HANDBOOK OF BASIC LAWS

for Educational and Vocational Guidance Counsellors

(An Initiative under Project Arushi: Umeed ki Kiran)

Delhi State Legal Services Authority

along with

Central and West District Legal Services Authorities

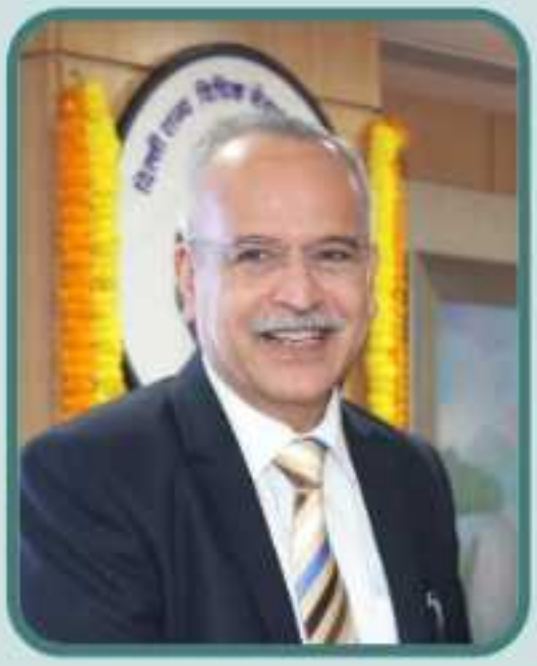
in association with

Directorate of Education, GNCT of Delhi

Every right for every child.

- UNICEF

MESSAGE FROM THE PATRON-IN-CHIEF, DSLSA



Hon'ble Mr. Justice
Satish Chandra Sharma
Chief Justice
High Court Of Delhi

Justice Satish Chandra Sharma
CHIEF JUSTICE

HIGH COURT OF DELHI
Sher Shah Road
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MESSAGE

The Constitution of India embodies a just and equal society in which the routes for enforcing one's rights are equally accessible, irrespective of a person's place in social or financial strata. The Legal Services Authorities Act, 1987 was enacted to realise the constitutional goal that competent legal services must be provided to all, and access to justice must be institutionalised from the ground level to the national level.

Project Arushi is a commendable collaborative effort of the Delhi State Legal Services Authority and its Central and West District Authorities along with the Directorate of Education, GNCT of Delhi, to train the Educational and Vocational Guidance Counsellors ("EVGCs") appointed in government schools of Delhi on legal aspects of the issues they face every day while interacting with children. I have been informed that the Directorate of Education, GNCT of Delhi manages 1056 schools in Delhi and has appointed 475 EVGCs holding qualifications in counselling and psychology in these schools for providing emotional and mental support to more than 13 lakh students. These EVGCs hold a critical position in the life of students as they often confide in them about personal aspects of their lives, including issues that have legal overtones, such as drug abuse, physical and sexual abuse, domestic violence, vulnerability to cyber crimes etc.

The EVGCs have been trained under ***Project Arushi*** on legal issues through various interactive sessions conducted by our legal services institutions, as also through field visits to core judicial, law enforcement, corrective and rehabilitative institutions. This Handbook shall operate as a comprehensive reference book containing the legal framework on a wide range of laws such as the right to free legal aid, laws relating to children and women, cyber safety, and criminal justice framework. It is an excellent effort by the team of ***Project Arushi*** to also bring together information related to legal services institutions, protection officers, help lines, one-Stop Centres, etc., in one place so that actionable guidance can be given to the children in need. With their background in psychology and the help of this Handbook, the EVGCs will be sufficiently equipped to address the concerns of the students with empathy and guide them towards appropriate legal remedies.

I once again congratulate the Delhi State Legal Services Authority, and its Central and West District Authorities and Directorate of Education, GNCT of Delhi for achieving this first milestone in the long and arduous journey to secure access to justice to children.

All the very best!

(SATISH CHANDRA SHARMA)

MESSAGE FROM THE EXECUTIVE CHAIRMAN, DSLSA

Hon'ble Mr. Justice
Siddharth Mridul
Hon'ble Judge
High Court Of Delhi

SIDDHARTH MRIDUL
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FOREWORD

"Access to Equal Justice for All" was identified as a fundamental principle within the framework of the Constitution of India and in order to realize this objective, the Legal Services Authorities Act of 1987 was enacted. This Act entrusted the Delhi State Legal Services Authority (DSLSA) and its corresponding District Legal Services Authorities (DLSAs) with the esteemed responsibility of furnishing competent and cost-free legal aid to marginalized individuals within the society. Additionally, their mandate encompassed the propagation of legal awareness and literacy throughout the people. One specific group covered under this legislation was children and youth. Despite being hailed as the future of the nation, they often found themselves subjected to various forms of violence and exploitation.

The constitutional obligation rested upon these legal institutions and government authorities to actively combat the aforementioned threats, this gave rise to ***"Project Arushi"*** an initiative undertaken by the Delhi State Legal Services Authority. The project aimed to bridge the information gap for children by offering training to Educational and Vocational Guidance Counselors' (EVGCs). These EVGCs played an integral role in molding the personalities of children and aiding them in navigating through complex situations. These EVGCs uncovered underlying socio-legal causes such as domestic violence, substance abuse, physical and sexual abuse, and limited awareness or access to affordable legal remedies. Due to the confidential and close relationships they formed with the students, these EVGCs were specifically trained to dispel any misconceptions and provide robust support, extending the protective umbrella of the law to children in distress.

The present handbook represents a significant stride towards ensuring children's access to justice. It provides a comprehensive examination of the challenges faced by children in today's global environment, along with practical and legal recommendations to counter these challenges. ***"Project Arushi"*** holds profound potential, as it introduces the realm of justice into one of the most accessible environments for students—their own schools. It is my sincere belief that through thorough training and utilization of this handbook, EVGCs can bring forth positive transformations in the lives of children who may need it in such distress situations.

I extend my heartfelt congratulations to the entire team of ***"Project Arushi"***, as well as to the officers and officials of DSLSA, Central and West DLSAs, and the Directorate of Education, for initiating such a commendable and Noble cause.

Justice Siddharth Mridul
Executive Chairman
Delhi State Legal Services Authority

MESSAGE FROM THE CHAIRPERSON, CENTRAL DLSA

Mr. Sh. Narottam Kaushal, Principal District & Sessions Judge (HQs), Tis Hazari Court, Delhi

नरोत्तम कौशल
प्रधान जिला एवं सत्र न्यायाधीश (मुख्यालय)
तीस हजारी न्यायालय
दिल्ली-110054 (भारत)

NAROTTAM KAUSHAL
Principal District & Sessions Judge (HQs.)
TIS HAZARI COURT
DELHI-110054 (INDIA)

अ.शा. संख्या
D.O. No

दिनांक 28.08.2023
Dated

MESSAGE FROM LD. PRINCIPAL DISTRICT & SESSIONS JUDGE (HQ)

It gives me immense pleasure that Central and West District Legal Services Authorities, together with Delhi State Legal Services authority and the Directorate of Education, GNCT of Delhi, have successfully completed the first phase of Project Arushi: Umeed ki Kiran. It is a truly transformative initiative which is fuelled by the collective dedication of all the stakeholders. Through Project Arushi, we have embarked on a mission that not only aligns with our statutory mandates but also resonates deeply with our commitment to "Sewa Samadhan Samarpan".

Project Arushi was conceived with a realization that our children are often victims as well as witnesses of physical, sexual, and mental abuse. It is paradoxical that on one hand, children are labelled as God's most precious creation and on the other, they are exploited, silenced and abused. Many such children find solace by confiding in their guidance counsellors. Through this project, we have imparted significant legal literacy to Educational and Vocational Guidance Counsellors with the hope that this will enable them to act as a bridge between children and the appropriate legal institutions.

The objective of this book is to communicate relevant information in a lucid and logical manner that can be understood by the counsellors without difficulty, and that can be used by them as they help children navigate social and legal issues. I congratulate Delhi State Legal Services Authority, Central and West District Legal Services Authorities and Directorate of Education, GNCT of Delhi for coming together for this impactful project and resourceful handbook and wish them best for their upcoming endeavours.

(NAROTTAM KAUSHAL)
Principal District and Sessions Judge (HQ)/
Chairperson Central DLSA

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MESSAGE FROM THE CHAIRPERSON, WEST DLSA

Mr. Vinod Kumar
Principal District & Sessions Judge (West)
Tis Hazari Court
Delhi.

Vinod Kumar
Principal District & Sessions Judge (West)
Tis Hazari Courts
Delhi

विनोद कुमार
प्रधान जिला एवं सत्र न्यायधीश (पश्चिम)
तीस हजारी न्यायालय
दिल्ली

MESSAGE

"The greatness of human being is not in being human, but in being humane"- Mahatma Gandhi

Our Constitution has been drafted on certain ideals which have been specifically mentioned in The Preamble. However, I believe that the supreme and the underlying ideal is humanity. On reading the Fundamental Rights, Fundamental Duties and Directive Principles of State Policy in the Constitution of India, one can easily notice that the common string among them is the idea of inclusion of all and exclusion of none. As a part of it, Article 39A aims to secures equal justice for all through free legal aid and to also ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. To realise this objective, Legal Services Authority Act was enacted in 1987 under which District Legal Services Authorities have been enjoined upon the duty to provide free legal aid to the entitled categories as laid down in the Section 12 of the Act. However, another very significant function under the Act is spreading legal awareness.

Children are one of the categories which are entitled to Free legal aid. Even otherwise, being tender and owing to their vulnerability, children need to be protected with conjoint efforts of different agencies and departments of Government. Central and West District Legal Services Authorities are committed to incessantly work in this direction and find out different and effective ways to reach out to children. Project ***'Arushi: Umeed ki Kiran'*** was conceived with this idea and intent in the backdrop. Central and West District Legal Services Authorities associated with Delhi State Legal Services Authority and Directorate of Education to bring a ray of hope in the life of children by equipping them with valuable information about their rights and about means to realise the same, if need arises.

Educational and Vocational Guidance Counsellors (EVGCs) working with Directorate of Education visit all 1056 schools of the Department and get a chance to interact with Children on daily basis as a part of their duty. Being domain experts, they provide counselling to the students, especially when the students come up with their behavioural, academic or emotional issues. Thus, we understand that they are in better position to assess the underlying issues with the children and have better understanding about effective communication with children. Therefore, through EVGCs, the information about rights, remedies and agencies to be approached in different adverse circumstances can be percolated to each student in the most effective manner. With this vision, academic sessions on various relevant legal topics as well as field visits to different legal institutions were conducted.

This Handboook is an effort to concretise the knowledge that EVGCs gained during this legal literacy course. We hope that this shall work as a ready reckoner for them while dealing with socia-legal issues of children and together we achieve the objective of protecting Children in true sense and in all circumstances.

I congratulate everyone involved in this Project for its successful completion.

Vinod Kumar
(Vinod Kumar)

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MESSAGE FROM THE MEMBER SECRETARY, DSLSA

Mr. Mukesh Kumar Gupta
District Judge

MUKESH KUMAR GUPTA
District Judge
Member Secretary

Central Office :
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MESSAGE

"Sewa Samadhan Samarpan" and **"Nyaya Sabke Liye"** are the two cherished guiding forces behind Delhi State Legal Services Authority. It is the bounden constitutional & statutory duty of Delhi State Legal Services Authority and its District Authorities to provide access to justice to all, especially to the marginalized and disadvantaged sections of society.

Children, despite being entitled to free legal services under Section 12 of the Legal Services Authorities Act, 1987, are often silent spectators to their own exploitation or of those close to them. To make justice delivery system accessible, DSLSA constantly conducts awareness activities and programmes specifically dedicated to the children. Over the years, DSLSA has made steadfast progress in protecting the rights of children, and ***Project Arushi: Umeed ki Kiran*** was launched in furtherance of this objective.

As a part of this project, the Educational and Vocational Guidance Counsellors (EVGCs) of Directorate of Education, GNCT of Delhi were imparted with knowledge and skills for tackling issues like domestic violence, substance abuse, cyber safety, prevention of sexual offences against children etc. They were also exposed to various institutions viz. Court complexes, Prisons, Observation Homes, Police Stations, drug de-addiction centres and child care institutions. This handbook has been created to serve as a guiding light to the EVGCs so that they are able to provide holistic guidance to students and also to assist them in approaching the appropriate legal institutions. The contents have been sourced from various legal sources to create a legal ready reckoner containing all relevant information at one place, so as to equip them suitably for providing first response in legal issues concerning children.

I convey my sincere appreciation to Sh. Naveen Gupta, Sh. Mridul Gupta and Sh.Abhinav Pandey for supervising the ***Project Arushi: Umeed ki Kiran***, and to Ms. Rishika Srivastava and Ms. Helly Fur Kaur, Secretaries DLSAs, for creating this handbook and my entire team for executing ***Project Arushi: Umeed ki Kiran***, for the benefit of EVGCs, and through them, of the more than 13 lakh children studying in government-run schools in Delhi.

I sincerely hope that this handbook shall come as a first significant stepping stone towards securing justice to children.

JAI HIND.

(MUKESH KUMAR GUPTA)

MESSAGE FROM THE DIRECTOR

Mr. Himanshu Gupta
Director, Directorate of Education, GNCT of Delhi

HIMANSHU GUPTA, IAS
Director, Education & Sports

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MESSAGE

I feel elated in recording my deep appreciation for the power packed Legal Literacy Course named 'Arushi- Umeed Ki Kiran' conducted by the Central & West District Legal Services Authorities (under the aegis of Delhi State Legal Services Authority) on the request of EVGC Bureau for 475 Educational & Vocational Guidance Counsellors of the Directorate of Education at SBV, Rouse Avenue.

Basic concepts of laws directly related to children e.g. Domestic Violence Act 2005, Prohibition of Child Labour Act 2006, POCSO Act 2012 and Juvenile Justice Act 2015 were explained with practical examples. And the best feature of this Project was field visits to Prisons, Observation Homes & Police Stations.

The enthusiasm with which Honourable Judges rendered the simple versions of the otherwise not so easy to comprehend legal provisions was imbibable.

I am given to understand that in order to propagate Legal Literacy, the DLSA is brining out a comprehensive Handbook also which will carry all basic information in r/o. important legal tenets compiled for the understanding of common citizens.

I extend my best wishes to the DLSA for this noble enterprise.

(HIMANSHU GUPTA)

MESSAGE FROM THE SECRETARIES

Ms. Rishika Srivastava

Secretary, Central DLSA

Ms. Helly Fur Kaur

Secretary, West DLSA

Message from Secretaries, Central and West District Legal Service Authorities

Central and West District Legal Services Authorities are guided by the principle "every right, for everychild" at each step of the way. Over the years, we have reached out to the most marginalized sections of the society through extensive grassroot programmes and campaigns. One such group is that of children. As a part of our various initiatives to safeguard child rights and to protect and nurture childhood, Delhi State Legal Services Authorities along with Central and West District Legal Services Authorities decided to associate with the Directorate of Education, GNCT of Delhi with the aim of equipping Educational and Vocational Guidance Counsellors (EVGCs) with crucial information about rights, remedies and legal aid. EVGCs, being counsellors, confidants, guides and friends, hold a unique position in the lives of school going children. It is this unique position that makes EVGCs one of the most appropriate touchpoints for Project Arushi: Umeed ki Kiran. This handbook has been created to enable the EVGCs to deal with socio-legal issues that arise as they interact with students and are exposed to their multi-faceted problems.

This handbook is a result of the outstanding leadership and supervision of Hon'ble Mr. Justice Siddharth Mridul, Judge, High Court of Delhi and Executive Chairperson, Delhi State Legal Services Authority who has motivated everyone with his commitment and vigour. We convey our heartfelt gratitude to Sh. Narottam Kaushal, Ld. Principal District and Sessions Judge (HQ) and Sh. Vinod Kumar, Ld. Principal District and Sessions Judge (West) for their mentorship and trust, which enabled us to bring our ideas to fruition. We are very thankful to Ld. Member Secretary, Delhi State Legal Services Authority and his team for their enthusiastic support and involvement in the creation of this handbook and the execution of Project Arushi: Umeed ki Kiran. Without them steering the wheels, our efforts would not have been as successful. We also extend our gratitude to the Directorate of Education, GNCT of Delhi for their cooperation and partnership.

We acknowledge the dedicated involvement and contributions of Ms. Anugya Chauhan, Ms. Manisha Bhau, Ms. Athira Johny, Mr. Harshal Kumar, Mr. Yashendra, Mr. Hardik Choubey and Ms. Neha Sumesh in the creation of this handbook. Our special thanks to Mr. Abhinav Pandey, Ms. Jyoti Maheshwari and Ms. Saema Jain for taking out their valuable time for reviewing this book.

