



LESSONS IN LAW

for
CBSE STUDENTS

Kerala State Legal Services Authority (KeLSA)

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A GUIDE TO LEGAL LITERACY for CBSE STUDENTS

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FOREWORD

India is a democratic nation. For the system of democracy to function effectively, a well informed citizenry is necessary. For upholding the Rule of Law also, it is necessary for all citizens to have a general knowledge of the various laws in the country. Our Constitution as well as the Central and State laws create rights and cast obligations on the citizen. Unless the citizen is aware of his rights and conscious of his duties, the legal system cannot function effectively. Therefore, it is necessary to spread awareness regarding laws among the members of the public.

The Kerala State Legal Services Authority has taken upon itself the task of spreading awareness in law among the public. It is necessary that our children, the future citizens of our country, are given lessons in law, from their early days. It is with the said objective that “Lessons in Law” has been conceived. It is a small book that provides the general information needed for an individual with respect to our Constitution and the important enactments that are in force in our country. The book provides an overview of the legal system to even a casual reader in a language that is simple and lucid. The book has been serving its purpose admirably during the past many years.

The present new edition maintains its previous character in full. We hope that this edition would also prove to be a useful tool in spreading awareness in law, among school students. I place on record my appreciation for the work of all who have toiled to bring out this new edition.

Justice K. Surendra Mohan
Executive Chairman
Kerala State Legal Services Authority

“Country for the People
People for the Country”

PLEDGE

I am an Indian. I love my country.

*I will endeavour to learn the Constitution and the laws
of the Country. I will strive to accomplish the noble
ideals of the Constitution.*

*I will contribute my share to the developmental
activities of the Country.*

*I will not discriminate my fellow being on the grounds
of caste, religion, language or region.*

I realize that we Indians are the inheritors of a rich heritage.

*I also realize that we are the sentinels of
a great democracy.*

Country for the people
People for the Country

CONTENTS

PART A

LAWS IN GENERAL

1. WE THE PEOPLE OF INDIA 9
2. JUDICIAL SYSTEM IN INDIA 11
 - ◆ The Judiciary And Kinds Of Courts
 - ◆ Judicial Courts in India
 - ◆ Supreme Court of India
 - ◆ Powers of Supreme Court
 - ◆ High Courts in the State
 - ◆ Powers of High Court
 - ◆ Subordinate Courts
 - ◆ Civil Courts
 - ◆ Criminal Courts
3. THE LEGAL SYSTEM IN INDIA 19
 - ◆ Constitutional Law
 - ◆ Civil Laws
 - ◆ Criminal Laws
 - ◆ Criminal Punishments
4. HUMAN RIGHTS 24
 - ◆ Universal Declaration of Human Rights
5. FUNDAMENTAL RIGHTS AND DUTIES 30
 - ◆ National Human Rights Commission
 - ◆ State Human Rights Commission
 - ◆ Fundamental Rights
 - ◆ Article 14: Right to Equality
 - ◆ Article 15: Rights of non-discrimination
 - ◆ Article 16 : Right to equal opportunity in employment or appointment
 - ◆ Article 17 : Right against untouchability
 - ◆ Article 19 : Right to Freedom
 - ◆ Article 21 : Right to Life
 - ◆ Article 21(A): Right to Education
 - ◆ Article 22: Right to be informed about the grounds of arrest and right to consult the legal practitioner
 - ◆ Article 23: Right against exploitation
 - ◆ Article 24: Right against child labouring
 - ◆ Article 25: Right to Freedom of Religion

- ◆ Article 26: Rights of Religious Denominations
- ◆ Article 28: Freedom of dissociation from religious instructions
- ◆ Article 29 and 30: Right to conserve cultural rights and Minority Rights
- ◆ Article 32: Right to Constitutional Remedies
- ◆ Public Interest Litigations
- ◆ Fundamental Duties

PART B

IMPORTANT LAWS

1. Prohibition of ragging	43
2. Prohibition of smoking	45
3. Prohibition of child marriage	46
4. Prohibition of child labour	47
5. Prevention of harmful publications	48
6. Commission for protection of child rights	49
7. Protection and care to children and juvenile justice	51
8. Protection and maintenance of senior citizens and parents	54
9. Protection of women from domestic violence	56
10. Social security of unorganised workers	57
11. Right to information	59
12. Prevention of damage to public property	61
13. Legal aid and legal services authorities	62
14. Protection of rights of consumer	65
15. Protection of environment	69
16. Negotiable instruments act	71
17. Women commission	72
18. Law relating to motor vehicles	74
19. Civic sense	77
20. Kerala Right to Service Act	80
21. Protection of children from sexual offences Act, 2012	81
The Rights of Persons with Disabilities Act, 2016	88
22. Criminal Law Amendment, 2018	88
23. The Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985	94
24. The National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999	95
25. Victim Compensation Scheme	97
26. Cyber Crimes	99
27. National Rural Employment Guarantee	104
28. Social Security of Unorganized Workers	106



PART- A

OUR NATION



LESSON 1

PREAMBLE OF THE CONSTITUTION OF INDIA

“WE, THE PEOPLE OF INDIA” – These are the opening words of the Constitution of India. It is the resolve of the people of the country to constitute a unique nation namely India or *Bharat*.

It has been laid down in the Preamble of the Constitution that our aim is to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic and to secure to all citizens, Justice, Liberty and Equality and to promote fraternity among them.

What is the significance of sovereignty? The idea of sovereignty involves freedom from all foreign control or domination. In short, it denotes supreme power, the greatest independence we got through our freedom fighters, who had fought against the British colonial rule for two hundred years in India.

The prime concern of a Socialist India is to eliminate inequalities in income, status and standard of living and to provide equality in opportunities and facilities.

Secularism is to ensure non-discrimination on the grounds of religion or beliefs.

In a democracy, the process of decision making vests with the people of the country. It is a system of ‘a Government of the People, By the People and For the People’.

A Republic means, a country in which the absolute power is vested with the people, under a Constitution, and the power is exercised by a duly elected representative body, not by a monarch or autocrat.

Ultimately, the Preamble, being the key to the minds of the makers of Constitution of India, defines the political and social life of the country and definitely declares the dreams of the nation, in its letter and spirit and reminds us about our duties.

It was on the 26th of November, 1949 that the Constituent Assembly adopted the Constitution. It came in to force on 26th January, 1950, when India became a Republic. The Parliament of India is the

supreme legislative body of the India. The Parliament is composed of the President of India and the houses. It is a bicameral legislature with two houses: the Rajya Sabha (Council of States) and the Lok Sabha (House of the People). We have the State Legislative Assembly and in certain States, Legislative Council also, as the State Legislative bodies. These are the law making bodies of our Country. In India, there are hundreds of laws in force either enacted by the Central Legislature or the State Legislatures. There are a few other laws in force, namely, subordinate legislations, such as rules, regulations etc., made by the executive bodies, according to the legislative scheme adopted by the Country.

The success and failure of a nation depends on the vigilance and depth of civic sense of the people of the nation. The civic sense of the people and efficiency of the Government Institutions would improve only when there is a proper understanding of the laws and regulations, as well as the duties and obligations.

Even the well-educated people in India are unconcerned about the misdeeds happening in the country. Illiteracy and poverty among the masses are the major reasons for the public inertia. The low legal literacy is highlighted as one of the reasons for the violation of laws and regulations. Thus legal literacy is one of the important needs, which the people of the country desire or require.

In short, awareness of law is essential for the progress of the country. In the absence of this, we will slip into a primitive world. The law is the basis of progress and civilization. Thus these 'Lessons in Law' are an important study for the students, apart from their general studies.

LESSON 2

JUDICIAL SYSTEM IN INDIA

THE JUDICIARY AND KINDS OF COURTS

India is the largest democratic country in the world and has a strong judicial system too. The Central Ministry of Law and Justice is the executive organ entrusted with the function of administration of justice within the territory of India. As the subject of administration of justice is allotted to both the Central Government and State Government, as per entry 11A in the concurrent list (List III) to the Constitution of India.

The Judiciary, consisting of Judicial Courts at various levels, is another salient feature of the Indian Judicial System. The Indian Judiciary is guided by the principles of separation of powers and independence of judiciary. Like the other two organs of the Government, the Legislature and the Executive, the Indian Judiciary also follows a federal system, which means a Union Judiciary at the Apex Level and a State Judiciary at the State levels.

Judicial Courts in India

Courts are integral part of the judicial system. There are different types of courts in India, each with varying powers and jurisdiction. ,with the Supreme Court of India at the top, followed by High Courts of respective states ,Civil Courts, Criminal Courts and Special Courts/Tribunal according to the nature of subjects they deal with or the nature of functions entrusted with them.

Supreme Court of India

The Supreme Court of India, situated in New Delhi, is established in accordance with the provisions contained in Article 124 of the Constitution of India.

The Chief Justice of India is the Head of the Supreme Court and the Court consists of other judges appointed by the President of India. The number of Judges in the Supreme Court may vary, in accordance with the law made by the Parliament in this regard. A Judge of the Supreme Court can hold his office till he attains the age of 65 years.

Powers of Supreme Court

The Supreme Court of India has its original jurisdiction with respect to the matters concerning enforcement of Fundamental Rights guaranteed under Part III of the Constitution of India. The Supreme Court has the powers to issue directions, orders and writs for the proper enforcement of Fundamental Rights. The Writ Jurisdiction of the Supreme Court consists of the writs of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*.

Writ of habeas corpus: A writ of habeas corpus is available in all cases of wrongful deprivation of personal liberty. The Constitutional Court can, at the instance of an interested person, command the production of the detinue in the Court. On enquiry, if the Court finds that there is no legal justification for the detention, the Court is also empowered to order release of the detinue. Normally, the person entitled to apply for habeas corpus would be the person illegally detained, but if it is not possible for him to make an application, a relative or a friend or a person interested in the welfare of the detinue may make an application to the Court.

For example, 'A' availed a loan from a private financier and failed to repay the same. The financier took 'A' and detained him in a secret place. The Police failed to find 'A'. The wife or the relative of 'A' can apply to the court seeking a writ of habeas corpus and the court may, according to the facts and circumstances of the case, issue the writ directing the police to find out 'A' and produce him before the Court.

Writ of mandamus: The writ of mandamus is a discretionary power of the Constitutional Court, wherein the Court issues directions to a public authority to perform its statutory or governmental obligations. The Court issues the writs to prevent a disorder from failure of justice. The existence of a right to the applicant and corresponding duty to the public authority is the primary concern of the Court, while issuing a writ of mandamus. A writ of mandamus will lie to compel the public officials or a public body to perform any public duty which they have failed to perform.

When a request by a school for ‘No Objection Certificate’ is pending before the State Government, the Court may issue a writ of mandamus to the State Government to pass appropriate orders on the request for obtaining ‘No objection certificate’, filed by the management of the School. Similarly, when an application for ‘Permit’ to construct a building is pending before the Municipality or Panchayat concerned, and the processing of the application is delayed by the officers concerned, the aggrieved person can approach the court for a writ of mandamus to direct the authorities to process the application at the earliest and in accordance with law.

Writ of prohibition: When a public office is carrying out its functions in a manner which is contrary to the law established, the Constitutional Court can issue a writ of prohibition to prevent it from proceeding further. When a Local Authority is carrying out its mining activities or excavations in violation of the right to life of the neighbouring people, the court can issue a writ of prohibition preventing the authorities from proceeding with mining and excavation. Likewise, when a dispute is pending adjudication in the higher Court and a case relating to the same subject matter is also under consideration in the Lower Court, the Supreme Court is empowered to issue a Writ of Prohibition, by withholding the proceedings pending consideration before the Lower Court.

Writ of quo warranto: A writ of quo warranto is a special and rare kind of writ, wherein the Court is empowered to examine whether a person holding a public office has been validly appointed and can issue a writ of quo warranto, declaring the removal of such a person from a public office. Any member of the public, acting in good faith, can apply for a writ of quo warranto seeking removal of a Minister or a Mayor, if they are holding the post, contrary to law.

Writ of Certiorari: Certiorari is a writ in a situation when the Court feels an order or a proceeding of the public authority is not in accordance with law and it is necessary to quash such an offending order or proceedings. A Writ of Certiorari will lie only against the orders or proceedings of the public officers, but not against private persons. For example, when an officer of the Grama Panchayat declines to issue a license or rejects the application to start an industry, by an order, the aggrieved person can apply for a writ of certiorari to quash the order

declining the license or rejecting the application, on legal grounds. When a department of the Government rejects the application for scholarship for a deserving student, on illegal reasons, the student can approach the Court, a writ of certiorari to quash the order rejecting the scholarship.

When a public office or body exercises its functions and decides an issue without observing the rules of natural justice, like passing an order without granting an opportunity for hearing, such decisions would be quashed by a writ of certiorari.

In addition to this, the Supreme Court is the highest appellate court in Civil and Criminal matters. As per Article 133 of the Constitution of India, an appeal from a civil proceeding, and as per Article 134 an appeal from a criminal proceeding of a High Court can be preferred to the Supreme Court. As per Article 136, an appeal can be filed before the Supreme Court with special leave of the Court against any proceedings, except the matters relating to Armed Forces.

Being an important functionary in administration of justice, the Supreme Court has an extraordinary power, as per Article 143 of the Constitution of India, to answer the questions referred to by the President of India. As Article 141 of the Constitution, the law declared by the Supreme Court is binding on all courts within the territory of India.

High Courts in the State

Article 214 of the Constitution of India mandates the establishment of a High Court for each state in India. The Judiciary in the State is headed by the Chief Justice of the High Court. The President of India appoints the Chief Justice and other Judges of the High Courts. The High Court of Kerala is situated at Ernakulam.

Powers of High Court

The High Courts are empowered to deal with matters in connection with its Original Jurisdiction and Appellate Jurisdiction. Under Article 226 of the Constitution, the High Court is empowered to issue directions, orders or writs for enforcement of any of the Fundamental Rights guaranteed by the Constitution and also for any other purpose, under its original jurisdiction. Any party aggrieved by an action taken by the

Government, its officers or the instrumentalities or the local authorities, can directly approach the High Court concerned by filing a Writ Petition under Article 226. While sitting as a Constitutional Court exercising writ jurisdiction, the High Court has the power to issue writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. Under Article 227, the High Court has the power to supervise subordinate courts or tribunals which are working in its local limits.

Subordinate Courts

The Subordinate courts in India are not entrusted with any constitutional function, as in the case of the Supreme Court or High Courts. According to the nature of disputes, either civil or criminal, the subordinate courts in Kerala can be classified as follows.

Civil Courts

Following types of Civil Courts are established in the State, as per the provisions of Kerala Civil Courts Act, 1957.

1. Munsiff Court
2. Sub-ordinate Judge's Court
3. District Court

Criminal Courts

1. Magistrates Court - Judicial First Class Magistrate/
Chief Judicial Magistrate
2. Court of Session

The Executive Magistrate appointed in every district performs certain functions provided in the Criminal Procedure Code, 1973 with regard to the dispersal of unlawful assembly, maintenance of public order, prevention of public nuisance etc.

Civil Courts

The Civil Courts are entrusted with the task of adjudication of disputes of civil nature, like money disputes, boundary disputes, disputes with respect to properties like ownership and title, partition, performance of contract etc. Civil courts are empowered to adjudicate on all kinds of

disputes of civil nature, unless it is expressly or by necessary implication barred under any other law. However, the Civil Procedure Code prohibits repetition of adjudication on the same subject matter between same persons or their representatives. Normally, a civil case shall be instituted in the Court within the local limits of whose jurisdiction the property under dispute is situated or the cause of action arises. Examples of suits of civil nature:

- Suits relating to right to property
- Suits relating to right to worship
- Suits relating to right to share in offering
- Suits for damages for civil wrongs
- Suits for specific relief
- Suits for rent
- Suits for restitution of conjugal rights
- Suits for dissolution of partnership
- Suits for or on accounts
- Suits for damages for breach of contract etc.

A person, the plaintiff, aggrieved by a civil wrong can institute a civil case by presentation of “plaint” to the court having jurisdiction.

When a civil case is instituted, the civil court orders to issue summons to the opposite party/parties, called as defendant/defendants to appear and answer to the claim of the plaintiff. The defendant may appear before the court either himself or through an advocate and file a ‘Written Statement’ in answer to the claim of the plaintiff.

The court will settle issues for adjudication of the actual dispute between parties.

After settlement of issues, the plaintiff and defendant will be given an opportunity to submit their documents and list of witnesses to be examined. This will be followed by the oral evidence on behalf of parties through examination- in- chief by affidavit, cross examination by the opposite party and re-examination. The court will examine the evidence, hear the arguments advanced by the lawyers and pronounce a judgment.

The person, against whom a decree is passed, may approach the appellate court by filing an appeal. The person, in whose favour a decree is passed may apply for execution of the decree.

The Civil cases are not cost free as the plaintiff has to pay court fee at the rate prescribed depending upon the nature of claim.

Criminal Courts

Criminal Courts are entrusted with adjudication of disputes of criminal nature, particularly with respect to offences committed against the human body, property, economic offences, statutory offences etc. Hurting somebody, unlawfully trespassing to other's property, committing murder, attempt to commit murder, rape, cheating, theft, robbery etc are some of the criminal offences. Additionally, there are some other illegal actions, like committing 'ragging' in educational institutions, compelling a child to do work, denying of minimum wages to workers, violation of traffic rules, smoking in public places, riding and driving of vehicles after consumption of alcohol or by using mobile phones, riding two wheelers without wearing helmet, driving vehicles without licence, dangerous driving etc, are also serious criminal offences.

A criminal case is instituted by informing the police, or by filing a complaint before the First Class Magistrate Court. The Police Officer, to whom information about the offence is given will register a crime and forward the 'First Information Report' to the nearest Judicial First Class Magistrate. Depending on the nature of offence and the gravity of punishment, the procedure for initiation of criminal cases may vary. A Magistrate, usually initiate the proceedings in a criminal case either on receiving a complaint of facts regarding an offence or on receiving a police report narrating the facts or also upon information received from any other person, as to an offence that has been committed.

A criminal offence is an offence against the State. Usually in criminal cases, the victim or the defacto complainant is represented by the State, through 'public prosecutors'. The proceedings in criminal cases, thus, differ from proceedings in civil cases. Before starting the adjudication of the criminal case, the attendance of opposite party, i.e the accused, is ensured by issuing summons or warrants, as the case may be.

The Civil Courts in the State are constituted as per the provisions of Civil Courts Act, whereas the Criminal Courts are constituted as per the provisions of the Criminal Procedure Code. The jurisdiction of the civil courts is fixed on the basis of monetary value of the subject matter of dispute and also by the territorial limits where the subject matter of dispute is situated or the cause of action arose. The jurisdiction of the Criminal Courts is based on the nature of offence and punishment and also on the basis of the territorial limits of the occurrence of the offence as mentioned in the Criminal Procedure Code.

Special Courts/Tribunals

Besides, there are some other special courts or tribunals established under special Acts, like Family Courts constituted under the Family Courts Act for adjudication of family disputes; Administrative Tribunals to deal with service matters of the Government or Public Sector employees; Tax Tribunals constituted under the Income Tax Act or Sales Tax Act; Land Tribunals to deal with the disputes on assignment of land; Vigilance Courts and tribunals to deal with cases of corruption etc.

LESSON 3

THE LEGAL SYSTEM IN INDIA

General

In general terms, a law can be defined as a bundle of rules or regulations or norms having universal or common applicability. Usually, law is made either by the Parliament or by the State legislatures, in accordance with the field entrusted to them under the Constitution of India. In India, the distribution of the legislative powers is made in accordance with the policy laid down in Articles 245 and 246 of the Constitution of India. For example, the Criminal Procedure Code, 1973 is the law enacted by the Parliament of India with respect to the procedure to be followed in adjudicating cases of criminal nature. The Kerala Land Reforms Act is the law enacted by the Kerala Legislative Assembly to regulate the possession of land in the State.

In addition to these enacted laws, there are customary laws which are practised and continued in the community from time immemorial. Under Article 141 of the Constitution of India, the law declared by the Supreme Court is the law of the land.

