

LESSONS IN LAW

**For CBSE & ICSE
Students of Sikkim**

(XI Class)



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*For CBSE & ICSE Students of Sikkim
XI Class*

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PLEDGE

I am an Indian. I love my country.

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

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

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

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

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

**COUNTRY FOR THE PEOPLE
PEOPLE FOR THE COUNTRY**

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LESSON 1

WE THE PEOPLE OF INDIA

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

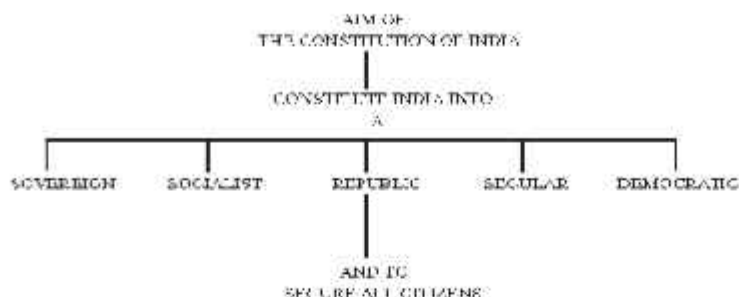


It has been laid down in the Preamble of the Constitution that our aim is to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic and to secure to all citizens. Justice, Liberty and Equality and to promote fraternity among them.

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

The prime concern of Socialist India is to eliminate inequalities in Income, Status and Standard of living and to

provide equality in opportunities and facilities.



Secularism is not to support anti-God ideals, but to ensure non-discrimination on the grounds of religion or beliefs.

In a democracy, the process of decision making vests with the people of the country. It is a system of 'a Government of the people, by the people and for the people'.

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

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

It was on the 26th of November, 1949 that the Constituent Assembly adopted the Constitution. It came into force on 26th January, 1950, when India became a Republic. The Constitution of India was framed by the Constituent Assembly. We have the Parliament of India, as the Central legislative body, with the House of People (Lok Sabha) and the Council of States (Rajya Sabha). We have the State Legislative Assembly and in certain States, Legislative Council also, as the State Legislative bodies.

These are the law making bodies of our Country. In India, there are hundreds of laws in-force either enacted by the Central Legislature or the State Legislatures. There are a few other laws in force, namely, subordinate legislations, such as rules, regulations etc., made by the executive bodies according to the legislative scheme adopted by the Country.

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

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

In short, awareness of law is essential for the progress of the country. In the absence of this, we will slip into a primitive



world. The law is the basis of progress and civilization. Thus these “Lesson in Law” are an important study for the students, apart from their general studies.



LESSON 2

JUDICIAL SYSTEM IN INDIA THE JUDICIARY AND TYPES OF COURTS

India is the largest democratic country in the world and has a strong judicial system too. The Central Ministry of Law and Justice is the executive organ entrusted with the function of administration of justice within



the territory of India. The system is managed by the Ministry of Law and Justice, both at the Centre and State levels. Administration of justice, is the subject allotted to both the Central Government and State Government, as per the entry 11A in the concurrent list (List III of Schedule VII) to the Constitution of India.

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

Judicial Courts in India

Courts are an integral part of the judicial system. In India, the Courts can be classified into Courts constituted as per the provisions of the Indian Constitution, Courts constituted as per the provisions of Criminal and Civil laws and the Courts/Tribunals constituted, as per the laws dealing with special subject matters like tax matters, family matters, corruption matters, and services matters etc.

In India, there is the Supreme Court, High Courts and Subordinate Courts, according to the territorial or local Jurisdiction. It can be classified as Constitutional Courts, Civil Courts, Criminal Courts and Special Courts/Tribunal according to the nature of subjects they deal with or the nature of functions entrusted with them.

Supreme Court of India

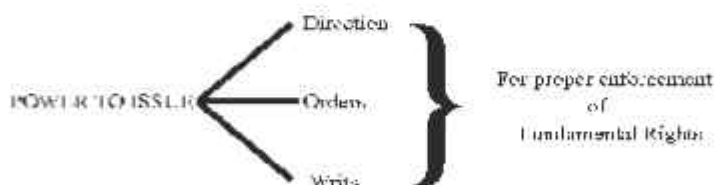
The Indian Judiciary has a Supreme Court established at the highest level. The Supreme Court of India is situated in New Delhi, the capital city of our nation. The Supreme Court of India is established in accordance with the provisions contained in Article 124 of the Constitution of India. The Supreme Court is the highest court in India as well as the Supreme Constitutional Court.

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



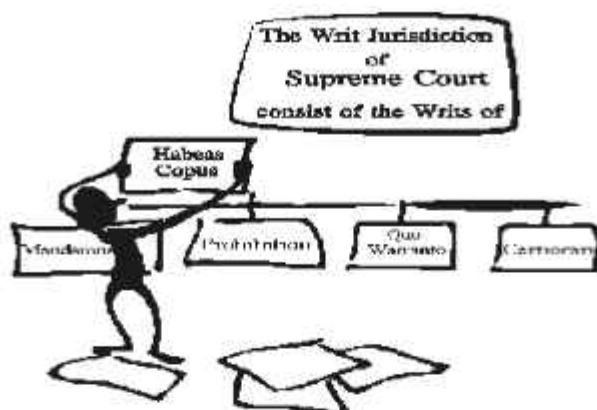
Powers of Supreme Court

The Supreme Court of India has its original jurisdiction with respect to the matters concerning enforcement of fundamental rights guaranteed under Part III of the Constitution of India. The Supreme Court has the powers to issue directions, orders and writs for the proper enforcement of fundamental rights. The Writ Jurisdiction of the Supreme Court consists of the writs of Habeas corpus, Mandamus, Prohibition, Quo warranto and Certiorari.



Writ of Habeas Corpus

A writ of Habeas Corpus is available in all cases of wrongful deprivation of personal liberty and the Constitutional Court can, at the instance of an interested person, command the production of the detainee in the Court. On enquiry, if the Court finds that there is no legal justification for the detention, the Court is also empowered to order release of the detainee.



Normally, the person entitled to apply for habeas corpus would be the person illegally detained, but if it is not possible for him to make an application, a relative or a friend or a person interested in the welfare of the detainee may make an application to the Court.

For example, 'A' availed a loan from a private financier and failed to repay the same. The financier took 'A' and detained him in a strange place and the relatives of 'A' approach the Police and file a complaint. The Police failed to find 'A'. The wife or the relative of 'A' applies to the Court seeking a writ of habeas corpus and the Court may, according to the facts and circumstances of the case, issue the writ asking the Police authority or any person concerned or the Government to find 'A' and produce him before the Court.

Writ of Mandamus

The Writ of Mandamus is a discretionary power of the Constitutional Court, wherein the Court issues directions to a public authority to perform their statutory or governmental obligations. The Court issues the writs to prevent a disorder from a failure of justice. The existence of a right to the applicant and

corresponding duty to the public authority is the primary concern of the Court, while issuing a writ of mandamus. A writ of mandamus will lie to compel the public officials or a public body to perform any public duty which they have failed to perform. For example, the authorities of a school can submit an application for affiliation to the Central Board of Secondary Education. For the successful processing of the application, 'No Objection Certificate' issued by the State Government may be a pre-requisite.

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

Writ of Prohibition

When a public office is carrying out its functions in a manner which is contrary to the law established, the Constitutional Court can issue a writ of prohibition to prevent it from proceeding further. When a local authority is carrying out its mining activities or excavations in violation of the right to life of the neighbouring people, the Court can issue a writ of prohibition preventing the authorities from proceeding with the activities of mining and excavation. Likewise, when a dispute is

pending adjudication in the higher Court and a case relating to the same subject matter is also under consideration in the Lower Court, the Supreme Court is empowered to issue a Writ of Prohibition, by withholding the proceedings pending consideration before the Lower Court.

Writ of Quo Warranto

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

Writ of Certiorari

Certiorari is a writ issued by the Constitutional Court, particularly in a situation when the Court feels an order or a proceeding of the public authority is not in accordance with the law and it is necessary to quash such an offending order or proceedings. A Writ of Certiorari will lie only against the orders or proceedings of the public officers, not against private persons. For example, when an officer of the Gram Panchayat declines to issue a license or reject the application to start an industry, by an order, the aggrieved person can apply for a writ of certiorari to quash the order declining the license or rejecting the application, on legal grounds. When a department of the Government rejects the application for scholarship for a deserving student, on illegal reasons, the student can approach the Court, by making a

petition to issue a writ of certiorari to quash the order rejecting the scholarship.

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

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

Being an important functionary in administering justice, the Supreme Court has an extraordinary power to answer the questions referred by the President of India, as per the provisions of Article 143 of the Constitution of India. Another significant thing to note is that as per the provisions of Article 141 of the Constitution, the law declared by the Supreme Court is binding on all Courts within the territory of India.

High Courts in the State

Article 214 of the Constitution of India mandates the establishment of a High Court for each state in India. The Judiciary in the State is headed by the Chief Justice of the High Court. The



President of India is the authority appointing the Chief Justice and other Judges of the High Courts. The High Court of Sikkim is situated at Gangtok having strength of three High Court Judges including the Chief Justice.

Powers of High Court

The High Court in the State is empowered to deal with matters in connection with its Original Jurisdiction and Appellate Jurisdiction. Under Article 226 of the Constitution, the High Court is empowered to issue directions, orders or writs for enforcement of any of the fundamental rights guaranteed by the Constitution and also for any other purpose, under its original Jurisdiction. That means any party aggrieved by an action taken by the Government, its officers or the instrumentalities or the local authorities can directly approach the High Court of local limits by filing a Writ Petition under Article 226. While sitting as a Constitutional Court or Court having writ jurisdiction, the High Court has the power to issue Writs of Habeas Corpus, Mandamus, Prohibition, Quo Warranto and Certiorari.

