

THE LEGAL AID AND LEGAL ASSISTANCE BILL
(No. XIII of 2025)

Explanatory Memorandum

The object of this Bill is to repeal the existing Legal Aid and Legal Assistance Act and re-enact a modern legislation with a view to making it more accessible for persons with low income and who cannot afford legal representation to have access to justice in civil and criminal proceedings before any Court.

2. The Bill, inter alia –

- (a) provides for an increase in the ceiling of the monthly earnings, and the assets, of a person who seeks to obtain legal aid or legal assistance;
- (b) widens the offences for which legal aid and legal assistance may be obtained; and
- (c) imposes an obligation on –
 - (i) the Court to inform a person, in a language that he is conversant with, of the possibility to obtain legal aid; and
 - (ii) a police officer who intends to record the statement of a person under warning to inform the person, in case the person is not represented by a barrister, that he may make an application for legal assistance for legal advice and counselling during the recording of the statement.

3. Opportunity has also been taken to address shortcomings in the law with regard to legal aid and legal assistance.

G. P. C. GLOVER, S.C.
Attorney-General

16 May 2025

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A BILL

**To repeal the Legal Aid and Legal Assistance Act and
re-enact a modern legislation**

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Legal Aid and Legal Assistance Act 2025.

2. Interpretation

“Appellate Court” means the Court of Criminal Appeal or the Supreme Court in the exercise of its appellate jurisdiction in criminal matters;

“application” means an application for legal aid or legal assistance;

“applicant” means a person who makes an application for legal aid or legal assistance;

“assets” means –

- (a) money, in any currency, in local banks and foreign banks;
- (b) money deposited in a non-bank deposit taking institution licensed by the Bank of Mauritius;
- (c) cash in hand in any currency accepted as legal tender in any country;
- (d) securities, including stocks, bonds, treasury bills or other units held in Mauritius or abroad;
- (e) shares or any interest in a company, *société* or partnership;
- (f) trust property;
- (g) any virtual asset;
- (h) any freehold or leasehold immovable property registered in Mauritius or abroad;
- (i) any motor vehicle;

“average monthly household income”, in respect of an applicant –

- (a) means his average monthly earnings and, if applicable, the average monthly earnings of his spouse or partner; but
- (b) does not include –
 - (i) his average monthly expenses and, if applicable, the average monthly expenses of his spouse or partner and his dependents;
 - (ii) any loan contracted by him;

“civil proceedings” includes proceedings in extrajudicial matters;

“Court” means –

- (a) in respect of civil or criminal proceedings before the Supreme Court or a Court of Appeal, the Chief Justice or a Judge designated by him;

- (b) in respect of civil or criminal proceedings before any other court, a Magistrate of that court;

“earnings” means any source of income;

“juvenile” means a child aged 14 or above but below the age of 18;

“subordinate court” means the Supreme Court in the exercise of its original jurisdiction, the District Court, the Intermediate Court, the Industrial Court or the Criminal Division of the Children’s Court, as the case may be.

3. Application of Act

- (1) This Act shall not apply to any disciplinary proceedings.

(2) Part II, in respect of criminal proceedings, shall not apply to a person who is tried for an offence before the District Court, other than an offence tried by the District Court which is punishable by penal servitude.

- (3) Part III shall apply to an arrestable offence.

PART II – LEGAL AID IN CIVIL AND CRIMINAL PROCEEDINGS

4. Right to legal aid

(1) Where a person brought, or summoned to appear, before a court is not represented by a barrister or an attorney, the court shall, before the start of the proceedings to which that person is a party, inform him in a language in which he is conversant that he may make an application for legal aid under this Act.

(2) Subsection (1) shall not apply where the person has been informed by the court at least once during the proceedings.

5. Eligibility for legal aid

Subject to section 8(3), no person shall be eligible to obtain legal aid in civil or criminal proceedings unless –

- (a) his average monthly household income does not exceed 25,000 rupees; and
- (b) his assets, excluding his wearing apparel, tools of trade and, if any, the subject matter of the proceedings, do not exceed one million rupees.

6. Application for legal aid

(1) A person who is a party to civil or criminal proceedings and who wishes to obtain legal aid shall make an application to the Court by swearing an affidavit in the form set out in the Schedule.

(2) The Court may, on an application made under subsection (1) –

- (a) cause such inquiry as it thinks fit to be made as to the means of the applicant and may request such additional information as may be required from the applicant; and
- (b) refer the application to a barrister or an attorney, or both, to give their opinion as to its apparent merits.

(3) A person who, for the purpose of, or in connection with, an application for legal aid wilfully gives information which is false or misleading shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to penal servitude for a term not exceeding 3 years.

7. Legal aid in criminal appeals

(1) Where the subordinate court sentences a convicted person, it shall, where the convicted person was not represented by a barrister or the convicted person was represented by a barrister by virtue of legal aid, inform the convicted person in a language in which he is conversant that, in case he wishes to make an appeal against its final decision, he may make an application for legal aid under this Act, and such fact shall be so recorded by the Court.