Ms. Helly Fur Kaur
Secretary, West DLSA

Ms. Rishika Srivastava
Secretary, Central DLSA

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CHAPTER I

RIGHT TO FREE LEGAL AID AND LEGAL SERVICES AUTHORITY ACT, 1987

INTRODUCTION

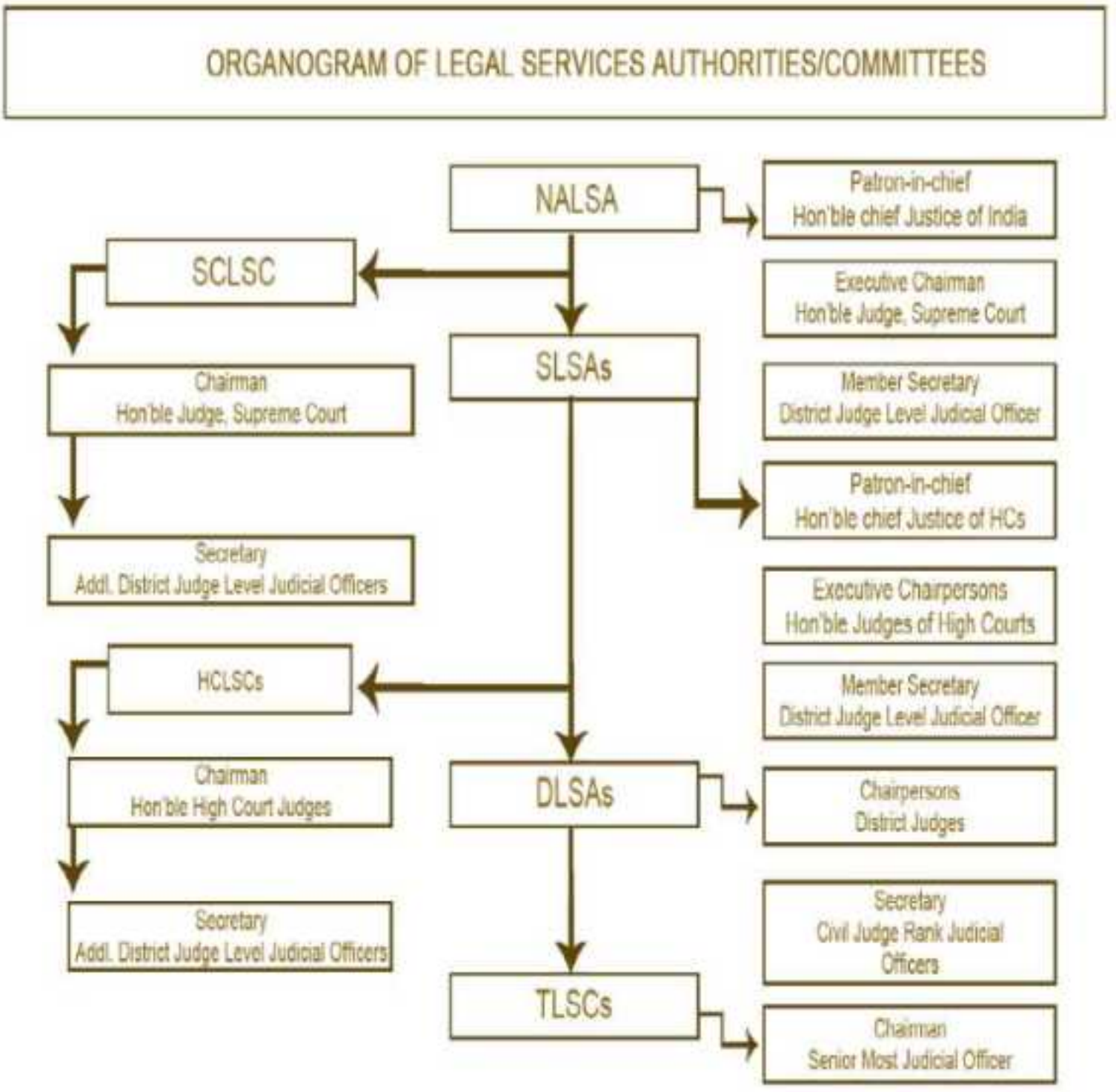
Article 39A of Constitution of India puts an obligation on the State to secure operation of the legal system in a manner that promotes justice on the basis of equal opportunity and is also required to ensure that opportunity for securing justice is not denied to any citizen by reason of economic or other disability. In pursuance thereof, **Legal Services Authority Act, 1987** was enacted.

The most prominent feature of this legislation is that it provides right to free legal services to certain specified category of persons and provides for efficient implementation and monitoring of the same. It also establishes legal services authorities at all levels i.e., National, State, District and Taluk levels and defines their functions so as to ensure that justice is approachable and accessible to each person.

It further provides for the organization of Lok Adalats and settlement of disputes through alternate dispute resolution mechanisms. It also mandates the legal services authorities to spread awareness among the masses so as to enable each person to realize their rights. With the passage of time, the role of legal services institutions has expanded considerably and now includes awarding and disbursal of victim compensation, preventing unnecessary detention in prisons by holding meetings of Undertrial Review Committee, appointing and training para-legal volunteers for assistance in police stations for matters pertaining to children etc.

It must be borne in mind that right to free legal aid is not a matter of state largesse and it has been recognized as a fundamental right under Article 21 of the Constitution of India which means that it is an essential component of right to life and personal liberty.

STRUCTURE OF LEGAL SERVICES INSTITUTIONS IN INDIA:



National Legal Services Authority (NALSA):

National Legal Services Authority (NALSA), which is also called the Central Authority under the Act, has Hon'ble Chief Justice of India as its Patron-in-Chief and a serving or retired Judge of the Supreme Court as its Executive Chairperson.

NALSA is responsible for laying down policies and principles at the central level to make legal services available under the Act. It has to take measures to spread legal literacy and awareness among the masses especially the weaker sections of the society. It has to organize legal aid camps in rural areas, slums or labour colonies, promote legal research in fields of legal services and take any other step to ensure legal aid reaches grass root level. It is also responsible for laying out effective and economical schemes for that purpose, making appropriate allocation of funds and providing grants-in-aid to various voluntary social service institutions and the State and District Authorities.

State Legal Services Authority (SLSA):

State Legal Service Authorities have the Hon'ble Chief Justice of their respective High Courts as their Patrons in Chief and a serving or retired Judge of the High Court as their Executive Chairperson.

This Authority is constituted by the State Government to give effect to policy and directions of NALSA. It is also responsible for giving legal services, conducting Lok Adalats, undertaking legal aid programmes and other necessary functions as required.

In Delhi, the Delhi State Legal Services Authority functions at the state level. This Authority has its office on 3rd floor, Rouse Avenue District Court, Delhi.

District Legal Services Authority (DLSA)

DLSAs perform such functions of the State Authority in the District as may be delegated to it from time to time by the State Authority. In addition, the District Authority coordinates the activities of the Taluk Legal Services Committee and other legal services in the district, organizes Lok Adalats within the District, and performs such other functions as the State Authority may fix by regulations.

Other authorities:

Besides, above Authorities, Supreme Court Legal Services Committee, High Court Legal Services Committees and Taluka Legal Services Committee are also the Authorities created under this Act to perform functions as may be prescribed by the Central or State Government, as the case may be.

There is no Taluka Services Authories Act

FREE LEGAL AID AND SERVICES

1. Who is entitled to avail free legal services?

Contrary to popular belief, free legal services are not just for those who have financial difficulties, but it is for all persons belong to the following categories:

- a member of a Scheduled Caste or Scheduled Tribe;
- a victim of trafficking in human beings or begars
- a woman or a child;

- a person with a physical or mental disability
- a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, natural calamity or industrial disaster; or
- an industrial workman; or
- a person in custody; including custody in a protective home or in a juvenile home or in a psychiatric hospital or psychiatric nursing home;
- a person whose annual income is less than:
    - Rs 3 lakhs for legal services in District Court and High Court (for senior citizens, this income threshold is Rs 4 lakhs) [*This income limit is only for availing free legal services in Delhi. Other states may have their own income ceilings and well as other categories.]*
    - Rs 5 lakhs for legal services in the Supreme Court
- Acid attack victim
- Persons infected and affected with HIV AIDS
- Transgender person having income less than Rs 4 lakhs *[This income ceiling is only for availing free legal services in Delhi]*

However, before getting free legal services, the legal services institution will have to be satisfied that such person has a prima facie case to prosecute or to defend.

2. How to avail free legal services?

Any entitled person willing to avail legal service may use any of the following platforms:

- Front Office of Supreme Court Legal Services Committee and High Court Legal Services Committee situated within the Court complex itself
- Front office of Delhi State Legal Services Authority or District Legal Services Authority – These offices are located in all the district court complexes in Delhi
- The nearest legal services clinic run by NALSA, DSLSA or DLSAs
- Web portal or mobile application of NALSA known as Legal Services Management System (LSMS)
- Vidhik Sewa mobile application of Delhi State Legal Services Authority
- Toll Free Helpline of National Legal Services Authority- 15100
- Toll Free Helpline number of Delhi State Legal Services Authority – 1516
- NALSA's Vidhi chatbox
- Website of NALSA, DSLSA or DLSA

3. What is included in free legal services? Will I have to pay court fees or printing and drafting charges?

Free legal services do not mean only giving an advocate without fees. It includes the following expenses as well:

- Court fees, provided that Court fees will be payable only after an application is moved before the Court concerned for suing as an indigent person and the Court has passed an order on such application;
- Process fees and other similar charges payable or incurred in connection with any legal proceedings;

- Charges for drafting, preparing, filing of any legal proceedings and representation by a legal practitioner in legal proceedings;
- Cost of obtaining and supply of certified copies of judgments, orders and other documents in legal proceedings;
- Cost of preparation of paper book (including paper, printing and translation of documents) in legal proceedings and expenses incidental thereto;

However, charges for spot inspection other than local commissioner's fee, such as photographer's/electrician's/plumber's/mason's charges and similar expenditure, charges for medical examination and the like, shall not be payable, except with the approval of the Chairperson.

4. Can legal services be withdrawn? If so, in what circumstances?

It is pertinent to mention that as per the regulations in force in Delhi, legal services may be withdrawn, after giving due notice to the legal aid beneficiary, in following circumstances:

- in the event of it being found that the aided person was possessed of sufficient means or that he obtained legal service by misrepresentation or fraud;
- in the event of any material change in the circumstances of the aided person;
- in the event of any misconduct negligence on the part of the aided person in the course of receiving legal service;
- in the event of the aided person not co-operating with the District Authority or with the legal service advocate assigned by the District Authority;

- in the event of the aided person engaging a legal practitioner other than the one assigned by the District Authority;
- in the event of death of the aided person except in the case of civil proceedings where the right or liability survives;
- in the event the application for legal service is found to be an abuse of the process of law or an abuse of legal services.

Where the legal services are withdrawn on the grounds set out in clause (a) above, the District Authority shall be entitled to recover from the aided person the amount equivalent to the legal services granted.

CHAPTER II

FUNDAMENTAL RIGHTS AND FUNDAMENTAL DUTIES

Fundamental Rights (Part III of the Constitution of India)

Part III of the Constitution of India contains the fundamental rights. It deals with rights and liberties of such basic nature that they are the very foundation of a democratic and just way of life. A fundamental right stands at a higher pedestal than an ordinary legal right as it is protected and enforced by the Constitution itself. It can be altered only by a constitutional amendment, and it can be suspended or restricted only in the manner prescribed in the Constitution. All constitutional rights are not fundamental rights. It is only the rights in Part III of the Constitution which are fundamental rights.

Given below are the various fundamental rights in the Constitution:

Article 14: Equality before law

Article 14 states that the 'State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.'

Article 14 uses the words 'any person' meaning that it includes citizens as well as non-citizens, companies, associations, etc. Equality is a dynamic concept, including with its ambit many aspects, such as that like should be treated alike and unlike should not be treated alike. Further, it emanates from Article 14 that State action must be based on valid relevant principles applicable alike to all similarly situated, and it must not be arbitrary or guided by any extraneous or irrelevant considerations as that would amount to denial of equality.

Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

Article 15 states that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Clause (2) states that no citizen can be subject to any disability, liability, restriction or condition with the following based on grounds only of religion, race, caste, sex, place of birth or any of them:

a. access to shops, public restaurants, hotels and places of public entertainment; or

b. the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

For instance, if the members of a certain caste are prohibited by other castes in the village from accessing the water well or the temple, such prohibition would be squarely covered by Article 15(2) and the members of the said caste would have a right to move Court seeking enforcement of their fundamental right.

Clause (3) clarifies that Article 15 does not prevent the State from making any special provision for women and children. Therefore, special laws and provisions for women and children (such as maternity benefits for women, and the Juvenile Justice (Care and Protection of Children) Act of 2015) have been enacted by the State.

Clause (4) of Article 15 allows the State to make special provisions for advancement of socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Clause (5) further states that such special provisions can be made in relation to admission to educational institutions including private institutions, whether aided or unaided by the State, other than the minority educational institutions.

Clause (6) allows the State to enact special provision for advancement of economically weaker sections of citizens other than the classes mentioned in Clauses (4) and (5). It states that such reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category. The term 'economically weaker sections' is not defined in Clause (6), instead, it is stated that the State will notify it from time to time on the basis of family income and other indicators of economic disadvantage.

Article 16: Equality of opportunity in matters of public employment

Under Article 16, the guarantee against discrimination deals with 'employment and appointment', whereas Article 15 is a wider and more general guarantee.

Clause (1) and Clause (2) of Article 16 read as follows:

1. There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

2. No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or

discriminated against in respect of, any employment or office under the State.

For instance, if the government passes a law prohibiting women from working in premises where liquor is consumed by the public, such a law will be liable to be struck down as it discriminates against women's right to employment and is based on stereotypes as to gender roles in employment.

The discrimination on the ground of 'sex' under Article 15 and 16 includes discrimination on the ground of gender and sexual identity. The expression 'sex' is not limited to biological sex of male and female, as it includes transgenders as well as members of the LGBT community. Sex is not merely restricted to the biological attributes of an individual, but also includes their sexual identity and character.

Clause (3) allows the Parliament to prescribe, in regard to a class or classes of employment or appointment, a requirement as to residence within a State or Union territory prior to such employment or appointment.

Clause (4), (4A), and (4B) pertain to the authority of the State to make provisions as to reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. Clause (4) allows such provisions, (4A) deals specifically with provision for reservation in matters of promotion, with consequential seniority, in services under the State in favour of the Scheduled Castes and the Scheduled Tribes, and Clause (4B) deals with considering of unfilled reserved vacancies of a year for being filled up as a separate class of vacancies in any succeeding year.

Clause (5) states that nothing in Article 16 shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution thereof shall be a person professing a particular religion or belonging to a particular denomination.

Lastly, Clause (6) allows the State to make provision for reservation of appointments or posts in favour of economically weaker sections of citizens other than the classes mentioned in Clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category.

Article 17: Abolition of untouchability

Article 17 abolishes the practice of "untouchability" and forbids any form of it. The enforcement of any disability arising out of "Untouchability" is an offence punishable in accordance with law.

The Protection of Civil Rights Act, 1955 has been enacted for this purpose. It prescribes punishment for preaching and practice of "untouchability", as well as the enforcement of any disability arising from it. It also penalizes social disabilities enforced on the basis of untouchability such as access to public places, acquisition of property, etc. It also penalizes refusing admission in hospitals, or refusing sale of goods or rendering of a service on the ground of untouchability.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 furthers the objective of preventing discrimination on the basis of caste and promoting social inclusion. It punishes discriminatory acts against members of SCs and STs such as wrongful deprivation of rights over any land

or water, bonded labour, prevention from exercising civil and political rights, deliberate public humiliation, false implication in criminal cases/legal proceedings, etc.

Article 18: Abolition of titles

Clause (1) of Article 18 abolishes the recognition and conferment of all titles other than those of military (such as 'Major', 'Lieutenant Colonel', etc.) or academic distinction (such as 'Dr.', 'Justice', etc.). Clause (2) prohibits Indian citizens from accepting any titles from foreign countries.

Article 19: Right to freedom

Article 19 lays down freedoms enjoyed by the citizens of India (under Clause (1)), as well as, stipulates the limited grounds on which restrictions can be imposed on the said freedoms (Clauses (2)-(6)). Given below are the six fundamental rights enshrined in Article 19:

a. The right to freedom of speech and expression

As held in judicial pronouncements over the years, the right to freedom of speech and expression includes within its wide ambit the freedom of press, right to publish, right to broadcast, right to receive information, right to advertise, right to criticize, as well as the right not to speak or the right to silence.

For instance, all citizens have the right to express themselves freely through speech, such as by writing articles in newspapers or by posting their views on electronic media.

b. The right to assemble peaceably and without arms;

Article 19(1)(b) includes the right to hold peaceful protests and demonstrations, public meetings, hunger strikes and processions, however, they are subject to restrictions, such as on unlawful assembly under the Indian Penal Code.

c. The right to form associations or unions;

d. The right to move freely throughout the territory of India;

e. The right to reside and settle in any part of the territory of India; and

g. The right to practice any profession, or to carry on any occupation, trade or business.

The exercise of the above-mentioned freedoms and rights can be restricted on the basis of grounds enumerated in Clause (2)-(6) of Article 19. There are different grounds for the different freedoms protected in Clause (1). Some of these grounds are sovereignty and integrity, security of the State, friendly relations with foreign States, public order, decency or morality, and so on.

Article 20: Protection in respect of conviction for offences

Article 20 contains rights that are fundamental to a fair and just criminal justice system. Clause (1) states that a person cannot be convicted of an offence except for violation of a law which was in force at the time of the commission of the act charged as an offence. A person cannot be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence. In other words, a new law cannot punish the old acts of a person.

Clause (2) states that 'No person shall be prosecuted and punished for the same offence more than once.' This is called the principle of double jeopardy.

Clause (3) states that 'No person accused of any offence shall be compelled to be a witness against himself.' This is often called the right against self-incrimination. In a criminal trial, it is the duty of the prosecution to establish the guilt of the accused, and the accused cannot be made to make a statement or admission by compulsion. Compulsion means not only physical threats, but also psychic torture, atmospheric pressure, environmental coercion, and overbearing and intimidating methods.

Article 21: Right to life and personal liberty

Article 21 states that 'No person shall be deprived of his life or personal liberty except according to procedure established by law.'

Article 21 is a fundamental right available to all persons, citizens and foreigners alike. Courts in India have given a wide interpretation to the language of Article 21 and thus, widened the ambit of personal liberty.