Under Article 227, the High Court of the State has the power to supervise the Subordinate Courts or Tribunals which are working in its local limits. Additionally, the High Court is the appellate Court with respect to civil and criminal proceedings decided by its subordinate Courts or Tribunals. In certain areas like tax, service, family disputes, etc. the High Court is entrusted with the powers of the appellate Court, in accordance with the provisions of such Special Acts.

Subordinate Courts

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

Civil Courts

Following types of Civil Courts are established in the State of Sikkim.

- Civil Judge
- District Judge

Criminal Courts

- Magistrates Court – Judicial Magistrate First Class/Chief Judicial Magistrate
- Sessions Judge

● Additionally there is a system of Court of Executive Magistrate, in every District, to perform certain functions provided in the Criminal Procedure Code, 1973, such as the dispersal of unlawful assembly, maintenance of public order, prevention of public nuisance, etc.

Function of Civil Courts

Types Of Civil Courts in Sikkim:



The Civil Courts are entrusted with the task of adjudication of disputes of civil nature, like money disputes, boundary disputes, disputes with respect to properties like ownership and title, partition, performance of contract, etc. Civil Courts are empowered to adjudicate on all kinds of disputes of civil nature, unless it is specifically barred under any other law. However, the Civil Procedure Code prohibits repetition of adjudication on the same subject matter between the same persons or their representatives. Normally, a civil case, namely, 'Civil Suit' is to be instituted in the Court within the local limits of whose jurisdiction the property under dispute is situated.

When a dispute arises between two persons with respect to the title and ownership of a property, the dispute is of civil nature. When a person fails to oblige to his/her contractual terms, the appropriate Civil Court can adjudicate the dispute. When a person is denied the property rights on his/her parent's property, he/she can file a Civil Suit in the appropriate Court to establish his/her rights.

A person aggrieved by civil wrong can institute the Civil Suit by filing a petition in duplicate called 'Plaint' along with the documents and the list of such document/s on which the plaintiff sues or relies. He is called the Plaintiff. On receipt of plaint in duplicate, the Civil Court issues a summon to the Opposite



Party, called as Defendant/Defendants, calling them to appear and answer to the claims or averments in the plaint. The Defendant may appear before the Court either himself or through an Advocate and file a 'Written Statement' answering the allegations in the plaint. Then the 'issues' will be framed which constitutes the real subject matter of the adjudication, which would be followed by a trial, examination of witness by plaintiff, examination-in-chief and cross examination and thereafter adducing evidences by the Defendant/s. Parties are required to file the examination-in-Chief of their witnesses in an affidavit. For cross examination of the witnesses, Court may appoint a pleader Commissioner. The pleader Commissioner shall submit his/her report to the Court after recording the cross-examination. On completion of the trial, the Court will adjourn the case pronouncing the judgment and it will be followed by a civil decree. Thereafter the person, against whom a decree is passed, may approach the appellate Court by filing an appeal. The person, in whose favour a decree is passed may apply for the execution of decree in an Execution Court.

Civil cases are not cost free. In a civil case, there is a requirement of payment of 'Court Fee' by the party instituting the claim at the rate prescribed, which would depend on the nature of Civil Suit.

Function of Criminal Courts

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

A criminal case starts with submitting a complaint or information before the Police Officer, who in turn records the 'First Information Report (F.I.R.)' and forwards the same to the nearest Judicial Magistrate First Class. Depending on the nature of offence and the gravity of punishment, the procedure for initiation of criminal cases may vary. The Magistrates, usually, initiate the proceedings, in a criminal case, either on receiving a complaint of facts regarding an offence or on receiving a police report narrating the facts or also upon information received from



any other person, as to an offence that has been committed.

An offence under the criminal statute is an offence against the State. Usually in criminal cases, the victims or the defacto complainants are represented by the State, through the Officers of the Government called 'Public Prosecutors'. The proceedings in criminal cases, thus, differ from proceedings in civil cases. In criminal cases, before starting the adjudication of the criminal case, the attendance of opposite party is ensured by issuing summons or warrants, as the case may be depending, upon the nature of cases, and provisions in the Criminal Procedure Code.

The Civil Courts in the State are constituted as per the provisions of Civil Courts Act, and the Criminal Courts in the State are constituted as per the provisions of the Criminal Procedure Code. The jurisdiction of the Civil Courts is fixed on the basis of monetary value of the subject matter of dispute and also by territorial limits of the occurrence of disputes. The jurisdiction of the Criminal Courts is based on the nature of offence and punishment and also on the basis of the territorial limits of the occurrence of the offence.

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



LESSON 3

ALTERNATIVE DISPUTES RESOLUTION (A.D.R.) SYSTEM

Apart from regular Courts mentioned above we also have Alternative Disputes Redressal Fora such as the following:-



Where a dispute has been referred:-

- a) for arbitration or conciliation, the provision of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act.
- b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the Legal Services Authorities Act, 1987 and all other provisions of that

Act shall apply in respect of the dispute so referred to the Lok Adalat.

- c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act.
- d) for mediation, the Court will refer the case to the Mediation Centre for a compromise between the parties by the Mediators and shall follow such procedure as may be prescribed.



LESSON 4

THE LEGAL SYSTEM IN INDIA

TYPES OF LAW:

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

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

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

Based on the nature of rights and obligations imposed

Depending on the territorial applicability of a law ,
it can be classified into :

International law

Municipal Law

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

Constitutional Law

In India, the Constituent Assembly adopted a comprehensive and basic legal scheme of the country on 26th November, 1949 and the Constitution of India, came into force on 26th January, 1950. India has a written and exhaustive constitutional law, which is the biggest in the world. The Constitution of India has the Preamble and Articles enumerated from Part I to XXII with 1 to 12 Schedules in the end portion. The Constitution of India, being the basic law of the Country contains the general policy of the Government of India like the constitution of the Parliament and State Legislatures,



establishment of Union and State Judiciary, formation of the Cabinets with Prime Minister at the Centre and the Chief Minister at the State levels, the provision for the appointment and service of the President of India, Vice President of India, Governors, Comptroller and Auditor General, Attorney General and Advocate Generals, Election Commission of India, Public Service Commissions, etc.

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

Civil Laws

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

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

requirements to enter into a contract, areas of breach of contract, and the remedies of specific performance are the salient features of the Contract Act.

One of the major examples of a contract is the private loan transaction. When a person obtains a loan from a financier, he undertakes to repay the loan subject to certain conditions, either by executing promissory notes or cheques or by oral terms. If there is a violation of such an undertaking, the financier has a remedy under the Civil laws for breach of contract. A person is said to have committed a civil wrong, when he encroaches upon the boundary of his/her neighbour or disturbs the legally entitled pathway of others. In either case, the remedy is to approach the Civil Court to get an injunction, either mandatory or prohibitory.



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

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

These are some of the civil enactments, having common application in the society.

Criminal Laws

One cannot disturb the peaceful life of another by committing a wrong to his/her body, property or against his/her dignity. Such disturbances are called as penal offences, punishable gravely, either by sentence of imprisonment or imposition of fine, or both imprisonment and fine. The nature of punishment depends on the gravity of the wrong committed by the wrong doer.

Criminal Procedure Code, 1973 deals with the procedures with respect to the adjudication of criminal cases. Cr.P.C. is the law on criminal procedure. There is also another law which deals with the different kinds of offences and its punishments. Indian Penal Code, 1860, shortly called as I.P.C., defines various criminal wrongs and also prescribes punishments for such wrongs. The Code lays down the punishment for offences under it.

Criminal Punishments

There are various kinds of punishments depending upon the gravity of the wrong committed. Death sentence,

imprisonment for life, rigorous imprisonment with hard labour, simple imprisonment, forfeiture of property and imposition of fine are the various kinds of criminal punishments.

For example, a person who commits the offence of murder may be punished with death sentence or imprisonment for life depending on the facts and circumstances of the case.



When a person causes bodily pain or infirmity to another, it is a hurt. When the person commits an act with an intention to cause hurt, such offences are punishable with a maximum imprisonment for one year or a fine upto ₹1,000/- or both.



When a person voluntarily obstructs another, preventing him from proceeding in further direction, for which such a person has a right to proceed, such wrongs are wrongful restraint. The offender may be punished for a simple imprisonment for upto one month or fine of ₹500/- or both. When a person unlawfully compels, another

to labour against his/her will, it is an offence punishable with imprisonment upto one year or fine or with both.

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



If the person commits assault against a public officer, during the lawful discharge of his/her duty, the wrong doer is punishable with imprisonment upto two years or fine or with both. Outraging the modesty of a woman, by committing assault or criminal force is also an offence punishable with imprisonment upto two years or with fine or with both.

Committing theft of property of another is an offence punishable with imprisonment upto three years or with fine or with both. Buying or disposing a person as slave is an offence under I.P.C., which is punishable with imprisonment upto seven years and also with fine. Buying or selling a minor for the purpose of prostitution or for any unlawful and immoral purpose is an offence punishable with imprisonment upto ten years and with fine.

Manufacture, sale, transport, export or import or even

possession of an explosive item, in violation of the provisions of Explosives Act is an offence punishable with imprisonment.

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



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



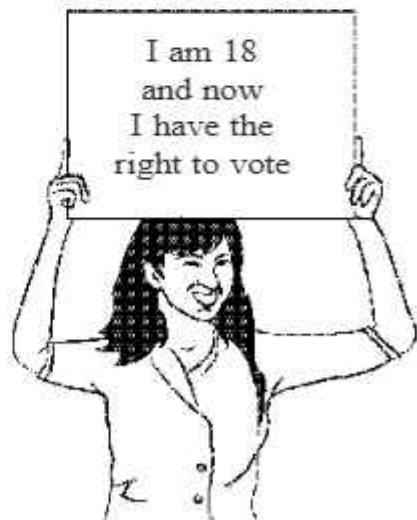
LESSON 5

HUMAN RIGHTS

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

There are basic rights granted to a person, by birth, which can be called as natural rights. Such rights emanate from the natural law, such as right to air, right to way, etc.