(2) Where, pursuant to subsection (1), the convicted person wishes to obtain legal aid to enable him to appeal against the final decision of the subordinate court, he shall –

- (a) inform the subordinate court, orally or in writing, of his intention to appeal; and
- (b) apply, in the form set out in the Schedule, for the grant of legal aid.

(3) The subordinate court –

- (a) shall, on an application under subsection (2)(b), order that execution of judgment be stayed pending a decision on the application for legal aid; and

- (b) may, depending on the circumstances of the case, by order –
 - (i) remand the applicant in custody;
 - (ii) release the applicant on parole with or without a requirement that the applicant report to a police station at specified intervals.
- (4) The subordinate court may issue execution of judgment where –
 - (a) it is satisfied, after an enquiry made by it under section 6(2)(a), that the applicant is not qualified for legal aid; or
 - (b) the applicant fails to comply with any order made by it under subsection (3)(b)(ii).

(5) This section shall be in addition to, and not in derogation from, any other enactment relating to appeals in criminal matters made from the subordinate court to the Appellate Court.

8. Grant of legal aid

- (1) Where the Court is satisfied that –
 - (a) the application for legal aid is well founded; and
 - (b) the applicant is qualified for legal aid,

the Court shall grant legal aid to the applicant.

(2) Where, pursuant to section 7(1)(b), the subordinate court approves the grant of legal aid under subsection (1), it shall transmit the record of the case to the Appellate Court.

(3) Notwithstanding section 5, where the assets of an applicant exceed one million rupees but his average monthly household income does not exceed 25,000 rupees, and the Court is of opinion that, in all the circumstances, it would not be reasonable and in the interest of justice to require the applicant to finance the litigation out of his assets, it may grant legal aid to the applicant.

(4) The Court shall communicate its decision to the applicant and make such orders consequential on its decision as it thinks fit.

9. Grant of legal aid to juvenile

- (1) Where a juvenile who is charged with a crime or misdemeanour

wishes to obtain legal aid, his parent or legal guardian, or any other person having his responsibility, shall inform the Court thereof and the Court shall, notwithstanding this Part, grant legal aid to the juvenile.

(2) Where a juvenile referred to in subsection (1) wishes to obtain legal aid and he has no parent, legal guardian or person having his responsibility, or his parent, his legal guardian or the person having his responsibility refuses to apply for legal aid on his behalf, the Court shall, notwithstanding this Part, grant legal aid to the juvenile.

PART III – LEGAL ASSISTANCE DURING POLICE ENQUIRY AND FOR BAIL APPLICATION

10. Right to legal assistance

(1) Where a person is suspected of having committed an offence, he shall, upon arrest, be informed by the police officer in charge of the police station that he may make an application for legal assistance during police enquiry, including legal advice and counselling during the recording of a statement under warning, and for bail application.

(2) Notwithstanding subsection (1), a police officer who intends to record the statement of a person under warning shall, in case the person is not represented by a barrister, inform the person that he may make an application for legal assistance for legal advice and counselling during the recording of the statement.

11. Eligibility for legal assistance

No person shall be eligible to obtain legal assistance unless –

- (a) his average monthly household income does not exceed 25,000 rupees; and
- (b) his assets, excluding his wearing apparel and tools of trade, do not exceed one million rupees.

12. Application for legal assistance

(1) A person who wishes to obtain legal assistance shall make an application to the District Court by swearing an affidavit in the form set out in the Schedule.

(2) The District Court may, on an application made under subsection (1), cause such inquiry as it thinks fit to be made as to the means of the applicant and request such additional information as may be required from the applicant.

(3) A person who, for the purpose of, or in connection with, an application for legal assistance wilfully gives information which is false or misleading shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to penal servitude for a term not exceeding 3 years.

13. Grant of legal assistance

(1) Where the District Court is satisfied that –

- (a) the application for legal aid is well founded; and
- (b) the applicant is qualified for legal assistance,

the District Court shall grant legal assistance to the applicant.

(2) The District Court shall communicate its decision to the applicant and make such orders consequential on its decision as it thinks fit.

14. Legal assistance to juvenile

(1) Where a person referred to in section 12(1) is a juvenile and is not represented by a barrister, the police officer in charge of the police station shall inform the parent or legal guardian of, or any other person having responsibility for, the juvenile that an application for legal assistance, in respect of the juvenile, may be made.

(2) Where a juvenile wishes to obtain legal assistance, his parent or legal guardian, or any other person having his responsibility, shall inform the District Court thereof and the District Court shall, notwithstanding this Part, grant legal assistance to the juvenile.

(3) (a) Where a juvenile wishes to obtain legal assistance and he has no parent, legal guardian or person having his responsibility, or his parent, his legal guardian or the person having his responsibility refuses to apply for legal assistance on his behalf, he shall be brought before the District Court within 24 hours of his arrest.

