;

(2) The legal profession must in the main, if not entirely,

accept the responsibility for the administration and working of schemes of legal aid. This responsibility should be discharged by the profession by organising and by serving on bodies which will render legal aid, and representing in courts poor persons or persons of limited means on the payment of only a proportion of the fees payable on taxation;

(3) The legal profession owes a moral and social obligation to poor members of society which it must discharge by every member of the profession doing a certain amount of legal work free for poor persons;

(4) The scheme for legal aid to poor persons and persons of limited means outlined by the Committee on Legal Aid and Advice appointed by the Government of Bombay in 1949 and the scheme outlined by the West Bengal Committee should, with suitable modifications made in the light of local needs and conditions, be adopted by all States as soon as financial conditions permit;

(5) The States should, pending the implementation of such schemes, make provision for legal aid in gradual stages bearing in mind the priorities mentioned in paragraph 16 above;

(6) Measures in furtherance of legal aid mentioned in paragraph 17 above should be adopted immediately;

(7) Bar associations should take immediate measures to render legal aid on a voluntary basis in the manner mentioned in paragraph 18 above.

## 4. GOVERNMENT OF INDONESIA

### MEMORANDUM ON "FREE LEGAL AID"

1. Free legal aid is available under Indonesian Law to Indonesian nationals and resident-foreigners in criminal cases as well as civil suits.

In civil suits, there is also a possibility of proceeding at half the rate of the costs, which include the fees of the advocate, costs of the registrar, court fees and execution costs.

Both natural and legal persons may apply for gratis procedure or proceedings at half the scheduled rate, as the case may be,

either as plaintiff or as defendant. For obtaining this concession from the courts different procedures are applicable for criminal and civil suits.

2. In civil cases an application is to be made by the plaintiff or the defendant through an advocate, setting out the grounds for his claim or his defence, as the case may be, along with a statement from the head of the local administration of the place of residence of the applicant, containing his personal data, his domicile and data regarding his income and his means.

The judge may, if he so desires, request the department of revenues to supply information regarding the income and the means of the applicant.

A decision on the application is taken by the judge after hearing the parties to the suit, unless the other party declares that he has no objection against the request of the applicant.

The judge may disallow the prayer even in cases where the inability of the applicant to pay the costs of the proceedings has been established, if he is of the opinion that there is no sufficient ground for the claim or the defence of the applicant or his interest is too small to justify a suit.

3. In penal cases the magistrate may at the request of the defendant nominate an advocate, who is a member of the bar, to act as his counsel free of charge. The nomination is binding on the advocate and can only be declined on grounds acceptable to the magistrate.

## 5. LEGAL AID IN JAPAN

By KENZO TAKAYANAGI

### 1. LEGAL AID IN CRIMINAL CASES—

#### SYSTEM OF ASSIGNMENT OF COUNSEL BY THE STATE

There is no specific provision in the Constitution of Japan with regard to legal aid in general such as to be seen in the Constitutions of Brazil, the Philippines and Italy. The Japanese Constitution, however, provides for the right of the accused to obtain, by compulsory process, witnesses on his behalf at public expense, and also for the right of the accused to have a qualified lawyer assigned by the State if he is unable to secure one himself (Art. 37).

Under this Article of the Constitution, legal aid is amply given to the accused in criminal cases. The system of assignment of counsel by the State existed before the adoption of the present Constitution in 1946, but the present Constitution and, more specifically, the present Code of Criminal Procedure provides that in case the alleged crime is punishable by death penalty, life imprisonment, or imprisonment exceeding three years, the court must assign a qualified lawyer of its own motion if no counsel has been appointed by the accused (Art. 289). So, even in the case of theft, which is punishable by imprisonment not exceeding ten years, counsel is to be thus assigned. Furthermore, even in the case of minor offences, the court must assign counsel for the accused if so requested by him provided that he is unable to appoint a lawyer because of poverty or any other sufficient reason (Art. 36), and the court may assign counsel of its own motion, in case the accused is (i) minor, (ii) a person exceeding seventy, (iii) a deaf or a dumb person, or (iv) a person reasonably suspected of being insane, or in case the court deems it necessary for any other reason (Art. 37).

Since the system of assignment of counsel by the State has thus been expanded, recent statistics show that about 50% of the accused have obtained assignment of counsel by the State (Table I).

The court may order the accused to pay costs in case he has been found guilty. "The costs" include travelling expenses, daily allowances, lodging expenses and professional fees to be paid to the lawyers assigned by the State. The court determines the amount to be paid for each item within the limits prescribed by law. The court may, however, exempt the accused from paying such costs, in case he is found to be unable to pay because of poverty (Code of Criminal Procedure, Art. 181). The court may do this, even after it ordered the accused to pay costs, upon motion of the accused filed within twenty days after such order showing sufficient cause (Code of Criminal Procedure, Art. 500). In nearly half of the cases where counsel was assigned by the State, the accused was exempted from paying costs. Moreover, in about half of the other cases, where the accused for whom counsel was assigned and the court ordered them to pay costs, the accused was finally exempted from paying costs upon motions filed according to Article 500.

Table II shows annual total amount of the professional fees, travelling expenses and daily allowances, paid to State-assigned counsel from 1952 to 1955.