Through years of judicial pronouncements, the right to life and personal liberty has come to include several other rights, such as the right to live with human dignity, right against torture, right to food, right to livelihood, right to privacy, right to free legal aid, right to a speedy and fair trial, right to a pollution-free environment, right to shelter and so on.

Article 21A: Right to education

As per Article 21A, the State shall provide free and compulsory education to all children between the ages of six to fourteen years in such manner as the State may, by law, determine.

The Right of Children to Free and Compulsory Education Act, 2009 has been enacted to realize the objective of Article 21A. 'Compulsory education' casts an obligation on the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age group. Furthermore, it also requires all private schools to reserve 25% of seats to children, and provides that no child shall be held back, expelled, or required to pass a board examination until the completion of elementary education.

Article 22: Protection against arrest and detention in certain cases

Article 22 embodies the rights of arrested persons and deals with the matter of preventive detention. It lays down the basic procedural rights for a fair arrest and detention but is not a complete code on laws on the subject. Such laws should be fair and just, and meet the requirements of other provisions of the Constitution as well such as Articles 14, 19 and 21.

Clause (1) of Article 22 states that no arrested person shall be detained in custody without being informed of the grounds for such arrest and that such person shall not be denied the right to consult, and to be defended by, a legal practitioner of his choice.

Every arrested person detained in custody has to be produced before the nearest Magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the

court of the magistrate, and no such person can be detained in custody beyond the said period without the authority of a magistrate. While a maximum limit of 24 hours has been prescribed, the Code of Criminal Procedure 1973 requires that such production before a Magistrate is at the earliest.

Clause (4) to (7) of Article 22 provide the procedure to be followed if a person is arrested or detained under a law of preventive detention. These Clauses cover safeguards including the review of the detention by an advisory board within 3 months of detention, the composition and procedure of the advisory board, communicating to the detained person the grounds of arrest as soon as possible, and giving to the detained person the earliest opportunity of making a representation against the order of detention i.e sufficient particulars to enable him to make a representation. Parliament may by law prescribe the circumstances under which a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board, and the maximum period for such a detention.

Article 23: Prohibition of traffic in human beings and forced labour

Under Clause (1) of Article 23 of the Constitution, traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

However, clause (1) given above does not prevent the State from imposing compulsory service for public purposes without any discrimination on grounds only of religion, race, caste or class or any of them.

Article 23 protects the individual not only against the State, but also against private individuals. *'Begar'* means to force a person to do some work against their will and on the basis of non-payment or grossly inadequate payment. 'Forced labour' includes not merely physical or legal force, but also force arising from the compulsion of economic circumstances.

Article 24: Prohibition of employment of children in factories, etc.

As per Article 24, no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 was enacted in pursuance of Article 24. Currently, the employment of children under the age of 14 years is prohibited as per this Act, except helping in the family or family business, and working in the audio-visual entertainment industry, subject to prescribed conditions and safety measures. Additionally, it outlaws the use of adolescents (between the ages of 14 and 18) in hazardous occupations and processes.

Article 25: Freedom of conscience and free profession, practice and propagation of religion

Clause (1) of Article 25 reads that 'Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.'

Clause (2) states that 'Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—

a. regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

b. providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.'

In sub-clause (b) of Clause (2), the reference to Hindus is construed as including persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions is construed accordingly.

The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Article 26: Freedom to manage religious affairs

Under Article 26, subject to public order, morality and health, every religious denomination or any section thereof has the following rights:

a. to establish and maintain institutions for religious and charitable purposes;
b. to manage its own affairs in matters of religion;
c. to own and acquire movable and immovable property; and

d. to administer such property in accordance with law.

While the right guaranteed by Article 25 is an individual right, the right guaranteed by Article 26 is the right of an organized body i.e a religious denomination.

Article 27: Freedom as to payment of taxes for promotion of any particular religion

As per Article 27, no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

Article 28: Freedom as to attendance at religious instruction or religious worship in certain educational institutions

The combined reading of Clause (1) and (2) of Article 28 provides that religious instruction cannot be provided in any educational institution wholly maintained out of State funds, except to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

Clause (3) states that 'No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.'

Article 29: Protection of interests of minorities

As per Clause (1) of Article 29, any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or

culture of its own shall have the right to conserve the same. This Clause aims to safeguard the cultural rights of minorities in India.

As per Clause (2), no citizen can 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. This Clause is general in nature and applies to all citizens, whether they belong to a majority or minority.

For instance, a school run by a minority institution, if it is aided by State funds, cannot refuse admission to children of other communities. However, it should be noted that nothing in Article 29(2) prevents the State from making reservations for backward classes under Article 15.

Article 30: Cultural and Educational Rights (Right of minorities to establish and administer educational institutions.)

As per Clause (1), all minorities, whether based on religion or language, have the right to establish and administer educational institutions of their choice. Further, Clause (1A) states that in making any law providing for compulsory acquisition of any property of an educational institution established and administered by a minority mentioned in Clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition is such as would not restrict or abrogate the right guaranteed under that clause.

Clause (2) lays down that the State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

Article 29(1) confers right on any section of citizens, thus including the majority, whereas Article 30(1) confers right only on religious or linguistic minorities.

Article 32: Remedies for enforcement of rights conferred by this Part

Article 32 enshrines the right to constitutional remedies, which provides the enforcement of the fundamental rights. A right is valuable only as long as it can be implemented effectively.

Clause (1) of Article 32 guarantees the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III. The Supreme Court has the power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III.

Clause (3) empowers the Parliament to empower by law any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under Clause (2).

Clause (4) states that the right guaranteed by Article 32 shall not be suspended except as otherwise provided for by the Constitution.

A writ petition is filed for issuance of writs. The power to issue writs is also provided to High Courts of India under Article 226. While the Supreme Court can be approached only for infringement of fundamental rights, the right to approach the High Court can be exercised in other matters pertaining to legal rights other than the fundamental rights.

Given below is a brief explanation of the writs that are mentioned in Article 32:

1. *Habeas corpus* - It literally means 'a demand to produce the body (whether dead or alive) in the Court'. The issuance of a habeas corpus writ means an order to the detaining authority or person to physically present before the Court the detained person and show the cause of detention to the Court so that the Court can determine its legality and release the person accordingly.

2. *Mandamus* - It is a command to act lawfully and to desist from perpetrating an unlawful act. Mandamus lies against any authority, officer, and government that fails or refuses to perform its legal obligation.

3. *Prohibition* - It is a judicial order prohibiting an authority from continuing their proceeding in excess or abuse of jurisdiction or in violation of the principle of natural justice. It is issued while the proceeding is ongoing.

4. *Quo Warranto* - It is a writ that translates to 'with what authority or warrant?'. It is invoked to seek clarification in relation to, or to restrain a person from taking charge of a public office to which they are not entitled.

5. *Certiorari* - The term means 'to inform' or 'to certify'. It may be defined as a judicial order requiring the records of any action to be certified by the Court and dealt with according to law. A writ of

certiorari lies against patently erroneous or without jurisdiction orders of tribunals or authorities or courts other than judicial courts.

Fundamental Duties (Part IVA of the Constitution of India)

Article 51A

Fundamental Duties were added to the Constitution by the 42nd Amendment to the Constitution in 1976. The duties laid down in Article 51A themselves are not enforceable in a court of law, except when the Parliament has passed a law to enforce a particular duty as a legal duty. However, a court may take them into account while adjudicating on a matter.

As per Article 51A, it shall be the duty of every citizen of India—

a. to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

b. to cherish and follow the noble ideals which inspired our national struggle for freedom;

c. to uphold and protect the sovereignty, unity and integrity of India;

d. to defend the country and render national service when called upon to do so;

e. to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

f. to value and preserve the rich heritage of our composite culture;

g. to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures;

h. to develop the scientific temper, humanism and the spirit of inquiry and reform;

i. to safeguard public property and to abjure violence;

j. to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;

k. who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

CHAPTER III

INTRODUCTION TO CIVIL AND CRIMINAL JUSTICE SYSTEM

What is a crime?

In plain terms, "crime" is an act or an omission of an act that is punishable by law and that harms public welfare and safety. The commission of crime means acting against a prescribed standard that exists in the society to the extent that such act or omission can be considered to be a threat to the society as a whole. Example: murder of a person, kidnapping of a child, stealing a car.

What is a civil wrong?

Civil wrong refers to an injury or harm caused to an individual or private property by the act or omission of any other person. The acts committed by the party are non-criminal in nature and are not considered to be a threat to the society at large. If one commits civil wrong, then generally such person is asked to pay monetary compensation or other civil reliefs like injunctions and declarations are passed. Imprisonment is not imposed as a penalty for having committed a civil wrong.

What is the difference between a crime and a civil wrong?

A crime is considered to be wrong against the community as a whole that disrupts the peace and order of the society, while civil wrongs refer to wrongful acts that infringe the private rights of an individual. A person convicted of committing a crime is punished by way of imprisonment or fine by the State. The remedy against civil wrong is generally to pay monetary compensation/damages to the aggrieved person by the defaulting party.

TYPES OF JURISDICTIONS

In India, there are several types of courts, each with a unique set of powers based on the jurisdiction assigned to it. "Jurisdiction" refers to the scope within which a Court can exercise its lawful authority i.e., its ability to hear the case and make a decision. Assigning specific jurisdiction to different Courts enables the judicial system to work in a more efficient and disciplined manner.

Jurisdiction is generally of 3 types:

Subject matter jurisdiction

This gives the Court the power to handle matters of a specific kind and pertaining to a specific subject. For instance, Family Courts have been created to deal with matters pertaining to divorce, maintenance, custody etc. Similarly, courts of Rent Controllers have been created to deal with matters pertaining to rent control laws. Tribunals like National Company Law Tribunal or National Green Tribunal have also been created to deal with specific subject matters.

Territorial Jurisdiction

A Court's territorial jurisdiction refers to the geographical limits within which the Court may exercise jurisdiction. For instance, if a theft is committed in Chandni Chowk in Delhi, the trial of the accused shall be conducted in the Central district of Delhi and not elsewhere.

Pecuniary Jurisdiction

Pecuniary jurisdiction refers to the monetary value or amount up till which a Court is authorized to exercise its authority. As on August, 2023, the pecuniary

jurisdiction of Court of Civil Judge in Delhi is up till Rs 3 lakhs and the pecuniary jurisdiction of the Courts of Additional District Judge in Delhi is Rs 3 lakhs to Rs 2 crores.

HIERARCHY OF COURTS

Supreme Court of India: It is the highest Court in the country. It has original as well as appellate jurisdiction, along with writ jurisdiction.

High Courts: High Courts are the senior-most Courts at the state level. Most states have their own High Courts while some have common High Courts. The Hon'ble High Court of Delhi has original civil jurisdiction over matters above Rs. 2 Crores. It also has writ and criminal jurisdiction.

District and Sessions Courts:

1. In civil cases, the District Courts are of two types-

a. Court of Senior Civil Judge/Civil Judge - It has a pecuniary jurisdiction of Rs 3 lakhs

b. Court of District Judge/Additional District Judge- It has a pecuniary jurisdiction of more than Rs 3 lakhs till Rs 2 crores.

2. In criminal cases, there are following types of Court at the district level:

a. Court of Sessions Judge/Additional Sessions Judge- can pass any sentence of imprisonment or fine but any death sentence passed shall be subject to confirmation by the Hon'ble High Court

b. Court of Chief Judicial/Chief Metropolitan Magistrate- can award imprisonment up till 7 years and any fine

c. Court of Judicial Magistrate 1st class/Metropolitan Magistrate- can award imprisonment up till 3 years and fine up till Rs 10,000

d. Court of Judicial Magistrate 2nd class- can award imprisonment up till 1 year and fine up till Rs 5,000

REPORTING OF AN OFFENCE, REGISTRATION OF FIR AND SECTION 156(3) CRPC

There are two types of offences: cognizable and non-cognizable.

A cognizable offence can be investigated by the police and it does not require an order of a Magistrate for the investigation to be initiated. If the requirements for an arrest are met, then the police may also arrest an accused in case of a cognizable offence. These are generally considered to be more serious than non-cognizable offences.

Some common examples of cognizable offences are:

- Acid attack
- Rape
- Murder
- Dowry death
- Kidnapping
- Cruelty by husband or his relatives
- Outraging a woman's modesty, sexual harassment, disrobing a woman, voyeurism, stalking
- Theft

- Robbery

On the other hand, non-cognizable offences are generally less serious offences in which the police cannot investigate or arrest the accused person without the permission of a Magistrate.

Common examples of non-cognizable offences are:

- Assault
- Defamation
- Public nuisance

2. How can I report a crime?

The first step in case a crime has occurred is to approach a police station. If the offence is cognizable, an FIR will be registered. F.I.R. stands for 'First Information Report'. It is the information relating to the commission of a cognizable offence that reaches the officer-in-charge of the Police Station (the SHO) first at the point of time.

If the offence is non-cognizable, the police officer will enter the substance of the information in a book kept in the police station for this purpose, and refer the informant to the Magistrate. The investigation can commence in such a case after an order for it has been issued by the Magistrate.

Registration of F.I.R.:

Any person who is aware of the facts and circumstances of the offence can register an FIR. A person does not have to be a relative or a victim or eye witness to lodge an FIR.

Details to mention in the F.I.R or the complaint in a non-cognizable offence:

The following details should be mentioned in an F.I.R., if known to the complainant/informant and wherever possible:

- Name of the complainant/informant, age, address, contact number
- Time and Date on which the offence took place
- Place where the crime occurred
- Details of the victims: name, age, sex, address, phone number etc.
- The acts that constituted the crime
- The number of accused persons and their details, if known
- Details of eye-witnesses, if any

Keep in mind that…

- If an oral report is made, ensure that the police record it in a written format in a book kept for that purpose in the police station.
- The FIR is to be signed only after it has been read over to the informant by the police.
- The police cannot administer an oath to the informant.
- The police cannot send away an informant because they want to make an oral report. The police are duty-bound to record it.
- As an informant, you are entitled to a free-of-cost copy of the FIR.

3. Can the police refuse to register an FIR on the ground that the offence took place somewhere outside their jurisdiction/local area?

The police cannot refuse filing of an FIR, even if the offence took place outside the police station's jurisdiction or local area. In such a case, the police station records a 'zero' FIR and forwards the same to the police station having jurisdiction over the area in which the crime was said to have been committed.

4. Can the police conduct a preliminary inquiry before registering an F.I.R.?

The police are not supposed to conduct any preliminary inquiry or investigation before deciding whether to register an F.I.R. or not. As long as the information given discloses the commission of a cognizable offence, an F.I.R. must be registered. The only exceptional cases where the police is allowed to conduct a preliminary inquiry are:

- Matrimonial disputes/ family disputes
- Commercial offences
- Medical negligence cases
- Corruption cases
- Cases where there is abnormal delay in initiating criminal prosecution without satisfactorily explanation regarding the reasons for the delay

The preliminary inquiry must be completed within 7 days.

5. What if the police do not register an FIR?

It is the duty of the officer-in-charge of the police station i.e. the S.H.O or person acting under his direction to register the FIR in case of cognizable offences. If they refuse to record the FIR, then information about the offence and non-registration of FIR should be sent in writing and by post, to the office of the Deputy Commissioner of Police (DCP).

If no action is taken even after the information was sent to the DCP, then an application under Section 156(3) of the Code of Criminal Procedure 1973 can be made to the Judicial/Metropolitan Magistrate who will decide whether the information discloses the commission of any cognizable offences and if yes, shall direct the S.H.O. to register the F.I.R. immediately.

6. What if the police registers an FIR but does not investigate properly?

It may happen that the police may register an F.I.R. but may not investigate properly or may water it down by invoking less serious offences. In such cases also, an application under Section 156(3) of the Code of Criminal Procedure, 1973 can be made to the Judicial/Metropolitan Magistrate.

7. Is there a time-limit to registering an FIR?

There is no time-limit for registration of an F.I.R., though prompt reporting is the best approach.

LAW RELATING TO ARREST

An arrest is an act of taking a person into custody as he/she may be suspected of committing an offence. The police may arrest a person suspected of committing a cognizable offence without a warrant and without an order from a Magistrate when certain conditions laid down in the Code of Criminal Procedure are met. In case of a non-cognizable offence, the police cannot arrest unless it has a warrant for the arrest or an order from the Magistrate for the arrest.

1. What is the purpose of arrest?

An arrest consists in the taking into custody of a person by the police. The purpose of an arrest is to conduct custodial investigation, and to prevent the arrested accused person from tampering with evidence, threatening witnesses or committing further offences. Arrest is also made when there is an apprehension that the accused person may flee or abscond and may not appear in Court to face his trial.

2. Is it necessary for the police to arrest the accused person if an FIR is made against him?

No, an arrest is not necessary only because an FIR is made against a person. In other words, there cannot be an automatic arrest upon registration of an FIR.

In case of information that the accused has committed a cognizable offence punishable with more than 7 years of imprisonment or with death sentence, an arrest should be made only if the police officer has received credible information of the same, and has reason to believe on the basis of that information that such person has committed the said offence.

Section 41(1)(b) of the Code of Criminal Procedure 1973 deals with offences with punishment of less than 7 years or up to 7 years. A more cautious approach has to be taken towards arrest in such cases. Firstly, there should be a reasonable complaint, or credible information received, or a reasonable suspicion that he has committed the offence, based on which the police officer has reason to believe that the person has committed the offence. Secondly, the police officer before arrest, in such cases has to be further satisfied that such arrest is necessary:

- to prevent such person from committing any further offence; or
- for proper investigation of the case; or
- to prevent the accused from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or
- to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or
- unless such an accused person is arrested, his presence in the court whenever required cannot be ensured.

