



MODULE FOR TRAINING OF PARA-LEGAL VOLUNTEERS



National Legal Services Authority

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October 30, 2017

MESSAGE

Para Legal Volunteers are the soldiers at the frontiers of legal awareness campaign as they work at the community level. They are the messengers of every legal service institution. When it is an imperative to spread legal literacy and awareness, the role of the Para Legal Volunteers assumes importance and, therefore, imparting training is extremely necessary. That is the need of the hour and that calls for a module for training of Para Legal Volunteers. It is in accordance with the Revised Scheme for Para Legal Volunteers, 2013 and the changing circumstances.

The Schemes floated by NALSA clearly define roles to be played by Para Legal Volunteers as they must know how to act in certain situations. NALSA had held a meet of Para Legal Volunteers at the National Level on 29-30 April, 2017 wherein a decision was taken to provide a definitive structure to the Para Legal Force. Two important policy decisions taken, amongst others, were to increase their strength from 54,000 to 90,000 and to enhance their honorarium from Rs. 250 per day to Rs. 500 per day. The State Legal Services Authorities were accordingly directed to do the needful.

The Module, I am certain, would serve as the laser beam to the Para Legal Volunteers and I hope they shall better themselves.

The Module is extensive and covers all the subjects which require imparting of training to the Para Legal Volunteers. The methodology to be adopted for imparting training would educate the trainees who would be eventually empowered to deal with the situation as expected of them. I congratulate NALSA in making this module a reality.

I would also take this occasion to abundantly caution the Para Legal Volunteers and to make them realize that they are not persons in authority. They ought to remember that they have no supervisory role over Government officials and the police. They are volunteers and it is not a source of livelihood. It comes within the concept of service. The Motto for them should be “**to connect and to act**”.

I wish NALSA and the Para Legal Volunteers all success.

A handwritten signature in black ink, appearing to read 'Dipak Misra'.

[Dipak Misra]

Ranjan Gogoi
Judge
Supreme Court of India
&
Executive Chairman
National Legal Services Authority



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FOREWORD

The true mandate of Article 39A is to secure a legal system that promotes justice on a basis of equal opportunity of which only one of many adjuncts is free legal aid. To construe 'Access to Justice' to only mean access to the adjudicatory mechanism (courts) and those that man it (lawyers) would be limiting the ever-evolving pursuit and purport of this Constitutional assurance.

To reach and include the last disadvantaged man, in the most remote corner of the country, is what the Legal Services Authorities at all levels throughout the country seek to achieve. And, only when we can achieve this, will we be able to truly say that a just social order prevails. The workforce of Para Legal Volunteers constitute a significant medium in the efforts to reach out.

Naturally, it is necessary that these Volunteers should be trained in the basics of the law and the working of the judicial system as well as the other state agencies so as to be able to assist the target population.

It is with this purpose in view that the Training Module Committee of the National Legal Services Authority has brought out a three-day Module for basic orientation training of Para Legal Volunteers. The Module is intended to inform and sensitize the Para Legal Volunteers on the Constitutional vision of justice, basics of criminal law, labour laws, law for juveniles and laws for protection of women and senior citizens. It lays emphasis on knowledge of procedure as well as social sensitivity and soft skills of behavior and communication which are essential for anyone dealing with a diverse population.

The Training Module is a collaborative effort of the Training Module Committee of NALSA and various contributors under the guidance of Justice Manju Goel, Former Judge, Delhi High Court. Each one of them deserve appreciation for putting together this Module which, I am sure will assist the Legal Services Authorities in developing a well informed, dedicated and socially responsible workforce for the noble cause of ensuring Access to Justice for All.

[Ranjan Gogoi]

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PREFACE

Courts are temples of justice for establishment of a just and fair society where people are able to secure their entitlements given by the Constitution and the laws. For this end, it is necessary that the citizens have access to the courts. Access to justice is a major issue for the economically and educationally deprived people. The aim of establishing Legal Services Authorities is to make legal services available to the vulnerable and marginalized sections of the society. Legal Services Authorities have established their offices at district and taluka levels as well as at the State and National level. It is felt that mere presence of the offices of Legal Services Authorities at the taluka level is not sufficient for bringing all the deprived sections of the society within the reach of Legal Services. For this we need the Para-Legal Volunteers. They are the bridge to connect people with Legal Services made available by the State.

The Para-Legal Volunteers are drawn from various sections of the society. The wide range of people working as Para-Legal Volunteers includes people from the medical profession, law students and teachers, various NGOs etc. It is not surprising that for the benefit of the prisoners, certain other prisoners have come forward to work as Para-Legal Volunteers.

The Para-Legal Volunteers are an educated group with minimum qualification of matriculation. However, they are a heterogeneous group in terms of their background. The need for training of any person cannot be exaggerated. Para-Legal Volunteers are no exception. One thing common amongst all the Volunteers is that they are not trained in law. Therefore, it is extremely essential that they are introduced to the basic concepts of law that we encounter in our day to day life. The common conflicts in the society, very often, are the result of ignorance of law. Although the Para-Legal Volunteers cannot be trained to become legal practitioners, they can become legally informed. We can inform them of the basics of the rights and duties of the citizens and of availability of relief for aggrieved persons.

With the aim of providing the required training to the Para-Legal Volunteers a curriculum was devised under the able guidance of Hon'ble Ms. Justice Manjula Chellar. It includes nearly 40 subjects. It is a stupendous task to bring the Para-Legal Volunteers, who, as said above, have different cultural and educational backgrounds under one uniform system of training. We are presenting the orientation training Module for the use of resource persons who may be engaged by the State and District Legal Services Authorities for training Para-Legal Volunteers working with them. Each session of training programme planned by us is a complete Module on the subject for a period of 1.5 hours approximately. The present volume deals with only few of them. Various State Legal Services Authorities have brought out reading material in the form of booklets on various topics included in the curriculum. Although the present Module cannot include all the subjects mentioned above, but it does give a broad framework for training of the PLVs which can be adopted for training them on subjects not covered by the present volume. We sincerely wish that those who use this Module give us their critical appreciation for our guidance in similar future ventures.

Resource persons for the training of Para-Legal Volunteers may be drawn from lawyers, judicial officers, mediators and other professionals. Some resource persons may have natural traits of an educator. However, just as training is valuable to any worker, training is also essential for the educators and trainers. National Legal Services Authority,

in three programmes has imparted training to more than 100 lawyers and judicial officers in training skills. It is hoped that these trained people have imparted training to other resource persons. All these resource persons can be requested to join in the programme. However, we may hasten to add that each Module is so designed that even without a formal training in training methods, a resource person with sufficient knowledge in the subject can deliver the sessions without needing to do much prior reading or preparation.

Apart from Dr. Sanjeev Kumar and Ms. Illa Rawat, the major contributors to this Module are present and former legal services functionaries namely Ms. Justice Manju Goel, Former Judge, High Court of Delhi, Ms. Asha Menon, District and Sessions Judge Delhi (South), Mr. Alok Agarwal, Member Secretary NALSA and Ms. Geetanjali Goel, Special Secretary, Delhi State Legal Services Authority. The office of NALSA has provided all the logistic support.

The present effort has received the blessings of Hon'ble Mr. Justice J.S. Khehar, the Former Chief Justice of India and Hon'ble Mr. Justice Deepak Misra, Chief Justice of India and Patron-in-Chief of NALSA. We are grateful for the guidance and support of Hon'ble Mr. Justice Ranjan Gogoi, the Executive Chairperson of NALSA, in preparing and presenting the present Module.

Committee for Developing Module for Training of Para-Legal Volunteers

Justice Manju Goel

Former Judge, High Court of Delhi

Justice Rekha Sharma

Former Judge, High Court of Delhi

Justice Kailash Gambhir

Former Judge, High Court of Delhi

Shri. P. Vishwanatha Shetty

Sr. Advocate, Supreme Court of India

Prof. P.S. Jaswal

Vice Chancellor, Rajiv Gandhi University of Law

FOR THE COORDINATORS AND RESOURCE PERSONS

The present work is an attempt to provide orientation to Para-Legal Volunteers. The book is meant for practical use by the resource persons who may be invited by the various Legal Services Authorities to give this orientation training to Para-Legal Volunteers. Therefore, it is important to share the ideas behind the Module with the course Coordinators and resource persons so that the best can be achieved out of the Module.

Who can be the resource person?

The idea behind formulating the Module is to equip the resource person with the necessary material and techniques that may be used in the training sessions. Since the subject of all these sessions is primarily law, we expect the resource person to be either a lawyer or a judge or a law teacher. The resource person will do well to acquaint himself/herself with the principles of adult learning. We expect the resource persons to be good listeners and good communicators with ability to deal with all kinds of learners including the resistant adult learners and to deal with not so comfortable questions which at times are sprung on the resource person by the participants.

How to use the modules?

Adult learners are different from school students in as much as they already have some knowledge and information on the subject of training. The adult learners like to build on their already existing knowledge. It is also recognized that learning is faster by doing i.e. by applying the information imparted. Accordingly, in the modules we have included activities that make the participants work with their colleagues and use as well as challenge their existing knowledge. The modules are designed with a view to make the training process efficient and interesting. Each Module has two parts. The first part is the exercise/task for the live sessions of training. The second part consists of the necessary information to deal with the exercise/task. For best results, the information part given in 'short notes' should be used by the resource person for his/her preparation before conducting the actual live sessions and should be used also for validation, only after the participants have actually performed the part assigned to them viz. quiz or group discussion etc. For every session the organizer/coordinator shall do well to photocopy the first set of pages containing the Module including the programme, exercises like group discussion, role play, experience sharing etc. The "short notes" provided for each Module should not be handed over till the exercises are over. The resource person can refer to the short notes preferably before the actual session and can share them at the end for the participants to read it themselves.

Time management

We have given a time management plan in each module. At times it may not be possible to strictly follow the plan as the actual time spent on each part of the module will vary depending upon participation of the groups. However, in case the time allotted turns out to

¹ Former Judge, High Court of Delhi.

be too short, the resource person may reorganize the time plan to cover the module. We are aware that the training sessions will throw up more questions than what can be dealt with within the given time, but the unanswered questions lead to a quest to be pursued beyond the sessions as well and, hence, would be welcome.

It is often found that the participants are keen for photographs while the sessions are on and thereafter, in groups and amongst themselves with visiting the dignitaries. While taking the photographs may take only a couple of seconds, organizing the group takes much longer and at times the time taken for these photo-shoots disturbs the schedule. The coordinator shall do well if appropriate arrangements and announcements are made in advance so that time for these activities can be squeezed into the format of time management.

Physical environment

The number of participants for a session should ideally be around 30. It will be greatly appreciated if the participants are not seated in any hierarchical manner. The seats, as far as possible should not be fixed to the floor so that they may be moved to make small groups. A thought should be given in advance to facilitate breaking the whole group into four or five small groups as such breakout groups may need separate rooms/ spaces where they can carry out their discussion. The coordinator may form the groups in advance so that time is not lost during the session in dividing the whole group into smaller groups.

Ice breaking

A short ice breaking session is extremely useful to motivate the participants in any training session to open up, share and contribute to the discussions in the actual sessions. These ice breaking sessions ensure associative and active rather than passive participation. They are often interactive meaningful fun sessions before a full and focused programme is run. Two small examples are given below by way of suggestions:

Each participant is asked to introduce himself/herself by giving the usual information of name and work, adding thereto some interesting fact little known to others e.g. I am Rakesh practicing on the criminal side in the District Courts of Rohini. Now, I may look obese but I played football and was the captain of the school football team.

Each participant is asked to introduce himself/herself with his/her name and work and say in one sentence what he/she expects to gain from the training. No one is allowed to repeat what a participant has already said.

TRAINING METHODOLOGY USED

a) Group discussion and presentation:

Group discussions are meant to provide participants an opportunity to find answers to specific questions given to them with the help of their existing knowledge and experience. In this process they feel to be important contributors in the process of training. They also learn by “doing” and such learning lasts longer. At the end of the presentation of the views by each group, the resource person may fill the gap in information with his/her own rich experience and learning and can refer to information on the subject given in the book.

b) Quiz:

The quiz given in the modules is not meant to be used as a contest. It is meant to show to the participants that although the topics are familiar, still there is scope to learn about them. The resource person can open a discussion on questions that call for elaborate answers.

c) Power Point presentation:

No one can ignore the importance of the traditional teaching method of lecturing. Power Point presentations provided here are meant to structure the lectures in a time efficient manner. Further, the Power Point presentation makes the lectures more effective with audio-visual impact which in turn makes a lasting impression on the mental horizons of the participants. Power Point presentation, if not prepared with sufficient acumen can be very distracting. We subscribe to the presentations in which the slides show only a few words at a time so that the participants do not have to engage in reading the slides. In case a long sentence is required to be shown in the slide, the speaker should allow the participants to read the same by pausing his own lecture for a while. It is not a good idea to have long scripts on the power point slide which is not being read by the speaker but the participants are trying to read the slide and hear the speaker at the same time, not getting anything out of any of the two.

The slides of the Power Point should not have long sentences. Paragraphs are entirely to be discarded. Only the point should appear on the slide so that the focus of the facilitator as well as the audience is retained. If the Power Point has reading material the attention of the participants gets divided between the words spoken by the resource person and the writing on the Power Point. Such Power Point affects the quality of the lecture and so should be avoided.

d) Experience Sharing:

The participants in the programme may already be working as Para-Legal Volunteers and have some experience in the topics they are being trained in. Experience sharing is the way of extracting from the participants themselves information on the subject for the session. The resource person may supply the information which is not provided by the participants in experience sharing. This method saves the participants of the monotony of hearing what they already know. At the same time, this makes the learning participatory since one person's experience informs the rest of the group. The resource person may supplement the information obtained by experience sharing so that the participants can receive full information.

e) Brainstorming:

Brainstorming is thinking together. This method is used for a whole group discussion in which the participants are making an effort to solve a problem or to select the right one out of several options available.

f) Role-Play:

Role-Play is one of the best modes of learning by performing. For this exercise the whole group has to be divided in small groups of say 5. While some participants perform the given role, the others watch and give their feedback. In the process, everyone learns what is intended to be imparted.

g) Skit:

While a role play is an exercise that is performed impromptu by the participants, a skit is a preplanned dialogue. The skit is designed to create a picture of facts and events. On the basis of the picture created by the skit the participants can be invited to brainstorm on the issues highlighted in the skit.

Needless to say that the ingenuity of the resource persons should not be curbed by the modules that we have designed. We shall gratefully welcome all suggestions which may come from the resource persons and the participants so that our work serves the cause better.

SCHEDULE OF THE TRAINING PROGRAMME PARA-LEGAL VOLUNTEERS

DAY-I

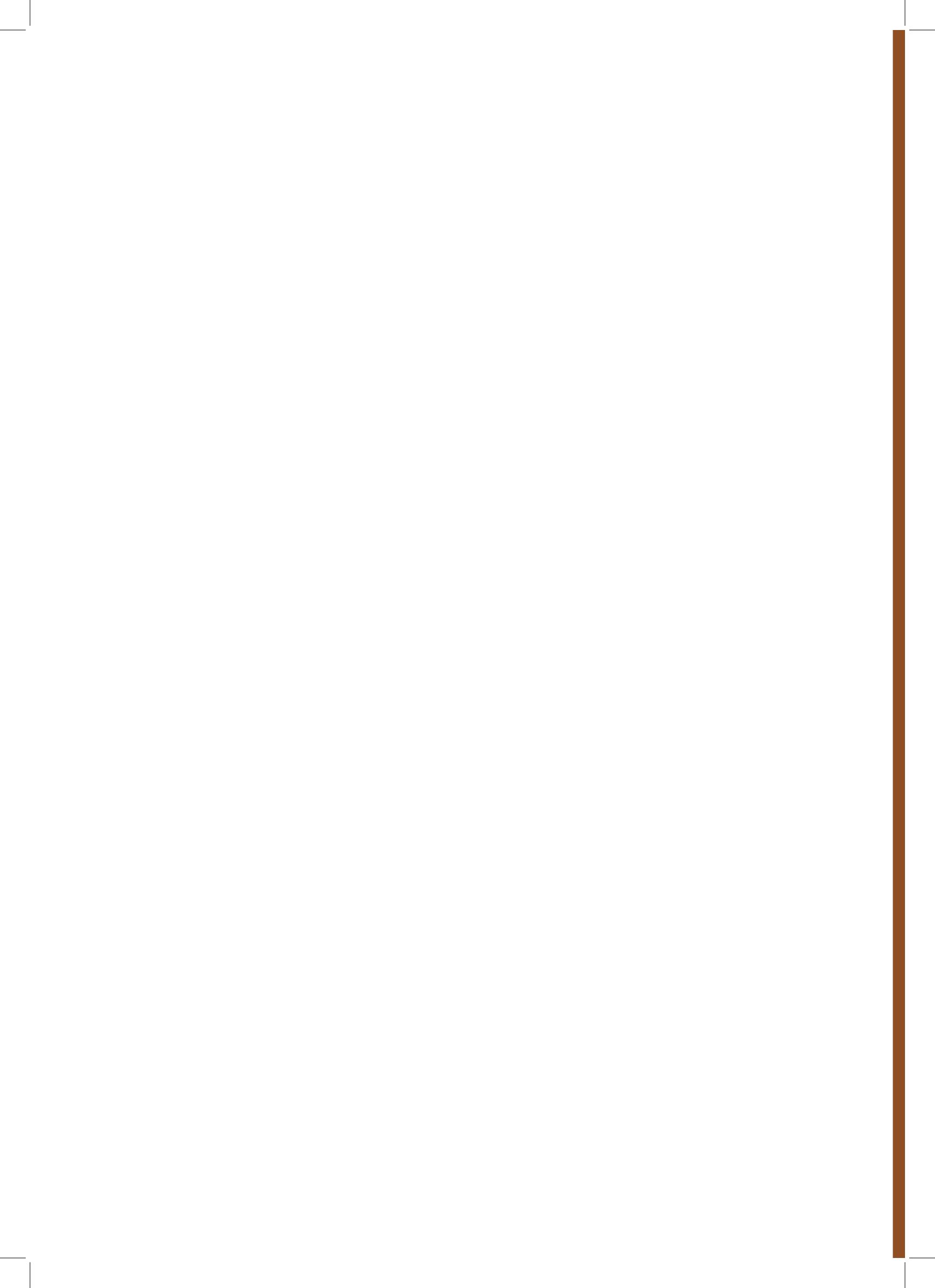
Duration	Details
9.45 AM to 10.30 AM	Inaugural Session
10.30 AM to 11.00 AM	Tea
11.00 AM to 11.45 AM	Ice Breaking
Session-I (11.45 AM to 1.15 PM)	Basic Structure of Constitution
1.15 PM to 2.00 PM	Lunch Break
Session-II (2.00 PM to 3.30 PM)	Legal Services Authorities Act & Role of Para-Legal Volunteers
3.30 PM to 3.45 PM	Tea
Session-III (3.45 PM to 5.15 PM)	The Basics of Criminal Law

DAY-II

Session –IV (9.45 AM to 11.00 AM)	Law Relating to Family
11.00 AM to 11.30 AM	Tea
Session –V (11.30 AM to 1.00 PM)	Protection of Women from Domestic Violence Act 2005
1.00 PM to 2.00 PM	Lunch Break
Session –VI (2.00 PM to 3.00 PM)	Senior Citizens Act, 2007
3.00 PM to 3.15 PM	Tea
Session –VII (3.15 PM to 4.45 PM)	Communication Skills

DAY-III

Session –VIII (10.00 AM to 11.15 AM)	Labour Laws
11.15 AM to 11.30 AM	Tea
Session –IX (11.30 AM to 1.00 PM)	Child Rights
1.00 PM to 1.30 PM	Writing Parting Messages
1.30 PM to 2.30 PM	Lunch Break
Session –X (2.30 PM to 3.30 PM)	Writing Feedback
3.30 PM to 4.00 PM	Group Photo & Tea
4.00 PM	Valedictory Session





Session I
Total Time: 90 minutes



Session I

Total Time: 90 minutes

MODULE FOR TRAINING OF PARA-LEGAL VOLUNTEERS ON BASIC STRUCTURE OF CONSTITUTION

**With special reference to Preamble, Fundamental Rights, Fundamental Duties
and Article-39A**

-Justice Manju Goel²

SESSION PLAN

Objective

- To inform the Para-Legal Volunteers about the basic structure of the Constitution.
- To inform the Para-Legal Volunteers about the sensitivity of the Constitution towards the weak and the underprivileged.
- To inform the Para-Legal Volunteers how legal services emanate from the basic structure of the Constitution.

Expected Learning Outcome

- The Para-Legal Volunteers will appreciate the importance of this work in establishing an equitable society.
- The Para-Legal Volunteers will develop an appropriate attitude towards their own work.

Programme

- **Introduction** 10 minutes

The resource person will introduce the topic by explaining what Constitution for any country is.

- **Quiz 1** 15 minutes

The quiz sheet in Activity 1 will be distributed amongst the participants who will write short answers on them. The resource person will gather the answers to the questions on a flip chart or charts and affix the same on the walls with the blue tack.

² Former Judge, High Court of Delhi

- **Lecture by resource person** 25 minutes
The resource person will cover in this lecture, the short notes till Fundamental Duties.
- **Brain storming** 15 minutes
The resource person will raise the brain storming based on questions in Activity 2.
- **Lecture by resource person on rest of the topics** 15 minutes
- **Concluding remarks** by resource person/one of the participants or by the visiting dignitary 10 minutes

Training Method

- Lecture
- Quiz
- Brain storming

Note: the resource person will pool the points on the flip chart/white board. He/she may prepare a power point for the lecture.

Tools Required

- Facility for power point presentation
- Flip chart
- Whiteboard marker
- Blue tack
- whiteboard

ACTIVITY I

INDIVIDUAL QUIZ

1. What is freedom?
2. What is right?
3. What is a fundamental right?
4. What is legal aid/service?
5. Is legal service a fundamental right?

ACTIVITY II

WHOLE GROUP BRAIN STORMING

6. Do you have any duties towards the country? If yes what are they?

SHORT NOTE

ON

BASIC STRUCTURE OF CONSTITUTION

With special reference to Preamble, Fundamental Rights, Fundamental Duties and Article-39A

-Justice Manju Goel³

INTRODUCTION

A set of guiding principles or norms are required to run any organisation. Without those rules, the leaders and the members of the organisation will not be able to take crucial decisions and will thus find themselves at variance every now and then. The concept of State can be co-related with an organisation functioning at a grand level. For proper functioning, it also requires a set of rules and norms which could guide it, these principles and rules become the Constitution of the State. Thus the State and all its subordinate bodies are governed by the Constitution which is the supreme document. It is above all and nobody can bypass or supersede it. Constitution provides the framework of all State activities, including laying down the establishment of the three branches i.e. legislative, executive and judiciary and their governance. The Constitution of India is the modern sacred text of contemporary India. It reflects the new aspirations and values of the people of India and testifies how the people of India are the supreme masters in all matters concerning the welfare of Indians. It was not prepared in haste but after a thorough debate and discussion on each proposal. The concepts of parliamentary democracy, republicanism, civil liberties, social and economic justice happen to be the most basic principles of the Constitution. It was drafted over a period of three years ending 1949.

FREEDOM FOR INDIA

India attained freedom at the stroke of midnight hour between 14th and 15th August, 1947. That was a time of great rejoicing as a long drawn struggle was coming to fruition. However, the leaders of freedom movement and those who assumed power at that time had things other than celebration in their mind. For them, it was a moment to take the pledge of dedication to the service of India. Subjugation to the British meant subjugation of the entire energy of the country in the service of the Queen of England for the benefit of the English. The policies adhered to by the British Government did not aim at emancipation of Indian people from poverty or ignorance. Nor did it mean economic development of the country. All economic activity was meant for enrichment of Great Britain. Attainment of freedom, though a milestone in the struggle for emancipation, was not a conclusion. The struggle continued, for the end purpose of attaining freedom was ending 'poverty and ignorance and disease and inequality of opportunities.' In his speech in the Constituent Assembly that night, our first Prime Minister Mr. Jawaharlal Nehru said: "*freedom and power bring responsibilities.*" He also said that "*future is not one of ease or resting but of incessant striving so that we may fulfil the pledges we have so often taken and the one we shall take today.....To bring*

³ Former Judge, High Court of Delhi

freedom and opportunity to the common man, to the peasants and workers of India. To fight and end poverty and ignorance and disease, to build up a prosperous, democratic and progressive nation, and to create social, economic, political institutions which will ensure justice and fullness of life to every man and woman."

Freedom may mean different thing to different people. A youngster today may show interest in freedom to go where ever and whenever he/she wants, his/her freedom of speech and expression and the like. These freedoms, true, are protected by the Constitution of India. But the subject that consumed the thoughts of all the leaders of the country at the time India became independent and when her Constitution was being drafted, was poverty, ignorance and lack of opportunity. To say it simply the uppermost thought at that time for anyone seriously concerned with the country was justice for "poor" of India. Justice –social, economic and political, is the first assurance that was given by the Constitution of India framed in 1949.

THE PLEDGE OF THE CONSTITUTION–PREAMBLE

By then the ideal governing structure accepted worldwide was democratic and republican order. India had always been secular and this cherished value had to be ensured. Other cherished goals were liberty, equality and fraternity, which had been the driving force behind the French Revolution, 1789. Thus our Constitution pledged to provide along with justice, liberty of thought, expression, belief, faith and worship, EQUALITY of opportunity and of status and promoted FRATERNITY assuring the dignity of the individual and unity and integrity of the nation. These assurances are mentioned in the very Preamble to our Constitution which happens to be the world's largest written Constitution.

Thus the Preamble that introduces the Constitution incorporates the promise as well as the dream of the Constitution makers. The beautifully crafted Preamble is extracted below:

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

And to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION

The very spirit of the Constitution is embodied in the Preamble. Each word in the Preamble is loaded with substance and meaning. The resolve expressed in the Preamble is sought to be fulfilled in the various articles contained in the Constitution. If the Preamble is thoroughly studied one can grasp and foresee what to expect in the study of the various chapters of this great document. We can now proceed to study each word that we read in the Preamble.

The resolution of the Constituent Assembly is to constitute India into a sovereign democratic republic. So India is a sovereign State which means that it is not subject to the

control of any other State or external power. It can make its own laws and run the country the way it prefers. The source of power behind all sovereign activities is the People of India. An elected President is the head of our State on and from 26th January, 1950 when the Constitution came into force. The elected President as the head of the State makes our country a Republic.

Our republic is a democratic republic. Democracy means rule of the people. In other words, the legislators, as well as the executive namely the governments, are elected by the people. India is the largest democracy in the world in terms of the number of voters. India subscribes to universal adult franchise, that is every adult citizen without any distinction of sex, class or creed has the same right to vote and each vote has equal value. An important thing to remember is that India's democracy is not simply political democracy, it is democracy from social standpoint also as it is infused with the spirit of Justice, Equality and Fraternity. The concept of democracy is futile unless inequality in all spheres is abolished. It was therefore stipulated by Constitution makers like Dr. Ambedkar and Dr. Radhakrishnan that political democracy cannot last unless it is based on social democracy. Social democracy, Dr. Ambedkar explained, means a way of life that recognizes Liberty, Equality and Fraternity, the three concepts which are interrelated and have to exist together.

When the Preamble says that the resolution is to offer justice it means removal of the distinction between one another and to bring about equality in all spheres of life. This equality is not to be brought about by a bloody revolution but by growth of wealth and resources and distribution of the wealth produced in equitable manner so as to reduce the inequalities. Such justice can be achieved only when India becomes a welfare state.

Liberty of thought, expression, belief, faith and worship has been guaranteed in Part-III of the Constitution in the form of Fundamental Rights. India is a secular State not because the governance has nothing to do with religion. It is secular because all the religions in the country are allowed to prosper and all religions are treated equally. The Constitution does not permit any discrimination based on religion, sex, caste, race or place of birth. Each citizen is assured equality of status and opportunity. The State has to constantly strive to bring about this equality. Unfortunately despite the long years of working of this Constitution, inequality, particularly in the area of income and wealth, has continued to exist and much is yet to be done.

Fraternity or feeling of brotherhood can come only when every citizen feels equally important and valuable and being a child of the soil or of the motherland. This comes only when each individual has the dignity of being equal in exercising all rights and privileges available to everyone in this country. Therefore a great emphasis has been placed in abolishing untouchability and practices that may undermine the dignity of an individual on any ground.

Unity and integrity can be strengthened when we as citizens of India feel bond of brotherhood despite the enormous diversity of various natures like race, culture, language etc.

FUNDAMENTAL RIGHTS

Two very important features of the Constitution of India are the Fundamental Rights and Directive Principles of State Policy. The Fundamental Rights are inviolable and no actions of the State can be designed to encroach upon these rights in any situation. These rights are:

1. Right to equality
2. Right to freedom
3. Right against exploitation
4. Right to freedom of religion
5. Right to constitutional remedies
6. Right to cultural and educational rights

Each of these rights can be the subject matter of long and detailed discussion. For the present purpose, it is sufficient to know the existence of these rights. A caution that must be remembered is that reasonable restrictions on these rights can be placed if any situation so demands. It is worthwhile to understand the basic concept underlying these rights.

Fundamental Rights are the greatest assets of the citizens of this country. The most important decisions of the Supreme Court affecting the lives of the people of this country have been written to explain and enforce these Fundamental Rights. Within the narrow compass of the present discussion it is not possible to go into the depth of this vast subject. But for the present, we may deal with only a few issues connected with Fundamental Rights.

The first Fundamental Right is Right to Equality. It states that State shall not deny any person equality before law and equal protection of laws within the territory of India. From this emerged the principle of rule of law. Rule of law means that law prevails rather than any individual or authority. The highest of the high and lowest of the low are treated with the same severity when anyone is confronted with the law. Equal protection of the law means that among equals law should be equal and be equally administered. The corollary is that the equals have to be treated equally and unequals have to be treated unequally. So this concept permits reasonable classification amongst persons or situations so that different classes can be treated differently but those within one classification have to be treated equally.

Article-15 which is also part of the right to equality prohibits discrimination on the grounds of race, sex, caste, place of birth or religion. Also closely related is abolition of untouchability in any of its form.

Six freedoms mentioned in Article-19 of the Constitution are Freedom of Speech and Expression, Freedom of Assembly, Freedom of Association, Freedom of Movement, Freedom of Residence and Settlement and Freedom of Profession, Trade, Occupation or Business.

Do the Street Vendors have a right to occupy public land, street ways and pavements to carry on their profession of vending?

Answering this question the Hon'ble Supreme Court said in *Soudan Singh V. New Delhi Municipal Committee*⁴ that the Hawkers had a Fundamental Right under Article-19(1) (g) to carry on trade or business of their choice. However, the areas meant for public use by way of roads and pathways must also remain available for the use of citizens. Balancing both the sides of the case the Supreme Court said that such right to carry on business on streets can be regulated by Municipal Authorities in such a way that if the road is not wide enough to accommodate traffic on it no hawking should be permitted on it.

⁴ 1992 AIR 1153 1992 SCR (2) 243 1992 SCC (2) 458 JT 1992 (2) 190 1992 SCALE (1)679

Importantly for us, the most widely used right for securing justice to the citizens has been the Right to Life and Personal Liberty covered by Article-21 of the Constitution. Right to life does not mean the right to bare existence. Under various judgments Supreme Court has included the following rights under Article-21:

1. Right To Live with Human Dignity
2. Right Against Sexual Harassment at Workplace
3. Right to Reputation
4. Right To Livelihood
5. Right to Shelter
6. Right to Social Security and Protection of Family
7. Right to Health
8. Right to Medical Care
9. Right to get Pollution Free Water and Air
10. Right to Clean Environment
11. Right Against Noise Pollution
12. Right to Know or Right to Be Informed

In the case of *Upendra Baxi V. State of U.P.*⁵, the Supreme Court observed that girls living in a protective home were entitled to life with dignity and directed several facilities to be given to those girls including vocational education.

Similarly Right to Personal Liberty is also covered by Article-21 which extends to:

1. Right to Privacy
2. Woman's Right to Make Reproductive Choices
3. Right to go abroad
4. Right against Illegal Detention
5. Right to write a book
6. Right against bar fetters

Several rights of prisoners covered by this right are:

1. Right to free legal aid
2. Right to appeal
3. Right to speedy trial
4. Right to fair trial
5. Right to bail
6. Right against handcuffing
7. Right against solitary confinement
8. Right against custodial violence

Most importantly Article-32 gives us right to enforce these Fundamental Rights through courts. Right to move to the Supreme Court for enforcement of the Fundamental Rights is itself a Fundamental Right. The Supreme Court, as well as the High Courts, have not only passed in numerous situations writs, that is orders to the State, for adhering to a Fundamental Right but in different situations have also asked the government to pay compensation or damages to the persons whose Fundamental Rights may have been infringed. It is by virtue of this position that citizens have come to the court under the now well-known method

5 JT 1998 (9) SC 119, (1998) 9 SCC 388

of Public Interest Litigation which means litigation by any citizen to seek remedy against infringement of Fundamental Rights of a large section of population particularly those who are too weak to litigate for themselves.

DIRECTIVE PRINCIPLES OF STATE POLICY

Apart from the rights which the State is bound to grant to its citizens, there are certain guiding principles which the State has to adhere to in all its executive and legislative functions. e.g. Article-38 prescribes that the State shall strive to promote the welfare of the people by securing a social order in which justice, social and economic, shall inform all institutions of national life. Thus the State is directed by the Constitution to make positive efforts to promote welfare of the people and to take such measures which would bring social, economic and political justice. This can be brought by minimising inequalities in income and opportunities, this can also be secured by welfare measures. Facilities like health, education etc. can be made available to poor free of cost. Taxation is another means by which government while securing its revenue may bring about redistribution of income. Another Directive Principle says that the State shall direct its policies in such a manner that the children get full opportunity to develop in a healthy manner and in condition of freedom and dignity and they are protected against exploitation.

Importantly for us, one of the Directive Principles, as given in Article-39A, directs the State to ensure that free legal aid and other opportunities are granted to those who need such help so that justice is not denied to any citizen by reason of economic and other disabilities. Certain other Directive Principles require the State to take steps to organise village panchayats in such a manner that they are able to function as units of self-government. Other Directive Principles require the State to provide humane conditions of work, living wages and participation of workers in management of industries. Another very important Directive Principle requires the State to attempt to secure a uniform civil code for all its citizens.

LEGAL AID: IS IT A FUNDAMENTAL RIGHT?

Article-39A being of special importance for the Para-Legal Volunteers is reproduced below:

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

It is a long sentence and may appear to be difficult to understand. What this Directive Principle exhorts the government to do is to provide free legal aid to all those who would be deprived of securing justice through law unless such aid or service is given to them. This can be secured by making new laws and drawing up schemes and maybe by other suitable means. Apparently, it is a Directive Principle for the State to follow and not a Fundamental Right of the citizens. However, when read with the Fundamental Right to Equality, the weight and importance of Art-39A gets enhanced. Without legal aid to those who need such aid, equality before a court of law cannot be secured. E.g. an accused who is in prison and does not belong to any supportive family or group will be severely prejudiced if he is not able to secure a lawyer to defend himself. Only when a lawyer is provided to him, only then justice can be given to such an accused. The Hon'ble Supreme Court, in the case of *Md. Ajmal*

*Amir Kasab V. State of Maharashtra*⁶, laid great stress on legal representation of the accused, who was a terrorist from Pakistan and had been arrested and tried in India. All through the trial, Md. Ajmal Amir Kasab received legal aid from the government. His appeal was pursued by legal services. Eventually, a very competent Senior Advocate was awarded the work of defending him. Providing defence counsel to an accused in custody is but a small part of the activity of the legal services provided by the State. In order to give effect to Art-39A, the legislature passed the Legal Services Authorities Act in the year 1987. Various authorities provide various kinds of services. In this workshop, a special session has been dedicated to the Act and the Schemes for providing legal services and details thereof are therefore not mentioned here.

Thus we find that though not named in the chapter of Fundamental Rights, the Legal Services Authorities Act, 1987 and the directions of the Supreme Court have raised the right to legal services to the same level as of Fundamental Rights.

FUNDAMENTAL DUTIES

“Ask not what your country can do for you; ask what you can do for your country”

-John F. Kennedy

Every member of any society owes certain duties towards the society. Part-IV A of the Constitution lists 11 Fundamental Duties. They are as under:

- a. to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- b. to cherish and follow the noble ideals which inspired our national struggle for freedom;
- c. to uphold and protect the sovereignty, unity and integrity of India;
- d. to defend the country and render national service when called upon to do so;
- e. to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- f. to value and preserve the rich heritage of our composite culture;
- g. to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures;
- h. to develop the scientific temper, humanism and the spirit of inquiry and reform;
- i. to safeguard public property and to abjure violence;
- j. to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.
- k. who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.”.

Every good citizen of the country, even without such a chapter in the Constitution of India, can very well be expected to follow these Fundamental Duties. Yet these have been added as a special chapter in the Constitution. These Fundamental Duties cannot be

⁶ (2012) 9 SCC 1

enforced in the manner a Fundamental Right can be. However, the government can use its administrative and legislative powers to give effect to these Fundamental Duties. Any right brings with it corresponding obligations and duties. If the citizens are not willing to perform these duties many of the laws promulgated by the State may not get implemented. e.g. Art-24 which forms part of Fundamental Rights bars employing children below the age of 14 in any hazardous employment and Art-41 forming part of Directive Principles as well as Art-39, inter alia, prescribe that the State shall ensure that the tender age of children are not abused and that children are given opportunities and facilities to develop in a healthy manner. One of the Fundamental Duties is that the parent and the guardian would provide opportunities for education to his child. Unless the parents share the dream of the Constitution of giving a healthy childhood to the children of this country neither the Fundamental Rights nor the Directive Principles in this regard can be of any practical use.

Similarly, clean environment has been treated by the Supreme Court as one of our Fundamental Rights covered under Article-21. The Fundamental Duty in this regard is to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. If every citizen is concerned about a clean and healthy environment it will become much easier for the State to secure the same by way of Fundamental Rights. Such correlation can be drawn between each of the Fundamental Duties and other provisions of the Constitution. Although not enforceable through court of law, these Fundamental Duties are not of any less importance.

So we conclude with this quote from Mahatma Gandhi:

“If we all discharge our duties, rights will not be far to seek. If leaving duties unperformed we run after rights, they will escape us like a will-o’-the-wisp”.



Session II

Total Time: 90 minutes



Session II

Total Time: 90 minutes

MODULE FOR TRAINING OF PARA-LEGAL VOLUNTEERS ON INTRODUCTION TO LEGAL SERVICES AUTHORITIES ACT AND THE ROLE OF PARA-LEGAL VOLUNTEERS

(Including Do's and Don'ts, Standard of Behaviour, Dress Code and Ethics)

–Asha Menon⁷

SESSION PLAN

Objective

- To introduce the participants to the entire structure and working of the legal services institutions under the Legal Services Authorities Act, 1987.
- To give the participants an overview of the Schemes of NALSA.
- To give the participants an insight into the role of Para-Legal Volunteers, do's and don'ts, standards of behaviour expected from them.