**Table I**  
Number of the Accused in the Courts of First Instance for whom Counsel was Assigned by the State

Year	Court	Number of the accused	Number of the Accused for whom Counsel was Assigned by the State		Total.	Number of the Accused who appointed a lawyer themselves.	Total
			Art. 37	Art. 69			
1953	Summary	67,218	276	9,366	38,880	27,921	66,801
	District	72,808	260	8,757	30,695	32,486	62,581
	Total	143,533 (100%)	536	18,103	69,575 (49.5%)	60,407	129,382 (92.6%)
1954	Summary	64,689	272	10,052	38,028	19,280	57,188
	District	78,843	290	9,079	34,418	31,341	65,759
	Total	140,026 (100%)	562	19,131	72,446 (51.2%)	50,621 (34.7%)	122,947 (85.9%)
1955	Summary	86,840	170	12,294	44,495	26,306	70,801
	District	84,242	190	8,818	37,174	33,867	71,041
	Total	171,082 (100%)	360	21,112	81,669 (47.4%)	60,173 (35.1%)	141,842 (82.5%)

**Table II**  
ANNUAL TOTAL AMOUNT OF THE PROFESSIONAL FEES, TRAVELLING EXPENSES, DAILY ALLOWANCES PAID TO STATE-ASSIGNED COUNSEL

Year	Detail of the Amount Paid		Total
	Professional Fees	Travelling Expenses Daily Allowances, Lodging Expenses	
1952	153,022,152	53,675,677	206,697,829
1953	134,373,654	61,958,757	196,332,411
1954	151,088,879	70,999,292	222,008,171
1955	177,792,994	84,420,388	262,213,382

## 2. LEGAL AID IN CIVIL CASES

Under the present Japanese law, legal aid in civil cases is recognised only in such cases as provided for in Article 118 and the ensuing articles of the Code of Civil Procedure. Legal aid is to be given when, (1) the party is unable to pay costs in advance, (2) when the party has some possibility of winning the case, and (3) when motion therefor is filed by the party. The aid to be given does not provide for exemption from payment of costs, but merely for temporary postponement of payment until judgment is given. The party should pay costs if he loses the case. So this aid is not so effective in assisting the poor. It is only very infrequently availed of as shown in Table III.

**Table III**  
LEGAL AID GIVEN IN CIVIL CASES  
UNDER ARTICLE 118 OF THE CODE OF CIVIL PROCEDURE

Year	First Instance, Ordinary Cases	District Courts		Summary Courts	Total
		First Instance Administrative Cases	Appeal Cases		
1953	75	0	1	15	91
1954	57	4	3	23	87
1955	86	2	1	41	130

It must be admitted that legislative means for legal aid in civil cases leaves much to be desired. But in practice various conciliation systems, well developed and very often availed of in Japan, serve to give the poor cheap justice. Furthermore, facilities for legal consultation, both governmental and private and private institutions for legal aid, have developed to a remarkable extent. The government is planning to encourage further development of these activities.

### 3. LEGAL AID BY CIVIL LIBERTIES INSTITUTIONS

The "Civil Liberties Institutions" includes (1) Civil Liberties Bureau of the Ministry of Justice and its local branches, called Civil Liberties Divisions of the Legal Affairs Bureaus (eight throughout Japan), and Civil Liberties Sections of the Local Legal Affairs Bureaus (forty-one throughout Japan), and (2) Civil Liberties Commissioners. All of these institutions have been established since 1948 with the view of protecting civil liberties in general. They have legal aid as one of their duties. But due to lack of funds and facilities, their activities are almost limited to giving legal advice in connection with carrying out of their duties to enlighten people about civil liberties and to investigate cases of violation of human rights. Besides, during the Human Rights Week (in early December) and on other occasions, they open temporary legal consultation offices at town halls and village offices, or in department stores. Table IV shows the number of the legal consultations handled by Civil Liberties Institutions in 1956.

**Table IV**  
**NUMBER OF LEGAL CONSULTATIONS HANDLED BY CIVIL LIBERTIES INSTITUTIONS (in 1956)**

Nature of Cases	Consultations Handled		Total
	at Civil Liberties Institutions	at Temporary Legal Consultation Offices	
Domestic Relations	9,596	4,002	13,598
Lease of Land or House	8,374	3,412	11,786
General Civil Affairs	11,707	5,148	16,855
Criminal Affairs	1,959	642	2,601
Farm Land	2,123	950	3,073
Livelihood Assistance (Social Security)	725	265	990
Tax	416	132	548
Labour	1,259	333	1,592
Others	2,683	1,113	3,796
Total	38,842	15,997	54,839

Federation of the Civil Liberties Commissioners in Tokyo and Osaka are giving effective legal aid out of the fund coming from the Community Chest or contributions by local bodies.

### 4. LEGAL CONSULTATION CONDUCTED BY OTHER OFFICIAL BODIES

#### (1) Consultation by Family Courts concerning Domestic Relations

Family courts deal with juvenile cases as well as cases of domestic relations. Cases of domestic relations are adjudged or conciliated by Family courts at small costs (fee from ¥50 to ¥100, approximately from 65 nP. to 1.30 nP.) and postal expenses for communication between the courts and the persons concerned. Handling these cases at such low costs practically serves as legal aid in this field. Besides, advisory departments of Family courts give advice free of charge on various legal problems concerning domestic relations. This latter device also is working satisfactorily.

#### (2) Legal Consultation Conducted at the Police Offices

This device began in 1919 when the Personal Affairs Consultation Office was established at the Tokyo Metropolitan Police Office. Today, consultation system is adopted under various names in police offices of eight prefectures. Such consultations comprise various legal problems involving domestic relations, succession, lease of land or house, etc.

#### (3) Legal Consultation Conducted by Local Public Bodies

Recently, many cities in Japan carry on legal consultation either independently or in cooperation with Local Lawyers' Associations, the Legal Affairs Bureaus, or the Local Legal Affairs Bureaus. For instance, in Tokyo, the Public Hearing Division of the Metropolitan Government gives advice on legal problems to citizens, as well as hearing and giving advice about complaints arising out of the functioning of local government. Such cases numbered 3,970 during the period from October 1955 to December 1956. Lawyers employed on part-time basis take charge of the matter. Each ward in the Metropolis also establishes Free Legal Consultation Offices either in cooperation with the Lawyers' Association of the ward or the Tokyo Legal Affairs Bureau.

#### (4) Legal Consultation by Law Schools

Law schools of Tokyo, Tohoku and Kyoto Universities have legal clinics under the guidance of professors. Besides these legal clinics, some students of Tokyo University run another Legal Con-

sultation Office at the Tokyo University Settlement. This office was established in 1918 in the eastern part of Tokyo, the part of the city chiefly inhabited by the poor. It was suspended during the last war but has resumed its activities.