These are the conclusions, which one may reach based on facts. Law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest.

3. What if the police arrest despite the requirements for an arrest not being met?

After an arrest, the police has to mandatorily produce the arrested person before a Magistrate within 24 hours of the arrest. Upon production, the police may request the Magistrate to grant them custody of the accused. At this stage, a check is maintained on the power to arrest by the Magistrate by perusing the information furnished by the police justifying the arrest.

For offences covered by Section 41(1)(b), when an accused is produced before the Magistrate, the police officer effecting the arrest will furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn will have to be satisfied that conditions precedent for an arrest are satisfied, and it is only thereafter that detention will be authorised.

4. What is an arrest memo?

The police officer making an arrest has to prepare an arrest memo that records details of the arrest. It must contain:

a. The signature of at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made.

b. The time, date, and place of the arrest.

The arrested person should sign the arrest memo after it is properly prepared.

5. Is the arrested person allowed to inform anyone about his arrest and seek help from them?

While making an arrest, the police officer must prepare a memorandum of arrest. If the memorandum of arrest is not attested by a family member, then the police officer will inform the person arrested that he has a right to have a relative or a friend named by him to be informed of his arrest.

Every police officer making any arrest has to forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for this purpose.

The police officer must inform the arrested person of this right as soon as he is brought to the police station and also make an entry of the fact as to who has been informed of the arrest of such person in a book kept in the police station for this purpose.

The Magistrate before whom the arrested person is produced is duty-bound to satisfy himself that these requirements have been complied with in respect of such arrested person.

6. Is handcuffing necessary to affect an arrest?

If the person to be arrested submits to the custody of the police officer by word or action, the police officer shall not actually touch or confine the body of the person to be arrested.

With regard to handcuffs, in case of arrest in execution of a warrant, the person arrested cannot be handcuffed unless the police have also obtained orders from the Magistrate for the handcuffing of the person to be arrested.

Where a person is arrested by the police without warrant, the police officer concerned may, if he is satisfied that it is necessary to handcuff such a person, he may do so till the time he is taken to the police station and thereafter is produced before the Magistrate. The police officer should have a well-grounded basis for drawing a strong inference that a particular person may escape from the police or run away from the police. Further use of the handcuff can only be under the orders of the Magistrate.

7. Is it necessary for the police to arrest the accused when filing a chargesheet before the Court?

No, there is no obligation on the S.H.O. that he has to arrest each and every accused at the time of filing of the chargesheet. If the Investigating Officer does not believe that the accused will abscond or disobey summons he/she is not required to be produced in custody, it is sufficient that the accused is

presented by the Investigating Officer before the court while filing the chargesheet.

8. Can women be arrested after sunset and before sunrise? What safeguards exist in this regard?

A woman cannot be arrested after sunset and before sunrise. This practice can be deviated from only when there are exceptional circumstances and when the woman police officer has obtained the prior permission of a judicial Magistrate within whose local jurisdiction the offence is committed or the arrest is to be made.

Only a female police officer can touch the woman at the time of arrest.

As far as possible, a female police officer is to be present if a woman is being arrested.

9. What can be done if the arrested person is tortured by the police while in their custody?

If there is any torture or maltreatment by the police, the arrested person should inform the Judicial Magistrate of the area about the same as soon as he is produced before the Magistrate. He should request the Magistrate for a medical examination so that a timely report of the injuries is prepared.

An FIR can also be registered against the concerned police officials to initiate a criminal investigation into the matter.

A complaint can be submitted to the National Human Rights Commission as well. NHRC has the power to recommend compensation to the victim, as well

as recommend the initiation of departmental action against the concerned police officials.

Important things to keep in mind:

- The person being arrested has a right to be informed of the grounds of arrest.
- A person arrested is entitled to meet an advocate of their choice during interrogation, though not throughout interrogation.
- If the arrested person requires free legal aid and assistance, the same is provided without cost by legal service institutions.
- If the offence for which the arrest is made is non-bailable, there is a right to bail and the person cannot be detained by the police if they are willing to furnish bail.
- After an arrest, the person arrested has a right to a medical examination. Female arrestees can only be examined by female medical officers or registered medical practitioners.
- The arrested person has a right to be produced before a judicial Magistrate without any delay, and in no case can the detention exceed 24 hours from the time of arrest without production before a Magistrate.

10. What steps are to be taken if the police have arrested a person but the whereabouts are not known thereafter?

If someone has been arrested by the police and since the arrest, there is no contact with the arrested person and they are not being produced before a Judicial Magistrate, a habeas corpus petition can be filed before the High Court of Delhi. Assistance in this regard can be sought from a legal aid lawyer.

11. What is police custody and judicial custody?

Police custody means that police have the physical custody of the accused while judicial custody means an accused is in the custody of the concerned Magistrate. In the former, the accused is lodged in a police station lockup while in the latter, he is lodged in the jail.

12. For how long can an arrested person be kept in police custody and judicial custody pending investigation?

After the arrest, for the first 15 days, police custody or judicial custody can be granted. After the expiry of the first 15 days, only judicial custody can be granted.

Pending investigation and filing of police report/chargesheet, judicial custody cannot exceed 60 days or 90 days, depending on the offence involved. If the investigation is not complete and a chargesheet is not filed by the end of the said 60 days or 90 days period (as the case may be), then the detained person has a right to default bail.

LAW RELATING TO BAIL

1. What are bailable offences and non-bailable offences?

If the offence alleged is bailable, then the accused is entitled to bail as a matter of right. In bailable offences, bail is a right and not a matter of discretion. In

such offences there is no question of any discretion in granting bail. It is only where the accused is unable to furnish surety bonds that he should be kept in detention. Bail in bailable offences can be granted by the Court or by the police.

Contrary to what the name suggests, bail can be granted in non-bailable offences as well. In non-bailable offences, bail is not a matter of right and the grant of bail depends upon exercise of judicial discretion. In such cases bail can be granted by Courts.

2. What are the factors that are commonly considered before granting bail in non-bailable offences?

Following are the factors that are commonly considered before granting bail:

1. Whether there is any prima-facie or reasonable ground to believe that the accused has committed the offence
2. Nature and gravity of charge
3. Severity of the punishment in the event of conviction
4. Danger of the accused absconding or fleeing if released on bail
5. Character, behaviour, means, position and standing of the accused
6. Likelihood of the offence being repeated
7. Reasonable apprehension of the witnesses being tampered with
8. Danger of justice being thwarted by grant of bail

3. What does the right to default bail mean?

There is a stipulated time-period (i.e. 60 days or 90 days as given in Section 167 of the Code of Criminal Procedure, 1973) for which an arrested person can be detained while the investigation is pending and police report,

commonly called chargesheet, is yet to be filed. When at the expiry of this stipulated period, no chargesheet is filed by the police, then the right to default bail accrues on the detained person. The investigation can continue, but the detained person has a right to bail upon expiry of this period, even in case of a non-bailable offence.

The detained person, and their family may file an application for default bail through their lawyer as soon as the time-period expires and no chargesheet is filed by the police.

4. What if bail has been granted by the Court but the accused is not released because the bail conditions are too onerous to be met?

In such cases, an application can be filed before the Court which had granted the bail for modification of conditions. The Court may reduce the number of sureties or surety amount or may even release the arrested person on personal bond.

Such a person may even inform the Secretary of the concerned District Legal Services Authority who may depute a para legal volunteer or jail visiting advocate to interact with the prisoner and assist him. The Secretary, DLSA may also prepare a report on the socio-economic conditions of the accused which may be placed before the concerned Court with a request to relax the condition(s) of bail/surety.

5. What is anticipatory bail and why is it given? Can all courts give anticipatory bail?

Where any person has a reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court

or the Court of Session for a direction under Section 438 of the Code of Criminal Procedure 1973, that in the event of such arrest, he shall be released on bail. An application for anticipatory bail can be filed only before the High Court or the Court of Session.

In other words, the distinction between an ordinary order of bail and an order of anticipatory bail is that while the former is granted after arrest and therefore means release from the custody of the police, the latter is granted in anticipation of arrest and is, therefore, effective at the very moment of arrest.

6. What is the procedure if the police come to arrest a person who has been granted an anticipatory bail for such an offence?

After the grant of anticipatory bail, if such person is thereafter arrested without warrant by an officer in charge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he will be released on bail, and if a Magistrate taking cognizance of such offence decides that a warrant should be issued in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court on the anticipatory bail.

7. Are there any offences that are outside the ambit of anticipatory bail?

Anticipatory bail cannot be filed for a case involving the arrest of any person on accusation of having committed the following offences of the Indian Penal Code, namely:

- Sub-section (3) of Section 376 - Rape on a woman under sixteen years of age
- Section 376AB - Rape on woman under twelve years of age

- Section 376DA - Gang rape on woman under sixteen years of age
- Section 376DB - Gang rape on woman under twelve years of age

CHAPTER IV

LAW RELATING TO PROTECTION OF WOMEN

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 ['PWDV ACT']

1. What is domestic violence?

Domestic Violence is any act, conduct or omission by a member or members of a shared household which causes harm, injury, or endangers the life, body, or health, or mental or physical well-being of a woman, or safety of her children in that household.

It also includes any conduct of a member or members of a shared household involving harassment or threat to a woman living in the shared household or any of her relatives for the fulfilment of any unlawful demand for dowry, or other property or valuable security with a view to coerce her.

Domestic violence is not limited to physical abuse. It includes verbal, emotional, sexual, and economic abuse as well.

Types of domestic violence -

- Physical abuse
- Sexual abuse
- Verbal abuse
- Emotional abuse
- Economic abuse

Self-assessment test

Given below is a check-list that can be used as a reference to identify cases of domestic violence:

a. *Does the abuser withhold food, water and other necessities like medicines, money, etc. from you or any woman in your household?*
b. *Does the abuser verbally abuse and ridicule you in-person or in front of your family?*
c. *Does the abuser threaten to kill or cause physical pain to you or any woman in your household?*
d. *Does the abuser hit you?*
e. *Does the abuser use any object or weapon to hurt you?*
f. *Does the abuser hurt any woman in your household?*
g. *Does the abuser speak with you or any woman in the household repeatedly in a derogatory or abusive manner?*
h. *Does the abuser control the money, jewelry, possessions, stridhan, etc. of any woman in the household?*
i. *Does the abuser touch* you or try to touch you inappropriately?

If you have been facing any one of the above, you have been a victim of domestic violence.

2. What is a shared household?

It is a household where the victim lives or has lived in the past, in a domestic relationship with the abuser, including a rented household. It also includes a household in which the victim or the abuser has any right, title, or interest. Any joint family property, whether there exists any such right or not is also a shared household.

3. Who can complain under the Act?

Women can be identified as victims under the PWDV Act and can seek relief. Categories of possible victims include:

- Married Women
- Unmarried Women (daughters, sisters, etc.)
- Women in a live-in relationship
- Mothers and Mothers-in-Law

A mother can file an application on behalf of her children (whether male or female).

4. Are children protected by the law?

Yes, domestic violence under the PWDV Act protects children below the age of 18 years which includes adopted, step, or foster children.

5. Against whom can a complaint be filed?

A complaint can be filed under the Act against any adult person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under the Act (male or female). This means that the complaint can be filed against the husband as well as his other relatives.

An aggrieved wife or female living in a relationship which is in the nature of a marriage (often called a live-in relationship) may also file a complaint against a relative of the husband or the male partner.

6. Who should be approached by the aggrieved woman for assistance?

The following can be approached by the woman with a complaint of domestic violence -

- Police officer

  Will inform the aggrieved woman about legal remedies available to her and will guide her to Protection Officer, Service Provider, shelter home, and medical facility. Police can also file an FIR under Section 498A of the Indian Penal Code (IPC) wherever it deems necessary.

- Judicial Magistrate/Metropolitan Magistrate

  Receives Domestic Incident Report (DIR) and application for relief under the Protection of Women from Domestic Violence Act. Grants reliefs by passing appropriate orders.

- Protection officers

  They are appointed by the Government of Delhi. They will fill up the Domestic Incident Report (DIR) and file an application to the Magistrate. They shall act as a link between victim and Court/Magistrate.

  They will get the victim medically examined and arrange a shelter home for her. They will also inform the victim about free legal aid and other services available for her.

- Service providers

  NGOs registered with the Government of Delhi which provide assistance to aggrieved women. They will fill in the details and prepare

the domestic incident report and forward it to the Protection Officer. They will get the victim medically examined and shall help them in getting a shelter home.

7. What is a domestic incident report?

It is a report made after the receipt of a domestic violence complaint of domestic violence from an aggrieved woman.

8. Who can file an application to seek relief under the PWDV Act?

An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under the PWDV Act.

9. How to prepare an application to seek relief under the PWDV Act?

The aggrieved person can contact a lawyer, a Protection Officer posted in their area, as well as registered service providers. They may also contact legal services institutions like DSLSA and DLSAs which can provide legal aid or counselling.

The Protection Officer will assist in submitting an application to the Magistrate for protection. They will also provide free-of-cost assistance to the woman including assisting in obtaining medical aid, legal aid, staying in a shelter home. If the woman has sustained injuries, the protection officer will also ensure that a medical examination is conducted.

If someone is facing any difficulty in lodging a complaint, or is unsure whom to approach, they can avail following free services provided by **Delhi State Legal Services Authority (DSLSA)**, which will aid in the following manner:

- Legal Aid lawyer - Assignment of legal aid lawyer to the victim and advice through audio-video calls and live chat
- Counselling - Conducting of counselling through Audio-Video means between the parties, by the counsellors of DSLSA, Mediation Cell, Family Courts or experts.
- Filing Petition: E-filing of victim's application before Mahila Court by the Legal Aid Counsel.
- Representation in Court: Legal representation of the victim in Court, physically, or through video conferencing.

Contact can be made through a call/SMS/missed call/WhatsApp at 1516 (toll-free) or through any of the modes mentioned in Chapter I of this handbook.

10. How can filing an application help the aggrieved person?

The PWDV Act provides a list of reliefs to a woman who is aggrieved by domestic violence as well as her children. These reliefs can ensure that the domestic violence comes to an end, that place of residence is ensured for the victim, that monetary support in terms of maintenance as well as compensation is granted, etc.

Given below are the orders that a Magistrate can pass under the PWDV Act:

- Protection order - Protection Order is issued to ensure the victim's safety in case the abuser commits any act of domestic violence upon the victim.

It can include a prohibition on the abuser from entering the workplace of the woman or if the aggrieved is a child, then the school of the child.

Magistrate can also prohibit him from communicating from the aggrieved person or from alienating assets or operating joint bank accounts. Protection can be granted not just to the aggrieved, but also to her dependents, relatives, and anyone who is assisting her.

- Residence order - The Magistrate can pass different reliefs in a residence order, such as that the abuser against whom relief is sought cannot remove the woman from the household, that he should remove himself from the household, that he should secure for the aggrieved woman an alternate accommodation of the same level.

  The Magistrate may impose any additional conditions or pass any other direction as deemed reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

- Custody order - By way of the custody order, the custody of children can be granted in favour of the victim temporarily. If the Magistrate is of the opinion that any visit of the abuser may be harmful to the interests of the child or children, the Magistrate can even refuse to allow such visits.

- Monetary relief - The Magistrate may direct the husband or male member to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved woman and any child of the aggrieved woman as a result of the domestic violence. For instance, monetary

relief can be granted in relation to the loss of earnings, medical expenses, maintenance for the aggrieved person as well as her children, etc.

- Compensation order - In addition to other reliefs, the Magistrate may on an application being made by the aggrieved person, pass an order directing a payment of compensation for the injuries, including mental torture and emotional distress, caused by the acts of domestic violence.

11. Can the Magistrate provide any temporary relief to the aggrieved woman, and what happens if the abuser is not appearing before the Magistrate?

Yes, the Magistrate can pass interim orders before the proceedings come to a final end, which provide a temporary and timely relief to the aggrieved woman. An application for interim relief should be decided within 60 days.

Even if the abuser does not appear before the Magistrate, orders (called ex-parte orders) can be passed in his or her absence.

12. What can an aggrieved person do in case of non-compliance of a protection order passed by a Magistrate?

A criminal proceeding can be initiated for non-compliance with the order of the Magistrate. If the abuser breaches a protection order, or an interim protection order, then it is an offence under the PWDV Act. It is punishable with imprisonment of either a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both. This offence will, as far as practicable, be tried by the Magistrate who had passed the order, the breach of which has been alleged.

While framing charges for non-compliance with the order, the Magistrate may also frame charges under Section 498A of the Indian Penal Code or any other provision of that Code or the Dowry Prohibition Act, 1961, if the facts disclose the commission of an offence under those provisions.

The offence of non-compliance with a protection order is cognizable and non-bailable. Therefore, an FIR can be registered with the police for investigation of the same.

13. Is an application under the PWDV Act a criminal proceeding?

No, an application for a relief under the PWDV Act such as protection to the woman, enforcing her right to a residence, and so on, is not a criminal proceeding. However, non-compliance of Court orders may result in imprisonment in some situations.

An application seeking these reliefs is not equivalent to filing of a criminal case against the member of the household.

However, it should be noted that upon receipt of information, the police have the duty to investigate cognizable offences, including Section 498A of the Indian Penal Code which deals with cruelty.

14. Can the husband or his relatives tell the woman to leave the house, or can they evict her or her children?

No. As per the PWDV Act, every woman in a domestic relationship has a right to reside in the household even if she does not have a right or title in the household. The court will guard her against removal from the house. To prevent further violent incidents, the court may also ask the abuser to remove

himself from the property, or may restrain him or his relatives from entering any portion of the house in which you reside.