There are some other rights granted by different statutes. Representation of Peoples Act grants every citizen, on attaining the age of 18 years, the right to vote, in the General election to the Lok Sabha or the State Legislature. This is a statutory right to elect the representatives to the democratic institutions. The Right to Information Act, 2005 grants a person, the right to



know or right to get information from public authorities, subject to the conditions and restriction provided in the Act.

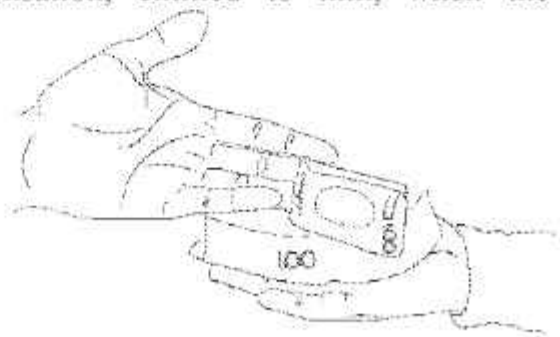


The Legal Services Authorities Act, 1987, grants to the oppressed or weaker sections of the society, the right to get free legal aid from the Government and from its agencies,



constituted as per the Act. The Minimum Wages Act, grants a labourer or employee the right to get minimum wages, prescribed by the State, from his/her employer. The Land Acquisition Act, 1894 grants the aggrieved

land owner, the right to approach the Court, to re-determine the compensation, entitled to him, when the Government acquires his/her land. These are some of the examples of statutory rights.



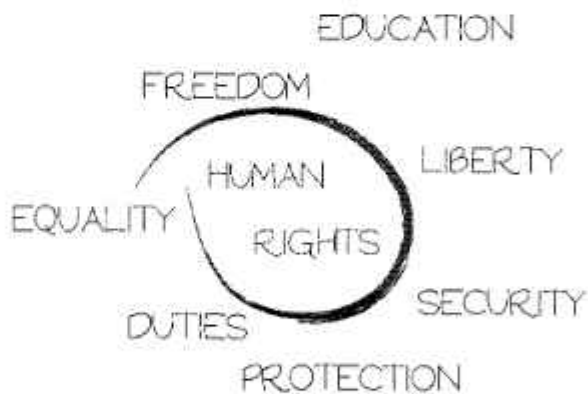
An easement

right is a private right entitled to a person, to use a way, which he is enjoying for several years, though the ownership of the way belongs to another private person. This right is an inherent right of a person, but granted in Easements Act also. Right to free flow of air and uninterrupted enjoyment of natural lights are some of the inherent rights of a person, and on denial of these kinds of rights, the aggrieved person may approach the Civil Court to have adjudication on this denial and to substantiate his/her rights.

Human Rights

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

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



basic document of the legal system in the United Kingdom. Human rights are enumerated in the 'Universal Declaration of Human Rights, 1948', which is a universal treaty adopted by the United Nations and its member countries.

Universal Declaration of Human Rights

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

- Right to equality in dignity and rights
- Rights and freedoms without distinction of any kind, such as race, sex, language, religion, political or other opinion, natural or social origin, property, birth or other status.
- Right to life, liberty and security of persons
- Right against slavery
- Right against torture or cruelty
- Right to recognition everywhere as a person before the law
- Right to equality before law and equal protection of law
- Right to judicial remedies
- Right against arbitrary arrest, detention or exile
- Right to fair and public hearing
- Right to privacy



December 10th 1948

UNIVERSAL DECLARATION OF HUMAN RIGHTS

30 Articles in the Declaration

&

Article 1 to 28 deal with various human rights and its scope.

- Right to freedom of movement and residence
- Right to nationality
- Right to marry and to form a family
- Right to own property
- Right to freedom of thought, conscience and religion
- Right to freedom of opinion and expression
- Right to peaceful assembly and association
- Right to elect the representatives
- Right of equal access to public services
- Right to social security
- Right to work and to free choice of employment
- Right to equal pay for equal work
- Right to form and join the Trade Unions
- Right to health
- Right to education
- Right to freely participate in cultural life of the country.



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

“Human Rights” means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the

Constitution or embodied in the international covenants and enforceable by Courts in India.

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



National Human Rights Commission:

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

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



The Commission has its head quarters at Delhi. The

Commission has the following functions and powers, while acting for the protection of human rights.

- (a) Inquire, suo moto or on a petition presented to it by a victim or any person on his/her behalf, into complaint of —
 - (i) Violation of human rights or abetment thereof; or
 - (ii) Negligence in the prevention of such violation by a public servant;
- (b) Intervene in any proceeding involving any allegation of violation of human rights pending before a Court with the approval of such Court;
- (c) Visit under intimation to the State Government, any jail or any other institution under the control of the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living conditions and make recommendations thereon;
- (d) Review the safeguards provided by or under the Constitution or any law for the time being in force for the protection of human rights and recommend measures for their effective implementation;
- (e) Review the factors, including acts of terrorism, that inhibit the enjoyment of human rights and recommend appropriate remedial measures;
- (f) Study of treaties and other international instruments on human rights and make the recommendations for their

effective implementation;

- (g) Undertake and promote research in the field of human rights;
- (h) Spread human rights literacy among various sections of society and promote the awareness of the safeguards available for the protection of these rights through publications, media, seminars and other available means;
- (i) Encourage the efforts of non-governmental organizations and institutions working in the field of human rights;
- (j) Such other functions as it may consider necessary for the promotion of human rights.

While inquiring on the complaint, the Commission has the following powers of a Civil Court.

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

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

While dealing with a complaint, the Commission initially calls for a report or information from the Central or State Governments, or any authority or organization under the Government. If no such report is received, the Commission

initiates its own inquiry. The Commission may drop the proceedings if it is satisfied with the report or information received from the Government or its subordinate authorities. If the Commission is not satisfied with the actions, it can initiate further inquiry of its own.

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

- (a) Where the inquiry discloses the Commission of violation of human rights, it may recommend to the concerned Government or Authority the initiation of proceedings for prosecution or such other action as the Commission may deem fit against the concerned person or persons;
- (b) Approach the Supreme Court or the High Court concerned for such directions, orders or writs as that Court may deem necessary;
- (c) Recommend to the concerned Government or Authority for the grant of such immediate interim relief to the victim or the members of his/her family as the Commission may consider necessary;

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

State Human Rights Commission:

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

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

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

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



LESSON 6

FUNDAMENTAL RIGHTS AND DUTIES

The Constitution of India guarantees the citizen the Fundamental Rights but also cast certain duties on its citizen.

Fundamental Rights

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

Part III of the Constitution of India guarantees under Article 14 to Article 32 various fundamental rights. These rights are fundamental, because the guarantee of these rights reflects the importance of the objectives of the Constitution. India is a country which believes in democratic principles. The Preamble



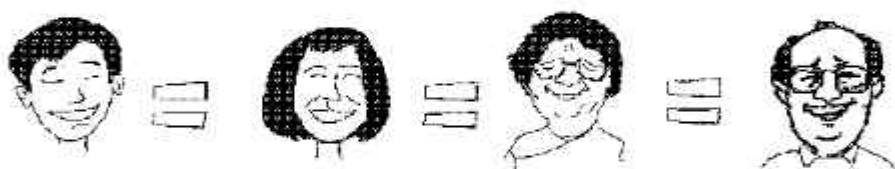
Part III of the
Constitution of India
guarantees under
Article 14 to Article 32
various fundamental rights

of the Constitution of India denotes the philosophy of the Indian Constitution.

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

The following are the Fundamental Rights:-

Article 14: Equality before Law:



This right ensures every person, equality before law and also equal protection of law within the territory of India. Equality means not conceptual equality, but equality among equals only. Every law may not have universal or common application for all persons who have not by nature or circumstances attained the same position. Similarly, equal protection only means, the right to equal treatment in similar circumstances. For example, a law may be enacted for special protection of women, special status can be granted to the tribal people by making provisions in a general statute etc. The Government is also entitled to classify the persons or things, in reasonable and non arbitrary manner to achieve the public goals and objectives.

Article 15: Prohibition of discrimination:

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



However, the Government is empowered to make laws for protective discrimination. Making of laws dealing with special provisions to women and children or laws dealing with special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Caste and the Scheduled Tribe are not prohibited under the Constitution. The Scheduled Caste or Scheduled Tribes are the special classes of persons, entitled for the special privileges under the Constitution. The President of India, in accordance with the provisions in Article 341 and 342, is empowered to

notify by orders; enumerating the classes of Scheduled Caste or Scheduled Tribes. Accordingly, the President notified Constitution (Scheduled Castes) Order and Constitution (Scheduled Tribes) Order, in 1950, by enumerating the lists of Scheduled Caste and Scheduled Tribe.

Article 16: Equality of opportunity in matters of public employment:

Every citizen of India is entitled to equal consideration in public appointment and employments. However, it is open to the authority to lay down some conditions for employment and appointment for ensuring the efficiency or proper administration of the Government. The Government can fix the minimum qualifications or age limits for the public employment, which are only reasonable restriction to ensure the quality of the post. However, there shall not be any discrimination on the ground of religion, race, caste, sex, descent, place of birth, residence or any of them. However, making reservation in employment or appointment in favour of any backward class of citizens or making special reservations in matters of promotion to Scheduled Caste or Scheduled Tribes, are not prohibited in the Constitution. Similarly, for special classes, like heirs of a deceased employee, the Government can frame special recruitment policy, under the compassionate appointment scheme.

Article 17: Abolition of untouchability:

Untouchability was a social evil prevalent in our country, which was based on the principles of “chaturvarnya”, the four castes, Brahmin, Kshatriya, Vaishya and Shudra. However,

even after independence, the practice of this evil is common in various parts of the country. Hence the Constitution guarantees the right against untouchability, by abolishing it and prohibiting its practice.