Depending on the territorial applicability of a law, it can be classified into International Law and Municipal Law. The treaties, entered by the Nations are the best example for the international laws. The laws enacted by the law makers of the independent countries, like the laws enacted by the Parliament of India, are the best examples of Municipal laws.

Based on the nature of rights and obligations imposed under a law, it can be classified into Constitutional Law, Criminal Law and Civil Law. There are some other kinds of laws, based on the purpose for which such laws are enacted, like taxation laws, labour laws, service laws etc. There is another classification of law into substantive law and procedural law. In substantive law, the Act prescribes the rights and obligations regulated or administered by the respective Acts. In the procedural law, the Act, usually lays down certain procedure to administer the provisions of a substantive law. However, law is generally classified into Civil Law and Criminal Law.

Constitutional Law

In India, the Constituent Assembly adopted a comprehensive and basic legal scheme of the country on 26th November, 1949. The Constitution of India, came into force on 26th January, 1950. India has a written and exhaustive constitutional law, which is the biggest in the world. The Constitution of India has the Preamble and Articles enumerated from Part I to XXII Schedules 1 to 12. The Constitution of India, being the basic law of the Country contains the general policy of the Government of India like the constitution of the Parliament and State Legislatures, establishment of Union and State Judiciary, formation of the Cabinets with Prime Minister at the Centre and the Chief Minister at the State level, the provision for the appointment and service of the President of India, Vice President of India, Governors, Comptroller and Auditor General, Attorney General and Advocate Generals, Election Commission of India, Public Service Commissions etc.

The Constitution of India guarantees various Fundamental Rights and freedom in Part III. It also provides mechanisms for enforcement of such Fundamental Rights by empowering the Supreme Court under Article 32 and the High Courts under Article 226 to issue directions, orders and writs to safeguard such rights.

Civil Laws

There is a general classification of other laws into Civil law and Criminal law. Civil laws deal with the civil obligations and rights of the persons. The remedies under the Civil law is statutorily protected under various civil statutes. Violations of civil obligations are not as serious like the penal punishments, and most of the disputes of civil nature are among the private parties. The Code of Civil Procedure, 1908 is the codified law dealing with the procedure to be adopted in adjudication of disputes under civil laws.

In day to day life, private agreements are entered into between the parties, which are commonly called as Contracts and such contracts are subject to the provisions of the Contract Act, 1872. There cannot be an enforceable contract in violation of the general principles laid down in

the Contract Act, which is one of the most important civil laws of the Country. The statutory requirements to enter into a contract, areas of breach of contract, and the remedies of specific performance are the salient features of the Contract Act.

One of the major examples of a contract is the private loan transaction. When a person obtains a loan from a financier, he undertakes to repay the loan subject to certain conditions, either by executing promissory note, or issuance of cheque or without executing documents. If the amount borrowed is not paid, the financier/creditor has a remedy under the Civil laws for breach of contract. A person is said to have committed a civil wrong, when he encroaches upon the boundary of his neighbour or disturbs the legally entitled pathway of others. In either case, the remedy is to approach the Civil Court to get an injunction, either mandatory or prohibitory.

When a person holding a valid title over the land intends to transfer his title and possession of the land legally, he has to follow the principles laid down in the Transfer of Property Act. All kinds of transfer of immovable properties, by way of sale, mortgage, lease etc are covered by the provisions of the Transfer of Property Act. With respect to the sale of movable property, the provisions of Sale of Goods Act, 1930 is applicable. The Sale of Goods Act, 1930 deals with the obligations and the rights of the seller or purchaser of a movable property.

When two or more persons are intending to create or incorporate a collective body, either to start a business or to render some service to the people, they have to follow the provisions of the Partnership Act, in order to form a partnership firm or the provisions of the Societies Registration Act, 1860 to form a Charitable Society. The incorporation, functioning and dissolution of Companies are regulated by the provisions of the Companies Act. These are some of the civil enactments, having common application in the society.

Criminal Laws

One cannot disturb the peaceful life of another by committing a wrong to his body, property or against his dignity. Such disturbances are

called as penal offences, punishable gravely, either by sentence of imprisonment or imposition of fine, or both imprisonment and fine. The nature of punishment depends on the gravity of the wrong committed by the wrong doer.

Criminal Procedure Code, 1973 [Cr.PC] deals with the procedure with respect to the adjudication of criminal cases. The Indian Penal Code, 1860 [IPC] describes different kinds of offences and the punishment prescribed for such offences against the State, human body, punishment with hard labour, simple imprisonment, forfeiture of property and imposition of fine, depending upon the gravity of the wrong committed.

Punishments for committing offences

There are various kinds of punishments like, death sentence, imprisonment for life, simple or rigorous imprisonment depending on the facts and circumstances of the case. When a person causes bodily pain or infirmity to another, it is a hurt. When the person commits an act with an intention to cause hurt, such offences are punishable with a maximum imprisonment for one year or a fine upto Rs 1000/- or both. Hurt could be simple hurt or grievous hurt.

When a person voluntarily obstructs another, preventing him from proceeding in further direction, for which such a person has a right to proceed, such wrongs are called wrongful restraint. The offender may be punished with simple imprisonment up to one month or fine of Rs. 500/- or both. When a person unlawfully compels another to labour against his will, it is an offence punishable with imprisonment up to 1 year or fine or with both.

When a person makes any gesture knowing that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, such wrongs are called 'Assault'.

If the person commits assault against a public officer, during the lawful discharge of his duty, the wrong doer is punishable with imprisonment up to 2 years or fine or with both. Outraging the modesty

of a woman, by committing assault or criminal force is also an offence punishable with imprisonment up to 2 years or with fine or with both.

Committing theft of property of another is an offence punishable with imprisonment up to 3 years or with fine or with both. Buying or disposing a person as slave is an offence under IPC, which is punishable with imprisonment up to 7 years and also with fine. Buying or selling a minor for the purpose of prostitution or for any unlawful and immoral purpose is an offence punishable with imprisonment up to 10 years and with fine.

Manufacture, sale, transport, export or import or even possession of an explosive item, in violation of the provisions of Explosives Act is an offence punishable with imprisonment.

Allowing an unauthorised person or a person who is not having a valid driving license to drive a vehicle, driving a motor vehicle without having a license, driving the vehicle at excessive speed, driving the vehicle at a speed or in a manner which is dangerous to the public, driving of vehicle by a drunken person or driving the vehicle under the influence of alcohol or drugs, are some of the offences punishable either with imprisonment or with fine or with both, under the Motor Vehicles Act.

The person, who commits damage to the public property, is also liable to be punished with imprisonment under the 'Prevention of Damage to the Public Property Act'. There are various other Criminal Laws dealing with different wrongs and punishments, in addition to the laws which are discussed above.

LESSON 4

HUMAN RIGHTS

“Rights” have corresponding “obligations” or “duties”. Rights and Duties are the two sides of the same coin. These are popularly accepted connotations. What is a right? It is a privilege granted to the person who is entitled for it. There are different kinds of rights, depending upon its characteristics and sources.

There are basic rights granted to a person, by birth, which can be called as natural rights, such as right to air, light etc. There are some other rights granted by different statutes. Representation of Peoples Act grants every citizen, on attaining the age of 18 years, the right to vote, in the General elections to the Lok Sabha or the State Legislature. This is a statutory right to elect the representatives to the democratic institutions. The Right to Information Act, 2005 grants a person, the right to know or right to get information from public authorities, subject to the conditions and restrictions provided in the Act.

The Legal Services Authorities Act, 1987, grants to the oppressed or weaker sections of the society, the right to get legal aid from the legal services institutions constituted as per the Act. The Minimum Wages Act, grants a labourer or employee the right to get minimum wages from his employer. These are some of the examples of statutory rights.

An easement right is a private right entitled to a person, to use a way, which he is enjoying for several years, though the ownership of the way belongs to another private person. This right is recognised by the Easements Act. The Right to free flow of air and uninterrupted enjoyment of natural lights are some of the inherent rights of a person, and on denial of these kinds of rights, the aggrieved person may approach the civil court to have an adjudication on this denial and to substantiate his rights.

Human Rights

These are the different types of rights entitled to a person, to ensure protection of his life, freedom and liberty, equality and dignity.

There is no precise definition of ‘human rights’, but it is corresponding to the bills of rights, guaranteed by the Constitution of the United States of America or Magna Carta, which is the basic document of the legal

system in the United Kingdom. The human rights are enumerated in the ‘Universal Declaration of Human Rights, 1948’, which is a universal treaty adopted by the United Nations and its member countries.

Universal Declaration of Human Rights

On 10th December 1948, the General Assembly of the United Nations adopted and proclaimed the basic declaration on human rights which is called as the ‘Universal Declaration of Human Rights’. There are 30 Articles in the Declaration and Articles 1 to 28 deal with various human rights and its scope. The following are the basic human rights proclaimed in the Declaration.

- ◆ Right to equality in dignity and rights
- ◆ Rights and freedoms without distinction of any kind, such as race, sex, language, religion, political or other opinion, natural or social origin, property, birth or other status.
- ◆ Right to life, liberty and security of persons
- ◆ Right against slavery
- ◆ Right against torture or cruelty
- ◆ Right to recognition everywhere as a person before the
- ◆ Right to equality before law and equal protection of laws
- ◆ Right to judicial remedies
- ◆ Right against arbitrary arrest, detention or exile
- ◆ Right to fair and public hearing
- ◆ Right to privacy
- ◆ Right to freedom of movement and residence
- ◆ Right to nationality
- ◆ Right to marry and to form a family
- ◆ Right to own property
- ◆ Right to freedom of thought, conscience and religion
- ◆ Right to freedom of opinion and expression
- ◆ Right to peaceful assembly and association
- ◆ Right to elect the representatives

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- ◆ Right of equal access to public services
 - ◆ Right to social security
 - ◆ Right to work and to free choice of employment
 - ◆ Right to equal pay for equal work
 - ◆ Right to form and join Trade Unions
 - ◆ Right to health
 - ◆ Right to education
 - ◆ Right to freely participate in cultural life of the country

In India, the Parliament enacted the Protection of Human Rights Act, 1993, by providing a National Human Rights Commission and also State Human Rights Commissions in different states to enquire about the violation of human rights, either suo moto or on a petition filed by a victim or any other person, on behalf of the victim. The Act defines human rights in the following terms.

“Human rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in the international covenants and enforceable by courts in India.

The Act authorizes the State Government to constitute human rights, courts in every district, to try the offences relating to the violation of human rights.

National Human Rights Commission

National Human Rights Commission is the apex body and primarily acting as an inquiry commission to enquire about the incidents of violation of human rights. The Commission consists of following members:

- (a) A Chairperson who has been a Chief Justice of the Supreme Court;
- (b) One Member who is, or has been, a Judge of the Supreme Court;
- (c) One Member who is, or has been, the Chief Justice of a High Court;
- (d) Two members to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

The Commission has its head quarters at Delhi. The Commission has the following functions and powers, while acting for the protection of human rights.

- (a) Inquire, suo moto or on a petition presented to it by a victim or any person on his behalf, into complaint of -
 - (i) Violation of human rights or abetment thereof; or
 - (ii) Negligence in the prevention of such violation by a public servant;
- (b) Intervene in any proceeding involving any allegation of violation of human rights pending before a court with the approval of such court;
- (c) Visit under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions and make recommendations there on;
- (d) Review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
- (e) Review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- (f) Study of treaties and other international instruments on human rights and make the recommendations for their effective implementation;
- (g) Undertake and promote research in the field of human rights;
- (h) Spread human rights literacy among various sections of society and promote the awareness of the safeguards available for the protection of these rights through publications, media, seminars and other available means;
- (i) Encourage the efforts of non-governmental organisations and institutions working in the field of human rights;

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- (j) Such other functions as it may consider necessary for the promotion of human rights.

While inquiring on the complaint, the Commission has the following powers of a civil court.

- (a) Summoning and enforcing the attendance of witnesses and examining them on oath;
- (b) Discovery and production of any document;
- (c) Receiving evidence on affidavits;
- (d) Requisitioning any public record or copy thereof from any court or office;
- (e) Issuing commissions for the examination of witnesses or documents.

While investigating on a complaint relating to violation of human rights, the Commission can utilize the services of any investigating agency under Central Government or State Government, like the Police, Intelligence etc.

While dealing with a complaint, the commission initially calls for a report or information from the Central or State Governments, or any authority or organization under the Government. If no such report is received, the commission initiates its own inquiry. The commission may drop the proceedings if it is satisfied with a report or information received from the Government or its subordinate authorities. If the commission is not satisfied with the actions, it can initiate further inquiry of its own.

After the conclusion of an inquiry by the Commission, it may take any of the following steps:

- (a) Where the inquiry discloses the Commission of violation of human rights, it may recommend to the concerned Government or authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;
- (b) Approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;

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- (c) Recommend to the concerned Government or authority for the grant of such immediate interim relief to the victim or the members of his family as the Commission may consider necessary;

When the Commission sends a copy of its inquiry report together with its recommendations to the Government or authority and the Government or authority, within a period of one month, or subject to the time granted by the Commission has to forward its comments on the report along with the action taken or proposed to be taken thereon, to the Commission. Thereafter the Commission publishes its inquiry report together with the comments of the Government or authority, if any, and the action taken or proposed to be taken by the concerned Government or authority on the recommendation of the Commission.

State Human Rights Commission

In every state, there is a State Human Rights Commission having the following members:

- a. A Chairperson who has been a Chief justice of a High Court;
- b. One Member who is, or has been, a Judge of a High Court;
- c. One Member who is, or has been, a district Judge in that State;
- d. Two Members to be appointed from amongst persons having knowledge of, or practical experience in matters relating to human rights.

The office of Kerala State Human Rights Commission is situated at Thiruvananthapuram. The State Human Rights Commission also has more or less the same functions and powers, prescribed for the National Human Rights Commission, subject to certain modifications.

Any person aggrieved by an action infringing his human rights can approach the Commission by filing a complaint. A person interested in the welfare of the victim or any organization or association working in the field of protection of human rights can make a complaint before the commission.

LESSON 5

FUNDAMENTAL RIGHTS AND DUTIES

The Constitution of India guarantees the citizen the Fundamental Rights and also obliges the citizen to do certain duties enumerated in the Constitution.

Fundamental Rights

These are the types of rights which are supported and guaranteed by the supreme law of the land, the Constitution of India. The makers of the Constitution have guaranteed certain Fundamental Rights among other rights. Human rights and Fundamental Rights are similar as both are manifestations of the unbreakable and fundamental freedoms of human beings, either in general terms or in support of the Constitutional provisions.

Part III of the Constitution of India guarantees a bunch of Fundamental Rights, in various Articles, from Article 14 to Article 32. These rights are fundamental, because the guarantee of these rights reflects the importance of the objectives of the Constitution. India is a country which believes in democratic principles. The Preamble of the Constitution of India denotes the philosophy of the Indian Constitution.

By the Constitution of India, the people of India constituted a Sovereign, Socialist, Secular, Democratic, Republic which guarantees, social, economical and political justice, liberty of thought, expression, belief, faith and worship, equal status and opportunity to all citizens. Above all, the Indian Constitution ensures the dignity of the individuals. The provisions of Part III of the Constitution are drafted in accordance with the above scheme of the Constitution.

The following are the Fundamental Rights:

Article 14: Right to Equality

This right ensures every person, irrespective of the fact that he is a citizen or not, equality before law and also equal protection of laws. Equality means not conceptual equality, but equality among equals only. Every law may not have universal or common application for all persons who have not by nature or circumstances attained the same position. Similarly, equal protection only means the right to equal treatment in similar circumstances. For example, a law may be enacted for special protection of women, special status can be granted to the tribal people

by making provisions in a general statute etc. The Government is also entitled to classify the persons or things, in reasonable and non arbitrary manner to achieve the public goals and objectives.

Article 15: Rights of non-discrimination

Every citizen of India, has the right or privilege of non-discrimination from the State on the grounds of religion, race, caste, sex, place of birth or any of them. The citizen has the right to access to shops, public restaurants, hotels and place of public entertainment. They have the right to use wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partially out of the Government funds or dedicated to the use of the general public. Such a right to access or right to use, cannot be denied to a citizen on the grounds of religion, race, caste, sex, place of birth or any of them.

However, the Government is empowered to make laws for protective discrimination. Making of laws dealing with special provisions to women and children or laws dealing with special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Caste and the Scheduled Tribes are not prohibited under the Constitution. The Scheduled Caste or Scheduled Tribes are the special classes of persons, entitled for the special privileges under the Constitution. The President of India, in accordance with the provisions in Articles 341 and 342, is empowered to notify by orders, enumerating the classes of scheduled caste or scheduled tribes. Accordingly, the President notified Constitution (Scheduled Castes) Order and Constitution (Scheduled Tribe) Order, in 1950, by enumerating the lists of scheduled caste and scheduled tribe.

Article 16: Right to equal opportunity in employment or appointment

Every citizen of India is entitled to equal consideration in public appointments and employments. However, it is open to the authority to lay down some conditions for employment and appointment for ensuring the efficiency or proper administration of the Government. The Government can fix the minimum qualifications or age limits for the public employment, which are only reasonable restrictions to ensure the quality of the post. There shall not be any discrimination on the ground of religion, race, caste, sex, descent, place of birth, residence or any of them. However making reservations in employment or appointment in

favour of any backward class of citizens or making special reservations in matters of promotion to scheduled castes or scheduled tribes, are not prohibited by the Constitution. Similarly, for special classes, like heirs of a deceased employee, the Government can frame special recruitment policy, under the compassionate appointment scheme.

Article 17: Right against untouchability

Untouchability was a social evil prevalent in our country, which was based on the principles of “chaturvarnya”, the four castes, Brahmin, Kshatriya, Vaisya, and Sudra. However, even after independence, the practice of this evil is common in various parts of the country. Hence the Constitution guarantees the right against untouchability, by abolishing it and prohibiting its practice.

Article 19: Right to Freedom

The objectives of the Constitution, the assurance of liberty and dignity of the individual, inspired the makers of the Constitution to guarantee certain freedoms to its citizens. Accordingly, Article 19 was framed by enumerating certain freedoms which are not absolute, but subject to the reasonable restrictions.

The following are the six freedoms given to a citizen of India under Article 19:

1. Right to freedom of speech and expression
2. Right to assemble peaceably and without arms
3. Right to form associations or unions
4. Right to move freely throughout the territory of India
5. Right to reside and settle in any part of the territory of India
6. Right to practise any profession, or to carry on any occupation, trade or business.

The fundamental freedom guaranteed in Article 19 refers to what is known as the natural or common law rights and its scope differs from the statutory rights provided in various Acts. The basic difference is that, a right created by a statute can be taken away by the Legislature who enacted such statute. But when a right is fundamental and subject to the grounds of reasonable restrictions provided in the Constitution, it cannot be taken away by the Legislature.

The Right to freedom of speech and expression guarantees the freedom to express one's convictions and opinions freely. It can be either by word of mouth, writings, paintings, pictures or by performing dramas, cinemas etc in a public platform or through electronic media. It ensures freedom of press, as collective freedom and freedom of propagation as individual freedom. A right to speech and expression can be curtailed by making reasonable restrictions in the interests of sovereignty and integrity of India, the security of the state, friendly relation with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. Hence a citizen cannot claim the freedom of speech and expression, by propagating the ideas of terrorism, by calling for an armed rebellion against the Government, by exhibiting women indecently in magazines, visual media etc. or by criticizing a judge who pronounces a judgment in a case pending before him.

Right to freedom of assembly guarantees the freedom of citizens to meet with each other in a peaceable and unarmed assembly. A citizen or group of citizens can enjoy the right to take out a procession in public streets, but such a right is subject to the traffic regulations and permission from the police administration. because one's right to assembly should not obstruct other's right to use public pathways and roads. A right to assembly is subject to reasonable restrictions that may not be against the interests of sovereignty and integrity of the nation and public order. Students have no right to assemble as a group for consumption of narcotics or to create violence in campus.