It is not necessary that at the time of filing of an application by an aggrieved person, the domestic relationship should be subsisting. Even if she is not in a domestic relationship in a shared household at the time of filing of an application, but has at any point of time lived so or had the right to live and has been subjected to domestic violence, she is entitled to file an application seeking enforcement of her right to residence.

15. If my father or uncle hits a woman in my house and she does not have money to get medical help, what should we do?

If the abuser hits you as a child or any woman in your household, you can inform the Police, or Mahila Panchayat of your area, or NGO working for the cause of women, or District Legal Services Authority, or government medical facilities, about the abuse and they will be bound to provide you and female members of your family with medical aid. If you want, they will also record a Domestic Incident Report (DIR) which will be sent to the Protection Officer.

16. What if the abuser tries to harass a woman or her children after she files a complaint?

An application can be filed before Mahila Court under Section 12 of PWDVA seeking protection orders from the Court.

After hearing both the parties, if the court is convinced of the occurrence of domestic violence, it will pass an order restraining the abuser from any further acts or threats of violence.

The Court shall also restrain the abuser from troubling or contacting the woman, or from entering her place of employment, or her children's school etc.

17. Does a woman have the right to reside in a shared household if the house is not registered in her name, or if it is rented?

Yes. Every victim of domestic violence has the right to reside in the shared household even if they do not have any right, title, or interest in that household.

18. What if I want to leave the house? Where can I go to escape from the abuser?

You can approach an NGO, police or a lawyer and they will help you in moving to a shelter home or find a separate accommodation, including a children's home in case of a child. There are shelters in Delhi for women as well as children who are victims of domestic violence.

The court may also ask the abuser to provide an aggrieved woman with an alternate accommodation if required.

19. Can a Residence Order be obtained if the aggrieved woman has left the household to live elsewhere?

Residence Order can be obtained from the court even if you are not living in the shared household.

20. If the victims are financially dependent on the abuser, how will they survive on their own?

The Court may, upon your application and according to the circumstances, ask the abuser to pay for the expenses and losses incurred as a result of the domestic violence.

It can also direct the abuser to provide for and pay the rent of the alternative house, compensate for the loss of earnings, or medical expenses, and provide legitimate expenses for maintenance for the aggrieved woman and her children.

Additionally, they may also be compensated for physical, mental or emotional injuries sustained as a result of the acts of domestic violence committed by the abuser.

21. Can my father take me away from my mother?

If the children are in danger because of the presence of the abuser, the court may grant temporary custody of the children to the aggrieved woman and make arrangements for the abuser to visit the children only if it is safe.

Also, remember: If the abuse is being committed on children, any person can file a complaint on their behalf.

22. What if a mother does not earn any money? Will she still get custody of her children?

The Court/Magistrate can order the abuser (if a father or husband) to pay maintenance for his wife and children.

23. If we do not have the money to pay legal fees, how will we approach the court?

A woman is always entitled to free legal aid by the Delhi State Legal Services Authority (DSLSA) as per the Legal Services Authority Act, 1987.

Victims of Domestic Violence can dial 1516, the 24x7 Toll-free number-to seek any kind of legal advice, information or help. DSLSA will pay for the court fees, fees of the advocate and other legal expenses incurred during the case on your behalf.

24. If I or a woman in my house does not wish to file a complaint against the abuser and do not want him to go to jail, or desire any monetary compensation from him, is there any other way out of the domestic abuse?

The court can direct the aggrieved person or the abuser to undergo counselling either singly or jointly, to ensure that the mental injury inflicted upon her is duly addressed and her safety is ensured before her return to the shared household.

Preparing a Safety Plan in a case of domestic violence

In cases of Domestic Violence, protecting oneself is the utmost priority. If you are a victim of domestic violence, you need to first save yourself and your children.

Some safety steps that you should take:

1. Identify one or more neighbors

You can tell them about the violence, and ask them to seek help for you if they hear a disturbance in your home.

2. Devise a code word

To use with family, friends or neighbors when you are in need of help or want them to call the police or someone else.

To use with your children when you want them to leave the house fearing violence.

3. Know how to get out of your home safely

Identify which doors, windows, elevator, or stairwell would be best to escape.

4. Have a phone accessible all the time

- Know what numbers to call for help.
- Know where the nearest public phone is located.
- Know the phone number to your local shelter.
- If your life is in danger, call the police immediately.

5. Have a packed bag ready

It should contain spare keys, money, important documents, and clothes.

Keep it at a relative or friend's house, in case you need to leave your home in a hurry.

6. Teach your children how to get help

Instruct them not to get involved in the violence between you and your partner.

7. Decide where you would go if you have to leave the home

Have a prior plan to get there even if you do not think you will need to leave.

8. Keep all the evidence of physical abuse

- Keep the medical prescriptions and pictures of injuries as proof.

- Keep a note of instances of domestic abuse.

Here are a few things to keep in mind:

1. If I have to leave my home, I will go to _____.

2. I will use _____ as my code with my children or my friends so they can call for help.

3. I will inform people taking care of my children about others who have the permission to pick them up from school and that my partner is not permitted to do so. The people I will inform about pick-up permission include:

_____ (name of school)

_____ (name of domestic help or babysitter)

_____ (name of teacher)

_____ (name(s) of other trusted friend(s) or relative(s)).

What to do if an altercation is unavoidable?

1. If an argument seems unavoidable, try to have it in a room or an area from where you can escape easily.

2. Stay away from any room where weapons or objects that can be used as weapons may be present. Keep a safe escape in mind in case you face sudden violence.

3. Do not run to where the children are as the abuser may hurt them as well.

4. If your life is in danger, call the police immediately.

5. Use your instincts and judgment.

6. Do not tell the abuser that you are leaving. Leave quickly.

List of things to be carried at the time of leaving the abuser

The personal safety of the victim of domestic violence is of utmost importance. The following things belonging to the victim may be carried by the victim while leaving the abuser, depending upon the facts and circumstances, but not at the cost of one's life, health and safety.

- Cash, Cheque book, ATM/Debit/Credit card.
- Mobile phone and keys (house, car, and office).
- Identification documents such as Aadhaar Card, Voter ID, Passport, Driver's license, Vehicle registration, PAN Card, Ration Card, etc.
- Your educational and work documents.
- Children's school and vaccination records, and birth certificates.
- Medical prescriptions and records.
- Documentary proof of violence (if any).
- Copy of Protection Order (if any).
- Other documents such as marriage certificate, property and insurance papers, court proceedings, etc.

THE DOWRY PROHIBITION ACT, 1961

1. What is 'dowry' under the law?

'Dowry' includes any property, good, money or any valuable security that is given by one party in a marriage to the other party, or by their parents or

anyone else to either party to the marriage or any other person. It amounts to dowry when it is given at or before the marriage or even after the marriage.

2. Who can be punished under this law?

Any person who demands dowry, or gives or takes or abets the giving or taking of dowry is liable for punishment under the Act.

3. What is the penalty for giving or taking dowry?

The punishment for giving or taking dowry is imprisonment of a minimum of 5 years and a fine of a minimum of Rs 15,000 or the amount of the value of the dowry, whichever is more.

Demanding dowry is punishable to a fine of up to Rs 10,000 and a sentence of imprisonment of a minimum of six months but may not exceed two years.

4. Does the woman have a right to the dowry?

The Act also deals with the transfer of dowry to the woman, parents and her heirs. The dowry is to be for the benefit of the wife or her heirs. The failure to transfer the property to the woman can also lead to imprisonment under the Act.

However, any agreement for the giving or taking of dowry is void, which means that it cannot be enforced in the Court.

5. How can action be taken under the law?

To initiate proceedings under this Act, the following steps can be taken:

- Complaint at the local police station by filing an FIR
- Complaint to the dowry prohibition officer in the district

- Write to the appropriate judicial authority, that is, a Metropolitan Magistrate
- Approach any government-recognized social welfare institution or welfare organization and process the complaint through them

6. Who can file a complaint?

A complaint can be filed by any person aggrieved by the offence or a parent or other relative of such person, or by any recognized welfare institution or organization.

7. Who are dowry prohibition officers and how to contact them?

The State Government appoints the Dowry Prohibition Officer, who is responsible for ensuring that the Act's provisions are followed, preventing the taking or demanding of dowry to the greatest extent possible and gathering evidence for prosecution of those in violation of the Act.

OFFENCES AGAINST WOMEN UNDER THE INDIAN PENAL CODE (IPC)

a. Acid Attack (Section 326A and 326B)

If someone deliberately inflicts permanent or partial damage, burns, disfigures, or disables a part of someone's body using acid or other methods with the intention of causing harm or knowing that harm is likely, they can be punished. Even throwing or attempting to throw acid with such an intention is punishable under Section 326B.

The punishment can include imprisonment for a minimum of ten years, up to life imprisonment, along with a fine. The fine is intended to help cover the

medical costs of treating the victim, and it must be fair and reasonable. Importantly, any fine imposed is directed to be given to the victim.

Victims can claim compensation under the Delhi Victim Compensation Scheme 2018 by contacting the local District Legal Services Authority.

Moreover, financial assistance of Rs. 1 lakh is provided to acid attack victims from the PM National Relief Fund. The application format is available on <https://pmnrf.gov.in/en/about/grant-to-acid-attack-victims>. The application for getting the grant from PMNRF should be sent through the District Administration concerned to the Ministry of Home Affairs, Government of India, North Block, New Delhi along with a copy of FIR, Medical Report, Bank Account detail of victim and Address Proof. In case of minor victims or for the victims, who have lost their lives due to acid attack, bank account details of Parents/next of kin may be provided.

b. Rape (Section 375, 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, and 376E)

Rape is not limited to the penetration of a penis into a vagina but also includes the insertion of any object or any part of the body to any extent, into the mouth, urethra or anus of woman; or making another person do so. Rape also includes putting one's mouth to the vagina, anus or urethra of a woman. It must be noted that penetration need not be complete for the offence of rape to be made out and even partial penetration constitutes the offence.

The act amounts to rape if it was against her will or without her consent, or if the consent was obtained by putting her or any person in whom she is interested, in fear of death or of hurt. Consent has been clearly defined as a

clear, voluntary communication that the woman agrees to the specific sexual act.

It still amounts to rape under Section 375 if it was done with her consent but at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration of any stupefying substance, she was unable to understand the nature and consequences of the act.

Moreover, if the woman is unable to communicate consent, then the act amounts to rape.

1. Is consent of a minor girl relevant?

The question of consent is immaterial if the woman is below 18 years of age. There is no concept of 'consensual' sexual intercourse with a minor. Such act amounts to rape and shall also be punishable under the Protection of Children from Sexual Offences Act, 2012 and under relevant provision of the Indian Penal Code, 1860.

2. What is the punishment for rape?

The punishment for rape is a minimum of ten years, and it can extend to a life imprisonment, with fine. In case of certain aggravated categories of rape, such as by the police in a police station or by a guardian or teacher, etc., the punishment is a minimum of 10 years, which can be extended to a life imprisonment, with fine.

Section 376A to 376E prescribe separate punishments in case of specific situations, such as when the rape causes death or a persistent vegetative state

of the victim, sexual intercourse by a husband with his wife during separation, sexual intercourse by person in authority, gang rape, and repeat offenders.

Rape Crisis Cell by Delhi Commission for Women

The Delhi Commission for Women runs a Rape Crisis Cell which provides assistance to rape victims. It is a free legal service cell exclusively for rape victims comprising of a team of persons supervised by experienced lawyers who provide legal services to the victims.

The Cell will assist the prosecutor in the trial, oppose the bail application of the accused, and facilitate recording of statements under Section 164.

The telephone number of the Cell is +91-11-23370557.

Rape victims may also approach Delhi State Legal Services Authority or District Legal Services Authority for legal assistance, medical aid and victim compensation.

c. Dowry Death (Section 304B)

Dowry death occurs when a woman dies under certain circumstances within seven years of her marriage, and it is shown that she was subjected to cruelty or harassment by her husband or any relative of her husband because of, or in connection with, demands for dowry. Dowry refers to property, money, or gifts given by the bride's family to the groom's family as part of the marriage.

The punishment can be imprisonment for a minimum of seven years, which can extend to life imprisonment.

d. Abetment of suicide (Section 306)

When the deceased has passed away due to committing suicide and the accused has instigated or abetted the suicide by direct means, then the accused can be said to have committed offence of abetment to suicide.

The punishment can be imprisonment for up to a term of ten years and could also include a file.

e. Cruelty by husband or his relatives (Section 498A)

Section 498A deals with situations where a husband or a relative of the husband subjects a woman to cruelty. 'Cruelty' here refers to intentional behaviour that is likely to push the woman towards harming herself or puts her physical or mental well-being at risk. It includes harassing the woman to make her or her family meet unjustified demands for property or valuable assets, or due to their inability to fulfil such demands.

The punishment can include imprisonment for up to three years and a fine.

In addition to the filing of a complaint by the aggrieved woman, it can be filed by her family members such as her father, mother, brother, sister, or father's or mother's brother or sister. With the permission of the Court, any other person can also file a complaint if they are related to the aggrieved woman by blood, marriage, or adoption.

f. Outraging the modesty of women (Section 354)

This offence addresses situations where someone intentionally assaults a woman or uses criminal force against her, with the aim of outraging her modesty. This includes actions that are meant to offend, insult, or disrespect a woman's sense of modesty.

The punishment can include imprisonment for a term of at least one year, which can extend up to five years, along with a fine.

g. Sexual Harassment (Section 354A)

Given below are acts or behaviours that are punishable as sexual harassment:

i. Any physical contact and advances involving unwelcome and explicit sexual overtures; or
ii. A demand or request for sexual favours; or
iii. Making sexually coloured remarks; or
iv. Forcibly showing pornography; or
v. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Clause (i) or clause (ii) can include rigorous imprisonment up to 5 years or fine or both. Clause (iii) to (v) can include punishment of up to 1 year or fine or both.

h. Assault on a woman with intent to disrobe a woman (Section 354B)

An act done with the intention of disrobing or compelling a woman to be naked is punishable with a term of minimum 3 years and up to 7 years, in addition to fine.

i. Voyeurism (Section 354C)

Voyeurism refers to the act of a man whereby he watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person or disseminates such image.

The punishment for voyeurism is harsher for repeat conviction. Upon first conviction, the imprisonment shall be of a minimum of 1 year and up to 3 years with fine. Upon a second or subsequent conviction, a minimum imprisonment of 3 years and maximum imprisonment of 7 years, with fine.

j. Stalking (Section 354D)

The offence of stalking includes a man who follows a woman and contacts or attempts to contact her repeatedly despite a clear indication of disinterest, or monitors her use of the internet, or watches her in a manner that results in a fear of violence or serious alarm, or interferes with her mental peace.

Upon first conviction, he shall be punished with imprisonment up to 3 years with fine. Upon second or subsequent conviction, he shall be punished with imprisonment of up to five years with fine.

k. Word, gesture or act intended to insult the modesty of a woman (Section 509)

Section 509 of the Indian Penal Code criminalises uttering of words or sounds or gestures, or exhibiting an object to a woman with the intention that she sees or hears it or it intrudes her privacy with the intention of insulting her modesty.

The punishment is imprisonment up to 3 years, and fine.

Understanding the rights of victims:

- Rights relating to reporting of an offence - In case of certain offences, namely, acid attack, rape, sexual harassment, outraging modesty, disrobing, stalking, voyeurism, at the time of reporting the incident to

the police, the victim can request that the information be recorded by a woman police officer.

If the woman against whom an offence stated above was committed (additionally, if it is a case of sec. 509) is temporarily or permanently mentally or physically disabled, then such information is to be recorded by a police officer at her residence or at a convenient place of her choice, in the presence of an interpreter or a special educator

The recording of an FIR disclosing any of the aforementioned offences is to be videographed

- Rights relating to the recording of a statement by the Judicial Magistrate - The statement of the woman should be recorded by the Judicial Magistrate as soon as possible.

  If the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement and the statement shall be video graphed.

- Right to medical treatment is provided under the Code of Criminal Procedure. All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, are legally bound to immediately provide first-aid or medical treatment, free of cost, to the victims of any offence covered under Section 326A (Acid attack), 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or Section 376E of the Indian Penal Code (relating to

the offence of rape). They are required to immediately inform the police of such incidents as well.

- Right to compensation as provided under the Delhi Victim Compensation Scheme

REHABILITATION ROUTES AND SHELTERS FOR WOMEN AND GIRLS

A. One Stop Centers (OSCs)

What is an OSC?

One Stop Centers provide support and assistance to women affected by violence and in distress, both in private and public spaces.

They facilitate immediate, emergency and non-emergency access to a range of services including medical, legal, temporary shelter, police assistance, psychological and counselling support to fight against any forms of violence against women. Temporary shelter can be availed at an OSC for a maximum of 5 days by needy women along with their children (girls of all ages and boys up to 12 years of age).

The admissibility of any woman to the temporary shelter is at the discretion of the administrator of the centre. If a girl child (below 18 years of age) is referred to an OSC, then they will also be provided services in coordination with authorities/institutions established under Juvenile Justice (Care and Protection of Children) Act, 2015, and the Protection of Children from Sexual Offences Act, 2012.

What facilities are available at an OSC?

- Medical aid
- Police assistance
- Legal aid/case management
- Psychosocial Counselling
- Sanitary Napkin
- Temporary Shelter - Maximum 5 days on need basis
- Food - Breakfast, Lunch, afternoon refreshment and Dinner
- Toiletries

OSCs are also required to have Para-Legal Volunteers, whose assistance will be provided to the victim and who will work as 'Permanent Support Person' to them.