Article 19: Protection of certain rights regarding freedom of speech, etc.:

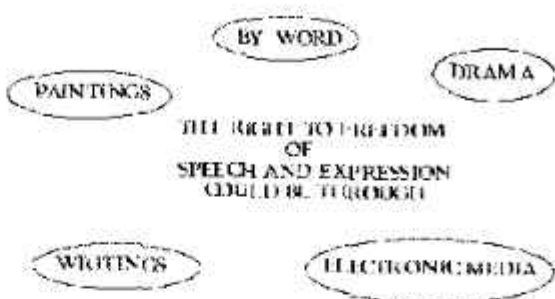
The objectives of the Constitution, the assurance of liberty and dignity of the individual, inspired the makers of the Constitution to guarantee certain freedom to its citizens. Accordingly, Article 19 was framed by enumerating certain freedoms which are not absolute, but subject to the reasonable restrictions.

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

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



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



The Right to freedom of speech and expression guarantees the freedom to express one's convictions and opinions freely. It can be either by word of mouth, writings, paintings, pictures or by performing dramas, cinemas, etc. in a public platform or through electronic media. It ensures freedom of press, as collective freedom and freedom of propagation as individual freedom. A right to speech and expression can be curtailed by making reasonable restrictions in the interests of sovereignty and integrity of India, the security of the state, friendly relation with foreign states, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence.

Hence a citizen cannot claim the freedom of speech and expression, by propagating the ideas of terrorism, by calling for an armed rebellion against the Government, by exhibiting

women indecently in magazines, visual media, etc. or by criticizing a Judge who pronounces a judgment in a case pending before him.

Right to freedom of assembly guarantees the freedom of citizens to meet with each other in peaceable and unarmed assembly. A citizen or group of citizens can enjoy the right to take out a procession in public streets, but such a right is subject to the traffic regulations and permission from the police administration. Because

one's right to assembly should not obstruct other's right to use public pathways and roads. A right to assembly is subject to reasonable restrictions that may not be against the interests of sovereignty and integrity



of the nation and public order. Students have no rights to assemble as a group for consumption of narcotics or to create violence in campus.

Right to form associations and unions, grants the citizen the right to form a collective organization or not to take part in the activities of an organization, if he so desires. That means, this right is not only an affirmative right but also a negative right. The incorporation of a student movement for lawful purpose or to have a collective bargain for the interest of the students is protected under this right. Likely, the labourers or employees, have collective or identical interests have the powers to form a

trade union in the industry for propagating their interests. However, the right is restricted, if exercise such right is against the interests of sovereignty and integrity of India or public order, or morality. Hence a member of Armed Force has no right to form an association. Likely no citizen has the right to form an association propagating terrorism or armed rebellion against the Government.

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

A person under the surveillance of the Police, cannot complain denial of right to movement or right to residence, as the Constitution guarantees only right to physical movement or shift. A watch by the police over the movement of a suspect in a crime is not a violation of the right. When a person is house arrested or detained in a jail, as per the law enabling preventive detention, such detentions are part of reasonable restrictions of the rights. A person suffering from an infectious disease may be prevented from moving, as a measure to prevent spreading of the

disease in the interest of the general public. The right to movement and right to residence of general public in areas notified as 'Tribal area' may be curtailed to prevent external interference on tribal life.

Every citizen in India has the right to choose his/her own employment or to take up any trade or business according to the limits and measures prescribed by the Government in the interest



of public welfare. Additionally, the right is subject to the law made by the Government, prescribing any professional or technical qualification for practicing any profession, or carrying on any occupation, trade or business. The Government can restrict the right by making monopoly of trade, business, industry or service with the Government authorities or corporations owned or controlled by the State.

Thus, prescription of additional qualifications for teachers of higher educational institutions is not an unreasonable restriction. No citizen has the right to trade or carry on business of alcohol, as a fundamental right, without the requisite license from the Government. When the Advocates Act and Medical Council Act prescribe the qualifications for practicing the profession of Advocates and Doctors respectively, such rights are created by statutes and not by the Constitution. Thus, such rights are subject to the terms and conditions imposed by the respective statutes.

Article 21: Protection of life and personal liberty:

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

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

Article 21A: Right to Education:

All children of the age of six to fourteen years have now been guaranteed fundamental right to have free and compulsory education.

Article 22: Protection against arrest and detention in certain cases:

The Constitution provides certain safeguards to an offender or persons arrested or detained in custody on the allegation of criminal charges. Such persons are entitled to the right to consult a legal practitioner of their choice. These rights are guaranteed with specific purposes to make some safeguards



to prevent the misuse of power by the Police authorities, or by law enforcement agencies.

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

Forced labour is prohibited under the Constitution of India. Trafficking in women and children for immoral or other purposes like prostitution, begging, etc. are prohibited and the person has the right against any kind of exploitation. A forced labour is prohibited, but the state is empowered to impose



compulsory service for public purposes and in imposing such service the State shall not make any discrimination on grounds of religion, race, caste or class or any of them.

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

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

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

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



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



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

Article 26: Freedom to manage of religious affair:

Every religious denomination in India has the right to establish and maintain the institutions for religious and charitable purposes, to manage its own affairs in matters of religion, to own and acquire movable and immovable property and to administer such property in accordance with law, subject to the riders of public order, morality and health. Thus, the religious denominations have the right to decide the rites and observances of their own or to decide the ceremonial law relating to religious institutions. However, the sacrifice of cow or like ceremonies is not protected under the Constitution.

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

The Constitution prohibits religious instruction in any

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

Articles 29 and 30: Cultural and Educational Rights:



Articles 29 and 30 of the constitution guaranteed four distinct rights to citizens and minorities to preserve the cultural and linguistic specialities of such groups. Any section of the citizens has the right to conserve their own language, script and culture. No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. On the other hand, every linguist or religious minority has the right to establish and administer educational institutions of their choice. Additionally, the Constitution mandates right against discrimination in granting aid to educational institutions, on the ground that such institutions are managed by religious or linguistic minorities.

Article 32: Right to Constitutional Remedies:

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



In the seventies of the last century, the Supreme Court expanded its power widely, opening access to justice to the downtrodden, the poor and persons from unorganized sectors, relaxing the locus-standi principles. Prior to that, only the aggrieved person could approach the court of enforcement of his/her rights. However, taking suo moto actions in public interest matters and entertaining 'Public Interest Litigations'

filed by public spirited persons, the Supreme Court has widened its jurisdiction. Even, letters sent in post cards were treated as validly constituted petitions under Article 32. Thus any person acting bonafide and having sufficient interest in maintaining redressal of public injury can approach the Court.

Public Interest Litigations

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

Fundamental Duties:

Originally, when the Constitution of India was framed in the year 1949, there was no enumeration of Fundamental Duties in the Constitution. Thus, it was a fallacy to think, what the Constitution granted were rights and rights alone. However, in

1976, the Constitution of India was amended by inserting Article 51A it has come into force with effect from 03.01.1977.

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

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

- (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 wild life, 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/her child or, as the case may be ward between the age of six and fourteen years.

Article 371-F: Special provisions with respect to the State of Sikkim

The State of Sikkim became the 22nd State of India w.e.f. 26th April 1975. This was done by amending the Constitution of India and inserting Article 371-F. Article 371-F prescribes special provisions for the State of Sikkim which has an overriding effect over the other provisions of the Constitution. The Hon'ble Supreme Court while deciding the case of Surendra Prasad Sharma Vs. State of Sikkim, has held that the terms and conditions of the merger of the State of Sikkim with the Union of India is found expressed in Article 371-F. This case is reported in 1994 Volume V, Supreme Court Cases, page 282.

Article 371-F is reproduced hereunder-

“371-F. Special provisions with respect to the State of Sikkim. -

Notwithstanding anything in this Constitution –

- (a) the Legislative Assembly of the State of Sikkim shall consist of not less than thirty members;
- (b) as from the date of commencement of the Constitution (Thirty-sixth Amendment) Act, 1975 (hereafter in this

article referred to as the appointed day) –

- (i) the Assembly for Sikkim formed as a result of the elections held in Sikkim in April, 1974 with thirty-two members elected in the said elections (hereinafter referred to as the sitting members) shall be deemed to be the Legislative Assembly of the State of Sikkim duly constituted under this Constitution;
 - (ii) the sitting members shall be deemed to be the members of the Legislative Assembly of the State of Sikkim duly elected under this Constitution; and
 - (iii) the said Legislative Assembly of the State of Sikkim shall exercise the powers and perform the functions of the Legislative Assembly of a State under the Constitution;
- (c) In the case of the Assembly deemed to be the Legislative Assembly of the State of Sikkim under clause (b), the references to the period of (five years) in clause (1) of Article 172 shall be construed as references to a period of four years and the said period of four years shall be deemed to commence from the appointed day;
- (d) until other provisions are made by parliament bylaw, there shall be allotted to the State of Sikkim one seat in the House of the people and the State of Sikkim shall form one parliamentary constituency to be called the parliamentary constituency for Sikkim
- (e) the representative of the State of Sikkim in the House of the

people in existence on the appointed day shall be elected by the members of the Legislative Assembly of the State of Sikkim;

- (f) Parliament may, for the purpose of protecting the rights and interests of the different sections of the population of Sikkim make provision for the number of seats in the Legislative Assembly of the State of Sikkim which may be filled by candidates belonging to such sections and for the delimitation of the assembly constituencies from which candidates belonging to such sections alone may stand for election to the Legislative Assembly of the State of Sikkim.
- (g) the Governor of Sikkim shall have special responsibility for peace and for an equitable arrangement for ensuring the social and economic advancement of different sections of the population of Sikkim and in the discharge of his special responsibility under this clause, the Governor of Sikkim shall, subject to such directions as the President may, from time to time deem fit to issue, act in his discretion;
- (h) all property and assets (whether within or outside the territories comprised in the State of Sikkim) which immediately before the appointed day were vested in the Government of Sikkim or in any other authority or in any person for the purposes of the Government of Sikkim shall, as from the appointed day, vest in the Government of the State of Sikkim;
- (i) the High Court functioning as such immediately before the appointed day in the territories comprised in the State of Sikkim shall, on and from the appointed day, be deemed to

be the High Court for the State of Sikkim;