Expected learning outcome

- Participants will understand their expected roles so that they are appropriately oriented to provide services to the beneficiaries effectively and sensitively.
- Participants will understand how they can coordinate with the legal services institutions and other authorities for the best interests of the beneficiaries and target groups.

Programme

- **Introduction:** 05 minutes

The resource person will introduce the topic of the right of citizens to access justice and the purpose of the Legal Services Authorities Act, 1987.

- **Activity I: Skit** 15 minutes

Two participants or two persons from the Legal Services Authority conducting the training program will perform the skit highlighting the different situations in which the

⁷ District and Sessions Judge, South District, Delhi.

Para-Legal Volunteers may have a role to play.

- **Discussion/ Brainstorming** 35 minutes

The skit will be followed by a discussion guided by the resource person during which the violation of various laws noticed will be highlighted. The resource person will bring out the provisions of law covering those violations and the NALSA Schemes relevant to those laws. The resource person will highlight the role of the PLVs under each Scheme as well as generally.

- **Lecture** 30 minutes

The resource person shall raise a discussion on the questions forming part of the skit, familiarise the participants with the social scenario of the vulnerable groups- women, children and worker are in making them susceptible to being exploited, shift in how rights of these groups are viewed, need for implementation of the welfare laws in letter and spirit.

- **Concluding remarks** by one of the participants/resource person/visiting dignitary. 5 minutes

Training methods:

- Lecture and/or PPT with handouts
- Skit
- Brainstorming

Note: The resource person will pool the points on the flip chart/white board. He/she may prepare a power point for the lecture.

Tools required

- Facility for power point presentation/ showing film
- Flip chart
- Whiteboard marker
- Blue tack
- Whiteboard

SKIT

LAW IN EVERYDAY LIFE

Dialogue between the Secretary, District Legal Services Authority and a Social Worker during a walk through the market.

Asha: Come Ma'am, Let us take this lane. This is the shortest route but a very busy lane. All kinds of small scale jobs and work are done here. Some make shoes, tailors stitch clothes, street vendors sell eateries etc.

Ma'am: Okay, we will take this route. Hey! Did you hear some noise? Let us go in and check out from where the noise is coming.

Asha: Somebody has fallen here. How did this happen? Oh God! Due to electricity shock this happened. See Ma'am, this is a workshop where clothes are stitched. All machines work on electricity. He must have received shock from one of these machines. Now what will he do?

Ma'am: He must have dislocated his shoulder. He can apply some pain relieving ointment like Iodex on his shoulder.

Asha: Also, he can use home remedies like applying turmeric and ghee on his affected area that will also help him. Or else he can go for a massage.

Ma'am: What if he is taken to the hospital?

Asha: Hospital will admit him for treatment, but he will not get any leave from his work, also his wages will be deducted for the days he does not come to work.

Ma'am: Why so? The employer should give him leave. After all he was injured at workplace while working.

Asha: Let me talk to these women here. Ma'am they are not being paid wages.

Ma'am: Don't they get the same amount of wages as their male counterparts? Both men and women should get the same wages for the same work done by them.

Asha: But they get less wages as compared to their male counterparts, and that too after months of wait.

Ma'am: Did they ever complain about this to anybody?

Asha: Where will they go, for many years they have been working here.

Ma'am: How much do they get?

Asha: They don't even get minimum wages. Also they don't get leaves as prescribed under law and they are made to do work for 10-11 hours a day.

Ma'am: Don't we have any legal provision covering these issues? Hey! Why has this small girl covered her face? I think she is married.

Asha: But she appears to be only about 15!

Ma'am: Law prohibits marriage of children below the age of 18 years and she is even pregnant. At this age she should have been in school but she is pregnant.

Asha: See Ma'am, there is also a boy here of about 12-13 years of age but he is doing tailoring work here.

Ma'am: This is a common practice. Otherwise how will they survive?

Asha: But still a child cannot be employed.

Ma'am: Children below the age of 14 years should go to school. Employing a child to work has many legal restrictions. They don't even get full wages. Asha, they need legal advice.

Asha: Ma'am, can this be considered a factory?

Ma'am: No, only 7 people are working here. Factories Act has many provisions regarding the protection of workers at workplace. But this is not a factory. Due to this reason, Government has made a new law 'Unorganised Worker Social Security Act, 2008'. These 7 people and other people like rickshaw pullers are included in this Act and can take benefit under this Act.

Ma'am: Asha, come let us see this building under construction.

Asha: Yes Ma'am.

Ma'am: See how these workers are hanging with the help of ropes. What if somebody falls?

Asha: Ma'am see there are small children who must have come with their mothers who work here.

Ma'am: Is anyone taking care of the kids? I don't see any provision for ladies toilet here. Where do the ladies go to relieve themselves?

Asha: Even the labours who are involved in construction of buildings and houses like those who are building that house here are legally protected. The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 is especially enacted to protect their rights.

Ma'am: There are more statues like this, like The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

Asha: Did you see that boy is taking two bottles of Cough Syrup with him.

Ma'am: This is a common medicine, which is easily available, but the boy does not look ill!

Asha: He might be taking it for someone else. But this is not right.

Ma'am: Why? What is wrong in this?

Asha: Ma'am, this can be used for intoxication. This cannot be sold without prescription.

Ma'am: For this medicine you need a doctor's prescription.

Asha: It can have effect of narcotics. So, it is illegal to sell it without a doctor's prescription. The one who is buying it without prescription can also be punished. Probably, if the boy is not guided right now to take the right path, he may go the wrong way and get involved in drugs.

Ma'am: Let us carry on. See, some girls are standing near that park. They look really poor. Can we do something for them?

Asha: Yes Ma'am.

Ma'am: There is a risk of them being misguided while looking for employment. They may get into prostitution. Let us go and caution them about this.

Asha: These helpless girls are deceived and sold to traffickers and when they try to escape and come out of this nexus they are not accepted in the society. So, they are forced to accept this kind of lifestyle. But they can be saved if they get some proper job for living.

Ma'am: Should we ask NALSA PLVs to visit this lane? What do you think?

Asha: Yes, Ma'am.

कानून प्रतिदिन

- आशा : चलिए मैम, पार्क जाने का यही सबसे छोटा रास्ता है, पर यहाँ बहुत काम होते हैं। कुछ जूते बनाने वाले हैं, कुछ कपड़े सीने वाले दर्जी हैं और गोल गप्पे भी यहीं तले जाते हैं।
- मैम : चलो, यहीं से चलते हैं। अरे! सुना तुमने, कैसी आवाज सी आई? चलो, भीतर चल कर देखते हैं।
- आशा : यहाँ तो कोई गिर गया है। कैसे गिरा? हाँ, बिजली के झटके से। देखिए, यहाँ कपड़े सिले जा रहे हैं। मशीनें बिजली से चलती हैं। शॉक लग गया होगा बेचारे को। अब वह बेचारा क्या करेगा?
- मैम : कुछ नहीं; लगता है कंधा खिसक गया है। थोड़ा सा आयोडेक्स लगा लेगा।
- आशा : हल्दी व घी लगाने से ठीक हो जायेगा। नहीं तो, पहलवान से मालिश करवा लेगा।
- मैम : यदि अस्पताल ले जायें तो?
- आशा : अस्पताल वाले भर्ती कर लेंगे, छुट्टी कटेगी, पैसे कटेंगे।
- मैम : क्यों? मालिक को देना चाहिए। आखिर काम करते समय चोट लगी है।
- आशा : इन औरतों से बात करती हूँ। मैम इनको तो वेतन पूरा नहीं मिलता है।
- मैम : मर्दों जितना नहीं मिलता क्या? पगार तो औरत और पुरूष को एक जैसे कार्य के लिए एक सी मिलना चाहिए।
- आशा : कम मिलता है, और कई-कई महीनों के बाद मिलता है।
- मैम : इन्होंने कहीं शिकायत की?
- आशा : कहाँ जाएँ, कई सालों से ये यहाँ काम कर रहे हैं।
- मैम : कितना मिलता है।
- आशा : (MINIMUM WAGES) तो नहीं मिलते हैं। कानून के मुताबिक छुट्टियाँ नहीं मिलती हैं और काम भी दस ग्यारह घण्टे करते हैं।
- मैम : इन सभी बातों के लिए कानून में कुछ प्रावधान हैं। अरे! ये बच्ची घूँघट डाले हुए? शादी हो गयी लगता है।
- आशा : देखने में तो 15 साल की है।
- मैम : अठारह से पहले विवाह कानून में मना है और इसका बच्चा होने वाला है। इसका स्कूल जाने का समय है और ये माँ बनने जा रही है।
- आशा : देखिए मैम, यहाँ एक 12-13 साल का लड़का (बच्चा) भी है, शर्टों में बटन लगाता है।
- मैम : ऐसा तो होता ही है, नहीं तो खर्च कैसे चलेगा।

- आशा : फिर भी बाल श्रमिक नहीं रख सकते?
- मैम : 14 साल से कम आयु के किसी को नौकरी में नहीं रख सकते हैं। ये गलत है। इनको तो वेतन पूरा नहीं देते हैं। आशा, यहाँ कानूनी सलाह की बहुत जरूरत है।
- आशा : मैम, क्या ये फैक्ट्री है?
- मैम : पता नहीं, यहाँ तो सिर्फ 7 लोग काम कर रहे हैं। फैक्ट्रीज एक्ट की सुरक्षाए इनको मिलती है क्या ? आगे चलते है।
- आशा : मैम वहाँ जो मकान बन रहा है वहाँ भी झाँक आते है I क्या वहाँ के मजदूरों को भी कोई सुरक्षा मिलती है ?
- मैम : कई कानून तो बने है ।
- मैम : देखो कैसे लटक- लटक कर वो मजदूर काम कर रहा । जैसे वो कोई tarzen हो ।
- आशा : कहीं गिर गया तो ?
- मैम : जान भी जा सकती है । अंग हानी भी हो सकती है।
पता नहीं इनके परिवार का क्या होगा ।
- आशा : इनके लिए सुरक्षा का प्रबंध है क्या ?
- मैम : यहाँ तो मजदूरों के बच्चे ऐसे ही घूम रहे है । इनको कौन देखता हैI इनके भोजन का बन्दोबस्त है क्या ?
- आशा : और toilet कहाँ जाते होंगे ?
- मैम : अरे देखो कैसे वेल्डिंग कर रहा है । इसके पास तो चप्पल भी नहीं है । ना चश्मा है । इसकी आँखें खराब नहीं हो जाएंगी ?
- आशा : मैम खराब हो जाएंगी तो उसको कोई मुआवजा मिल सकता है क्या ?
- मैम : इन्होंने तो हेलमेट भी नहीं पहना है । हेलमेट दिया नहीं है क्या मालिक ने ।
- आशा : औरतें भी है । एक तो पेट से भी है । कानून इन सबके लिए कुछ है क्या ?
- आशा : अपने देखा, वह लड़का दो cough Syrup की बोतलें ले जा रहा था ।
- मैम : ये तो आम दवा है, मिल जाती है, पर वह तो बीमार नहीं लग रहा था ।
- आशा : फिर किसी और के लिए ले जा रहा होगा । ये तो ठीक नहीं है ।
- मैम : क्यों? इसमें क्या खास है?
- आशा : मैम, नशा करने वाली दवा है। इसको ऐसे ही नहीं बेच सकते।
- मैम : इसके लिए Dr. का (Prescription) पर्ची चाहिए।
- आशा : इसमें तो नशा होता है। बिना Dr. की पर्ची के बेचना अपराध है। जो ले जा रहा है, उसे भी सजा हो सकती है।

मैम : शायद, उस बच्चे को कानून का नहीं पता । उस बच्चे को अभी नहीं संभाला गया तो वह नशे का शिकार बन सकता है। एक बार नशे का शिकार हो जाए तो पैसे के लिए चोरी करेगा और फिर अन्य अपराध भी ।

आशा : हाँ, मैम । आज मैंने अखबार पढ़ा था कि एक बच्चे ने अपनी माँ को मार दिया क्योंकि वो, पैसे नहीं दे रही थी । और पुलिस उसको ले गई । जेल जायेगा क्या ?

मैम : बाल-गृह बने हुए है बाल अपराधियों के लिए वहीं जाना चाहिए ।

मैम : चलो आगे चलते हैं। पार्क के पास कुछ लड़कियाँ खड़ी रहती हैं। बहुत जरूरत मंद लगती है। क्या उनके लिए कानून कुछ कर सकता है?

आशा : हाँ मैम ।

मैम : कहीं कोई उन्हे बहकायेगा तो नहीं। काम देने के नाम से इनको देह व्यापार में ले जाते हैं। चलो उन्हे सावधान करते हैं।

आशा : इन लड़कियों को धोखे से बेच दिया जाता है और फिर इनको कोई नहीं अपनाता और फिर ये इसी तरह जीने के लिए मजबूर हो जाती है। इनको कुछ आमदनी का जरिया मिल जाए तो शायद बच जाएं।

मैम : क्यों न हम नालसा के P.L.V. को इस गली में भेजें, क्या कहती हो?

आशा : हाँ, मैम ।

SHORT NOTE

ON

THE LEGAL SERVICES AUTHORITIES ACT, 1987 AND THE ROLE OF PARA-LEGAL VOLUNTEERS

–Asha Menon⁸

In 1987, the Legal Services Authorities Act was enacted by the Parliament which came into force on 09th November, 1995 to establish a nationwide uniform network for providing free and competent legal services to the weaker sections of the society on the basis of equal opportunity.

Legal Services Authorities/Committees have been constituted under the Legal Services Authorities Act, 1987 at various levels, i.e. State, District and Taluka for implementation of legal aid programmes and making legal services available under the Act. Legal services are provided to the persons eligible under Section 12 of this Act, provided that the concerned Authority is satisfied that such person has a prima facie case to prosecute or to defend.

Criteria for giving Legal Services under Section 12 of the Legal Services Authorities Act, 1987:-

Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is-

- a. A member of a Scheduled Caste or Scheduled Tribe;
- b. A victim of trafficking in human beings or begar as referred to in Article 23 of the Constitution;
- c. A woman or a child;
- d. A mentally ill or otherwise disabled person;
- e. A person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- f. An industrial workman; or
- g. In custody such as in jail, protective home and observation home or in a psychiatric hospital or mental health facility; or
- h. A person whose income is below Rs.1 Lac per annum;
- i. Transgender whose income is below Rs.2 Lac per annum;
- j. Senior citizen whose income is below Rs.2 Lac per annum.

(The last two categories have been added only in some States)

Persons who satisfy all or any of the criteria specified would be entitled to receive legal services provided that the concerned Authority is satisfied that such person has a *prima facie* case to prosecute or to defend. An affidavit made by a person as to his income is sufficient for making him eligible to the entitlement of legal services under this Act unless the concerned Authority has reason to disbelieve such affidavit.

⁸ District and Sessions Judge, South District, Delhi.

SCHEMES AND REGULATIONS OF NALSA

The National Legal Services Authority at the national level is responsible for making policies and for evolving economic schemes to let legal services reach to the ones who need it the most. Accordingly, NALSA, as it is generally called, has promulgated several schemes, including some regulations. Though the PLV Scheme sets out explicitly what is expected of the PLVs, NALSA has drawn up several other regulations and schemes through which various groups are targeted for attention. The PLVs have an important role to play under each of these regulations and schemes. The different schemes and the role of the PLVs are briefly mentioned hereafter.

Role of Para-Legal Volunteers (PLVs) under Scheme for Para-Legal Volunteers (Revised) and Module for Orientation-Induction-Refresher Courses for PLV Training Scheme, 2013:

National Legal Services Authority (NALSA) has brought out a scheme called the Para-Legal Volunteers Scheme which aims at imparting legal training to volunteers selected from different walks of life so as to ensure that legal aid reaches all sections of people through the Para-Legal Volunteers.

The Para-Legal Volunteers (PLVs) are expected to act as intermediaries bridging the gap between the common people and the legal services institutions to remove impediments in access to justice. The process aims at legal services institutions reaching out to the people at their doorsteps rather than people approaching such legal services institutions. The Para-Legal Volunteers are the face of the Legal Services Authorities and the arm of the legal services institutions to reach out to the community. They are the very backbone of legal services.

Under the PLV Scheme, the following role is envisaged for them -

- The PLVs are trained the basics of different laws which would be applicable at the grass root level with reference to their day-to-day life, the working of the judicial system, and the functioning of various other stakeholders like the Police, officials from Social Welfare Department, Women and Child Department and other departments dealing with different beneficial schemes of Central and State Governments including the Protection Officers involved with Domestic Violence and Juvenile Justice Acts, in order to be of service to people of the community with reference to their day-to-day issues.
- PLVs are not only expected to impart awareness on the laws and the legal system, but they must also brief the counsel and try to amicably settle simple disputes between the parties at the source itself, which could save the trouble to the affected people from traveling all the way to the Legal Services Authority/ADR Centres.
- If the dispute is of such a nature, which cannot be resolved at the source with the assistance of PLVs, they could bring such parties to the ADR Centres, where, with the assistance of the Secretary in charge, either it could be referred to Lok Adalat or Mediation Centres or legal assistance could be provided for adjudication in a court of law, depending upon the nature of the problem.
- Para-Legal Volunteers are trained to educate people, especially those belonging to weaker sections of the society, to enable them to be aware of their rights to live with human dignity, to enjoy all the constitutionally and statutorily guaranteed rights as also their duties and to discharge obligations as per law.

- Para-Legal Volunteers shall make people aware of the nature of their disputes/issues/problems and inform them that they can approach the TLSC/DLSA/HCLSC/SLSA/SCLSC so as to resolve the dispute/issue/problems through these institutions.
- Para-Legal Volunteers shall give information to the people of their locality about the legal services activities of SLSA/DLSA/TLSC/HCLSC/SCLSC and shall provide their addresses to the people so as to enable the utilization of free services rendered by the above organizations to the persons who are eligible.
- Para-Legal Volunteers shall constantly keep a watch on transgressions of law or acts of injustice in their area of operation and bring them immediately to the notice of the DLSA/ TLSC through telephonic message or a written communication or in person to enable effective remedial action by the Authority/ Committee.
- When the PLV receives information about the arrest of a person in the locality, the PLV shall visit the Police Station and ensure that the arrested person gets legal assistance, if necessary, through the nearest legal services institution.
- The PLVs shall also ensure that the victims of crime get proper care and attention. Efforts shall be made by the PLVs to secure compensation for the victims of crime under the provisions of Section 357-A Cr.P.C.
- PLVs shall, with proper authorization from the DLSA/TLSC visit jails, lock-ups, psychiatric hospitals, children's homes/observation homes and shall ascertain the legal service needs of the inmates and intimate the authorities concerned about any absence noticed of basic essential necessities with special emphasis on hygiene.
- PLVs shall report violations of child rights, child labour, missing children, child marriages and trafficking of girl children to the nearest legal services institutions or to the Child Welfare Committee.
- Para-Legal Volunteers shall assist the DLSA/TLSC in organizing legal awareness camps in their area of operation, particularly for small groups such as women, unorganised labour, drug users/victims etc.
- Para-Legal Volunteers shall generate awareness amongst people about the benefits of settlement of disputes including those at pre-litigation stage through Lok Adalat, Conciliation, Mediation and Arbitration.
- Para-Legal Volunteers shall make people aware of the benefits of inexpensive settlement of disputes relating to Public Utility Services like P&T, Telephones, Electricity, Water Supply, Insurance and hospital services through Permanent Lok Adalat (PLA).
- Para-Legal Volunteers shall submit monthly reports of their activities to the DLSA/ TLSC under whom they are working in the prescribed format.
- A diary to record the daily activities shall be maintained by each PLV. The diary shall be printed and given to PLVs by the District Legal Services Authority. Such diary shall be verified and endorsed by the Secretary, DLSA or the Chairman, TLSC as the case may be.
- Para-Legal Volunteers shall see that publicity material on legal services activities are exhibited at prominent places in their area of activity.

National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010

NALSA (Free and Competent Legal Services) Regulations, 2010 have been framed to make available free and competent legal services to the persons entitled under Section 12 of the Act. The Regulations envisage Retainer lawyers at Taluk, District, High Court and Supreme Court level and a monitoring system right from the time of receiving applications for legal aid. Front Offices have been established under these Regulations to provide services like drafting notices, sending replies to lawyers' notices and drafting applications, petitions etc. Front Offices are manned by panel lawyers and PLVs. The PLVs assigned duties at the Front Offices must be regular and punctual. They must attend to every visitor and record what was the purpose of the visit, the problem they had, the advice or service provided and whether further action was proposed. The diary meant for this purpose issued by the DLSA must be used strictly.

In deserving legal aid cases, apart from the fees paid to the lawyers, expenses for payment of court fees and other court related expenses such as preparation of paper-book and translation of documents etc. are met by the Legal Services Authorities. Therefore, the PLVs should assure poor and marginalized people that they need not incur any expenses to approach the Court for redressal of their rights.

In cases of great public importance and for defending cases of serious nature affecting life and liberty of the applicant, special engagement of Senior Advocate can be made by the Executive Chairperson or the Chairperson of the Legal Services Authority. The PLVs must inform the poor that fees of the lawyers are paid by the Legal Services Authorities and they need not worry about such expenses.

The PLVs must also encourage people to resolve their disputes amicably by resorting to the ADR (Alternate Dispute Redressal) methods of mediation and Lok Adalat.

National Legal Services Authority (Legal Services Clinics) Regulations, 2011

The NALSA (Legal Services Clinics) Regulations, 2011 aim at establishing Village Legal Care and Support Centres in villages or for a cluster of villages, legal services clinics in jails, educational institutions, community centres, protection homes, courts, Juvenile Justice Boards and other areas. The PLVs have a very important role under this Scheme. The Village Legal Care and Support Centres and legal services clinics are manned by trained Para-Legal Volunteers (PLVs).

The PLVs engaged in the Village Legal Care and Support Centres and legal services clinics in the community provide initial advice to the persons seeking legal services and help such people, especially the illiterate in drafting minor petitions, representations and filling up the application forms for various benefits available under the government schemes. The panel lawyers also attend these Village Legal Care and Support Centres and other legal services clinics as per a schedule drawn up by the Secretary. The panel lawyers are also available to the PLVs for advice and mentorship.

PLVs in jails help other inmates to follow up the court cases and also help them with other problems such as concerns of family and property.

Role of Para-Legal Volunteers (PLVs) under the NALSA (Legal Aid Clinics) Regulations, 2011 is briefly listed below:-

- The PLVs engaged shall provide initial advice to the persons seeking legal service, help such people, especially the illiterate in drafting petitions, representations or notices and filling-up the application forms for various benefits available under the government schemes.
- PLVs shall, if necessary, accompany the persons seeking legal services to attend the government offices for interacting with the officials and for solving the problems of such persons.
- If services of a lawyer are required, the PLV shall without any delay contact the nearest legal services institution to make available the services of a lawyer.
- In case of emergency, PLVs may take the persons seeking legal services to the nearest legal services institutions.
- PLVs shall be in touch with the assigned mentor and take his/her guidance before dealing with complicated issues.
- PLVs shall distribute pamphlets and other materials in aid of legal education and literacy to the persons seeking legal services in the legal services clinics.
- PLVs shall take active part in the legal awareness camps organised by the legal services institutions in the local area of the legal services clinics.
- PLVs or lawyers in the legal services clinics shall attempt to resolve disputes locally, and amicably, ideally even before the dispute reaches the court.
- If the PLVs or the lawyers feel that such dispute can be resolved through any of the ADR mechanisms, they may refer such disputes to the legal services institution having territorial jurisdiction or to the District ADR centre.
- There shall be a register in every legal services clinic for recording the names and addresses of the persons seeking legal services, name of the lawyer or Para-Legal volunteer who renders services in the legal services clinic, nature of the service rendered, remarks of the lawyer or PLV and signature of persons seeking legal services.
- It shall be the duty of the PLVs and the lawyers in the legal services clinic to hand over the registers to the legal services institution having territorial jurisdiction as and when called for.

Scheme for Legal Services to Disaster Victims through Legal Services Authorities

The Scheme has been formulated to provide legal services to victims of disasters - both manmade and natural – who are under circumstances of underserved want, being victims of mass disaster, ethnic violence, caste atrocities, flood, and drought, earthquake or industrial disaster. In case victims of disaster have lost valuable documents like title deeds, ration cards, identity cards, school and college certificates, certificate of death and birth, passport, driving licence etc., District Legal Service Authority organises legal services clinics in the affected areas to assist the victims to get duplicate certificates and documents by taking up the matter with the authorities concerned. The Legal Services Authorities take up the insurance claims of the disaster victims with the Insurance Companies for settlement of such claims. Intervention by the Legal Services Authorities under this scheme can be through the PLVs for the following:-

- Ensuring immediate help by Govt./NGOs
- Coordinating the activities of different departments/NGOs supervising the reunion of families
- Supervising health care and sanitation
- Ensuring availability of food, medicine and drinking water
- Awareness on the rights of victims
- Assisting in restoration/reconstruction of valuable documents
- Assisting victims to get the benefits provided by the Govt.
- Assisting in the problems relating to Insurance Policies

National Legal Services Authority (Legal Services to the Mentally Ill and Mentally Disabled Persons) Scheme, 2015

This Scheme is meant to provide legal services to a neglected group of citizens, namely, mentally ill persons and the mentally retarded/disabled people including those who are suffering from autism and cerebral palsy. The objective is to ensure that the mentally ill or disabled are not stigmatized and they are dealt with as individuals, who are to be helped to enforce all rights they are entitled to and as assured to them by law.

Under the Scheme, the Legal Services Authorities provide legal assistance to the mentally ill persons for obtaining treatment and health care under the Mental Health Act, 1987. The mentally disabled are also helped to avail the protections under the National Trust For Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999. Awareness programmes on the rights of the mentally ill persons and mentally disabled persons are conducted and legal services are provided to them to protect their property, person and health.

The PLVs can assist the mentally ill and mentally retarded persons in the following manner:-

- Provide assistance at the Legal Services Clinics set up at the Mental Health facilities.
- Visit the psychiatric hospitals or psychiatric nursing homes and other places to look out for cases of forced admission into the psychiatric hospitals or psychiatric nursing homes or for persons who have been cured and are yet being kept in these facilities or homes.
- Follow up the condition of mentally ill persons against whom a Reception Order has been passed and also ensure that reports are submitted to the court on time so as to ensure timely release of cured persons.
- Assist the cured patients to move applications for discharge or leave of absence under the Mental Health Act.
- Assist patients to file appeals under Section 45 of the Mental Health Act.
- Help identify the relatives of patients and counsel them to take back the cured people where there is reluctance on their part.
- Help reunite families and also ensure that patients far from their homes are brought to facilities closer to their homes.
- Spread legal awareness about human rights and other rights of mentally ill persons and mentally disabled, including their right to treatment and counsel people who are violating these rights.
- To make available the benefits under the various schemes to the mentally disabled persons as a part of their fundamental rights.
- To ensure that there are provisions in the psychiatric homes/facilities and facilities for the mentally disabled, to enhance skills of the mentally ill and disabled to enable them to become self-sufficient and productive.
- Obtain legal services for orders for appointment of guardian, individual or institutional rehabilitation under the National Trust for the Welfare of Persons with Autism, Cerebral Palsy Mental Retardation and Multiple Disabilities Act, 1999.
- Ensure legal services for accessing the benefits under the Persons with Disabilities (Equal Opportunities, Protection of Rights and full Participation) Act, 1995 now known as the Rights of Persons with Disabilities Act, 2016.
- Keep a watchful eye for the prevention of exploitation of mentally disabled including sexual abuse and also for assist in legal action against the abusers and exploiters.
- Assist the police with the wandering and homeless mentally ill or mentally disabled persons.
- To help the mentally disabled persons in protecting their rights of inheritance, owning properties and enjoying financial rights.
- Spread awareness for acceptability of mentally ill and mentally disabled persons as valuable members of the society and remove stigma attached to them.

NALSA (Legal Services Clinics in Universities, Law Colleges and Other Institutions) Scheme, 2013

NALSA by this Scheme has extended support to the establishment of legal services clinics in colleges etc. The activities of the Clinics are planned by the college clinic in-charges and the legal services authority concerned. The objectives of the Scheme are:-

- To set up nationwide collegiate Legal Services Clinics to familiarize law students of the country with the problems faced by the masses who are ignorant about their rights and remedies under the law.
- To attain the ideals of “Social, Economic and Political” justice as enshrined in the Constitution in the backdrop of poverty and inequality, by reaching out to the marginalized and the vulnerable communities through the collegiate Legal Services Clinics.
- To spread legal awareness among students and people at large through awareness camps, seminars, debates, legal counselling, poster making and street plays.
- To expose students to community services.
- To introduce the students to socio-economic impediments to access to justice.
- To provide the students a platform for the empowerment of socially and economically backward groups or individuals.

This Scheme is to be read with the National Legal Services Authority (Legal Aid Clinics) Regulations, 2011 under which PLVs are also to be utilized in rendering service at the clinics and in the community just as they would in any community or village based clinic.

NALSA (Legal Services to the Workers in the Unorganized Sector) Scheme, 2015

A very large section of the population is engaged in the unorganized sector, be it small enterprises, artisans or craftsmen, home based business or industries, self-employed people like rickshaw pullers etc. The distinguishing feature of this sector is non-applicability of most of the labour laws. The unorganized workers lack collective bargaining power and are susceptible to exploitation. They work under poor working conditions and receive far lower remuneration as compared to the organised sector. Workers migrating to other States in search of work also live in very poor conditions. They have housing, hygiene, health and education issues which they are unable to tackle due to ignorance and lack of resources.

The Government has enacted several legislations in their interest, the most important being The Unorganized Workers Social Security Act, 2008. However, the workers in the unorganized sector have not been able to access these benefits. Therefore, the PLVs will play a very crucial role under this Scheme. The entire success of the Scheme falls on the PLVs, their commitment and responsiveness. The PLVs will be part of the Special Cell. Thus, PLVs under this Scheme would have:-

- to organize and conduct Legal Awareness/Literacy Programmes, Training Programmes and seminars for unorganized workers;
- to coordinate with Government Authorities in relation with registration and extension of the benefits of the Schemes to the unorganized workers;

- to facilitate and provide assistance in filing, processing and furnishing application form for registration and in availing benefits of schemes by the unorganized workers;
- to provide legal assistance and legal aid to workers in respect of any claim or defence before any court or other authorities;
- any other function that the State Authority may prescribe for them;
- PLVs will be actively involved in the survey and identification of unorganized workers in the area and will inform the concerned authorities if child labour is found;
- they shall also follow up with the Government on setting up of the State Social Security Boards and the building and other construction workers Welfare Boards;
- they are also to help beneficiaries where benefits have been denied to them, either by following it up with the Government or connecting them to the DLSA/TLSC/SLSA for enforcing legal remedies;
- PLVs must be upto date with the information about the State Welfare Schemes to inform the unorganized workers of the latest schemes and to facilitate them in accessing these schemes.

Role of Para-Legal Volunteers (PLVs) under NALSA (Victims of Trafficking and Commercial Sexual Exploitation) Scheme, 2015

There can be no doubt that victims of commercial sexual exploitation, whether trafficked or voluntary sex workers, are a highly marginalised group. Their rights are forgotten; their conditions of life and living are not anybody's concern; what happens to them and their children interests no one. Yet they are all entitled to benefits under various schemes of the Government because of their marginalised status.

NALSA has formulated this Scheme to bridge the gap between the Government Departments and the vulnerable women and girls, forge partnership with the community and the NGOs working with victims of trafficking and bring the Schemes to the beneficiaries while handholding victims through the trial and court processes. The PLVs will have a crucial role to play in this. Under the scheme PLVs are required to do the following:

- PLVs should ensure that all the due diligence processes including eligibility documents and proofs are collected to enable the vulnerable communities to access the schemes.
- DLSAs should use their PLVs and their offices wherever necessary to interact with the Administrative heads such as the District Collector or Chief Secretary to ensure the final realization of the scheme.
- PLVs attached to or assigned to a police station in compliance of the orders of the Supreme Court of India to handle cases of missing children should keep a keen eye on children's issues as well as trafficking issues so that they are responsive and intervention is possible at the earliest.
- PLVs must inform the SLSAs/DLSAs whenever a case of trafficking is reported or arrest of a sex worker occurs at the police station.
- PLVs drawn from the community can act as the front line workers of the Authority as far as the community is concerned.

- PLVs drawn from the Village Level Child Protection Committees (VLCPC) and Anganwadis as well as teachers should also help in preventing trafficking for sexual exploitation, by keeping watch for school dropouts and following up at their homes and encourage children to attend school.
- PLVs must report all such incidents to the SLSA/DLSA concerned.
- PLVs must help the victims to get their FIR registered and should be present during remand proceedings etc.
- PLVs must keep the panel lawyer informed of the concerns of the victims.
- PLVs should also help the victims to apply to DLSA for release of compensation under the Victims Compensation Scheme and also to access other welfare schemes meant for the rehabilitation of such victims.
- PLVs must act as support persons for victims to enable them to testify against trafficking and should need be, familiarise the victims with the court before the date of hearing.
- PLVs must also help the victims access medical care.

Role of Para-Legal Volunteers (PLVs) under NALSA (Child Friendly Legal Services to Children and their Protection) Scheme, 2015

Children are the future of any country. The State is therefore concerned about their care and protection and well-being. NALSA has drawn up this Scheme with the object of providing child friendly legal services to children as children are entitled to free legal services. The Scheme envisages effective coordination and interface with all Government Bodies, functionaries, institutions, authorities, NGOs and other organisations concerned with or entrusted with responsibilities relating to child rights.

Apart from the role at the Legal Services Clinics at the Juvenile Justice Boards and Observation Homes, PLVs must also ensure that the concerns of the children are conveyed to either the Legal Services Lawyer appointed for the child or the Juvenile Justice Boards or Child Welfare Committee as the case may be. The PLVs must also engage with the children to give them assurance and where they are in conflict with law, to counsel them in a friendly manner to wean them away from crime and to report to the Juvenile Justice Boards, if there is a lack of remorse or disinclination to improve, as such information would help the Juvenile Justice Boards to prepare an effective care plan for the child. The PLVs can play a significant role in connecting the child to rehabilitative activities such as skill building and even facilitate their employment by working with NGOs in the field. PLVs can play an effective role in spreading awareness against child sexual exploitation, rehabilitation and after care programmes. PLVs can also connect children to schools under the RTE and also ensure that children get all benefits and compensation under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.

Additionally,

- PLVs are to draw up awareness programmes to educate public at large including all stakeholders i.e. PLVs, Panel Lawyers on child rights and their protection, on available child protection services, schemes and structures at all levels.
- PLVs should undertake and organize training, orientation and sensitization programs for all stakeholders, caretakers of various homes for their skill enhancement and for creating a sense of responsibility amongst them.
- PLVs shall be deputed in Legal Services Clinics.
- PLVs may have to create an effective outreach campaign through the distribution of posters using child appropriate messaging.
- PLVs at each police station, in compliance of the directions of the Hon'ble Supreme Court of India in Bachpan Bachao Aandolan vs Union of India should conduct initial interviews and assist in investigations, provide counselling and work as a link between the child and his or her family.
- PLVs must have greater social community engagements to prevent young girls from being coerced into early marriage.
- In order solve the problem of child labour, PLVs must work in villages to sensitize families about the long term benefits of education and to make them aware that child labour is not acceptable.

Role of Para-Legal Volunteers (PLVs) under NALSA (Effective Implementation of Poverty Alleviation Schemes) Scheme, 2015

Very often intended beneficiaries of poverty alleviation and social security measures are unable to access the benefits due to severe lack of capabilities, social structures, economic marginalisation and exploitation. The Legal Services Authorities are very well suited to facilitate access to poverty alleviation measures. This Scheme lays down a mechanism for identification of poverty alleviation and social security measures, a framework for facilitating access to such measures by intended beneficiaries and a model for effective review of these processes. The PLVs are the back bone of this Scheme as it is through them alone the Legal Services Authorities can connect the beneficiaries in different groups with Government Welfare Schemes intended for them.

The PLVs can work in the following manner:-

- Team of PLVs constituted by District Authorities under a Legal Services Officer to implement the Scheme will help the beneficiaries access the various schemes of the Government.
- The PLVs must be sensitive to the needs of persons belonging to socially and economically weaker sections and the benefits they can avail through Poverty Alleviation Schemes.
- Para-Legal Volunteers including from the legal services clinics, must go with the Scheme Beneficiaries to the office of the designated authority or the officer to be approached under any of the Poverty Alleviation Schemes to assist them in

fulfilling all the formalities of the Scheme such as filling up the forms, preparing the documentation etc.

- PLVs must inform the Scheme Beneficiary of his/ her option to register a complaint with the Legal Services Officer or Legal Services Authority and even with the PLV about any designated authority or officer under any of the Poverty Alleviation Schemes who refuses to cooperate with a Scheme Beneficiary in providing him/ her access to the benefits that he/ she is entitled to under the Poverty Alleviation Scheme.
- The District Authority, through Para-Legal Volunteers or legal services clinics, shall provide regular updates to the Complainant Beneficiary about the status of the complaint.
- PLVs must regularly spread awareness amongst the target groups, whenever the Government announces a scheme and should seek the help of Legal Services Authorities to organise camps to take the Schemes to the doorsteps of the target groups.

Role of Para-Legal Volunteers (PLVs) under NALSA (Protection and Enforcement of Tribal Rights) Scheme, 2015

Despite all the efforts made to improve the socio-economic condition of tribes, it is still a fact that the life situation of Scheduled Tribes (STs) has improved only marginally. The Human Development Index (HDI) of the STs is much lower than that of the rest of the population. The gap in the literacy rate is high. There are more ST families below the poverty line than those from other communities. Their percentage in government jobs is not in proportion to their population despite the provision of reservation. Their condition, thus, is far worse than that of the rest of the population and they have not been able to reach the envisaged level of development, where they could benefit from the opportunities offered by a fast expanding economy.

This Scheme was drawn up in this background. The Scheme is aimed at ensuring access to justice to the tribal people in India in all its connotations i.e. access to rights, benefits, legal aid, other legal services etc., and protection of their rights.

The Scheme envisages the following:-

- Panel lawyers should, with the help of Para-Legal Volunteers, facilitate the tribal people for getting compensation for their acquired land and assist them in rehabilitation.
- The issues, requirements and legal needs as well as availability of shelter, educational and medical facilities in tribal areas must be identified with the assistance of PLVs and action for judicial redressal initiated in appropriate cases.
- The PLVs should identify the areas of the districts where there is tribal population and reach out to them.
- PLVs must work hard in order to gain trust of the tribal communities, to know the problems of each such community and also to communicate with them effectively during awareness programmes. They must familiarise themselves with the language of the tribal people and be extremely respectful of their culture.