Can OSCs be contacted in an emergency?

Yes. A dedicated Ambulance with all necessary medical equipment and preferably lady staff/ attendant are made available at each OSC Tier-I [hospital]. Such ambulances shall be pressed into service in each case where a distress call is made by the victim from her house, workplace or any other place including the place of incident/ assault.

B. Short Stay Homes for women and girls in Delhi

The Short Stay Home scheme for women and girls extends temporary shelter and rehabilitation to those women and girls who have no social support systems due to family problems, mental strains, social ostracism, exploitation and other causes. The services extended in these homes include medical care, psychiatric treatment, case work services, occupational therapy, educational cum vocational training, recreational facilities, etc.

C. Nirmal Chhaya Complex run by Delhi Government

Statutory institution - The Delhi Government runs a statutory institution where admission is given by the order of the concerned Courts. The statutory institution is Nirmal Chhaya in Nirmal Chhaya Complex located at Jail Road, New Delhi.

Nirmal Chhaya admits women and girls under the following categories at the orders of the concerned Court:

- Women and girls rescued from brothels.
- Women and girls in moral danger.
- Women and girls under Sections 363, 366 and 376 of IPC, etc.

The Institution provides free boarding, lodging, medical care, mental health care, protection, counselling, psychiatric treatment, vocational training, guidance, basic education and recreation activities for the residents.

Non-statutory institutions - There are three non-statutory institutions as well in the Nirmal Chhaya Complex, where admission is granted on the recommendation of the Admission Committee, which comprises of the District Officer as Chairperson, Senior most Superintendent of the Nirmal Chhaya complex as member and Superintendent of the concerned institution as convener.

The three non-statutory institutions are:

- Short Stay Home, Nirmal Chhaya Complex, Jail Road, New Delhi
- Widow Home, Nirmal Chhaya Complex, Jail Road, New Delhi
- After Care Home for Women, Nirmal Chhaya Complex, Jail Road, New Delhi

Additionally, facilities of shelter homes run by NGOs may also be utilized.

CHAPTER V

LAWS RELATION TO PROTECTION OF CHILDREN

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 [POCSO ACT]

1. Who is protected from sexual offences under the POCSO Act?

The Protection of Children from Sexual Offences Act covers any person under the age of 18 years. It is a gender-neutral statute and a male child under the age of 18 is also covered by the Act.

2. Who can be an offender for sexual offences against children?

Any person who commits a sexual offence against a child, as defined under the Act, would be an offender. This includes persons of all genders.

3. What are the sexual offences that can be committed against a child?

The POCSO Act provides for several sexual offences with punishments prescribed:

Penetrative Sexual Assault (Section 3): includes penetration of any object or body part into any private part or mouth of the child. It also includes manipulating any body part of the child or making the child penetrate anyone else's body or even the body of the offender.

Sexual Assault (Section 7): when an abuser touches the child's vagina, penis, anus or breast or makes the child do so, he is said to have committed sexual assault. This sexual offence is touch-based and no penetration is required for it.

Aggravated Penetrative Sexual Assault, Aggravated Sexual Assault (Section 5, 9): a sexual assault become an aggravated penetrative sexual assault or aggravated sexual assault under some grave situations like

- the offender or the abuser is any person who is in the authority or position of trust of the Child
- there is a blood relation between the offender and the child
- the child becomes pregnant or gets infected with HIV
- the child suffers injury or dies
- the child is below 12 years of age

Sexual Harassment (Section 11): when an offender shows or shares any sort of sexual content to the victim through a message or any other form of communication, he commits sexual harassment. It also includes vulgar or abusive gestures or inducing a child for pornographic purposes. No touch is required for this.

Using Child for pornographic purposes (Section 13): If a child gets used on any form of media for sexual gratification, then the person using the child is considered an offender for this section. Sexual gratification means and includes representation of the sexual organ of a child, using a child for actual or simulated sexual activity that may or may not include penetration, or indecent or obscene representation of a child.

4. What is the meaning of using a child for pornographic purposes ?

Using a child in any form of media including television programmes, advertisements, on the internet, in any electronic form or in printed media- for the purpose of sexual gratification would constitute 'using a child for pornographic purpose. The law considers 'using a child' as involving a child in preparation, production, offering, transmitting, publishing, or facilitation of pornographic material.

The punishment of using a child for pornographic purposes would be up to five years imprisonment with liability of a fine. In the case of second or subsequent conviction, there could be imprisonment for up to seven years with a fine.

5. Is possession or distribution of child pornography also punishable?

A person who stores or possesses pornographic material involving a child, for sharing and transmitting is liable to a minimum fine of Rs 5000. And if someone distributes or displays it, they may be liable to imprisonment of up to 3 years.

6. What if two adolescents are in a consensual sexual relationship?

Section 2(d) of the POCSO Act defines "child" as any person below the age of 18 years. In the eyes of law, a child is not capable of giving consent to sexual acts and therefore any such consent said to be given by them is irrelevant. Thus, even a consensual sexual relationship between two adolescents where one or both of them is under 18 years of age, would still be considered an offence under POCSO.

In such cases, the "offenders" are tried as 'minors' by the Juvenile Justice Board as Child In conflict with the law. If the offence is of penetrative sexual

assault and the offender is above the age of 16, and below 18 years, they may be tried as an adult by the Children's Court.

7. What if a minor is in a consensual sexual relationship with an adult?

Such a relationship would constitute an offence under the POCSO Act and in case of penetrative sexual assault, could be a heinous offence punishable by life imprisonment.

The POCSO Act defines children as any person under the age of 18. In India, the 'age of consent' is 18 years and consent of a person who is not 18 years is immaterial for sexual offences. An offence under this Act is committed even if a minor boy indulges in a sexual relationship with a major person, man or woman.

8. Will the criminal system believe the accusations made by a child?

Since commission of sexual offences against a child is a grave offence, there are certain presumptions that apply in these cases.

The Court would presume that an accused committed the offence unless the contrary is proved. It will also be presumed that the offender had the mental intention to commit the offence, unless otherwise is proved.

9. What is the punishment for sexual offences under the POCSO Act?

Offenses like non-penetrative sexual assault, using sexually explicit content to lure a child, or even touching a child inappropriately, can lead to imprisonment ranging from three to five years, along with fines.

More serious offenses like penetrative sexual assault, aggravated penetrative sexual assault, or repeated offenses can result in stricter penalties, including a minimum of ten years' imprisonment, extendable to life imprisonment, and fines.

The Act also accounts for offences like child pornography, which carry fines and imprisonment for up to five years if it is the first offence and up to seven years in case of second or subsequent offence.

10. What can you do if you find out about a sexual offence being committed against a child?

Section 19 of the POCSO Act makes it a legal obligation to mandatorily report incidents concerning sexual offences against children. This is also the case when a consensual relationship involves a person below the age of 18 years.

11. Where can such an offence be reported?

Information related to the commission of an offence under the POCSO Act can be provided to either the Special Juvenile police Unit or the local police.

12. Punishment for non-reporting of the offence?

Punishment for not reporting an offence under the POCSO Act can include imprisonment of either description for a period of up to six months or fine or both. For any person who is in charge of a company or institution, if they fail to report the commission of an offence by their subordinate, they can be punished by imprisonment for a term up to one year or fine or both. No child can be punished for not reporting information.

13. How will the safety and well-being of a child be ensured during the proceedings?

The POCSO Act emphasizes on protection of the identity of the child and their mental well being. Several provisions in the act work towards this objective:

- Any information related to the child's identity, particularly if they are a victim of sexual abuse, remains confidential. It makes it an offence to publish or comment regarding the child's identity.
- The child's emotional and psychological well-being is safeguarded during the legal proceedings by allowing for their testimony to be recorded in a child-friendly manner. Their statement would be recorded by a woman officer, in plain clothing, in a safe and familiar environment for the child.
- Statement of the child is recorded in the presence of their parents or in the presence of persons they have confidence in. Assistance of an interpreter or a translator or a special educator can be availed to record the child's statement.
- The trial is conducted in-camera, away from the public eye, maintaining the child's privacy and reducing their exposure.
- Please refer to Chapter VIII for understanding how testimony of children is recorded using the Vulnerable Witness Deposition Complex.

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015

A child can come under the ambit of Juvenile Justice Act (JJA) either as a Child in Conflict with Law or as a Child in need of Care and Protection. The Act is to ensure that such children are catered to through proper care, protection, development, treatment, social re-integration, by adopting a child-friendly approach in adjudication, disposal of matters and their rehabilitation.

Child in Conflict with Law

1. Who is a "Child in Conflict with Law"?

"Child in conflict of Law" is a child who is alleged or found to have committed an offence and who has not completed the age of 18 years on the date of commission of the offence. If a person, above the age of 18 years, is apprehended for an offence that was committed before the age of 18, such person will also be considered a child in conflict with law.

If a person completes 18 years of age during the process of enquiry, the enquiry will continue as if they have continued to be a child.

2. How are offences dealt with under this Act?

For a child in conflict with law, the offences have been classified into three types- petty, serious and heinous offences.

Petty offences- offences for which the maximum punishment is imprisonment up to three years.

Serious offences- includes the offences for which the punishment is -

1. minimum imprisonment for a term more than three years and not exceeding seven years; or

2. maximum imprisonment for a term more than seven years but no minimum imprisonment or minimum imprisonment of less than seven years is provided

Heinous offences- includes the offences for which the minimum punishment is imprisonment for seven years or more.

All these offences are dealt with differently depending upon the age of Child in Conflict with law.

3. What if the offence was committed by a child under 16 years of age?

For commission of a petty offence, a serious offence or a heinous offence by a child under the age of 16 years, proceedings will be conducted by Juvenile Justice Board.

4. What orders can a Juvenile Justice Board pass?

Juvenile Justice Board can pass any of the following orders, depending on the seriousness of the offence:

- Allow the child to go home after advice or admonition
- Direct participation in group counselling
- Order performance of community service
- Order the child or their parents or guardian to pay fine
- Order release of child on probation
- Direct the child to be sent to a special home or a place of safety for not more than 3 years

5. What if the child was above 16 but below 18 years of age?

Age of a child becomes relevant only in case of a heinous offence. For petty and serious offences, inquiry will be done by JJB.

If a person at time of commission of a heinous offence was above the age of 16 years but below the age of 18 years, they may be tried as an adult, in Children's Court. This is determined on the basis of a preliminary assessment conducted with regard to their mental and physical capacity to commit such offence, ability to understand the consequences of the offence and the circumstances in which they allegedly committed the offence.

6. What order can be made by the Children's Court?

If a child is tried as an adult by the Children's Court and is found guilty, the child is to be sent to a place of safety till he attains the age of 21 years. Thereafter, evaluation is done to see if he has undergone any reformative change. Depending on this, he can either be released or sent to jail to complete the term of imprisonment.

A child in conflict with law cannot be sentenced to death or for life imprisonment without the possibility of release.

7. How is the age of child in conflict with law determined?

Age is determined by Juvenile Justice Board by taking evidence by obtaining:

(i) the date of birth certificate from the school, or the matriculation or equivalent certificate from the concerned examination Board, if available; and in its absence;

(ii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(iii) and only in the absence of (i) and (ii) above, age shall be determined by an ossification test or any other latest medical age determination test conducted on the orders of the Committee or the Board

Medical tests for age determination may not be extremely accurate and there is a margin of error for 2 years. If two views are possible, one benefiting the accused and the other being detrimental, the benefit of the age has to go in the favour of the accused.

8. What are the rights of a child in conflict with law?

- A child alleged to be in conflict with law cannot be placed in a lockup or a jail. The child apprehended must be taken before JJB without any loss of time, within 24 hours
- Right of the parents to be informed about the apprehension of the child and the address of the JJB where the child will be produced
- Right to not be handcuffed or chained or use of fetters on a child
- Right to get bail
- FIR against a child can only be registered if the complaint is alleging a heinous offence or if the offence was committed jointly with adults.
- Protection of identity- identity of a child in conflict with law cannot be revealed as it leads to long lasting stigma. Identity includes name, address,

photo, school or any other particular which may lead to identification of a child.

- Protection against disqualification- It means that a child in conflict with law cannot be made to suffer disqualification for being involved with crime in the future with respect to availing of any other opportunity such as further education, skill development or employment on reaching the age of employment. However, this protection is not available to a child who has completed or is above 16 years of age and has been found to be in conflict with law for commission of a heinous offence.

Child in Need of Care and Protection (CNCP)

1. Who is a child in need of care and protection?

A child in need of care and protection is a child who is neglected or is at risk of some harm or abuse. If any of the following situations arise, a child is considered to be a child in need of care and protection:

- a homeless child;
- who is found working in contravention of labour laws or is found begging, or living on the street;
- who resides with a person who has injured, exploited, abused or neglected the child or has violated any other law for the time being in force meant for the protection of child; or has threatened to kill, injure, exploit or abuse the child and there is a reasonable likelihood of the threat being carried out; or has killed, abused, neglected or exploited some other child or children and there is a reasonable likelihood of the child in question being killed, abused, exploited or neglected by that person;

- who is mentally ill or mentally or physically challenged or suffering from terminal or incurable disease, having no one to support or look after or having parents or guardians unfit to take care;
- who has a parent or guardian and such parent or guardian is unfit or incapacitated to care for and protect the child;
- who does not have parents and no one is willing to take care of, or whose parents have abandoned or surrendered him;
- who is missing or run away child, or whose parents cannot be found after making reasonable inquiry;
- who has been or is being or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts;
- who is found vulnerable and is likely to be inducted into drug abuse or trafficking;
- who is being or is likely to be abused for unconscionable gains;
- who is victim of or affected by any armed conflict, civil unrest or natural calamity;
- who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage;

2. What to do if you come across of a child in need of care and protection?

In case of coming across a CNCP, one may contact the Child Welfare Committee. Alternatively, the nearest police station, special juvenile police unit, District Child Protection Unit, childline service, Probation Officer, social worker can be contacted and they will produce the child before CWC.

3. What will Child Welfare Committee do once a child is taken to them?

A Child Welfare Committee will hold an inquiry in the matter of condition of the child. On the basis of this inquiry, taking into account the wishes of the child, they may be restored to parents or the guardian. If the parents or guardian are absent or unwilling or unable to take care of the child , they may be placed in Children's Home, fit facility, Specialised Adoption Agency or foster care.

3. **How are children accommodated at a Children's Home?**

While children (irrespective of gender) below 10 years may be kept in the same home, separate bathing and sleeping facilities shall be maintained for boys and girls in the age group of 5-10 years.

There are separate children's homes for boys and girls in the age group of 7-11 years and 12- 18 years. There are separate facilities for children upto the age of six years with appropriate facilities for infants.

The children also get appropriate clothing, bedding, toiletries, four nutritious meals in a day, medical care, education and vocational and recreational facilities.

PREVENTION OF DRUG ABUSE AMONG CHILDREN

1. Why do some school-going students get addicted to drugs and alcohol?

Children and adolescents are very impressionable. They are eager to try out new things and are easy to influence but lack the awareness to understand the impact, both short and long term, of their actions. Due to their social setting, there is a desire to be accepted by their friend groups and so they also give into the peer pressure.

There has been an increase in mental pressure on the school students, they have to excel academically while also maintaining their extra-curricular and co-curricular activities. This causes anxiety and other mental health issues among the students.

Due to any one or more of these, a student may try out alcohol or drugs or some narcotic substance. These lead to a temporary mood alleviation and this starts the cycle of addiction.

They might use tobacco, cigarettes, *bidi*, alcohol, cannabis (*bhang, charas, ganja*), heroin or opium. If these are not available, they may even resort to inhalants that are commonly available like whitener, thinner, glue, pain relief ointments, gasoline, paint, cleaning fluids or cough syrups.

2. What are the early signs of addiction among children?

It is important to look out for any symptoms of drug or substance use among students so that intervention can be done as soon as possible.

Drug use causes several physical as well as behavioural changes but it is important to eliminate the possibility of any other cause leading to the changes. Recognising signs of addiction amongst teenagers can be difficult- as various signs of drug use in teens are typical young adult behaviour, which include mental health signs.

There can be several *physical signs* which can allude to drug abuse amongst students. These include:

- Skin bruises or scars along the veins due to repeated use of injections
- constant perspiration

- flushed skin
- seizures
- repeated vomiting
- slurred speech
- runny nose or nosebleeds,
- sores or spots around the mouth
- sudden loss of weight
- impaired coordination
- fatigue

Further, changes in behaviour can also signify substance abuse amongst teenagers. These *behavioural signs* include:

- Inability to focus and thereby leading to declining grades
- Insomnia
- Sudden change in eating pattern
- cutting ties with people and emotional distancing from peers and family
- Mood swings or irritability
- Hyperactivity or lethargy
- Depression or anxiety
- Decline in self esteem
- Self hatred, resulting in self harm
- avoidance of eye contact

Many children struggling with substance abuse might show both visible physical signs and behavioural signs. If these signs are evident, professional help should be sought.

3. How can addiction be combatted after identification?

Early identification and targeted brief counselling should be the first step for de-addiction amongst children and young adults. Using general programmes developed for adult de-addiction are not advisable.

Schools can run awareness campaigns and de-stigmatise de-addiction programs so that students who realise that they might need help, can approach the authorities without any shame or fear.

To help a student who might be using or abusing drugs, it is important that a safe and non-judgemental environment is created by the teacher or counsellor. The person should not be threatened or embarrassed in front of other students or teachers, as this might lead to alienation from their friend group or the school community, this might push the student further into the reliance on drugs.