- (j) all courts of civil, criminal and revenue jurisdiction, all authorities and all officers, judicial, executive and ministerial, throughout the territory of the State of Sikkim shall continue on and from the appointed day to exercise their respective functions subject to the provisions of this Constitution;
- (k) all laws in force immediately before the appointed day in the territories comprised in the State of Sikkim or any part thereof shall continue to be in force therein until amended or repealed by a competent Legislature or other competent authority.
- (l) for the purpose of facilitating the application of any such law as is referred to in clause (k) in relation to the administration of the State of Sikkim and for the purpose of bringing the provisions of any such law into accord with the provisions of this Constitution, the President may, within two years from the appointed day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon, every such law shall have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law;
- (m) neither the Supreme Court nor any other court shall have jurisdiction in respect of any dispute or other matter arising out of any treaty, agreement, engagement or other similar instrument relating to Sikkim which was entered into or

executed before the appointed day and to which the Government of India or any of its predecessor Government was a party, but nothing in this clause shall be construed to derogate from the provisions of Article 143;

- (n) the President may, by public notification, extend with such restrictions or modifications as he thinks fit to the State of Sikkim any enactment which is in force in a State in India at the date of the notification;
- (o) if any difficulty arises in giving effect to any of the foregoing provisions of this article, the President may, order, do anything (including any adaptation or modification of any other article) which appears to him to be necessary for the purpose of removing the difficulty;
Provided that no such order shall be made after the expiry of two years from the appointed day;
- (p) all things done and all actions taken in or in relation to the State of Sikkim or the territories comprised therein during the period commencing on the appointed day and ending immediately before the date on which the constitution (Thirty-sixth Amendment) Act, 1975, received the assent of the President shall, in so far as they are in conformity with the provisions of this Constitution as amended by the Constitution (Thirty-sixth Amendment) Act, 1975, be deemed for all purposes to have been validly done or taken under this Constitution as so amended”.



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

LESSON 1

CIVIC SENSE

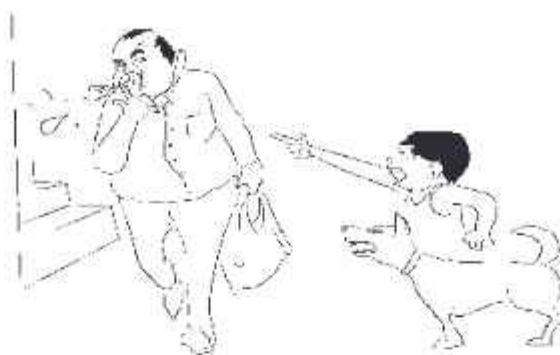
The word '**civic**' means relating to citizen or in relation to man as a member of society of civic affairs. Therefore, civic sense would mean the attitude a citizen ought to have. The duties, responsibilities and virtues of citizens were even discussed in detail by Aristotle, one of the earliest renowned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

CIVIC SENSE derived from word 'CIVICS'

**The study of Rights & Duties of a citizen
&
the role of citizens in the
functioning of the government**

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

It is strongly felt that Civic sense is nothing but social



ethics. It is consideration by the people for the unspoken norm of society. A lot of people assume that civic sense is just about keeping the roads, streets and public property clean. But civic sense is more than that; it has to do with law-abiding, respect for fellow men and maintaining decorum in public places. A lot of foreign countries function in a smooth manner because of the strong civic sense amongst its people. The fundamental theory of 'love thy neighbour' as propagated by all religions is the essence of the concept of Civic sense.

Rights of the citizens are enumerated in the chapter on Fundamental Rights in the Constitution. We often speak of our rights but we tend to forget about our duties. Conferment of a right necessarily imposes a duty. It is believed that civic sense requires persons to see and respect their duties. Duties are enumerated in chapter IVA & Article 51A of the Indian Constitution. The following are the duties:

- 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 wild life 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 endeavor 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.

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

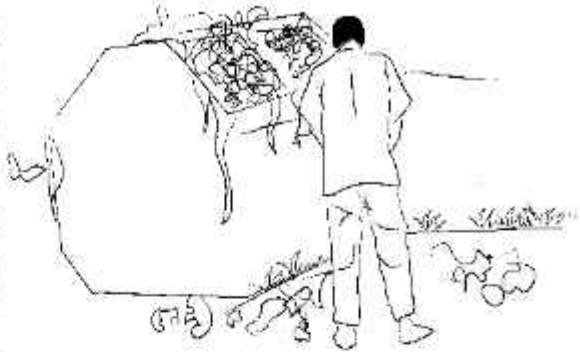
The main responsibility of citizen is to obey and ensure the enforcement of the law of the land. While exercising the right to defend one's life, liberty, property or family, it has to be kept in



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

Therefore awareness in this regard is the need of the hour. There is a need of change of mindset of the people. It necessarily

follows that teaching a person about civic sense involves teaching him about civic responsibility. It involves respecting other members of society. A person



who is clean will keep his surrounding clean. Civic sense would involve keeping the environment clean, obeying the laws, taking steps to avoid pollution (air, water etc) keeping the public places clean by avoiding spitting, using garbage bins and making use of public toilets. We have to bear in mind that as per the World Health Organization (WHO) statistics India ranks first in T.B., dengue, cholera other preventable and treatable diseases. India ranks 127th in Human Development Index (HDI) out of 177 countries. Sanitary conditions, poor health care, absence of waste management system compound it. Protection of public health is a matter which affects everyone. Though the State of Sikkim is having least population as compared to other States of India and usage of vehicles is very low compared to other States of the country, lack of civic sense is one of the measure contributing factors. Ignoring the basic lessons regarding the usage of roads and footpath also contribute to this.

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

LESSON 2

SIKKIM ANTI DRUGS ACT, 2006

Alarmed by the rise in the abuse of drugs and controlled substances in the State, the State Legislature enacted the *Sikkim Anti Drugs Act, 2006* (Act No. 2 of 2006) and *Sikkim Anti Drugs Rules, 2007*.



The intention of passing this law was to combat the menace of abuse of drugs and controlled substances. Some of the important provisions contained in the Act are as follows:-

Section 2 (iii) defines – “controlled substances” to mean “any substance declared by the Government by notification published in the official gazette.”



“CHAPTER III”
PROHIBITION, CONTROL AND
REGULATION

Prohibition of certain operations

7.No person shall -

(a) sale, stock for sale or trade
in any controlled substance;

or

(b) transport either inter-State
or intra-State any controlled
substance,

*Without a valid license under
the Drugs and Cosmetics Act,
1940 or Sikkim Trade License
Act; Provided that, and
subject to the other provisions
of the Act and the rules made
thereunder, the possession of
small quantities of controlled
substances for medicinal
purposes with a valid
prescription, or for a legal use
of the substance, shall be
permissible;*

Provided further that the
amount of controlled substance
in possession shall not be
beyond the limit prescribed in
prescription slip/ card, or in
cases of other substances other

than drugs, the amount permissible shall be proportionate to its purported use.

Power of Government to permit, control and regulate

8. Subject to the provisions of Section 7, the Government may, by rules-

(a) permit and regulate -

- (i) the possession of controlled substances by the authorized person;
- (ii) the sale of controlled substances by the licensed dealers;
- (iii) the use and consumption of controlled substances in any chemical form;
- (iv) the manufacture of the controlled substances by the licensed manufacturers;
- (v) the transport of controlled substances by licensed dealers and authorized persons;

(b) prescribe any other matter requisite to render effective the control of Government over any of the matters specified in clause (a).



CHAPTER IV

OFFENCES AND PENALTIES

Punishment for contravention of controlled substances

9. Whoever, contravenes any provision of this Act or any rule or any order made thereunder shall be punishable -

- (a) where the contravention is by the licensed dealers, with suspension or cancellation of the license, or with imprisonment for a term which may extend to six months, or with fine which may extend to twenty thousand rupees, or with all;



- (b) where the contravention involves use or consumption of the controlled substances, without valid medical prescription, by any means/route of intake, in any chemical form, such person shall undergo with

compulsory detoxification, and to be followed by rehabilitation and also will remain under observation/probation, and such person shall also be liable to pay a fine which may extend to ten thousand rupees, if the user is young, married or unemployed;



- (c) where the contravention involves a person who is a State Government employee or an employee in an Organisation or Undertaking under the State Government, such person shall be liable to imprisonment which may extend to six months, and also liable to pay a fine which may extend to twenty thousand rupees. Further, such person shall also be liable to dismissal from service;

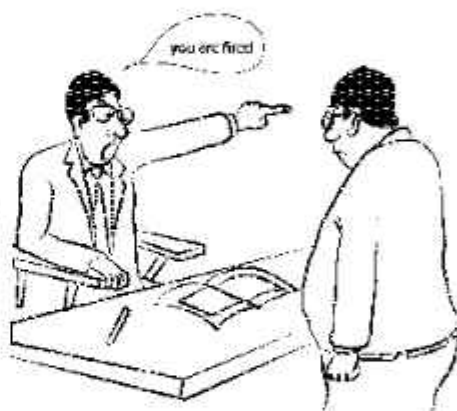
- (d) where the contravention involves a person using a mode of transport or any other form of conveyance, either inter-State or intra-State, such person shall be liable to imprisonment for a term which may extend to five years or with fine



which may extend to one lakh rupees, or with both, and the vehicle used, shall be liable to be seized and confiscated, which may be released on payment of twenty thousand rupees;

(e) where the contravention involves the manufacturer of controlled substances, such person shall be liable to imprisonment which may extend to three years or with fine which may extend to fifty thousand rupees, or with both;

(f) where a person who has been convicted for an offence under this Act and if such person is unemployed, such conviction shall be a disqualification for employment under the State Government.