- PLVs should reach out proactively to the tribal people and become the 'go to person' for the tribal community he/she is assigned to serve.
- PLVs should help the illiterate tribal people requiring legal assistance in filling up forms and filing applications for getting benefits of various schemes made by the Government.
- Health being a serious issue, the needy persons may be identified with the help of Para-Legal Volunteers and with assistance of the local Legal Services Authority, such tribal people may be facilitated in getting suitable medical assistance and medicines as well as benefits of Medical Insurance Schemes.
- PLVs must be the voice of the tribal people to communicate to the concerned authorities when there are issues relating to schools, absence of teachers and harassment of tribal children or right to work, right to food, right to health etc. as listed in Part 1 of this Scheme.
- The PLVs may be useful in matters of human trafficking for identifying the victims of trafficking and taking suitable action for obtaining victim compensation and accessing various rehabilitation schemes.
- PLVs must assist the trafficked children, when they are rescued and produced before the Child Welfare Committees (CWCs). They should help the CWCs in tracking out the families of the victims.
- PLVs must hand hold the victims when they have to testify in the Court.
- PLVs must be the bridge between the tribal people and the panel lawyers and must assist both the tribal person as well as the lawyer so that the case of the tribal is effectively understood and heard by the court.
- PLVs must also be the connect between the government departments and the tribal people to ensure that the food and ration meant for the tribal people reach them even when they live in remote and sparsely populated areas in the State.
- Documentary proof of land is mostly not available with tribal people. The tribal people may, in such cases, need legal assistance for getting proper compensation and rehabilitation. PLVs should help the tribal people to collect all documents and other evidence so that displaced tribal people may be rehabilitated properly.
- PLVs must visit jails and interact with inmates to find out about their cases and report to the Full Time Secretary of the DLSA about them so that immediate follow up can be taken for their release on bail or expeditious hearing of their cases.

Role of Para-Legal Volunteers (PLVs) under NALSA (Legal Services to the Victims of Drug Abuse and Eradication of Drug Menace) Scheme, 2015

The phenomenal rise in drug trafficking and drug abuse amongst the youth, children and adolescents has serious implications, adversely affecting national health and economy. Curbing it is the highest priority for the State as well as the society.

The illicit cultivation of plants where-from the substances/drugs are derived is an area of major concern. Generally, people are unaware of the ill effects of such cultivation. In order to prevent illicit cultivation of substances, participation of Panchayati Raj Institutions and Local Bodies is necessarily required. Although many agencies of the State as well as Non-Governmental Organizations are working in the field for eradication of drug trafficking and drug abuse, there is lack of coordination amongst them. Individual efforts of different functionaries and agencies have not achieved the desired results. Experience shows that victims of drug abuse have no idea how to tackle the issues of treatment and rehabilitation.

The objective of the Scheme is to disseminate awareness amongst the general masses regarding the legal provisions, various policies, programmes and schemes, in respect of Narcotic Drugs and Psychotropic Substances as well as to create awareness about the ill effects of drug abuse amongst children in schools and colleges, street children, urban slum children, injective drug user(s), families, prisoners, workers in unorganized sector, Chemists, drug peddlers, sex workers and general masses etc.

The Para Legal Volunteer is an important member of the Special Units established by the DLSAs under this scheme.

- PLVs will need to move in the community and spread awareness about the different kinds of drugs and their potency for addiction and caution school children and adults alike.
- In village areas, they must counsel farmers that short term gain through cultivation of cannabis, hemp and poppy will result in irreversible long term losses.
- PLVs must work with the farmers and Government and other market bodies to help them with financial help and market access.
- Farm labour remaining unemployed must be connected to MNREGA.
- PLVs must identify and work with drug addicts to counsel them regarding rehabilitation.
- PLVs must also tell families of drug addicts that their support is crucial to the recovery from addiction and counsel them not to disown children and relatives who are using drugs and alcohol.
- PLVs must keep a watch on the rehabilitation centres and ensure that there are no human rights violations or violation of law at these centres and immediately report to the DLSA, if such violations are found.
- PLVs must work with street children.
- PLVs must help in the rehabilitation of those who have been de-addicted by connecting them to employers.

NALSA (LEGAL SERVICES TO VICTIMS OF ACID ATTACKS) SCHEME, 2016

The incidents of acid attacks in India show that they are generally against the women. Quite often they are a result of a marriage proposal or sexual advances being rejected. Conflicts related to dowry can also result in acid attacks. Acid attacks are also resorted to as a means of taking revenge, family reasons land dispute, inheritance issues and other property issues. Occasionally, acid attacks may occur due to social, political or religious beliefs.

Apart from life-long bodily disfigurement and physical challenges often requiring life-long treatment, the psychological challenges are greater and deeply affect the victims apart from affecting the employability of the victims. It is also seen that there are limited medical facilities available in the country for acid victims with the number of specialized burn hospitals being limited and it becomes a herculean task for the victim to get admitted in a hospital, much less to get treatment which may often span from a few months to several years. The treatment may also involve huge costs for the victims and their families. The rehabilitation of the victims also becomes an important issue.

This Scheme has been formulated by the NALSA with the objectives of strengthening legal aid and representation to the victims of acid attacks; to help them get medical help and to be able to access all rehabilitative schemes of the Government. The role of the PLVs is as below:-

- PLVs are to act as the interface between the victims of acid attacks and the legal services institutions and are expected to reach out to them.
- PLVs are to remain in touch with the victims of acid attacks and their relatives and to ensure all possible help to them in securing appropriate medical help and treatment.
- PLVs shall provide assistance and support to the families of victims of acid attacks and where possible counselling for them may be arranged so as to bring them out of trauma occasioned by the incident of acid attack.
- PLVs shall also assist the victims of acid attack in obtaining from the hospital where the victim was first treated a certificate that the individual is a victim of an acid attack which may be utilised by the victim for treatment and reconstructive surgeries or benefit under any other scheme that the victim may be entitled to under the State Government or the Union Territories, as directed by the Supreme Court in the order dated 10th April, 2015.
- PLVs shall ensure that the victims of acid attacks are able to avail the various rehabilitative services that may be available for them.
- PLVs will immediately bring to the notice of the Legal Service Authorities when any hospital denies treatment to victims of acid attack despite the best efforts of the PLVs.
- PLVs will help the acid attack victims apply to DLSA for interim compensation immediately and also help her to get the compensation of Rs.3 lacs as assured by the Hon'ble Supreme Court.
- PLVs will also help the victims to seek employment, if eligible, under the category of "Person with Disability" under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 now known as the Rights of Persons with Disabilities Act, 2016."

NALSA (LEGAL SERVICES TO SENIOR CITIZENS) SCHEME, 2016

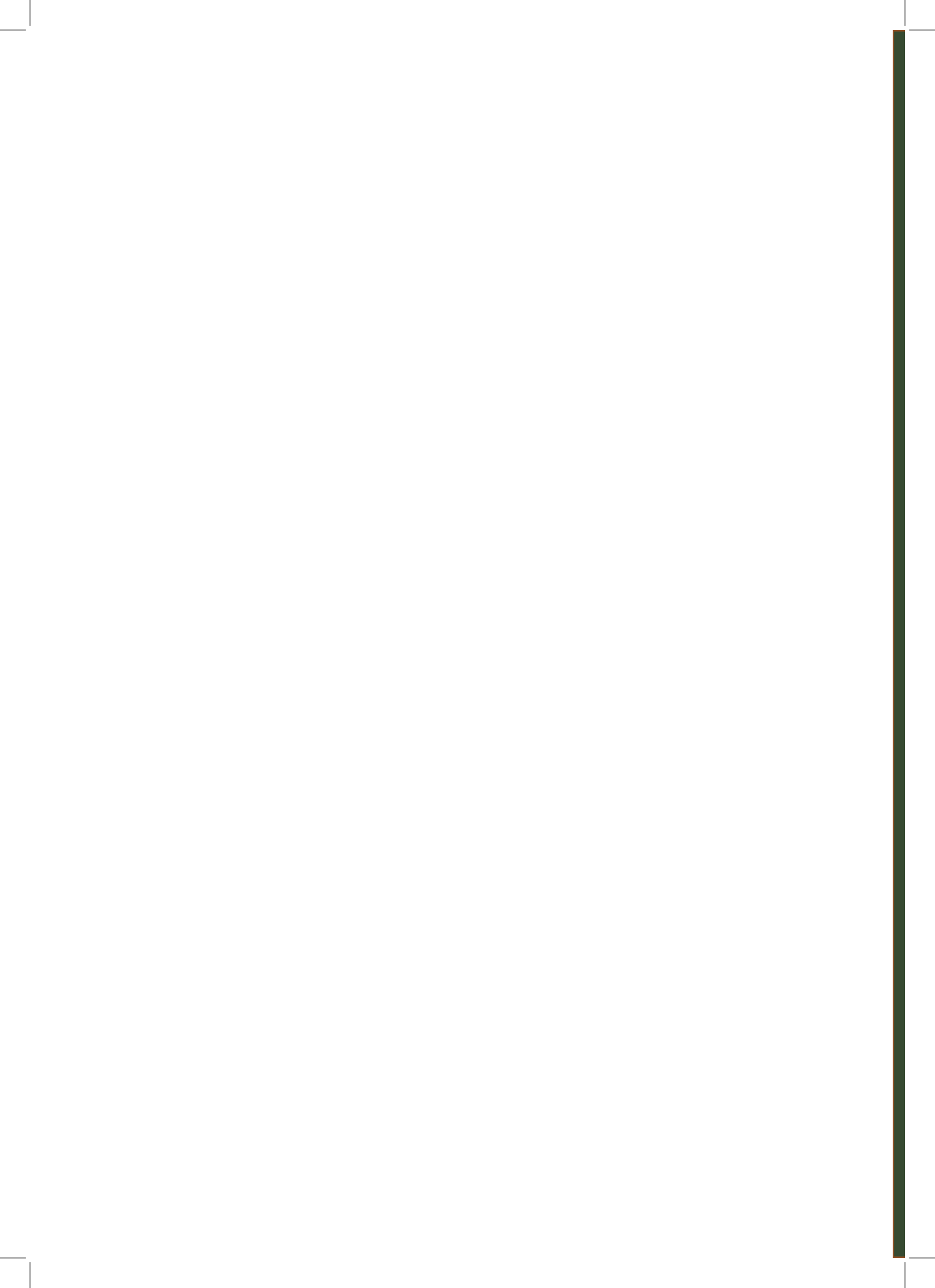
Over the years, with advancement in science, there has been a substantial increase in life expectancy. Senior citizens face a myriad of challenges – social, physical, mental and economic which are unique to them. The economic problems could be on account of loss of employment with a consequent loss of income and economic insecurity. Physical problems include health and medical problems. Social problems could be lack of familial support and social maladjustment. Security is another major issue for the older persons. The problem is made more acute with the break-up of the joint family system and more and more elderly persons being left to fend for themselves. There is migration of productive members of the families from rural to urban areas. As such the women and the older persons in rural areas face greater problems. There is also evidence of systematic and continuous abuse of the elderly i.e. infliction of physical, emotional or psychological harm on the older persons. Half of the elderly population reportedly experience abuse besides disrespect and neglect.

It is in this background that NALSA has promulgated this Scheme. Its objectives are to protect the interest, welfare and rights of those above the age of 60 years. The Scheme envisages the following role for the PLVs:-

- PLVs should make efforts to identify the problems of senior citizens as they cannot be homogeneously classified.
- PLVs must with the help of their mentors resolve issues relating to the legal rights of the senior citizens and approach the Tribunals established under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
- PLVs must coordinate with the DLSAs for expeditious disposal of cases of senior citizens pending before the courts.
- PLVs must visit homes and Day Care Centres meant for senior citizens to interact with inmates and take remedial actions where the homes are not running properly or there is violation of rights and bring such incidents to the notice of DLSA.
- PLVs will spread awareness of all Government Schemes and facilities extended to senior citizens.
- PLVs will counsel children who abandon senior citizens and parents to take back their parents and relatives and care for them.
- PLVs must amicably settle issues between the Senior Citizen and their children including in respect of the common residence. Issues relating to property must however be discussed with the mentor before a PLV initiates legal action or helps the senior citizen to initiate legal action.
- PLVs must spread awareness in the community about the rights of the senior citizens and corresponding duties of the children under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.
- PLVs should be available at Clinics opened by legal services institutions as per their schedule, without fail, to tackle immediate issues as well as to give preliminary advice to Senior Citizens.

DO's & DONT's (To be given as handouts).

- The PLVs thus have a very important role to play. They are however not people “**in authority**”.
- They have no supervisory role over Government officials or the police.
- PLVs are “**Volunteers**”. The very name stands for service with commitment.
- It is not a livelihood or career and cannot be a source of income.
- Payments are made but to tide over cost, particularly of travel.
- They must always be conscious of the person for whom they are acting. Thus humility, persuasiveness, understanding, sensitivity to the cause, are all hallmarks of a good PLV.
- A PLV must be confident and honest so that the community she serves will trust her. But she should never be over-bearing, aggressive, emotional, tyrannical or quarrelsome even under severe provocation.
- She should never believe that the ends will justify the means.
- Any problem must be resolved in a harmonious way.
- Difficult issues should be brought to the notice of the Secretary of the legal services institutions concerned.
- The PLVs should not think that they know the law completely and assume the role of a lawyer, as they are not lawyers.
- They must always be in touch with their mentors and take their guidance before advising people.
- PLVs should always remember that their importance is not in their position but in the quality of their service.
- Attitude of PLVs alone will make them a valuable partner for the police and government authorities and a valuable friend for the community they serve.





Session III

Total Time: 90 minutes



Session III

Total Time: 90 minutes

MODULE FOR TRAINING OF PARA-LEGAL VOLUNTEERS ON THE BASICS OF CRIMINAL LAW

- Alok Agarwal⁹
- Naveen Gupta¹⁰

Session Plan

Objectives:

- To give the participants a working knowledge of criminal procedure.
- To inform the participants about the rights and duties of the accused and victims involved in the criminal proceedings.

Expected Learning Outcomes:

- The participants will be able to offer preliminary advice about the rights and duties to the persons accused of criminal offences.
- The participants will be able to assist the victims of criminal offences in initiating appropriate proceedings and assist them at various stages of criminal trial.

Programme:

- **Lecture** 15 minutes
The resource person will give an overview of the Indian Criminal Justice system
- **Group discussion on Activity I** 20 minutes
The resource person will divide the participants into groups of 5-6 persons and will ask each group to discuss the questions given in the activity. Each group shall after discussion, write their answers on a chart paper.
- **Presentation:** 30 minutes
The resource person will ask each group to give a presentation on the above questions, followed by a whole group discussion guided by the resource person.
- **Activity II**
The resource person will ask the participants to enumerate the following and write

⁹ Member Secretary, NALSA

¹⁰ Additional Secretary, Delhi State Legal Services Authority

them on separate flip charts.

Rights of the accused 08 minutes

Rights of the victims 07 minutes

- **Concluding remarks** by the resource person 05 minutes
- **Feedback/remarks** by the participants 05 minutes

Training Method:

- Lecture
- Group Discussions
- Brainstorming

Tools required:

- Flip charts
- Whiteboard markers
- Blue Tac

ACTIVITY I

ON

BASICS OF CRIMINAL LAW

Questions for Group Discussion

- A lady gets a call from the police station, stating that there is a complaint against her of theft, and that they want to arrest her. It is 7 pm on 21st January. Advise her.
(What to discuss: What are her rights? Can she be arrested, if not why?)
- A resident of your locality approaches you and informs you that he was involved in some quarrel with a person named 'A', who lost a tooth as a result of him hitting 'A' with his fist. Advise him about his rights when sought to be arrested by the police.
(What to discuss: Is the offence committed by the person cognizable or non-cognizable? What does this imply in the context of the rights he has? How can he get bail after arrest, if it so happens?)
- 'X' approaches you and informs you that his brother was taken to the police station 'A' two days back and is being detained for questioning in the case of a dacoity. He seeks your advice as he saw his brother at the station and observed that his brother's face was swollen and there were other minor but visible injuries.
(What to discuss: What illegality/irregularity the police has committed in the given situation? What legal action can be suggested to 'X' for safeguarding the interests of his brother?)
- 'B', a victim of sexual assault, approaches you and informs you that she visited the police station to complain against sexual assault. The police called the accused and asked him to compensate her. She refuses to receive compensation and seeks your advice.
(What to discuss: What action may be taken if the police does not register an FIR? Whether 'B' is entitled to get compensation and how can she avail this benefit?)
- 'C' had got an FIR registered, for an incident of assault, naming three accused persons in it. The investigating officer had arrested two accused persons, but he did not wish to enquire about the role of the third person in the incident. 'C' seeks your advice.
(What to discuss: What measures can be taken by 'C' in these circumstances?)
- 'D' is an under trial prisoner who has been charged under section 308 IPC for having thrown a brick at his neighbour 'A' during a scuffle that resulted from D objecting A to park his vehicle in front of D's house. The brick missed the head of A and hit

his shoulder causing hurt. He has been in custody for the last three months. Advice.

(What to discuss: What are the concepts and consequences of plea-bargaining proceedings? What measures shall be taken by 'D'?)

- A person worked at a shop and had some money with him. On the way back to his home from workplace, he was stabbed by an unknown person and all the money was stolen. He was hospitalised with serious injuries, after a prolonged treatment his life was saved but he suffers permanent disability. Now he seeks your advice whether he can get any compensation and if so, from whom?

(What to discuss: Section 357 A Cr.P.C, victim compensation scheme; offences covered; stage and mode of seeking compensation and who awards the compensation.)

SHORT NOTE

ON

THE BASICS OF CRIMINAL LAW

— *Alok Agarwal*¹¹

Introduction:

Criminal law is the body of law that relates to crime. Crime or criminal offence is often termed as an offence against the society. Consequently, criminal law prohibits the conduct perceived as threatening, harmful, or otherwise endangering to the property, health, safety, and moral welfare of the people. Thus criminal law can be distinguished from civil law on the grounds that it affects the rights of the individual as well as involves injury to the society in general. Criminal law or penal law as it is often called prescribes penalty in some form of punishment as a consequence of violation of the law.

On the other hand, criminal law also provides a bona fide judicial system with an opportunity to put up a defence. The purpose of the criminal justice system is not only to punish the offender but also to save the offender from private vengeance and chaos.¹²

Criminal law system like any other law is divided into substantive law and procedural law. Substantive law defines the offences, explains the essentials of the particular offence and provides the punishment for the same. Indian Penal Code, 1860 (herein after referred to as 'IPC') is one of the substantive laws and Criminal Procedure Code, 1973 (herein after referred to as 'Cr.P.C.') enumerates the procedural laws of the Indian criminal law system. Many other legislations also declare some acts or omissions as "offences". Some of them prescribe a special procedure, too, to try these offences. Otherwise, the procedure given under the Cr.P.C. has to be adopted.

The Constitution of India grants every person a right to fair trial, protection against self-incrimination, double jeopardy etc. India has adopted the adversarial legal system which requires two competent advocates to argue the case in the court of a neutral judge. In the cases of commission of cognizable offences, the State takes cognizance on behalf of the victim and represents the entire society in the court of law; while in other cases, the victim/complainant pursues the prosecution against the offender. In a criminal trial the 'burden of proof' to prove the guilt of the offender is on the prosecution. In addition to this, the prosecution is required to prove the guilt of the accused 'beyond all reasonable doubt'.

What is an Offence?

Section 40 of IPC defines the word 'offence' as a thing punishable under this Code (IPC) or under any special or local law. 'Special Law' is defined as a law applicable to a particular subject, e.g. The Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), Prevention of Corruption Act, 1988, The Protection of Children from Sexual Offences (POCSO) Act, 2012, The Explosive Substances Act, The Essential Commodities Act, Dowry

¹¹ Member Secretary, NALSA

¹² See, David Lanham, 2006

Prohibition Act, 1961, Delhi Police Act, 1978 etc. 'Local Law', on the other hand, is a law applicable only to a particular part of India.

Thus any act which is made punishable by the Parliament or State Legislature by way of a general or special legislation is termed as an 'Offence'. Once a person is convicted of any offence, he is liable for punishment within the limits of the minimum and maximum punishment prescribed for the said offence under the respective legislation.

How is an offence proved?

The offence however has to be proved in the Court of Law via evidence tendered by the prosecution. This is where the procedural law comes in. Evidence is presented in the court in accordance with the provisions of the Indian Evidence Act, 1872.

The Cr.P.C. lays down the procedure for investigation, trial and imposing punishment for the offences as defined under IPC and for most of the other offences under special laws or local laws. If the procedure to try a particular offence has been prescribed by any special or local law, the said procedure has to be followed.

How are the offences classified?

The Cr.P.C. classifies various offences for the purpose of investigation and separately, for the purpose of trial. For the purpose of investigation, the offences are classified as (i) Cognizable and Non-Cognizable; and (ii) Bailable and Non-bailable, under the First Schedule to the Cr.P.C. While the table under the First Schedule classifies all the offences defined by IPC in the above categories, the classification of offences under local and special laws is usually prescribed under the respective legislation. However, the second part of the First Schedule also prescribes that offences under other laws which are punishable with imprisonment for 3 years or more shall be cognizable and non-bailable and the offences punishable with less than 3 years or with fine only shall be non-cognizable and bailable. It is reiterated that in case a different classification is provided by a particular special or local law, the said classification shall prevail.

Cognizable and Non-Cognizable Offences:

'Cognizable offence' as defined under section 2(c) of Cr.P.C. is one for which a police officer may arrest without warrant. If a cognizable offence is reported to the police, it is mandatory for it to register an FIR (section 154(1) Cr.P.C.) and begin investigation (section 156(1) Cr.P.C.). Examples of cognizable offences are: Murder, Theft, Robbery etc.

'Non-cognizable offence' is the offence for which a police officer has no authority to arrest without warrant. In case of commission of non-cognizable offence the police authorities cannot take up investigation on their own. The police officer cannot investigate such case without the order of a Magistrate (section 155 Cr.P.C.). Examples of non-cognizable offences are: Public Nuisance, Causing Simple Hurt, Mischief etc.

Bailable and Non-Bailable offences:

As per section 2(a) of Cr.P.C., 'bailable offence' means an offence which is shown as bailable in the First Schedule or which is made bailable by any other law for the time being in force and 'non-bailable' offence means any other offence.

In case of an arrest for a bailable offence, it is the duty of the police officer arresting him to inform him of his right to bail. Further, if the accused furnishes/is prepared to give bail, he shall be released on bail. There is an explanation appended to the provision, as per which a person, who is unable to give bail within one week of arrest, shall be presumed to be indigent for this purpose.

Thus, bailable offences are, in general, less serious offences in which the arrestee has a right to get bail immediately upon his arrest from the investigating agency itself.

In case of non-bailable offence, there is no absolute right to bail. However, the arrestee can apply for bail to the court and the application shall be adjudicated as per the provisions contained in section 437 Cr.P.C.

A Magistrate court can grant bail under section 437 Cr.P.C. in all the cases except in cases which are punishable with death or imprisonment for life. Further, the Magistrate court will also not grant bail to any person who is accused of a cognizable offence and had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more or he had been previously convicted on two or more occasions of a cognizable offence punishable with imprisonment for three years or more but less than 7 years. However, in case such person is a woman or is sick or infirm, the said exceptions do not apply.

In the above mentioned cases falling within the exceptions, the accused can approach the Sessions Court or High Court for bail, which will then decide the said application on its merits.

Anticipatory Bail:

Any person apprehending arrest, though not arrested as of yet, can apply to the Sessions Court or the High Court to get anticipatory bail. An anticipatory bail order passed in favour of an accused makes it obligatory on the investigating agency to release the accused on bail in case he is arrested.

How is an offence investigated?

The systematic inquiry of an incident (or an offence) is called an investigation. It is defined to include all the proceedings for the collection of evidence conducted by the police or any other person authorised by a Magistrate.

Collection of evidence includes recording of statements of witnesses, collection of relevant documents, obtaining of scientific or forensic evidence, obtaining of experts' opinion on medical, forensic and other aspects.

In this context, section 39 Cr.P.C. imposes a duty on every person to inform forthwith to the police or the nearest magistrate of their knowledge of commission of, or of the intention of any other person to commit, any serious cognizable offence (list of offences provided in the section).

The investigation of any cognizable offence begins with recording of the First Information Report (FIR).

First Information Report (FIR)

An FIR can be called the first footstep to set the criminal law machinery in motion. This information enables the police authorities to start investigating into an alleged criminal incident. It is important to note here that FIR does not constitute a substantive evidence; rather it begins investigation and collection and recording of substantive evidence to be presented in the court of law.

Section 154 Cr.P.C. puts an obligation on the police authorities to register an FIR on every information relating to the commission of a cognizable offence and make a written record of all the information furnished by the person making the statement. It is important to keep in mind, however, that it is not essential that a witness to the incident can only make the statement or give the said information, rather FIR can be recorded on the information of a person with a reasonable opportunity to have the knowledge of the incident.

In a landmark judgement, *Lalita Kumari v. Govt. of U.P., 2014 (2) SCC 1*, a Constitution Bench of the Supreme Court held that if the information discloses commission of a cognizable offence, the police shall register an FIR and that the same is not discretionary. It was also held that if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are: (a) Matrimonial disputes/family disputes; (b) Commercial offences; (c) Medical negligence cases; (d) Corruption cases; (e) Cases where there is abnormal delay/laches in initiating criminal prosecution. The same, however, is not an exhaustive list.

In case, however, the statement discloses an offence which is non-cognizable, the Police Officer shall enter the substance of the information in a book kept for this purpose (generally known as Non-Cognizable Register or NCR) and refer the informant to the Magistrate.

What action may be taken if FIR is not registered?

As stated earlier, a victim of an offence may approach the concerned Police Station to lodge his/her complaint. If the statement made by him/her discloses commission of a cognizable offence, the Police are duty bound to lodge an FIR as provided under Section 154 Cr.P.C and enter upon investigation.

However, it may happen that even on a cognizable offence being disclosed, the officer-in charge of the police station may refuse to register the FIR. The victim in that case, has the following options:

Report the matter to the Superintendent of Police. He may, if satisfied with the contention of the victim, order the concerned Police officer to register FIR and also, may initiate departmental action against the erring officer.

File an application under Section 156(3) Cr.P.C. before the Magistrate having jurisdiction over the matter praying for order to the Officer in-charge of the concerned Police Station to register an FIR and investigate the case. On such application, the Magistrate may after hearing, if he thinks fit, make an order for investigation of the case by Police; otherwise, he may try the same in the manner prescribed for trial of a complaint case.

To file a complaint case before the Magistrate having jurisdiction. A 'complaint' is defined under Section 2(d) Cr.P.C. which means 'any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report'.

The Magistrate is empowered to initiate proceedings on a complaint. However, the procedure to take cognizance and to try the offence on a complaint is different from that of a police report.

Ensuring proper investigation:

The Apex Court in *Sakiri Vasu v. State of U.P., 2008 (2) SCC 409*, has held that Section 156 (3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police.

What is an arrest?

Arrest can be defined as forcibly depriving someone of his/her liberty i.e. a forcible restraint. This act of depriving someone of his/her liberty is generally a consequence of a criminal investigation or as a matter of prevention of crime, with the authority of law. However, preventive detention is an exception not a rule.

Who can make an arrest?

An arrest can be made by a police officer (either with or without warrant), by a Magistrate, or by a private person.

Under section 44 of Cr.P.C. a Magistrate is given power to arrest any person, or order the arrest of any person, if he/she witnesses any offence being committed within his/her local jurisdiction.

Section 41 Cr.P.C. enumerates certain situations where a police officer, without an order from a Magistrate and without a warrant, is authorised to arrest a person. Some of them are as follows:

- If the police officer has witnessed the person committing a cognizable offence;
- If a reasonable complaint, about commission of cognizable offence, has been filed against anyone or the police officer has reasonable suspicion that the person has committed cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years. However, the police officer shall be satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the offence; or to prevent such person from tampering with evidence or from making any inducement, threat or promise to any witness to dissuade him from deposing etc.;
- If credible information has been received against the person that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years;
- If the person has been proclaimed as an offender either under Cr.P.C. or by the Government;

- If the person has in his/her possession property suspected of being stolen;
- If the person obstructs a police officer performing his/her duty or he has escaped from lawful custody;
- If the person is suspected of deserting Armed Forces of the Union;
- If the person is suspected of committing such an offence outside the territory of India which if committed within the territory would have been punishable and for which he is under any law relating to extradition.

Further, it provides that no person shall be arrested for non-cognizable offence without a warrant from a Magistrate.

It is noteworthy that in the case of a complaint of a cognizable offence punishable with less than or up to seven years of imprisonment, the police cannot arrest a person without the conditions specified under Section 41 being satisfied. The procedure to be followed in the cases where the said conditions are not satisfied is prescribed under section 41A Cr. PC.

Section 41A states that in the cases where it is not essential to arrest the person according to the provisions of section 41, the police officer must issue a notice with direction to the said person to appear before him or at such other place as specified in the notice. In pursuance to such direction, if the person is willing to comply with notice, the police shall not arrest the said person in connection with the respective offence. However, in a situation where the said person fails to comply with the terms of the notice, the police officer may, subject to such orders if any passed by a competent Court in this behalf, arrest him.

In a landmark judgement of *Arnesh Kumar v. State of Bihar, 2014 (8) SCC 273*, the Apex Court observed that there is a need to exercise caution by the police officers while exercising the power of arrest. Arrest has a social stigma attached to it. It was held that it is evident from the provisions of the said section that any person accused of an offence punishable with imprisonment which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested only on the belief that the person has committed the aforesaid offence. In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. The police officer in this case has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured.

Safeguards at the time of arrest:

Section 41B enumerates the procedure to be followed by the police officials While making an arrest, the police officer must:

- Wear an accurate, visible and clear identification of his/her name;
- Prepare a memorandum of arrest, to be attested by one witness, who is either a relative or a respectable member of the locality where the arrest is made;

- In case the memorandum is not attested by a relative of the person arrested, he/she should be informed of his/her right to have a relative or friend informed of his arrest.

Further, the person arrested is entitled to meet an advocate of his choice during interrogation, though not throughout interrogation (section 41D).

Arrest by a private person:

Under section 43 of Cr.P.C. a private person can arrest another person if the private person witnesses someone committing a non-bailable and cognizable offence. Further the person should without any unnecessary delay hand over the person arrested to the police officer. If the said police officer is satisfied that the person comes under the provisions of section 41, then he shall arrest him again. In case there is no sufficient reason to believe that person arrested has committed any offence, he shall be immediately released.

Can a person be handcuffed by the police?

Handcuffs must be the last refuge, not the routine regimen. In a landmark case of *Prem Shankar Shukla v. Delhi Administration*, AIR 1980 SC 1535, the Apex Court held that 'if a few more guards will suffice, then no handcuffs. If a close watch by armed policemen will do, then no handcuffs. If alternative measures may be provided, then no iron bondage. This is the legal norm. In rare cases of concrete proof readily available of the dangerousness of the prisoner in transit, the onus of proof of which is on him who puts the person under irons. Even in cases where, in extreme circumstances, handcuffs have to be put on the prisoner, the escorting authority must record contemporaneously the reasons for doing so. Nor will mere recording the reasons do, as that can be a mechanical process mindlessly made. The escorting officer, whenever he handcuffs a prisoner produced in court, must show the reasons so recorded to the Presiding Judge and get his approval.'

In *Citizens for Democracy v. State of Assam*, 1995 (3) SCC 743, it was held by the Apex Court that where the police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate.

Rights of the arrested person:

The essential principle behind providing extensive safeguards against the abuse of the power to arrest and for the people in custody is that any person who is under the custody of the police for either investigation or under-trial or convicted prisoner, does not lose his/her human rights and certain fundamental rights provided under the Constitution.

These rights can be broadly divided into: constitutional and statutory safeguards.

Constitutional Rights:

The constitutional safeguards are enlisted within the fundamental rights under Articles 20 and 21.

Article 20 lays down the principles of safeguard against 'ex-post facto', 'double jeopardy' and 'self-incrimination'. Article 20 (1) lays down that a person can only be punished for the violation of any law which was in force at the particular point of time of the commission of

the offence. Therefore, no one shall be charged for an act which is declared unlawful after it was committed i.e. no one shall be charged by an ex-post facto law. An ex-post facto law is one which makes illegal an act that was legal when committed.

Article 20(2) lays down the principle of 'double jeopardy' i.e. it prohibits the State to prosecute and punish any person more than once for the same offence. The doctrine of 'double jeopardy' is based on the Roman law principle "an issue once decided must not be raised again". The common law rule laying down the concept of double jeopardy is that "no one should be punished twice for one fault".

Section 300 of Cr.P.C. provides that if a person has been tried in a competent court of law and either convicted or acquitted of the offence, he/she cannot be put to trial again for the same offence nor on the same facts for any offence for which a different charge from the one made against him might have been made.

Prohibition against self-incrimination: The principle of self-incrimination is part of the constitutional safeguards against the probable abuse of power by the police authorities. It is one of the principles of natural justice too. The doctrine of self-incrimination essentially prohibits the authorities from forcing an individual to give testimony against himself. The American and English judicial systems also recognise the right against self-incrimination and prohibits the authorities to force a person to give any testimony which has the potential to render him vulnerable to prosecution.

In *M.P. Sharma v. Satish Chandra*, AIR 1954 SC 300, the Supreme Court set out the ambit of the principle of self-incrimination and observed that this right embodies the following essentials:

- It is a right in relation to an individual who is "accused of an offence".
- It is a procedural protection against the "compulsion to be a witness".
- It is a protection against such compulsion relating to his giving evidence "against himself".

The Apex Court discussed the scope of the prohibition against self-incrimination in *Nadini Satpathy v. P.L. Dani*, AIR 1978 SC 1025 and defined clause (3) of Article 20 in considerably wider terms. The Apex Court held that the prohibitive scope of Article 20(3) does not merely come into play at the trial stage in the court of law; however, its scope extends to police interrogation as well. It protects the accused in regard to forcible disclosure of self-incriminatory information. Thus it prohibits the police authorities from extracting "forcible testimony". The term forcible testimony includes not just physical threats or violence but also psychological coercion. Thus the accused is given a 'right to remain silent'.

Statutory safeguards:

The legislature has given certain rights to the accused/arrested persons in order to save them from both abuse of power by the authorities and unnecessary arrests.

As mentioned above, section 41 of Cr.P.C. enumerates a number of provisions with the aim to avoid unnecessary arrest. There are other statutory rights given to the accused, both before and after the arrest.

- Section 46(4) enumerates that a woman should not be arrested after sunset and before sunrise unless there exist some exceptional circumstances for the same. The woman arrested should not be physically apprehended except by a female officer.

- Section 50(1) of Cr.P.C. lays down that the person arrested has a right to be informed of his/her grounds of arrest along with the complete details of the offence for which he is arrested.
- Section 50 (2) lays down that in cases related to bailable offences, the police officer is under an obligation to inform the accused about his right to be released on bail.
- Further, under section 50 A of the Cr.P.C., the person making arrest shall forthwith give information regarding such arrest and place where the arrested person is being held to any person nominated by the accused. In *D.K. Basu v. State of West Bengal, AIR 1997 SC 610*, the Apex Court held that a person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at a particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.
- Section 56 of Cr.P.C. lays down that the person arrested without a warrant shall be presented before a Magistrate or the officer in charge of the particular police station, without any unnecessary delay.

In *Khatri (II) v. State of Bihar, AIR 1981 SC 928*, the Apex Court has “strongly called upon the State and its police authorities to ensure that this constitutional and legal requirement to produce an arrested person before a Judicial Magistrate within 24 hours of the arrest to be scrupulously observed”.

- The person, who has been arrested without warrant, cannot be kept in the police custody for more than 24 hours without judicial scrutiny, this time however is calculated exclusive of the reasonable time required for travel to the Magistrate’s Court (section 57 Cr.P.C.).
- Further, as per section 54 Cr.P.C. a person who is arrested shall be taken for a medical examination by the police authorities and the same is not discretionary. If the arrested person is female, the examination of the body shall be made by or under the supervision of a female medical officer. The doctor is required to prepare a report of the medical examination and that report shall be furnished to the arrested person or his nominated person.
- Section 55-A of the Cr.P.C. puts an obligation on the person having the custody of an accused to take reasonable care of the health and safety of the accused.
- Right to Legal representation/aid for the arrested person: The person under arrest is entitled to legal representation under the constitutional mandate of giving each person a fair trial.

Further, once criminal proceedings are instituted against a person in the court of law, Section 303 Cr.P.C. entitles the accused to the right to be defended by a counsel in the court of law.

In a benchmark judgment in *Hussainara Khatoon v. Home Secretary, State of Bihar, AIR 1979 SC 1369*, the Apex Court held that, “the right to free legal services is an essential ingredient of ‘reasonable, fair and just’ procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21”, the essence of the judgement being that nobody shall be denied an opportunity to secure justice for not being able to afford legal representation (Article 39A of the Constitution).

In *Mohd. Ajmal Amir Kasab v. State of Maharashtra, 2012 (9) SCC 1*, the Apex Court held that “Every accused unrepresented by a lawyer has to be provided a lawyer at the commencement of the trial, engaged to represent him during the entire course of the trial. Even if the accused does not ask for a lawyer or he remains silent, it is the constitutional duty of the court to provide him with a lawyer before commencement of the trial.”

The Legal Services Authorities Act, 1987 enables the establishment of legal services institutions at National, State, District and Taluka levels. At national level, National Legal Services Authority (NALSA) was constituted. Each State has its own State Legal Services Authority. District Legal Services Authorities (DLSAs) have also been established at district level. Section 12 of the said Act enumerates the categories of persons eligible to receive legal aid which includes all the persons in custody. legal services institutions at all levels, particularly DLSAs, have been entrusted with the responsibility to ensure that each and every person arrested has legal representation from the first day of production before the court. It is also the duty of the court to inform him of this right.

- Right to Speedy Trial is part of the broader right to fair trial itself. Section 309 Cr.P.C. states that in every trial the proceedings shall be continued a day-to-day basis and any adjournment in the case must be recorded with the reasons.
- Right to defend himself against the accusation: The right of the accused to defend himself is part of the principles of natural justice i.e. the right to be heard. Under section 313 Cr.P.C. an opportunity is granted to the accused to explain any circumstances appearing in the evidence against him. Further under section 315 Cr.P.C. the accused can become a competent witness in his own defence.
- Rights of a child/juvenile: If a minor child comes in conflict with the law, the Juvenile Justice (Care and Protection of Children) Act, 2015 prescribes under section 10 that such child (juvenile) once apprehended should immediately be produced before the Juvenile Justice Board. It further prescribes that the juvenile shall be placed under the charge of the Special Juvenile Police Unit or any police officer especially designated for this purpose.