## 5. LEGAL AID BY PRIVATE ORGANISATIONS

### (1) Legal Consultation by Lawyers' Associations

On the Constitution Day in May, on the Anniversary of the Enactment of the Lawyers Act in September, and the Judiciary Day in November, the Japan Federation of Lawyers' Associations open temporary free legal consultation offices at station plazas, shopping centres and department stores. Major newspapers give substantial aid to these activities.

Each local lawyers' association is conducting various legal consultation with the financial aid from local public bodies or in cooperation with other organisations.

### (2) Legal Aid Association

In co-operation with the Supreme Court, Ministry of Justice and other governmental agencies concerned, the Japan Federation of Lawyers' Associations founded a Legal Aid Association in 1952. The fund of the Association, at the beginning consisted of an endowment of Y1,000,000 contributed by the Japan Federation of Lawyers' Associations, and working fund of Y3,000,000 donated by some lawyers and some business corporations. Since then, the working fund has been increased by gifts from local public bodies and others.

As an executive organ of the Association, the Legal Aid Committee has been set up for the purpose of examining the property of applicants for legal aid, appointing lawyers to take charge of the case, and levying costs. Table V shows the outcome of the work of the Association from its establishment up to 1955.

### (3) Legal Consultation by Newspapers

Major newspapers have legal consultation columns where legal questions raised by the public are answered by qualified persons from the Ministry of Justice, Legal Aid Association or legal clinics belonging to Universities. These columns are quite effective in settling legal disputes. As mentioned on 5(1) of this paper, some newspapers help lawyers' associations in their efforts for legal consultation.

Table V

### Legal Aid Given by Legal Aid Association

Year	Applications Made (Including Cases carried over from the Preceding Year)	RESULTS				
		Settled through Legal Consultation	Legal Aid denied due to Financial Capability of Applicants or other reasons	Legal Aid Given	Determination Reserved	Pending (Carried over to the next year)
1952	195	73	50	49	8	15
1953	188	77	38	40	17	16
1954	318	224	30	43	8	13
1955	486	365	46	43	5	9
Total	1125	739	164	175	38	9

### ADDITIONAL DATA

#### Legal Aid Given by Legal Aid Association

It has been pointed out in the already distributed material<sup>1</sup> that since 1958 fiscal year the Government has undertaken to subsidize the Legal Aid Association for its work of legal aid. The Association has thereupon decided to establish its branch offices, one in each "To", "Do", "Fu" and prefecture, at 46 localities in order to carry out its legal aid activities throughout the country.

According to the regulations of the Association, a person who wants to be given legal aid is required to fill in a prescribed application form and submit it to the branch office of the Association, and also to prove either by presenting a certifying document issued by competent authorities or other documents, or by oral statements that his rights cannot be protected without such aid.

The examination as to whether or not aid is necessary in a case will be carried out by the Legal Aid Examination Committee. The Committee is composed of lawyers, social workers, officials concerned of the Ministry of Justice, etc. under each branch office of the Association.

The said examination will be made with the following standards as the basis of the decision:

1. That the applicant is a person of scanty means being either

<sup>1</sup> "Report on Legal Aid in Japan" presented to Cairo Session.

- (1) a person who qualifies for the protection under the Daily Life Protection Law,<sup>2</sup> or
  - (2) a person whose living would be menaced by the payment of expenses for a suit, or
  - (3) a person who may be regarded nearly the same as the person mentioned in (2) above.
2. That the suit promises to be a winning one.
  3. That it is appropriate to give the aid.

In case aid is to be given, details such as the amount of expenses for the lawsuit concerned to be paid in advance by the Association on behalf of the client, etc., will be decided upon by the Association and the lawyer who will take charge of the lawsuit will also be decided by Association upon recommendation of the Lawyers' Association.

The expenses payable in advance by the Association on behalf of the client cover nearly all the items of expenses of a lawsuit including the suit, lawyer's fee and remuneration, and guaranty money.

When a suit has been settled, the person given aid, shall reimburse the expenses paid by the Association. However, in case the aided person has lost the case, or in case in spite of his winning the case the amount of money he receives from the other party is too small, or in other similar cases, his duty for the reimbursement may, according to the circumstances, be either waived or suspended with the permission of the Minister of Justice.

The cases handled by the Association during fiscal year 1958 were as follows:

Cases in which aid was applied for	...	...	...	643,
broken down into—				
Cases in which aid was given	...	...	...	256,
Cases in which aid was not considered necessary	...	...	...	244,
Cases pending examination	...	...	...	143.

For reference the Act of Endowment of the Association, the Office Regulations for Legal Aid and the Detailed Rules of Legal Aid Examination Committee are attached herewith.

<sup>2</sup> The Daily Life Protection Law has been legislated in accordance with the following provision of the Constitution: "All people shall have the right to maintain the minimum standards of wholesome and cultured living."

## Office Regulations for Legal Aid

### Chapter 1. Legal Aid Examination Committee

#### Article 1

The main office and branch offices shall have Legal Aid Examination Committees (hereinafter referred to as "Committee").

#### Article 2

The Committee shall consist of one chairman of the Committee, three or more than three vice-chairmen and a certain number of Committee members.

The Committee member shall be appointed by chief director in the case of the Committee of the main office and by the chief of the branch office in the case of the Committee of the branch office.

The chairman and vice-chairman shall be elected by mutual vote from among the Committee members.

The term of office of the chairman, vice-chairman and Committee members shall be two years, provided that they may be re-elected.

#### Article 3

The Committee shall conduct examinations and render decisions concerning the acceptance or non-acceptance of the application for aid, concerning the application of the standard for aid in actual case, and also concerning the standard in general.

#### Article 4

The Committee of the branch office shall request approval of the Committee of the main office with regard to the aid conditions provided for in Article 11 and Article 14, with necessary data attached to the request.

#### Article 5

The Committee may appoint a sub-committee if necessary.

The sub-committee shall consist of one chairman, one vice-chairman and a certain number of sub-committee members.

The chairman, vice-chairman and members of sub-committee shall be selected and appointed by chairman of the Committee.



**Article 6**

The sub-committee may exercise the power of the Committee on its behalf. However, the sub-committee shall report to the Committee on the result of the disposition of cases and request for its approval.