Right to form associations and unions, grants the citizen the right to form a collective organization or not to take part in the activities of an organization, if he so desires. That means, this right is not only an affirmative right but also a negative right. The incorporation of a student movement for lawful purpose or to have a collective bargain for the interest of the students is protected under this right. Likewise, the labourers or employees, having collective or identical interests have the powers to form a trade union in the industry for propagating their interests. However, the right is restricted, if exercise of such right is against the interests of sovereignty and integrity of India or public order, or morality. Hence a member of the Armed Force has no right to form an association. Likewise no citizen has the right to form an association for propagating terrorism or armed rebellion against the Government.

Right to freedom of movement ensures the right of a citizen to move or to shift throughout the territory of India without any sort of discrimination of nativity, place of birth etc. Hence, a person born in Karnataka has every right to move to Himachal Pradesh for employment or visit. Additionally, a citizen has the right to residence or right to shift the residence or right to settle in any part of India. The right of movement and right of residence are subject to reasonable restrictions such as the interest of the General Public or protection of interest of the Scheduled Tribes. These rights are specifically granted as Fundamental Rights to promote the unity of the Nation, by removing the internal barriers within India or between any of its parts.

A person under the surveillance of the Police, cannot complain of the denial of right to movement or right to residence, as the Constitution guarantees only right to physical movement or shift. A watch by the police over the movement of a suspect in a crime is not a violation of the right. When a person is house arrested or detained in a jail, as per the law enabling preventive detention, such detentions are part of reasonable restrictions of the rights. A person suffering from an infectious disease may be prevented from moving, as a measure to prevent spreading of the disease in the interest of the general public. The right to movement and right to residence of general public in areas notified as ‘Tribal areas’ may be curtailed, to prevent external interference on tribal life.

Every citizen in India has the right to choose his own employment or to take up any trade or business according to the limits and measures prescribed by the Government in the interest of public welfare. Additionally, the right is subject to the law made by the Government, prescribing any professional or technical qualification for practising any profession or carrying on any occupation, trade or business. The Government can restrict the right by making monopoly of trade, business, industry or service with the Government authorities or corporations owned or controlled by the State.

Thus prescription of additional qualifications for teachers of higher educational institutions is not an unreasonable restriction. No citizen has the right to trade or carry on business of alcohol, as a Fundamental Right, without the requisite license from the Government. When the Advocates Act and Medical Council Act prescribe the qualifications for practising the profession of advocates and doctors respectively, such

rights are created by Statutes and not by the Constitution. Thus such rights are subject to the terms and conditions imposed by the respective statutes.

Article 21: Right to Life

Every person within the territory of India has the Right to life and personal liberty and such right or liberty shall not be denied except according to a fair, just and reasonable law, which is valid and enforceable. That means before a person is deprived of his life or personal liberty, strict legal measures are to be followed.

The Supreme Court, on various occasions expanded the scope of right to life, by enumerating various other rights, namely, right to medical aid, right to education, right to pollution free and decent environment, right to residence, right to legal aid, right of access to justice and speedy justice, right to health, right to pollution free water, right to food, right to privacy etc. Thus the rights guaranteed under Article 21 have a wide scope as they sum up the responsibility of the government to ensure a decent and dignified life for a person.

Article 21 (A) : Right to Education

The states shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may by law, determine. In view of this constitutional amendment, Parliament has introduced another law, Right of Child to Free and Compulsory Education Act, 2009.

Article 22: Right to be informed about the grounds of arrest and right to consult the legal practitioner

The Constitution of India provides certain safeguards to an offender or persons arrested or detained in custody on the allegation of criminal charges. Such persons are entitled to the right to consult a legal practitioner of their choice. These rights are guaranteed with specific purposes to make some safeguards to prevent the misuse of power by the Police authorities, or by law enforcement agencies.

Article 23: Right against exploitation

Forced labour is prohibited under the Constitution of India. Trafficking in women and children for immoral or other purposes like prostitution, begging etc are prohibited and the person has the right against

any kind of exploitation. Forced labour is prohibited, but the state is empowered to impose compulsory service for public purposes and in imposing such service the State shall not make any discrimination on grounds of religion, race, caste or class or any of them.

Article 24: Right against child labour

Like forced labour, engaging children in hazardous employment is also prohibited. Thus no child below the age of 14 years shall be employed in any factory or mine or in any other industries, which are treated as hazardous.

Article 25: Right to Freedom of Religion

India is a country which follows the secular principles. In other words, all religions in the country are entitled to have equal treatment. In a secular state, the existence of a legal right or public duty, does not depend on the profession or practice of any particular religion. Thus all persons in India have the right to freedom of conscience and the right to freely profess, practise and propagate any religion.

These rights are also not absolute like other Fundamental Rights, and are subject to public order, morality and health and other provisions in Part III of the Constitution of India. Since freedom is given to every person, the freedom of one cannot curtail similar freedom of others and thus forcible conversion of religion, performance of thandava dance in public streets, the practice of sati and devadasi etc are not protected under the freedom of religion.

The Government is empowered to make reforms for the eradication of religious practices which stand in the way of the country's progress. Hence practice of bigamy and excommunication are banned in India.

Article 26 : Rights of Religious Denominations.

Every religious denomination in India has the right to establish and maintain institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to own and acquire movable and immovable property and to administer such property in accordance with law, subject to the riders of public order, morality and health. Thus the religious denominations have the right to decide the rites and observances of their own or to decide the ceremonial law relating to religious

institutions. However, the sacrifice of cow or like ceremonies are not protected under the Constitution.

Article 28: Freedom of dissociation from religious instructions

The Constitution of India prohibits religious instruction in any educational institution wholly maintained out of State funds, except in special circumstances. As well, no person attending any educational institution recognized by the State or receiving aid out of State funds shall be required to take part in any religious instructions, against his desire or his guardian's desire.

Articles 29 and 30: Right to conserve Cultural Rights and Minority Rights

Articles 29 and 30 of the Constitution guarantee distinct rights to citizens and minorities to preserve the cultural and linguistic specialties of such groups. Any section of the citizens has the right to conserve their own language, script and culture. No citizen shall be denied admission 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. On the other hand, every linguistic or religious minority has the right to establish and administer educational institutions of their choice. Additionally, the Constitution mandates right against discrimination in granting aid to educational institutions, on the ground that such institutions are managed by religious or linguistic minorities.

Article 32: Right to Constitutional Remedies

The Constitution of India not only guarantee the various Fundamental Rights, as discussed above, but also the right to remedy whenever a state action violates the exercise of Fundamental Rights. The right to move the Court where a Fundamental Right has been infringed is itself a Fundamental Right. When a Fundamental Right is infringed, the aggrieved person can approach the Supreme Court of India, by filing a petition for enforcement of the Fundamental Rights under Article 32 (1). While considering such a complaint of violation of rights, the Supreme Court has the power to issue directions or orders or writs, including writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari, in appropriate cases for the enforcement of one's Fundamental Right.

In the seventies of the last century, the Supreme Court expanded its power widely, opening access to justice to the downtrodden, the poor and persons from unorganised sectors, relaxing the locus-standi principles. Prior to that, only the aggrieved person could approach the court for enforcement of his rights. However taking suo motu actions in public interest matters and entertaining Public Interest Litigations [PILs] filed by socially committed persons, the Supreme Court has widened its jurisdiction. Even, letters sent in post cards were treated as validly constituted petitions under Article 32. Thus any person acting bona fide and having sufficient interest in maintaining redressal of public injury can approach the Court.

Public Interest Litigations

It is not always possible for a person to approach the Court, complaining infringement of Fundamental Rights or of illegal or arbitrary or unreasonable action on the part of the public or governmental authorities, on account of social or economical disabilities. illiteracy and poverty are the main reasons which deny justice to a person. When the execution of a development project threatens the environment, the aggrieved persons may be numerous or not particular. In such cases, an association of citizens may represent them and may approach the Court, by filing a public interest litigation seeking a Court enquiry, with respect to disadvantages of the project. When patients in a mental hospital are put to sufferings due to the mismanagement of the authorities, any person may approach the Court to take an action through a public interest litigation. Sometimes, Courts have entertained public interest litigations in which allegations of mass corrupt practices by government officials were involved and have ordered investigations on the allegations.

Fundamental Duties

When the Constitution of India was framed in the year 1949 ,the Fundamental Duties were not enumerated in the Constitution. Thus it was a fallacy to think, what the Constitution granted were rights and rights alone. However in 1976, the Constitution of India was amended by inserting Article 51A. It has come into force with effect from 3-1-1977.

What are our Fundamental Duties? Have you heard about them?

The following are our fundamental duties, the duties towards the nation and society to form a prosperous, civilized and developed India.

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1. We have the duty to abide by the Constitution of India and respect its ideals and institutions. We have a tri-colour National Flag and a National Anthem. We are duty-bound to respect the National Flag and National Anthem. Any kind of insult to the National Flag or National Anthem or Constitution of India is an offence punishable with imprisonment upto 3 years or with fine or with both. The Prevention of Insults to National Honour Act, 1971 provides for such punishments.
 2. We are bound to cherish and follow the noble ideals which inspired our national struggle for freedom.
 3. The sovereignty, unity and integrity are the prime concerns of our nation. We have different cultures, different life styles, numerous religions and beliefs spread over the different States and Union Territories. Unity among diversity is our motto. Every citizen in India is bound to uphold and protect the sovereignty, unity and integrity of India.
 4. India has plenty of human resources consisting of brave, well educated, trained, experienced and hardworking people. We have the second largest population in the world with multi faceted personalities. It is our duty to defend the country and render national service when called upon to do so.
 5. We have people with different religious beliefs. The people follow different languages and culture and ours is a country of diversity. We are bound to promote harmony and the spirit of common brotherhood amongst all the people transcending religious, linguistic and regional or sectional diversities. We have the duty to renounce the practices derogatory to the dignity of women.
 6. Ours is a country having traditional and cultural values of prestige. We have a rich heritage dating back to centuries. Of course, we are bound to value and preserve the rich heritage of our composite culture.
 7. India has a green heritage of thick forests, hundreds of lakes and rivers and wild life. Protection of the natural resources in a pollution free environment is the prime concern these days. We can not grow up healthy and decent without a clean

environment. Hence we have the duty to protect and improve the natural environment, including forests, lakes, rivers and wild life, and to have a compassion for living creatures.

8. We belong to the modern world. We are living in a border-less society, wherein science and technology has exceeded the man-made, territorial jurisdiction of countries. We cannot ignore the scientific development which contributed for a speedy progress of the nation and community. We always have the duty to develop scientific temper, humanism and spirit of inquiry and reform.
9. A sensible person would not think about destroying his personal belongings or his property, unless it is unusable. Similarly, every citizen has the obligation to safeguard and protect the public properties and to give up violence. We have an Act called the Prevention of Damage to Public Property Act, 1984 which contains penal provisions to deal with those who commit any kind of mischief causing damage to public property.
10. An individual has no existence by standing aloof from his society and it is the collective effort of the society that contributes to the massive progress of the nation in every field. A society would be more sensible, when it encourages or recognizes the individual efforts. We being the members of a sensible society, are bound to do our best for the excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievements.
11. Right to education is one of the Fundamental Rights of a child. It is the duty of the State to give all facilities for education to children. Parents have an equal obligation to provide opportunities to their child for a better education. A citizen of India, who is a parent or guardian, has the duty to provide opportunities for education to his child or ward who is between the age of six and fourteen years.

Thus being responsible citizens of this country, we are bound to follow these fundamental duties which of course require compulsory obedience, as suggested by Justice J.S. Verma, the former Chief Justice of India.



PART- B

IMPORTANT LAWS

INTRODUCTION

Ignorance of law is not an excusable defense, in legal adjudications. The general presumption is that everyone should be aware of his/her legal rights and duties covered under various statutes. There are numerous statutes or Acts enacted both by the Parliament and the different State Legislatures. A layman is not expected to study every statute in the country in depth since he has little opportunity to familiarise himself with such legal provisions. However, it is very important to keep oneself aware of the basic laws in the country. Hence, this hand book, aims to build a general understanding on some of the laws which may be useful in day to day societal life.

1. PROHIBITION OF RAGGING

Don't you think insulting or harassing your friend, school mate or college mate is injustice done to him?

Are you not violating his basic Fundamental Rights to Life and Education?

The High Court of Kerala in one of its judgments had expressed that Practice of Ragging in educational institutions must be viewed as a criminal offence and the offenders should be prosecuted just like other criminals. Following the observation, the Government of Kerala promulgated the 'Kerala Prohibition of Ragging Ordinance' in 1997, prohibiting ragging in educational institutions in the State of Kerala. Later, the Kerala Legislative Assembly enacted the Kerala Prohibition of Ragging Act 1998, by replacing the Ordinance. Thus with effect from 23.10.1997, ragging within or outside an educational institution is prohibited in Kerala.

Ragging is an intentional mental or physical assault committed on a student, by another. The Act defines 'Ragging' as doing any act, by disorderly conduct, to a student of an educational institution, which causes or is likely to cause physical or psychological harm or raising apprehension or fear or shame or embarrassment to the student. Such disorderly conduct includes, teasing or abusing or playing practical jokes on or causing hurt to such student or asking a student to do any act or perform something which such student, will not be willing to do in the ordinary course.

From this definition, it is clear that all the inhuman activities, practised in educational institutions and hostels, during the entry of fresh students, are covered by statutory definition of ragging and the scope of the Act is wide enough to keep an orderly campus throughout the State.

A student, parent, guardian of a student or a teacher of the institution may report an incident of ragging in writing to the Head of the institution. On receiving such a complaint or report, the Head of the institution is bound to enquire in the matter within 7 days. If he finds that the allegations in the complaint are true, the student involved in ragging shall be suspended from the institution. The Head of the institution is also bound to forward such complaint to the police station in the area for further action. But, if such complaint is false, the Head of the institution is bound to intimate the outcome of the enquiry to the person who made the complaint.

A student who commits the offence of ragging shall be punished with imprisonment for a term which may extend to 2 years and shall also be liable to a fine which may extend to Rs.10, 000. A student, who participates in, abets or propagates ragging within, or outside an educational institution is also liable to the same punishment. The Head of the institution is also liable to punishment; if there is any lapse on his/her part to comply with the statutory formalities. If the Head of the institution fails or neglects to take action within 7 days of the receipt of the complaint, or fails to enquire into the matter and if prima facie found true, does not suspend the student and fails to forward such complaint to the police station in the area, then such person shall be deemed to have abetted the offence of ragging and shall be liable to the same punishment.

If a student is convicted of the charges of committing, abetting, participating or propagating ragging, he shall be dismissed from the institution and such student will not get an admission in other educational institutions for a period of 3 years from the date of his dismissal from the institution.

The 1998 Act is only applicable to the educational institutions and hostels situated in the State of Kerala. However in May 2009, the Supreme Court of India has pronounced an exhaustive judgment in the Kerala University's case directing all the educational institutions in India to take measures for the proper control on ragging incidents.

2. PROHIBITION OF SMOKING

Smoking is injurious to the health of not only the smoker but also to the health of the neighbour. Hence public smoking is a nuisance to be controlled by regulation. Though there was an Act called 'The Prevention of Juvenile Smoking Act 1096' in the erstwhile Cochin Area, there was no law prohibiting public smoking in India till the year 2003. The 'Cochin Act' prohibited juvenile smoking in public places and also provided for seizure of tobacco from the youth. In 2003, the Parliament enacted the 'Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act' to prohibit the advertisement of and to provide for the regulation of trade and commerce of cigarettes and tobacco products. As per section 4 of the Act, smoking in a public place is prohibited. The Act also mandates the establishment of a separate area for smoking in restaurants and hotels. The offence of public smoking is punishable with a fine which may extend up to Rs. 200.

The sale or offer for sale of cigarette or other tobacco products to a person below the age of 18 years is prohibited. Such sale within a radius of 100 yards of any educational institution is also prohibited. A trader or any other person who violates such prohibition is also liable to be punished with a fine of up to Rs. 200.

The Kerala High Court in its judgment in Ramakrishnan v. State of Kerala prohibited public smoking considering it as a public nuisance. Thereafter, the Supreme Court in Murli S. Deora v. Union of India also reiterated the necessity to ensure prohibition of smoking in public places.

There were no serious attempt to implement the provisions of the Act either due to the ignorance of the provisions of the Act or due to ignorance of its health hazards. However in 2008, the Government of India framed the 'Prohibition of Smoking in Public Places Rules' which has come into force from 2-10-2008, to ensure proper implementation of the prohibition.

As per the said Rule, it is the duty of the owner, proprietor, manager or supervisor who is in charge of the affairs of the public place, to ensure that there is no smoking in such places. A public place is defined as any place to which the public has access, whether as of right or not. An auditorium, hospital building, railway waiting room, amusement centers,

restaurant, public offices, court buildings, educational institutions, library, public conveyance such as trains and buses, are a few examples for public places.

A board that smoking is prohibited has to be exhibited at the public places.. Keeping of ashtray, match box,, lighter or other things designed to facilitate smoking is prohibited in public places.

The Rules also authorise certain authorities and officers to ensure implementation of the Rules. Section 25 of the Act provides for detention of an offender by the officers and in cases of detention, the offender shall forthwith be taken before the Magistrate for further action. As per Rule 5, the notified officers are empowered to impose and collect fine for the offence of public smoking.

The Station Masters/ Asst. Station Masters/ Station Head/ Station in charge of Railways are empowered to impose and collect fines if public smoking is found in Railway premises. All Gazetted Officers of the Central and State Government are empowered to impose and collect fine if smoking is found in Government Offices. Principals/ Head Masters/ Teachers are the empowered authorities to implement the provisions of the Act in the respective educational institutions.

The Director of Public Health and the Nodal Officers of the Anti-Tobacco Cell also have the power to proceed under the Act, in all public places, to impose and collect fines from the offenders.

3. PROHIBITION OF CHILD MARRIAGE

If you come from a traditional family, your grandparents might have told you about the solemnization of child marriage which was very common in the first half of the last century. But, even now, it exists in some areas of our country, wherein a child is forced to contract marriage with another child or to an adult. Don't you think such child marriages are merciless and blatant violation of the rights of the child?

The Child Marriage Prohibition Act of 2006 prohibits such marriages where one of the parties is a child.

This Act was enacted by the Parliament by repealing the old Act, 'The Child Marriage Restraint Act 1929'. A boy who has not completed 21 years of age or a girl who has not completed the age of 18 years is considered a child under the Act.

In a marriage, when either of the party is a child, it is considered to be a child marriage.

Such a marriage is voidable at the option of the child and the District Court having appropriate jurisdiction has the power to annul or declare nullity of such marriage on a petition filed by the aggrieved party to the marriage. Such a petition shall be filed at any time within 2 years of attaining majority.

The punishment for a male adult marrying a child is rigorous imprisonment upto 2 years or fine upto 1 lakh rupees or both.

The punishment for solemnizing a child marriage in the form of performing the child marriage or abetting child marriage in any form shall be liable to the same punishment unless it is proved that the accused had reasons to believe that the marriage was not a child marriage.

On an application filed by the Child Marriage Prohibition Officer or on receipt of a complaint regarding child marriage, the Judicial First Class Magistrate in the local area has the power to order prohibition of such child marriage under the Act. Government is empowered under Section 16 of the Act to appoint Child Marriage Prohibition Officers to prevent solemnization of child marriage by taking appropriate legal actions and also to propagate the evils of child marriage in the society.

4. PROHIBITION OF CHILD LABOUR

It is very common to see children in our society employed in various works, including hazardous and dangerous works. Poverty is definitely one of the primary reasons. Children even work after school hours to meet their educational expenses.