Once drug use is ascertained, the student may be explained the physical and mental dangers of usage of drugs. Further if the student is using injections for consumption of drugs, the risk of sharing needles and transmission of HIV infection can also be explained.

While communicating with the student, ensure that a confrontational tone is not used and that the student is not under the influence at that time. It might shut down further communication or the student might not remember the conversation.

While helping and working with students addicted to drugs, it might be important to highlight the limit of help that the school can offer and suggest use of specialised institutions in dealing with the issue. However, such assistance should be taken only after informing the student about it.

4. Can the Child Welfare Committee be approached for assistance?

Juvenile Justice Act recognises the need of a child who has been or is being or is likely to be inducted into drug abuse and trafficking and considers them under the definition of "child in need of care and protection". Such a child has to be brought before Child Welfare Commitee within 24 hours. After enquiry is done by CWC, such child is to be placed in the appropriate institution. CWC may also order a child addicted to drugs or alcohol to be moved to Integrated Rehabilitation Centre for Addicts.

5. What if a intoxicating or narcotic substance is given to a child by someone else?

Whoever gives, or causes to be given, to any child any intoxicating liquor or any narcotic drug or tobacco products or psychotropic substance, except on the order of a duly qualified medical practitioner, shall be punishable with rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine which may extend up to one lakh rupees.

6. What if someone uses a child for vending, peddling, supplying liquor or narcotic drugs?

Whoever uses a child, for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance, shall be liable for rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine up to one lakh rupees.

7. What if the above-mentioned offences are committed by a child?

Such a child shall be treated as child in conflict with law and appropriate proceedings shall take place before the Juvenile Justice Board. The JJB may also pass an order to direct such child to undergo a de-addiction program.

8. What if someone volunteers to undergo treatment for de-addiction?

If a person is an addict and volunteers to undergo medical treatment from a hospital or from a rehabilitation centre, they shall not be liable to be prosecuted for consumption of narcotic drugs or psychotropic substances, if offence involves a small quantity of narcotic drugs or psychotropic substance.

The said immunity from prosecution may be withdrawn if the addict does not undergo the complete treatment for de-addiction.

9. What are some important helplines that can be used?

- National Drug De-addiction helpline number : 1800-11-0031
- Childline 1098
- DCPCR child helpline service 9311551393
- DSLSA: 1516

THE CHILD AND ADOLESCENT LABOUR (PROHIBITION AND REGULATION) ACT, 1986

Definition of "child" and "adolescent" under the Act

For the purpose of this Act, a "child" is a person who has not completed the age of 14 years and an "adolescent" is a person who has completed their 14 years but not 18 years.

1. When can a child work?

A child cannot be employed or permitted to work in any occupation or process. A child can only:

- help their family or family enterprise, after their school hours or during vacations. "Family" in relation to a child, means their mother, father,brother, sister and father's sister and brother and mother's sister and brother

- work as an artist in an audio-visual entertainment industry, including advertisement, films, television serials or any such other entertainment or sports activities except the circus

2. What are the conditions of employment of an adolescent?

No adolescent shall be employed or permitted to work in any of the hazardous occupations or processes.

- Adolescent cannot be made to work for more than 6 hours in a day
- They cannot be made to work for more than 3 hours at a stretch and after such period, a rest of at least 1 hour must be given
- No adolescent shall be permitted or required to work between 7 p.m. and 8 a.m.
- No adolescent shall be required or permitted to work overtime.

- No adolescent shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.
- A weekly holiday must be fixed by the employer

Steps to take in case you come across a child labour:

If a child or an adolescent is found to be working or employed in violation of the prescribed conditions, a complaint against child labour can be made at

- Any police station
- Special Juvenile Protection Unit
- Delhi Commission for Protection of Child Rights
- ChildLine
- Government Platform for Effective Enforcement for No Child Labour (PENCIL) portal (https://pencil.gov.in)
- Delhi State Legal Services Authority/District Legal Service Authority for legal assistance in reaching the appropriate fora

The Prohibition of Child Marriage Act, 2006

1. What is a child marriage

A child marriage is a marriage in which either of the parties is a child. Under the Act a 'child' is defined as a girl who has not attained the age of 18 years and a boy who has not attained the age of 21 years. This means a marriage in which either a girl is below the age of 18 years or the boy is below the age of 21 years is prohibited under the Act.

2. Where to report child marriage?

Under the Act one can approach the following authorities to report instances of child marriage;

- Child Marriage Prohibition Officer- The Sub-Divisional Magistrate (SDM) is appointed as a CMPO. The DM becomes the CMPO in situations when mass child marriages take place such as on days like Akshaya Trutiya (Akha Teej) which is generally celebrated in April.
- Child Welfare Committee
- Deputy Commissioner of Police (Special Juvenile Police Unit)
- District Child Protection Officer (DCPO)
- Deputy Director of Education (DDE) of your zone
- Secretary of the concerned District Legal Services Authority (DLSA)
- Civil society organisations working on child protection issues with a focus on awareness, prevention and rehabilitation of victims of Child Marriage.
- Judicial Magistrate (First Class) or the Metropolitan Magistrate- The Court will order the Police or the Child Marriage Prohibition Officer, as required to take action.

3. Who can be punished and what is the punishment

- An adult male marrying a child.
- Persons having the charge of the child i.e. parents/guardians and organisations/associations/other persons.
- Persons performing/ abetting/ permitting the marriage such as priest/ religious leader/community leaders, caterers, organisers and relatives/neighbours attending the wedding.

- The Act does not make any provision for punishing a female adult who marries a male child. However, she may be punished under the Protection of Children from Sexual Offences Act, 2012 (POCSO) if the marriage was with a male child below the age of 18 years and there were sexual relations between them.

4. What is the legal status of a child marriage?

A child marriage which has been solemnised can be legally annulled at the option of the child before the child completes two years after attaining majority by filing a petition in the District Court.

A child marriage is considered null and void from the very beginning if it is solemnised in violation of a restraining order issued by a Judicial Magistrate of the First Class or a Metropolitan Magistrate.

5. When can a child marriage be declared to be null and void?

A child marriage is null and void where a child, being a minor;

- is taken or enticed out of the keeping of lawful guardian, or
- is by force compelled, or by any deceitful means induced to go from any place; or
- is sold for the purpose of marriage; or if the minor is married after which the minor is sold or trafficked or used for immoral purposes.

6. What are the provision for maintenance and residence to girl child

If the groom is a minor, his parents or guardians could be directed by the Court to pay maintenance charges until her remarriage in lump sum or in monthly

installments. In a situation wherein the girl child approaches the Court to void her marriage, the Court can also give orders for her suitable residence until her remarriage.

CHAPTER VI

CYBER SECURITY AND LEGAL REMEDIES

CYBER THREATS TO CHILDREN:

1. Cyber Grooming: Cyber grooming is the process of *befriending* a child online to facilitate online sexual contact and/or a physical meeting with them with the goal of committing sexual abuse or exploitation. Here, the perpetrators tend to build an emotional connection through the use of child-friendly websites with future intentions of sexual abuse, sexual exploitation or trafficking. The perpetrator may pretend to be a child in order to establish a bond with the victim child more easily.

A child who has been groomed may feel responsible for or deserving of the abuse, leading to self-blame and low self-esteem. Cyber grooming is often considered to be a gateway to more serious offences of sexual exploitation of children.

Example: Child "A" meets a person named "B" on a social networking website and starts chatting with him regularly. "B" slowly wins over the trust of the child and requests to meet him physically alone. He also convinces "A" to not tell his parents about the meeting. "A" goes to meet "B" alone and is exposed to various threats like kidnapping, sexual assault, trafficking, pornography etc.

2. Cyber Bullying: Cyberbullying involves the use of electronic technologies to harass children by employing hostile, embarrassing and intimidating repetitive behaviors. It can be described as an extension of face-to-face bullying and often involves spreading a rumour, sending harassing messages

or threats of physical or sexual violence, social exclusion or rejection, humiliation, gossiping about a victim to get others not to like the person, and verbal insults. It may also involve making anonymous phone calls, theft of identity information, impersonation and distributing explicit videos on the internet.

Cyberbullying can be especially damaging to children due to its pervasiveness. The internet and social media have made it possible for children to always remain connected and a victim of cyberbullying can be exposed and barraged with harmful material 24 hours a day.

Example: "A" is a student of class VII. He has a social media account where he frequently shares videos of his dance performances. He starts receiving anonymous messages online mocking him for his dance, abusing him and threatening him to stop posting the videos.

3. Online Transaction Fraud: Although most children do not have their own bank accounts with access to internet banking, given the pervasiveness of e-commerce, they commonly use their parents' accounts for activities such as online shopping, gaming, and other activities. To steal money from accounts, criminals employ a number of deceptive strategies, such as phishing and impersonation, etc. Seemingly harmless website or applications can result in great financial loss if children are not taught how to navigate the internet wisely.

Example: Child "A" enjoys playing a mobile game in which he has to collect online "gems" and trade them for online "lives". While playing the game, an advertisement pops up offering 100 "gems" for a nominal cost. "A" clicks on the link and is taken to a website that looks very similar to the official website

of that mobile game. "A" uses the debit card of his father to seemingly pay the nominal cost for 100 gems but becomes a victim of cyber fraud and loses the entire amount in the account.

Another common online fraud is signing up or renewal of subscription services by using deceitful means.

4. Cyber Stalking: It refers to the persistent and unwanted pursuit or monitoring of an individual through digital channels and online platforms. It involves the use of technology, such as the internet, social media, email, and messaging apps, to intrude into the victim's personal life. It can instill fear, and create a sense of vulnerability. Cyberstalking can have severe emotional, psychological, and sometimes physical consequences for the victim.

Example: "A" is a child who uses social media to regularly post updates about his school, family and social life. "B" is a cyber stalker who keeps a tab on his social media posts, location updates, and other online interactions. He uses this information to intimidate "A" and to create his fake profile to impersonate him, to spreading false information and to engage in harmful activities using "A's" identity.

5. Inappropriate or Explicit Content: This is one of the most common threats children face online. They may come across explicit videos, sexual images, or shocking violence at any time on the internet. Inappropriate content can come in many different forms. However, the dangers of allowing sensitive and impressionable viewers to be exposed to harmful content can have a long-lasting negative impact.

Example: Pornography, Vulgar Language (Swearing, Casteist slurs etc.), Depictions of Illegal Behavior (Crime, Terrorism, Vandalism etc.), Depictions of Harmful Behavior (Eating Disorders, Self-Harm or Suicide etc.), Depictions of Violence etc.

6. Child Pornography: The offence of child pornography is not just one offence, rather it is a series of offences with harsh consequences. The genesis of this phenomenon is rooted in the perpetration of sexual abuse upon a child, who likely lacks a comprehensive understanding of the nature of the events befalling them.

Child pornography crimes are directly linked to the sexual abuse of children. Apart from the fact that some child pornographic material depict physical, sexual abuse against children, the fact that the abuse has been recorded, disseminated and viewed add to the victimization and abuse of the child victims. It is common for children who have been abused and depicted in pornographic material to develop depression and feelings of guilt.

7. Child Identity Theft/Impersonation: Child identity theft refers to the fraudulent use of a child's personal information, such as their Unique Identity Numbers (AADHAR Details), name, and date of birth, to commit various forms of financial or personal fraud. Unlike adult identity theft, where the aim is usually financial gain, child identity theft often involves criminals using a minor's identity for different purposes, often exploiting the fact that children typically do not have a credit history and the theft can go undetected for a longer period.

Child identity theft can have serious and long-lasting consequences for the victim, as their personal and financial records may be compromised before

they even reach adulthood. It may take years to discover and resolve such theft, potentially affecting the child's credit history, education, employment opportunities, and financial well-being in the future.

Example: Pretending to be a trusted organisation in fake websites and emails (phishing), text messages (SMS phishing or smishing) and phone calls (voice phishing or vishing) to trick victims into disclosing personal information (passwords, card details, answers to security questions) etc.

8. Cyber Trafficking: Unlike sex-trafficking, the victim here does not come in direct contact with the abuser. Rather, the abuser records the victim performing forced sexual and intimate acts and violates their privacy through live-streams, films, photographs or from a central location. This material is often sold online or streamed live to sexual predators and buyers.

9. Sextortion: Sextortion refers to a form of online exploitation and blackmail in which an individual, often a child or teenager, is coerced or manipulated into providing explicit images, videos, or engaging in explicit acts on camera. The perpetrator then uses these materials as leverage to extort the victim, demanding money, more explicit content, or other forms of compliance under the threat of sharing the explicit material with the victim's family, friends, or the public. Once online, such information may receive widespread circulation.

10. Revenge Porn: Victimising by way of revenge porn is often practiced by children below 18 years of age. It may be described as an act whereby a perpetrator satisfies their anger and frustration for a broken relationship through publicizing false, sexually provocative portrayal of his/her victim, by misusing information that he may have known naturally and that he may have stored on his computer, or phone, or may have been conveyed to his electronic

device by the victim herself, or may have been stored in the device with the consent of the victim herself; and which may essentially have been done to publicly defame the victim.

11. Use of deepfake for illegal purposes: Deepfake technology involves the use of artificial intelligence and machine learning to manipulate or create highly realistic audio, video, or images that appear to be genuine but are actually fabricated. It has raised concerns about its potential for misuse and its implications for cybercrime. While deepfakes themselves are not inherently criminal, their misuse in certain contexts can lead to various forms of cybercrime.

The use of deepfake technology can give rise to one or more cyber crimes like Cyber bullying, exploitation and grooming and privacy violations. Deepfakes can be used to create fake videos or images of children in compromising or embarrassing situations. These manipulated content pieces can then be shared online, leading to cyberbullying, harassment, and humiliation. Children may become targets of ridicule and face emotional distress due to the spread of such malicious content.

12. Copyright Infringement: Copyright infringement through the internet refers to the unauthorised use, distribution, reproduction, or sharing of copyrighted material using digital platforms and online technologies. This form of infringement occurs when individuals or entities use copyrighted works without obtaining proper permission or licenses from the copyright holders. The internet has made it easier to copy and distribute copyrighted material, leading to various instances of online copyright infringement.

Children are at risk of committing copyright infringement as well as being victims of copyright infringement due to lack of knowledge.

Example: Downloading copyrighted materials from pirated websites and portals, sharing the copyrighted works like movies, TV shows, music, or other media etc. over the internet using torrent sites, peer-to-peer networks etc.

13. Defamation: Social media, email groups, intranet, bulletin boards, chats and other digital spaces enable widespread dissemination of defamatory content against a person. Online publication of defamatory statements about a person can be more harmful and damaging than verbal and offline statements. The effects of online communication of sensitive personal information, images or videos can be devastating and intimidating for children in particular. Offensive messages, name calling and body shaming on social media can be very hurtful. The severity, frequency and the fact that such messages spread so fast cause a lot of distress to the person who has been targeted. Even though it may be difficult to establish such behaviour as an offence under Indian law, it is grossly unethical to threaten or humiliate anyone online.

2. LEGAL PROVISIONS/OFFENCES ALONG WITH PENALTIES

The primary statutes and legal provisions that cover offences and penalties relating to cyber threats against children are:

A. Indian Penal Code, 1860

None of the provisions of IPC specifically deals with cybercrimes committed against children. However, the Information Technology Act runs parallel to some of the provisions from IPC which penalizes certain forms of cybercrimes, including those in relation to:

- **Financial frauds (Section 405, 406, 409)**: These sections talk about the offence of 'criminal breach of trust' and covers online financial frauds. It punishes the offender with imprisonment which may extend to 3 years or 10 years to life, depending on the kind of offence committed.

- **Online cheating (Section 415, 417, 420)**: These sections talk about the offence of 'cheating' and 'dishonestly inducing delivery of property', and imposes imprisonment for 1 to 7 years along with fine, depending on the seriousness of the crime. Cybercrimes like creating fake websites, cyber frauds, password theft for fraud, and the creation of fraudulent websites are covered under this.

- **Cyber stalking (Section 354D)**: This section punishes an offender who monitors the use by a woman of the internet, email, or any other form of electronic communication. Such an offender shall be punished with imprisonment which may extend to 3 years and fine on the first conviction, and with imprisonment which may extend to 5 years and fine on subsequent convictions.

- **Sexual harassment (Section 354A) and Voyeurism (Section 354C)**: Please refer to Chapter III

- **Criminal intimidation (Section 503, 506)**: This section punishes the offender who threatens another with any injury to his person, reputation, or property with the intent to cause alarm to that person or to cause that person to do any act which he/she is not legally bound to do or to omit to any act which that person is legally entitled to do.

- **Word, gesture or act intended to insult the modesty of a woman (Section 509)**: Please refer to Chapter III.

- **Defamation (Section 499, 500)**

- **Making or using forged documents (Section 463, 465, 471)**

B. Information Technology Act, 2000

- **Section 67B** deals with the punishment for publication and transmission of sexually explicit material depicting children (those who are below 18 years) on online platforms and penalizes the same. It also covers:

    - Creation of text or digital images or collecting, seeking, browsing, downloading, advertising, promoting, exchanging, distributing any electronic material depicting children in obscene or indecent or sexually explicit manner

    - Cultivating, enticing or inducing children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource;

    - Facilitating online abuse of children;

    - Recording in any electronic form one's own abuse or that of others pertaining to sexually explicit acts with children.

- **Section 66E** punishes the publication or transmission of images of a private area of a person or of a person engaged in private activities

without consent of such person, if such images are captured under circumstances violating privacy.

- **Section 66C** deals explicitly with identity theft cybercrimes. This section prescribes punishment for any individual who fraudulently or dishonestly uses personal information like password, e-sign of other people.

- **Section 66D** imposes punishment on a person who commits cheating by impersonating another.