Special Provisions in case of victims of certain offences:

In certain cases, refusal to register FIR or to give medical treatment to the victim may lead to much more serious consequences.

If any information is received by Police or any other public servant disclosing cognizable offence under sections 326A, 326B, 354, 354B, 370, 370A, 376A to 376E or Section 509 I.P.C, and he refuses to record the same, this amounts to an offence under Section 166A of the IPC and is punishable with a rigorous imprisonment for a term not less than six months but extending up to two years and shall also be liable to fine.

(a) All hospitals whether public or private are obliged to provide immediately, first aid or medical treatment, free of cost, to the victims of any offence covered under sections 326A, 376, 376A to 376E of the IPC and to immediately inform the Police of such incidents [section 357C Cr.P.C.].

(b) Section 166(B) I.P.C lays down that any hospital whether private or public as mentioned above who contravenes the above Section 357-C Cr.P.C shall be punished with imprisonment for a term which may extend to one year or with fine or both.

As per First Schedule to Cr.P.C., an offence under Section 166-A IPC is cognizable and

bailable, while that under Section 166-B is non-cognizable and bailable. First and foremost, it is the right of the victim of a criminal offence to get an FIR registered at the nearest police station.

Remand: What happens after the arrest?

Once the person is arrested he/she shall be produced before the Magistrate within 24 hours of being arrested. After being produced before the Magistrate, he will either send the accused to police custody or to judicial custody, for a term not exceeding 15 days in the whole.

The judicial custody mentioned above can be extended to a maximum of 15 days at a time and up to 90 days in the case where the person arrested is accused of an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years or 60 days in other cases (section 167 Cr.P.C.).

Further, at the time when the arrested person is produced before the Magistrate, it is the duty of the Magistrate to ensure that all the requirements of arrest mentioned above are satisfied. The counsel for the accused and in case he has not engaged his own counsel, the Remand Advocate deputed by the District Legal Services Authority is also duty bound to point out any violations of the same. If these rights of the arrested person were violated, the Magistrate must take appropriate action against the police authorities in charge. (*D.K. Basu v. State of West Bengal, AIR 1997 SC 610*).

What happens after the completion of investigation?

After the completion of investigation the officer-in charge of the police station has to file a police report with the court (section 173 Cr.P.C.). The said police report shall contain all the particulars regarding the case as mandated under section 173 Cr.P.C., along with the opinion of the investigating authorities such as: whether any offence appears to have been committed and, if so, by whom.

Further, in the case where the police report discloses commission of an offence, the same in common parlance is called a “charge sheet”.

On the other hand, in case the police report under section 173 Cr.P.C. discloses that no offence is made, the same in common parlance is called a cancellation report.

The opinion of investigating agency forwarded through report filed under section 173 Cr.P.C. is not binding upon the court. It is the court’s duty to apply its own mind and prima facie decide whether the facts enumerated in the police report disclose commission of an offence or not and, if so, by whom.

Thus, the Magistrate is fully empowered to take cognizance of the offence despite the contrary opinion of the investigating agency.

Initiation of Proceedings in the Court:

In the Court, the Magistrate can take cognizance of any offence upon receiving any of the following:

1. Upon receiving a complaint containing facts which constitute an offence;
2. Upon a Police Report of such facts;
3. Upon information received from any person other than a police officer or upon his own knowledge, that an offence has been committed. (Section 190 Cr.P.C.)

Procedure for summoning of accused:

Procedure in case of a complaint [Section 200 to 203 Cr.P.C.] is that the Magistrate examines the Complainant and the witnesses present, if any, except in the case of a complaint in writing made by a public servant acting or purporting to act in discharge of his official duties or when a court has made the complaint. In these cases, such examination is exempted.

After considering the statement, recorded on oath of the Complainant and of the witnesses or, in cases where such examination is exempted, and documents, if any filed with it, if the Magistrate finds no sufficient ground for proceeding, he may dismiss the complaint. In case there is sufficient ground for proceeding, he may issue process against the accused person/s.

In case of a police report, the Magistrate may if satisfied, from perusal of the report of the statement of witnesses recorded by the Police during the investigation that there is sufficient ground for proceeding, takes cognizance of the offence and issue summons to the accused person/s.

Classification of Cases for the purpose of Trial:

The Code of Criminal Procedure provides different trial procedures for the following categories of cases:

1. Warrant case, which means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years. [Section 2(x) Cr.P.C.];

2. Summons case, which means a case relating to an offence, and not being a warrant case [Section 2(w) Cr.P.C].

All the summons cases along with some other cases as mentioned in Section 260 Cr.P.C. can also be tried summarily. Further, in the cases which are mentioned in the First Schedule to Cr.P.C. as triable by the Sessions Court, the Magistrate after taking cognizance summons the accused and supplies copies of police report to them. Thereafter, he commits the case to the Court of Sessions which tries the offence (Section 207 to 209 Cr.P.C.).

Compoundable and Non-Compoundable Offences:

Criminal offences are generally understood to be offences committed against the society as a whole. Therefore it is perceived as necessary that the person accused of committing the offence is tried under the prescribed procedure and if convicted, be adequately punished. However, in case of some offences which may have essentially caused injury to the person/property, health or psyche of an individual person or persons, Section 320 Cr.P.C makes an exception. Such offences are listed in the said provision and can be compounded by the persons as mentioned in the provision. The composition of an offence under this section will have the effect of acquittal of the accused with whom the offence has been compounded. It may be noted that the offences listed under Section 320 Cr.P.C. only, and no other offence, can be compounded.

Thus when an accused is tried for a compoundable offence, he has an option of amicable settlement with the victim of such offence and such settlement when approved by the Court will result into his acquittal.

Plea Bargaining

The concept Plea Bargaining can be defined as the pre-trial negotiations where the accused agrees to plead guilty to an offence in exchange of certain concessions from the side of the prosecutor. Plea Bargaining can be of two types: Charge Bargain and Sentence Bargain. 'Charge Bargain' is the situation in which the accused is given the option to plead to either a lesser charge or to lesser number of charges against him. 'Sentence Bargain' is the situation where the prosecutor offers the accused a lesser sentence and informs him beforehand the duration of the sentence he/she will receive if he pleads guilty.

Plea Bargaining was introduced in India in a restricted form by the Criminal Law (Amendment) Act, 2005, and inculcated in the Cr.P.C. under Section 265A-265L. Plea Bargaining in India is applicable to offences with punishment up to seven years. Further, plea bargaining is not applicable to cases pertaining to socio-economic offences, or offences committed against women or a child below 14 years of age.

Section 265-B provides the procedure to apply for 'Plea Bargaining'; the accused can file an application for plea bargaining in the court where his trial is pending (Section 265-B (1)).

Sub-section (2) provides that the said application should contain a brief description of the case and the offence charged, along with an affidavit from the accused stating that the accused understands the nature and extent of the offence, and that the accused was not convicted for the same offence by any court in the past.

The court after receiving the said application, will intimate the public prosecutor and the opposite party, and will fix a date for the appearance of all, in the court. (Section 265-B (3))

Sub-section (4) provides that on the day fixed for appearance the court must take a statement in-camera from the accused to ensure that the accused has moved the application for plea bargaining voluntarily

Further, once the court is satisfied that the accused has filed the application voluntarily, under section 265- C, all the three parties i.e. the public prosecutor, the victim and the accused are supposed to arrive at what is called a "mutually satisfactory disposition". This mutually satisfactory disposition may include compensation to the victim by the accused.

Section 265-C (a) provides that if the case was instituted on police report then in addition to the public prosecutor, the victim and the accused the police officer in-charge of the investigation will also be a part of the negotiations. Sub-section (b) provides that if the case was instituted otherwise than on police report, the court shall issue notice to only the victim and the accused. However, in both the scenarios, the court has to ensure that the parties to the negotiations participate voluntarily and are under no pressure. Further, the accused or the victim as the case maybe can participate along with their counsel, in the said negotiations in both cases.

Further, under section 265-D, once they arrive at a 'mutually satisfactory disposition' the court will prepare a report of the said disposition, to be signed by the presiding officer of

the court and all the other parties involved in the negotiations. The court will then dispose of the case according to the procedure given further in the Cr.P.C.

The Court shall award a compensation to the victim in accordance with the MSD and then, hear the parties on sentence. In case the accused can be released on Probation of good conduct, the Court will normally do so. If however, a minimum sentence is prescribed for the offence in question, the Court can award half the said minimum sentence. In other cases, upto one fourth of the sentence prescribed can be awarded.

Para-Legal Volunteers can play a major role in creating awareness about this provision, especially among those accused persons who have already undergone some part of the punishment prescribed for the offence they are charged with.

Victim Compensation:

Section 357 Cr.P.C. provides for compensation to be awarded by the court if the accused is found guilty. This compensation, as ordered by the court, has to be paid by the accused.

However, in many cases, either the compensation awarded under Section 357 is not adequate for rehabilitation of victim or his dependents, or the case ends in acquittal or discharge, or the offender is not traced or identified. In any such case, with the objective of rehabilitating the victim, Section 357A provides for the State to pay compensation to the victims out of a Victim compensation Fund created for this purpose. The award of the Compensation is to be made by the State / District Legal Services Authority on a recommendation made by the Court or on an application filed by the victim or his dependents.

All States and Union Territories have framed their own schemes which lay down the eligibility, procedure, offences in which the compensation is payable and the lower and upper limits of amount payable for each offence. However, the type of offences in which compensation is given by the State is usually offences against body.

There is a Central Victim Compensation Fund Scheme also, which prescribes the minimum compensation that should be paid for specified offences and allows the States to claim reimbursement from the Central Fund in case the State scheme provides for a lesser amount.

In *Suresh v. State of Haryana*, AIR 2015 SC 518, the Apex Court held that 'on being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can also be at interim stage.

Further, in case where a person is victim of an offence and he/she is entitled to compensation under the provisions of respective Victim Compensation Scheme of the state, the victim can approach the District Legal Services Authority or the State Legal Services Authority to receive the relief provided for in the scheme. Para-Legal Volunteers have a major role to play in spreading awareness about the Victim Compensation Scheme of their State and also, in assisting the victims in claiming compensation.



Session IV

Total Time: 90 minutes



MODULE FOR TRAINING OF PARA-LEGAL VOLUNTEERS ON LAW RELATING TO FAMILY

- Justice Manju Goel¹³

SESSION PLAN

Objectives

- To inform the Para-Legal Volunteers of the various angles involved in a family dispute.
- To inform the volunteers about the present legal framework governing family disputes.

Expected Learning Outcome

- The Para-Legal Volunteers will be sensitised in respect of the legal situation governing family disputes.
- Para-Legal Volunteers will be able to understand their role if confronted with a family dispute.

Training Method

- Lecture
- Group Discussion
- Experience sharing

Programme

- **Introduction** 10 minutes
The resource person will introduce the subject by explaining what personal law is and how broadly family relationships are similar despite minute differences in personal law.
- **Group Discussion** 15 minutes
The participants will be divided in groups of 5 or 6 and will be given the 'Reading' provided in this chapter for group discussion/Activity-1. The groups will try to find the answers to the questions given in the activity sheet.

¹³ Former Judge, High Court of Delhi.

- **Presentation by groups and whole group discussion** 20 minutes
Groups will present their views and a discussion led by the resource person will follow. The resource person will pool the points and write them on the flip chart and fix the chart on the wall of the room.
- **Lecture by resource person** 15 minutes
The resource person will give lecture covering the areas not so far covered.
- **Experience Sharing** 20 minutes
The resource person will invite 2 volunteers to share their experiences in handling family disputes. Experiences narrated should preferably be both of success and failure.
- **Concluding remarks:** by resource person/one of the participants or by the visiting dignitary 10 minutes

Tools Required

- Facility for power point presentation
- Flip chart
- White board markers
- Blue tack
- whiteboard

ACTIVITY -1

FAMILY LAW

Reading for Group Discussion

Ms. Aisha has two daughters. The youngest one is 2 years old. She is married to Hameed who is a vegetable vendor. Hameed's old mother also lives with him. Hameed and Aisha often have quarrels as Hameed has been blaming Aisha for not bearing a male child. Aisha had been earning as a part time *Aaya* in a nursery school. However, after her first daughter was born Aisha had to discontinue her job to look after the child. Before she could pick up another job she was pregnant again with her second daughter. Hameed is the only earning member. His income is just good enough to look after the family including his mother who has frequent health issues requiring Hameed to spend on her treatment.

Today Aisha and Hameed had a fight. Hameed twisted Aisha's arm causing her a dislocation of bone. He is threatening to throw Aisha out of the house. Aisha is not willing to leave the house. She has no relative in this town and her parental family is of the same economic standard as of Hameed's. If she returns to her parental house she will become a financial burden on that family.

Another cause for discord between Hameed and Aisha is that Hameed does not want to spend any money on the education of the daughters. He thinks that daughters will soon be married and educating them will not give him any benefit. He rather wants to save the money which would be required to perform their marriage.

ACTIVITY

In small group/full group discussion find answers to the following question:

1. What are the different angles of dispute between Aisha and Hameed?
2. What legal proceedings may ensue if Aisha wants legal redressal?
3. What would be the consequences if Aisha and Hameed dissolve their marriage by triple talaq or otherwise?
4. How can Hameed be convinced that he should educate his daughters?
5. What various facilities are available in such situations for the benefit of the children, for the wife or for the couple?

SHORT NOTE ON LAW RELATING TO FAMILY

-Justice Manju Goel¹⁴

INTRODUCTION

Marriage is an accepted institution in all communities in the world. By and large the accepted norm of marriage is monogamy although in certain societies polygamy is also seen. Marriage, matrimonial relationship, custody and guardianship of children and the norms that rule inheritance are parts of that branch of law which is called personal law. Thus those governed by Hindu Law are governed by Hindu Succession Act, 1956, Hindu Marriage Act, 1955, Hindu Adoption and Maintenance Act, 1956. The Christians are governed by the Indian Divorce Act, 1869. Then we have the Special Marriage Act, 1954 for those who opt to marry under the Act and choose not to be governed by the personal law. Muslim marriage is governed by Shariat law. All these Acts give different shades to the legal consequences of marriage. However, socially speaking marriage in all communities means a bond entered into by a man and a woman creating a permanent relationship with the aim of procreation and of making a family. For the present purpose of training Para-Legal Volunteers it is not necessary to go deep into different consequences of marriages under different laws except that a man governed by Muslim law is permitted to have more than one wife.

The concept of marriage means beginning of a new life and a new family. It is a ritual or a ceremony by which a man and a woman become husband and wife living together for the rest of their lives. According to the ancient Hindu Law, marriage was such a sacred and holy union that even death could not destroy this relationship or bond that was created between the husband and the wife. The main objective behind marriage was to allow the husband and the wife to perform religious duties and beget progeny to continue their lineage. According to the ancient law, a man was incomplete without a wife and the wife was half of her husband (*ardhangini*) and completed him.

Why does a marriage fail?

Although at the time of marriage, the bride, the bride groom and their families believe that they have found a perfect match to make a perfect couple, reality does not turn out to be so. In the Indian context majority of marriages last a lifetime. Despite all the controversy over *triple talaq* and all the petitions pending in the courts for resolution of various kinds of matrimonial disputes, the society still persists in preserving this institution of marriage. Marriage means the security of relationship which is extremely helpful for leading a healthy and peaceful life. Very often we find couples continuing the relationship despite occasional bouts of quarrel and even unreasonable behaviour by one party towards the other. The bond of marriage is surely more powerful and more permanent than a relationship of partnership in a business or membership of any group, large or small. Now we have laws permitting divorce. However, Indian social structure believes in continuation of a relationship rather

¹⁴ Former Judge, High Court of Delhi.

than dissolving it by divorce unless continuity of marriage is utterly unacceptable to the husband and the wife or at least to one of the two.

Although divorce is available in all the personal laws, the same is not available on mere asking. The Indian Divorce Act, 1869, the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955 require proof of one or the other ground for divorce before a marriage can be dissolved by a decree for divorce. Certain serious mental and physical illnesses are grounds of divorce. Adultery, which means a sexual relationship outside the marriage, is also a ground for divorce. The commonest ground for divorce, however, is cruelty. For the present module for Para-Legal Volunteers we will discuss only the concept of cruelty and how to deal with the same.

Cruelty can be mental and physical. In the case of physical cruelty, which is hurting the spouse, it is generally the wife who is the victim. The person, who assaults, generally, feels that he was right in assaulting the wife. Unfortunately not only the husband but others including the battered wife consider such physical assault to be forgivable. The law, however, does not count physical assault as something which a partner in a marriage needs to endure.

Mental cruelty is causing emotional hurt by words of mouth or by other means. Mental cruelty can be caused by uttering words which are meant to despise the spouse or the persons dear to her like her parental family. Criticism of the spouse in public, making false complaint to authorities like police or court are also acts of mental cruelty. Suspecting the character of the spouse can also cause pain. Suspicion can lead to unreasonable behaviour, accusations, as well as attempts to oppress the spouse.

Amicable solutions to disputes

When any symptom of discord between the spouses appears one should attempt to find solutions to the problems that have given rise to the discord so that the discord does not escalate further. The elders in the family or in the society can play the role of mentor, guardian or mediator and take an active part in resolving the disputes. The facility of mediation is available with all the legal service authorities. They can be approached for a settlement mutually acceptable to the parties. The facility of mediation is also available in many courts that have employed trained mediators for this purpose.

Amicable resolution, whether by mutual discussion, through family elders or through trained mediators, may lead to several beneficial results. The parties may be able to understand and forgive the behaviour of each other that may have caused the discord. They then go back to live a peaceful happy family life. In case the same is not possible, such amicable efforts can bring about a settlement other than reunion without going through a full-fledged process of litigation in courts. Parties may resolve to end the marriage and bring a petition for dissolution of marriage by mutual consent. When such resolution takes place all disputes between parties regarding alimony, custody of children, distribution of assets etc. take place in an amicable atmosphere.

What is divorce?

It is necessary to understand that divorce (except *talaq* as per Muslim Law) can be granted only by a court of law. The agreement between the parties to end a marriage is not a divorce. The parties are sometimes advised to swear affidavits in respect of their

settlement. Sometimes documents like '*chod chitthi*', or, a letter expressing intention to sever the relationship is written by one party to the other. These are not divorces in the eye of law. So long as a marriage is not dissolved by a decree of a court the marriage continues to exist.

Maintenance

Maintenance is a corollary of marriage. If the wife is unable to maintain herself, that is, if she does not have her own income, the husband is liable to maintain her as well as the minor children. The liability of the husband to maintain the wife continues even after the marriage is dissolved. This liability is lifelong or till the divorced wife marries again. Even if the wife has some casual income or stray earnings, the husband's liability is not over. The wife is entitled to a share of the husband's income which is sufficient to keep the wife in the same standard of living as is enjoyed by the husband. The liability to maintain the children continues till the children become eighteen.

Custody of children

The custody of minor children is another vexed issue. In all cases of failed marriages, whether dissolved or not, children are the victims. It is important that in the early years the child gets love and affection of both the parents. Generally speaking when a child is of tender age the mother gets the custody of the child. As the child grows older the custody is determined keeping in view the best interest of the child. Custody of the child is not an issue of the rights of the parents. Bitter battles are fought in courts over custody of a child. Such battles harm the child. The child needs both the mother and the father. When the court determines the issue of custody, although the custody is given to one of the two parents, the other parent may be given the right to visit the child.

Understanding parties

It is important for the Para-Legal Volunteers to understand the general nature of matrimonial disputes and the consequences that follow therefrom. The foundation of a successful marriage is trust between the partners. If trust prevails the couple is able to overcome various kinds of adversities and remain united. The best way to build trust is introspection. The couple should be encouraged to discuss their issues in peaceful and calm atmosphere and to try to understand the feelings of the other side. Very often what is looked upon as a violent behaviour is an expression of emotional hurt. Very often we hurt others without understanding the severity of such hurt. The person who is hurt may not react immediately but may express the same at a later time. E.g., if a man is humiliated or feels humiliated by the conduct of the relatives of his wife, he may have a grouse in his mind and utter rude words at a later point of time against the family of his in-laws or the wife. It may not be immediately possible to connect the two incidents. Sometimes a person who is behaving cruelly believes that he is doing his lawful duty of bringing order in the family. The misunderstanding can be resolved either by mutual discussion, or through a mediator or a marriage counsellor. Once the misgivings are resolved the love and trust between the parties can be restored.

The mediator's duty is to discover the cause of discord between the spouses and to deal with the same. It will be wrong, without going into details, to brand one party as the victim and the other as the victimiser. It will be equally wrong to give any advice regarding solutions on a superficial view of the problem.

Criminal Law

The criminal law also attempts to protect wife from the cruelty of the husband and his family. If a complaint is made to the police about cruel behaviour of the matrimonial family towards the wife, the husband and others accused in the complaint face the consequences including arrest, detention, trial and punishment. However, before, any complaint is made to the police a very careful thought is required to be given to the aspect of relationship of the two parties because once the complaint to police is made, the embitterment that follows almost inevitably destroys any chance of reconciliation. It is often seen that the complainant exaggerates the allegations. The parties often fight over valuable properties like jewellery. Sometimes persons distantly related to the husband's family or other innocent persons are also roped in by the complainant. These acts have no good effect on any of the two sides. The appropriate course is to take the parties to the legal services Secretary at the District or Taluka level and get proper legal advice or help.

DISCUSSION ON THE CASE FOR ACTIVITY

Cruelty and Section-498A IPC

A typical case of matrimonial dispute in our country is given in the activity in this chapter. Several legal provisions get attracted to the disputes. Cruelty to the wife is an offence under Section-498A of IPC. However, not every assault on the wife will come under the scope of Section-498A IPC. A wilful conduct which is likely to drive a woman to commit suicide is cruelty under this section. Further if the conduct can cause grave injury or danger to life, limb or health of the woman it will constitute cruelty. If the harassment of the women is caused to coerce anyone to meet any unlawful demand for property or money the same will also be cruelty. In this case a dislocation of bone has been caused and the victim Aisha must have suffered great pain and there are possibilities that she may not be fully cured. The injury caused is covered under the definition of grave injury and action can be taken under Section-498A IPC.

Maintenance

If Aisha is thrown out of the house Hameed will be liable to pay for her maintenance. While fixing the maintenance the court will take into account the income of Hameed as well as his liabilities which will include the cost of maintaining his old mother. Aisha may live by herself or may live with her parents. In either case maintenance will have to be paid by Hameed under Section-125 of Cr.P.C. The provisions of Section-498A IPC and Section-125 Cr.P.C are secular provisions. People of all religions are covered by these two provisions. Maintenance is also available to Ayesha under the Muslim Women (Protection of Rights on Divorce) Act, 1986 as well as under the Protection of Women from Domestic Violence Act, 2005.

Protection of Women from Domestic Violence Act, 2005

Hameed cannot throw Aisha out of the house. Aisha has a right to live in the matrimonial home. Any attempt to throw her out of the house can be prevented by an appropriate petition under the Protection of Women from Domestic Violence Act, 2005.

Custody of Minor Children

Minor children need to be looked after. Generally both the parents demand custody of children. If the dispute is taken to the court, the court can determine who of the two is entitled to the custody of the children. The parent who does not get the custody of the children is entitled to keep contact with the children and to visit them. The court generally fixes the schedule when meetings between children and the other parent should take place.

The father as in this case, is the only bread winner for the family. The father is liable to maintain two children till they attain the age of 18. Therefore, if Aisha gets the custody of the children, Hameed will be liable to pay maintenance for the children.

Divorce

Hameed can divorce the wife by pronouncing *talaq, albeit, by following the appropriate procedure*. The Supreme Court in the recent judgment in the case of *Shayara Bano*¹⁵ has held that *triple talaq* or *talaq-i-bidat* is not valid in law. Be that as it may, his liability to payment does not cease because of *talaq* or divorce. The Supreme Court has clarified that the liability to pay maintenance does not come to an end on the expiry of the period of *Iddat*, i.e. 3 months after the divorce, but continues till she remarries. Aisha is also entitled to divorce her husband under Muslim personal law by means of *Talaq-e-tafwiz* which means wife dissolving the marriage by exercising her right to do so as given to her in the marriage contract or *Khula* which means *talaq* by the husband on the request of the wife.

Hameed's Perception

The source of the entire quarrel between Aisha and Hameed is the patriarchal view which treats daughters as liabilities and sons as assets. The son carries the family name forward. Generally the son takes over the business of the father and contributes to family income. The daughter on the other hand becomes part of another family on her marriage. For these and for other reasons birth of a daughter is treated as unfortunate. Attempts are made to detect the sex of the foetus in the womb and to abort a female foetus. Determination of sex of foetus is an offense. So is sex selective abortion. The government promulgated the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 (PCPNDT Act) to prevent female foeticide. Nonetheless a large number of female foeticides takes place every year.

Hameed is labouring under a misconception that Aisha is responsible for the birth of the female children. Whether the child will be male or female is dependent entirely on chance and none is responsible for the child being male or female. However, one should know that it is the chromosome in the sperm of the father that determines the sex of the child.

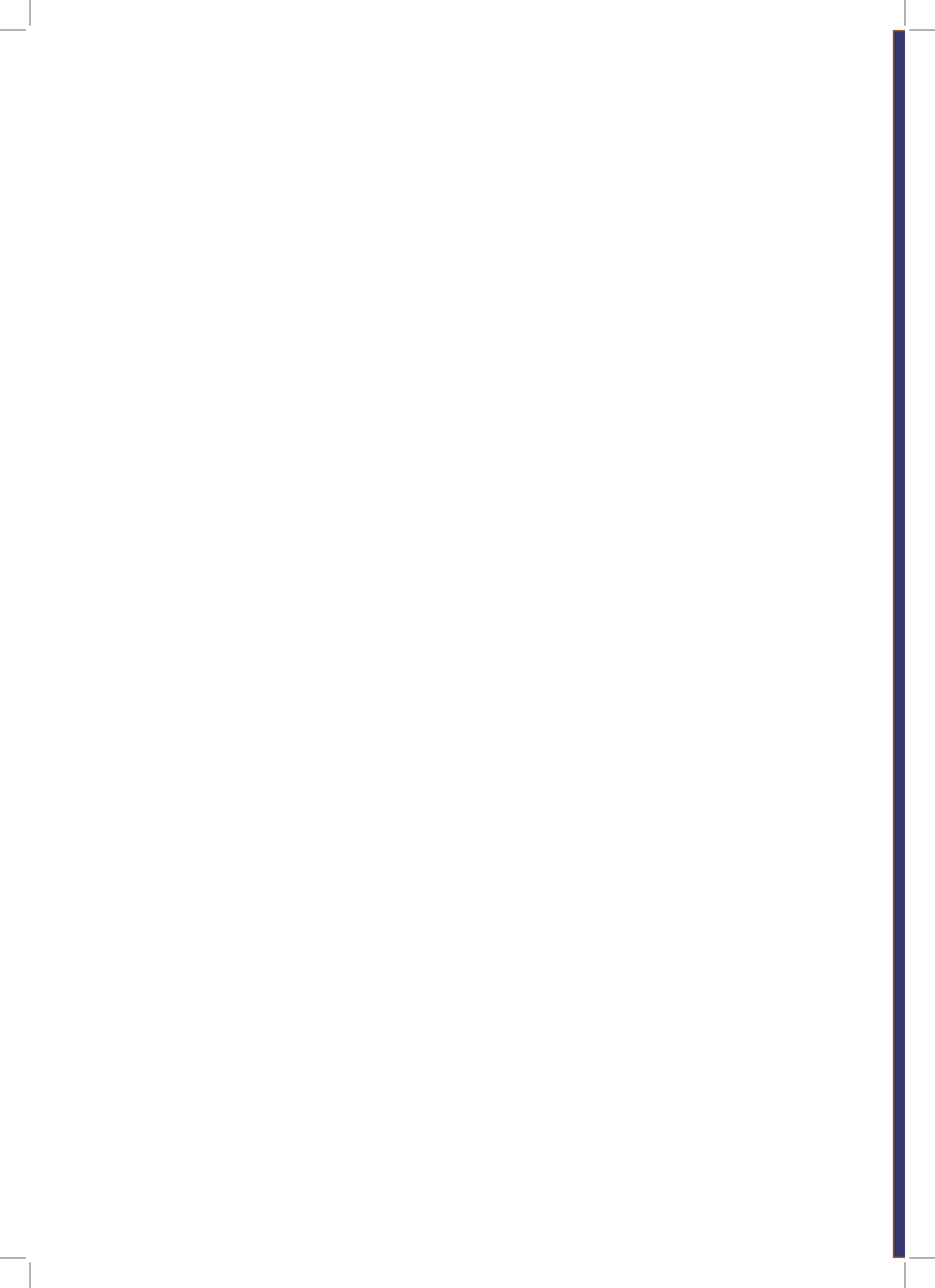
In Hameed's view women do not need to be educated. Further education is going to cost whereas the money saved can be utilised in the marriage of the daughter. Men and women both are earning members in a family. If equal opportunity is given both men and women can develop their personalities. Both of them can be assets and none need to be a liability. In order to encourage parents to educate their daughters, the governments of various States have launched schemes which ensure not only free education for the girl child but also a scholarship for continuing her education when she becomes an adult.

¹⁵ Writ Petition (C) No. 118 of 2016

Hameed holds Aisha responsible for the birth of the two daughters and for her failure to bear a male child. This is the root cause of discord between them. If Hameed can be counselled to change his views towards women and he is made to realise that Aisha is not responsible for the sex of the two children, Hameed will be able to accept Aisha as well as the two daughters as invaluable possessions and will be able to give them their due place in his heart and in his house.

CONCLUSION

Male chauvinism has given rise to various evil practices in the society. Women are subjected to oppression of various kinds as it is believed that they being the inferior sex deserve to be so treated. For a perfect balance in the society both men and women are to be treated equally which is also our constitutional norm. In the family also women have to be given their due place. Only when the husband and wife enjoy equal rights in the family and consider the other partner with love and dignity can the family live in harmony and be a useful unit for the benefit of the society.





Session V

Total Time: 90 minutes



Session V

Total Time: 90 minutes

MODULE FOR TRAINING OF PARA-LEGAL VOLUNTEERS ON PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

– Geetanjli Goel¹⁶

SESSION PLAN

Objectives

- To provide the Para-Legal Volunteers an overview of the law relating to domestic violence.
- To give them an understanding of the reliefs that can be sought under the Protection of Women from Domestic Violence Act, 2005.
- To give them clear perspective of related laws under which women in distress can seek relief.

Expected learning outcome

- Participants will be able to take steps to assist women who are in distress.
- Participants will be able to play a proactive role qua women whose cases fall within the parameters of the Protection of Women from Domestic Violence Act, 2005.
- Participants will be able to identify the cases where there is need to approach the legal services institutions and thereby guide the women to the nearest legal services institution.
- Participants will also get an idea of the other laws under which relief can be sought.
- Participants would be informed of the responsibilities they are expected to discharge in relation to women in situation of distress.

Programme

- **Introduction** 05 minutes
The resource person will introduce the Act emphasising how domestic violence is a universal phenomenon and how the provisions regarding protection of women in domestic relations more not adequate before this Act.
- **Quiz** 20 minutes
This is not a competitive or evaluative quiz but only questions raised to evoke previous experience and to generate a discussion. This is an individual exercise.

¹⁶ Special Secretary, Delhi State Legal Services Authority and Officer of Delhi Higher Judicial Service.

The participants will be given 10 minutes time to answer the questions. This will be followed by the trainer compiling the answers.

- **Lecture** 20 minutes
Trainer will introduce the subject, raise a discussion on the questions forming part of the quiz, familiarise the participants with the social scenario and the gravity of the problem of domestic violence leading to the enactment of the Act and introduce the scheme of the Act. He/she can introduce the concept of domestic violence and discuss the reliefs which can be sought under the Act and also inform about the related laws in this regard.
- **Role Play** 10 minutes
Three participants would be asked to volunteer to do the role play. They would be given their individual roles on the basis of which they would enact their part. The other participants would be required to observe the role play.
- **Discussion** on the Role Play led by the resource person 10 minutes
- **Interaction** with the Protection Officer appointed under The Protection of Women from Domestic Violence Act 15 minutes
- **Lecture by resource person.** 05 minutes
The resource person will inform the participants of the points not covered so far.
- **Concluding remarks by one of the participants/resource person/visiting dignitary** 05 minutes

Training methods:

- Lecture and/or PPT
- Quiz (experiential)
- Role Play

Note: The resource person will pool the points on the flip chart/white board. He/she may prepare a power point for the lecture.

Tools required

- Facility for power point presentation
- Flip chart
- Whiteboard markers
- Blue Tack
- Whiteboard

ROLE PLAY

Role of Vimla

You are aged about 28 years. You have been married to Ramesh for 8 years. You have a son aged 5 years and a daughter aged 3 years. You were subjected to frequent dowry demands and beatings by your husband and in laws. You were thrown out of the matrimonial home and are now residing at your parental home. Your children were kept by your husband and in laws and they are not allowing you to meet them. You have no source of income. Your *stridhan* and other items were also retained by your in laws.

Today you were sitting in the *verandah* of your parental home crying. You desperately want to see your children. Now, you have a visitor. He/she is the local Para Legal Volunteer.

You converse with the Para Legal Volunteer and slowly disclose the facts when he/ she puts questions to you.

Role of the Para Legal Volunteer.

You have come to Vimla, who is your neighbour. You have come to see her as someone has told you that Vimla was thrown out of her matrimonial home and remains sad and distressed. You speak to Vimla and try to know her facts relating to her present problems with questions like:

- How are you?
- Why are you crying?
- How many children do you have?
- Why did your in laws beat you?
- Do you have any source of income?
- Have you sought any legal help?
- Etc. etc.

After learning about her precarious condition, you take her case to the Secretary of the Legal Services Authority.

Now you are before the Secretary of the Legal Services Authority. You explain the case in detail to the Secretary of the Legal Services Authority.

Role of the Secretary of the Legal Services Authority (Can be played by the Resource person).

The PLV has come to you with the case of Vimla. You hear the PLV in detail and jot down the important points and discuss the case with him/her.

Now you tell the remedies available to Vimla.

1. An effort can be made to settle the matter by calling the husband and the in laws to the office of the Legal Services Authority and hearing both the parties and counselling them.
2. The Protection Officer under the Protection of Women from Domestic Violence Act can be approached or an application can be made under the Protection of Women from Domestic Violence Act, 2005 directly in the court seeking reliefs of custody, maintenance, residence order, return of stridhan and an application for visitation rights to the children can be filed. Interim orders can also be applied for.
3. A petition for maintenance could also be filed under Section 125 Cr.P.C.
4. You also tell the PLV how the legal services can help Vimla in the resolution of the conflict, i.e. through mediation in the office of Secretary or through litigation at the cost of the State.

Time: 10 minutes

QUIZ
ON
PROTECTION OF WOMEN FROM DOMESTIC
VIOLENCE ACT, 2005

–Geetanjli Goel¹⁷

Please tick the correct answer

- 1. Do you think domestic violence is a grave problem in our country?**
a) Yes b) No
- 2. If a woman suffers from domestic violence, she:**
 - i. Can file a complaint under Section 498A IPC and other sections of IPC.
 - ii. Has to accept domestic violence as a part of life and her fate.
 - iii. File a civil suit
 - iv. File a petition for divorce
 - v. Claim maintenance from her husbanda) Only i) b) Only i) and iii)
c) Only ii) d) Only i), iii), iv) and v)
- 3. Under the Protection of Women from Domestic Violence Act, 2005, a woman can:**
 - i. Seek relief only against her husband
 - ii. Seek relief against her husband and in laws
 - iii. Seek relief against her father and brother
 - iv. Seek relief against her sona) Only i) b) Only ii)
c) Only ii) and iii) d) Only ii), iii) and iv)
- 4. Can the husband file an application under the Act to restrain his wife from meeting the children?**
a) Yes b) No.
- 5. Can one kick given by a drunk husband be considered as normal wear and tear of marriage and not constituting domestic violence?**
a) Yes b) No.

¹⁷ Special Secretary, Delhi State Legal Services Authority and Officer of Delhi Higher Judicial Service.

6. Who can file a complaint under the DV Act?

- a) The woman herself
- b) The father in law against the daughter in law
- c) The parents of the aggrieved woman
- d) The protection officer
- e) Only a), c) and d)
- f) All the above

7. Which of the following are incidents of domestic violence?

- a) The husband does not allow his wife to go to her parents' house.
- b) The husband asks his wife to make tea for him.
- c) The wife is not allowed to take up an occupation.
- d) The in laws taunt the daughter in law for being ugly in front of outsiders.
- e) All of the above
- f) Only a), c) and d)

8. Which of the following can be claimed in an application under the DV Act?

- a) The husband be restrained from going to the school of the child.
- b) The husband be directed to pay maintenance to the wife.
- c) The husband and in laws be directed to pay compensation for causing domestic violence.
- d) The sister in law be asked to leave the shared household.
- e) All the above.
- f) Only a), b) and c)

9. Can the wife ask for an order that the employer of her husband be directed to deposit the maintenance granted in her favour in her bank account?

- a) Yes
- b) No.

10. Can a woman who has been living with her husband since her marriage in the house of her mother in law be thrown out, when differences arise, on the ground that the house is in the name of her mother in law and not her husband?

- a) Yes
- b) No.

SHORT NOTE

ON

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

–Geetanjli Goel¹⁸

A. Background

- a) The general notion is that the family is a 'cradle of safety' but it can actually be a 'cradle of violence' and much of the violence is directed against the female members, in particular against the wife by the husband. Domestic violence has been sought to be justified throughout the ages; legal and cultural traditions have granted men permission to beat their wives and even to kill them in certain circumstances and is intended to subordinate women. Domestic violence in India is prevalent amongst all castes, socio-economic classes, religious groups and regions.
- b) Causes of domestic violence may be many – alcohol and drug related violence, dowry related violence, frustration due to unemployment and financial constraints, acceptance of violence by women as their due, societal acceptance of wife beating, illiteracy amongst women, male dominance and belief that women are men's property and male has right to control her sexuality, fertility and labour in a patriarchal family structure and lack of independent social existence for the women. Women also continue in violent relationships due to various reasons such as economic dependence upon men, family and social pressure to keep the family intact and preserve the marriage, lack of parental support, absence of faith in the law enforcement delivery systems and fear of losing custody of children. Whatever be the form of violence, domestic violence can result in physical injury, even death, and psychological impairment and mental injury besides adversely affecting the family life and impacting the children negatively.
- c) It is only in recent years that attention has been given to the rights of women. Several international instruments have been concluded such as the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) adopted by the General Assembly of the United Nations in 1979 which imposes obligations on the State parties to ensure equality of women; the Declaration on the Elimination of All Forms of Violence Against Women adopted by the General Assembly of the United Nations on 20th December, 1993; Vienna Declaration adopted by the World Conference on Human Rights in June 1993 and the Beijing Declaration of 1996.
- d) In India Articles 14 and 15 of the Constitution mandate equality and Article 15(3) enables the State to make special provisions in favour of the women. In India theoretically a victim of domestic abuse has three different types of remedies at law: recourse to the criminal law, a civil suit and matrimonial relief. The Indian Penal Code, 1860 was amended to include Sections 498A (making cruelty to the wife by her husband or his relatives an offence) and Section 304B while Section 306 is available

¹⁸ Special Secretary, Delhi State Legal Services Authority and Officer of Delhi Higher Judicial Service.

to punish relatives for abetment of suicide and instances of misappropriation of property can also be addressed under the IPC under Section 406. Similarly Dowry Prohibition Act is available which criminalizes the giving and taking of dowry. Besides the general offences of assault and causing injury are available. Female infanticide, or forcing the wife to terminate her pregnancy are also recognized as offences as also wrongful restraint or confinement besides the offences of rape and outraging the modesty of a woman, bigamy, fraudulent marriage ceremony, adultery and deceitfully causing a person to believe that she is lawfully married. Throwing or administering acid has also been made punishable.