The Child Labour (Prohibition and Regulation) Act, 1986 is one the most debated acts regarding children in India. It outlines where and how children can work and where they can not. The Schedule appended to the Child Labour (Prohibition and Regulation) Act, 1986 enumerates such occupations and process of works. The central legislature of India had promulgated a legislation Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (“CL Act”) to regulate the child labour practices in India. The central legislature has made substantial changes in the provisions of the CL Act in the year 2016 and the said amendments have been made effective from July 30, 2016. Pursuant to the said amendment

the name of the CL Act has been changed to ‘Child and Adolescent Labour (Prohibition and Regulation) Act, 1986’. A complete prohibition has been imposed on employment of child labour (i.e. a person below the age of 14 years) in any establishment whether hazardous or not. A child is permitted to work only to help family, in family enterprise or as child artist after school hours or during vacations. The amendment has introduced the concept of adolescent labour for the first time. An adolescent has been defined as a person between the ages of 14-18 years. The amendment permits employment of adolescent labour except in hazardous processes or occupation. The number of hazardous occupations and processes has been reduced from 83 to only 3. The offences under the Act have now been made compoundable and cognizable notwithstanding the provisions of the Criminal Procedure Code. The CL Act provides for rehabilitation of children and adolescent who have been victims under the provisions of the CL Act. It provides for setting up of the Child and Adolescent Labour Rehabilitation Fund in which all the amounts of penalty have to be realised. Liability has been affixed upon the parents and guardian of the affected child/children separately from the employers. The Act provides for increased penalty and imprisonment which shall not be less than 6 months and may extend upto 2 years and fine which may vary between Rs.20, 000 to Rs. 50,000. Previously, the violations under the CL Act were punishable with imprisonment of not less than three months which could extend to one year or/and with fine of ten thousand rupees which could extend to twenty thousand rupees.

5. PREVENTION OF HARMFUL PUBLICATIONS

In the modern society, the print and electronic media have a great role in the development of a child as a responsible citizen. For the attainment of healthy and tensionless psychological environment, it is necessary to ensure that children are not in contact with publications and visuals which are harmful to them.

As per the provisions of the Young Persons (Harmful Publications) Act, 1956, the State Government is empowered to declare a publication as harmful to young persons and to forfeit such publications. A person under the age of twenty years is considered a young person under the Act.

What is a harmful publication? The Act defines it as any book, magazine, pamphlet, leaflet, newspaper or other like publication which consists of stories told with the aid of pictures or without the aid of pictures or wholly in pictures, portraying certain kinds of stories. Such stories portraying commission of offences, acts of violence or cruelty, incidents of a repulsive or horrible nature which would tend to corrupt a young person by inciting or encouraging him to commit an offence or act of violence or cruelty, would be considered a harmful publication. Any person who sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or advertises any harmful publication shall be punishable with imprisonment which may extend to 6 months, or with fine, or with both.

A Police Officer on getting information or making search as per the warrant of a Magistrate, has the power to seize such harmful publication and produce it before the Magistrate. The Magistrate may also order for destroying such publication if he is of the opinion that such a publication is in violation of the provisions of the Act.

6. COMMISSION FOR PROTECTION OF CHILD RIGHTS

Majority of the children are illiterate about their rights. There are no facilities or opportunities available to them for proper education with respect to their rights.

A child has some inherent and basic rights but he also has certain duties and responsibilities towards his parents, teachers and society and to the nation at large.

The Commission for Protection of Child Rights Act, 2005 provides for constitution of a National level and State level Commissions for the protection of Child Rights and Child Courts to provide speedy trial of offences against the children and violation of child rights. The term 'Child Rights' is an exhaustive term and includes the Children's Rights adopted by the United Nations Convention on the Rights of the Child on 20.11.1989.

A child means every human being below the age of 18 years. He/she has the following rights under the Convention.

1. Inherent Right to Life
2. State protection for survival and development; physical, mental, spiritual, moral and social development.

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3. Right to get his birth registered, right to name and right to nationality.
 4. Right to live along with parents, except, when competent authorities determine otherwise.
 5. Protection from illicit transfer.
 6. Right to expression of views freely in matters affecting child.
 7. Right to have opportunity to be heard in any judicial and administrative proceedings, affecting the child.
 8. Right to freedom of expression and freedom to seek, receive and impart information and ideas, subject to restrictions.
 9. Right to freedom of association and peaceful assembly.
 10. Right to privacy.
 11. Right to full and decent life to mentally or physically disabled child.
 12. Right to health, enjoyment of highest attainable standard of health, facilities for the treatment of illness and rehabilitation of health.
 13. Right to primary education.
 14. Right to be protected from economic exploitation, protection from performing any hazardous work or works to interfere which the education of child.
 15. Right to be protected from inducement, coercion and also from exploitative use in prostitution, unlawful sexual practices, pornographic performances.
 16. Right to protection from torture, cruelty, inhuman or degrading treatment or punishment.

As per the Act, there shall be a National Commission constituted by the Central Government with a Chairperson and six other members. The State Commissions shall also have identical constitution. Such commissions have the power to enquire into the violation of child rights and recommend initiation of proceedings in appropriate cases. The Commissions have the power to inquire into the complaints and to take suo motu actions in matters relating to deprivation and violation of child

rights, non implementation of laws providing for protection and development of child etc.

The Act also provides for establishment of Children's Courts to ensure speedy trial of offences against the Children and cases relating to the violation of child rights. Special Prosecutors are appointed by the Government to prosecute cases in Children's Court, i.e., the Sessions Court in every district.

7. PROTECTION AND CARE TO CHILDREN AND JUVENILE JUSTICE

It is the primary responsibility of the Government to ensure that all the needs of the children are met and their basic human rights are fully protected. The first proper intervention by the government of India in justice for children was via the *National Children's Act, 1960*. This act was replaced later with Juvenile Justice Act, 1986. In 1992, India ratified the United Nations Convention on the Rights of the Child (UNCRC). To adapt to the standards of the convention, the 1986 act was repealed and the JJ Act, 2000 was passed.

The JJ Act 2000 dealt with two categories of children viz. '*child in conflict with law*' and '*child in need of care and protection*'. As per JJ Act, 2000, a juvenile is a person who is below 18 years of age. This act has a provision that a *child in conflict with law* cannot be treated as an adult. If a child is convicted for any offence, he may spend a maximum of three years in institutional care. This act empowered the Child Welfare Committees (CWCs) to deal with child in need of care and protection. Juvenile Justice Boards (JJB) were empowered to deal with child in conflict with law. The Juvenile Justice (Care and Protection of Children) Act, 2000 was enacted with some special provisions to provide for proper care and protection to the children. A person who has not completed the age of 18 years is a juvenile or child under the Act. District level Juvenile Justice Boards have been constituted to deal exclusively with the matters relating to children, under the Act. The Chief Judicial Magistrate in the District, who has special knowledge or training in child psychology or child welfare, is the Member of the Board along with other members. Other members are appointed from among social workers, who have been actively involved in health, education or welfare activities pertaining to children for at least seven years.

When a juvenile is arrested on the allegation of committing an offence, it is for the Board to hold an enquiry and the Board is empowered to pass such orders in accordance with law. Normally such enquiry has to be concluded within 4 months of its commencement, unless there is sufficient cause for extension of time. A juvenile offender is entitled for bail, if he is found involved in an offence, and on granting bail, such juvenile shall be released on bail with or without sureties. If the police officer or the Board refuses to grant bail to a Juvenile, it is their duty to keep the juvenile in Observation Home or in any other Safe Place, as provided under the Act. An arrest of a juvenile shall be informed to his father or guardian, by the police officer effecting arrest.

The specialty of the Act is that a juvenile is not liable to be punished, like an adult offender, and on conclusion of the enquiry by the Board, the Board can allow the juvenile to go home after advice or admonition and after giving counselling to the juvenile along with his parent or guardian.

The Juvenile Justice (Care and Protection of Children) Act, 2015 came into force on 15.1.2016 by repealing the Juvenile Justice (Care and Protection of Children) Act, 2000.

The JJ Act, 2015 provides for strengthened provisions for both children in need of care and protection and children in conflict with law. Some of the key provisions include: change in nomenclature from ‘juvenile’ to ‘child’ or ‘child in conflict with law’, across the Act to remove the negative connotation associated with the word “juvenile”; inclusion of several new definitions such as orphaned, abandoned and surrendered children; and petty, serious and heinous offences committed by children; clarity in powers, function and responsibilities of Juvenile Justice Board (JJB) and Child Welfare Committee (CWC); clear timelines for inquiry by Juvenile Justice Board (JJB); special provisions for heinous offences committed by children above the age of sixteen year; separate new chapter on Adoption to streamline adoption of orphan, abandoned and surrendered children; inclusion of new offences committed against children; and mandatory registration of Child Care Institutions.

Under Section 15, special provisions have been made to tackle child offenders committing heinous offences in the age group of 16-18 years. The Juvenile Justice Board is given the option to transfer cases of heinous offences by such children to a Children’s Court (Court of

Session) after conducting preliminary assessment. The provisions provide for placing children in a 'place of safety' both during and after the trial till they attain the age of 21 years after which an evaluation of the child shall be conducted by the Children's Court. After the evaluation, the child is either released on probation and if the child is not reformed then the child will be sent to a jail for remaining term. The law will act as a deterrent for child offenders committing heinous offences such as rape and murder and will protect the rights of victim.

To streamline adoption procedures for orphan, abandoned and surrendered children, the existing Central Adoption Resource Authority (CARA) is given the status of a statutory body to enable it to perform its function more effectively. Separate chapter (VIII) on Adoption provides for detailed provisions relating to adoption and punishments for not complying with the laid down procedure. Processes have been streamlined with timelines for both in-country and inter-country adoption including declaring a child legally free for adoption. Several rehabilitation and social reintegration measures have been provided for children in conflict with law and those in need of care and protection. Under the institutional care, children are provided with various services including education, health, nutrition, de-addiction, treatment of diseases, vocational training, skill development, life skill education, counselling, etc to help them assume a constructive role in the society. The variety of non-institutional options include: sponsorship and foster care including group foster care for placing children in a family environment which is other than child's biological family, which is to be selected, qualified, approved and supervised for providing care to children. Several new offences committed against children, which are so far not adequately covered under any other law, are included in the Act. These include: sale and procurement of children for any purpose including illegal adoption, corporal punishment in child care institutions, use of child by militant groups, offences against disabled children and, kidnapping and abduction of children.

All child care institutions, whether run by State Government or by voluntary or non-governmental organisations, which are meant, either wholly or partially for housing children, regardless of whether they receive grants from the Government, are to be mandatorily registered under the Act within 6 months from the date of commencement of the Act. Stringent penalty is provided in the law in case of non-compliance.

A juvenile shall not be sentenced to death or life imprisonment or send to prison. In appropriate cases, on receipt of the report from the Board, the authorities of the State Government can issue orders to detain the juvenile, in protective custody in appropriate places. The Act prohibits publication of name and other details of a juvenile or details of proceedings initiated against the juvenile in newspapers, magazines or visual media.

The Act also deals with other areas of child protection by providing penal provisions in cases of cruelty to juvenile/ child, employment of a juvenile/child in begging, providing them with intoxicating liquor or narcotic drugs, exploitation of juvenile/ child by employing them in hazardous employments etc.

There are Child Welfare Committees, Special Juvenile Police units, Advisory Boards, After-care Organizations, Shelter Homes and Children's Homes constituted for the smooth implementation of the provisions of the Act.

8. PROTECTION AND MAINTENANCE OF SENIOR CITIZENS AND PARENTS

Don't you think isolating your parents and grandparents during their old age is a serious evil? You would definitely remember the pain and hardships they have taken to raise you and provide you education to make you a responsible citizen in the society.

Often we hear about the ill-treatment of or abandoning of parents and senior citizens, by their children, grand children and relatives.

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, in short, the Senior Citizens Act, 2007 deals with the prime responsibility for the maintenance of parents by their children, grand children or relatives, who may possibly inherit the property of a senior citizen. This is an endeavor by the Ministry of Social Justice and Empowerment to curb the harassment of parents and senior citizens by their relatives. These days, the rapid urbanization and nuclear family system have led to the breakdown of the traditional joint family system, which has in turn threatened the social security of senior citizens.

Due to the constant shifting of their children to different cities for employment, the senior citizens have to face many difficulties such as inadequate medical care, improper shelter and food, crimes from anti-

social elements etc. The Act seeks to protect the parents and senior citizens from such difficulties.

It enables the parents, who are unable to maintain themselves through their own earnings or if the income from their properties is insufficient, to apply for maintenance, which may include provision for proper food, shelter, clothing and medical treatment, from their adult children, who include son, daughter, grandson and grand-daughter. The parents and senior citizens are entitled to get all the protection which is necessary to lead a normal life.

The Act aims to protect parents, who include biological, adoptive, step mothers and step fathers who need not be senior citizens.

A senior citizen, who is sixty years and above and does not have a child, can claim maintenance from the relatives who are in possession of or are likely to inherit his/her property. The monthly maintenance amount may go up to Rs. 10, 000/-

There is a Tribunal for adjudicating and deciding upon the order of maintenance and the Tribunal is headed by an officer not below the rank of Sub-Divisional Magistrate. Such Tribunals have the power to take their own proceedings to adjudicate a complaint. There is an Appellate Tribunal to hear the appeals against an order passed by the Tribunal and such appellate tribunals are presided over by an officer not below the rank of District Magistrate.

The Act also makes it an obligation for the State Governments to establish old-age homes, at least one in a District, to assist the senior citizens, who do not have sufficient means to maintain themselves.

It is important to note that after the commencement of the Act, certain transfers of property made by a senior citizen are void at the option of such persons.

If a senior citizen has transferred his property by way of gift or otherwise, on a condition that the transferee shall provide the basic amenities and physical needs for him and the transferee refuses or fails to provide it, the Tribunal has the power to declare the transfer as void.

The Act also provides for stringent punishment in cases of abandoning of senior citizens and in such cases the offender is liable to be punished with imprisonment for up to 3 months or with fine up to Rs. 5000/- or with both.

9. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE

An overall examination of our societal system reveals that women and children are the victims of domestic violence.

Women are subjected to violence by their husbands and in-laws, which causes harm to their health and may sometimes result in their death too. In cases of domestic violence, the children in the families are also equally aggrieved as a result of the fights between their parents and relatives.

The Protection of Women from Domestic Violence Act, 2005 is a progressive legislation to provide for a more effective protection of the rights of women. It also aims at preventing the harassment of women, who are often the victims of violence within the family. There is an exhaustive definition of 'domestic violence' in the Act to cover all kinds of violence which occur in a family. It includes physical abuse, sexual abuse, verbal and emotional abuse, and economic abuse. It also includes causing of harms or injuries, mental or physical to a woman, which endangers her health, safety, life, limb or well-being. Doing such acts to coerce a woman or any of her relatives to meet any unlawful demand for any dowry or other property or valuable security also comes under domestic violence.

A woman aggrieved by an act of domestic violence has the right to approach the Court of Magistrate to obtain relief under the Act. An application under Section 12 of the Act can be filed by the aggrieved woman herself or through a Protection Officer or by any other person on behalf of the aggrieved woman. The Magistrate can by an order grant the aggrieved woman the right to reside in a shared household, which means the household where the woman lives or has lived in a domestic relationship or marriage.

In appropriate cases, the Magistrate can issue a protection order prohibiting the other party from committing any act of domestic violence, aiding or abetting the commission of acts of domestic violence, entering the place of employment of aggrieved woman, attempt of personal communication, by personal, oral or written or electronic or telephonic contact, transfer of assets, operating bank accounts and bank lockers, causing violence to dependants or relatives of the woman, or committing any other act, as decided by the Magistrate in the Order.

It is also relevant to note that the Magistrate can issue a protection order against the opposite party to the proceeding, prohibiting the person from entering into a school or other place, if the person aggrieved of domestic violence is a child.

A Magistrate is empowered to grant the monetary relief such as the expenses incurred or loss suffered by the woman. Such monetary reliefs include loss of earnings, medical expenses, loss caused due to the destruction or damage or removal of any property from the control of the woman and money for the proper maintenance of her life. A child is also entitled for the maintenance as per the order of the Magistrate. Such maintenance shall be adequate, fair and reasonable and consistent with the standard of living of the woman or child. A woman is entitled to get compensation and damages for the injuries suffered by her, including for the mental torture or emotional distress, caused by the other party in an act of domestic violence.

It is also important to note that the Magistrate can order and grant interim custody of the child to a woman or to the person approaching the Court on her behalf, even if the custody of the child is with the father, as per the order of any other Court under any other law.

As per the Act, Protection Officers are appointed to assist an aggrieved woman or child to approach for reliefs under the Act. Such Protection Officers are the special officers under the Act having the duty to assist the Magistrate in discharging his function, to report the act of domestic violence to the Magistrate, to make application for protection order for an aggrieved woman, to get the aggrieved woman medically examined in cases of report of causing bodily injuries etc. Authorized service providers are also available to assist the persons aggrieved by domestic violence. There are some other laws having general importance, which mandate the people to behave in a particular manner, to ensure entitlement of their rights and to cast their civic obligations.

10. SOCIAL SECURITY OF UNORGANISED WORKERS

We have a strong trade union system or employee organizations to make collective bargains for the labourers in the industrial sectors or in other organized sectors such as government services, services in Public Sector Undertakings, Companies and Corporations. However, there are

a large number of workers employed in the unorganised sector, which means an enterprise owned by individuals or in the field of self employment, where the number of workers is less.

Lack of collective bargaining in this sector results in the exploitation of workers by the employers. Their work security and wage security is also minimum compared to the workers in the organized sector.

Who is an ‘unorganised worker’? The Unorganised Worker’s Social Security Act, 2008 defines an unorganised worker, as a home based worker, a self employed worker, wage workers in unorganised sector and also the workers in organized sector not covered by the social security schemes under various Acts, such as the Workmen’s Compensations Act 1923, Industrial Disputes Act 1947, Employees’ State Insurance Act 1948, Employee’s Provident Funds and Miscellaneous Provisions Act 1952, Maternity Benefit Act 1961 and Payment of Gratuity Act 1972. The workers employed in homes like domestic workers, temporary and casual workers are beneficiaries of the Social Security Act, 2008.

Every unorganised worker, having the minimum age of 14 years, is entitled for a registration under the Act, by making an application for registration before the District Administration. On processing the registration application, the District Administration is bound to issue a ‘SMART CARD’ which is an identity card carrying a unique identification number to the worker.

The central government has the responsibility to formulate a Welfare Scheme for unorganised workers on the matters relating to their life and disability to cover health and maternity benefits, old age protection etc. Indira Gandhi National Old Age Pension Scheme, National Family Benefit Scheme and Janani Suraksha Yojana, Handloom Weavers’ Comprehensive Welfare Scheme etc are some of the schemes notified in the Schedule by the Government under the Act.

As per the Act, there is a National Social Security Board and State Social Security Boards for unorganised workers constituted for recommending suitable social security schemes and to monitor the social welfare schemes for the unorganised workers at the national and state levels. Thus like any worker in the field of organised sector or industry, the workers in the unorganised sector are also now enjoying the benefits of social security scheme.

11. RIGHT TO INFORMATION

Aren't you entitled to any scholarship from the Government? What are the concessions and facilities you are entitled from the School and Public Agencies?

Right to Information is an inherent right of every citizen in a democratic country like India. It ensures the right of a citizen to know about the governmental activities, his right and advantage in the governance, accountability and due attendance of responsibility by the public servants, transparency in the public functioning etc. In the greatest advantage, this right empowers the citizen to fight against corruption and partisan actions of the Government or Public Officials.

In the year 1975, while considering Rajnarain's case, the Supreme Court of India had held that the people of the country have the right to know about every public act. In 2002, the Supreme Court in Aruna Roy's case, held that Right to Information is part of the Fundamental Right to life guaranteed under Article 21 of the Constitution. The International Covenant on Civil and Political Rights highlighted the importance of the right by expanding the scope of freedom of opinion and expression.

Following the principles reiterated by the Judiciary and International Treaties, the Parliament enacted the Right to Information Act, 2005 and the Act came into force fully, with effect from 12.10.2005. Thus after the date of its enforcement, every citizen in India has the right to information subject to the limitations provided under the Act.

An applicant can approach the Public Authorities, by filing an application for information to their Public Information Officers. There is no prescribed form for filing application and the Public Information Officer cannot ask the applicant regarding the purpose of the information. There are Public Information Officers in all the Central and State Government departments to receive, process and issue information as per the Act, on receipt of fee prescribed under the Act.

At the time of filing an application, the applicant has to remit a fee for application which is Rs.10/-. There would be an additional fee depending on the volume of information gathered and supplied. If the information is issued in A4 or A3 papers, the officer can collect Rs. 2/- per paper. If the information is provided in disks he can collect Rs.50 per disk.