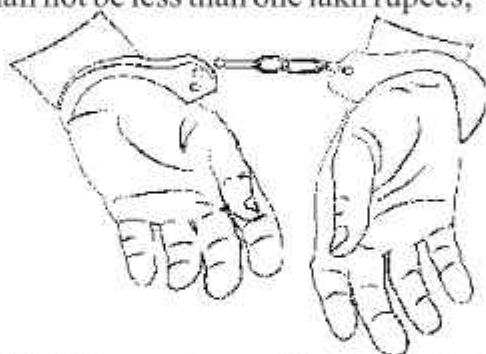
Punishment for allowing premises, etc., to be used for commission of an offence

10. Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with imprisonment which may extend to one

year or with fine which may extend to fifty thousand rupees, or with both.

Punishment for financing illicit traffic and harbouring offenders

11. Whoever indulges in financing, directly or indirectly, any of the activities specified in clause (vi) of Section 2 or harbours any person engaged in any of the aforementioned activities, shall be punishable with imprisonment for a term which shall not be less than two years or with fine which shall not be less than one lakh rupees;



Provided that the court may, for reasons to be recorded in the judgement, impose a fine exceeding one lakh rupees.

Punishment for abetment and criminal conspiracy

12. Whoever abets, or is a party to a criminal conspiracy to commit an offence punishable under this chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy and notwithstanding anything contained in Section 116 of the Indian Penal Code, punishable with punishment provided for the offence.

Enhanced punishment for offences after previous conviction

13. If any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence punishable under this Act with the same amount of punishment shall be punished for the second and every subsequent offence with rigorous imprisonment for a term which may extend to twice the maximum term of punishment, and also be liable to fine which shall extend to twice the maximum amount of fine;

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding the fine for which a person is liable.

Punishment for offence for which no punishment is provided

14. Whoever contravenes any provisions of this Act or any rule or order made thereunder for which no punishment is separately provided in this chapter, shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to twenty thousand rupees, or with both.

No suspension, remission or commutation in any sentence awarded under this Act.

15. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force, no sentence awarded under this Act (other

than Section 7 (b) shall be suspended, remitted or commuted.)

Presumption of culpable mental state

16. (1) In any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defense for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation: In this section "culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe a fact.

- (2) For the purpose of this section, a fact is said to be proved only when the court believes it to exist beyond a reasonable doubt and not merely when its existence is established by a preponderance of probability.

Constitution of Special Courts

17. (1) The Government may, for the purpose of speedy trial of the offences under this Act, by notification in the Official Gazette, in consultation with the High Court of Sikkim, designate a Court of District and Sessions Judge as the Special Court for the purpose of trial of the offences under this Act.
- (2) A Special Court shall consist of a single Judge who shall be appointed by the Government with the concurrence of the Chief Justice of the High Court.

- (3) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure 1973 (including the provisions as to bail and bonds) shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court, shall be deemed to be a Public Prosecutor.

No Prosecution under this Act shall be instituted except by a Gazetted Officer or an officer not below the rank of Deputy Superintendent of Police."

LESSON 3

CYBER CRIMES

Have you heard about the causing of nuisance to an individual by anonymous messages, frequent missed calls, pornographic, obscene messages or pictures in mobile phones and emails?



The growth of Information Technology has increased the importance of computers, internet and electronic devices like mobiles and I-Phones in the society. Dependence on the IT facilities has significantly resulted in a dynamic and fast growing information pathway in the business field as well as in the field of education. Alternatively it also opens a new species of crime called 'Cyber Crimes'.

Generally speaking, any illegal activity committed by using the computer can be termed as a 'Cyber Crime'. Nowadays,



such crimes committed by using a computer or network are common in the IT field. Cyber wrongs may be committed against a person or an organization or even against the Government. Since cyber crimes are transnational in nature, they have proved to be a headache for the law enforcement agencies who deal with such cyber crimes. There are different kinds of cyber crimes done on the internet.

The privacy of an individual may be affected by a third party when he/she uses the internet.

His/her activities may be put under surveillance, his/her computer may be hacked or there may be a virus attack on his/her work or websites.

Stalking is another type of crime done using the internet. Distribution of pirated software, violating the laws on Intellectual Property Rights, causing nuisance by spamming and circulation of pornographic scenes or videos are the major types of cyber crimes often committed using the internet.



Crimes committed using the computer and its accessories are also very common in the modern society. Criminals commit

such crimes by the aid of computers, mobile phones, scanners, digital cameras and other electronic devices. Forging a document is one of the best examples of this kind of a cyber crime. Image morphing, circulation of defamatory comments/threats through mobile phones, taking photographs without consent and consistent blackmailing may be some other examples.

The Parliament of India enacted the Information Technology Act in 2000, framing uniform regulations in the field on electronic governance, e-commerce and information technology. Under the Act certain violations are treated as serious crimes and offenders are liable to penal actions.

Tampering with a computer by destroying/altering its source code or programme is a crime punishable with imprisonment upto 3 years or with fine upto ₹ 2 lakhs or with both.



Hacking of a computer which causes damage to public property or to any person by destroying, deleting or altering any internal information is also a crime calling for the same punishment.

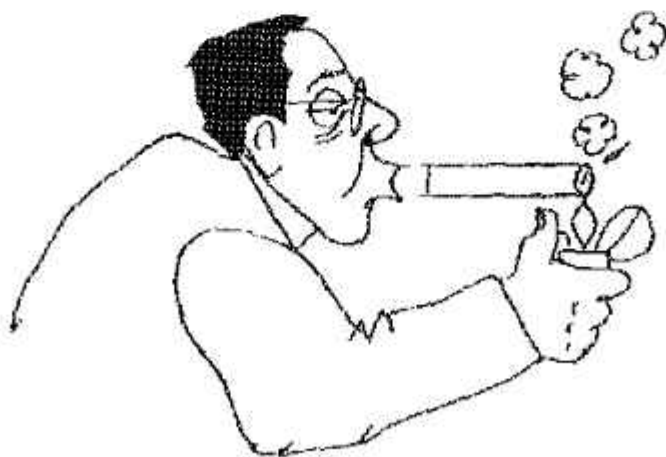
Publishing and circulating obscenity in electronic form is a serious offence punishable with imprisonment for a term of upto 5 years and with fine upto ₹1 lakh, when an offender commits the crime on the first occasion. However, when he commits the crime on a second or subsequent occasion, he/she is liable to punishment with imprisonment for a term upto 10 years and with a fine upto ₹ 2 lakhs. The Act also empowers a Police Officer to enter into a public place to conduct search and to effect arrest without warrant, if such Officer has reasonable suspicion of the commission of any offence under the Act.



LESSON 4

PROHIBITION OF SMOKING

Smoking is injurious to the health of not only the smoker but also to the health of the neighbour. Hence, public smoking is a nuisance to be controlled by regulation. In 2003, the Parliament enacted the '**Cigarettes and other Tobacco Products (Prohibition, of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act**' to prohibit the advertisement of and to provide for the regulation of trade and commerce of cigarettes and tobacco products. As per section 4 of the Act, Smoking in a public place is prohibited. The Act also mandates the establishment of a separate area for smoking in restaurants and hotels. The offence of public smoking is liable to be punished with a fine of upto ₹200/-.



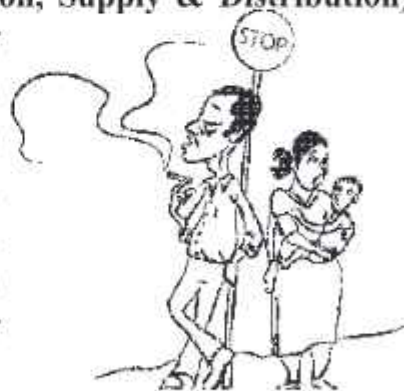
As per the Act, the sale or offer for sale of cigarette or other tobacco products to a person below the age of 18 years is prohibited.



Moreover, such sale within a radius of 100 yards of any educational institution is also prohibited. A trader or any other person who violates such prohibition is also liable to be punished with a fine of upto ₹200/- .



The enactment of the **Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply & Distribution) Act, 2003** by the Government of India is a comprehensive legislation. **The Hon'ble Supreme Court in Murli S. Deora v. Union of India (AIR 2002 SC40)** also reiterated the necessity to ensure prohibition of smoking in public places.



There were no stringent actions to implement the provisions of the Act from the public officers, either due to the

ignorance of the provisions of the Act or due to ignorance of its health hazards. However in 2008, the Government of India framed the 'Prohibition of Smoking in Public Places Rules' which has come into force from 2-10-2008 to ensure proper implementation of the prohibition. This is a rule framed as per the provisions of the **Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.**



As per the Rule, it is the duty of the owner, proprietor, manager or supervisor who is incharge of the affairs of the public place, to ensure that there is no smoking in such places. A public place is defined as any place to which the public has access whether as of right or not. An auditorium, hospital building, railway waiting rooms, amusement centres, restaurants, public offices, court buildings, educational institutions, libraries, public conveyance such as trains, buses and aeroplanes are some of the examples of public places. Normally, all the places which are visited by the general public which are not open spaces are treated as public places.

It is required under the Rules, to exhibit a board showing the prohibition of smoking in public places. The Rules also prohibit the keeping of ashtrays, matches, lighters or other

things designed to facilitate smoking in public places.

As per the Rules, certain authorities or officers are authorized to take actions for the proper functioning of the prohibition. Section 25 of the Act provides for detention of an offender by the officers and in case of detention, the offender shall forthwith be taken before the Magistrate for further actions. As per Rule 5, the notified officers are empowered to impose and collect fine for the offence of public smoking.

