

THE KHYBER PAKHTUNKHWA LEGAL AID ACT, 2019
(KHYBER PAKHTUNKHWA ACT NO. XLIII OF 2019)

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THE KHYBER PAKHTUNKHWA LEGAL AID ACT, 2019
(KHYBER PAKHTUNKHWA ACT NO. XLIII OF 2019)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 21st October, 2019).

AN
ACT

*to provide for the establishment of a Legal Aid Agency
in the province of Khyber Pakhtunkhwa.*

WHEREAS It is expedient to establish and maintain a Legal Aid Agency in the Province of the Khyber Pakhtunkhwa and to provide legal aid to the indigent persons and for matters connected therewith and ancillary thereto;

It is hereby enacted as follows:

1. Short title, extent and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Legal Aid Act, 2019.

(2) It shall extend to the whole of the Province of the Khyber Pakhtunkhwa.

(3) It shall come into force at once.

2. Definitions.---(1)--- In this Act, unless the context otherwise requires,-

(a) “Agency” means the Khyber Pakhtunkhwa Legal Aid Agency, established under section 3 of this Act;

(b) “Court” means a Court, established under any law, for the time being in force;

(c) “Department” means the Home and Tribal Affairs Department of Government;

(d) “Director General” means the Director General of the Agency;

(e) “family dispute” means a dispute relating to divorce, maintenance, dowry, dower or custody of children, involving a female indigent person;

- (f) “Government” means the Government of the Khyber Pakhtunkhwa;
- (g) “indigent person” means a person, involved in the commission of an offence or a female involved in a family dispute, and does not have the financial capacity to engage an Advocate on his or her own;
- (h) “legal aid” means the legal services provided by an Advocate to an indigent person under this Act;
- (i) “prescribed” means prescribed by rules; and
- (j) “rules” mean the rules made under this Act.

(2) Words and expressions, used but not defined under this Act, shall have the same meanings as are assigned to them in the Code of Criminal Procedure, 1898 (V of 1898) or the Legal Practitioners and Bar Councils Act, 1973 (XXXV of 1973).

3. Khyber Pakhtunkhwa Legal Aid Agency.---(1) The Department shall, by notification in the official Gazette, establish a Legal Aid Agency to be known as the Khyber Pakhtunkhwa Legal Aid Agency.

(2) The Agency shall consist of the Director General and such other employees as Government may, in the prescribed manner, determine and appoint.

4. Functions of the Agency---(1) The Agency shall-

- (a) evolve policies, principles and guidelines for providing legal aid;
- (b) design and establish an effective mechanism for provision, monitoring and evaluation of legal aid;
- (c) advise the Government or any other agency in regard to enforcement of the right to fair trial and due process;
- (d) undertake and promote research in the field of legal aid with special reference to the need of such aid to the indigent persons;
- (e) devise and recommend structure of fees for legal aid for approval of Government;
- (f) perform such other functions as may be assigned to it by Government; and

(g) do all other things necessary for carrying out the purposes of this Act.

5. Superintendence of the Agency.---The superintendence and control of the Agency shall vest in the Government to be exercised by the Department in the prescribed manner.

6. Administration of the Agency.---(1) The administration of the Agency shall vest in the Director General who shall be responsible for effective administration and management of the affairs of the Agency so as to ensure that the objectives of this Act are faithfully accomplished.

(2) The Director General shall exercise such administrative and financial powers as may be prescribed or assigned to it by Government.

7. Director General---(1) Government may either post an officer of BPS-20, as Director General of the Agency or may appoint the Director General by initial recruitment, as the case may be, for a term not exceeding three years.

(2) The Director General appointed by initial recruitment shall possess such qualification and have such terms and conditions of service, as may be prescribed.

8. Duty to provide legal aid---The Agency shall make appropriate arrangements for the provision of legal aid to an indigent person in such manner and to such extent as may be prescribed.

9. Provision of legal aid.---(1) An indigent person, seeking legal aid, shall apply, in the prescribed manner, to the Agency.