‘Information’ as defined in the Act is any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in electronic form etc. On getting a request for information, the Public Information Officers of the public authority is bound to issue such information if it does not come under the purview of the exemption provided under Section 8. All the authorities, an authority or body or institution of self government established or constituted by or under the Constitution, Central or State laws, notification or order issued by the State or Central Government will come under the purview of the ‘Public Authority’ defined under the Act.

If an authority is a body owned, controlled or substantially financed by the Government, such authorities are public authorities under the Act. A non-governmental organization substantially financed, directly or indirectly by the funds provided by the Government is also a public authority bound to issue information.

Right to information not only gives the right to get copies of the documents, but also gives the right to inspection of work, documents and records. On receiving an application for information, the Public Information Officer is bound to give it at the earliest within 30 days. If he is not able to issue such information within time, the applicant is entitled for the information free of cost. If an application is rejected or not responded within time or the information is incomplete, the applicant can file an appeal before the appellate authority of the Public Authority. If he is aggrieved by the order of the appellate authority, he has a remedy to file an appeal before the Information Commission. There is a Central Information Commission in New Delhi dealing with matters of Public Authorities under the Central Government or Central Laws and a State Information Commission at Thiruvananthapuram dealing with Public Authorities under the State Government or State Acts.

Section 8 of the Act enumerates, exemption from disclosure of information. Information can be denied under the Act in the matters affecting sovereignty and integrity of India; security, strategic, scientific or economic interest of the State; relation with a foreign state etc. Information which has been expressly forbidden to be published by any court of law or tribunal and such information, the disclosure of which

would cause a breach of privilege of Parliament or the State Legislatures are also exempted. Exempted information includes cabinet papers and information available in the fiduciary capacity.

12. PREVENTION OF DAMAGE TO PUBLIC PROPERTY

Who is the master of public property? Is it only the Government or the Public too? Is it the responsibility of the citizen to protect a public property from destruction by anti-social or unwanted elements? We often hear about instances of damaging public transport vehicles, public offices and vehicles of government officials during the observance of hartals, bandhs, student strikes, public protests etc. On such occasions, there is an encroachment upon of public property by individuals by causing damage and committing mischief.

We have an Act called the 'Prevention of Damage to Public Property Act, 1984' enacted by the Parliament to ensure punishment for persons involved in damage to public property. Now, what constitutes public property? An immovable property or movable property which is owned, possessed or is under the control of Central or State Government, local authorities like Panchayats, Municipalities or Corporations, or Public Companies and Public Corporations or Institutions or concerns notified by the Central Government will come under the purview of 'public property'.

Severe punishments are provided under the Act, which would depend on the nature of mischief committed by an offender. The term of imprisonment may vary from 6 months to 10 years depending on the nature of offence. The Supreme Court in a recent decision issued guidelines to protect the public properties from damage in connection with the violence in hartals, bandhs and organized protests and strikes. As per the decision of the Supreme Court, the persons responsible for such hartals, bandhs, protests or strikes are also responsible for paying compensation in cases of damage caused to public properties.

Apart from this, as per Section 151 of the Railways Act 1989, causing of damage or destruction of properties of the Railways like railway tracks, bridges, railway buildings, carriages, wagons, telecommunication equipments etc. is an offence punishable with imprisonment up to 5 years or with fine or with both.

Therefore, we need a strict implementation of the Act as well as education to the masses on the importance of civic duties and responsibilities to protect public property from damage.

13. LEGAL SERVICES INSTITUTIONS AND LEGAL AID

Litigation or grievance redressal process in India is time consuming and expensive, compared to the average income of the common people of our country. Poverty, social and economical backwardness and illiteracy are some of the contributing factors which deny justice to the common man.

However Article 39A of the Constitution, mandates the State to provide free legal aid by making suitable legislation or schemes to ensure opportunities for securing justice to the economically, socially and educationally disabled persons. The Legal Services Authorities Act, 1987 was enacted to constitute Legal Services Institutions to provide free and competent legal services to the weaker sections of the society.

The hierarchy of legal services institutions: The National Legal Services Authority [NALSA] controls and coordinate the legal services programmes across the country. The Chief Justice of India is the Patron-in-Chief of the National Authority. It has an Executive Chairman who is or was a Judge of the Supreme Court and nominated by the President of India in consultation with the Chief Justice of India. There are other members and a Member Secretary.

There are State Legal Services Authorities in the States and Union Territories. The Chief Justice of the High Court is the Patron-in-Chief and a serving or retired Judge of the High Court shall be the Executive Chairman. The State Authority has a Member Secretary, who is a District Judge in the State Higher Judicial Service and such other members nominated by the State Government in consultation with the Chief Justice of the High Court.

In every District there shall be a District Legal Services Authority headed by the District Judge as its Chairman. There are other members in the District Authority nominated by the Government in consultation with the Chief Justice of the High Court. In addition to these, there are Legal Services Committees in the Supreme Court, all the High Courts, and in every Taluk to render legal services to eligible persons and to

conduct Lok Adalats to determine and settle the cases under their respective jurisdictions.

The expression 'legal service' include rendering advices on legal issues and also rendering services in conducting cases or other legal proceedings. The Act authorises to constitute Lok Adalat to determine and to arrive at a compromise or settlement of disputes between the parties, either pending before a court or a Pre-litigation matter. The Lok Adalat is presided over by serving or retired Judicial Officers and such other persons, as may be decided by the appropriate authorities or committees.

The following persons are entitled to free legal services under the Act:

- (1) A member of a Scheduled Caste or Scheduled Tribe.
- (2) A beggar or a victim of trafficking in human beings.
- (3) A woman or a child
- (4) A mentally ill or otherwise disabled person
- (5) A victim of mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster.
- (6) An industrial workman
- (7) A person in custody
 - i. in a protective home under the provisions of Immoral Traffic (Prevention) Act, 1956.
 - ii. in a Juvenile Home under the provisions of the Act dealing with Juvenile Justice.
 - iii. in a Psychiatric hospital or Psychiatric Nursing Home under the provisions of Mental Health Act, 1987.
- (8) A person whose annual income is less than Rs 1,25,000 in cases of litigation before the Supreme Court and in all other cases Rs 3,00,000. [Rule 12 of KeLSA Rules, 1998]

A Court may refer a pending litigation to the Lok Adalat, if one of the parties to the litigation makes an application or all the parties jointly make an application. The Court may make such referrals if it is satisfied that there are elements of settlement or the matter is an appropriate one to be taken cognisance of by the Lok Adalat. The Lok Adalat can dispose

of the matter by arriving at a compromise or settlement between parties. But if no settlement is arrived at, then the Lok Adalat may return the case to the court from which the case was referred.

In Pre-litigation cases, if the dispute is not settled at the Lok Adalat, it shall advise the parties to seek remedy in a Court of Law. Every award of the Lok Adalat shall be deemed to be a decree of a civil court or an order of the Court which referred the case to the Lok Adalat, and final and binding on the parties to the dispute.

The Act also provides for constitution of Permanent Lok Adalats for exercising jurisdiction in respect of one or more public utility services, like transport services for carriage of passengers or goods by air, road or water; postal, telegraph or telephone services; supply of power, light or water to the public; services in hospitals and dispensaries; insurance service, public conservancy and sanitation services, education and real estate. The Central or the State Government can add, by notification, more public utility services.

The pecuniary jurisdiction of Permanent Lok Adalat is Rupees one crore.

The Permanent Lok Adalat is headed by a Chairman, who is or has been a District Judge or Additional District Judge or has held Judicial Office higher in rank than that of a District Judge. It also consists of two other members having adequate experience in public utility services. Permanent Lok Adalat has the power to resolve a dispute before it though conciliation and if the dispute is not settled, decide the case on merit. The decision so taken through conciliation or by adjudication is final and binding on the parties.

At Present the services of Permanent Lok Adalat are available in 3 regions in the state namely Thiruvananthapuram, Ernakulam and Kozhikode regions. PLA at Thiruvananthapuram, which started functioning in 2006 has jurisdiction over Thiruvananthapuram, Kollam and Pathanamthitta districts, whereas PLA at Ernakulam which started functioning in 2011 has jurisdiction over Alappuzha, Kottayam, Idukki, Ernakulam and Thrissur districts. PLA Kozhikode which started functioning in 2013 has jurisdiction over Palakkad, Malappuram, Kozhikode, Wayanad, Kannur and Kasaragod districts.

The Legal Services Institutions have taken up the initiative to impart basic legal education and legal literacy to the different sections of the society like students, women etc.

An eligible person can approach the Legal Services Authorities and Legal Service Committees of respective jurisdiction to get legal services of an Advocate in Panel to conduct their cases or to avail legal advice on his remedies under law.

14. PROTECTION OF RIGHTS OF CONSUMER

Today, shopping has become an unavoidable life style for all. Large number of distributors of consumer goods, bring their goods to their customers, either through delivery in shops/super markets or by a system of door delivery through its sales agents. There are instances of cheating, misrepresenting and distributing goods of lower quality which ultimately end in litigations between the distributor and the customer.

Marketing a product is not an easy task in a society where the consumer is properly educated. Goods are introduced or marketed through advertisements and promotional schemes in the market. Reduction sales, prizes and installment schemes offered by the distributors may induce the common people to purchase things which are not of good quality. Apart from selling of goods, services are also rendered to customers. Such services may include those services rendered by a Repairing house or a Consulting agency. There are also instances of complaints made by the consumers against the service providers due to deficiency in services.

This scenario in the market and in the society, where consumerism is a necessity invited the enactment of consumer protection laws in India. The Consumer Protection Act, 1986 is the comprehensive law which provide for the better protection of the interest of the consumers. Under the Act, consumer councils and redressal agencies are established for the promotion and protection of the rights of the consumers and also for settlement of consumer disputes.

There are Central and State level Consumer Protection Councils constituted for educating the consumer on his rights. The consumer has the following rights under the Act :

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- (1) Right to be protected against the marketing of goods and services which are hazardous to life and property.
 - (2) Right to be informed about the quality, quantity, potency, purity, standard and price of goods or services so as to protect the consumer against unfair trade practices.
 - (3) Right to be assured, access to a variety of goods and services at competitive prices.

The Protection Councils have the duty to see that these rights are protected with respect to a consumer. Additionally, the consumer has the right to be heard and right to seek redressal against unfair trade practices or unscrupulous exploitation.

There are three fold agencies for redressal of consumer disputes and grievances. Complaint has to be filed before the District Forums which are established in each district, if the nature of the dispute does not exceed Rs. 20 lakhs. If it exceeds Rs. 20 lakhs and does not exceed Rs. 1 crore, the complaint has to be filed before the State Commission at Thiruvananthapuram. A complaint dealing with a subject matter of dispute of more than Rs 1 crore has to be filed before the National Commission in Delhi.

District Forums are headed by the President and consist of such other members and the President shall be a person who is or has been qualified to be a District Judge. An order of the District Form can be challenged in Appeal before the State Commission. The State Commission shall be presided over by the President, who is or has been a Judge of the High Court and may also consist of such other members. An order in original of the State Commission or its order in appeal can be challenged before the National Commission. The National Commission shall be presided over by a President who is or has been a Judge of the Supreme Court and also consists of such other members. An appeal against the order of the National Commission will lie only in the Supreme Court. The period for filing appeal is 30 days from receipt of the Order and the Appellate Forum can condone the delay in filing the appeal if the causes for delay are satisfactorily explained.

A complaint can be filed by a consumer, any incorporated voluntary consumer association, the Central government or the State government or by one or more consumers, if they are having same interest in the subject matter of the complaint. If the aggrieved consumer is dead, his

legal heirs or representatives can prosecute the matter before the redressal agencies.

A complaint before the redressal agencies must be in writing and along with remittance of fee prescribed. Complainant is liable to remit fee of Rs 100/- for a complaint covering dispute up to Rs. 1 lakh and Rs 200/- for a complaint covering dispute between Rs. 1 lakh and Rs. 5 lakhs. The fee is Rs 400/- for a complaint covering dispute between Rs. 5 lakhs and Rs. 10 lakhs and the fee is Rs 500/- for a complaint covering dispute between Rs. 10 lakhs and Rs. 20 lakhs. The complaint must be filed within two years from the date on which the cause of action has arisen. However, the redressal agencies can condone the delay in filing the complaint if the complainant is able to explain the delay satisfactorily.

The following nature of complaints can be filed under the Act:

1. When any trader or service provider has adopted an unfair trade practice or restrictive trade practice. When a trader adopts an unfair method or unfair or deceptive practices for the purpose of promoting the sale, use or supply of any goods or for providing any services, such practices amount to unfair trade practices. A false representation made on the standard quality, quantity, grade, composition, style or model of goods is an unfair trade practice. A false representation made on the standard, quality and grade of services is also an unfair trade practice. False representation of re-built, second hand, renovated, reconditioned or old goods as new goods is an unfair trade practice. Making false or misleading representation on the need for or the usefulness of any goods or services is also an unfair trade practice. Advertisements by misleading declaration of price of goods or services will also amount to unfair trade practices. Such trade practices which tend to bring about manipulation of price or its conditions of delivery or to affect the flow of supplies in the market will come under the purview of restrictive trade practices.

When a trade practice requires a consumer to buy, hire or avail any goods or services as condition precedent to buying, hiring or availing of other goods and services, it will amount to restrictive trade practices. When the trader or service provider

delays the supply of goods or service beyond the agreed date intending to raise the prices of goods or service, such practices amount to restrictive trade practices.

2. When the trader supplies defective goods.
3. When the service hired or availed suffers from deficiency in any respect.
4. When the trader or service provider charges prices in excess than the actual he declared.
5. When goods or services which are hazardous to life and safety are being offered for sale to public.

Services like banking, finance, insurance, transport, processing, supply of electricity, boarding and lodging, house construction, entertainment etc will come under the purview of the Consumer Protection Act. Any person who buys goods for a consideration which has been paid or promised or partly paid or partly promised or the use of such goods will come under the expression of 'consumer' under the Act. With respect to hiring or availing of services, a person who hires or avails any service for a consideration which has been paid or promised or partly paid or partly promised and also any beneficiary of such service is a consumer entitled for remedy under the Act. Only the purchase of goods or hiring or availing of service for end consumption is covered under the Act. Sale of goods or availing of service by two traders or between two parties for commercial purpose is outside the purview of the Act and such persons are not considered 'consumers' under the Act.

When an interim order is issued by the Redressal Agencies, which is not complied within the stipulated time, property of the respondent can be attached and sold for executing the order by such agencies. If any amount is due under an order of the Redressal Agencies, the person entitled for recovery can obtain a certificate of recovery from the Redressal Agencies and approach the District Collector of the jurisdiction to proceed for recovery under the provisions of the Revenue Recovery Act. In such cases, the District Collector shall attach either movable or immovable properties of the defaulter and will recover the amount by selling his properties in public auction.

If the Orders of the Redressal Agencies are violated or not complied by a person against whom a complaint is made, such violators can be subjected to punishment of imprisonment for a period between 1 month to 3 years or with fine between Rs. 2000 to Rs. 10,000 or with both imprisonment and fine.

Thus the Consumer Protection Act, 1986 provides effective provisions to check the unfair and unethical trade practices in the market and also protect the consumer from exploitation to a larger extent.

15. PROTECTION OF ENVIRONMENT

Years ago, some children from Russia drew a simple picture in the magazine 'Sputnik', which became very famous. The picture was an outline of the globe and below that it was written 'There is no other home other than this'.

What does it mean? There is only one globe which is the earth and there is no other home for us other than the earth. It is the home not only to the human beings but also to the animate and inanimate. We will fail to exist in the absence of a healthy environment and pollution free atmosphere. Air, water and soil must be kept out of impurities for a pollution free atmosphere. Nuisance from sound must be reduced. Natural resources shall be used with utmost care. We are bound to safely entrust the globe to the next generation. Environmental laws are made for preserving the globe.

In India, The Water (Prevention and Control of Pollution) Act of 1974 was enacted for the prevention and control of water pollution and to maintain and restore the purity of water. Central and State Pollution Control Boards are constituted as per the Act to promote and ensure the cleanliness of streams and wells by making appropriate remedial measures for preventing pollution.

In 1981, The Air (Prevention and Control of Pollution) Act was enacted to provide for the prevention, control and abatement of air pollution. Presence of air pollutants in the atmosphere such as any solid, liquid or gaseous substance including noise which are present in the atmosphere which are injurious to human beings or other living creatures or plants or property or environment amounts to air pollution under the Act. The Boards constituted under the Water (Prevention and Control

of Pollution) Act, 1974 has the additional powers to improve the quality of air and to prevent, control and abate air pollution.

The Parliament of India enacted the Forest (Conservation) Act, 1980 to prevent deforestation since it was found that the large scale activities of deforestation causes ecological imbalance in the country. As per the Act, use of any forest land for any non-forest purpose is regulated and the assignment of forest land to private person is controlled. The Act also requires the State Government to maintain the reserve forests, subject to the guidelines of the Central Government.

The Wild Life (Protection) Act, 1972 provides for the protection of animals and plants. The lists of protected wild animals and plants are scheduled in the Act itself. Animals like elephants, lions, deer, monkeys, rhinoceros and birds like peacock, parrot, hornbill etc are enumerated in the Schedule.

In 1986, the Environment Protection Act was enacted to provide for protection and improvement of environment in general, and which requires the Central Government to take all measures for the protection and improvement of quality of the environment. The Act also provides mechanisms for preventing, controlling and abating environmental pollution. The environment is defined as to include water, air and land. The industries and the persons handling the hazardous substances are required under the Act to maintain the standards and safe guards to control environmental pollution. Any activity of polluting the environment is a penal offence under the Act which attracts severe punishments including imprisonment up to a term of 5 years.

We have a strong and extensive system to implement the anti-pollution laws. However, working mechanisms under the anti -pollution laws are less effective in the absence of greater public participation. We have to develop an environmental culture by educating ourselves about the importance of non-polluted environment. We should report the instances of environmental pollution to the authorities, timely and properly, for the effective control and regulation of pollution of water, land and air.

As per the law on water pollution, nobody shall be allowed to drain waste water towards any running water without permission from the Pollution Control Board. Draining of rain water to a river by mixing it with industrial chemicals is also water pollution. Requirement of licence for starting an industry from the Pollution Control Board is one of the

mechanisms to regulate water pollution under the Act. The Act also mandates to establish effluent treatment plants for purifying industrial waste water. If the provisions of the Act are violated by an industry, the Board is empowered to order shut down of such industry.

Air pollution occurs mainly due to the smoke and gas discharge from heavy industries and discharge of smoke by motor vehicles. The activities of the industrial concern are regulated by the supervision of Pollution Control Board. Consent of the Board is also required for setting up of an industry. Generating noise beyond the particular decibel amounts to noise pollution. This is also regulated under the air pollution laws.

16. NEGOTIABLE INSTRUMENTS ACT

DISHONOUR OF CHEQUE IS AN OFFENCE

Cheque, Demand Draft, Pay Orders etc are the instruments exceedingly typical, not only in the commercial circle, but also in the ordinary life of the people. Cheque, the common instrument used for money transactions, is a Negotiable Instrument, regulated by the provisions of the Negotiable Instruments Act, 1881.

A cheque is a negotiable instrument. Crossed and account payee cheques are not negotiable by any person other than the payee. The cheques have to be deposited into the payee's bank account.

Legally, the author of the cheque is called 'drawer' and the person in whose favour, the cheque is drawn is called 'payee'.

Validity of a Cheque is for three months from the date of issue . Any material alteration in the cheque will make it invalid, as the Banker may refuse to honour such cheque.

However, cases of dishonour of cheques are common these days. Sometimes cheques bearing large amounts remain unpaid and are returned by the bank on which they are drawn.

When a cheque is issued to another with a clear indication of honouring of cheque on its presentation to the Bank, the dishonour of such cheque is an offence punishable under the Negotiable Instruments Act, 1881. A cheque may be returned from the bank on any ground, but when it is returned for insufficient funds to honour the cheque or it exceeds the amount arranged to be paid from the account, such an omission on the part of the maker of the cheque is punishable with

imprisonment up to two years or with fine which may be twice the amount in the cheque or with both. Return of cheque due to stop payment or closure of account are sufficient reasons to presume commission of offence under the Act.