- **Section 43A** imposes civil liability in the form of 'compensation' and requires individuals and institutions handling personal data and sensitive information of people to take care of such information as against illegal use and exposure. This provision is wide enough to cover personal data and sensitive personal information of children.

C. Protection of Children from Sexual Offences Act, 2012 (POCSO Act)

The POCSO Act also provides punishments for sexual harassment and/or assault of a child and creating or using child pornography. The same has been explained in detail in Chapter IV.

3. PROCEDURE FOR FILING COMPLAINTS

The cybercrime complaints can be registered with the cybercrime cells. The process of filing the complaint is both online and offline, and the victim can choose the procedure according to his/her convenience. It is not necessary for the victim to register the complaint in the cybercrime cell of the city in which he or she is residing or where the crime was committed because the cybercrime comes under the purview of global jurisdiction i.e., the cybercrime complaint

can be registered with any of the cybercrime cells established in India. These cells have also been generating awareness about the cybercrimes and measures to avoid being a victim of such crimes. Cybercrime cells maintain reports of cybercrimes and also take care of investigations.

A complaint can be filed by the aggrieved children or any other person on behalf of the child using one of the following methods -

- **File an offline cyber crime complaint with the Cyber Crime Cell:** The Cyber Crime Cell is a dedicated unit of the Police to tackle cyber crimes. The victim can make a written complaint to the nearest Cyber Crime Cell addressed to the head of the respective Cell. The complaint shall be accompanied by name, contact details, mailing address, and other relevant documents/evidence of the victim/complainant

- **File an online complaint on the Cyber Crime Reporting Portal:** The MHRD has developed a portal for reporting of cyber crimes and the same can be accessed at *https://cybercrime.gov.in*. The complaints can also be made anonymously on this portal if the victim/complainant reports the crime related to women or children. The cybercrime related to Child Pornography, Child Sexual Abuse Material can only be reported anonymously. While reporting the cybercrime (relating to women or children) on the portal, the complainant will have to provide the following information only -

1. **Incidental details**

    - Category of the cybercrime

- Date and time of the incident (e.g., when the sexually abusive video was uploaded on social media)
- State and district: where the victim is residing or where the crime was committed
- Platform where the incident occurred (WhatsApp, Facebook, Instagram, etc.)
- Upload evidence: images, videos, documents or link to CP/RGR content.

2. Suspect's details

- Suspect name if the victim/complainant is aware of the same.
- Suspect's identity (Email, Driving License, Mobile Number, PAN Card etc.) if the victim/complainant is aware of the same.

- **Helpline:** Victims can also register their complaints through the toll-free Number for cybercrime complaints (*1930*).
- **Filing an FIR with the Police:** In cases where the victim/complainant does not have access to any of the Cyber Crime Cells in India or internet services, such persons can file an FIR at a local police station with the relevant information and evidence. In case of inaction of police or failure to register an FIR, a Judicial Magistrate (called Metropolitan Magistrate in Delhi) can be approached under Section 156(3) Cr.P.C. This topic has been covered in detail in Chapter II.
- **Filing of a private complaint directly in Court**

4. PROCEDURE FOR OBTAINING LEGAL ASSISTANCE

For any free legal assistance, aid or advice in Delhi, legal services institutions can be contacted on 1516 or 15100. The Front Offices in each Court complex may also be visited. For more details on how to obtain free legal assistance, aid or advice, please refer to chapter I.

Keep in mind that all children are entitled to free legal assistance, aid and advice! The income of their parents does not matter.

5. SAFETY/PREVENTIVE MEASURES

The prevention of cybercrimes targeting minors requires a comprehensive strategy that encompasses the collaborative efforts of parents, guardians, educational institutions, law enforcement agencies, and technology companies.

(i) **Education and Awareness -**

- The children should be taught about online safety, privacy, and the potential risks associated with sharing personal information including name, parents' name or employment, Aadhar or other identity card numbers, phone numbers, address, bank details etc.

- Children should be explained that they must not click on any emails from any strangers, pop ups and other unfamiliar links and websites.They should first consult their parents or teachers before navigating into unfamiliar areas.

- Children must be repeatedly warned against physically meeting anyone they met online. Any meeting, if required, must happen at a public place and in the presence of parents or guardians.

- The school should encourage open communication with children about their online activities and experiences.
- The Government should provide resources and workshops for parents, guardians, and teachers to stay informed about the latest online threats and safety practices.
- Schools should incorporate digital citizenship and online safety education into the curriculum.

(ii) **Parental Supervision and Guidance**:

- Parents should establish age-appropriate rules for internet usage, including time limits and appropriate websites or apps.
- The parents can use parental control software to monitor and restrict access to certain websites or content.
- The parents should be actively involved in your child's online activities, and maintain open lines of communication about their online interactions.
- Parents should discuss the potential consequences of sharing personal photos, videos, or information on social media.
- The children should be encouraged to only connect with people they know in real life on social media platforms.

(iii) **Privacy Settings and Security Measures:**

- The Parents should ensure that privacy settings are properly configured on devices, apps, and social media platforms for their children.

- The children should be taught how to create strong, unique passwords and encourage them to use two-factor authentication where possible.

- The children should be made aware to use the in-built reporting options within the social media platforms like Instagram, Facebook, Snapchat, Youtube etc. for pornography, cyber bullying or harassment.

By taking proactive steps and fostering a culture of online safety, parents, guardians, and communities can significantly reduce the risks of cybercrimes against children and create a safer digital environment for them.

CHAPTER VII

Witness Protection

It is obvious that witnesses are an integral part of Criminal Justice System as without their true, clear and coherent testimony, the Court will find it difficult to arrive at the correct finding. In order to ensure that witnesses are able to depose in Courts without fear or pressure, the Delhi Government has implemented the Witness Protection Scheme, 2018.

Witness Protection Scheme 2018

1. **Who is a witness?**

   As per the scheme, Witness means any person, who possesses information or document about any offence.

2. **What is 'offence' as per the Scheme?**

   The scheme is applicable only in case of limited offences. These offences are those which are:

   - punishable with death or life imprisonment; or
   - an imprisonment up to seven years and above; and
   - also, offences punishable under Section 354, 354A, 354B, 354C, 354D and 509 of Indian Penal Code

3. **When can a witness file an application for protection?**

   A witness can file an application for protection in case of

   - Threat to Life of witness or his family members
   - Threat to Safety of witness or his family members

- Threat to Reputation of witness or his family members
- Threat to Property of witness or his family members
- Harassment or intimidation to witness or his family members

4. Who all are included in the term 'family member'?

- parents/guardian of the witness
- spouse of the witness
- live-in partner of the witness
- siblings of the witness
- children of the witness
- grandchildren of the witness

5. Where can a witness file application?

It can be moved before a Competent Authority through its Member Secretary. The Head of the Prosecution (commonly called as Chief Public Prosecutor) is the Member Secretary as per the Scheme and thus, the application has to be filed with the Head of the Prosecution. The Competent Authority that decided the application and passes Witness Protection Order consists of

- District & Sessions Judge as its Chairperson
- Head of Police as Member and
- Head of the Prosecution as Member Secretary

For the sake of clarity, it is pertinent to mention that each court complex in Delhi has a separate office of Chief Public Prosecutor where such application can be moved.

6. **What protection measures can be directed by the Competent Authority while passing Witness Protection Order?**

The witness protection measures are ordered in proportion to the threat and shall be for a specific duration on need basis which shall be reviewed regularly. The scheme divides witnesses into the three categories depending upon threat perception:

CATEGORY A: Where the threat extends to **life** of witness or his family members, during investigation/trial or thereafter

CATEGORY B: Where the threat extends to **safety, reputation or property** of the witness or his family members, during the investigation/trial or thereafter.

CATEGORY C: Where the threat is moderate and extends to **harassment or intimidation** of the witness or his family member's, reputation or property, during the investigation/trial or thereafter.

Depending upon the category of witness and other facts and circumstances, following measures can be ordered:

- Ensuring that witness and accused do not come face to face during investigation or trial
- Monitoring of mail and telephone calls;
- Arrangement with the telephone company to change the witness's telephone number or assign him or her an unlisted telephone number;
- Installation of security devices in the witness's home such as security doors, CCTV, alarms, fencing etc.;

- Concealment of identity of the witness by referring to him/her with the changed name or alphabet;
- Emergency contact persons for the witness;
- Close protection, regular patrolling around the witness's house;
- Temporary change of residence to a relative's house or a nearby town;
- Escort to and from the court and provision of Government vehicle or a State funded conveyance for the date of hearing;
- Holding of in-camera trials;
- Allowing a support person to remain present during recording of statement and deposition;
- Usage of specially designed vulnerable witness court rooms which have special arrangements like live links, one-way mirrors and screens apart from separate passages for witnesses and accused, with option to modify the image of face of the witness and to modify the audio feed of the witness" voice, so that he/she is not identifiable;
- Ensuring expeditious recording of deposition during trial on day-to-day basis without adjournments;
- Awarding time to time periodical financial aids/grants to the witness from Witness Protection Fund for the purpose of re-location, sustenance or starting new vocation/profession, as may be considered necessary;

- Any other form of protection measures considered necessary, and specifically, those requested by the witness can be ordered by Competent Authority.

7. **Can a witness seek protection or change of identity?**

Yes. An application seeking identity protection can be filed in the prescribed form before the Competent Authority through its Member Secretary i.e., the Head of Prosecution. Besides, witness can also request for change of identity and Competent Authority can take a decision conferring a new identity to the witness including new name/ profession/ parentage and providing support documents. The new identities do not deprive the witness from existing educational/professional/property rights.

8. **Which is the implementing Authority/agency of the orders passed by Competent Authority under this scheme?**

The Witness Protection Order passed by the Competent Authority shall be implemented by the Witness Protection Cell of the State or the trial court, as the case may be. Overall responsibility lies with the Head of the Police in the State. However, orders for change of identity and/or relocation are implemented by Department of Home of the concerned State.

Penal Provisions:

Section 195A of Indian Penal Code makes the act of threatening any person to give false evidence, an offence. It provides that if any person threatens another person with injury to his body, reputation or property or threatens to cause

such injury to any person in whom that person is interested, it amounts to an offence which may be punishable up to 7 years of imprisonment or fine or both. Likewise, in statues namely Juvenile Justice (Care and Protection of children) Act, 2015, Whistle Blowers Protection Act, 2011, Protection of Children from Sexual Offences Act (POCSO Act) 2012 and National Investigation Agency Act, 2008 and Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 also provides for safeguarding witnesses against the threats.

CHAPTER VII

DELHI VICTIM COMPENSATION SCHEME 2018

1. What is the Victim Compensation Scheme?

The Delhi Victim Compensation Scheme was formulated to ensure that victims of any harm or injury do not have to face additional victimisation due to the social and financial disparity in the society. It also takes care of rehabilitation needs of the victims. The amount of compensation is fixed by the DSLSA or DLSA and the compensation awarded depends on the degree of harm or injury caused, whether physical or mental.

2. Who can avail it?

Any person who has suffered any loss or injury as a result of an offence is a victim and they can avail the benefits under the scheme. Dependents of the victim can also apply under the scheme. Dependents include, spouse, minor children, unmarried daughter, parents and grandparents.

In case of the death of the victim, their guardian or legal heir may also apply for it.

3. Are there any special provisions for women?

The scheme provides for a separate fund for compensation for women victims or survivors of sexual assault and other offences such as dowry death, acid attack, cruelty by husband or his relatives, miscarriage, victim burning. This includes any other offence that leads to loss of any limb or part of body or death.

4. How can it be applied for?

The victim or the dependent or the SHO of the area can fill Form-I available for this purpose and submit it to the DSLSA or DLSA. The women victims have to submit the Form -Z. This form should be submitted along with a copy of FIR or the criminal complaint and if available, Medical Report, Death Certificate, copy of judgement or recommendation of the Court if the trial is over.

For offences committed against women, the police authorities are mandated to submit a copy of FIR to the DSLSA or DLSA and in deserving cases, the grant of compensation may be made by DSLSA or DLSA on its own, without submission of the application.

5. Are there some immediate reliefs available to the victim?

The victim or her dependents can apply for interim relief and it may be ordered by DSLSA on its own in certain circumstances. This provides immediate first aid facility or other medical benefits free of cost.

Monetary interim compensation may also be granted in some situations in addition to an order for free medical aim and treatment. And for women

victims, as soon as application is received, a sum of Rs 5,000 is immediately disbursed.

In case of acid attack, a sum of Rupees One Lakh shall be paid to the victim within 15 days of the matter being brought to the notice of DSLSA or DLSA.

6. Is there a time limit for applying for the compensation?

No claim for compensation shall be entertained after 3 years from the date of occurrence or the offence or conclusion of the trial.

However, for the women victims, compensation may be granted beyond the three years' time limit if the DSLSA or DLSA is of the opinion that reasons were satisfying.

7. How will the compensation reach the victim or the dependents?

The amount of compensation is disbursed in a bank account in the joint or single name of the victim or the dependents. If the victim does not have a bank account, DLSA would facilitate opening of a bank account in the name of the victim.

If the victim is minor, then an account will be opened jointly in the name of the victim and the guardian. If the child is in a child care institution, the superintendent of the institution will act as a guardian. The 80 percent of the amount of compensation awarded to a minor shall be deposited in fixed deposit account and can be withdrawn only on attainment of majority or after 3 years after 3 years of deposit, whichever is later. Exceptional case of educational or medical or other urgent need may be considered for withdrawal of the amount.

However, monthly interest accrued on the fixed deposit is available for the withdrawal.

8. What if the victim is a minor without any parents or legal guardian?

In such a case, the compensation is disbursed to the Bank Account of the child, opened under the guardianship of the Superintendent of the child care institution where the child is.

9. How much compensation will be granted?

A minimum and maximum amount for different kinds of losses and injuries arising out of offences has been fixed. However, the amount of compensation that is awarded, depends on various factors like

- the gravity of injury caused, injury could be mental or physical
- Expenditure incurred or likely to be incurred on the medical treatment, funeral, travelling during investigation, inquiry or trial
- Loss of educational opportunity, impact on employment
- Relation between the victim and the offender, if any
- If the incident was a singular one or took place over a period of time
- Whether any Sexually Transmitted Disease of Human Immunodeficiency Virus (HIV) was contracted
- Disability suffered by the victim
- Financial condition of the victim, financial loss if any incurred to the victim of their dependents
- In case of death, the age of deceased, monthly income, number of dependents, life expectancy, future promotion etc.

CHAPTER IX

Guidelines for recording of evidence of vulnerable witnesses

Who is a vulnerable witness?

- A child below the age of 18 years
- Age-neutral victims of sexual assault
- Gender-neutral victims of sexual assault under POCSO Act
- Age and gender neutrals victims of sexual assault under Sec 377 IPC, which covers unnatural offences
- Witnesses suffering from mental illness
- Any speech or hearing-impaired individual or a person suffering from any other disability who is considered to be a vulnerable witness by the competent Court
- Witnesses with threat perception
- Any other witness that the court may deem to be a vulnerable witness

Structural measures to protect the witness from unnecessary stress:

- Every district court has a Vulnerable Witness Deposition Centre. These centres ensure that vulnerable witnesses or the victims do not have to be physically present in the same courtrooms as the accused and there is no direct or indirect contact between the witness and the opposing party.

- Different passageway is provided for vulnerable witness to minimise the chances of accidental encounter with the opposing party

- The waiting area for vulnerable witnesses with the support person is separate from waiting areas used by other persons. The waiting area for vulnerable witnesses is furnished so as to make a vulnerable witness comfortable.

- In general, proceedings take place in open courts which means there is no prohibition on who is present in the courtroom at any particular proceedings. However, for proceedings involving vulnerable witness, in camera proceedings may be conducted, which means that only the persons directly involved with the case are allowed to be present in the courtroom.

- Witnesses may be allowed to testify from a place other than the witness chair.

- The vulnerable witness may choose to not see the opposing party, however, the opposing party and his counsel is allowed to have a frontal or profile view of the witness during the testimony, even if it is by a video link. This may happen by use of a screen, one sided mirror or other similar means.

- If the witness refuses to give testimony in the presence of the accused or if circumstances show that the witness may be inhibited from speaking the truth in that person's presence, the court shall give orders to temporarily remove the accused from the courtroom to an adjacent room with a video link or a one-way mirror visibility into the courtroom. Defence lawyer of the accused will be present in the courtroom to ensure that the accused's right of fair trial is not infringed.

- To conceal the identity of the witness, testimony may be held behind the screen, using image or voice altering devices, through the means of live video link or through qualified and suitable intermediary, such as, but not limited to, an interpreter for people with hearing, sight, speech or other disabilities

Other procedural measures

- Testimony of vulnerable witnesses is taken expeditiously and at an appropriate time during the day when they are well rested.
- Vulnerable witness may be allowed reasonable period of recess during deposition
- To familiarise vulnerable witnesses with the layout of the Court, pre-trial visits can be arranged and the procedure for recording evidence may be explained.
- A support person, with whom the witness is comfortable with, can be allowed to be present in the courtroom.
- For effective communication, a facilitator such as an interpreter, translator, child psychologist, psychiatrist, teacher may be allowed in the courtroom
- To protect the identity of a vulnerable witness, the Court may take necessary steps such as removing the names, addresses, workplaces, professions or any other information that could be used to identify the witness. The persons present in the court may be forbidden from

disclosing the identity an a pseudonym or a number may be assigned to the witness

- Language in which questions are put is appropriate to be used before the witness. It is such that it does not cause unnecessary stress or embarrassment to the witness

The language used is simple to allow the vulnerable witness to understand it easily.

Notes

Delhi State Legal Services Authority

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