(b) Where a juvenile is brought before the District Court pursuant to paragraph (a), the District Court shall grant legal assistance to the juvenile.

PART IV – ASSIGNMENT OF BARRISTER AND ATTORNEY FOR LEGAL AID OR LEGAL ASSISTANCE

15. Assignment of barrister and attorney

(1) The Court shall assign a barrister or an attorney, or both, to assist a person who is granted legal aid or legal assistance.

(2) A barrister or an attorney assigned under subsection (1) shall –

- (a) not refuse his assistance unless he satisfies the Chief Justice of some good reason for such refusal;
- (b) not be bound to make any disbursement out of his own money while giving his assistance;
- (c) not take or agree to take, or seek to obtain, from a person to whom legal aid or legal assistance is granted any fee or reward while giving his assistance.

(3) (a) A barrister or an attorney assigned under subsection (1) shall be paid, out of funds to be provided from the Consolidated Fund, such fees as the Chief Justice may determine.

(b) No fee shall be paid to a barrister or an attorney by a person to whom legal aid or legal assistance is granted.

(c) Where a person to whom legal aid or legal assistance is granted gives or agrees to give any fee or reward to another person, the grant of legal aid or legal assistance shall be revoked by the Court and that person shall not be granted legal aid or legal assistance again to be a party in the same proceedings.

(4) A person who contravenes subsection (2)(c) or (3)(b) shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to penal servitude for a term not exceeding 3 years.

16. Costs

(1) (a) Where, in any proceedings in which legal aid is granted to a person, an award for costs is made against any other person, the award shall, unless the court otherwise orders, be deemed to have been made in favour of the Government and the costs shall accrue to the Consolidated Fund.

(b) The Attorney-General shall take such steps as may be necessary for the recovery of any costs awarded under paragraph (a).

(2) (a) The court may make an award for costs against a person to whom legal aid is granted subject to such conditions as it may determine.

(b) Any costs awarded under paragraph (a) shall be paid out of the Consolidated Fund.

PART V – MISCELLANEOUS

17. Exemption from duties and fees

Where the Court grants legal aid or legal assistance under this Act, the applicant shall not, in the proceedings to which his application relates, be liable to pay any sum payable under any enactment relating to stamp duty, registration dues, usher's fees, witnesses' fees or court fees.

18. Rules

The Chief Justice may make such rules as he thinks fit for the purposes of this Act.

19. Regulations

The Attorney-General may, by regulations, amend the Schedule.

20. Repeal

The Legal Aid and Legal Assistance Act is repealed.

21. Transitional provision

Any application for legal aid or legal assistance made under the repealed Legal Aid and Legal Assistance Act and which is pending on the commencement of this Act shall be dealt with as if this Act has not come into operation.

22. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

SCHEDULE

[Sections 6(1), 7(1)(b) and 12(1)]

APPLICATION FORM FOR LEGAL AID/LEGAL ASSISTANCE*

PART I – PARTICULARS OF APPLICANT/SPOUSE/PARTNER/DEPENDENTS

Name and surname of applicant

Marital status of applicant

National Identity Card no. of applicant

Contact details of applicant

Address Phone no.

Mobile no. Email address

Name and surname of spouse/partner

Details of dependants

Name Age

Name Age

Details of next of kin who could be contacted in case of need

Name Address

Phone no. Mobile no.

PART II – AVERAGE MONTHLY HOUSEHOLD INCOME OF APPLICANT

Average monthly earnings of applicant

Employment, trade or occupation of applicant

Average monthly earnings of spouse/partner (not applicable where subject matter of proceedings is divorce or applicant and spouse/partner separated)

Employment, trade or occupation of spouse/partner

Average monthly expenses of applicant/spouse or partner/dependents

Other sources of income and particulars thereof

Loan contracted and particulars thereof

Average net monthly income of applicant

Average monthly household income of applicant

PART III – ASSETS OF APPLICANT

Money, in any currency, in local banks and foreign banks

Money deposited in a non-bank deposit taking institution licensed by the Bank of Mauritius

Cash in hand in any currency accepted as legal tender in any country

Securities, including stocks, bonds, treasury bills or other units held in Mauritius or abroad

Shares or any interest in a company, société or partnership

Trust property

Any virtual asset

Particulars of freehold or leasehold immovable property other than subject matter of proceedings

(1) Extent of land

(2) Nature of buildings

(3) Income derived therefrom

Particulars of motor vehicles owned

- (1) Brand or make
- (2) Year of registration
- (3) Capacity
- Total assets worth

PART IV – DECLARATION OF APPLICANT

I swear/solemnly affirm* that the information set out above is true to the best of my knowledge and belief and, if I give any false or misleading information, I will commit an offence and will, on conviction, be liable to a fine not exceeding one million rupees and to penal servitude for a term not exceeding 3 years.

.....
Date

.....
Signature or mark of applicant

* *Delete as appropriate*