When a cheque is returned from the Bank, with a memo of return, for the aforesaid reasons, it is mandatory to issue a notice to the drawer of the cheque, intimating dishonour of cheque and make a demand for payment of the cheque amount. Such notice shall be issued within 30 days of receipt of such memo from the Bank. If the addressee of such notice accepts the notice or refuses the notice or causes the return of notice as unclaimed, in such situations, a complaint can be filed before the Judicial First Class Magistrate Court, as per the provisions of the Criminal Procedure Code, against the maker of the cheque/ account holder after 15 days to enable him to pay the cheque amount, but within 45 days of such receipt or returning of notice.

A complaint for dishonour of cheque can only be filed before the Court within whose local jurisdiction the bank branch of the payee, where the payee presents the cheque for payment is situated.

It is an important fact that the offence can be compounded or the subject matter of dispute can be settled at any stage of the litigation, between the parties with the leave of the Court and now-a-days the remedy available under the Act, is widely utilised by the litigant people to redress the grievances of non payment of debts or liabilities, which are secured by issuance of cheques.

17. WOMEN'S COMMISSION COMMISSIONS FOR WOMEN TO SAFEGUARD THEIR INTEREST

At the National and the State Level, there are two commissions for safeguarding the interests of Women in India. The National Women's Commission is constituted as per the provisions of the National Commission for Women Act, 1990. The State Women's Commission, popularly known as "*Vanitha Commission*" in the State of Kerala is constituted as per the provisions of the Kerala Women's Commission Act, 1990.

The important functions of the Women's Commission are to investigate and examine the matters relating to the safeguards provided

for women under the Constitution and other laws. The Commission has to make reports and recommendations for the effective implementation of those safeguards for improving the conditions of women. It also has to review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures, to meet any lacunae, inadequacies or shortcomings in such legislations. It has also to take up the cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities.

The Commission has the power to look into the complaints and take suo motu notice of matters relating to deprivation of women's rights; non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development, non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and to take up the issues arising out of such matters with appropriate authorities.

It is the key function of the Commission to inspect jails, remand homes, women's institutions or other places of custody where women are kept as prisoners or otherwise, and take up with the concerned authorities measures for remedial action, if found necessary and to fund the litigations involving issues affecting a large body of women.

Any kind of instances of harassment or atrocities or physical or mental tortures committed towards women, generally and against a woman of any age group, can be reported to the Women's Commission. On receipt of such a report or information, the Commission headed by its Chairperson and other members will order a preliminary investigation on the complaint. On receipt of a report in the preliminary investigation, the Commission will hold inquiry in appropriate cases, if it is found that there are sufficient grounds to proceed further in the subject matter of the complaint. After the conclusion of the Inquiry the Commission will forward its recommendation to the Government for appropriate actions. In cases, in which, offences are committed against women; the commission will initiate prosecution against the offenders under the provisions of the respective laws.

There are provisions in the Indian Penal Code to safeguard the women from harassments, especially in Sections 354, 376, 498A etc. The Immoral Traffic (Prevention) Act, 1956 prevents exploitation of women from sexual harassments. Legislation of Protection of Women from Domestic Violence Act, 2005 is a major achievement in the field of law to safeguard women. Dowry Prohibition Act, 1961 and Indecent Representation of Women (Prohibition) Act, 1986 are examples of other enactments dealing with protection and promotion of interest of women.

18. LAW RELATING TO MOTOR VEHICLES

In the earlier days, people travelled along the “PATH-ways”. Pathways became larger to form “CART-ways” with vehicles like hand carts, bullock carts, etc. When there was no rush and traffic was less, no one felt it difficult to use these “WAYS” safely.

Thereafter, people started using such WAYS to drive motor vehicles. Vehicles fitted with machines and motors were felt dangerous to general public and any other road user when these mechanized vehicles were used with bad condition or by persons without proper training and also without proper order or discipline. Accidents became common due to the above conditions. Therefore these ill consequences of accidents due to mechanical defects, negligent or untrained use and lack of discipline had to be tackled with.

Human behaviour can be controlled by making laws. Therefore, Motor Vehicles Act was made in 1939 mainly for the purpose of avoiding danger to the public / road user. The law first classified the various motor vehicles like two wheelers, three wheelers, light motor vehicles, heavy motor vehicles etc. They also varied in degrees of danger posed. Therefore, it is desirous that the vehicles are in good condition and used safely and carefully by competent persons to make sure that such motor vehicles are not dangerous to general users of road. The safety of the general public should be safeguarded. The Law relating to use of Motor vehicles was made to achieve these and other purposes.

Therefore, when we read the Motor Vehicles Act, we will learn the rules that are to be followed when the motor vehicles are used on public roads.

The law insists on minimum safety standards for the vehicle. Every new model of motor vehicles has to be approved by the government before it is sold in the market. Periodical inspection of motor vehicles and certification has to be obtained so that they are in good condition. Similarly, the law insists that all those who drive or ride a motor vehicle are competent and have learnt about its safe use. Tests are conducted to ensure their competence and they are given permission to drive/ ride. It is called the 'Driving license'. Minimum age is prescribed for applying for such license. The license will show which type class of vehicles the license-holder can drive. For example, a four-wheeler car/jeep/van etc which are generally called Light Motor vehicles or a two-wheeler like a scooter/ motor cycle/ moped, etc. or a heavy vehicle like trucks/buses/ or the special vehicles like *trailer*.

The law also categorises motor vehicles into private and public service vehicles. The public service vehicles are for hire or carry public for a fee. They are taxies, city service buses, cabs, etc. Private vehicles are those which people own for their own use or their family's use. You can see a yellow number plate with black numbers written on it for public service vehicles and black numbers on white plate for private use vehicles. These numbers are given after registration of a vehicle for identification. Registration numbers are originally given after the vehicle is found to be fit for use and they are renewed if such road worthiness is maintained.

Using private vehicles for taxi service is punishable. Public vehicles are checked more frequently to have better road worthiness and they are for the better safety of general public.

The law also guides you as to how the vehicles are to be driven on the public road. These are found in the Rules of the Road Regulations made by the government.

For better and disciplined driving, there are guidelines on the streets by way of signs and signals. You might have seen signals or sign boards placed on the road sides. These help a driver to understand the road and how he should regulate his driving at certain places. 'Speed-breaker' signs are placed on the road-sides for drivers to prepare the vehicles to slow down. They are generally placed in junctions, near hospitals and school gates to avoid accidents. At some important places, there are

signs showing ‘no use of horns’ as these are considered a disturbance to the regular activities in the area. In short, all signs are to help the drivers to follow the rules of road use like those mentioned above.

Signals are normally voiceless communication / instructions to drivers to regulate their vehicles to proceed in a disciplined and orderly manner at busy and important places to avoid accidents. Such signals are generally given by lights fitted in visible positions. At times signals are given by hand movements by the traffic officers. On several occasions one driver will have to communicate with the driver of another vehicle. He may want to indicate his intention to overtake or turn to sides or stop his vehicle and he will let the other know. These can also be done by indicator lights fitted on their own vehicles or by hand movements. The other passengers in the vehicles should therefore avoid careless hand movements outside the vehicle as this would be mistaken as a signal. All these signals should be generally common or else the signal shown by one will not be understood by the other. Therefore, the law clearly says what signals can be shown by drivers or the traffic police officials and how they should be understood by the other drivers. There are officers who will constantly keep watch on the drivers on the road. They will find out those who violate the rules and report. There are punishments for all such violations. The punishments can be fine or even imprisonment.

No one should drive motor vehicles after consuming any alcoholic drink or any narcotic substance. These make the human brain ineffective and incapable of decision making. These drivers are sure to cause accidents as they cannot think or act quickly. They are to be discouraged. Those who encourage them by traveling along with them when they drive can also be stopped and punished. The punishments for such driving are severe. Since accidents are caused due to mechanical failures on account of non-maintenance of vehicles, by rash and negligent driving, by drunken driving, due to bad roads and bad weather conditions, careless pedestrians, etc, it mostly results in sufferings of innocent victims. Therefore, the law makes everyone who is responsible for causing any loss, injury or death by an accident liable to be punished and also to compensate such innocent sufferers. Since some of the drivers are monetarily incapable of compensating such losses, the law makes it compulsory for all owners of motor vehicles to arrange for insurance

cover for such purposes by paying small affordable installments. Therefore insurance companies will pay the necessary compensation to the victims even if the driver cannot pay such compensation.

There are technically qualified road traffic officers under the Traffic departments. They have good knowledge about the motor vehicles, and their use on the road. There are police officers also to assist the road users to safeguard them. They also help road users like pedestrians to cross and the drivers to find out their correct direction.

In short, using a vehicle on public road without fitness certificate or an insurance cover, by any one without proper license, etc. is illegal. Driving against the rules and signals is also illegal. The law also mentions what punishment is to be given for such illegal acts and which court will give such punishments. The law also says what the victim should do for getting compensation.

Remember, the rules relating to driving motor vehicles vary from country to country. When you watch an American movie, or the news in Arab Countries, you find people driving along the right side of the road unlike in UK or in India where the law prescribes driving along the left side of the road. So make sure to understand the law of the place before you think about driving a motor vehicle.

19. CIVIC SENSE

The word ‘civic’ means relating to citizen or in relation to man as a member of society of civil affairs. Therefore, **civic sense** would mean the attitude a citizen ought to have. The duties, responsibilities and virtues of citizens were even discussed in detail by Aristotle, one of the earliest renowned political philosophers and thinkers. It is generally felt that teaching morals and civic responsibility is the sole duty of the family, which should be imparted during early childhood. The concept of moral duties may vary from person, family or society as the case may be.

Civic sense is derived from the word ‘Civics’ which is the study of rights and duties of a citizen, and the role of citizens in the functioning of the government. The history of civic sense can be attributed to the earliest theories by Plato, who believed that reason and wisdom should govern, not rhetoric and persuasion.

It is strongly felt that Civic sense is nothing but social ethics. It is consideration by the people for the unspoken norms of society. A lot of people assume that civic sense is just about keeping the roads, streets and public property clean. But civic sense is more than that; it has to do with law-abiding, respect for fellow men and maintaining decorum in public places. A lot of foreign countries function in a smooth manner because of the strong civic sense amongst its people. The fundamental theory of ‘love thy neighbour’ as propagated by all religions is the essence of the concept of Civic sense.

Rights of the citizens are enumerated in the chapter on Fundamental Rights in the Constitution. We often speak of our rights but we tend to forget about our duties. Conferment of a right necessarily imposes a duty. It is believed that civic sense requires persons to see and respect their duties. Duties are enumerated in chapter IV A of the Indian Constitution.

The following are the duties:-

- ◆ To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- ◆ To cherish and follow the noble ideals which inspired our national struggle for freedom;
- ◆ To uphold and protect the sovereignty, unity and integrity of India;
- ◆ To defend the country and render national service when called upon to do so;
- ◆ 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;
- ◆ To value and preserve the rich heritage of our composite culture;
- ◆ To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures; To develop the scientific temper, humanism and the spirit of inquiry and reform;
- ◆ To safeguard public property and to abjure violence;

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- ◆ To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement.

Prohibition against trafficking in human beings and forced labour, prohibition of child labour, freedom of Speech and Religion, abolition of untouchability etc are guaranteed under the Fundamental Rights. The underlying principle in the concept of civic sense is the maintenance of dignity of an individual which necessarily implies that rights and duties have to be complementary. If so, there shall be no crime.

The main responsibility of a citizen is to obey and ensure the enforcement of the law of the land. While exercising the right to defend one's life, liberty, property or family, it has to be kept in mind that the other person also has the same right and that cannot be encroached upon. A citizen with civic sense is bound to lead a quiet life minding his own business. 'Do unto others as you would like others to do' is the principle contained in the concept of civic sense. Civic sense would imply understanding and appreciating the other person's view point and acting accordingly. Usually problems arise when there is a collision of the rights of two individuals. Appreciating the other person's point of view will enable a mutually agreeable solution with the necessary adjustments. When speaking about civic sense the discourse should start with the understanding of the lack of civic sense. Spit marks on the roads, urinating in public, vulgar graffiti, random garbage, overflowing sewages etc are examples of lack of civic sense. We often blame the government for not doing enough to prevent the above but we do not take a moment to understand that the condition is so because someone caused it. In recent times, we often hear about the outbreak of epidemics such as swine flu being the latest example. Such epidemics can always be averted or controlled if there is a concern for others, by taking adequate precautions. Disruption caused to the different means of transport ignoring the inconvenience caused to the common people clearly shows the lack of civic sense.

Therefore awareness in this regard is the need of the hour. There is a need of change of mindset of the people. It necessarily follows that teaching a person about civic sense involves teaching him about civic

responsibility. It involves respecting other members of society. A person who is clean will keep his surroundings clean. Civic sense would involve keeping the environment clean, obeying the laws, taking steps to avoid pollution (air, water etc) keeping the public places clean by avoiding spitting, using garbage bins and making use of public toilets. We have to bear in mind that as per WHO statistics India ranks first in TB, dengue, cholera and other preventable and treatable diseases. India ranks 127th in Human Development Index (HDI) out of 177 countries. Sanitary conditions, poor healthcare, absence of waste management system compound it. Protection of public health is a matter which affects everyone. Though Kerala State has one -eighth of the population as that of USA and usage of vehicles is very low compared to that country, death, maimed persons, loss of property due to motor accidents are manifold. Lack of civic sense is one of the major contributing factors. Ignoring the basic lessons regarding the usage of roads and footpaths also contribute to this.

A nation would be healthy, clean, and crime-free if its citizens have civic sense. A country with civic sense saves on medical bills and it will have productive man hours which will in turn give prosperity making the country green and beautiful.

20. KERALA STATE RIGHT TO SERVICE ACT, 2012

Have you ever visited any government office with your parents? Even if you are not, you might have heard several people complaining about their weird experiences when they were to government offices. They often complain about the rude behaviour of the employees, inordinate delay in getting things done and the shameless way of asking for bribe. The people are forced to suffer as the system had failed to deliver. Even in a democratic country like us, people feel that they are ill treated and abused in a government office. Though the primary dictum of an elected democracy upholds right of the people above everything, the situation is just the opposite. The chances are that we may get ashamed on seeing the ground realities.

What the government employees forget is the basics of democracy. In a democracy, administrators and government officials are literally the servants of the people. The demon of corruption, however, has vitiated

our bureaucracy too. The corrupt practices within the system deny the common man his basic rights and ruined the foundation of our administrative system. The Kerala Legislature has recently passed Right To Services Act (RTS) to bring down corruption among the government officials. The main objective of this legislation stands for good governance which is essential for the sustainable development on all spheres of life. The three indispensable elements of good governance are transparency, accountability, and responsiveness of the administration. To improve and strengthen the relationship between the citizens and service providers, the Government of Kerala has already introduced a Citizen Charter. It gives every citizen the right to obtain government services within specified time frame. The law ensures time-bound solutions to people's grievances and prompt delivery of services and makes government servants punishable for inordinate delays. The law envisages a mechanism for punishing the errant public servant who cannot deliver the service stipulated under the statute. The Right to Services Act would complement the Right to Information Act enacted by Parliament in 2005. Madhya Pradesh is the first state in India to enact Right To Service Act in 2010. Kerala became the 13th state in India to pass this law. The Act came into force on November 1, 2012.

The law stipulates that every government department, local self-government institution and statutory body should, within six months of the commencement of the Act, notify the services that will be rendered by them, the officers designated for providing the services, and the time limit for providing them. The designated officer shall display in the notice board, all relevant information related to the services, stipulated time limit, designated officer, first appellate authority and the second appellate authority. On receipt of an application for service by an eligible person the designated officer shall give acknowledgment to the applicant. The stipulated time limit for such service shall start from the date of production of the document. Public holidays shall be excluded from the stipulated time limit for providing the services. It also puts in place a two-tier appellate system to redress grievances. The act casts a duty on the designated officer, who on receipt of an application for service, to provide service or reject the application within the time limit, counted from the day the application is received. In case of rejection, the officer should justify it in writing.

On failure to provide the service by the designated officer within the given time or rejected to provide the service, the aggrieved person can approach the First Appellate Authority. No fee shall be levied for filing the first or second appeal under the Act. The First Appellate Authority, after making a hearing, can accept or reject the appeal by making a written order stating the reasons for the order and intimate the same to the applicant, and can order the public servant to provide the service to the applicant. An appeal can be made from the order of the First Appellate Authority to the Second Appellate Authority, who can either accept or reject the application, by making a written order stating the reasons for the order and intimate the same to the applicant, and can order the public servant to provide the service to the applicant or can impose penalty on the designated officer for deficiency of service without any reasonable cause, which can range from Rs. 500 to Rs. 5000 or may recommend disciplinary proceedings. The first appeal must be filed within 30 days. If the appellate authority is convinced that there are valid reasons, appeal can be filed even after the 30 days period. The filing of second appeal should be within 60 days of the rejection of the first appeal. The appellate authorities are granted certain powers of a Civil Court for the production of documents and issuance of summon to the designated officers and appellants. The actions taken in the backdrop of this Act cannot be questioned in a civil court.

If implemented properly, RTS can change the way by which our public offices are functioning. No doubt, it will provide the momentum for the growth of the state as a good administration needs an efficient bureaucracy.

21. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

The above Act provides for protection of children from offences of sexual assault, sexual harassment and pornography. The above Act came into force on 14/ 11/2012.

“Child” means any person below the age of 18 years. As per Section 3 to 12 of the above Act five important sexual offences against children are explained.

a) Penetrative sexual assault - When a person (a) 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

b) He inserts to any extent any object or a part of the body not being penis into the vagina, urethra or anus of the child or makes the child to do so with him or any other person, OR He manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of the body of the child or makes the child to do so with him or any other person OR

1) On commission of any of the above acts, the person shall be punished with imprisonment from seven years to life and fine.

2) Aggravated penetrative sexual assault:

Whoever being a Police Officer, a member of armed forces, public servant, jail, remand home, observation home authorities who are appointed for protection of children, Government or Private hospital management, employees, educational or religious institute employees, commits penetrative sexual assault on a child, whoever commits 'penetrative sexual assault on a child using deadly weapons, fire, heated substance or corrosive substance, causing grievous hurt or injury or injury to sexual organs of the child, OR causing physical or mental incapacity to the child OR causing pregnancy to the girl child, OR inflicting viruses reducing immunity OR exploiting the physical or mental disability of the child, OR committing penetrative sexual assault repeatedly, OR being a resident of the house of the child as a relative, OR being in-charge of institution providing services to the child OR knowing the child to be pregnant, OR attempts to murder the child, OR during communal or sectarian violence, OR making the child naked in public, is liable to be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to fine.

3) Sexual assault - when a person touches the vagina, penis, anus or breast of a child or makes the child touch the vagina, penis,

anus or breast of such person or any other person or does any act with sexual intention which involves physical contact without penetration commits sexual assault and is punishable with imprisonment from three to five years with fine.

- 4) Aggravated sexual assault — Any person who commits aggravated sexual assault as explained in item (2) above without penetration, that amounts to aggravated sexual assault and is punishable with imprisonment from five to seven years with fine.
- 5) Sexual harassment. A person is said to commit sexual harassment when he does any of the following acts with sexual intent:
 - (a) Utters a word or makes any sound or gesture or exhibits any object or part of the body with intention that they shall be heard or seen by the child, OR
 - (b) Makes the child exhibit his body or any part of his body so as it is seen by such person or any other person, OR
 - (c) Shows any object to a child in any form or media for pornographic purposes.
 - (d) Repeatedly or constantly follows, watches, contacts a child either directly or through electronic, digital or any other means.
 - (e) Threatens to use any involvement of a child in a sexual act in any form of media, through electronic, film or digital.
 - (f) Entices a child for pornographic purposes or given gratification.

Person committing sexual harassment shall be punished with imprisonment up to three years with fine.

USE OF CHILD FOR PORNOGRAPHIC PURPOSE

Use of child in any form of media for sexual gratification including representation of sexual organs of a child, usage of child as engaged in real or stimulated sexual acts (with or without penetration) or the indecent or obscene representation of a child.