(2) The application for legal aid shall be supported by an affidavit sworn by the applicant and such other documents as may be prescribed.

(3) The eligibility of an indigent person for legal aid shall be determined in the prescribed manner.

(4) If the Director General is satisfied that the applicant is an indigent person and fulfils the requirements of this Act, he shall provide him the legal aid, otherwise, his application shall be rejected.

(5) The Director General, after affording an opportunity of hearing, may recall the provision of legal aid at any stage of the case, for reasons of mis-statement, misrepresentation or fraud.

(6) Any person, aggrieved from the order, passed under sub-sections (4) and (5), may submit an appeal to the Secretary of the Department, within seven days from the communication of the order to him, in the manner as may be prescribed.

(7) The provision of legal aid to a person under this Act is without prejudice to the powers of a Court available to it under any other law for the time being in force.

10. Panel of Advocates.---(1) The Agency shall, for each financial year, accredit a panel of Advocates, in the prescribed manner, in each district or, if necessary, in any tehsil for provision of legal aid.

(2) The Agency shall initiate the process of accreditation of the Advocates for the next financial year, maximum in the first week of April of that year.

(3) Notwithstanding the conclusion of a financial year, the panel of Advocates accredited for the outgoing financial year shall continue to serve till such time that the new panel for that financial year is notified.

(4) The Agency may, in the prescribed manner, classify the accredited Advocates for purposes of providing legal aid to different classes of persons or Courts or both.

(5) The Agency shall not, at any one time, allocate the cases of legal aid to an Advocate on the panel in excess of the number prescribed.

(6) The Agency shall monitor and evaluate the quality of legal aid provided by each accredited Advocate.

(7) An accredited Advocate shall maintain a proper record of the cases entrusted to him and shall provide information to the Agency at such time and in such manner as may be prescribed.

11. Code of conduct.---(1) Government, on the recommendation of the Agency, may prescribe a code of conduct for accredited Advocates.

(2) The Director General may suspend or, subject to hearing, cancel the accreditation of an Advocate, when he is found guilty of breach of the code of conduct so prescribed.

12. Payment---The Director General shall promptly make payment of such professional fee, after deduction of the applicable taxes, to an Advocate engaged for legal aid as may be prescribed or approved by Government.

13. Unauthorized disclosure---(1) Except for purposes of this Act and subject to law, the Director General and no employee of the Agency shall disclose any information relating to an indigent person to any unauthorized person.

(2) Any unauthorized disclosure of information shall be construed as 'misconduct' within the meaning of the Khyber Pakhtunkhwa Efficiency and Disciplinary Rules, 2011 and shall be dealt with accordingly.

14. Information to indigent persons---A Court or, as the case may be, an investigating officer, a prosecutor or a prison officer shall, on coming to know that an indigent person remains undefended by an Advocate, shall inform him that he may apply to the Agency for legal aid.

15. Annual report---(1) The Director General shall prepare and submit the annual performance report of the Agency to Government by 30th September of each year, enumerating all the activities performed by it during the previous financial year, its successes and failures, the social impact of free legal aid and its future plans and targets.

(2) Government shall submit the annual performance report of the Agency, before the Provincial Assembly of the Khyber Pakhtunkhwa.

16. Furnishing false information---Any person who intentionally makes a false declaration or swears a false affidavit in support of his application for legal aid shall be punished with imprisonment of either description for a term which may extend to six months, but shall not be less than seven days.

17. Cognizance of offence---(1) An offence under this Act shall be non-cognizable.

(2) No Court shall take cognizance of an offence under this Act, except on a complaint, in writing, made by the Director General or any officer of the Agency, authorized by him in this behalf.

18. Delegation of powers---The Director General may delegate any of his powers, except the powers delegated to him, to any employee of the Agency.

19. Power to make rules---Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

20. Removal of difficulties---If any difficulty arises in giving effect to or applying the provisions of this Act, Government may, within two years from the commencement of this Act, make such order, not inconsistent with this Act or the rules, as may be necessary for removal of such difficulty.