**Article 7**

The resolution of the Committee and the sub-committee shall be rendered by a majority of vote of those who are present. In case of a tie the chairman of the Committee or chairman of the sub-committee shall decide.

**Chapter 2. Acceptance of a Case****Article 8**

A person who applies for legal aid (including aid connected or not connected with litigation, aid in the form of a legal advice, etc.) (hereinafter referred to as "client") shall fill in a prescribed form and submit to the branch office of the Association.

The client must prove that without the aid of the Association he cannot protect his own rights.

**Article 9**

On receipt of an application for aid the chief of the branch office shall refer it to the Committee for its disposition.

The Committee may ask the sub-committee to dispose of it.

**Article 10**

The Committee shall examine the merits of the case and investigate into the means of the client and decide whether it will accept the case or not.

If the case wherein aid has been applied for is considered as falling under one of the following items, the acceptance of such case may be refused, in which case the client shall be so informed immediately.

- (1) That the case is not worth to be handled from the point of view of justice and law.
- (2) That the case is of such nature as any of the lawyers in general can undertake without demanding retaining fee from the client.
- (3) That the client cannot prove the circumstances under which he needs aid.

- (4) That the case will have to be disposed in a remote place, or that it is extremely difficult to handle it, or that it requires special technical ability.

**Article 11**

In case the Committee has accepted an application as prescribed in the preceding Article it shall determine the amount of expenditure (trial costs, incidental actual costs and fees) necessary for handling the case, and also the amount of the expenditure and remuneration to be borne by the client, and the Committee shall inform them to the client.

**CHAPTER 3. DISPOSITION OF A CASE****Article 12**

When the Committee has accepted a case as prescribed in Article 10 it shall request a lawyers' association to recommend a lawyer (hereinafter referred to as "entrusted lawyer") to be entrusted with the case (hereinafter referred to as "entrusted case") with the indication of the outline of the case concerned and the conditions of the aid to be given.

**Article 13**

The entrusted lawyer shall, in accordance with the provisions of Article 11, enter into contract with the client and receive the expenses from the client and Association according to the division, of the charge to be borne by them.

**Article 14**

The entrusted lawyer may, in case expenses are insufficient or in case he needs guaranty money, etc., apply to the Committee for such expenses.

The provisions of Article 11 and the preceding Article shall apply *mutatis mutandis* in the case of the preceding paragraph.

**Article 15**

The entrusted lawyer shall, in case the entrusted case is deemed to be worth the aid in litigation, so notify to the court.

**Article 16**

The entrusted lawyer shall not make any advance payment of money on behalf of the client or collect money from him without the approval of the Committee. The same shall apply to any type of payment other than pecuniary payment.

**Article 17**

The Committee may collect reports from the entrusted lawyer concerning the disposition of the entrusted case whenever it is necessary.

**Article 18**

In case the client is found to have enough means so as not to require any aid or has come to possess such means, or in case it has been found that the case concerned has come to fall under Article 10 paragraph 2 item 1, after a case was accepted as prescribed in Article 10, the Committee may discontinue the aid to such client.

The entrusted lawyer shall, in case he suspects that the client or the entrusted case may fall under the preceding paragraph, immediately report to the Committee to that effect.

**Article 19**

The Committee, in case it has discontinued the aid under the preceding Article, may collect from the client the whole or a part of the expenses already disbursed for him.

**Article 20**

The Committee may, in case the entrusted lawyer has been found exceedingly unfit for handling the case, so inform the lawyers' association which has recommended the lawyer and request it to take appropriate measures.

In the case of the preceding paragraph, when the entrusted lawyer has resigned, recommendation of another lawyer may be requested by the Committee and the resigned lawyer may be made to pay back the whole or a part of the expenses already delivered to him according to the progress of the case.

The newly recommended entrusted lawyer shall have the delivery of expenses by applying the Article 11 *mutatis mutandis*.

**Article 21**

The entrusted lawyer shall, when the entrusted case has been settled, immediately submit to the Committee a report of the case by filling in a prescribed form.

**Article 22**

The entrusted lawyer shall collect on behalf of the Association the expenditure and prescribed remuneration with respect to the

entrusted case from the money he has collected or caused a person to collect on behalf of the client. The same shall apply in the case where the client has gained any property or profit other than money.

In the application of the preceding paragraph the Committee may waive, if it deems it appropriate to do so, the client from paying the whole or a part of the amount of money which has been or has to be charged upon the client.

**Article 23**

The Committee shall submit a report on the case to the chief of the branch office after the settlement thereof together with documents concerned.

**Supplementary Provision**

The present Rules shall be enforced as from March 20, 1958.

**Act of Endowment of Incorporated Foundation the****Legal Aid Association****CHAPTER 1. NAME AND LOCATION****Article 1**

The Association shall be called Incorporated Foundation the Legal Aid Association.

**Article 2**

The office of the Association shall be located at No. 1, 1-Chome, Kasumigaseki, Chiyoda-ku, Tokyo.

**Article 3**

The Association may establish a branch office if necessary.

**CHAPTER 2. OBJECT AND BUSINESS****Article 4**

The object of the Association is to ensure justice on behalf of the persons who need legal aid and to protect their rights.

**Article 5**

The Association shall perform the following business for attaining the object prescribed in the preceding Article:

- (1) To aid persons of scanty means on legal matters.
- (2) To make researches, to collect or prepare statistics and reference materials, to publish literatures, and to hold lecture meetings, with respect to the aid mentioned in the preceding item.
- (3) Other matters necessary to attain the object of the Association.

**CHAPTER 3. CO-OPERATIVE ORGANIZATIONS**

**Article 6**

The Japan Federation of Lawyers' Association, All Lawyers' Associations, Civil Liberties Association and other organizations which approve, and co-operative in the work of this Association and which are recognized by the board of directors of this Association shall be co-operative organizations.

**Article 7**

The co-operative organizations shall make efforts for the accomplishment of the Association's work according to their respective duties and functions.

**CHAPTER 4. OFFICERS**

**Article 8**

The Association shall have the following officers:

1. Chief Director	...	...	...	...	1
2. Directors	...	...	...	...	50 or less
3. Auditors	...	...	...	...	5 or less
4. Counsellors	...	...	...	...	some
5. Councillors	...	...	...	...	some

**Article 9**

The chief director, directors and auditors shall be appointed by the council.