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

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

In Sikkim, the Government of Sikkim has enacted an Act **“The Sikkim Prohibition of Smoking and Non-Smokers Health Protection Act, 1997 (Act No. 12 of 1997)”** dated 10th November 1997, which extends to the whole of Sikkim. The Act prohibits smoking in places of public work or use like auditoriums, hospitals, health institutions, restaurants, amusement centres, educational institutions, libraries, etc and, in public vehicles. It also prohibits advertisement, storage, sale

and distribution of cigarette or any other smoking substances to a person below 18 years and lays down certain directives for display and exhibition of boards to hotel owners or manager or incharge of affair of every place of public work stating that the place is a "No Smoking Zone" and "Smoking is an Offence". Any person who disobeys any provision of the law can be punished under Section 11 of the Act. Sikkim had made tremendous progress in implementing the Smoke Free Laws which has been appreciated by International Organizations.

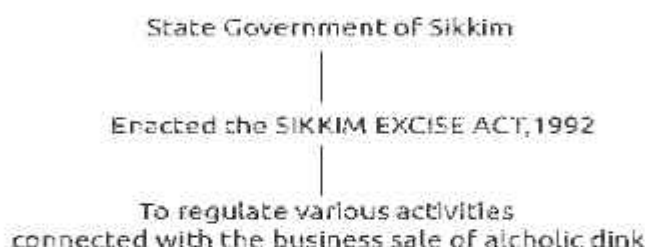
Further, Government of India has issued guidelines for strict enforcement of Cigarette & Other Tobacco Products Prohibition Act all over the country.



LESSON 5

PROHIBITION OF DRINKING

The State Government of Sikkim has enacted the **Sikkim Excise Act, 1992** to regulate various activities connected with the business of sale of alcoholic drinks. Sections 20, 21 and 55 of the Act are very important.



Section 20 prohibits the sale of liquor and alcoholic drinks to persons under the age of 18 years, students and uniformed Government servants. Section 21 on the other hand prohibits employment of women and persons under the age of 18 years in places of sale of liquor for consumption like restaurants, bars, hotels etc. Those persons not following these provisions can be punished under Section 55 of the Act.



Besides the above, notices have been issued from time to time to remind those selling liquor of the provisions of the Law discussed above.



LESSON 6

PROHIBITION OF CHILD MARRIAGE

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

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

This Act was enacted by the Parliament by repealing the old Act, '**The Child Marriage Restraint Act, 1929**'. A boy



who has not completed 21 years of age or a girl who has not completed the age of 18 years is considered a child.

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

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

The punishments for a male adult marrying a child shall be rigorous imprisonment upto 2 years or fine upto ₹1 lakh or both.

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

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



LESSON 7

PROHIBITION OF CHILD LABOUR

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

An employer is prohibited from employing a child, who has not completed his 14th year of age, in certain areas of work and occupations. The Scheduled appended with **Child Labour (Prohibition and Regulation) Act, 1986** enumerates such occupations and process of works. Occupation connected with different activities of railways, like transport of passengers, goods or mails; cinder picking, clearing of an ash pit or building operation in the railway premises; work in a catering establishment at a railway station, involving the movement of a vendor from one platform to another or into or out of a moving train; work relating to the construction are some of the areas where child labour is





prohibited. Child labour is also prohibited in ports, works relating to selling of crackers and fireworks and slaughter houses.

The Act also deals with prohibition of child labour in some processes of work such as beedi-making, carpet-weaving, cement manufacture, printing, dyeing and weaving of cloth, manufacture of matches, explosives and fire-works, soldering operations, cashew descaling and processing, printing works, building and construction work, tanning, wool-cleaning, soap manufacture, mica-cutting and splitting, shellac manufacture, etc.

Child labour is prohibited in manufacturing processes using toxic metals and substances such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos. Employers are also prohibited from employing children in hazardous processes and dangerous operations in a factory.

The Act also requires that no child shall be required to do work overtime or between 7 p.m. to 8 a.m. in the areas of non-prohibited occupations and work. A continuous work of more



than three hours is prohibited and the child is entitled for rest for at least one hour if his work extends for three hours. A child is entitled to get a holiday of one whole day in each week. There shall be an Officer called Inspector to supervise the requirements of the Act. Any violation of the provisions of the Act is an offence punishable with imprisonment, subject to nature of the

offences committed by the violator.

The Child Labour (Prohibition and Regulation) Act, 1986 also requires the Government to prescribe or to ensure facilities or standards for the health and safety of the children employed or permitted to work in any establishment.

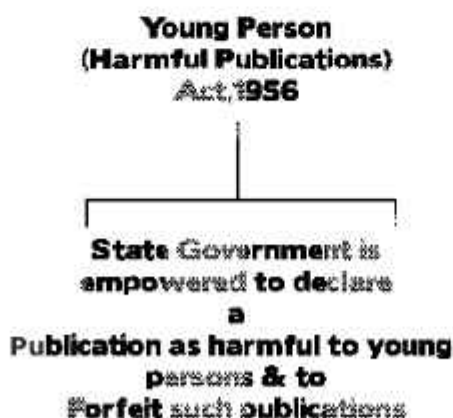


LESSON 8

PREVENTION OF HARMFUL PUBLICATIONS

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

As per the provisions of the **Young Person (Harmful Publications) Act, 1956**, the State Government is empowered to declare a publication as harmful to young persons and to forfeit such publications. A person under the age of 20 years is considered a young person under the Act.





What is a harmful publication? The Act defines it as any book, magazine, pamphlet, leaflet, newspaper or other like publication which consists of stories told with the aid of pictures or without the aid of pictures or wholly in pictures, portraying certain

kinds of stories. Such stories portraying commission of offences, acts of violence or cruelty, incidents of a repulsive or horrible nature which would tend to corrupt a young person by inciting or encouraging him to commit an offence or act of violence or cruelty, would be considered a harmful publication. Any person who sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or advertise any harmful publication shall be punishable with imprisonment which may extend to 6 months, or with fine or with both.

A Police Officer on getting information or making search as per the warrant of a Judicial Magistrate has the power to seize such harmful publication and produce



**imprisonment upto 6
months
or
with Fine
or
Both**

it before the Judicial Magistrate. The Judicial Magistrate may also order for destroying such publication if he is of the opinion that such publication is in violation of the provisions of the Act.

LESSON 9

COMMISSION FOR PROTECTION OF CHILD RIGHTS

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

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



The Commission of Protection of Child Rights Act, 2005 provides for constitution of a National level and State level Commissions for the protection of Child Rights and Child Courts to provide speedy trial of offences against the children and violation of child rights. The term 'Child Rights'



is an exhaustive term and includes the Children's Rights adopted by the United Nations Convention on the Rights of the Child on 20.11.1989.

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

1. Inherent Right to Life.
2. State protection for survival and development; physical, mental, spiritual, moral and social development.
3. Right to get his birth registered, right to name and right to nationality.
4. Right to live along with parents, except, when competent authorities determine otherwise.
5. Protection from illicit transfer.
6. Right to expression of views freely in matters affecting child.
7. Right to have opportunity to be heard in any judicial and administrative proceedings, affecting the child.
8. Right to freedom of expression and freedom to seek, receive and impart information and ideas, subject to restrictions.
9. Right to freedom of association and peaceful assembly.
10. Right to privacy.
11. Right to full and decent life to mentally or physically disabled child.
12. Right to health, enjoyment of highest attainable

standard of health, facilities for the treatment of illness and rehabilitation of health.

13. Right to primary education.
14. Right to be protected from economic exploitation, protection from performing any hazardous work or works to interfere with the education of child.
15. Right to be protected from inducement, coercion and also from exploitative use in prostitution, unlawful sexual practices, pornographic performances.
16. Right to protection from torture, cruelty, inhuman or degrading treatment or punishment.

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

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



LESSON 10

PROTECTION AND CARE OF CHILDREN AND JUVENILE JUSTICE

It is primary responsibility of the Government to ensure that all the needs of the children are met and their basic human rights are fully protected. **The Juvenile Justice (Care and Protection of Children) Act, 2000** is enacted with some special provisions to provide for proper care and protection to the children. A person who has not completed the age of 18 years is a juvenile or child under the Act. District level Juvenile Justice Boards have been constituted to deal exclusively with the matters relating to children, under the Act. Judicial Magistrate in the District, who has special knowledge or training in child psychology or child welfare, is the Member of the Board along with other members. Other members are appointed among social workers, who have been actively involved in health, education or welfare activities pertaining to children for at least seven years.

When a juvenile is arrested on the allegation of committing an offence, it for the Board to hold an enquiry and the Board is empowered to pass such orders in accordance with law. Normally such enquiry has to be concluded within 4 months of its commencement, unless there is sufficient cause for extension of time. A juvenile in conflict with law is entitled for bail, if he is

found involved in an offence, and on granting bail, such Juvenile shall be released on bail with or without surety. If the police officer or the Board refuses to grant bail to a Juvenile, it is their duty to keep the juvenile in **Observation Home** or in any other Safe Place, as provided under the Act. An arrest of a juvenile shall be informed to his father or guardian, by the police officer effecting arrest.