Punishment - Imprisonment up to 6 years with fine.

2nd or subsequent conviction - imprisonment up to 7 years with fine. Direct participation in sexual act with child - punishment from 10 years up to imprisonment for life and fine. Punishment to those who keeps these pornographic materials involving child is imprisonment for 3 years and fine.

ABETMENT OF AND ATTEMPT TO COMMIT AN OFFENCE

A person abets an offence in following manners.

- (1) Instigates any person to do that offence.
- (2) Engages in conspiracy with other person/persons to do that offence.
- (3) Intentionally aids the doing of that offence.

If the offence is committed in consequence of abetment, the abettor shall be punished with punishment provided for that offence.

REPORTING OF OFFENCES

Report regarding commitment or possibility to commit an offence under this Act shall be reported by anybody including child to Special Juvenile Police, or Police. Police shall number and write the report in the Book. If the report is given by the child, the same shall be entered in the language understandable to child. If the child is to be given protection, the police-is duty bound to give the same within 24 hours and the matter shall be reported by the police to Child Welfare Committee or Special Court or Sessions Court within that time. No civil/criminal proceedings shall be initiated against any person who bonafide gives a report. Medial, photography, hotel, hospital people have a duty to report offences against children if such acts came to their knowledge. Failure to make such report is punishable with imprisonment for six months and fine. If a report is wrongly given against a child, the same is punishable with imprisonment for one year and fine. If news is published in a media adversely affecting a child without proper knowledge and information about the news, the owner of media shall be punished with imprisonment for 6 months to one year and fine.

PROCEDURE FOR RECORDING STATEMENT OF CHILD

Statement of the child shall be recorded at the residence of the child or his usual residence place by a woman police officer not below

the rank of a Sub Inspector. Child shall not be detained in police station during night. While taking evidence from child, he shall not come in contact with the accused. Identity of child shall not be disclosed through media. Statement u/s 164 of the child shall be recorded by the Magistrate as spoken by the child in the presence of parents of the child or any other person in whom child has trust or confidence. Medical examination of a child who was subjected to offence shall be conducted in the presence of the parents or other person in whom child has trust or confidence and in absence of both in the presence of a woman appointed by medical institution. If the victim is a girl child, medical examination shall be conducted by a woman doctor.

SPECIAL COURTS

One court of Sessions in each district shall be nominated as Special Court for speedy trial of offences under the Act. Where a person is prosecuted for committing or abetting or attempting to commit any offence u/s 3, 5, 7 and 9 of this Act, the Special Court shall presume that such person has committed or abetted or attempted to commit the offence, unless the contrary is proved. Special court can also presume the existence of culpable mental state for the accused, but the accused will get opportunity to prove the fact that he had no such mental state with respect to the charged offence. The court can take cognizance of any offence on being committed to it for trial, upon receiving the complaint of facts which constitutes the offence. Counsel for the accused shall frame questions to be asked to child and the court shall in turn put those questions to the child. Court shall create a child friendly atmosphere while putting those questions in the presence of parents or person in whom the child has confidence. Court shall ensure that the child shall not be called repeatedly to the court and see that dignity of the child is maintained all times during trial and that his identity is not disclosed during investigation or trial court can also award compensation to the child. In the case of offence committed by the child, he shall be tried by the court after finding his age under the Juvenile Justice Act. The court shall take evidence within 30 days of taking cognizance from the child and explain the delay if any and shall complete the trial in one year. During trial, the child shall not see the accused and the accused and his lawyer shall hear what the

child says and for that purpose, video conferencing can be arranged. The presence of parents/guardian is essential while taking secret evidence from child. Free legal advice shall be provided to the child. As per the amendment in the above Act n 2013, the provisions of this Act shall prevail over any other laws if found contrary.

RULES UNDER THE ACT

Child protection units shall be started in each district. A register of interpreters, translators and special educators shall be forwarded by the Child Protection Units to the Special Juvenile Police Unit, Local Police, Magistrate, Special Court. These persons shall keep the secret nature of evidence.

On receipt of a complaint the police shall enter and give the following to the complainant.

- 1) His name and designation.
- 2) Address and telephone number.
- 3) Name, designation and contact details of the officer who supervises the officer receiving information.

Police shall also do the following on receipt of complaint.

- 1) Prepare a First Information Report and give its copy free of cost to the person who gave the report.
- 2) Necessary medical aid shall be provided to the child and subject the child to medical examination.
- 3) Samples received for forensic examination shall be forwarded to such examination.
- 4) Child and parents shall be informed about the facilities for counselling and free legal aid.

In case of information regarding the possibility of a crime under this Act at the place of residence of child, the matter shall be conveyed by the police to the Child Welfare Committee and the committee shall arrange protection to the child. Committee shall also engage a person to assist the child in investigation and trial. This does not prevent the child/parents from securing their own helps from other sources. The person so appointed shall keep all things secret and necessary information shall be handed over to the parents or guardians. He is also responsible to

make the child aware of the importance of giving evidence before the court. The matter of appointment of such helper shall be informed by the police to the court within 24 hours. In case the parents require the change of that person, child welfare committee can change him. Police is bound to inform all court proceedings to the parents of the child then and there.

Police is bound to furnish necessary medical aid to the child. No doctor or, hospital shall insist for any documents as condition for such medical aid. The following aspects shall be noted by the medical examiner.

- (1) Cuts, bruises and other injuries.
- (2) Sexually transmitted diseases.
- (3) Possibility of pregnancy
- (4) Possibility of mental disease.

The Special Court for the purpose of rehabilitation is empowered to award interim compensation. This amount shall be utilised for other expenses of the child and adjusted from the final compensation.

22. CRIMINAL LAW AMENDMENT, 2018

Rape on women has increased at an alarming and unprecedented level. In the wake of the ever increasing incidences of rape on not only adult women but also on minors, a much more stringent need for action against such criminals was necessary and the amendment in the existing criminal law was proposed by way of the Criminal Law Amendment Ordinance, 2018. It was promulgated by the President on 21st April, 2018. The Ordinance stands to amend the Indian Penal Code, Code of Criminal Procedure, Indian Evidence Act and Protection of Children from Sexual Offences Act. The most prominent and important amendments to the relevant laws under the IPC, Cr.Pc, POSCO and Evidence Act are as follows:

INDIAN PENAL CODE

- ◆ Section 376 IPC: Minimum Punishment for Rape has been made Ten Years. It was Seven Years earlier. The Maximum punishment remains the same, i.e. Life imprisonment. A new clause (3) has been added to Section 376, which prescribes the Minimum punishment of twenty years to a person committing rape on a woman under Sixteen years of Age.

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- ◆ A new Section 376AB has been inserted which prescribes the minimum punishment of twenty years rigorous imprisonment to a person committing rape on a woman less than twelve years of Age. Such a person can be awarded capital sentence as well.
 - ◆ Section 376DA and 376DB provides for minimum punishment of life imprisonment for persons involved in gang rape of woman aged less than 16 years and 12 years respectively. Death penalty is also prescribed for persons involved in gang rape of a girl of age less than 12 years.

CODE OF CRIMINAL PROCEDURE 1973

- ◆ The investigation in relation to in all Rape cases may be completed within three months from the date on which the information was recorded by the officer in charge of the police station. The provisions of Code of Criminal Procedure have also been amended to insert a subsection which prescribes six months time to dispose of an appeal in rape cases. Anticipatory bail cannot be granted to a person accused of rape of girls of aged less than sixteen years.

POSCO ACT, 2012 AND EVIDENCE ACT

Section 42 of the POCSO Act has been amended to include newly inserted IPC provisions section 376AB, section 376DA, and section 376DB. Section 53A of the Evidence Act that deals with evidence of character or previous sexual experience not relevant in certain cases and Section 146 of the Act that deals with evidence of character or previous sexual experience not relevant in certain cases, has also been amended to include newly inserted IPC provisions section 376AB, section 376DA, section 376DB.

THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

After India signed and ratified the UNCRPD in 2007, the process of enacting a new legislation in place of the Persons with Disabilities Act, 1995 (PWD Act, 1995) began in 2010 to make it compliant with the UNCRPD. After series of consultation meetings and drafting process, the Rights of PWD Act, 2016 (RPWD Act, 2016) was passed by both the houses of the Parliament. It was notified on December 28, 2016 after receiving the presidential assent. Principles stated to be implemented

for empowerment of persons with disabilities (PWD) are respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons. The Act lays stress on non-discrimination, full and effective participation and inclusion in society, respect for difference and acceptance of disabilities as part of human diversity and humanity, equality of opportunity, accessibility, equality between men and women, respect for the evolving capacities of children with disabilities, and respect for the right of children with disabilities to preserve their identities. The principle reflects a paradigm shift in thinking about disability from a social welfare concern to a human rights issue.

The PWD (Equal Opportunities, Protection of Rights, and Full Participations) Act, 1995 was enacted to give an effect to the "Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region, which was issued in a meeting of the Economic and Social Commission for Asia and the Pacific Region in December 1992 at Beijing, to launch the "Asian and Pacific Decade of Disabled Persons 1993–2002." The Act listed seven conditions of disabilities, which were blindness, low vision, leprosy cured, hearing impairment, locomotor disability, mental retardation, and mental illness. Mental retardation was defined as "a condition of arrested or incomplete development of mind of a person which is specially characterized by sub normality of intelligence." The Act adopted an approach of social welfare in respect of PWD and the main focus was on prevention and early detection of disabilities, education and employment of the PWD. The Act also provided 3% reservation in Government jobs and educational institutions. It stressed on making the barrier-free situations as a measure of non-discrimination.

In the RPWD Act, 2016, the list has been expanded from 7 to 21 conditions and it now also includes cerebral palsy, dwarfism, muscular dystrophy, acid attack victims, hard of hearing, speech and language disability, specific learning disabilities, autism spectrum disorders, chronic neurological disorders such as multiple sclerosis and Parkinson's disease, blood disorders such as haemophilia, thalassemia, and sickle cell anaemia, and multiple disabilities. The nomenclature mental retardation is replaced by intellectual disability which is defined as "a condition characterized by significant limitation both in intellectual functioning (reasoning, learning,

problem-solving) and in adaptive behavior which covers a range of every day social and practical skills including specific learning disabilities and autism spectrum disorders.” The Act provides an elaborate definition of mental illness which is “a substantial disorder of thinking, mood, perception, orientation, or memory that grossly impairs judgment, behavior, and capacity to recognize reality or ability to meet the ordinary demands of life but does not include retardation which is a condition of arrested or incomplete development of mind of a person, especially characterized by sub normality of intelligence.” Persons with benchmark disabilities are defined as those with at least 40% of any of the above disability. PWD having high support needs are those who are certified as such under section 58(2) of the Act.

The RPWD Act, 2016 provides that “the appropriate Government shall ensure that the PWD enjoy the right to equality, life with dignity, and respect for his or her own integrity equally with others.” The Government is to take steps to utilize the capacity of the PWD by providing appropriate environment. It is also stipulated in the section 3 that no PWD shall be discriminated on the ground of disability, unless it is shown that the impugned act or omission is a proportionate means of achieving a legitimate aim and no person shall be deprived of his personal liberty only on the ground of disability. Living in the community for PWD is to be ensured and steps are to be taken by the Government to ensure reasonable accommodation for them. Special measures are to be taken to ensure women and children with disabilities enjoy rights equally with others. Measures are to be taken to protect the PWD from being subjected to cruelty, inhuman, and degrading treatments and from all forms of abuse, violence, and exploitation. For conducting any research, free and informed consent from the PWD as well as a prior permission from a Committee for Research on Disability to be constituted in the prescribed manner. Under section 7(2) of the Act, any person or registered organization, who or which has reason to believe that an act of abuse, violence, or exploitation has been, is being or likely to be committed against any PWD, may give information to the local Executive Magistrate who shall take immediate steps to stop or prevent its occurrence and pass appropriate order to protect the PWD. Police officers, who receive a complaint or otherwise come to know of violence, abuse, or exploitation,

shall inform the aggrieved PWD of his right to approach the Executive Magistrate. The police officer shall also inform about particulars of nearest organization working for the rehabilitation of the PWD, right to free legal aid, and right to file complaint under the provisions of this Act or any other law dealing with such offence.

Equal protection and safety in situations of risk, armed conflict, humanitarian emergencies, and natural disasters are to be provided to PWD. Children with disability are not to be separated from parents except on the order of a competent court and information about reproductive rights and family planning to the PWD is to be ensured. Accessibility in voting and access to justice without discrimination to the PWD are to be ensured. Public documents are to be made available in accessible formats.

It is to be ensured that all PWD enjoy legal capacity on an equal basis with others in all aspects of life and has the right to equal recognition everywhere as any other person before the law and have the right, equally with others, to own and inherit movable and immovable property as well as control their financial affairs (Sec 13). It is also provided that a PWD with benchmark disability who consider himself to be in need of high support, he/she or any other person or organization in his behalf may apply to the authority appointed by the Government for the same and the authority shall take steps to provide support accordingly (Sec 38). However, the PWD would have the right to alter, modify, or dismantle the support system and in case of conflict of interest, the supporting person would withdraw from providing the support [sec 13(4&5)]. It has been provided in the section 14 of the Act that a District Court or any designated authority, as notified by the State Government, finds that a person with disability, who had been provided adequate and appropriate support but is unable to take legally binding decisions, may be provided further support of a limited guardian to take legally binding decisions on his behalf in consultation with such person, in such manner, as may be prescribed by the State Government. It is also provided that the District Court or the designated authority, as the case may be, may grant total support to the person with disability requiring such support or where the limited guardianship is to be granted repeatedly. In these cases the decision regarding the support to be provided shall be reviewed by the Court or the designated authority, as the case may be, to determine the nature

and manner of support to be provided. Limited guardianship has been explained to mean a system of joint decision which operates on mutual understanding and trust between the guardian and the person with disability, which shall be limited to a specific period and for specific decision and situation and shall operate in accordance to the will of the person with disability. It is also provided that on and from commencement of the Act, every guardian appointed under any other law for time being in force shall be deemed to function as a limited guardian.

The Act provides for the access to inclusive education, vocational training, and self-employment of disabled persons without discrimination and buildings, campuses, and various facilities are to be made accessible to the PWD and their special needs are to be addressed. Necessary schemes and programs to safeguard and promote the PWD for living in the community are to be launched by the Government. Appropriate healthcare measures, insurance schemes, and rehabilitation programs for the PWD are also to be undertaken by the Government. Cultural life, recreation, and sporting activities are also to be taken care of. All Government institutions of higher education and those getting aid from the Government are required to reserve at least 5% of seats for persons with benchmark disabilities. Four percent reservation for persons with benchmark disabilities is to be provided in posts of all Government establishments with differential quotas for different forms of disabilities. Incentives to employer in private sector are to be given who provide 5% reservation for persons with benchmark disability. Special employment exchanges for the PWD are to be set up. Awareness and sensitization programs are to be conducted and promoted regarding the PWD. Standards of accessibility in physical environment, different modes of transports, public building and areas are to be laid down which are to be observed mandatorily and a 5-year time limit is provided to make existing public building accessible. Access to information and communication technology is to be ensured. The Central and State Advisory Boards on disability are to be constituted to perform various functions assigned under the Act. District level Committees are also to be constituted by the State Government. Chief Commissioner and two Commissioners for PWD are to be appointed by the Central Government at the central level for the purposes of the Act. Similarly, State Commissioners for

PWD are to be appointed by the State Governments. National Funds for PWD and State Funds for PWD are to be constituted at the central and state levels respectively by the appropriate Governments. Contraventions of the provisions of the Act have been made punishable by a fine of an amount up to ten thousand for first contravention and fifty thousand extendable up to five lakhs for subsequent contraventions. Atrocities on PWD have been made punishable with imprisonment of 6 months extendable to 5 years and with fine. Fraudulently availing of the benefits meant for PWD has also been made punishable.

23. THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (NDPS) ACT, 1985

Narcotic Drugs and Psychotropic Substances continue to have several medical and scientific uses. Their permissible use worldwide is for medical & scientific purposes only. At the same time, these drugs & substances have tremendous potential for abuse. In fact, these are abused and trafficked worldwide.

India's approach towards Narcotic Drugs and Psychotropic Substances is enshrined in Article 47 of the Constitution of India which mandates that the 'State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health'. The same principle of preventing use of drugs except for medicinal use was also adopted in the three international conventions on drug related matters, viz., Single Convention on Narcotic Drugs, 1961, Convention on Psychotropic Substances, 1971 and the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. India has signed and ratified these three conventions. India's commitment to prevention of drug abuse and trafficking predates the coming into force of the three conventions.

The statutory control over narcotic drugs is exercised in India through a number of Central and State enactments. The principal Central Acts, namely, the opium Act, 1857. The Opium Act, 1878 and the Dangerous Drugs Act, 1930 were enacted long time ago. With passage of time and the developments in the field of illicit drug traffic and drug abuse at the national and international level, many deficiencies in the laws that have

come into force under the aforesaid Acts. As a result to provide a comprehensive legislation on narcotic drugs and psychotropic substances which, inter alia, should consolidate and amend the then existing laws relating to narcotic drugs, make provisions for exercising effective control over psychotropic substances, make provisions for the implementation of international conventions relating to narcotic drugs and psychotropic substances, the Narcotic Drugs and Psychotropic Substances Act, 1985, popularly known as NDPS Act, was enacted on 16th September, 1985. The NDPS Act prohibits, except for medical and scientific purposes, the manufacture, production, possession sale, purchase, transport, warehouse, use, consumption, import inter-state, export inter-state, import into India, export from India, or 8 transshipment of narcotic drugs and psychotropic substances.

The Act is widely regarded as a prohibitionist law which seeks to grapple with 2 kinds of offences: trafficking of prohibited substances i.e. cultivation, manufacture, distribution and sale, as well as their consumption. The quantum of punishment under the NDPS Act is based on the quantity of drugs found which may be classified into 3 categories: small, less than commercial and commercial. As a result, the punishment may be as low as rigorous imprisonment for six months if the drugs found are in small quantity and as high as 20 years imprisonment for a large quantity of drugs.

As drug abuse is often a habitual problem for those who engage in it. The Act imposes a far stricter punishment on repeat offenders. Broadly speaking, the punishment for repeat offences can be up to one and half times the quantum of punishment for the first offence and even death penalty.

24. THE NATIONAL TRUST FOR WELFARE OF PERSONS WITH AUTISM, CEREBRAL PALSY, MENTAL RETARDATION AND MULTIPLE DISABILITIES ACT, 1999

The National Trust Act was enacted by the Parliament in December 1999. It has a very progressive objective so as to enable persons with disability to live as independently and as fully as possible within and close to the community to which they belong. The idea is not to push people out of the society and keep them in residential institutions, but to encourage them to live within their family. They have the right to live within their family.

This act covers the following disability areas and is defined by the National Trust as follows:

- ◆ “Autism means a condition of uneven skill development primarily affecting the communication and social abilities of a person, marked by repetitive and ritualistic behavior.”
- ◆ “Cerebral Palsy means a group of non-progressive condition of a person characterized by abnormal motor control posture resulting from brain insult or injuries occurring in the pre-natal, perinatal or infant period of development.”
- ◆ “Multiple disabilities means a combination of two or more disabilities as defined in clause (i) of section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995
- ◆ “Severe Disability means disability with eighty percent or more of one or more multiple disabilities.

The objectives of the National Trust are: [1] To enable and empower persons with disability (persons covered by the National Trust) to live as independently and as fully as possible within and as close to the community to which they belong. [2] To strengthen facilities to provide support to persons with disabilities to live within their own families and to help persons with disabilities who have no family support. [3] To extend support to registered organizations’ that provide need-based services to family of persons with disabilities. [4] To promote measures of care for persons with disabilities in the event of a death of their parent or guardian. [5] To evolve procedure for the appointment of guardians and trustees for persons with disability requiring protection. [6] To facilitate the realization of equal opportunities, protection of right, and full participation of persons with disability. [7] To do any other act which is incidental to the objectives mentioned above.