The chief director shall represent the Association and assume the control of its business.

Five standing directors shall be chosen by the mutual voting of the directors.

Standing directors shall assist chief director, and in case chief director cannot carry out his duties they shall act for him.

Auditors shall audit the accounts of the Association.

Counsellors and councillors shall be commissioned by chief director from among the persons recommended by co-operative organizations.

**Article 10**

Counsellors shall give their opinion by the board of directors upon the latter's request.

**Article 11**

The term of office of an officer shall be two years provided that he may be reappointed.

When a vacancy on the staff of officers has been filled by an officer the term of office of such officer shall be the remaining term of his predecessor. An officer shall carry out his duties even after the expiration of his term of office until his successor will have been appointed.

**Article 12**

The board of directors shall be convened by chief director once a month. However, it may be convened whenever necessary.

The decision of the board of director shall be made by a majority vote of those who are present. In the case of a tie the vote shall be decided by chief director.

**Article 13**

The council shall be convoked by chief director when he finds it necessary to convene it or when one or more than one councillor indicates a subject for discussion and requests for the convocation of the council with the consent of the one-fifth or more of the councillors.

The council shall, upon request of the chief director, perform deliberations on important matters.

The resolution of the council shall be made by a majority vote of those who are present.

**CHAPTER 5. ASSETS AND ACCOUNTS**

**Article 14**

The total amount of the assets of the Association at the time of its establishment shall be the one million yen contributed by the founders of the Association and this shall be the fund of the Association. The fund shall not be disposed of without the resolution of the board of directors and of the council.

**Article 15**

The expenses of the Association shall be disbursed from the following:

1. Subsidies
2. Contributions
3. Income from business
4. Fruits from assets
5. Other incomes

**Article 16**

The fiscal year of the Association shall start from April 1 and end on March 31 of the following year.

**Article 17**

The budget for revenue and expenditure of the Association shall be determined by the board of directors after its deliberation by the council. The settlement of accounts, the inventory of assets and the business report shall be submitted to the council after the end of the fiscal year together with the opinions of the auditors, and the council's approval shall be requested of them within two months of the end of the fiscal year.

**CHAPTER 6. BRANCH OFFICES****Article 18**

The regulations concerning the branch offices shall be determined by the board of directors.

**CHAPTER 7. SECRETARIAT****Article 19**

The main office and branch offices shall have their secretariats for the discharge of general affairs.

**CHAPTER 8. MISCELLANEOUS RULES****Article 20**

Rules necessary for the business operations of the Association shall be determined by the board of directors separately from the present Act.

**Article 21**

Any amendment to the present Act of Endowment shall be made with the resolution of the board of directors and with the approval of the council.

**Supplementary Provisions**

The first chief director, directors and auditors of the Association at the time of its establishment shall be as follows and their terms of office shall, regardless of the provision of Article 11, expire on March 31, 1952. (This Act of Endowment shall be enforced from January 24, 1952.)

These amended provisions shall be enforced from June 25, 1958. However, the amended provision of Article 11 shall apply to officers appointed after the enforcement.

**DETAILED RULES FOR LEGAL AID  
EXAMINATION COMMITTEE**

(Convocation of Committee, Sub-Committee or Meetings of Sub-Committee Chairmen)

**Article 1**

The Legal Aid Examination Committee (hereinafter referred to as the "Committee") shall be convened by chairman of the Committee once every month. However, it may be convened at any time when necessary.

The sub-committee of the Committee (hereinafter referred to as the "sub-committee") shall be convoked by chairman of the sub-committee whenever necessary.

The chairman of the Committee may convoke the meeting of chairmen of sub-committees whenever necessary. The meeting of chairmen of sub-committees shall deliberate on simple matters common to all sub-committees.

(Scope of persons needing aid)

**Article 2**

The persons to be given legal aid shall be limited to those who fall under any of the following items and recognized by the Committee as needing such aid:

- (1) Person who qualifies for the protection under the Daily Life Protection Law (Law No. 144 of 1949).
- (2) Person whose living would be menaced by the payment of expenses for a suit.
- (3) Person who may be regarded nearly the same as a person coming under the preceding item.

**(Scope of aid-needing case)****Article 3**

The cases in which legal aid is to be given shall be limited to those in which the amount of value of the object of the suit is within around 500,000 yen; however this rule may not be applied in the case where such aid is specially necessary in view of the nature of the case.

**(Standard of fee and remuneration)****Article 4**

The fee and remuneration of the entrusted lawyer for settling a case shall be determined by the provisions of standard of compensation, etc., of the Japan Federation of Bar Associations.

**(Certification of clients means)****Article 5**

The condition of the means of the client shall have to be certified by documents prepared by the government office or district welfare commissioner, etc. having the entry of the fact prescribed in any item of Article 2. However, in an urgent case this shall not apply so far as the condition is clearly known from existing circumstances.

**(Hearing of client's opinion)****Article 6**

The committee or sub-committee may hear the opinion of the client concerning the disposition of the case by the entrusted lawyer, if necessary.

**(Preparation of document)****Article 7**

The secretariat shall prepare the following documents and seek the approval of the chairman of the committee or sub-committee:

- (1) The minutes of the proceedings of the committee or sub-committee meetings.
- (2) Report on the disposition of cases.
- (3) Report concerning delivery and receipt of money.

**Supplementary Provision**

These detailed rules shall be enforced as from April 1, 1958.

**6. FREE LEGAL AID IN PAKISTAN****CODE OF CIVIL PROCEDURE 1908 (ACT V OF 1908)**

(First Schedule)

**ORDER XXXIII**

Suits By Paupers

**Suits may be instituted in forma pauperis**

1. Subject to the following provisions, any suit may be instituted by a pauper.

Explanation.—A person is a "Pauper" when he is not possessed of sufficient means to enable him to pay the fee prescribed by law for the plaint in such suit, or, where no such fee is prescribed, when he is not entitled to property worth one hundred rupees other than his necessary wearing-apparel and the subject-matter of the suit.