- e) Under the civil law a woman can seek remedy for physical and psychological injury. However there are hardly any cases where the civil law provisions have been invoked in cases of domestic violence. As such women have to take recourse to matrimonial remedies to obtain relief such as cruelty being a ground for divorce. However if a woman desires relief from domestic abuse outside a matrimonial proceeding for dissolution of marriage there is hardly any remedy available.
- f) The inadequacies of the existing provisions led to the enactment of the Protection of Women from Domestic Violence Act, 2005 which was brought into force on 26.10.2006 and is an Act to provide for more effective protection of rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family. This Act is:
 - i) A comprehensive piece of legislation covering various rights under one umbrella;
 - ii) A secular legislation which applies across all religions and irrespective of the personal laws applicable.
 - iii) Preventive in nature and seeks to provide immediate relief to the victim.

B. Concepts

- a) '*Domestic violence*' has been given a very wide meaning under the Act and includes any act, omission or commission or conduct of the respondent which harms or injures or endangers the health, safety, life, limb or well-being whether mental or physical or done with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security or has the effect of threatening the aggrieved person. It includes 'physical abuse' such as beating, slapping, hitting, biting; sexual abuse such as forced sexual intercourse, being compelled to watch pornography; verbal and emotional abuse such as name calling, threatening to desert, forcing a woman to marry against her will, preventing woman from leaving the home and economic abuse such as refusing to give money for maintenance, compelling the woman to leave her job, taking away the woman's salary. Importantly it is not necessary that to constitute domestic violence, habitual assault should be there and even a single act may amount to domestic violence.
- b) '*Domestic relationship*' means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related through a common ancestor, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family.

'*Relationship in the nature of marriage*' provides remedy to those women whose marriages may be void or invalid in the eyes of law and also extends protection to women who are in 'live-in relationships' and at the same time reiterates the legal position that long periods of cohabitation between a man and a woman raise a presumption of marriage.

- c) '*Shared household*' means a household where the aggrieved person lives or has lived in a domestic relationship either singly or along with the respondent and includes such a household whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them.

C. Right to residence

A woman has a right to residence in a shared household, whether or not she has any right, title or beneficial interest in the same. Further the woman shall not be evicted or excluded from the shared household or any part of it by the respondent except as per law. (Section 17 of the Act) The right to residence does not however, entitle a woman to claim ownership over the premises.

D. Reliefs That Can Be Sought

The Act provides for a number of reliefs that can be sought in an application under the Act.

a) Protection Orders:

On being *prima facie* satisfied that domestic violence has taken place or is likely to take place, the Magistrate can pass a protection order in favour of the aggrieved person and prohibit the respondent from committing or aiding or abetting in the commission of any act of domestic violence, entering the place of employment/ school or any other place frequented by the aggrieved person; attempting to communicate with the aggrieved person in any manner; alienating any assets and causing violence to the dependents, other relatives or those assisting her against the violence or committing any other act specified in the order (Section 18). Thus a wide range of reliefs can be sought to prevent domestic violence against the woman under this.

Breach of a protection order is a cognizable and non-bailable offence.

b) Residence Orders

The Magistrate, on being satisfied that domestic violence has taken place can pass a residence order restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household; directing the respondent to remove himself from the shared household; restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides; restraining the respondent from alienating or disposing off the shared household or directing the respondent to secure alternative accommodation for the aggrieved person and can also direct the respondent to pay rent and other payments and to return to the possession of the aggrieved person her *stridhan* or any other property or valuable security (Section 19). Thus if a woman is subjected to cruelty and fears for her life in the shared household,

the court can direct the respondent to provide an alternate accommodation which should be of the same level as enjoyed by her in the shared household.

No order directing the respondent to remove from the shared household can be passed against a woman.

c) **Monetary Reliefs:**

Under Section 20 of the Act a woman can claim maintenance, monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of domestic violence which may include loss of earnings, medical expenses, loss caused due to removal of property from her control and such relief should be adequate, fair and reasonable and consistent with the standard of living to which she is accustomed. Further she can claim compensation and damages for the injuries, including mental torture and emotional distress caused by the acts of domestic violence committed by that respondent (Section 22).

d) **Custody orders**

Under Section 21 of the Act, the Magistrate may, at any stage of the hearing of the application for protection order or for any other relief under the Act, grant temporary custody of the child or children to the aggrieved person or the person making an application on her behalf and specify, if necessary, the arrangements for visit of such child or children by the respondent (the Magistrate can refuse to allow such visit if he is of the opinion that any visit of the respondent may be harmful to the interests of the child or children). Permanent custody can be granted only in separate proceedings under the relevant law.

E. **Relevant Procedure**

An application under Section 12 of the Act can be filed before the Magistrate seeking one or more reliefs under the Act though a complaint can be made to the police or protection officer or service provider as well..

a) *Who may file the application:* An aggrieved person, Protection Officer or any other person on behalf of the aggrieved person such as a neighbour, relative, social worker or other person may present an application. An application may also be filed on behalf of a child.

An '**aggrieved person**' means any *woman* who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent.

b) *Against whom the application can be filed:* The application can be filed against any person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief.

c) *Interim and ex-parte orders:* The Magistrate can pass an interim order to prevent further violence and to provide immediate relief to the woman. Similarly an ex-parte order can be passed if the Magistrate is satisfied that an application discloses that the respondent is committing, or has committed an act of domestic violence or that there is likelihood of the respondent committing an act of domestic violence.

d) *Appeal:* An appeal shall lie to the Court of Session within thirty days from the date on which the order made by the Magistrate is served on the aggrieved person or the respondent, whichever is later (*Section 29*).

- e) *Counselling and assistance of experts*: The Magistrate may at any stage of the proceedings direct the parties to undergo counselling.

F. Enforcement of Orders

The orders passed under the Act are to be enforced in the same manner as laid down under Section 125 of the Cr.P.C. In addition:

- i) The Magistrate may require the respondent to execute a bond with or without sureties, for preventing the commission of domestic violence;
- ii) The Court may also pass an order directing the officer-in-charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order;
- iii) The Magistrate while passing an order under Section 19 may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties;
- iv) Upon failure of the respondent to make payment of monetary reliefs, the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the Court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent; and
- v) An execution petition can also be filed.

G. Role and Duties of Protection Officer

A Protection Officer has a very significant role to play in cases of domestic violence. He/ She is the key person to ensure protection and relief for a victim of domestic violence. The Protection Officer is required to make a report of incident of domestic violence to the Magistrate; to make an application to the Magistrate seeking protection order for the aggrieved, ensure free legal aid to the aggrieved, maintain a list of service providers, arrange safe shelter for the aggrieved, get the aggrieved medically examined if she has sustained injuries and to ensure that the order granting monetary relief is complied with.

H. Other Related Laws

There are various provisions under IPC which have already been referred to. Besides:

i) Maintenance

Various other laws contain provisions for maintenance for women and the children such as Section 125 Cr.P.C. Enhancement of maintenance can be sought as also interim maintenance. Even a divorced woman can claim maintenance under it.

For Hindus, the Hindu Marriage Act also makes provision for maintenance and alimony both for the wife and the children. Besides the Hindu Adoption and Maintenance Act also contains provisions for maintenance, more importantly it provides for the circumstances in which a woman whose husband is not alive can seek maintenance from the father in law or the estate (property of the joint family, when the late husband is proved to have made a contribution).

As regards Muslims, the Muslim Women (Protection of Rights on Divorce) Act gives the option to parties to be governed by the Act or by Section 125 Cr.P.C. The Special Marriage Act, 1954, Indian Divorce Act, 1869 and Maintenance and Welfare of Parents and Senior Citizens Act, 2007 also contain provisions for maintenance.

ii) **Custody**

Various laws deal with custody such as Hindu Marriage Act, 1955, The Hindu Minority and Guardianship Act, 1956, Special Marriage Act, 1954, Hindu Adoption and Maintenance Act, 1956 and Guardians and Wards Act, 1890.

iii) A Hindu married woman can claim maintenance and separate residence from the husband if her living separately is justified such as on ground of cruelty, desertion bigamy.



Session VI
Total Time: 90 minutes



MODULE FOR TRAINING OF PARA-LEGAL VOLUNTEERS ON RIGHTS OF SENIOR CITIZENS

—Geetanjli Goel¹⁹

SESSION PLAN

Objectives

- To give an overview to the Para-Legal Volunteers about the legal provisions and Schemes available for Senior Citizens.
- To inform the participants of the responsibilities they are expected to discharge in relation to the Senior Citizens.

Expected learning outcome

- The participants would be sensitized on the rights of the senior citizens.
- The participants would be equipped to play a proactive role qua the senior citizens as Para-Legal Volunteers.

Programme

The participants will be asked a day in advance to be ready to share their experience on the points mentioned in the sheet of Activity III.

- **Introduction** 05 minutes
The resource person will introduce to the participants the subject of Rights of Senior Citizens highlighting the need for treating Senior Citizens as a class by themselves, their problems, the legal provisions available for them as well as the different Schemes that have been drawn up for their benefit and what role they would be expected to play as Para-Legal Volunteers.
- **Experience sharing** 05 minutes
The participants will share their experience on points mentioned in the sheet of Activity III.
- **Group Discussion** 15 minutes

¹⁹ Officer of Delhi Higher Judicial Service and Special Secretary, Delhi State Legal Services Authority.

The participants can be divided into groups of 5-6 to do the Activities I and II and to find answers to the problems posed for them. The participants will jot down the points of consensus and differences.

- **Presentation by groups** 15 minutes
- OR
- **Role Play** 15 minutes
Three participants would be asked to volunteer to do the role play. They would be given their individual roles on the basis of which they would enact their part. The other participants would be required to observe the role play.
- **Discussion** on the Role Play led by the resource person 15 minutes
- **Exhibition of NALSA Capsule on Legal Services To Senior Citizens** 05 minutes
- **Lecture** by resource person on issues not covered so far from The Short Note on the subject. 10 minutes
- **Concluding remarks** by one of the participants/resource person/visiting dignitary 05 minutes

Training method

- Lecture and/or PPT
- Group Discussion/ Role Play
- Experience sharing
- Exhibition of short film

Note: The resource person will pool the points on the flip chart/white board. He/she may prepare a power point for the lecture.

Tools required

- Facility for power point presentation
- Flip chart
- Whiteboard markers
- Blue tack
- Whiteboard

ACTIVITY I

RIGHTS OF SENIOR CITIZENS

GROUP DISCUSSION/READING

You are a para legal volunteer deputed to go to Old Age Home. You come across a senior citizen who had a house in his name but out of love and affection, he had transferred the same in the name of his son who had agreed to take care of him in his old age. Over a period of time he had become resigned to his fate that he would never be able to go back to his house as he felt that once he had transferred the house in the name of his son, there was no remedy available for him.

Problem for Group Discussion

Can you help him? What will you do?

What would you do if the senior citizen is found to be suffering from some mental disability and requires treatment and it also comes to your knowledge that the house had been got transferred by the son in his name through force and coercion?

ACTIVITY II

RIGHTS OF SENIOR CITIZENS

GROUP DISCUSSION/READING

You are a para legal volunteer who occasionally interacts with the persons living in your village. During such interaction you meet an old lady who has bruises on her body and when you ask her about the same she replies that she had fallen and sustained them. However, you often see her crying and you come to know that she is beaten by her son and daughter in law and not given proper food and medical care by them.

Problem for Group Discussion

Can you help her? What will you do?

ROLE PLAY

Role of *Auntiji*

You are an old lady of 80. You are educated but presently suffering from loss of memory. You often forget important facts of day to day life. You own the house you live in. A neighbour looks after you. Of late, he is not coming to take care of you. You executed a gift deed in his favour in respect of the house without fully comprehending the impact of the gift deed. You thought with the gift deed in hand the neighbour will be able to deal on your behalf with the Municipal Authorities. Now the neighbour treats you like a liability and is not showing any care and affection. Now you regret having executed the gift deed.

Today you are lying sick with high fever. No one is coming to help you. Now, you have a visitor. He/She is the local Para Legal Volunteer.

You converse with the Para Legal Volunteer and slowly disclose the facts when he puts questions to you.

Role of the Para Legal Volunteer.

You have come to Auntiji, who is your neighbour. You know that she is old and infirm. You have come to see her as someone has told you that Auntiji is in distress as she is sick and the neighbour has stopped looking after her. You speak to Auntiji and try to know her facts relating to her present problems with questions like:

- How are you?
- Have you been to a Doctor?
- Who looks after you?
- Who owns this house?
- Do you deal with the Municipal and other Authorities?
- Who helps you in such dealings?
- Do the neighbours care for you?
- Do you trust the neighbours?

After learning about her precarious condition, you take her case to the Legal Services Secretary.

Now you are before the Legal Services Secretary. You explain the case in detail to the Legal Services Secretary.

Role of the Legal services Secretary (Can be played by the Resource person).

The PLV has come to you with the case of an old lady. You hear the PLV in detail and jot down the important points and discuss the case with him/her.

Now you tell the remedies available regarding the gift deed and her welfare.

- A suit for cancellation of the gift deed can be filed on the plea that she was made to sign the document without sufficient explanation about the consequences of the document. (*Dr. Latika Sarkar's Case*)

- An application can be made under the Maintenance and Welfare of Senior Citizens Act, 2007 for annulment of the gift deed and/or for other directions for the care of the senior citizen.
- You also tell the PLV how the Legal Services can help the old lady in the resolution of the conflict, i.e. through mediation in the office of Secretary or through litigation at the cost of the State.

ACTIVITY III
EXPERIENCE SHARING
READING

During your work as para legal volunteer, you must have come across senior citizens standing in long queues at railway stations or in hospitals. Have you taken any steps to help them? Please share your experiences.

SHORT NOTE

ON

RIGHTS OF SENIOR CITIZENS

—Vijay Hansaria²⁰
—Geetanjali Goel²¹

A. BACKGROUND

A.1 The Senior Citizens in any country constitute a class in themselves. They are a reservoir of experience and knowledge, yet in many cases they are marginalised and almost wished away by the younger sections of the society as a burden on the society. The senior citizens do not constitute a homogenous group. The differences are based on the age gap amongst the senior citizens themselves, level of physical and mental alertness, their ability to work and such like.

A.2 Over the years, with advancement in science, there has been a substantial increase in human life expectancy. As mentioned in the National Policy on Senior Citizens, 2011, “the demographic profile depicts that in the years 2000-2050, the overall population in India will grow by 55% whereas population of people in their 60 years and above will increase by 326% and those in the age group of 80+ by 700% - the fastest growing group.” 1/8th of the world’s elderly population lives in India. In real terms the population of elder persons has increased from nearly 2 crores in 1951 to 7.2 crores in 2001 to 10.38 crores in 2011. Thus about 8% of the population is above 60 years. The highest percentage of people aged above 60 years is found in Kerala with the elderly constituting 12.55% of the population of the State followed by Goa with 11.2% of the population and Tamil Nadu with 10.41% of the population. The number of females is larger in the category of 60+ age group with the number of females being 5,27,77,168 to 5,10,71,872 males as per the Census of 2011.

A.3 The senior citizens face a myriad of challenges- social, physical, mental and economic which are unique to them. The economic problems could be on account of loss of employment and consequent loss of income, whereas physical problems could be on account of health and medical problems, and social problems could be lack of familial support, social maladjustment. The problem is made more acute with the break-up of the joint family system and more and more elderly persons being left to fend for themselves. Further the women and the older persons in rural areas face greater problems. Besides there is evidence of systematic and continuous abuse of the elderly i.e. infliction of physical, emotional or psychological harm on the older persons. Half of the elderly population reportedly experience abuse besides disrespect and neglect. According to the report of the National Crime Records Bureau (NCRB), a total of 8,973 cases were registered as crimes against senior citizens from January 2014 to October, 2014. As such every society and State recognizes certain rights of the senior citizens, distinct from the rest of the society.

²⁰ Senior Advocate, Supreme Court of India.

²¹ Officer of Delhi Higher Judicial Service and Special Secretary, Delhi State Legal Services Authority.

A.4 The issue of ageing has been raised by the United Nations from time to time since 1948. The World Assembly on Ageing was held in Vienna in 1982 where an International Plan of Action on Ageing was adopted with the objective to strengthen the ability of individual countries to deal effectively with the ageing in their population, keeping in mind the special concerns and needs of the elderly. In 1991, the UN General Assembly adopted certain principles aimed at independence, participation, care, self-fulfillment and dignity of the older persons. In 1992, the UN General Assembly adopted the proclamation to observe the year 1999 as the International Year of the Older Persons. 1st October has been declared as the International Day for the Elderly, now known as the International Day of the Older Persons.

A.5 The Constitution of India guarantees the right to life and liberty of every individual under Article 21. This has been interpreted to include the right to live with dignity and would encompass the right to live with dignity of the senior citizens. Article 41 of the Constitution lays down that the State shall, within the limits of economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, *old age*, sickness and disablement, and in other cases of undeserved want. Article 46 also imposes a positive obligation on the State to promote with special care the economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation. Articles 41 and 46 are included in the Directive Principles of State Policy which are not enforceable in any court of law, nevertheless, they impose positive obligations on the State and are fundamental in the governance of the country.

A.6 Entry 9 in the State List and entries 20, 23 and 24 of the Concurrent List relate to old age pension, social security and social insurance and economic and social planning. Entry 24 in List III of Schedule VII i.e. Concurrent List specifically deals with the 'Welfare of labour, including conditions of work, provident funds, liability for workmen's compensation, invalidity and old age pension and maternity benefits.' Thus there are several constitutional provisions relating to old age.

B. Maintenance

A major problem faced by senior citizens is of maintaining themselves. Apart from that the moral duty to maintain the parents is recognized across communities though the extent of the liability may vary under different personal laws.

B.1 Hindu Law

The obligation of the sons to maintain the parents, who were not able to maintain themselves has been recognized since ancient times. Under the Hindu Law, various provisions have been enacted to enable the parents to claim maintenance. Under the **Hindu Adoption and Maintenance Act, 1956** aged or infirm parents are entitled to maintenance from son and daughter provided the parents are unable to maintain himself/herself out of his/her own earnings or other property.²² Thus an obligation has been placed even on the daughters to maintain the parents. Parents include childless step-mother.²³ The amount of maintenance is at the discretion of the court having regard to various factors such as position and status of parties; reasonable wants of the claimant; value of claimant's property; number of persons the respondent is liable to maintain.²⁴

²² Section 20

²³ Explanation to section 20

²⁴ Section 23

B.2 Muslim Personal Law

Children in easy circumstances are bound to maintain their parents, even if the latter are able to earn something for themselves. A son, even in strained circumstances, is bound to maintain his mother, if she is poor though not infirm. A son, who is poor but earning something, is bound to maintain his father who earns nothing.²⁵ Thus children are duty bound to maintain their parents under the Muslim law. A person is also bound to maintain his paternal and maternal grandfathers and grandmothers, if they are poor and not otherwise, to the extent as he is bound to maintain his poor father.²⁶ Moreover both the sons and daughters are bound to maintain their parents provided they have the means to do so.

B.3 Sections 125 to 128, Code of Criminal Procedure, 1973

The provision for maintenance of parents was introduced for the first time in 1973 in Section 125 of the Code of Criminal Procedure. Under this provision, father or mother, who is unable to maintain himself or herself, can claim maintenance from his/her major son/daughter, if they neglect or refuse to maintain the parents. An 'adoptive mother' is entitled to file application for maintenance as she comes within the expression 'mother'; but not a 'step mother'. However, a childless step mother can claim maintenance from her step son if she is a widow or her husband is incapable of maintaining her.²⁷ A daughter is liable to maintain her parents if she has her own income independently of her husband.²⁸ This is a secular law and applies across all religions.

An application can be filed by the parents only where the child is staying and not where the parents are staying.²⁹ The parent is also required to show that the child had sufficient means and had neglected or refused to maintain the parent, who is unable to maintain himself or herself. The court may order payment of monthly allowance for the maintenance at such rate as is deemed appropriate and even interim maintenance and the expenses of proceeding may be awarded. There is no limit on the amount of maintenance that can be granted.

If the person against whom the order has been passed fails to pay the amount of maintenance without any sufficient reason, execution proceedings can be filed and the court may even issue a warrant imposing fines for the breach of the order and the person may be imprisoned.

Similarly, the mother may file a petition against her son under the **Protection of Women from Domestic Violence Act** if she is subjected to domestic violence and claim various reliefs provided under the Act including maintenance (the said Act has been discussed separately).

²⁵ S. 371; Mulla Principles of Mohammedan Law

²⁶ S. 372; Mulla Principles of Mohammedan Law

²⁷ *Kirtikant D. Vadodaria v. State of Gujrat*; 1996 (4) SCC 479

²⁸ *Vijaya Manohar Arbat v. Kashirao Rajaram Sawai*; 1987 (2) SCC 278

²⁹ *Vijay Kumar Prasad v. State of Bihar*; 2004 (5) SCC 196

C. Maintenance and Welfare of Parents and Senior Citizens Act, 2007

C.1 Considering the need to protect the rights of senior citizens and to further the constitutional objectives, the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (hereinafter referred to as the Act) was enacted which seeks to provide for more effective provisions for the maintenance and welfare of parents and senior citizens. Significantly, the Act applies to citizens of India outside India as well.

C.2 Who can apply:³⁰ Under this Act, an application for maintenance can be made by:

- 'Parent', i.e., father or mother whether biological, adoptive or step father or step mother; and
- 'Senior Citizen', i.e. a person who has attained the age of 60 years or above.

Thus the application can be made by the parents irrespective of whether they are senior citizens or not and by a senior citizen. If the senior citizen or the parent is incapable, any other person or a voluntary organization authorised by the senior citizen or parent can apply for maintenance on their behalf. The Tribunal may also take cognizance of the matter *suo motu*.³¹

C.3 Application against whom:³² The application for maintenance can be made by:

- parent or grand-parent, against one or more of his/her children, i.e., son, daughter, grandson and grand-daughter, not being a minor; and
- childless senior citizen, against his/her relative, i.e. legal heir, not being a minor, who is in possession of or would inherit his property after his death.

Thus a senior citizen can claim maintenance even from a relative who is in possession of the property of such senior citizen or would inherit the property of such senior citizen. The application for maintenance may be filed against one or more persons.

C.4 What can be claimed:³³ A senior citizen/parent who is unable to maintain himself can make an application for 'maintenance'. Maintenance would include food, clothing, residence, and medical attendance and treatment subject to a maximum amount of Rs. 10,000/- per month. The Tribunal may even award interim maintenance.

C.5 Jurisdiction:³⁴ The proceedings under this Act may be initiated against any children or relative in any District where the parent/senior citizen resides/ last resided or where the children or relative reside. The Act provides for the setting up of one or more Tribunals³⁵ for each sub-division for the purpose of adjudicating and deciding upon the order of maintenance. The Tribunal is to be presided over by an officer not below the rank of Sub-Divisional Officer. The Act also provides for the constitution of Appellate Tribunal³⁶ for each district to hear the appeal against the order of the Tribunal which shall be presided over by an officer not below the rank of District Magistrate. Any parent/ senior citizen, may

³⁰ Section 2 (d) & 2(h)

³¹ Section 5

³² Section 2(a) & 2(g)

³³ Section 9(1),(2) & Section 5(2)

³⁴ Section 6(1)

³⁵ Section 7

³⁶ Section 15

prefer an appeal against the order of the Tribunal to the Appellate Tribunal within 60 days from the date of the order of the Tribunal³⁷, unless the time is extended by the Tribunal. The Tribunal may first refer the application to a Conciliation Officer³⁸ who is to submit his findings within one month.

For maintenance to be granted under this Act, the Tribunal has to be satisfied that the children or relatives have neglected or refused to maintain a senior citizen being unable to maintain himself. The Tribunal while making an order for maintenance direct that in addition to the amount of maintenance, simple interest shall also be paid.

C.6 Legal Practitioners:³⁹ Legal practitioners are debarred from participating in any proceedings before the Tribunal/Appellate Tribunal. However, the State Government may designate Maintenance Officer (District Social Welfare Officer or officer not below the rank of a District Social Welfare Officer) to represent parent/ senior citizen, if so desired.⁴⁰ However the legal practitioners can assist the senior citizens in drafting of applications and appeals and can inform them of their rights under the Act. The role of the PLVs becomes important as they can step in to provide all possible assistance to the senior citizens in drafting and filing applications before the Tribunal.

C.7 Execution of orders: If the children or relative against whom the maintenance order is passed fail to pay the maintenance without sufficient cause, the Tribunal may issue a warrant for levying the amount due in the manner provided for levying fines. It may also sentence such person to imprisonment⁴¹. The time period for making an application to levy such amount is to be made within a period of three months from the date on which it became due.

C.8 Enforcement against transferee of property: Under the Act, the right to receive maintenance can also be enforced against transferee of property of the parent/ senior citizen, if the transferee has notice of the right, or if the transfer is gratuitous⁴² though the same is not enforceable against the transferee for consideration and without notice of right. The Tribunal may even declare transfer of property by a senior citizen as void at the option of the transferor where a senior citizen has transferred the property by way of gift or otherwise, subject to the condition that the transferee shall provide the transferor with basic amenities and basic physical needs, and such transferee refuses or fails to provide such amenities and physical needs.⁴³

In Activity I for Group Discussion, the para legal volunteer can inform the senior citizen about his right to get the transfer of property in the favour of his son declared as void and the para legal volunteer can also let the senior citizen know the procedure for enforcing his right. The para legal volunteer can furnish the details of the Tribunal set up under the Act to the senior citizen and assist him in making the application before the Tribunal.

³⁷ Section 16

³⁸ Conciliation Officer means any person or representative of an organization referred to in Explanation to sub-section (1) of section 5 or the Maintenance Officers designated by the State Government under sub-section (1) of section 18 or any other person nominated by the Tribunal for the purpose – Explanation to sub-section (6) of section 6.

³⁹ Section 17

⁴⁰ Section 18(1), (2)

⁴¹ Section 5(8)

⁴² Section 23

⁴³ Section 23

C.9 Offence:⁴⁴ Abandoning of senior citizen by anyone having care or protection of such senior citizen has been made an offence under the Act which is punishable for a maximum period of 3 months or fine upto Rs.5000/- or with both. This is a very important provision for protecting the life and property of senior citizens and to prevent their being abandoned at places from where they could not be found.

C.10 Miscellaneous provisions: Apart from the provisions in respect of maintenance, the Act also provides for the establishment of Old Age Homes for Indigent Senior Citizens i.e. senior citizens who do not have sufficient means to maintain themselves. Further the State Government has to ensure that the Government hospitals or hospitals funded fully or partially by the Government shall provide beds for all senior citizens; separate queues be arranged for senior citizens, facility for treatment of chronic, terminal and degenerative diseases is expanded for senior citizens; research facilities for chronic elderly diseases and ageing are expanded and there are earmarked facilities for geriatric patients in every district hospital duly headed by a medical officer with experience in geriatric care. The State Government is also to prescribe a comprehensive action plan for providing for life and property of senior citizens.

Thus, a senior citizen has a different form for claiming maintenance from his/her children and/or relatives. He can make a choice of the forum where such a claim can be made. While the Act provides a speedy remedy for claiming maintenance, there is a limit of Rs. 10,000/- that can be claimed before the Tribunal under the Act of 2007; but there is no such ceiling in respect of a claim made under Section 125 Cr.P.C. or under Hindu Maintenance and Adoption Act, 1956. In case there is no Tribunal established in any District, it is then advisable to file maintenance application under Section 125 Cr.P.C. The following aspects must be mentioned in the application for maintenance:

- a. name, age and address of the parent /senior citizen
- b. name, age and address of the children/relative. Whether all the children/relatives have been added as parties? if not, give details of all children/relative and the reason for not impleading them.
- c. income, if any, of the claimant and the source thereof,
- d. details of property, if any, of the claimant and whether any income is earned through such property.
- e. statement to the effect that the claimant is unable to maintain himself/ herself from his/ her earning or out of the property owned by him/ her.
- f. whether or not the claimant is staying with his/her children/relative ? If staying separately, reason thereof;
- g. income of the Respondents and the size of family which the Respondent is required to maintain.
- h. amount of maintenance claimed giving details of requirement for
 - i. Food
 - ii. Clothing
 - iii. Shelter (rent, if any, electricity, telephone, domestic help etc.)
 - iv. Medical expenses (enclose recent medical papers)
 - v. Conveyance/travel
 - vi. Other miscellaneous.

⁴⁴ Section 24 & Section 25 (1),(2)

In **Activity II for Group Discussion**, the para legal volunteer can inform the senior citizen of her right to seek protection through court under the Protection of Women from Domestic Violence Act. The para legal volunteer can also inform the senior citizen about her right to get maintenance and the various provisions under which she can claim it and the procedure for claiming the same. The para legal volunteer can further assist the senior citizen by putting her in touch with a Legal Services Lawyer who can take up her case.

D. Schemes for Senior Citizens

Different Ministries under the Central Government have come up with different Schemes for senior citizens. The Government of India approved the National Policy for Older Persons on January, 13, 1999 for empowering the senior citizens. It provided for the setting up of a pension fund for ensuring security for those persons who had been serving in the unorganized sector, construction of old age homes and day care centres for every 3-4 districts, concessional rail/ air fares for travel within and between cities and ensuring compulsory geriatric care in all public hospitals. A National Council for Older Persons was constituted by the Ministry of Social Justice and Empowerment to operationalise the National Policy on Older Persons which has been renamed as the National Council of Senior Citizens. This Council is to advise the Central and State Governments on issues related to the welfare of the senior citizens.

The schemes being implemented by the **Ministry of Social Justice and Empowerment** for the benefit of senior citizens are:

- Integrated Programme for Older Persons under which financial assistance upto 90% of the project cost is provided to NGOs for establishing and maintaining Old Age Homes, Day Care Centres, Mobile Medicare Units and to provide non-institutional services to older persons. In 2011-12, 362 old age homes were supported by the Central Government though in 2014-15, the number of such homes was only 187.
- Scheme of Assistance to Panchayati Raj Institutions/ Voluntary Organizations/ Self Help Groups for construction of Old Age Homes/ Multi Service Centres for older persons under which one time construction grant for Old Age Homes/ Multi Service Centres is provided to non-governmental organizations on the recommendation of the State Governments/ Union Territory Administrations.

Ministry of Finance:

- Income tax rebate upto an income of Rs.3,00,000/- p.a. is granted to senior citizens and the category of 'very senior citizens' i.e. 80 years and above are eligible for a higher exemption limit of Rs.5 lakhs.
- Income tax rebate of upto Rs.15,000/- or actual tax whichever is less is available for senior citizens who attain the age of 65 years at any time during the relevant previous year.
- The deduction in respect of medical insurance premium is upto Rs.30,000/- under section 80D of Income Tax Act, 1961.
- Deduction under section 80D for treatment of specified ailment is Rs.60,000/- for senior citizens.
- If the senior citizens do not have business income, they are exempted from paying Advance Tax and are required to pay only self-assessment tax.

- Separate counters are marked for senior citizens at the time of filing the income tax returns and on the spot assessment facility is also provided.

'Senior Citizens Saving Scheme' is also available for senior citizens under which the citizens of 60 years and above can deposit Rs.1000/- or its multiples in post offices doing savings bank work. This carries an interest of 9% per annum and the maturity period of the deposit is five years, extendable by another three years. For senior citizens i.e. those having the age of 65 years and above, higher rates of interest on saving schemes are available. Higher rate of interest is also given to senior citizens on certain savings plans run by post offices and private banks.

Life Insurance Corporation has several schemes for the benefit of the older persons such as the Senior Citizen Unit Yojana, Medical Insurance Yojana.

Ministry of Rural Development

Under the Indira Gandhi National Old Age Pension Scheme, central assistance is given towards pension at the rate of Rs.200/- per month to persons above 60 years and at the rate of Rs.500/- per month to senior citizens of 80 years and above belonging to a household below the poverty line and the same is expected to be supplemented by at least an equal contribution by the States.

Ministry of Civil Aviation

Air India/ Jet Airways provide 50% discount on basic fare for all domestic flights in economy class to senior citizens having the age of 65/63 years (men/ women). Sahara India provides 50% discount on basic fare for all domestic flights in economy class to senior citizens having the age of 62 years (men and women). Spice Jet and Indigo also offer concession of 15%.

Air India offers discount to senior citizens of above 60 years on flights to USA, UK and Europe.

The elderly persons are also given priority in boarding the flights.

Ministry of Railways

Concession of 40% is granted for senior citizens –males aged above 60 years in all classes and trains including Rajdhani/ Shatabdi. Women senior citizens above 58 years are entitled to 50% concession. The concession is granted in the basic fares of Mail/ Express trains and all-inclusive fares of Rajdhani/ Shatabdi/ Jan Shatabdi trains. Senior citizens are also given priority for lower berths.

Separate counters for senior citizens for purchase/ booking or cancellation of tickets are also available.

Wheel chairs for use of senior citizens are available at all junctions, District Headquarters and other important stations. Ramps for wheelchair movement are also available at the entry to important stations. Even specially designed coaches with provisions for accommodating wheel chairs, handrails and specially designed toilet for disabled older citizens have been introduced.

Ministry of Road Transport and Highways

Two seats in the front rows of buses of State Road Transport Undertakings are reserved for senior citizens. Some State Governments are giving fare concession to senior citizens in the State Road Transport Undertaking buses and are introducing bus models which are convenient to the elderly.

Ministry of Health and Family Welfare

Instructions have been issued to all State Governments to provide for separate queues for older persons in hospitals for registration and clinical examination. The Government of India has also launched the 'National Programme for Health Care of the Elderly' for providing dedicated health care facilities to senior citizens above 60 years of age at primary, secondary and tertiary health care delivery system. This envisages setting up of dedicated Geriatric Departments in identified Regional Geriatric Centres with OPD care services and 30 bedded wards for providing indoor services; setting up geriatric units at all District Hospitals to provide specialist services, establishment of Rehabilitation Unit at all Community Health Centres and setting up of weekly Geriatric clinics at Primary Health Centres. Concessions are also given to senior citizens in treatment of diseases like kidney problem, cardiac problem, diabetes and eye problem.

Ministry of Consumer Affairs, Food and Public Distribution

Under the *Antyodaya Scheme*, the Below Poverty Line families which include older persons are provided food grains i.e. 35 kgs per family per month at concessional rates. The persons above 60 years from the BPL category were given priority for identification. Under the *Annapoorna Scheme* being implemented by the States/ UT Administration, 10 kgs of food grains per beneficiary per month are provided free of cost to those senior citizens who remain uncovered under the old age pension scheme.

Priority is given in issuance of ration to ration card holders who are over 60 years of age in Fair Price Shops.

In the housing sector, housing facilities such as retirement homes and recreational or educational centres are provided for older persons to give them an opportunity to spend their free time doing various activities. The recreational centres have provision for yoga clubs, fitness clubs, parks, libraries etc.

Ministry of Telecommunications

Senior citizens of age 65 years and above are given priority in giving telephone connections by the Ministry of Telecommunications. Similarly, faults/ complaints of senior citizens are given priority by registering them under senior citizens category with a VIP Flag which is a priority category.

Priority is also given to cases of senior citizens in the courts with a view to expeditious disposal. Under the Right to Information Act, second appeals filed by senior citizens are taken on a high priority basis.

National Legal Services Authority (NALSA) has also launched a Scheme known as the **NALSA (Legal Services to Senior Citizens) Scheme, 2016**. The main objectives of the said Scheme are to ensure that the senior citizens live a life of dignity and enjoy all the benefits

and facilities which are due to them and to that end, it seeks to strengthen legal aid and representation at the National, State, District and Taluka levels for senior citizens who are entitled under Section 12 of the Legal Services Authorities Act, 1987 in availing the benefits of the various legal provisions which exist; to ensure access to various Governmental Schemes and programmes to the senior citizens; to create and spread awareness about the rights and entitlements of the senior citizens under the various laws and Governmental Schemes and programmes through the District Legal Services Authorities, Taluka Legal Services Committees, panel lawyers, Para-Legal Volunteers, students and legal services clinics.

NALSA had in 2015 also launched the NALSA (Legal Services to the Mentally Ill and Disabled Persons) Scheme, 2015 with the objective to ensure that the mentally ill or mentally disturbed are not stigmatized and they are able to enforce all rights they are entitled to and as assured to them by the law. The Legal Services Authorities have to promote, protect and ensure the full and equal enjoyment of human rights and fundamental freedoms of the mentally ill and mentally disabled persons. They are required to open Legal Services Clinics in the mental health facilities and psychiatric homes to render all assistance to the mentally ill persons regarding enforcement of their rights. The Legal Services Clinics are required to interact with the mentally ill patients who are taking in house treatment from the facility to understand, if there are property and maintenance issues and to move the court for appropriate relief. The Legal Services Authorities are required to devise sensitization programmes in coordination with mental health officials for doctors, police officials, lawyers and judicial officers. The benefits of this Scheme would also be available to those senior citizens who fall in the category of mentally disabled persons.

In **Activity I for Group Discussion**, the para legal volunteer can take up the issue of providing proper care and treatment for the senior citizen. Further the para legal volunteer can inform the District Legal Services Authority which can take up the case regarding the property of the senior citizen which had been forcefully got transferred by the son in his name.

It is thus seen that apart from the statutory provisions, various Schemes have also been formulated for the benefit of senior citizens. Besides, several States have come out with their own Schemes and Programmes for the benefit of senior citizens. However, the benefits of the said Schemes have reached very few senior citizens. The Schemes lay down the entitlements of the senior citizens and if the senior citizens have any difficulty in availing their entitlements under the said Schemes, the Para-Legal Volunteers can play a pivotal role in ensuring that the benefits of the Schemes reach the senior citizens.