The Act contains provisions similar to the purpose of this Act. Section 3 of the Act deals with the Constitution of National Trust for Welfare of such persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability, etc. by the Central Government. The superintendence, management, etc. of affairs of this Trust shall be dealt

with by a Board. The Chairperson and members of the Board are appointed by the Central Government. The Board shall do all the acts enlisted under different clauses provided under Act, including receipt of contribution from the Central Government, receipt of bequest of movable property from any person for disabled persons' benefit, and all other given matters.

The Act provides for registration of associations set up by disabled persons or by parents of such persons or even by voluntary organization with its main object to promote welfare of disabled persons.

One of the salient features of the National Trust Act is constitution of Local Level Committees by the Board for prescribed areas. Another important provision is appointment of guardian to the disabled person, by which the parent of such persons or his relative or even a registered organisation can apply, with the consent of guardian of disabled persons, to the Local Level Committee, for appointment of person of their choice as guardian of such disabled persons. On such application the Local Level Committee after considering the need of such appointment and the purpose thereof, will decide the application by following the provisions contained in the regulations made in this behalf.

The responsibilities of the guardian are: [1] To care for the person with disability and his/ her property [2] To be responsible for the maintenance of the person with disability and [3] The guardian shall submit a statement of assets and liabilities a statement of accounts and balance sheet. If a guardian is not performing his duties properly, he can be removed. A guardian can be removed for abuse or neglect of a disabled person or misappropriation or neglect of property of the disabled. The local level committee must be certain that the necessary grounds exist, and must then record these reasons in writing before a guardian is removed.

25. VICTIM COMPENSATION SCHEME

Every crime produces a victim(s). The victims, who were generally considered as mere informants or witnesses in criminal trials, assisting the state in its endeavor to punish offenders, are now becoming the focal points of our criminal justice system. The criminal justice system is basically meant to redress the victimization of these victims and to address

the issues surrounding him. The last few witnessed ground breaking reforms in the approach of legal systems nationally as well as internationally with reforms not only in statutory laws but also even in judicial approach towards the victims of crime.

Victim compensation is one of the major aspects in reparation of the harm or injury caused to the victim due to the commission of the crime. Monetary assistance in one-way or the other always benefits the victims in the mitigation of their sufferings. The renaissance of the prominence of victims in legal system is however a recent phenomenon.

Post independence, the criminal trials were governed by criminal Procedure Codes 1898 and then by 1973 Code (**Cr.PC**). Till the year 2008, there was a provision more or less similar in both the codes for compensation to the victims of the offence that is section 545 in the old Code and section 357 in the new Code. The compensation has to be paid by the accused and on his conviction. This provision therefore prescribes the person as well as the circumstance (i.e. conviction of the accused) in which the compensation can be paid to the victim. It is a fact that majority of people who are accused of and are convicted of crimes are poor and therefore this provision was never a satisfactory answer to the woes of victims of crime. The payment of compensation by the offender is not possible where there is acquittal or where the offender is not apprehended. Further, the payment remains suspended till the limitation period for the appeal expires or if an appeal is filed, till the appeal is disposed of. The delay in the realisation of the amount often adds to the woes of the victim.

The duty of state to rehabilitate the victim of crime is not less than its responsibility of rehabilitating the criminal. The Victim compensation is a State obligation in all-serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be organised in a separate legislation by Parliament.

It is in consonance with this shift in the approach towards victims for compensating them that an amendment was made in the Code of Criminal Procedure, 1973 whereby a new provision i.e. Section 357 A has been added, which provides for the Victim Compensation Scheme.

As mandated in Sec 357A of CrPC- every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. The Government of kerala has introduced kerala victims compensation schemes in 2014. The said scheme was amendes in 2017.

There are many situations after the commission of the offences in which the compensation can be awarded. Whenever a recommendation is made by the Court for compensation, the District or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme aforesaid. If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation. Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation which shall be decided after due enquiry award adequate compensation by completing the enquiry within two months.

The District Legal Services Authority, as the case may be, to lessen the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below rank 4 no officer in charge of the police station or a judicial or executive Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

Under section 357A Code of Criminal Procedure, the State is also liable to pay compensation to the victims of crime apart from the accused under section 357 Code of Criminal Procedure.

Earlier under section 357, the compensation was awarded only in the eventuality of the conviction of the accused but now not only on conviction but also on acquittal or discharge of the accused or in case of

untraced status of the accused, compensation can be granted. It means that Section 357A of the Code of Criminal Procedure has substantially widened the scope of compensating the victims of crimes.

26. CYBER CRIMES

Though the word Crime carries its general meaning as “a legal wrong that can be followed by criminal proceedings which may result into punishment” whereas **Cyber Crime** may be “unlawful acts wherein the computer is either a tool or target or both”.

It is under these circumstances Indian parliament passed “**INFORMATION TECHNOLOGY ACT, 2000**” to have an exhaustive law to deal with the technology in the field of e-commerce, e-governance, e-banking as well as penalties and punishments in the field of cyber crimes.

Information technology has spread throughout the world. The computer is used in each and every sector wherein cyberspace provides equal opportunities to all for economic growth and human development. As the user of cyberspace grows increasingly diverse and the range of online interaction expands, there is expansion in the cyber crimes i.e. breach of online contracts, perpetration of online torts and crimes etc. Due to these consequences there was need to adopt a strict law by the cyber space authority to regulate criminal activities relating to cyber and to provide better administration of justice to the victim of cyber crime. In the modern cyber technology world it is very much necessary to regulate cyber crimes and most importantly cyber law should be made stricter in the case of cyber terrorism and hackers. Cyber Crimes could be hackers vandalizing your site, viewing confidential information, stealing trade secrets or intellectual property with the use of internet. It can also include ‘denial of services’ and viruses attacks preventing regular traffic from reaching your site. Cyber crimes are not limited to outsiders except in case of viruses and with respect to security related cyber crimes that usually done by the employees of particular company who can easily access the password and data storage of the company for their benefits. Cyber crimes also includes criminal activities done with the use of computers which further perpetuates crimes i.e. financial crimes, sale

of illegal articles, pornography, online gambling, intellectual property crime, e-mail, spoofing, forgery, cyber defamation, cyber stalking, unauthorized access to Computer system, theft of information contained in the electronic form, e-mail bombing, physically damaging the computer system etc.

CLASSIFICATIONS OF CYBER CRIMES

1. CYBER CRIMES AGAINST PERSONS

- ◆ **Harassment via E-Mails** It is very common type of harassment through sending letters, attachments of files & folders i.e. via e-mails. At present harassment is common as usage of social media increases day by day.
- ◆ **Cyber-Stalking** It means express or implied physical threat that creates fear through the use to computer technology such as internet, e-mail, phones, text messages, webcam, websites or videos.
- ◆ **Dissemination of Obscene Material** It includes Indecent exposure/ Pornography (basically child pornography), hosting of web site containing these prohibited materials.
- ◆ **Defamation** It is an act of imputing any person with intent to lower down the dignity of the person by hacking his mail account and sending some mails with using vulgar language to unknown persons mail account.
- ◆ **Hacking** It means unauthorized control/access over computer system and act of hacking completely destroys the whole data as well as computer programmes. Hackers usually hacks telecommunication and mobile network.
- ◆ **Cracking** It is amongst the gravest cyber crimes known till date. It is a dreadful feeling to know that a stranger has broken into your computer systems without your knowledge and consent and has tampered with precious confidential data and information.
- ◆ **E-Mail Spoofing** A spoofed e-mail may be said to be one, which misrepresents its origin.
- ◆ **SMS Spoofing** Spoofing is a blocking through spam which means the unwanted uninvited messages.
- ◆ **Carding** It means false ATM cards i.e. Debit and Credit cards used by criminals for their monetary benefits by withdrawing money

from the victim's bank account malafidely.

- ◆ **Cheating & Fraud** It means the person who is doing the act of cybercrime i.e. stealing password and data storage, has done it with having guilty mind which leads to fraud and cheating.
- ◆ **Child Pornography** It involves the use of computer networks to create, distribute, or access materials that sexually exploit underage children.
- ◆ **Assault by Threat** Refers to threatening a person with fear for their lives or lives of their families through the use of a computer network i.e. E-mail, videos or phones.

2. CRIMES AGAINST PERSONS PROPERTY

- ◆ **Intellectual Property Crimes** Intellectual property consists of a bundle of rights. Any unlawful act by which the owner is deprived completely or partially of his rights is an offence. The common form of IPR violation may be said to be software piracy, infringement of copyright, trademark, patents, designs and service mark violation, theft of computer source code, etc.
- ◆ **Cyber Squatting** It means where two persons claim for the same Domain Name either by claiming that they had registered the name first on by right of using it before the other or using something similar to that previously.
- ◆ **Cyber Vandalism** Cyber vandalism means destroying or damaging the data when a network service is stopped or disrupted. These acts may take the form of the theft of a computer, some part of a computer or a peripheral attached to the computer.
- ◆ **Transmitting Virus** Viruses are programs that attach themselves to a computer or a file and then circulate themselves to other files and to other computers on a network. They usually affect the data on a computer, either by altering or deleting it.
- ◆ **Cyber Trespass** It means to access someone's computer without the right authorization of the owner and does not disturb, alter, misuse, or damage data or system by using wireless internet connection.

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- ◆ **Internet Time Thefts** Basically, Internet time theft comes under hacking. It is the use by an unauthorised person, of the Internet hours paid for by another person. You can identify time theft if your Internet time has to be recharged often, despite infrequent usage.

3. CYBERCRIMESAGAINSTGOVERNMENT

There are certain offences done by group of persons intending to threaten the international governments by using internet facilities. It includes:

- ◆ **Cyber Terrorism** Cyber terrorism is a major burning issue in the domestic as well as global concern. The common form of these terrorist attacks on the Internet is by distributed denial of service attacks, hate websites and hate e-mails, attacks on sensitive computer networks etc.
- ◆ **Cyber Warfare** It refers to politically motivated hacking to conduct sabotage and espionage. It is a form of information warfare sometimes seen as analogous to conventional warfare although this analogy is controversial for both its accuracy and its political motivation.
- ◆ **Distribution of pirated software** It means distributing pirated software from one computer to another intending to destroy the data and official records of the government.
- ◆ **Possession of Unauthorized Information** It is very easy to access any information by the terrorists with the aid of internet and to possess that information for political, religious, social, ideological objectives.

4. CYBER CRIMESAGAINSTSOCIETYATLARGE

An unlawful act done with the intention of causing harm to the cyberspace will affect large number of persons. These offences includes:

- ◆ **Child Pornography** It involves the use of computer networks to create, distribute, or access materials that sexually exploit underage children. It also includes activities concerning indecent exposure and obscenity.
- ◆ **Cyber Trafficking** It may be trafficking in drugs, human beings, arms weapons etc. which affects large number of persons. Trafficking in the cyberspace is also a gravest crime.

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- ◆ **Online Gambling** Online fraud and cheating is one of the most lucrative businesses that are growing today in the cyber space. There are many cases that have come to light are those pertaining to credit card crimes, contractual crimes, offering jobs, etc.
 - ◆ **Financial Crimes** This type of offence is common as there is rapid growth in the users of networking sites and phone networking where culprit will try to attack by sending bogus mails or messages through internet. Ex : Using credit cards by obtaining password illegally.
 - ◆ **Forgery** It means to deceive large number of persons by sending threatening mails as online business transactions are becoming the habitual need of today's life style.

PREVENTIVE MEASURES FOR CYBER CRIMES

Prevention is always better than cure. Certain precautions shall be taken while operating the internet and follow certain preventive measures for cyber crimes. They are:

- ◆ Identification of exposures through awareness
- ◆ One should avoid disclosing any personal information to strangers via e-mail or while chatting.
- ◆ One must avoid sending any photograph to strangers by online as misusing of photograph incidents increases day by day.
- ◆ An update Anti-virus software to guard against virus attacks should be used by all the netizens and should also keep back up volumes so that one may not suffer data loss in case of virus contamination.
- ◆ A person should never send his credit card number to any site that is not secured, to guard against frauds.
- ◆ It is always the parents who have to keep a watch on the sites that your children are accessing, to prevent any kind of harassment or depravation in children.
- ◆ Web site owners should watch traffic and check any irregularity on the site. It is the responsibility of the web site owners to adopt some policy for preventing cyber crimes as number of internet users are growing day by day.

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- ◆ Web servers running public sites must be physically separately protected from internal corporate network.
 - ◆ It is better to use a security programmes by the body corporate to control information on sites.
 - ◆ Strict statutory laws need to be passed by the Legislatures keeping in mind the interest of netizens.
 - ◆ IT department should pass certain guidelines and notifications for the protection of computer system and should also bring out with some more strict laws to breakdown the criminal activities relating to cyberspace.
 - ◆ As Cyber Crime is the major threat to all the countries worldwide, certain steps should be taken at the international level for preventing the cybercrime.
 - ◆ A complete justice must be provided to the victims of cyber crimes by way of compensatory remedy and offenders to be punished with highest type of punishment so that it will anticipate the criminals of cyber crime.

Since users of computer system and internet are increasing worldwide, certain precautionary measures should be taken by while using the internet which will assist in challenging this major threat Cyber Crime.

27. NATIONAL RURAL EMPLOYMENT GUARANTEE

Majority of the people in India live in rural areas. It is an undisputed fact that any action for economic betterment of rural areas will result in greater social transformation and thereby increase the prosperity of the country itself. It can only be achieved by a drastic change in the rural infrastructure facilities in the fields of education, health, drinking water, housing and roads. The Government of India has modeled several projects to develop basic facilities in rural areas, like Pradhan Mantri Gramodaya Yojana (PMGY), Integrated Rural Development Programme (IRDP), The Development of Women and Children in Rural Area (DWCRA), Million Wells Scheme (MWS), Sampoorna Gramin Rozgar Yojana

(SGRY) etc. Keeping in view the needs and aspirations of the common Indians, Panchayati Raj institutions have been involved in the programme implementations in rural areas.

However, all these executive initiatives were insufficient to guarantee a proper improvement in rural infrastructure. Hence, the Parliament of India enacted an Act to provide enhancement of livelihood security of the households in rural areas of the country by providing at least one hundred days of guaranteed wage employment. This is the National Rural Employment Guarantee Act, 2005.

The Act requires the State Government to ensure at least 100 working days for every household in a notified rural area by providing unskilled manual works. Such workers are entitled to daily wages as prescribed by the Central Government under notification, which is payable on weekly basis. The State Government is required to frame a scheme for this purpose within six months of the commencement of the Act.

If an applicant under a Scheme is not provided employment, such applicants are entitled to daily unemployment allowance, subject to the conditions. The guarantee of employment or unemployment allowance is to a 'household', and for the purpose of ensuring the minimum employment days, the employment opportunities granted to all the adult members in a household will be taken into consideration. The management of the Scheme of employment guarantees and unemployment wages are entrusted with Programme Officers and District Programme Coordinators. There are provisions to constitute Central Employment Guarantee Council and State Employment Guarantee Council to monitor the schemes and reviewing the implementation of the Act.

The District, Block and Grama Panchayat are the principal authorities for planning and implementation of Schemes under the Act. The Grama Panchayat has the additional responsibility to identify the projects in their respective areas as per the recommendations of the Grama/ Ward Sabha. It is the responsibility of the Grama Panchayat to allocate the employment opportunities among the applicants and ask them to report for work.

There are penal provisions in the Act penalizing the persons in

cases of non-compliance of the provisions of the Act. The violators may be convicted for a fine up to Rs. 1000.

The adult members of every household in a rural area can make applications to do unskilled manual work under the Scheme. They have to submit their names, age and address of the household to the Grama Panchayat in the respective jurisdiction. When an application is received, the Grama Panchayat authorities are bound to register it and it is in force for 5 years. The Panchayat has the responsibility to issue a Job Card containing details of adult members of a household. The persons included in the Job card are entitled to get employment opportunities under the Scheme, for a guaranteed minimum of 100 days with daily wages. Period of such employment shall ordinarily be for 14 continuous days and six days in a week.

The National Rural Employment Guarantee Act has a greater role in ensuring the minimum standard of living in rural area, as it guarantees a source of income to the ordinary people of our rural area for their livelihood.

28. SOCIAL SECURITY OF UNORGANIZED WORKERS

We have a strong trade union system or employee organizations to make collective bargains for the labourers in the industrial sectors or in other organized sectors such as government services, services in Public Sector Undertakings, Companies and Corporations. However, there are a large number of workers employed in the unorganized sector, which means an enterprise owned by individuals or in the field of self employment, where the number of workers is less than 10. Lack of collective bargaining in this sector results in the exploitation of workers by the employers. Their work security and wage security is also minimum compared to the workers in the organized sector.

Who is an ‘unorganized worker’? The Unorganized Worker’s Social Security Act, 2008 defines an unorganized worker, as a home based worker, a self employed worker, wage workers in unorganized sector and also the workers in organized sector not covered by the social security schemes under various Acts, such as the Workmen’s Compensations Act 1923, Industrial Disputes Act 1947, Employees’ State

Insurance Act 1948, Employee's Provident Funds and Miscellaneous Provisions Act 1952, Maternity Benefit Act 1961 and Payment of Gratuity Act 1972. The workers employed in homes like domestic workers, temporary and casual workers are beneficiaries of the Social Security Act, 2008.

Every unorganized worker, having the minimum age of 14 years, is entitled for a registration under the Act, by making an application for registration before the District Administration. On processing the registration application, the District Administration is bound to issue a 'SMART CARD' which is an identity card carrying a unique identification number to the worker.

The Central Government has the responsibility to formulate a Welfare Scheme for unorganized workers on the matters relating to their life and disability to cover health and maternity benefits, old age protection etc. Indira Gandhi National Old Age Pension Scheme, National Family Benefit Scheme and Janani Suraksha Yojana, Handloom Weavers' Comprehensive Welfare Scheme are some of the schemes notified in the Schedule by the Government under the Act.

As per the Act, there is a National Social Security Board and State Social Security Boards for unorganized workers constituted for recommending suitable social security schemes and to monitor the social welfare schemes for the unorganized workers at the national and state levels. Thus like any worker in the field of organized sector or industry, the workers in the unorganized sector are also now enjoying the benefits of social security scheme.

Addresses of District Legal Services Authorities in Kerala

Thiruvananthapuram

District Legal Services Authority
District Court Buildings, ADR Centre,
Vanchiyoor, Thiruvananthapuram.
Ph. No. - 0474 -2467700

Thrissur

District Legal Services Authority
ADR Centre, District Court Buildings
Civil Lane, Ayyanthole, Thrissur
Ph. No. -0487 - 2363770

Kollam

District Legal Services Authority
District Court Buildings
Kollam
Ph. No. - 0474 2791399

Palakkad

District Legal Services Authority
District Court Buildings
Palakkad
Ph. No. - 0491 - 2505665

Pathanamthitta

District Legal Services Authority
District Court Buildings
Pathanamthitta
Ph. No. - 0468 -2220141

Malappuram

District Legal Services Authority
District Court Buildings
Manjeri, Malappuram District
Ph. No. - 04833 - 244151

Kottayam

District Legal Services Authority
ADR Centre, Near Malankara Quarters
Muttambalam P.O., Kottayam
Ph. No. - 0481 - 2572422

Kozhikkode

District Legal Services Authority
District Court Buildings
Kozhikkode
Ph. No. - 0495 -2366044

Alappuzha

District Legal Services Authority
District Court Buildings,
Alappuzha
Ph. No. - 0477-2262495

Wayanad

District Legal Services Authority
District Court Buildings
Kalpetta, Wayanad District
Ph. No. - 04936 - 207800

Idukki

District Legal Services Authority
District Court Buildings
Thodupuzha, Idukki District.
Ph. No. -04862-255383

Kannur

District Legal Services Authority
District Court Buildings
Thalassery, Kannur District.
Ph. No. - 0490- 2344666

Ernakulam

District Legal Services Authority
ADR Centre, District Court Annex Buildings
Kaloor, Ernakulam
Ph. No. -0484 -2344223

Kasaragod

District Legal Services Authority
District Court Buildings
Kasaragod
Ph. No. - 04994- 256189

Saketham (Legal Assistance Establishment): 0484-2396817
Saketham Help Line : 1516 (Office Hours)
KeLSA Help Line : 9846700100 (24 Hours)