**Contents of application**

2. Every application for permission to sue as a pauper shall contain the particulars required in regard to plaints in suits: a schedule of any moveable or immoveable property belonging to the applicant, with the estimated value thereof, shall be annexed thereto; and it shall be signed and verified in the manner prescribed for the signing and verification of pleadings.

**Presentation of application**

3. Notwithstanding anything contained in these rules, the application shall be presented to the Court by the applicant in person, unless he is exempted from appearing in Court, in which case the application may be presented by an authorised agent who can answer all material questions relating to the application, and who may be examined in the same manner as the party represented by him might have been examined had such party attended in person.

**Examination of Applicant**

4.—(1) Where the application is in proper form and duly presented, the Court may, if it thinks fit, examine the application, or his agent when the applicant is allowed to appear by agent, regarding the merits of the claim and the property of the applicant.

**If presented by agent, Court may order applicant to be examined by commission**

(2) Where the application is presented by an agent, the Court may, if it thinks fit, order that the applicant be examined by a

commission in the manner in which the examination of an absent witness may be taken.

#### Rejection of application

5. The Court shall reject an application for permission to sue as a pauper—

- (a) Where it is not framed and presented in the manner prescribed by Rules 2 and 3, or
- (b) where the applicant is not a pauper, or
- (c) where he has, within two months next before the presentation of the application, disposed of any property fraudulently or in order to be able to apply for permission to sue as a pauper, or
- (d) where his allegations do not show a cause of action, or
- (e) where he has entered into any agreement with reference to the subject-matter of the proposed suit under which any other person has obtained an interest in such subject-matter.

#### Notice of day for receiving evidence of applicant's pauperism

6. Where the Court sees no reason to reject the application on any of the grounds stated in rule 5, it shall fix a day (of which at least ten days' clear notice shall be given to the opposite party and the Government pleader) for receiving such evidence as the applicant may adduce in proof of his pauperism, and for hearing any evidence which may be adduced in disproof thereof.

#### Procedure at hearing

7.—(1) On the day so fixed or as soon thereafter as may be convenient, the Court shall examine the witnesses (if any) produced by either party, and may examine the applicant or his agent, and shall make memorandum of the substance of their evidence.

(2) The Court shall also hear any argument which the parties may desire to offer on the question whether, on the face of the application and of the evidence (if any) taken by the Court as herein provided, the applicant is or is not subject to any of the prohibitions specified in Rule 5.

(3) The Court shall then either allow or refuse to allow the applicant to sue as a pauper.

#### Procedure if application admitted

8. Where the application is granted, it shall be numbered and registered, and shall be deemed the plaint in the suit, and the

suit shall proceed in all other respects as a suit instituted in the ordinary manner, except that the plaintiff shall not be liable to pay any court-fee (other than fees payable for service of process) in respect of any petition, appointment of a pleader or other proceeding connected with the suit.

#### Dispaupering

9. The Court may, on the application of the defendant, or of the Government pleader, of which seven days' clear notice in writing has been given to the plaintiff, order the plaintiff to be dispaupered:

- (a) if he is guilty of vexatious or improper conduct in the course of the suit;
- (b) if it appears that his means are such that he ought not to continue to sue as a pauper; or
- (c) if he has entered into any agreement with reference to the subject-matter of the suit under which any other person has obtained an interest in such subject-matter.

#### Costs where pauper succeeds

10. Where the plaintiff succeeds in the suit, the Court shall calculate the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper; such amount shall be recoverable by the (Provincial Government) from any party ordered by the decree to pay the same, and shall be a first charge on the subject-matter of the suit.

#### Procedure where pauper fails

11. Where the plaintiff fails in the suit or is dispaupered, or where the suit is withdrawn or dismissed,—

- (a) because the summons for the defendant to appear and answer has not been served upon him in consequence of the failure of the plaintiff to pay the court-fee or postal charges (if any) chargeable for such service, or
- (b) because the plaintiff does not appear when the suit is called on for hearing, the Court shall order the plaintiff, or any person added as a co-plaintiff to the suit, to pay the court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper.

#### Procedure where pauper suit abates

11A. Where the suit abates by reason of the death of the

plaintiff or of any person added as a co-plaintiff the Court shall order that the amount of court-fees which would have been paid by the plaintiff if he had not been permitted to sue as a pauper shall be recoverable by the Provincial Government from the estate of the deceased plaintiff.

**Provincial Government may apply for payment of court-fees**

12. The (Provincial Government) shall have the right at any time to apply to the Court to make an order for the payment of court-fees under rule 10, (rule 11 or rule 11A).

**Provincial Government to be deemed a party**

13. All matters arising between the (Provincial Government) and any party to the suit under rule 10, rule 11 (rule 11A) or rule 12 shall be deemed to be questions arising between the parties to the suit within the meaning of section 47.

**Recovery of amount of court-fees**

14. Where an order is made under rule 10, rule 11 or rule 11A the Court shall forthwith cause a copy of the decree or order to be forwarded to the Collector, who may, without prejudice to any other mode of recovery, recover the amount of court-fees specified therein from the person or property liable for the payment as if it were an arrear of land revenue.

**Refusal to allow applicant to sue as pauper to bar subsequent application of like nature**

15. An order refusing to allow the applicant to sue as a pauper shall be a bar to any subsequent application of the like nature by him in respect of the same right to sue, but the applicant shall be at liberty to institute a suit in the ordinary manner in respect of such right, provided that he first pays the costs (if any) incurred by the (Provincial Government) and by the opposite party in opposing his application for leave to sue as a pauper.

**Costs**

16. The costs of an application for permission to sue as a pauper shall be costs in the suit.

**ORDER XLIV**

**PAUPER APPEALS**

**Who may appeal as pauper**

1. Any person entitled to prefer an appeal, who is unable to pay the fee required for the memorandum of appeal, may present

an application accompanied by a memorandum of appeal, and may be allowed to appeal as a pauper, subject, in all matters, including the presentation of such application, to the provisions relating to suits by paupers, in so far as those provisions are applicable:

**Procedure on application for admission of appeal**

Provided that the Court shall reject the application unless, upon a perusal thereof and of the judgment and decree appealed from, it sees reason to think that the decree is contrary to law or to some usage having the force of law, or is otherwise erroneous or unjust.