As regards **Activity III on Experience Sharing**, the Para-Legal Volunteers can narrate if they had taken any steps to help senior citizens which may fall under any of the above Schemes.

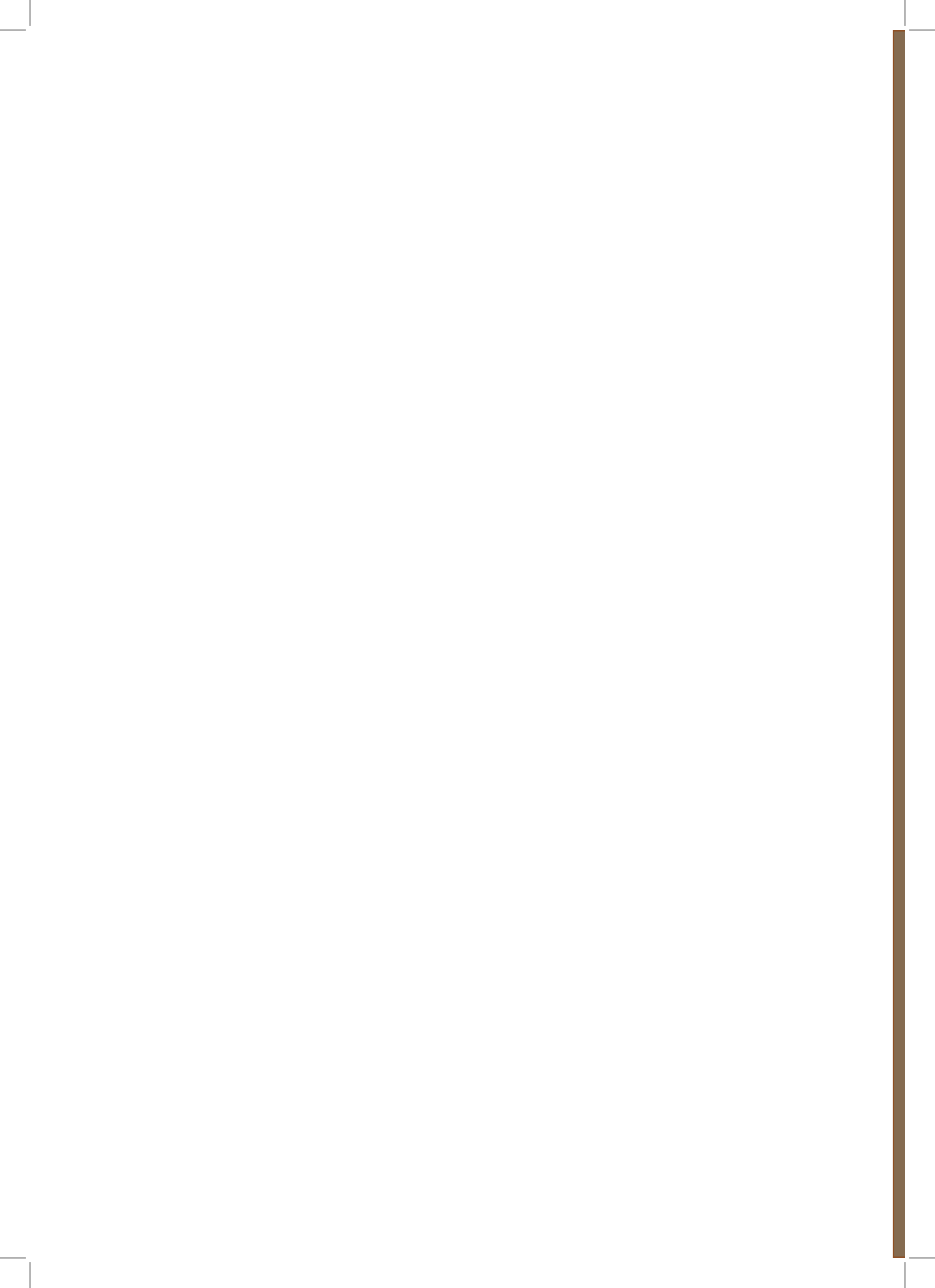
Role of Para-Legal Volunteers qua the Senior Citizens

While it is not possible to lay down any exhaustive list of the manner in which the Para-Legal Volunteers can assist the Senior Citizens and it would vary from situation to situation, but broadly, the Para-Legal Volunteers can play the following role as regards the senior citizens:

- The PLVs shall act as the interface between the senior citizens in the community who are unable to access the legal services institutions and the legal services institutions. Where it is not possible for the senior citizens to reach the legal services institutions on account of their conditions, the legal services institutions shall reach out to them through PLVs.
- They can help in identifying the core issues which affect the senior citizens in a particular area and seek solutions to them, including through coordination with the concerned governmental agencies.
- They can facilitate the setting up of self-help groups of senior citizens to encourage community support and reduce a sense of dependency on the part of the senior citizens.
- The Para-Legal Volunteers can assist the senior citizens in drafting applications to be filed before the Tribunal constituted under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 as the lawyers are not allowed to appear before the Tribunal or the Appellate Tribunal.
- They can help the SLSAs in compiling a database of all the existing Central or State Schemes, policies, regulations, policy directives concerning senior citizens and distribute such compilation amongst senior citizens which could also include details about access to remedies and contact details of helpline numbers available across the state.
- The Para-Legal Volunteers should maintain a database of hospitals, medical centres and other facilities which may be available for senior citizens in their area so that they can help in accessing assistance immediately where the need arises.
- The Para-Legal Volunteers may also maintain a database of senior citizens in their area so that they can reach out to them as and when necessary. They may also coordinate with the law enforcement agencies to address the security concerns of senior citizens and seek to enhance the interface between the police and the senior citizens such as through increased patrolling, maintaining regular contact with senior citizens once every week or every fortnight. PLVs can also assist in the registration of senior citizens with the police stations, in getting servant and tenant verifications done and such other matters which concern the security of the senior citizens.
- They can provide immediate assistance to persons in distress by coordinating with the concerned departments such as health or police departments.
- They can play an important role in disseminating information regarding the policies, schemes, programmes to the senior citizens and government functionaries.
- The Para-Legal Volunteers can assist the beneficiaries to procure the documents required for availing the benefits under the various schemes; inform the beneficiaries of the name and address of the designated authority or the officer who may be approached for availing the benefits under the schemes; go with the beneficiaries to the office of the designated authority or to the officer concerned under any of the schemes.
- They can sensitize people to the needs of the senior citizens and that it is the moral duty of children to take care of senior citizens and not to leave them in a destitute condition in their old age and explain the need to treat the senior citizens with dignity.

- They may visit old age homes or other places frequented by senior citizens and conduct awareness programmes and also help to organise special health or check-up camps for senior citizens such as general health camps, eye check-up camps etc. or with the police to have a special registration drive of senior citizens.
- They may regularly interact with senior citizens whether in the old age homes or in the community to see if they face any problem, harassment and help them in taking necessary action.
- The Para-Legal Volunteers may assist the senior citizens in availing their pensionary benefits.

The Para-Legal Volunteers are thus expected to be alert to the needs of senior citizens and to address them and where any legal solutions are needed, to assist them in approaching the legal services institutions.





Session VII

Total Time: 90 minutes



MODULE FOR TRAINING OF PARA-LEGAL VOLUNTEERS ON EFFECTIVE COMMUNICATION SKILLS

-Sanjeev Kumar⁴⁵

Session Plan

Objectives

- Give an overview of the communication process
- Learn tools for improving listening and questioning skills
- Improve verbal and non-verbal communication skills
- Apply communication skills effectively

Suggested methodology

- Presentation/Interaction
- Role play/Case study/Game/Activity
- Interactive Lecture- demonstration

Tools required

- PPT, Activity

Session break up

Session	Topic
1	Role and importance of effective communication
2	What are communication skills?
3	One way/Two way communication
4	Verbal and Non Verbal Communication
5	Body Language
6	Barriers to effective communication
7	Effective communication skills

Para Legal Volunteer: Role and importance of effective communication Effective communication is fundamental to the practice of dealing effectively and successfully with people. As has been described in NALSA's Scheme for Para-Legal Volunteers and the National Legal Services Authority (Legal Aid Clinic) Regulations 2011, the Para-Legal Volunteers are

⁴⁵ Senior Consultant and Guest Faculty at Indian Institute of Mass Communication.

required to play a crucial role in build up linkages between common people and the legal services institutions by sensitizing and assisting the poor and the marginalized people to get accesses to Legal Services Authorities. The need for Para-Legal Volunteers has grown in order to enable the Legal Services Authorities to reach the bottom of the communities. In this regard whether PLV is interviewing a new client, contacting a legal expert, taking the statement of a witness, scheduling a court meeting or discussing a case with the lawyer, or setting an issue or dispute through negotiation and mutual understanding, a large part of PLV's working time is spent communicating with others. Therefore, the ability to communicate clearly and effectively is an essential and important Para-Legal skill. With that need in mind, as a part of their capacity building initiatives, one of the crucial topics included is communication skills.

PLV role and function

As PLV you may face the following situations.

- Situation 1:** You are talking to someone about a violation and he/she is not ready to listen to you. You try to reason out or explain the matter further but the person is not ready to listen to you at all.
- Situation 2:** You are trying to seek some more information from a person about consumption of drugs and he/she is not ready to open up and speak with you.
- Situation 3:** There is fight between a husband and wife in the neighborhood and you have come to know of the situation and have been asked to come over to help. You are trying to talk to the husband and wife and inform that these could be covered Chargeable under the Domestic Violence Act.
- Situation 4:** You have been approached by a young woman to help her save her from constant eve teasing and harassment by two persons on the road. You try to talk to them and they start arguing and fighting with you.
- Situation 5:** You have got information that a person from the locality has been arrested. You go to the police station and talk to the authorities and inform the person about the legal aid that is available to him/her.

Looking at the situations and many such other scenarios which you might encounter and may be involved in, the importance of effective communication skills and knowledge is very clear.

What are Communication skills?

Let's us understand what are communication skills?

Speaking, listening, asking, telling, observing, explaining, interpreting, understanding...

Well, what is so special about them? We have been doing them since early childhood. Sometimes we take them for granted as we do not think of them as something that needs special attention or learning. Everyone thinks of them as a natural ability which comes with age. Some people are good at it while some others are probably not so efficient. But have we thought why some people are good at it and some not so good? We admire the people who are good at it. We like to speak with them, listen to them, and go to them for help or advice. We can share with them our concerns and issues, we trust them, and we respect

them. They also know how to help us to open up, speak up and facilitate difficult issues we find reluctant or problematic to share. They have a pleasant way of communication through their speech, silence and facial expression and body language. You feel comfortable talking to them and even if they have some criticism or disagreement they convey that in a fashion that does not hurt. In fact we see and take those observations and suggestions pleasantly and think them over. They explain the complicated legal terms or procedure or process of availing the benefits of the scheme or facilitate getting legal aid or advice through the authorities. They are not perfect or know everything but they are always ready to help or come back to you with the information or solution. They are well informed and have a knack of finding out more or learn more in case they do not have complete or correct information at that moment.

Would you like to meet such a person? Of course! Who is she/he?

Look around and then stand in front of the mirror – yes, there, that person on the other side of the mirror? That is YOU. You are that person. As a Para Legal Volunteer you are that person who effectively uses communication skills with people. Can effective communications skills be acquired or learned?

Yes, of course. So let's start from the beginning.

What is Communication?

Communication has been called the transfer of meaning from one mind to another. It is also the exchange and transmission of ideas, views and information. The goal of good communication is shared understanding.

How do we communicate in today's world?

Newspaper, radio, television, letter, verbal/oral, phone, social media, internet, email, SMS, WhatsApp.

Interpersonal communication is one of the most important communication methods we use every day. Communication is a process. Let's understand that process.

Communication Process

The Communication Process can be broken down into several commonly accepted steps that are comprised of the following components:

The Sender – This is the individual or group who is initiating the message. This message can be verbal or non-verbal.

The Receiver – There must be a message sent if there is one to be received. The Receiver is the individual or group to whom the message is sent.

The Message – This is the particular content that is sent and received.

The Channel – (or **Medium**) is the means by which the message is sent. Some common channels are: spoken voice/telephone/radio/television, written word, computer.

The Context – This is the setting or environment in which the message is conveyed.

Feedback – This is the response by the Receiver as to the success of the communication.

Noise – This is the disturbance or distortion caused by the environment or could be the sender or the receiver or even the channel.

Model of communication

One way communication: One way communication is one speaks and other only listens with no participation.

Two way communication: Two way communications happens when both the speaker and the listener have equal right and participation in the communication process.

The communication model for two-way and one-way communication is relatively simple. It starts out with an assumption that we have both the sender and a receiver. The sender decides to choose a medium to communicate a message. Typically this medium is either verbal, written, or some type of electronic medium.

To possess effective two-way communication skills, we must process both verbal and nonverbal information flows at the same time.

Types of communication

Verbal and nonverbal communication

All forms of communication can be categorized as either verbal or nonverbal.

Verbal Communication

Much of the communication that takes place between people is verbal; that is, it is based on language. It could be written or spoken. Both forms use language.

Non Verbal Communication

While verbal communication is much studied and is the focus of much applied attention, the fact is that human beings communicate more through nonverbal means. Some estimates are that so-called body language accounts for 65, 70, even 90 percent of human communication. Using the 70-percent figure for body language, the voice accounts for another 20 percent or so, and specific words only about 10 percent. Nonverbal communication is hugely important in human interaction.

Activity 2:	Invite two volunteers in front. Give instruction to one of them to give only instruction nonverbally to fold a piece of paper in five folds and then in to half and then roll. Observe the second volunteer follow the instructions. Stop. Ask the second volunteer what he/she felt during the process.
Activity 3:	Reverse the roles for the volunteers. The activity is replayed by doing only verbal instructions. Follow the instruction and see what happens. Stop. Ask the doer volunteer what he/she felt during the process.
Activity 4:	This time do the activity with both nonverbal and verbal instructions together. After the instructions do the folding of the paper. Stop. You will ask the two volunteers what they felt this time.

Nonverbal communication may be vocal (focusing on vocal characteristics such as pitch, rate, and so on) or non-vocal (focusing on body language, environment, attire and the like).

- Your stance – present yourself as a person who knows – stand tall;
- How you sit – calmly and with a posture of interest;
- Facial expressions – show interest and enthusiasm;
- Eye contact – depending on culture, maintain eye contact; never wink or roll eyes;
- Gesturing and fidgeting – shows disinterest; wait to pack up until meeting is done;
- Nodding – lets your customer know you understand.

The following are important elements of verbal/oral communication.

Your Voice

- Pitch – highness or lowness
- Volume – loudness or softness
- Tone – emphasis and inflection
- Rate – speed
- Enunciation – distinction and correctness

Your Words

- Pronunciation – pronounce words correctly
- Grammar – usage and correctness matters
- Vocabulary – watch for over-use of words
- The “In” Words – Stay away from the popular phrases
- Slang and Swearing – Avoid at all cost

BODY LANGUAGE

The difference between the words people speak and our understanding of what they are saying comes from non-verbal communication, otherwise known as “body language.” By developing your awareness of the signs and signals of body language, you can more easily understand other people, and more effectively communicate with them.

They are sometimes subtle – and sometimes not so subtle – movements, gestures, facial expressions and even shifts in our whole bodies that indicate something is going on. The way we talk, walk, sit and stand all say something about us, and whatever is happening inside can be reflected on the outside.

By becoming more aware of this body language and understanding what it might mean, you can learn to read people more easily. This puts you in a better position to communicate effectively with them. Moreover, by increasing your understanding of others, you can also become more aware of the messages that you convey to them.

There are times when we send mixed messages – we say one thing yet our body language reveals something different. This non-verbal language will affect how we act and react to others, and how they react to us.

Body language impacts a great deal how we communicate, and can reflect quite accurately what’s going on inside us.

It includes body movements and gestures (legs, arms, hands, head and torso), posture, muscle tension, eye contact, skin colouring (flushed red), even people's breathing rate and perspiration. Additionally, the tone of voice, the rate of speech and the pitch of the voice all add to the words that are being used.

It is important to recognize that body language may vary between individuals, and between different cultures and nationalities. It is therefore essential to verify and confirm the signals that you are reading, by questioning the individual and getting to know the person.

Activity 5: Ask a volunteer to come to the front. Do the following activities which demonstrate the different Body language and its effects.

Eye contact – Listen without making eye contact.

Talk with an angry face

Listen and take two yawns

Talk to the person with pointing one finger at him/her

Take feedback from the volunteers as to what they felt during the activity.

Barriers to communication

The communication sometimes is not smooth or easy. Why is this so? What are the barriers to communication? The barriers to communication make the communication ineffective and less productive. The barriers to communication could be Internal and External.

Activity 6: Invite two volunteers to come to the front.

Listen to a person when there is a lot of noise in the environment and you are not able to hear properly.

Talk to a person when you are also responding to a mobile phone.

Talk to a person using a lot of technical/legal jargon

Take feedback from the persons of what they felt during the activity

Internal- Internal barriers include fatigue, poor listening skills, attitude towards the sender or the information, lack of interest in the message, fear, mistrust, past experience, negative attitude, problems at home, lack of common experiences, and emotions.

External- External barriers include noise, distraction, bad phone connection, time of the day; sender used too many technical words for the audience, and environment.

As an effective communication person, one has to learn to eliminate or minimize the barriers as it will spoil the relationship you have built with your client.

Effective communication skills

What are effective communication skills? How can one improve one's effective communication skills?

Seven Cs of effective communication

Let us remember some essentials of effective communication.

1. Clear/ Coherent
2. Concise/ Concrete
3. Confident/ Creative
4. Correct
5. Credible
6. Complete
7. Courteous

Learning Specific Communication skills

There are specific communications skills which will help you engage with your audience better and productively and effectively.

1. Active listening
2. Observation
3. Open and closed ended questions
4. Rapport
5. Conflict resolution
6. Positive attitude
7. Inter personal Communication
8. Remaining focused
9. Appreciating

Active listening

What is the difference between listening and hearing?

Active listening requires active participation and involves supportive gestures, questions, verbalizations. Think of a time when you felt fully listened to and understood. How did you feel? Fulfilled? Satisfied? Content? Possibly all of that and more. Now think of a time when your partner didn't pay attention. Perhaps he or she was just waiting for you to finish speaking, or worse, waiting to cut you off. How did you feel? Irritated? Frustrated? Angry? Dejected? We know the feeling.

Good listeners are patient, flexible and open minded. They are interested in their partner and ready to see their point of view without being judgmental. Poor listeners, on the other hand, always seem to rush the conversation. Listening is a skill that has to be learned; yet it is perhaps the most underrated, underutilized, and underdeveloped interpersonal skill. It is at the core of every successful human interaction, and as PLV you work with people, it is an absolute must.

Paraphrasing

Write phrases on the chart paper or board for the students to use in a paraphrasing role; ask students what else might be added as a prompt.

- What I hear you saying is...
- In other words you feel/think that...
- Am I correct in assuming that you think/feel that...?
- I think I understand where you are coming from; your thought is that...

Observation

Observation might be called the search for visual and auditory clues to your partner’s non-verbal communication. In other words, observation is verifying what you hear and feel. Some describe it as “listening with your eyes”. Have you ever noticed that you never really notice something until you become interested in it? How often have you said to yourself, “I never really saw that before”? Observation requires an open mind and an increased awareness. It can register split- second, fleeting expressions, gestures and clues. There is a whole host of things that observation can tell you once you put it into practice. For example, do they like you? Some signs that people like you include- smiles, good eye contact, arms uncrossed, facing you directly and appearing at ease and relaxed.

Open and close ended questions

Asking question in the right or appropriate way is another effective communication skill one has to master. Asking questions during the interaction can help to open up new information or clarify the information that is made available. Do not bombard the client with too many questions. One has to learn the effective questioning techniques. There are mainly two types of questioning techniques that are used in the interaction. **Close ended questions:** These types of questions are that can be answered with a minimal response (generally with a yes or a no). These type of questions help get clear and categorical answers. The second type of question is called **Open ended questions:** Open ended questions are those questions which cannot be answered in a yes or a no, these types of questions encourage the client to speak and explain or detail out the answer which help you to gain better insight into the person and the situation. These questions typically begin with why, where, how etc. You should ask a mix of open ended and closed ended questions appropriately.

Open ended questions	Close ended questions
<ul style="list-style-type: none"> • Why do you think so? • How did you do that? • Where were you at that time? 	<ul style="list-style-type: none"> • Do you agree? • Is that true? • Do you understand?

Rapport

Building rapport with the client as well as with the community is very important. It will help get information and insight which may be very useful for the case. There are numerous ways you can build rapport. Active listening is one of the tools which help you build rapport with the individual as well as with the community. Affirmation and acknowledgement of the problem of the person is another way of improving rapport. Sometimes engaging in small talk is also a way to get the rapport with the person. Asking general questions, health, weather, family, wellbeing also develops a relationship which gives a comfort zone to the other person.

Conflict resolution/Critical thinking/problem solving

Interpersonal conflict is a fact of life and can arise in almost any sphere, from organizations through to personal relationships. Learning to resolve it effectively, in a way that does not increase your stress levels, is therefore important for everyone. It's important to emphasize that dealing with conflict early is usually easier, because positions are not so entrenched, others are less likely to have started to take sides, and the negative emotions are not so extreme. The best way to address a conflict in its early stages is through negotiation between the participants.

Positive attitude

Do you have "an attitude"? Of course you do. Everyone does. Hopefully, yours is a positive one. Communicating a positive and sunny attitude and coming from a place of gratitude makes great sense. Why? Because you feel better, literally. You actually physically feel better. And this isn't your imagination -- this claim is backed up by science. A person carrying positive attitude looks at the brighter side, concentrates on solutions and avoids conflicts. They are happy workers and cooperative individuals who look for overall growth not just personal growth.

A person having a positive frame of mind rises up the success ladder as he knows the benefits of positive communication and implement the same in his work. They work hard and communicate the same to their boss. They seek solutions and are ready to experiment and take risks and accept changes in life.

Communicating with others becomes easy when we are in a happy mood than in a sad state. We feel freer to communicate our thoughts and share our feelings with someone who talks positively rather than negatively. A positive attitude leads to open communication and the outcomes are always better than in a closed communication.

Remaining focused

Focusing enables you to direct client's conversational flow in a certain direction and area. It may be possible that the client talks of disconnected issues and takes a long diversion before coming to the point. He/she also does not remain focused on the central point. With little practice you can facilitate the client to remained focused. Use client's name to keep the individual focus, repeat key words of the problem or the issue at hand, remind the client why they are there and what is the main theme of the interaction.

Appreciating

You may not think of practicing appreciation as an obvious communication skill but it's been studied and proven that adding purposeful appreciation and gratitude towards others on a regular basis can be one of the most powerful communication skills you can hone.

The bottom line is this: everyone has a real need to feel appreciated. It makes us feel valued and connected. When we feel genuinely valued and appreciated, we will connect and respond better, even perform better. Appreciate and recognize the people around you.

Show your appreciation whenever someone helps you. Everyone wants to feel that their work is appreciated. So, genuinely compliment the people around you when they do something well. This will open the door to great work relationships

Appreciation is a simple communication skill that brings amazing results in building and improving relationships. If you aren't doing it already, start adding appreciation to your daily routine. First, pay attention to those that are doing good things around you and encourage them. Be accessible when they need you. And, most important, thank them for what they do for you.

Appreciation: List some of the words and expressions of appreciation

Ask the participants to say "thank you"/"You did great" in five different ways.

Gathering from the answers, soon you will have more than 100 ways of saying "thank you" or "you did great"

How do we help a person to open up, speak up?

You may at times come across clients that will not open up and won't speak up, what do you do with such a client? One has to understand the person and situation sensitively. One has to be patient. One has to understand that there could be some reason and background to holding up and being uptight. One has to remain positive and use encouraging words and supportive body language to make the person comfortable so that the person gets the environment in which he/she feels confident and relaxed that he/she will not get further hurt. You can also use paraphrasing whatever little the client has spoken so as to clarify and be sure that you have understood the person correctly. You can reassure the person that whatever she/he is sharing is purely confidential and will be taken in all its sensitivity and sensibility and without making a judgment. Observe the person for if he/she is gathering words or courage to speak up. The person could be in shock or traumatized or anxious and may not feel OK to share. It could be that some past experience is holding him back. Give the person some time.

Inter Personal Communication

One basic role and task of the PLV is to reach out to people and talk and listen to them in an inter-personal manner. There could be need to help them talk or open up. It could also be that the task may involve them to listen to each other. People could have inhibitions or apprehensions or fear or lack of information and knowledge that may hinder appropriate communication. Given the role and duties of the PLV how do we apply the learning about communication to help in the work at hand?

You have to help people overcome inhibitions, apprehensions. These inhibitions and apprehensions are natural or could be circumstantial, but with patience and empathy these can be overcome. It will take time but when the client, community member develops trust and respect for you he/she will get over the inhibitions and apprehensions and share the concern of the problem he/she is facing. You have to be non-judgmental and have a positive attitude.

The benefit of having Good Relationships

Human beings are naturally social creatures – we crave friendship and positive interactions, just as we do food and water. So it makes sense that the better our relationships are at work, the happier and more productive we're going to be.

Good working relationships give us several other benefits: our work is more enjoyable when we have good relationships with those around us. Also, people are more likely to go along with changes that we want to implement, and we're more innovative and creative.

What's more, good relationships give us freedom: instead of spending time and energy overcoming the problems associated with negative relationships, we can, instead, focus on opportunities.

Defining a Good Relationship

There are several characteristics that make up good, healthy working relationships:

Trust – This is the foundation of every good relationship. When you trust your team and colleagues, you form a powerful bond that helps you work and communicate more effectively. If you trust the people you work with, you can be open and honest in your thoughts and actions.

Mutual Respect – When you respect the people that you work with, you value their input and ideas, and they value yours. Working together, you can develop solutions based on your collective insight, wisdom and creativity.

Mindfulness – This means taking responsibility for your words and actions. Those who are mindful are careful and attend to what they say, and they don't let their own negative emotions impact the people around them.

Welcoming Diversity – People with good relationships not only accept diverse people and opinions, but they welcome them. For instance, when your friends and colleagues offer different opinions from yours, you take the time to consider what they have to say, and factor their insights into your decision-making.

Open Communication – We communicate all day, whether we're meeting someone or speaking over phone, or meeting face-to-face. The better and more effectively you communicate with those around you, the richer your relationships will be. All good relationships depend on open, honest communication.

Gender sensitivity- It is very important that we have a sensitive and respectful behaviour and attitude towards women. We need to treat them as equals and understand that they could have special needs and attention, need for privacy and confidentiality.

How to Build Good Work Relationships

So, what can you do to build better relationships at work?

Develop Your People Skills

Good relationships start with good people skills.

Identify Your Relationship Needs

Look at your own relationship needs. Do you know what you need from others? And do you know what they need from you?

Understanding these needs can be instrumental in building better relationships.

Schedule Time to Build Relationships

Devote a portion of your day toward relationship building, even if it's just 20 minutes, perhaps broken up into five-minute segments.

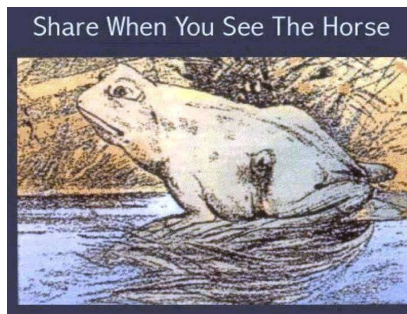
These little interactions help build the foundation of a good relationship, especially if they're face-to-face.

Recap and conclusion

Ask: Effective communication skills include.....

Thank you very much. Have a great day and life ahead.

Activity: What do you see?





Session VIII

Total Time: 90 minutes



Session VIII

Total Time: 75 minutes

MODULE FOR TRAINING OF PARA-LEGAL VOLUNTEERS ON LABOUR LAWS

—Illa Rawat⁴⁶

SESSION PLAN

Objectives

- To give the participants an overview of various kinds of issues relating to employment faced by workmen/employees.
- To give the participants an overview of the availability of remedial measures in the area of labour laws.
- To equip the Para-Legal Volunteers to recognise the people in need of legal services in the area of labour law.

Expected learning outcome

- The Para-Legal Volunteers will be generally aware of various issues in the area of work and employment.
- The Para-Legal Volunteers will acquire confidence and competence in identifying persons needing legal services in the area of labour laws.

Programme

- **Introduction by Resource Person** 5 minutes
The resource person shall introduce the subject and speak generally on Labour Law.
- **Group Discussion** 25 minutes
The participants will be divided into small groups in which they will try to find answers to the questions provided in Activity 1.
- **Presentation by Groups and Whole Group Discussion** 30 minutes
The Presentation/Discussion will be guided by the Resource person.
- **Lecture by Resource person** 10 minutes
Summing up and supplementing information not given so far.
- **Concluding remarks** 05 minutes

⁴⁶ Additional District and Sessions Judge, Delhi

One of the participants or a visiting dignitary can give the concluding remarks.

Training method

- Lecture with/without PPTs and Handouts
- Group Discussion and presentation

Tools required

- Facility for power point presentation
- Flip chart
- Whiteboard markers
- Blue tack

ACTIVITY – I
ON
LABOUR LAWS
QUESTIONS FOR GROUP DISCUSSION

1. What remedy is available to a lady who is employed in a local school as an Aaya, who is about to deliver a baby but the school is not willing to give her any leave/wages for the period of leave?
2. If an employee of a factory goes to his village and is unable to come back and join after the period of one week for which he had taken leave and he comes back to join 15 days later, can the employer dismiss him from his service ?
3. What can a worker do if his/her wages for two months have not been paid but the worker is otherwise willing to continue with the employment?
4. A factory worker has injured his right hand while working in the factory. His employer says that he is no more useful in the factory since his right hand is injured. Does the worker have any remedy?
5. A factory shifts its location from one town to another .Will workers lose their jobs if they are unable to move to the new location? What remedies do workers have who do not want to shift to the new location?
6. Can an employee in a transferable job refuse to accept an order of transfer and join at the new place of posting?
7. An employee has sublet the accommodation given by employer to his nephew and moved to his own house. Can he hold on to accommodation if the employer issues him notice to handover the said accommodation?
8. What are different proofs of employment? Are the following proof of employment :-
 - a. Food Coupon
 - b. Gate pass
 - c. I Card
 - d. ESI Card
 - e. PF account
 - f. Correspondence received at the address of employer
 - g. Letter received from employer

SHORT NOTE ON LABOUR LAWS

—Illa Rawat⁴⁷

Everyone has to work to make a living. Some work as independent professionals or do some businesses in which they are self-employed persons. In most cases they do not employ another person for their economic activity. Some may run small or big businesses when they employ workers of various categories. The most common means of livelihood is to get employed in some government/public offices, professional firms of various kind, factories, commercial houses etc. The relationship between the employer and employee is governed by a set of laws. The basic law is the law of contract. In every contract of employment there are terms and conditions which bind both employer and employee or the workman and the management. However for ensuring the welfare of the employees/workmen and to avoid exploitation of the weaker sections there are various laws enacted by the Central and State Governments. Taken together these laws are called Labour Laws. Labour laws are a specialised field of study of law not only because they deal with the exclusive domain of labour and its inter-relationship with management but also because the jurisdictions to deal with the issues arising in this area are conferred on various adjudicatory bodies outside the traditional Civil Courts.

International Labour Organisation (ILO) was one of the first organisations to deal with labour issues. The ILO was established as an agency of the League of Nations following the Treaty of Versailles, which ended World War I. The earliest Indian statute to regulate the relationship between employer and his workmen was Trade Disputes Act, 1929 which went under substantial modifications. Eventually the Industrial Disputes Act, 1947 came into force repealing the Trade Disputes Act of 1929. The Act protects the workmen from illegal retrenchments and regulates the relation between the workmen and the management. It has provisions to protect the workmen's wages and other dues apart from protecting them from exploitation by the management.

Some of the important legislations in this field are Workmen's Compensation Act 1923, Trade Unions Act 1926, Payment of Wages Act 1936, The Industrial Employment (Standing Orders) Act 1946, The Factories Act 1948, Minimum Wages Act 1948, The Employees' State Insurance Act 1948, The Employees' Provident Fund and Miscellaneous Provisions Act, 1952, Maternity Benefit Act 1961, Apprentices Act 1961, Payment of Bonus Act 1965, The Contract Labour (Regulation & Abolition) Act 1970, Payment of Gratuity Act 1972, Child Labour (Prohibition and Abolition) Act 1986, The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, Unorganised Workers' Social Security Act 2008 and The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

All these Acts have beneficial provisions for the employees/workmen. The provisions of these Acts have been further clarified and interpreted by the judgments of the Courts. It is important for the Para-Legal Volunteers to be aware of these laws. The employees/workmen should not only know the rights available to them under various Act but should

⁴⁷ Additional District and Sessions Judge, Delhi

also know the duties that are attached to the employment and also how to ensure that their rights are not defeated on account of acts and omissions by the employers/managements or by employees/workmen.

For example, an employee/workman should possess an employment letter that can indicate not only the fact that he or she has been employed by an organisation but also the terms of employment including emoluments. The workman should keep records like that of the wages received, leave applied for by him/her, leave sanctioned etc. A common experience is that employees/workmen are happy to get the salary at the end of the month but do not care to ensure that appropriate records are maintained at their end as well as at the end of the employer.

Courts are often called upon to decide the status of the Petitioners vis-a-vis the Respondent/Employer/Management. This is because the Petitioners do not produce appropriate records of their employment with the Respondent. The responsibility to prove that a Petitioner was employed with the Respondent lies on the Petitioner. The management/employer also produces his records of his employees. However, the Petitioner should have some minimum proof of his employment so that the Adjudicatory Authority/Court can call upon the employer to produce its records. The records of employment are very important because they are crucial for getting various benefits given by these welfare legislations. For example, if a workman is injured in course of employment he is entitled to money compensation from his employer. For getting this benefit it is important that he is able to prove before the authority namely the Commissioner under the Workmen's Compensation Act, 1923 that he was employed with that particular employer. The amount of compensation also depends upon the emoluments of the workman. The workman, therefore, should have some proof of emoluments that he gets from his employer.

There are sometimes issues as to who is the employer vis-a-vis the workman and against whom he can seek legal action under any of the aforesaid laws. The proof of employment will also indicate who the employer of that particular workman is.

Hours of work are regulated by the contract of employment as well as by the rules framed by the Government or notifications issued by them. The Minimum Wages Act 1948 prescribes not only the minimum wages but also the number of hours for which the workman can be made to work. If the workman is required to work beyond the regulated hours of work, he is entitled to overtime wages which are higher than the wages for normal working hours.

The workman is entitled to be paid by the appointed date for payment of wages. If the wages are not paid in time or if the wages for several months have fallen in arrear the workman need not file a suit in the Civil Court. He can apply to the Competent Authority appointed under the Payment of Wages Act 1936.

Two very important legislations for women are the Maternity Benefit Act 1961 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The Maternity Benefit Act 1961 binds the employer to provide maternity benefits including paid leave to a pregnant woman for a maximum period of twelve weeks. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 prevents harassment of any sexual nature at the workplace so that the woman at that workplace may feel secure during the hours of work.

One hard reality of life is that while the employer/management can afford to engage expensive lawyers to pursue their cases the workman being comparatively poor would generally rely upon labour union leaders who are not able to match the counsel of the employer/management. Further, it is not always possible to get competent witnesses to give oral evidence regarding the employment of the Petitioner. Documentary evidence is always preferred by the Court over oral evidence. Accordingly it is very important that the workman is able to produce sufficient documentary evidence in support of his own case. Hence, it is important to obtain and preserve proof of factum of employment as well as the terms and conditions thereof.

Added to the above is the fact that the capacity to sustain a prolonged litigation is stronger in the management as the workman does not have the financial capacity for the same. Particularly if the workman has been suspended from the job or has been removed from the employment his priority lies in finding some immediate means of sustenance rather than to fight for justice. Sometimes the employer gives living quarters to an employee and if the employee is required to vacate such living quarter his predicament is further compounded.

The women constitute 27% of the workforce in our country. It requires some sensitivity to understand the plight of women workers. Very often the women workers are not only employed in low paid jobs but are also paid less than their male counterparts. Further social reality in our country being what it is, the demand on her time and energy by her children and family is much higher than what it should be.

With all the above in mind, we, at NALSA, thought it to be very important to apprise and sensitise Para-Legal Volunteers about various issues that the workmen/employees are often confronted with and with the availability of remedial measures so that they become harbingers of peace and justice in the society.

DISCUSSION ON THE QUESTIONS FOR THE ACTIVITY I

- 1 What remedy is available to a lady who is employed in a local school as an Aaya, who is about to deliver a baby but the school is not willing to give her any leave/wages for the period of leave?**
 1. As per the provisions of The Maternity Benefit Act, 1961, every woman employee, whether employed directly or through a contractor, who has actually worked in the establishment for a period of at least 80 days during the period immediately preceding the date of her expected delivery, is entitled to receive maternity benefit (sec 5(2)).
 2. The maternity benefit under the Maternity Benefit Act, 1961 is the pay for the leave of absence required for the delivery which includes period before the delivery and after the delivery. The maximum period for which such maternity benefit can be claimed is 26 weeks.
 3. For calculating the number of days on which the woman has actually worked during the preceding 12 months, the days on which she has been laid off or was on holidays with wages, shall also be counted. There is neither any wage ceiling nor any restriction as regards the type of work a woman is engaged in for the applicability of the Act.
 4. The maternity benefit is payable to a woman worker at the rate of average daily wages for the period of her actual absence, during the benefit period. Wages for this purpose include basic wage, dearness and house rent allowance, incentive bonus and money value of concessional supply of food grains and other articles.
 5. The woman employee in question will be required to give a notice in writing (in prescribed form) to her employer. [Sec 6(1) and 6(2)]. The failure to give notice, however, does not disentitle the woman to benefits of the Act. The employer is liable to pay the amount of maternity benefit for the period preceding the date of expected delivery, in advance to the woman employee on production of proof of pregnancy in the prescribed format. The balance amount due for subsequent period should be paid within 48 hrs of production of proof of delivery (in the prescribed format).
 6. If the employer of the woman still fails to pay her dues towards maternity benefit then the woman employee can file a complaint against said employer with the Area Labour Inspector with copies thereof to Senior Officers like Labour Commissioner.
 7. If a woman, who is allowed to go on maternity leave works for any other establishment for any period during authorised leave, then her claim to maternity benefit for such period worked shall be forfeited (sec 18).

- 2. If an employee of a factory goes to his village and is unable to come back and join after the period of one week for which he had taken leave and he comes back to join 15 days later, can the employer dismiss him from his service ?**

1. It is desirable that when an employee has to proceed on leave or extend the period of his leave he should do so with the permission of his employer but there may be situations when he is unable to do so. In such an eventuality when he reports for work he should submit his leave application giving explanation for his unauthorised absence from work.
 2. Normally absence from work for a short duration of one week does not give rise to presumption of abandonment. An employer has a duty to send some communication at the last given address of employee before terminating the service of an employee on the ground of unauthorised absence. Termination of service of an employee for such a short duration, without following the due process, would not be legal.
 3. If the employer refuses to take the above mentioned employee back on work then it amounts to illegal termination of his service. This employee can raise an industrial dispute to seek his reinstatement in service with full back wages and other consequential benefits. The length of service of an employee, his past leave record and conduct rules, if any, applicable to the establishment of the employer are also some of the relevant factors.
- 3. What can a worker do if his/her wages for two months have not been paid but the worker is otherwise willing to continue with the employment?**
1. The worker in question can file an application under section 15(2) of the Payment of Wages Act, 1947, if, his monthly salary does not exceed Rs 18,000/- (eighteen thousand only). Application is to be filed before designated Labour Court ("Authority" under the Act) within 12 months from the date when such claim becomes due. An application can be made after 12 months, provided, that the delay is suitably explained. His designation and nature of work are not material.
 2. In the alternative he can file an application under section 33(C) 2 of the Industrial Disputes Act, 1947 for recovery of arrears of his wages. He would be qualified to take recourse of section 33(C) 2 only if he falls within the definition of 'workman' as defined under section 2(s) of the ID Act. No period of limitation is prescribed. Application is to be filed before concerned Labour Court having area wise jurisdiction over the area in which the workplace is situated.
- 4. A factory worker has injured his right hand while working in the factory. His employer says that he is no more useful in the factory since his right hand is injured. Does the worker have any remedy?**
1. Every employee (including those employed through a contractor but excluding casual employees), who is engaged for the purpose of employer's business and who suffers an injury in any accident arising out of and in the course of his employment, is entitled for compensation under The Workmen's Compensation Act, 1923 (hereinafter referred to as the WC Act) as amended upto date.
 2. Injury caused to a workman by an accident ordinarily results in loss of the earning capacity of the workman concerned and this loss of earning capacity is technically called 'disablement'. Disablement can be classified as (a) Total (b) Partial. It can further be classified into (i) Permanent (ii) Temporary disablement.
 3. Disablement, whether permanent or temporary is said to be total when it incapacitates a worker for all work he was capable of doing at the time of accident resulting in such disablement. 'Total disablement' is considered to be permanent if a workman,

as a result of accident, suffers from injury specified in Part I of Schedule I or suffers from such Combination of injuries specified in Part II of Schedule I as would lead to loss of earning capacity when totalled to one hundred per cent or more. Disablement is said to be permanent partial when it reduces for all times, the earning capacity of a workman in every employment he was capable of undertaking at the time of accident.

4. The employer of any establishment covered under the WC Act, is required to compensate an employee (a) who has suffered an accident arising out of and in the course of his employment, resulting into (i) death, (ii) permanent total disablement, (iii) permanent partial disablement, or (iv) temporary disablement whether total or partial, or (b) who has contracted an occupational disease.
 5. The employer becomes liable to pay the compensation as soon as personal injury/death is caused to the workman by accident arising out of and in course of the employment. The amount of compensation is to be paid as soon as it falls due. It is to be computed on the date of the accident in accordance with provisions of section 4(1) of the WC Act. If the amount is not paid within one month from the date it fell due, the 'Compensation Commissioner' (Deputy Labour Commissioner) under the WC Act can direct payment of simple interest thereupon. Generally the compensation is not payable to the workman directly but is deposited along with the prescribed statement with the Commissioner who then pays it to the workman. A workman seeking compensation is required to file a claim before the Commissioner along with "notice of accident" containing such particulars as the name and address of the person injured, date and cause of accident etc. A copy of notice is also required to be sent to the establishment wherein the workman was employed.
 6. In the instant case the workman has suffered an injury to his right hand and his employer is refusing to give him work. It is presumed that the workman has suffered only temporary disability. In the first instance the workman should report for work with his fitness certificate. If the employer refuses to give him work then he can raise an industrial dispute for reinstatement in service. He can also claim compensation for his temporary disablement whether total or partial.
 7. In an event where the workman has suffered permanent total disablement or permanent partial disablement and is unable to discharge his duties which he was doing at the time of the accident, he may request the employer to provide him an alternative job, if available. This would be in addition to his entitlement to file a claim under WC Act.
5. **A factory shifts its location from one town to another .Will workers lose their jobs if they are unable to move to the new location? What remedies do workers have who do not want to shift to the new location?**
1. When an employer shifts his factory from one town to another, the employees have an option to join job in the factory at the new location. If for some reason they are unable to do so then they would be entitled to compensation as provided for in section 25FFF of The Industrial Disputes Act, 1947. The Supreme Court in *M.C. Mehta v. Union of India*, AIR 1996 SC 2231 laid down various norms for this purpose. It was held that the workmen employed in such industries were entitled to the rights and benefits, the workmen would have continuity of employment at the new town and place where the industry is shifted. The terms and conditions of their employment

shall not be altered to their detriment. The period between the closure of the industry at its original location and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of the service. All those workmen who agree to shift with the industry would be given one year's wages as "shifting bonus" to help them settle at the new location. The workmen employed in the industries also fail to relocate and the workmen who were not willing to shift along with the relocated industries would be deemed to have been retrenched with effect from the date of closure provided they had been in continuous service for not less than one year in the industries concerned before the said date. They should be paid compensation in terms of Section 25-F (b) of Industrial Disputes Act, 1947. These workmen would also be paid, in addition, one year's wages as additional compensation.

6. Can an employee in a transferable job refuse to accept an order of transfer and join at the new place of posting?

An employee in a transferable job cannot refuse to accept an order of transfer or to join at a new place of posting especially when said term is part of his contract of employment/ terms of appointment. Such a refusal on the part of an employee would amount to misconduct on his part and would render him liable for inquiry and punishment including dismissal in respect of the same.

7. An employee has sublet the accommodation given by employer to his nephew and moved to his own house. Can he hold on to accommodation if the employer issues him notice to handover the said accommodation?

Residential accommodation is an additional incentive given by an employer to his employee for better performance. An employee may choose to avail of this benefit or may decline the offer of his employer and continue to reside in his own accommodation. However, once he avails of an official accommodation, he does not have any authority to part with possession thereof or to sublet the said accommodation to any third person including his nephew. It is apparent that the employee in question has acquired his own house and has moved into it and does not require official accommodation any longer. In these circumstances he ought to have handed over the possession of the said house to his employer especially after the employer issued him notice to hand it over. Non-compliance of such directions and/ or refusal on the part of an employee to hand over possession of official accommodation would amount to misconduct on his part and would render him liable for inquiry in respect of the same. The employee in question can also be prosecuted under section 452 of Companies Act, 2013 by his employer.

8. What are different proofs of employment? Are the following proof of employment :-

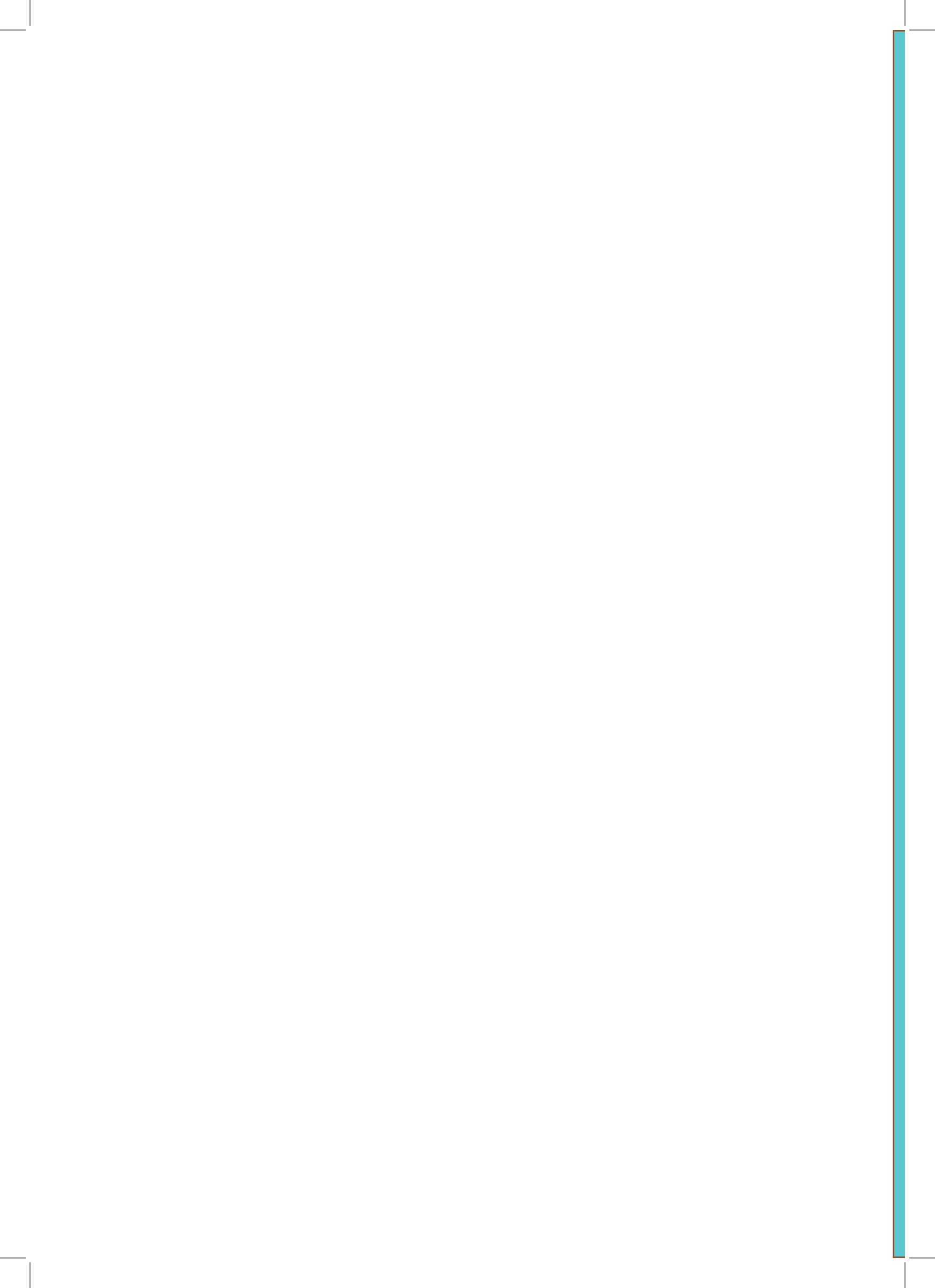
- A) Food Coupon
- B) Gate pass
- C) I Card
- D) ESI Card

E) PF account

F) Correspondence received at the address of employer

G) Letter received from employer

1. Success of any litigation, initiated by an employee/ a workman against any person for redressal of his grievance qua employment, terms of employment, non-payment of wages, illegal termination of service etc., to a large extent depends on the said employee/ workman being able to prove his relationship with the employer and his being in the employment of said person/ management. Very rarely one finds an employer who is maintaining all records and is issuing documents such as appointment letter, identity card etc. to his employees. In absence of proper documents very often the claimant/ employee produces documents like food coupon, ESI card etc. to prove his/her relationship with the alleged employer. The value of some of these documents as:-
 - a. Food Coupon – It is not a proof of employment.
 - b. Gate Pass- It is not a proof of employment unless it has details/ description like employee code, seal of employer and signatures of authorised signatory of employer etc. on it. Further it should also reflect continuity of employment.
 - c. Identity Card- It is a proof of employment.
 - d. ESI Card- It is a proof of employment but its duration is relevant.
 - e. PF Card/ Account-It is a proof of employment but its duration is relevant.
 - f. Correspondence received at the address of an employer- It is not a proof of employment unless it is correspondence received by an employee in connection with his employment in the establishment.
 - g. Letters received from the employer-It is a proof of employment.





Session IX

Total Time: 90 minutes



Session IX

Total Time: 90 mins

MODULE FOR TRAINING OF PARA-LEGAL VOLUNTEERS ON LAWS RELATING TO CHILDREN

–Geetanjli Goel⁴⁸

SESSION PLAN

Objectives

- To provide the Para-Legal Volunteers an understanding of the different laws relating to children.
- To give them a clear perspective of the different situations in which the children can be in difficult circumstances and need relief.

Expected learning outcomes

- Participants will be able to identify situations where children are in difficult situations and take steps to help them, including producing them before the Child Welfare Committees if necessary.
- Participants will be able to identify the cases where there is need to approach the legal services institutions and to approach the legal services institutions on behalf of the children.
- Participants will also get an idea of the different laws which exist for protection of children.
- Participants would be informed of the responsibilities they are expected to discharge in relation to children in difficult circumstances.

Programme

- **Introduction** 10 minutes

The resource person will introduce the topic by explaining about the different legislations concerned with children.

- **Activity I : Skit** 10 minutes

Two Participants performing the Skit will highlight any one of the difficult situations in which the children may find themselves in

- **Discussion** 15 minutes

This will be followed by a discussion on the issues raised in the skit.

⁴⁸ Special Secretary, Delhi State Legal Services Authority and Officer of Delhi Higher Judicial Service.

- Exhibition of NALSA Capsule on child labour and child marriage
10 minutes
- **Discussion** on the points raised in the NALSA Capsule and the role that can be played by Para-Legal Volunteers in relation to children.
15 minutes
- **Lecture** by resource person on issues not covered so far with points from Short Note on the subject.
25 minutes
- **Concluding remarks** by one of the participants/resource person/visiting dignitary
05 minutes

Training methods:

- Lecture and/or PPT
- Skit
- Exhibition of NALSA capsules

Note: The resource person will pool the points on the flip chart/white board. He/she may prepare a power point for the lecture.

Tools required

- Facility for power point presentation/ showing film
- Flip chart
- Whiteboard marker
- Blue tack
- Whiteboard

SKIT ON LAWS RELATED TO CHILDREN

Two participants would be asked to volunteer to perform the skit. They would be handed over the script and explained the purpose of the skit. The volunteers would then perform the skit as per the script. Thereafter there would be discussion on the questions which arise out of the skit.

Characters

Rani is aged about 15 years old. She loves going to school. Rani is a bright student and performs equally well in extra-curricular activities. She remains happy and is friendly with all. She aspires to join the police force. Her teachers have a lot of hope from her that she would do well in life.

Sushila is the class teacher of Rani. One day Rani comes to school looking morose and unhappy. She cannot concentrate in the class and remains distracted. Sushila senses that there is something wrong and takes Rani aside and questions her on what the matter is. Rani starts crying.

Sushila: Rani, why are you crying? Something appears to be wrong.

Rani: No ma'am, there is nothing wrong.

Sushila: Rani, do not hide anything from me. You are such a happy child. Clearly something is wrong. Tell me what it is.

Rani: (in between sobs) Ma'am, yesterday one boy's family came to see me. I was told to dress up for them.

Sushila: Your parents want to get you married off?

Rani: My parents were saying that it is a good match and I would be very happy in their family. You know Ma'am, the boy is around 24 years old. I do not want to get married to him.

Sushila: Oh! But you are only 15 years old. You are too young to be married off.

Rani: In our village, most of the girls are married off by the age of 15-16 years. My parents say that if I do not get married off now, it will bring bad name to the family.

Sushila: Rani, you are a bright student and we have lot of expectations from you. Did you not tell your parents that you do not want to get married?

Rani: Ma'am, I told my parents that I do not want to get married and want to study further and take up a job. But my parents laughed off saying that girls from good families do not work outside the house.

Sushila: Why don't you ask your parents to at least let you complete class 12?

Rani: Ma'am, they are not willing to listen to anything. The whole night I have been

thinking of my friend Meena. She was married off when she was barely 14 years old. She had her first child before her fifteenth birthday and now at the age of 18 years she has three children. She has to look after the children and also do the household work. She is also often beaten by her husband and mother in law. Ma'am, she had come to her parents' house. She looked so dull and unhappy. I do not want such a life for myself. I think I should run away from home.

Sushila: No dear Rani, please do not take any such step. We can think of some solution. You know Rita, she had protested when she was about to be married off and she was able to stop her own marriage. I have heard she has taken some para legal training and now she helps girls like you who are forced to get married at a young age.

Questions for discussion

- 1) How can Rita help Rani and Sushila?
- 2) Can a girl of 15 years be married off?
- 3) If a girl of 15 years old is married off, how would it affect her?
- 3) Can anything be done to stop the marriage from taking place? Who can prevent the marriage and how?
- 4) If the marriage is solemnised can any action be taken against the parents of Rani for solemnising her marriage?
- 5) Would any action lie against the boy and his family?
- 6) Will such a marriage be legally valid?

SHORT NOTE

ON

LAWS RELATED TO CHILDREN

–Geetanjli Goel⁴⁹

A. Background

A.1 Children constitute about 39% of the population of India. Children are the future of the country and are entitled to all the rights given to a citizen in the Constitution of the country. However, they are treated as a separate category having certain distinct rights from those of the adults. This is because it is recognized the world over that the mental faculties of the children are not fully developed to enable them to take rational decisions. Children are also vulnerable and hence need special care. Since the children cannot speak up or demand their rights, the society has to ensure that the rights of the children are protected.

A.2 Over the period, there has been a change in the way children's rights are looked at. There was a time when the children were regarded more as property or chattels but slowly there has been a shift in the attitude towards children. Now it is recognized that the children have rights not as a matter of charity or benevolence but certain rights are inherent to them being children.

A.3 There are many situations where the children may be in difficult circumstances and need relief. This could be:

- a) Where the child is orphan or abandoned or without any home
- b) Where the parents are not in a position to bring up the child due to illness, incarceration or other such reasons
- c) Where the child is trafficked
- d) Where the child is found begging or put into employment despite his tender age
- e) Where the child is sexually exploited
- f) Where the child is exploited, abused by the family members or a guardian
- g) Where the child suffers from a mental or physical disability
- h) Where the child falls prey to drugs or other forms of addiction
- i) Where the child is used by militant groups or by gangs or by adults for committing offences
- j) Where the child for various reasons comes into a situation of conflict with law
- k) Where the child runs away from home
- l) Where the child is a victim of a crime
- m) Where the child has witnessed a crime taking place
- n) Where the child is a victim of a natural calamity or a disaster

⁴⁹ Special Secretary, Delhi State Legal Services Authority and Officer of Delhi Higher Judicial Service.

- o) Where the child is married of at a young age or is at the imminent risk of being married off
- p) Where there is a matrimonial proceeding going on between the parents of the child.

Such situations could be multiplied and it is not possible to give an exhaustive list of all the different situations in which children could find themselves and need relief.

A.4 In India, laws relating to children date to pre-independence era. In the Indian Penal Code, 1860 Code there were several child friendly provisions. Several of its provisions deal with offences in which children are victims. It also deals with the age of criminality of a child. The Child Marriage Restraint Act was passed in 1929 as also the law banning infanticide. Post-independence a number of laws have been enacted for the welfare of children. In fact Article 15(3) of the Constitution enables the State to make special provisions in favour of children. The Constitution also contains several other Articles which provide for betterment of children. In particular:

- Article 21A provides that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. To give effect to the same The Right of Children to Free and Compulsory Education Act, 2009 was enacted.
- Article 1)23) prohibits traffic in human beings and beggar and other similar forms of forced labour and any contravention of this provision shall be an offence punishable in accordance with law.
- Article 24 enacts that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
- Article 29(2) lays down a guarantee against denial of admission to any citizen into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.
- Articles 39, 45 and 47, though form part of the Directive Principles of State Policy also mandate the State to make laws for the welfare of children. Article 39(e) provides that the State shall, in particular, direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
- Article 39(f) provides that the State shall, in particular, direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
- Article 45 mandates that that the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.
- Article 47 provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.
- Article 51A(k) which was incorporated vide amendment and forms part of the Fundamental Duties lays down that it shall be the duty of every citizen of India who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

A.5 Various laws have been enacted to give effect to the constitutional mandate and which deal with protection of children against exploitation. On the civil side certain laws have recognised the rights of children in matters of inheritance, property, marriage and maintenance. In fact there are laws governing the journey of a child from the womb to adulthood. There are more than 50 laws which directly affect children besides provisions in several other laws. There are also a number of international conventions and covenants laying down the rights of children and India is a signatory to a number of them, the most important being the Convention on the Rights of the Children 1989 which India has ratified and the Protection of Children and Co-operation in Respect of Inter-country Adoption (1993).

A.6 Under the Legal Services Authorities Act, 1987, all children are entitled to free legal aid and services. Most of the State Legal Services Authorities regularly carry out awareness and training programmes in relation to the rights of children. Lawyers have also been appointed by them to represent children such as in Juvenile Justice Boards and Child Welfare Committees. In 2015, National Legal Services Authority also brought out the NALSA (Child Friendly Legal Services to Children and their Protection) Scheme, 2015 which seeks to strengthen the mechanisms that exists for providing legal aid and representation and assistance to children in difficult circumstances.

A.7 A perusal of the different laws which exist relating to children shows that there is variation in the laws on who would be regarded as a child – whether a person upto 18 years or upto 16 years or upto 21 years would be regarded as a child. This depends largely on the subject with which the particular law is dealing. Here, we shall deal with some important laws relating to children.

B. Protection of Children from Sexual Offences Act, 2012

B.1 Children being vulnerable are more prone to being victims of sexual offences. There was a steady increase in the offences against children but the same were not adequately addressed by the existing laws. To protect children from offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well-being of the child at every stage of the judicial process and to provide for establishment of the Special Courts for trial of such offences, the Protection of Children from Sexual Offences Act, 2012 was enacted and it came into force on 14 November 2012. It defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography, and deems a sexual assault to be “aggravated” under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-a-vis the child, like a family member, police officer, teacher, or doctor or where a child is below 12 years of age or is a victim of incest. An important feature of the Act is that it is gender neutral. The Act provides stringent punishment for offences against children, which have been graded as per the gravity of the offence. The punishments range from simple to rigorous imprisonment of varying periods. There is also provision for fine, which is to be decided by the Court. The table containing the various offences and the punishment for the same is as under:

1. Offence	2. Section	3. Punishment
<p>i. Penetrative sexual assault: A person commits this offence if:</p> <p>j. a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or</p> <p>k.</p> <p>ii. b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or</p> <p>iii. c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or</p> <p>iv. d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.</p>	4. 3, 4	<p>5. Imprisonment of either description for a term which shall not be less than seven years but may extend to imprisonment for life; and</p> <p>6. Fine</p>
<p>7. It amounts to an offence of Aggravated Penetrative Sexual Assault when the offence of penetrative sexual assault is committed by a police officer, member of the armed forces or security forces or a public servant or by a person on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection or hospital or educational institution or religious institution or if gang penetrative sexual assault is committed on a child or if penetrative sexual assault is committed on a child using deadly weapons, fire, heated substance or corrosive substance or if it is accompanied by causing grievous hurt or bodily harm and injury or injury to the sexual organs of the child or it results in physical incapacitation of the child or causes the child to become mentally ill or causes impairment of any kind to the child or makes the girl child pregnant or inflicts the child with HIV or any other life threatening disease or infection or is committed repeatedly or is committed by a relative or is committed on a child knowing the child to be pregnant or if attempt is also made to murder the child or is committed in the course of communal or sectarian violence or where it is committed by a person in a position of trust or authority on the child in an institution or home of the child or anywhere else or where the child is below twelve years of age.</p>	8. 5, 6	<p>9. Rigorous imprisonment for a term which shall not be less than ten years but may extend to imprisonment for life; and</p> <p>10. Fine</p>

<p>Sexual Assault: A person commits this offence if he, with sexual intent touches the vagina, penis, anus, breast of the child or makes the child touch his vagina, penis, anus or breast or of any other person, or does any other act with sexual intent which involves physical contact without penetration.</p>	<p>11. 7, 8</p>	<p>12. Imprisonment of either description for a term which shall not be less than three years but may extend to imprisonment for five years; and</p> <p>13. Fine</p>
<p>14. It amounts to an offence of Aggravated Sexual Assault when the offence of sexual assault is committed by a police officer, member of the armed forces or security forces or a public servant or by a person on the management or on the staff of a jail, remand home, protection home, observation home, or other place of custody or care and protection or hospital or educational institution or religious institution or if gang sexual assault is committed on a child or if sexual assault is committed on a child using deadly weapons, fire, heated substance or corrosive substance or if it is accompanied by causing grievous hurt or bodily harm and injury or injury to the sexual organs of the child or it results in physical incapacitation of the child or causes the child to become mentally ill or causes impairment of any kind to the child or inflicts the child with HIV or any other life threatening disease or infection or is committed repeatedly or is committed by a relative or is committed on a child knowing the child to be pregnant or if attempt is also made to murder the child or is committed in the course of communal or sectarian violence or where it is committed by a person in a position of trust or authority on the child in an institution or home of the child or anywhere else or where the child is below twelve years of age.</p>	<p>15. 9, 10</p>	<p>16. Imprisonment of either description for a term which shall not be less than five years but may extend to imprisonment for seven years; and</p> <p>17. Fine</p>
<p>Sexual harassment: A person is said to commit sexual harassment upon a child when a person with sexual intent:</p> <p>i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or</p> <p>18. ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or</p> <p>iii) shows any object to a child in any form or media for pornographic purposes; or</p>	<p>19. 11, 12</p>	<p>20. Imprisonment of either description for a term which may extend to three years; and</p> <p>21. Fine</p>

iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or vi) Entices a child for pornographic purposes or gives gratification for the same.		
22. Use of child for pornographic purposes: If a person uses a child in any form of media for purpose of sexual gratification including representation of the sexual organs of a child, use of a child in real or simulated sexual acts or indecent or obscene representation of a child, then he would be guilty of this offence.	23. 13, 14	24. Imprisonment of either description for a term which may extend to five years; and 25. Fine 26. If in addition any offence under other sections is also committed, then it would entail higher punishment.
27. If anyone stores, for commercial purposes, any pornographic material involving a child, it amounts to an offence.	28. 15	29. Imprisonment of either description for a term which may extend to three years or with fine or with both.
30. Mandatory reporting of offences and recording of cases	31. 19, 20, 21	32. Imprisonment of either description for a term which may extend to six months/ one year; and or fine.
33. Making a false complaint or providing false information is also an offence.	34. 22	35. Imprisonment for a term which may extend to six months or with fine or with both.

B.2 The Act provides for the establishment, if not already there of **Special Courts** to try the offences under the Act, keeping the best interest of the child as of paramount importance at every stage of the judicial process. The courts are to complete the trial within a period of one year, as far as possible. It is significant that if the offence is allegedly committed by a child, then the case first goes before the Juvenile Justice Board and the case would proceed as per the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015.

B.3 For the more heinous offences of Penetrative Sexual Assault, Aggravated Penetrative Sexual Assault, Sexual Assault and Aggravated Sexual Assault, the **burden of proof** is shifted on the accused to prove his innocence. This provision has been made keeping in view the greater vulnerability and innocence of children.

B.4 The Act incorporates **child friendly procedures** for reporting, recording of evidence, investigation and trial of offences. These include:

- Recording the statement of the child at the residence of the child or at the place of his choice, preferably by a woman police officer not below the rank of sub-inspector.
- No child to be detained in the police station in the night for any reason.
- Police officer to not be in uniform while recording the statement of the child
- The statement of the child to be recorded as spoken by the child

- Assistance of an interpreter or translator or an expert as per the needs of the child
- Assistance of special educator or any person familiar with the manner of communication of the child in case child is disabled
- Medical examination of the child to be conducted in the presence of the parent of the child or any other person in whom the child has trust or confidence.
- In case the victim is a girl child, the medical examination shall be conducted by a woman doctor.
- Frequent breaks for the child during trial
- Child not to be called repeatedly to testify.
- No aggressive questioning or character assassination of the child.
- In-camera trial of cases.
- Right of the child to take assistance of legal counsel.

B.5 The Act makes it an offence to disclose the name of the child in the media. The Act provides for mandatory reporting of sexual offences and non-reporting is made an offence which is punishable under Section 21 of the POCSO Act.

B.6 The Act also provides for grant of compensation to the victim and the compensation can be awarded at the interim stage as well as after the culmination of trial. Most of the States have a Victim Compensation Scheme and the amount of compensation awarded in POCSO cases is disbursed as per the said Scheme.

B.7 The Para-Legal Volunteers can play an important role in respect of the POCSO Act:

- The Para-Legal Volunteers ought to keep their eyes and ears open and remain alert to any offences under the Act being committed around them. Since a number of Para-Legal Volunteers belong to the community, they would be in a better position to know if any child is subjected to sexual offences. Sometimes, the children may also confide in them about any offences taking place with them.
- The Para-Legal Volunteers can inform the police about such cases which come to their knowledge.
- The Para-Legal Volunteers can play an active role in creating awareness about the provisions of POCSO Act. They can educate the children about 'good touch' and 'bad touch' and encourage them to speak up and not hide any such incidents that may happen and also to remain alert against such happenings.
- The Para-Legal Volunteers can provide support to the victims of such offences and their families. They can assist them in lodging complaints to police, accompany them for medical examination or for recording of their statement in the police station or the court and inform the victims about their right to get compensation.

C. The Prohibition of Child Marriage Act, 2006

C.1 Child marriages have been prevalent in India since times immemorial. As per available statistics, more than half the girls in India get married before they have turned 18. A large number of boys also get married at a young age. Child marriages affect the children physically, mentally and socially. The children are physically and mentally not

in a position to handle a marriage. If the girls get pregnant, their body is not developed enough for bearing a child which seriously affects their health and may even lead to death. Even child rearing is a difficult task as they themselves are children. Often the boys are not economically independent and do not earn enough to take care of their family. Girls who are married off at a young age are often subjected to domestic violence. They are also not able to take education and employment if they so desired to.

C.2 The first ever law restraining child marriages was passed in 1929 known as the Child Marriage Restraint Act of 1929 or more popularly the Sarda Act. The minimum legal age for marriage at that time was 15 years for girls and 18 for boys. Through several amendments, this age was increased and under the present Prohibition of Child Marriage Act, 2006 (hereinafter referred to as PCMA) child means a male who has not completed 21 years of age and a female who has not completed 18 years of age. A marriage is called a child marriage if either of the contracting parties is a child. The consent of a child is considered irrelevant.

C.3 This Act applies across the country and across religions except to the State of Jammu and Kashmir and certain residents of Puducherry called Renconcants who are governed by the French laws.

C.4 The PCMA contains provisions for:

1. Prevention of child marriage i.e. stopping it from taking place
2. Prohibition of child marriage as an offence
3. Prosecution of offenders
4. Protection and rehabilitation of children affected by such marriage.

C.4 Under the PCMA the families of the parties arranging and solemnizing the marriage as also priests and guests who attend a child marriage, knowing that the person being married off is a child can be booked and tried for offences under the Act. It is significant that though the Act treats a child marriage as an offence but it does not declare a child marriage as invalid per se except in certain circumstances. Thus under the Act:

1) A marriage would be voidable at the option of the person who got married when he or she was a child on attaining majority. A petition seeking annulment of marriage before the competent court specified by the State Government for such matters. Such a petition can be filed within 2 years of the person attaining majority.

2) Certain marriages are null and void i.e. they are of no effect: This can be where:

- the child marriage is solemnised despite an injunction order passed under Section 13 of the Act to prevent the child marriage from taking place, or
- the child is kidnapped or taken away from her/his lawful guardian by enticement for the purpose of marriage, or
- the child is forced or induced by use of deceitful means to go to another place for marriage, or
- the child is sold for the purpose of marriage, or
- The marriage is used as a means to sell or traffic the child for immoral purposes.

C.5 As far as the legal effects of a child marriage are concerned:

- 1) Children born out of a child marriage are legitimate for all the purposes and have a right to maintenance from their father, even if the marriage is annulled. The court can make orders for the custody of a child born out of a child marriage keeping in view the interest of the child. The other party may be allowed access to the child.
- 2) Minor girl whose marriage was solemnized is entitled to maintenance from her husband till she gets remarried. In case the husband is a minor at the time of marriage, his guardian is liable to pay maintenance.
- 3) The District Court can also pass orders directing both parties in a child marriage to return the money, valuables and gifts exchanged between the at the time of marriage.
- 4) The District Court can also pass an order allowing the girl a right to residence in her marital home until she remarries.

C.6 The Act makes provision for prevention of child marriages and provides for issuance of an injunction order i.e. an order restraining and stopping the parties solemnizing the child marriage from doing so. However, before such an order is passed, the Court has to issue a written notice to the concerned parties and give them adequate opportunity to explain their point of view. This gives an opportunity to the contracting parties to realize that their action is illegal, that now the matter is in the knowledge of the court and they have got an opportunity to reconsider their decision and call off the child marriage. The PCMA also empowers the Courts to issue an interim injunction in emergent situations (such as where the marriage is about to be solemnised) which can be issued without giving any notice to the concerned parties and in the absence of the other party. An injunction order can be confirmed or even altered by the Court. It is significant that the injunction order can be passed by a Judicial Magistrate of First Class or by a Metropolitan Magistrate and the Magistrate can even take *suo moto* cognizance of any reliable report or information or complaint about a child marriage likely to take place so even a para legal volunteer can make a report in this regard.

C.7 The Act makes provision for appointment of Child Marriage Prohibition Officer whose duty is to prevent a child marriage from taking place; stop people from promoting, aiding or allowing a child marriage; spread awareness about the provisions of the Act and who can also seek injunction order to stop a child marriage or an order for maintenance of the married minor girl and her child born out of the child marriage. The District Magistrate is mandated to prevent solemnization of child marriage and to act as the Child Marriage Prohibition Officer with additional powers in particular to stop mass child marriages that take place on occasions such as *Akshaya Tritiya*.

C.8 The following table lists the offences under the Act and the punishment for the same:

Offence	Section	Punishment
A male adult i.e. above 18 years of age marrying a minor	9	Rigorous imprisonment up to two years, or Fine up to one lakh rupees, or Both

Performing, conducting, directing or abetting any child marriage	10	Rigorous imprisonment up to two years, and Fine up to one lakh rupees
It is presumed, unless and until the contrary is proved, that where a minor child has contracted a marriage, the person having charge of such minor child has negligently failed to prevent the marriage from being solemnized and such person, guardian, association or group of persons who conducted and participated in the solemnization of the marriage is liable to be punished.	11	Rigorous imprisonment up to two years, and Fine up to one lakh rupees No woman shall be subjected to imprisonment
Disobeying an injunction order of a Judicial Magistrate of First Class obtained under Section 13 (1) restraining or prohibiting a child marriage	13(10)	Rigorous imprisonment up to two years, or Fine up to one lakh rupees, or Both No woman shall be subjected to imprisonment

C.9 The Para-Legal Volunteers can play an important role in prevention of child marriages and providing support to a child who finds himself/ herself in such a situation.

- Since the Para-Legal Volunteers mostly belong to the community, they can play a crucial role in the prevention of child marriages. They would be in a position to know if a child marriage is about to take place and they can immediately approach the police or even a Judicial Magistrate of First Class or a Metropolitan Magistrate for passing an injunction order restraining such a child marriage.
- The Para-Legal Volunteers can create awareness in the society against child marriage, highlighting the repercussions of early marriage on the physical and mental well-being of the girls and counsel families where there is a tradition of child marriages. They can also educate the people about the Right to Education Act and the advantages of children getting educated.
- There may be a situation where a child is being married off and seeks help. The para legal volunteer can immediately take steps for the protection of the child and besides approaching the police or the Child Marriage Prohibition Officer or the court, he can approach Child Line on 1098 and even guide the child to the nearest legal services institution.
- The Para-Legal Volunteers can also step in where a child was married off but on attaining the age of majority, the person wants to get the marriage annulled. In such a situation as well, the Para-Legal Volunteers can guide the person to the nearest legal services institution.
- It is also essential that the Para-Legal Volunteers maintain a data base containing the names and contact details of the Child Marriage Prohibition Officers and other stakeholders whose assistance may be sought in case of an emergent situation.

D. Child Labour

D.1 Across the world, children, despite their tender age are engaged in a range of jobs- be that as domestic workers or rag pickers or in field or in industries. Child labour interferes with the education of children and is harmful to their health and full development. Children are also maltreated and made to work for long hours without proper food and working conditions. They are paid meagre amount for the work done by them. Not only this, children are trafficked for being engaged in various jobs.

D.2 Child labour has been rampant in our country despite the existence of laws prohibiting child labour or regulating it. It is generally believed that more than 100 million children are engaged in employment, often heavy and hazardous in contravention of the international conventions which provide for their protection from economic exploitation and from performing work. India accounts for the second highest number of children who are employed.

D.3 Many international conventions and declarations such as the Geneva Declaration on the Rights of the Child, 1924, Universal Declaration of Human Rights, 1948 and the UN Convention on the Rights of the Child, 1989 emphasise the need for special care of the child. The Constitution of India also contains several provisions to protect and safeguard the interests of the children such as Article 23 which prohibits traffic in human beings and forced labour, Article 24 which prohibits employment of children below the age of 14 years to work in any factory or mine or other hazardous employment. Article 39 (e) directs the State to secure conditions in favour of children so that their tender age is not abused and they are not compelled by economic necessity to take up jobs unsuited to their age and strength. Article 39(f) mandates the State to ensure that the children are given opportunities and facility to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

D.4 There are several laws which contain provisions prohibiting or regulating child labour. Most of the special Acts under the labour laws which deal with specific activities such as the Plantations Act, Mining Act contain provisions in this regard. However, the main legislation regarding child labour is the Child Labour (Prohibition and Regulation) Act, 1986 which has now been renamed as the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (hereinafter referred to as the Act) after the amendments carried out in 2016. It outlines where and how children can work and where they cannot i.e. it prohibits employment of children in certain employments, occupations or processes which are specified in the Act and regulates the conditions of work of children in certain other employments where they are not prohibited from working.

D.5 The Act defines a child as any person who has not completed his fourteenth year of age and bans employment of all such children in all occupations and processes. However, an exception has been incorporated in that the child can (a) help his family or family enterprise which is other than hazardous occupation or process provided in the Schedule to the Act, after school hours or during vacations and (b) work as an artist in an audio-visual entertainment industry, except circus. The Act makes it clear that no such work by a child shall effect the school education of the child. The Act also provides that the parents or guardians of such children shall not be punished unless they permit such child to be employed for commercial purposes in contravention of the law.

D.6 The amended Act creates a category of ‘adolescents’ to mean persons who have completed fourteen years of age but have not completed eighteen years of age. The Act prohibits the employment of adolescents in any of the hazardous occupations or processes laid down in the Schedule to the Act.