**Inquiry into pauperism**

2. The inquiry into the pauperism of the applicant may be either by the Appellate Court or under the orders of the Appellate Court by the Court from whose decision the appeal is preferred:

Provided that, if the applicant was allowed to sue or appeal as a pauper in the Court from whose decree the appeal is preferred, no further inquiry in respect of his pauperism shall be necessary, unless the Appellate Court sees cause to direct such inquiry.

**THE SUPREME COURT RULES, 1956**

**Part II**

**APPELLATE JURISDICTION**

**ORDER XXII**

**Pauper Appeals, Petitions etc.**

1. The provisions of Order XLIV in the First Schedule to the Code, shall, with necessary modifications and adaptations, apply in the case of any person seeking to appeal to the Court as a pauper.

2. An application for permission to proceed as a pauper shall be made on petition, setting out concisely in separate paragraphs, the facts of the case and the relief prayed, and shall be accompanied by a certificate of counsel that the petitioner has reasonable grounds of appeal. It shall be also accompanied by an affidavit from the petitioner disclosing all the property to which he is entitled and the value thereof, other than his necessary wearing apparel and his interest in the subject matter of the intended appeal, and stating that he is unable to provide sureties, and pay court-fees. The Registrar on satisfying himself that the petition

is in order, may himself enquire into the pauperism of the petitioner after notice to the other parties in the case and to the Attorney-General, or refer the matter to the Registrar of the High Court, and the High Court either itself or by a Court subordinate to the High Court investigate into the pauperism after notice to the parties interested and make a report thereon within thirty days after the receipt of the reference from this Court:

Provided that no reference as aforesaid shall be necessary where the petitioner had been permitted to prosecute his appeal in *forma pauperis* in the Court appealed from.

3. The Court may allow an appeal to be continued in *forma pauperis* after it has begun in the ordinary form.

4. Where the petitioner obtains leave of the Court to appeal as a pauper he shall not be required to pay Court-fees or to lodge security for the costs of the respondent.

5. Where the appellant succeeds in the appeal, the Registrar shall calculate the amount of court-fees which would have been paid by the appellant if he had not been permitted to appeal as a pauper and incorporate it in the decree or order of the Court; such amount shall be recoverable by the Federal Government from any party ordered by the Court to pay the same, and shall be the first charge on the subject-matter of the appeal.

6. Where the appellant fails in the appeal or is dispaupered, the Court may order the appellant to pay the court-fees which would have been paid by him if he had not been permitted to appeal as a pauper.

7. The Federal Government shall have the right at any time to apply to the Court to make an order for the payment of proper court-fees under the last two preceding rules.

8. In every pauper appeal the Registrar shall, after the disposal thereof, send to the Federal Government a memorandum of the court-fees due and payable by the pauper.

9. No person shall take, agree to take or seek to obtain from a person proceeding as a pauper, any fee, profit or reward for the conduct of the pauper's business in the Court, but the Court may nevertheless award costs against the other party and in that case may direct payment thereof to the Advocate of the pauper and the Attorney acting for him.

## ORDER XXIII

### CRIMINAL APPEALS

7. In proper cases the Court may in its discretion direct engagement of an Advocate for an accused person at the cost of the government. In such a case the engagement of an Attorney to instruct the Advocate shall not be necessary. The fee of the advocate so engaged shall be Rs. 100 per day, the day to be reckoned as  $4\frac{1}{2}$  hours of actual hearing in Court.

## SIND COURTS CRIMINAL CIRCULARS

### CHAPTER VII

#### SESSIONS PROCEDURES

6. In all cases in a Court of Sessions in which any person is liable to be sentenced to death, the accused shall be informed by the committing Magistrate at the time of committal, or if the case has already been committed, by the Sessions Court that, unless he intends to make his own arrangements for legal assistance, the Sessions Court will engage a legal practitioner at Government expense to appear before it on his behalf. If it is ascertained that he does not intend to engage a legal representative at his own expense, a qualified legal practitioner shall be engaged by the Sessions Court concerned to undertake the defence and his remuneration, as well as the copying expenses incurred by him, shall be paid by Government.

The appointment of an advocate or pleader for the defence should not be deferred until the accused has been called upon to plead. The advocate or pleader should always be appointed in sufficient time to enable him to take copies of the deposition and other necessary papers which should be furnished free of cost before the commencement of the trial. If after the appointment of such legal representative the accused appoints another advocate or pleader, the advocate or pleader appointed by the Court may still in its discretion be allowed his fee for the case.

In those Sessions Courts in which the District Public Prosecutors have an establishment of one or more copying clerk under them, the copies required by the pleader for the defence should be prepared by those copying clerks under the orders of the District Public Prosecutors. If in urgent cases this is found impossible, the District Public Prosecutor is authorized to employ temporarily an extra copying clerk, or if that is not possible, to obtain the



necessary copies from the Court's Sectioners, and in each instance the District Public Prosecutor should report the circumstances and the cause of emergency to the Remembrancer of Legal Affairs. In the case of District Public Prosecutors who have no copying clerks under them, the copies needed for the pleader for the defence must be obtained by the Public Prosecutors in the same way that they obtain copies for themselves, namely, through the Court's Sectioners and they should charge for such copies in their monthly bills, which are sent to the Remembrancer of Legal Affairs for counter-signature. In small cases the District Public Prosecutor might often be able to save the expenses of a double set of copies by allowing the pleader for the accused the use of his own copies.

## RULES AND ORDERS OF THE COURT OF JUDICATURE AT LAHORE

Volume III

### INSTRUCTIONS TO CRIMINAL COURTS

#### CHAPTER 24

PART C—Providing an accused person with Legal Advice  
before a Sessions Court in certain cases.