D.7 Economic exploitation of children is also a criminal offence under the Juvenile Justice (Care and Protection of Children) Act, 2015 and may also attract the provisions of the IPC and Bonded Labour Act.

D.8 While the engagement of children in certain occupations and processes is prohibited, the law regulates engagement of children or adolescents in other occupations and processes by prescribing the working hours and working conditions. The laws provide that the period of work on each day shall be so fixed that it does not exceed three hours at a time and an adolescent gets an interval for rest for at least one hour. Overall working period in a day cannot exceed six hours and including the time spent in waiting for work on any day. No adolescent shall be permitted to work overtime. No adolescent shall be permitted to work between 7.00 PM & 8.00 AM. An adolescent cannot be permitted to work in more than one establishment in a day. An adolescent shall be entitled to one whole day holiday which has to be specified by a notice permanently exhibited at conspicuous place in the establishment.

D.9 The violation of the provisions of the Act becomes an offence. The table containing the offences and the punishment for the same is as under:

SUMMARY	SECTION	PUNISHMENT
<p>Prohibition of employment of children in any occupations and process.</p> <p>Any person who employs any child or permits any child to work contrary to the provisions of the Act commits an offence.</p>	3/14(1) & (1B), 14(2)	<p>Imprisonment for a term which shall not be less than six months but which may extend to two years, or</p> <p>Fine which shall not be less than 20000 rupees but which may extend to 50000 rupees, or with both:</p> <p>A repeat offence is punishable with imprisonment for a term which shall not be less than one year but which may extend to three years.</p>

<p>Prohibition of employment of adolescents in certain hazardous occupations and process.</p> <p>Whoever employs any adolescent or permits any adolescent to work contrary to the provisions of the Act, in any of the hazardous occupations or processes set forth in the Schedule commits an offence.</p>	<p>3A/14 (1A), 14(2A)</p>	<p>Imprisonment for a term which shall not be less than six months but which may extend to two years; or</p> <p>Fine which shall not be less than 20000 Rupees but which may extend to 50000 rupees, or with both.</p> <p>A repeat offence is punishable with imprisonment for a term which shall not be less than one year but which may extend to three years.</p> <p>Where the parents or guardian are convicted of an offence under section 3 or section 3A and they commit a like offence afterwards, they shall be punishable with a fine which may extend to 10000 rupees.</p>
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D.10 The Act makes provision for a fund called the Child and Adolescent Labour Rehabilitation Fund to which the amount of fine realised from the employer of the child and adolescent shall be credited. The Government shall also credit an amount of Rs.15, 000/- to the Fund for each child or adolescent for whom the fine amount has been credited to the fund. This amount shall be deposited in bank or invested gainfully and along with interest shall be paid to the child or adolescent at the appropriate time. The Act also provides that the child or adolescent who is employed in contravention of the provisions of the Act shall be rehabilitated in accordance with law.

D.11 In respect of child labour as well, the Para-Legal Volunteers can have a very important role to play. They can report cases of child labour which come to their knowledge to the concerned authorities.

- Para-Legal Volunteers can create awareness about the right of children to education and the harmful effects of child labour on the health and well-being of children.
- They should remain alert against any attempts to traffic children from their area, taking advantage of the vulnerability of the family and the child.
- They can also help the children in getting admission in schools.
- They can inform the families of children who are rescued from child labour about the availability of legal aid and the right of the children to recover their wages for the period which they worked.

PART- A
THE SCHEDULE
(Section 3A)

Hazardous occupation and processes in which adolescents are prohibited to work and children are prohibited to help

- (1) **Mines and Collieries** (underground and underwater) and related work in, -
 - (a) stone quarries;
 - (b) brick kilns;
 - (c) preparatory and incidental processes thereof including extraction, grinding, cutting, splitting, polishing and handling of stones or lime or slate or silica or any other such element or mineral extracted from the earth; or open pit mines.
- (2) **Inflammable substances and explosives** such as -
 - (a) Fire crackers;
 - (b) for manufacture, storage, sale, loading, unloading or transport of explosives as define under the Explosives Act, 1884 (4 of 1884);
 - (c) work relating to manufacturing, handling, grinding, glazing, cutting, polishing, welding, moulding, electro-plating, or any other process involving inflammable substances or;
 - (d) Waste management of inflammable substances, explosives and their by-products.
- (3) **'Hazardous processes'** as specified in the First Schedule of the Factories Act, 1948 (63 of 1948) and mentioned below:

List of Industries Involving hazardous processes:

(A). Ferrous Metallurgical Industries

- (i) Integrated Iron and Steel;
- (ii) Ferro-alloys;
- (iii) Special Steels

(B). Non-ferrous Metallurgical Industries:

Primary Metallurgical Industries, namely zinc, lead, copper, manganese and aluminium.

(C). Foundries (ferrous and non-ferrous):

Castings and forgings including cleaning or smoothening or roughening by sand and shot blasting.

(D). Coal (including coke) Industries:

- (i) Coal, Lignite, Coke, similar other substance;
- (ii) Fuel Cases (including Coal Gas, Producer Gas, Water Gas).

(E). Power Generating Industries.

(F). Pulp and paper (including paper products) Industries.

(G). Fertilizer Industries:

- (i) Nitrogenous;
- (ii) Phosphate;
- (iii) Mixed.

(H). Cement Industries:

Portland cement (including slag cement, puzzolona cement and their products).

(I). Petroleum Industries:

- (i) Oil Refining;
- (ii) Lubricating Oils and Greases.

(J). Petro-chemical Industries.

(K). Drugs and Pharmaceutical Industries: Narcotics, Drugs and Pharmaceuticals.

(L). Fermentation Industries (Distilleries and Breweries)

(M). Rubber (Synthetic Industries).

(N). Paints and Pigment Industries.

(O). Leather Tanning Industries.

(P). Electro-plating Industries.

(Q). Chemical Industries:

- (i) Coke Oven By-products and Coal tar Distillation products;
- (ii) Industrial Gases (nitrogen, oxygen, acetylene, argon, carbon dioxide, hydrogen, sulphur dioxide, nitrous oxide, halogenated hydrocarbon, ozone, similar other gas);
- (iii) Industrial Carbon;

- (iv) Alkalies and Acids;
- (v) Chromates and dichromate;
- (vi) Lead and its compounds;
- (vii) Electro chemicals (metallic sodium, potassium and magnesium, chlorates, perchlorates and peroxides);
- (viii) Electro thermal produces (artificial abrasive, calcium carbide);
- (ix) Nitrogenous compounds (cyanides, cyanimides, and other nitrogenous compounds);
- (x) Phosphorus and its compounds;
- (xi) Halogens and Halogenated compounds (chlorine, fluorine, bromine and iodine);
- (xii) Explosives (including industrial explosives and detonators and fuses).

(R). Insecticides, Fungicides, Herbicides and other Pesticides Industries.

(S). Synthetic Resin and Plastics.

(T). Man-made Fibre (Cellulosic and non-cellulosic) industry.

(U). Manufacture and repair of electrical accumulators.

(V). Glass and Ceramics.

(W). Grinding or glazing of metals.

(X). Manufacture, handling and processing of asbestos and its products.

(Y). Extraction of oils and fats from vegetable and animal sources.

(Z). Manufacture, handling and use of benzene and substances containing benzene.

(AA). Manufacturing processes and operations involving carbon disulphide.

(BB). Dyes and dyestuff including their intermediates.

(CC). Highly flammable liquids and gases.

- (4) Process involving handling and processing of hazardous and toxic chemicals as specified in Part-II of the Schedule I to the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989.
- (5) Work in slaughter houses and abattoirs;
- (6) Work involving exposure to radioactive substances and incidental processes therein;

- (7) Ship breaking;
- (8) Salt Mining or Salt Pan Work;
- (9) Hazardous processes as specified in Schedule IX to the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Central Rules, 1998.

PART- B

List of Occupations & Processes where children are prohibited to help in family or family enterprises (in addition to part A)

Occupations (Non Industrial Activity)

Any occupation concerned with:

1. Transport of passengers, goods or mails by railways; or
2. Cinder picking, clearing of an ash pit or building operation in the railway premises;
or
3. Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from the one platform to another or in to or out of a moving train; or
4. Work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway tracks; or
5. A port authority within the limits of any port; or
6. Work relating to selling of crackers and fireworks in shops with temporary licenses;
or
7. Automobile workshops and garages; or
8. Handloom and power loom industry; or
9. Plastic units and fiberglass workshops;
10. Domestic workers or servants;
11. Dhabas (roadside eateries), restaurants, hotels, motels, resorts etc
12. Diving; or
13. Circus; or
14. Caring of elephant; or
15. Power driven bakery machine; or
16. Shoe making.

PROCESSES (INDUSTRIAL ACTIVITY)

1. Beedi-making;
2. Carpet-weaving including preparatory and incidental process thereof;
3. Cement manufacture, including bagging of cement;
4. Cloth printing, dyeing and weaving including processes, preparatory and incidental thereto;
5. Mica-cutting and splitting;
6. Shellac manufacture;
7. Soap manufacture;
8. Wool-cleaning;
9. Building and construction industry including processing and polishing of granite stones; hauling and stacking materials; carpentry; masonry;
10. Manufacture of slate pencils (including packing);
11. Manufacture of products from agate;
12. Manufacturing processes using toxic metals and substances, such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos;
13. Cashew and cashew nut descaling and processing;
14. Metal cleaning, photo engraving and soldering processes in electronic industries;
15. 'Aggarbatti' manufacturing;
16. Automobile repairs and maintenance including processes incidental thereto namely, welding, lathe work, dent beating and painting;
17. Brick kilns and roof tiles units;
18. Cotton ginning and processing and production of hosiery goods;
19. Detergent manufacturing;
20. Fabrication workshops (ferrous and non ferrous);
21. Gem cutting and polishing;
22. Handling of chromite and manganese ores;
23. Jute textile manufacture and coir making;
24. Lime kilns and manufacture of lime;
25. Lock making;
26. Manufacturing processes having exposure to lead such as primary and secondary, smelting, welding and cutting of lead-painted metal constructions, welding of galvanized or zinc silicate, polyvinyl chloride, mixing (by hand) of crystal glass mass,

sanding or scraping of lead paint, burning of lead in enamelling workshops, lead mining, plumbing, cable making, wiring patenting , lead casting, type founding in printing shops. Shot making and lead glass blowing;

27. Manufacture of cement pipes, cement products and other related work;
28. Manufacture of glass, glass ware including bangles, florescent tubes, bulbs and other similar glass products;
29. Manufacture of dyes and dye stuff;
30. Manufacturing or handling of pesticides and insecticides;
31. Manufacturing or processing and handling of corrosive and toxic substances, metal cleaning and photo engraving and soldering processes in electronic industry.
32. Manufacturing of burning coal and coal briquettes;
33. Manufacturing of sports goods involving exposure to synthetic materials, chemicals and leather;
34. Oil expelling and refinery;
35. Paper making;
36. Potteries and ceramic industry;
37. Polishing, moulding, cutting, welding and manufacturing of brass goods in all forms;
38. Processes in agriculture where tractors, threshing and harvesting machines are used and chaff cutting;
39. Saw mill – all processes;
40. Sericulture processing;
41. Skinning, dyeing and processes for manufacturing of leather and leather products;
42. Tobacco processing including manufacturing of tobacco, tobacco paste and handling of tobacco in any form;
43. Tyre making, repairing, re-treading and graphite beneficiation;
44. Utensils making, polishing and metal buffing;
45. 'Zari' making and processes involving the use of zari (all processes);
46. Graphite powdering and incidental processing;
47. Grinding or glazing of metals;
48. Diamond cutting and polishing;
49. Rag picking and scavenging;
50. Mechanized fishing;
51. Food Processing;
52. Beverage Industry;
53. Cultivating, sorting, drying and packaging in Spice industry;

54. Timber handling and loading;
55. Mechanical Lumbering;
56. Warehousing;
57. Massage parlours, gymnasiums, or other recreational centres, or in medical facilities;
58. Operations involving the following classes of dangerous machines:
 - (a) Hoists and Lifts;
 - (b) Lifting machines, chains, ropes and lifting tackles;
 - (c) Revolving machinery;
 - (d) Power presses;
 - (e) Machine tools used in the metal trades;
 - (f) Guillotine machines.
59. Printing as in sub-clause (iv) of the Factories Act, 1948 (63 of 1948) i.e. composing types for printing, printing by letter press, lithography, photogravure or other similar process or book-binding.”.

E. The Pre-Conception & Pre-Natal Diagnostic Techniques Act, 1994

E.1 Amongst the different forms of violence against girls and women, perhaps the worst form is female infanticide or female foeticide where the girl child is not allowed to be born and is killed in the womb and if born, she is killed by other means. Stories of effects of female infanticide and female foeticide abound from across the country: in the Dang district of Rajasthan, one woman was reported to live as the wife of 8 brothers; in Baghpat district in Uttar Pradesh a woman is forced to live and bear children with her husband's two brothers who had failed to find wives; in a village in MP there had been no *baraat* for 110 years as there was no girl in that village and there are also instances of women being bought from far off villages in Bihar for as little as Rs.500-15,000/- and married off to men. Coupled with this is the fact that there has been an increase in the incidence of crimes against women and children. Women and even young girls are kidnapped or abducted, raped, forced into prostitution. A woman who is purchased and brought as a bride enjoys a very low status in her matrimonial home and is treated as a chattel.

E.2 The social, cultural and religious fibre of India is pre-dominantly patriarchal based on the foundation that the family line runs through a male which makes men a precious commodity that needs to be protected and given a special status. Further marriage is considered as a process whereby the burden of the father is passed on to the husband for a very high price. Thus, a girl child was never considered 'desirable' and 'acceptable' and various methods were found to eliminate the girl child soon after her birth like starving her, crushing her under the bed or giving her poison etc. The techniques of elimination of girl child have become more scientific with the progress in science and medical technology. Female infanticide has now given way to female foeticide. The moral guilt attached to elimination of the girl child after she is born is not felt equally if the child is eliminated while still in the womb. Female foeticide or sex selective abortion is the elimination of the female foetus in the womb itself and prior to that the sex of the foetus has to be determined and it is done by methods like ultrasonography and amniocentesis. In rural areas, some

other methods of inducing abortion are also known like herbs, drugs etc.

E.3 There has been further 'progress' with the development of sex selection techniques i.e. preconception gender selection (PGS) through preimplantation gender determination of the embryo, and in vitro fertilization to ensure the birth of a baby of the desired sex without undergoing abortion. Thus a girl is not even allowed to be conceived. Though these techniques were developed to reduce the risk of several diseases, in India they are being used to avoid giving birth to girl children. The result of the use of these techniques is that in some parts of the country, the sex ratio of girls to boys has dropped to less than 800:1,000.

E.4 Female infanticide was prohibited through legislation in the pre-independence period. Certain provisions were also included in the Indian Penal Code, 1860 punishing causing of miscarriage and other like offences but unfortunately these provisions were rarely resorted to. The government in 1978 issued a directive banning the misuse of amniocentesis in government hospitals/laboratories. Thereafter, a law to prevent sex determination tests was passed in Maharashtra known as the Maharashtra Regulation of Pre-natal Diagnostic Techniques Act, 1988. Finally the Parliament enacted the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act on 20th September 1994 (hereinafter referred to as the Act) to provide for the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital mal-formations or sex linked disorders; and for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide. Thus the Act does not ban all pre-natal diagnostic tests but regulates the conduct of such tests and seeks to prevent their misuse.

E.5 The Act came into force in 1996. By itself it is a comprehensive piece of legislation which defines the terms used therein, lays down when the use of pre-natal diagnostic techniques is prohibited and where it is regulated. It has provisions for bodies which are responsible for policy making under the Act and those which are responsible for the implementation of the Act. The penalties for various offences and how and by whom cognizance of complaints is to be taken, are also elaborated. However the implementation of the Act remained poor till the order of the Supreme Court dated 4.5.2001 in *CEHAT v. Union of India*. In order to address the inadequacies and practical difficulties in the administration of the Act that came to the notice of the Government and to counter the use of techniques that had been developed to select the sex of the child before conception, the PNNDT Act was amended with a view to banning the use of sex-selection techniques prior to conception as well as the misuse of pre-natal diagnostic techniques for sex selective abortions and to regulate such techniques and the title of the Act has been amended to read 'The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act' (referred to as the PC and PNNDT Act). The said amendments have been upheld by the Mumbai High Court and it was held that pre-conception sex determination violated a woman's right to live and was against the Constitution.

E.6 Under the Act, any genetic counselling centre or genetic clinic or genetic laboratory is barred from:

- Conducting; or
- Associating with; or
- Helping in conducting *pre-natal diagnostic techniques* unless registered;

- employing or causing to be employed or taking services of any person, whether on honorary basis or on payment who does not possess prescribed qualifications;
- conducting or causing to be conducted a *pre-natal diagnostic technique* except for the purposes specified in the Act;
- Conducting or causing to be conducted a *pre-natal diagnostic technique* including an ultrasonography for the purpose of determining the sex of the foetus.

Thus the tests can be conducted only by registered units and tests by unregistered centres are illegal and punishable.

E.7 Any person including a relative or husband of the pregnant woman cannot seek or encourage the conduct of any *pre-natal diagnostic techniques* on her except for the purposes specified in the Act or the conduct of any sex-selection technique on her or him or both or conduct or cause to be conducted any *pre-natal diagnostic technique* including ultrasonography for purpose of sex determination. Further there is a prohibition on the person including the person conducting a *pre-natal diagnostic procedures* from communicating to the pregnant woman concerned or her relatives or any other person the sex of the foetus by words, signs or in any other manner whatsoever. There is also a presumption under the Act that the husband and relatives of the pregnant woman who undergoes a *pre-natal diagnostic technique* for the purposes other than those specified in the Act was compelled to undergo the *pre-natal diagnostic technique* unless the contrary is proved.

E.8 The Act also bans advertisement of sex determination and sex selection techniques and no person, organization, *Genetic Counselling Centre, Genetic Laboratory or Genetic Clinic*, including clinic, laboratory or center having ultrasound machine or imaging machine or scanner or any other technology capable of undertaking determination of sex of foetus or sex selection can issue, publish, distribute, communicate or cause to be issued, published, distributed or communicated any advertisement, in any form, including internet, regarding facilities of pre-natal determination of sex or sex selection before conception available at such centre, laboratory, clinic or at any other place.

E.9 While preventing the misuse and over-use of the pre-natal diagnostic techniques the Act permits and regulates the use of such techniques for the purpose of detection of specific genetic abnormalities or disorders and for the larger benefit of mankind and under certain conditions by the registered bodies. The doctors conducting pre-natal diagnostic techniques should maintain proper documentation. Under the amendments it has been made mandatory that the person conducting ultrasonography on a pregnant woman shall keep complete record thereof in the clinic. The Medical Council of India has also been authorized to take action against any erring medical practitioner.

E.10 The PC and PNDT Act also has an important link with the **Medical Termination of Pregnancy Act, 1971** (hereinafter referred to as the MTP Act). Prior to 1971, abortions were considered illegal in our country and in fact the same could be punishable under the Indian Penal Code. In 1971, the MTP Act was passed which provides for the termination of certain pregnancies by registered medical practitioners (as defined under the MTP Act). Thus it is clear that abortion is not provided for in all cases of pregnancy but only in case of certain pregnancies.

E.11 Despite the stringent provisions of the Act and extensive advertisement of the ban on such tests, sex determination tests followed by abortion are widely prevalent. There have been very few convictions under the Act and even the prosecutions are mainly

confined to non-registration of the clinics etc. and some cases of advertising. The whole problem is of detection as in most cases there is no complainant. The woman who is to undergo the sex determination test is also a part of the same social structure and the centers do such tests in extreme secrecy. It also becomes very difficult to prove the nexus between sex determination tests and abortion. In these circumstances female foeticide and sex selection have continued unabated and there are centres carrying out such tests everywhere. Mobile ultrasound machines are carried to the remotest of areas where otherwise even the basic medical facilities are not available. New and more advanced techniques for carrying out the tests are being developed.

E.12 A legislation alone cannot solve the problem and may not be effective to completely ban the practice and the mindset that needs to be changed. What is needed is social awareness and sensitizing all the sections of the society, advocacy of a scientific and rational approach, empowerment of women and a strengthening of women's rights, inculcating a strong ethical code of conduct among medical professionals, simple methods of complaint registration and wider publicity for the provisions of the Act. People must be made aware that a girl is as much (if not more) an asset as a boy. The society as a whole needs to ensure that the girl is safe, secure, educated, economically and emotionally independent. In this the Para-Legal Volunteers can play a very important role. Besides the Para-Legal Volunteers can also keep a watch on centres which might be carrying out such tests and report them to the concerned authorities. They can also remain alert to situations where many pregnant women in an area who otherwise appear to be healthy get abortions done.

F. Juvenile Justice (Care and Protection of Children) Act, 2015

F.1 Considering the vulnerability of children and the need for a separate legislation dealing both with children in conflict with law and the children in need of care and protection, the Juvenile Justice (Care and Protection of Children) Act, 2015 was enacted. It replaces the Act of same name of 2000 which also contained elaborate provisions aimed at rehabilitation and re-integration of children. Just like the earlier Act, this Act provides a separate adjudicating and rehabilitating machinery, distinct from that for adults, for handling matters concerning children (except in some cases). It stresses the need for child-friendly legal procedures and seeks to lay them down. It is perhaps the only legislation in the world which contains provisions both for children in conflict with law and for children in need of care and protection. The Act manifests the recognition, the world over that children needs to be treated differently as their mental faculties are still at the developing stage and they may not be in a position to take mature decisions. It is because of this immaturity that they are not supposed to be treated as adult offenders. The Act provides for a special approach towards the children keeping in mind their best interest and provides a framework for the protection, treatment and rehabilitation of children in the purview of the juvenile justice system whether they are children in conflict with law or in need of care and protection.

F.2 The Act takes into consideration various international conventions and covenants such as the Convention on the Rights of the Child adopted by the General Assembly of the United Nations on 20.11.1989 and ratified by India on 11.12.1992 which lays down the standards to be adhered to by all the State parties in securing the best interests of the child and it emphasizes social reintegration of juveniles and care and protection of vulnerable children; United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (popularly known as the Beijing Rules or Beijing Declaration), the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990), United

Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines) and SAARC Convention on Regional Arrangements for Promotion of Child Welfare adopted in 2002 which recognizes the family as the best place for the well-being of children and lays down the primary objective of promoting the child's reintegration in the family and society.

F.3 The Act of 2015 incorporates certain principles which have to be kept in mind by all the stakeholders who come in contact with children in conflict with law or children in need of care and protection be they the Juvenile Justice Boards (Board) or Child Welfare Committees (CWC) or police persons or lawyers or voluntary organizations or other functionaries under the Act. The said principles include:

1. The *best interest of the child* which means that all decisions regarding the child shall be based on the primary consideration that they are in the best interest of the child and will help the child to develop his/her full potential⁵⁰.
2. Principle of repatriation and restoration which seeks to ensure rehabilitation and reintegration of the child in the society. Every child has the right to be re-united with his family and restored back to the same socio-economic and cultural status that such child enjoyed before coming within the purview of the Act unless such restoration and repatriation is not in his best interest. Coupled with this is the principle of *institutionalization as a measure of last resort* i.e. a child shall be placed in institutional care as a step of last resort after making a reasonable inquiry.
3. Equally important is the principle of presumption of innocence i.e. a child is presumed to be innocent of any mala fide or criminal intent upto the age of eighteen years. This also incorporates the right of the children to legal representation and legal aid has to be provided to them. Further it includes the principle of *participation* i.e. every child shall have a right to be heard and to participate in all the processes and decisions affecting his interest and the child's views shall be taken into consideration with due regard to his/her age and maturity. The Act of 2015 also incorporates the principle of *natural justice* i.e. basic procedural standards of fairness shall be adhered to, including the right to a fair hearing, rule against bias and the right to review, by all persons or bodies, acting in a judicial capacity under the Act.
4. Treatment of a child consistent with his sense of dignity and worth which is a fundamental principle of juvenile justice and has to be protected throughout the entire process of dealing with the child coupled with the right to privacy and confidentiality.

These principles have to be adhered to by everyone dealing with children in conflict with law at every stage irrespective of the gravity of the offence or other circumstances.

F.4 The Act defines a child as a person who has not attained the age of 18 years. In respect of children who are alleged to be in conflict with law, the material date is the date of offence allegedly committed by the child.

50 'Best interest of child' under section 2 (9) of Act of 2015 has been defined to mean the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and needs, identity, social well-being and physical, emotional and intellectual development.

Broadly speaking, the Act may be divided into three parts, though there are obvious linkages:

- I. Where it contains provisions in respect of children in conflict with law
- II. Where it contains provisions in respect of children in need of care and protection
- III. Where it recognizes certain offences that may be committed against children.

F.5 Children in conflict with law

F.5.1 Under the Act, the cases of children in conflict with law are to be adjudicated by **Juvenile Justice Boards** (hereinafter referred to as the Board) rather than by regular criminal courts and such Boards are to be set up in every district. A Board consists of a Metropolitan Magistrate or a Judicial Magistrate of the first class, as the case may be, with at least three years' experience and two social workers of whom at least one shall be a woman, forming a Bench. The proceedings of the Board are to be held in the premises of an Observation Home or, at a place in proximity to the observation home or at a suitable premise in any Child Care institution meant for children in conflict with law run under the Act but not within any court or jail premises. The procedures have to be child-friendly and the venue should not be intimidating to the child and should not resemble regular courts. The Board is also to ensure that no person unconnected with the case remains present when the case is in progress and that only those persons are present in whose presence the child feels comfortable.

F.5.2 A Board shall have the power to deal exclusively with all offences whether under IPC or any local or special law allegedly committed by a juvenile/ child. The functions and responsibilities of the Board include ensuring informed participation of the child and the parent or guardian in every step of the process and that the rights of the child are protected throughout the process of apprehending the child, inquiry, aftercare and rehabilitation, ensuring availability of legal aid for the child through the legal services institutions, directing preparation of social investigation report, adjudicating and disposing of cases of children in conflict with law, transferring to the Committee, matters concerning the child alleged to be in conflict with law, stated to be in need of care and protection, disposing of the matter and passing a final order that includes an individual care plan for the child's rehabilitation, conducting inquiry for declaring fit persons or fit facilities regarding care of children in conflict with law, conducting inspection of the residential facilities for children in conflict with law, directing the police to register FIR for offences committed against any child in conflict with law and a child in need of care and protection on a complaint made in that regard/ written complaint by a Committee and conducting regular inspection of jails meant for adults to check if any child is lodged in such jails and taking immediate measures for transfer of such a child to the observation home. The Board may also pass appropriate orders for the re-admission or continuation of the child in the school where the child has been disallowed from continuing his education in a school on account of the pendency of the inquiry or the child having stayed in a Child Care Institution for any length of time. Importantly, the Board may deploy, if necessary, the services of student volunteers or non-governmental organization volunteers for para legal and other tasks such as contacting the parents of the child in conflict with law and collecting relevant social and rehabilitative information about the child.

F.5.3 The children in conflict with law are not to be kept in jail or lock-up and the Act provides for setting up of the observation homes, special homes and place of safety for children in conflict with law. 'Observation home' is meant for temporary reception of any child in conflict with law during the pendency of any inquiry regarding them under the Act. 'Special home' is meant for reception and rehabilitation of children in conflict with law.

F.5.4 The Act of 2015 classifies the offences as 'petty offences' which include the offences for which the maximum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment up to three years, 'serious offences' which include the offences for which the punishment under the Indian Penal Code or any other law for the time being in force, is imprisonment between three to seven years and 'heinous offences' which include the offences for which the minimum punishment under the Indian Penal Code or any other law for the time being in force is imprisonment for seven years or more. The nature of the proceedings before the Board and the orders passed in respect of children, to some extent depend on the category in which the offences fall.

F.5.5 Under this Act, as soon as a child alleged to be in conflict with law is apprehended, he is to be placed in the custody of a Special Juvenile Police Unit or the designated child welfare police officer appointed as such in each Police Station who are required to record the social background of the child and circumstances of apprehension i.e. to prepare a Social Background Report. The parents or the guardian of the child are also to be informed immediately about the apprehension of the child as also the probation officer attached to the Board. The child is to be provided appropriate medical assistance, assistance of interpreter or a special educator, or any other assistance which the child may require. The child is to be apprehended only in case of heinous offences unless the apprehension is in the best interest of the child himself, such as where the child takes drugs or his family cannot be traced or he is being used by gangs. In all other cases, the information regarding the nature of offence alleged to be committed by the child along with his Social Background Report is to be forwarded to the Juvenile Justice Board and the parents or guardian of the child have to be intimated as to when the child is to be produced for hearing before the Juvenile Justice Board.

F.5.6 When the child is produced before the Board, it has to consider the Social Background Report (SBR) prepared by the Child Welfare Police Officer or officers, individuals, agencies producing the child and the Board may dispose of the case or transfer the child to the Child Welfare Committee if it appears to the Board that the child has not committed any offence and is in need of care and protection or consider the release of the child on bail or release the child in the supervision or custody of fit persons or fit facility or probation officers or keep the child in an observation home or place of safety pending inquiry. After the police files the report of investigation, the Board conducts an inquiry into the matter and comes to a finding whether the child was involved in the offence or not, though the Board is mainly concerned with inquiring into the circumstances in which the child became involved in the offence. The proceedings before the Board are to be conducted in as simple a manner as possible and the child is to be given child-friendly atmosphere during the proceedings. After the inquiry is over, if the child is found involved in the offence, the Board may pass any of the dispositional orders as laid down in the Act such as directing the child to perform community service or releasing the child on probation or after advice and admonition and the Board may also pass orders for the child to complete his education or undertake vocational training.

F.5.7 Under the Act of 2015, the Board, in case of heinous offences alleged to have been committed by a child, who has completed or is above the age of sixteen years, has to conduct a preliminary assessment. The Board may, after the preliminary assessment decide to dispose of the matter itself. However, where the Board passes an order that there is a need for trial of the child as an adult, then the Board may transfer the trial of the case to the Children's Court. After the Children's Court receives the preliminary assessment, it has to make a decision on whether to try the child as an adult or as a child. If the Children's Court decides that there is no need for trial of the child as an adult it may conduct an inquiry as a Board and pass dispositional orders as per the Act of 2015. Where the Children's Court decides that there is need for trial of the child as an adult, it may pass appropriate orders. The Children's Court does not award any sentence of death or life imprisonment. While disposing of the case the Children's Court, if it finds the child to have been involved in some alleged offence(s), the Court is required to pass an order that includes an individual care plan for the rehabilitation of the child including a follow up by a Probation Officer or the District Child Protection Unit or a social worker. The child found to have committed the offence by the Children's Court is also entitled to the reformatory services and rehabilitation services that are available to all other children.

F.5.8 A child who has committed an offence and has been dealt with under the provisions of the Act shall not suffer disqualification i.e. even if the child is found to be involved in an offence that would not be a bar to his seeking a government job. Likewise, a child in conflict with law cannot be thrown out of school merely because he is alleged to have committed an offence or because he remained in an observation home for some period. The media (print, visual) is barred from disclosing the name, address or school or any other particulars calculated to lead to the identification of the child except with the permission of the authority holding the inquiry, which may grant permission only, if in its opinion such disclosure is in the interest of the child. The picture of the child cannot be published.

F.6 Children in need of care and protection

F.6.1 Where the child is a child in need of care and protection i.e. orphan, street child, found homeless or begging, neglected or abandoned child, victim of abuse of any kind, he/ she is to be brought before the Child Welfare Committee (CWC). The Child Welfare Committees are constituted for rescue and rehabilitation of children in need of care and protection. The Child Welfare Committee consists of a Chairperson and 04 other persons, one of whom at least should be a woman. The Committee is the final authority to dispose of cases for the care, protection, treatment, development and rehabilitation of the children as well as to provide for their basic needs and human rights. A child rescued from hazardous occupation, brothel, abusive family or other such exploitative situation must be produced before the CWC who will conduct an inquiry to ensure optimum rehabilitation with minimal damage to the child. The child in need of care and protection may be produced before the Committee by any person who comes across such a child i.e.

- any police officer or special juvenile police unit or a designated police officer
- any public servant
- ChildLine, a registered voluntary organization or by such other voluntary organization or an agency as may be recognized by the State Government
- any social worker or a public spirited citizen, or

- by the child himself
- JJB may also send the child.

F.6.2 When a child is produced before the Committee, it is required to interact with the child/accompanying adult, to conduct age inquiry, to ensure that information has been given to police and child line, to consider the report submitted by the person producing the child, to provide immediate medical or other help, to make services of interpreter available where child is unable to understand the language, to facilitate filing of police complaint and FIR in cases of missing children, violence, exploitation and abuse. The Committee assigns the case to a social worker or caseworker of child welfare officer or Officer-in-charge for conducting an inquiry into the social background. The Committee is also to make efforts to trace the family of the child and it may send the child to Children's Home pending inquiry or restore the child under the care of a parent, guardian or fit person pending inquiry. The Committee also calls for an individual care plan for the child for the immediate and long term rehabilitation of the child and it may pass suitable orders for restoration of the child or to 'commit' the child i.e. the child is to continue in the home. The Committee is also required to follow up the progress of the child – direct the officer-in-charge of the home to submit quarterly reports and to produce the child. Even in case of restoration, the Committee could order production of the child at periodic intervals.

F.6.3 Children in need of care and protection, who cannot be reintegrated with their families are sent to the Children's Home which have been set up for the reception of the child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation. The children who are orphan or surrendered to Child Welfare Committee by the parents or guardian can be placed with a specialised adoption agency. The Child Welfare Committee may also pass other necessary orders for their rehabilitation, restoration and social re-integration. The rehabilitative alternatives provided under the Act include adoption, foster care, sponsorship and after care. The children are declared legally free for adoption by the Child Welfare Committee before they can be given in adoption through a court order. The Child Welfare Committee after an enquiry and on receipt of the Social Investigation Report, can make the following orders if it finds that the child is in need of care and protection:

- a) Declare that the child is in need of care and protection
- b) Restore the child to parents or guardian with or without supervision
- c) Place the child in children's home/fit facility/specialized adoption agency
- d) Place the child with a fit person
- e) Order foster care
- f) Order sponsorship
- g) Direct services like medical attention, psychological support, counselling and the like
- h) Declare the child as legally free for adoption.

Thus, the Act contains elaborate provisions for rehabilitation of children who are in need of care and protection.

F.7 Offences against Children

F.7.1 The Act lays down various offences which may be committed against children. These include:

- Prohibition of disclosure of identity of children – Section 74
- Cruelty to child – Section 75
- Employment of child for begging – Section 76
- Giving intoxicating liquor or narcotic drug or psychotropic substance to a child – Section 77
- Using a child for vending, peddling, carrying, supplying or smuggling any intoxicating liquor or narcotic drug or psychotropic substance to a child – Section 78
- Exploitation of a child employee – Section 79
- Adoption without following prescribed procedures – Section 80
- Sale and procurement of children – Section 81
- Corporal punishment – Section 82
- Use of child by militant group or other adults – Section 83
- Kidnapping and Abduction – Section 84

F.7.2 The Act lays down the punishment for such offences and the Juvenile Justice (Care and Protection of Children) Model Rules, 2016 lays down the procedure to be followed in cases of offences against children. The Rules also lay down that the child and his family are to be provided access to Para-Legal Volunteers under the DLSA. DLSA is also to provide a support person or Para-Legal Volunteer for pre-trial counselling and to accompany the child to record the statement.

F.8 The Para-Legal Volunteers have an important role to play in the juvenile justice system. Most of the children who are in conflict with law belong to poor families, or there may be children who have no one to take care of them. The Para-Legal Volunteers have to play a proactive role considering that they are dealing with children who require sensitive handling and have to bear in mind the best interest of the children who come in contact with them. Thus:

- The Para-Legal Volunteers can give all required support to the Child Welfare Police Officers and Special Juvenile Police Units in handling the child and at the same time also taking care of his needs, immediately on apprehension.
- They can assist the lawyers who represent the children before the Boards and at the same time provide support to the children and their families in dealing with the justice system. They could facilitate legal assistance to the children and their families by bringing their concerns to the legal aid lawyers so that there could be effective representation during inquiry and trial.
- They need to build trust so that the children and their families are forthcoming with the truth, besides explaining to the children and their families that the objective of the Act is not to penalize or punish the children but to rehabilitate them and to ensure their reintegration in the society. They can familiarize the children and their families with the functioning of the Boards and keep them abreast with the proceedings in the Boards or the progress in the investigation or inquiry or trial.
- The Para-Legal Volunteers can assist in the preparation of the Social Investigation Report and the Individual Care Plans. Through their interaction with the child prior to the production of the child before the Board, especially if the child is taking drugs or is being used by someone to commit offences, the Para-Legal Volunteers can bring the said facts to the knowledge of the lawyers representing the children.
- The Para-Legal Volunteers can inform the child and his family members about their rights and the available remedies in case the rights are violated.

- The Para-Legal Volunteers can be involved in the follow-up process after the case of the child is over to ensure that the child does not come into conflict with law in the future.
- If a child faces any problems in the institution where he is kept, the Para-Legal Volunteers can bring the same to the notice of the lawyers.
- The Para-Legal Volunteers can provide support to the victims of crime and make them aware of the legal process.
- If the Para-Legal Volunteers find any child wandering around, they can inquire about the family members of the child and if no satisfactory answer is forthcoming, they can hand over the child to police or produce the child before the Child Welfare Committee or inform on Childline number 1098.
- They have a very important preventive role to play as they can keep a watch on children mingling with criminals or taking drugs and taking appropriate action immediately.
- The Para-Legal Volunteers are expected to keep a watch on transgressions of law in the community and bring them to the notice of the concerned legal services institutions and initiate actions under their guidance and they can play a significant role in watching against any offence under the Act being committed against a child.
- The Para-Legal Volunteers can assist the parents of missing children and inform them about the progress of investigation.
- The Para-Legal Volunteers can visit the jails, lock-ups, psychiatric homes and facilities to see if any children are lodged there and if so, they can take appropriate action.
- They can visit children's homes, observation homes etc. and bring to the notice of the concerned authorities the needs of the inmates and also report to the legal services institutions the need for any intervention. They could also visit the places of safety to assess the conditions in which a child is residing there and to check the progress of the child in respect of the Individual Care Plan.
- They also co-ordinate with the task force and the police teams in respect of rescue operations of trafficked people, child labour and missing children.
- They could help in the restoration of children, help in spot visits, help in community enquiry about missing children and trace the parents, or even bring the parents to the Juvenile Justice Board or Children's Court where the child has come into conflict with law, or before the Child Welfare Committee in other cases of missing children, etc.

The Para-Legal Volunteers can thus act as friends, philosophers and guides of the children and they could play a vital role in enabling the children to access justice.

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District Papum Pare, Arunachal Pradesh – 791111.
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