#### **Committing Magistrate to report whether accused can afford to engage counsel**

1. It is considered that every person charged with committing an offence punishable with death should have legal assistance at his trial either in a Court of Session or in the High Court. With this object the Magistrate committing any person for trial to a Court of Session or to the High Court shall report whether the accused was represented by counsel in the proceedings before him, and, if not, whether the accused can afford to engage one for his trial in the Court of Session or the High Court.

#### **Counsel for accused to be provided by Sessions Judge**

2. If the accused is unrepresented and cannot afford to engage counsel, the Sessions Judge shall make arrangements to employ counsel at Government expense, and he may also appoint counsel, if he thinks fit, even when the committing Magistrate has considered that the accused has means enough to engage counsel himself. Counsel in such cases should be appointed in time to enable him to study necessary documents which should be supplied free of cost. These documents will ordinarily be copies of:

- (1) the evidence recorded by the committing Magistrate, the charge and the order of commitment,

- (2) the police record including, not the zimnis, but such documents as the first information report, the inquest report and the plan of the spot.

#### **Fees of counsel**

3. The legal practitioner thus engaged by the Court trying the case shall receive the same fees as private practitioners engaged under the note to rule X (2) of the rules regulating the conduct of business in the Law Department, and the fees shall be entered in the same register and drawn in the same manner as is prescribed for such practitioners.

## HIGH COURT OF EAST PAKISTAN, DACCA

Extract from the Legal Remembrancer Manual of 1930

Vol. 1

### CHAPTER XI

Representation by Government of pauper  
accused punishable with death.

#### **Pauper accused punishable with capital sentence to be given legal assistance**

1. Every person charged with committing an offence punishable with death, shall have legal assistance at his trial and the courts should provide advocates or pleaders for the defence unless they certify that the accused can afford to do so.

Note: Offences punishable with death are those under Sections 121, 132, 194, 302, 303, 307 and 396 of the Indian Penal Code.

#### **Committing Magistrate to report to District Magistrate**

2. In committing murder cases to the Sessions Court, the Magistrate will report to the District Magistrate whether the accused was represented in the proceedings before him, and if not, whether he can afford to engage an advocate or pleader for his trial in the Sessions Court. If the Magistrate reports that the accused has not sufficient means, it will be incumbent on the District Magistrate to engage an advocate or pleader at Government expense.

#### **Judge to take action when accused goes unrepresented**

3. In any case, if the accused is unrepresented in the Sessions Court, and the Judge considers that he has insufficient means to obtain legal assistance, in spite of the committing Magistrate's

report to the contrary, the Judge shall immediately inform the District Magistrate, who must make the necessary arrangements for the defence of the accused.

#### **No discretion of court allowed**

4. It is no longer left to the discretion of the courts to decide whether the nature of the case makes legal assistance essential. The sole criterion is whether the accused has sufficient means or not, and the courts are bound to satisfy themselves on this point.

4A. "In each district the Magistrate may, after consulting the District Judge form a panel of pleaders for the defence of pauper accused in murder cases subject to the approval of the Legal Remembrancer. The panel should consist of pleaders of sufficient standing and ability and should not be unreasonably large. The number of pleaders who will constitute the panel shall be fixed after approval by the Legal Remembrancer and shall not be altered without his approval. The District Magistrate may, however, appoint or remove any pleader after consulting the District Judge within the number approved by Legal Remembrancer and after obtaining the Legal Remembrancer's previous sanction."

#### **Engagement of pleaders to be in time**

5. In all cases, the advocate or pleader should be appointed in time to be able to study the case, and the person selected should be of sufficient standing and ability to render substantial assistance. He should be given a brief similar to that prepared for the Public Prosecutor, and it would be convenient if the two briefs were copies of all papers of which an accused person is ordinarily allowed copies.

#### **Employment of pleaders in mutually antagonistic defence**

6. When two or more paupers accused of murder in the same trial put forward mutually antagonistic defence, arrangement should be made for separate representation of the accused by different pleaders or advocates at the expense of Government.

#### **Fees**

7. The fee allowed in the foregoing cases shall ordinarily be a lump sum fee. The fee shall be calculated on the basis of not more than Rs. 12 per day, and half fee for less than half-day. No reference to the Legal Remembrancer is necessary if the engagement is at this rate, but if a special fee is proposed, the pleader shall not be engaged without the previous sanction of the Legal Remembrancer, who will settle the fee on the recommendation of the District authority.

#### **Fee when trial is incomplete or abruptly ends**

8. When the trial abruptly ends on the plea of insanity of the accused person, or on the accused person admitting his guilt and the case is not contested the fee previously fixed for the whole case is liable to modification according to the discretion of the Legal Remembrancer. If the trial ends on the plea of insanity a fresh sanction is necessary for the defence of the accused person when a fresh trial is begun.

#### **Fee once settled is not revised**

9. The lump fee settled is not ordinarily subject to revision again.

#### **Defence of pauper accused in High Court Sessions**

10. In regard to cases where an accused is to be tried by the High Court for an offence punishable with death, the committing Magistrate should report to the Commissioner of Police whether the accused is a pauper, and will not be able to defray the expense of defending himself in the High Court. If the Magistrate reports that the accused has not sufficient means it will be incumbent on the Commissioner of Police to report the matter to the Legal Remembrancer who will arrange for counsel. The counsel will obtain the copies of charges, depositions and exhibits from the Clerk of the Crown and receive his instructions, from the accused direct. The police will give facilities for this purpose.

#### **In Rules and References for enhancement of sentence to one of death**

11. In cases in which an accused is called on by the High Court to show cause why lesser sentence should not be enhanced to a sentence of death, the Legal Remembrancer will communicate with the District Magistrate concerned, and ascertain whether the accused will be able to defend himself in the High Court or not. If the accused was defended as a pauper at Crown expense in the Sessions Court, he will obviously require to be similarly defended before the High Court. But cases may arise when the accused defends himself at his own expense in the Lower Court, and yet may be too poor to meet the cost of his defence in the High Court. In such cases enquiries will be made by the Magistrate before submitting his report to the Legal Remembrancer. If the District Magistrate reports that the accused has not enough means to defend himself in the High Court, the Legal Remembrancer will engage counsel for the accused and supply him with copies of charges, depositions and exhibits prepared for the Crown Counsel.