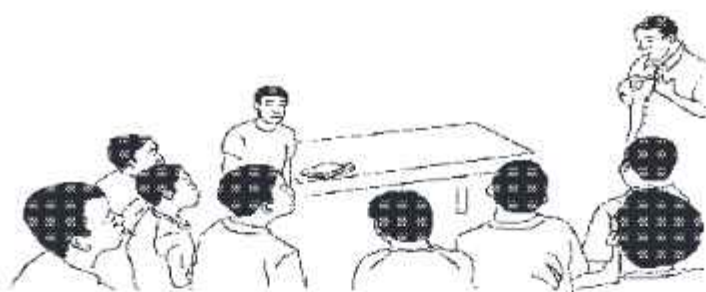


The specialty of the Act is that a juvenile is not liable to be punished, like an adult offender, and on conclusion of the enquiry by the Board, he can be dealt with only as per the provisions of section 15 of the Act. The Board can allow the juvenile to go home after advice or admonition and after giving



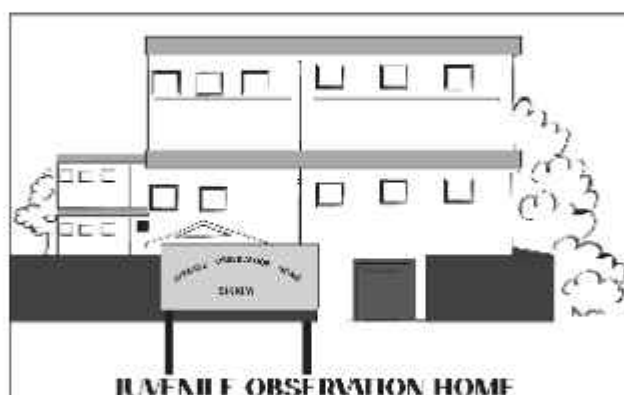
COMMUNITY SERVICE

counseling to the Juvenile along with his parent or guardian. The Board is empowered to direct the juvenile to participate in group counseling and community services. The Board can impose fine and direct the parent to remit the fine. If the juvenile is above the age of 14 years and earns an income, the Board can order the juvenile to remit the fine. The



GROUP COUNSELING

Board can release the juvenile on probation of good conduct on executing a bond by the parent or guardian or other person, for ensuring good behaviour or well being of the juvenile. In appropriate cases, the Board is empowered to make an order directing the juvenile to be sent to a Special Home.



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



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



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

In Sikkim at present we have a Juvenile Observation Home at Sichey, Gangtok. The State Government is in the process of establishing constructing a Juvenile Observation Home at Gangtok, East Sikkim.

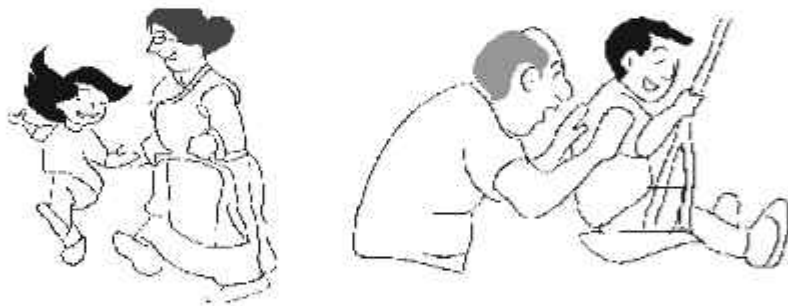
In view of the direction of the Hon'ble Supreme Court in **Sampurna Behrua Vs. Union of India and Other W.P. (C) no. 473/2005**, the Sikkim State Legal Services Authority has empanelled the lawyers for legal aid Centres for the South and West Districts at Namchi and for the East and North Districts at Gangtok and to attend the Juvenile Justice Board proceedings whenever the need arises.



LESSON 11

PROTECTION AND MAINTENANCE OF SENIOR CITIZENS AND PARENTS

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



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

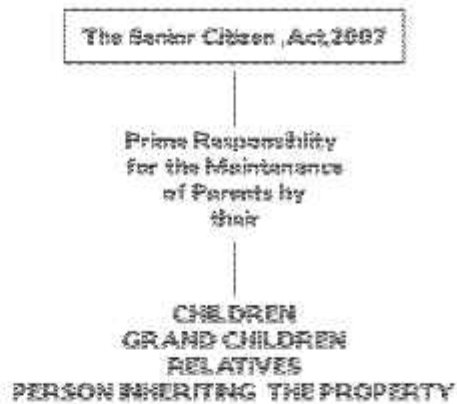
The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, in short, the Senior Citizens Act, 2007 deals with the prime responsibility for the maintenance of parents by their children, grand children or relatives, who may possibly inherit the property of a senior citizen. This is an endeavour by the Ministry of Social Justice and Empowerment to curb the

harassment of parents and senior citizens by their relatives. These days, the rapid urbanization and nuclear family system have led to the breakdown of the traditional joint family system, which has in turn threatened the social security of senior citizens.

Due to the constant shifting of their children into different cities for employment, the senior citizens have to face many difficulties in their old age such as inadequate medical care, improper shelter and food, crimes from anti-social elements etc. The Act seeks to protect the parents and senior citizens from such difficulties.



necessary to lead a normal life.



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

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

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

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



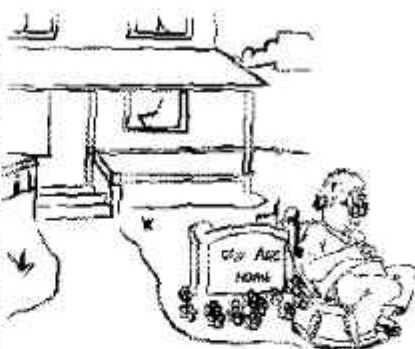
The Act also makes it an obligation for the State Governments to establish old-age homes, at least one in a District, to assist the senior citizens, who do not have sufficient means to maintain themselves.

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

If a senior citizen has transferred his property by way of gift or otherwise, on a condition that the transferee shall provide

the basic amenities and physical needs for him and the transferee refuses or fails to provide it, the Tribunal has the power to declare the transfer as void.

The Act also provides for stringent punishment in cases of abandoning of senior citizens and in such cases the offender is liable to be punished with Imprisonment for upto 3 months or fine upto ₹ 5,000/- or with both.



In Sikkim the State Government has constituted a Maintenance Tribunal for the purpose of adjudicating and deciding upon the order for application on maintenance of parents and senior citizens for each Sub-Division. This has been constituted under the Maintenance and Senior Citizens Act, 2009.

This Tribunal consists of the Sub-Divisional Magistrate, Sub-Divisional Police Officer and a representative of a Non Governmental Organization to be nominated by the concerned District Collector.

An Appellate Tribunal to hear the appeals against the order of the Tribunal has also been constituted for each District. The Appellate Tribunal consists of the District Collector as President, Superintendent of Police, Non Governmental Organization representative and the Social Welfare Officer of the Social Welfare Department.



LESSON 12

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE

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



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

The Protection of Women from Domestic Violence Act, 2005 is a progressive legislation to provide for a more effective protection of the rights of women. It also aims at preventing the harassment of women, who are often the victims

of violence within the family. There is an exhaustive definition of 'domestic violence' in the Act to cover all kinds of violence which occur in a family. It includes physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. It also includes causing of harms or injuries, mental or physical to



a woman, which endangers her health safety, life, limb or well being. Doing such acts to coerce a woman or any of her relatives to meet any unlawful demand for any dowry or other property or valuable security also comes under domestic violence.

A woman aggrieved by an act of domestic violence has the right to approach the Court of Judicial Magistrate to obtain relief under the Act. An application under section 12 of the Act can be filed by the aggrieved woman herself or through a Protection Officer or by any other person on behalf of the aggrieved woman. The Judicial Magistrate can by an order grant the



aggrieved woman the right to reside in a shared household, which means the household where the woman lives or has lived in a domestic relationship or marriage.

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

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

A Judicial Magistrate is empowered to grant the monetary relief such as the expenses incurred or loss suffered by the woman. Such monetary reliefs include loss of earnings, medical expenses, loss caused due to the destruction or damages or removal of any property from the control of the woman and money for the proper maintenance of her life. A child is also entitled for the maintenance as per the order of the Judicial Magistrate. Such maintenance shall be adequate, fair and

reasonable and consistent with standard of living of the woman or child. A woman is entitled to get compensation and damages for the injuries suffered by her, including for the mental torture or emotional distress, caused by the other party in an act of domestic violence.

CHILD CUSTODY



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

As per the Act, Protection Officers are appointed to assist an aggrieved woman or child to approach for relief under the Act. Such Protection Officers are the special officers under the Act having the duty to assist the Judicial Magistrate in discharging his function to report the act of domestic violence to

the Judicial Magistrate to make application for protection order for an aggrieved woman to get the aggrieved woman medically examined in cases of report of causing bodily injuries, etc. Authorized service providers are also available to assist persons aggrieved by domestic violence.

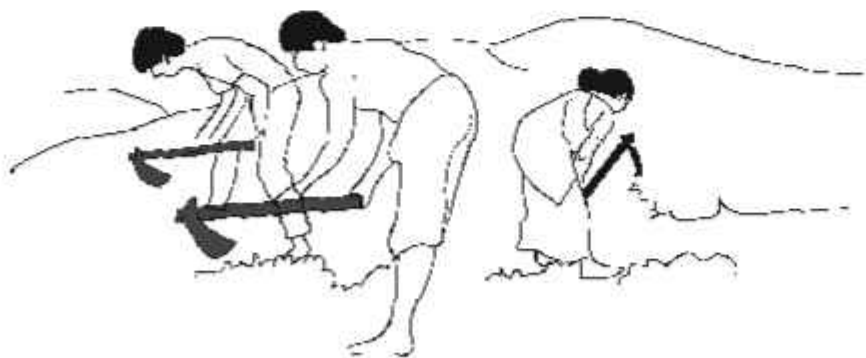
There are some other laws having general importance, which mandates the people to behave in a particular manner, to ensure entitlement of their rights and to cast their civic obligations.



LESSON 13

MAHATMA GANDHI NATIONAL RURAL EMPLOYMENT GUARANTEE ACT

The National Rural Employment Guarantee Act 2005 was notified on September 7, 2005 to enhance livelihood security in rural areas by providing at least one hundred days of guaranteed wage employment in a financial year to every household whose adult members volunteer to do unskilled manual work. Majority of the people in India live in rural areas. It is an undisputed fact that any action for economic betterment of rural areas will result in greater social transformation and thereby increase the prosperity of the country itself. It can only be achieved by a drastic change in the rural infrastructure facilities in the fields of education, health, drinking water, housing and roads. The Government of India has modeled several projects to develop basic facilities in rural areas, like



Pradhan Mantri Gramodaya Yojana (PMGY), Integrated Rural Development Programme (IRDP), The Development of Women and Children in Rural Areas (DWCRA), Million Wells Scheme (MWS), Sampoorna Gramin Rozgar Yojana (SGRY), etc. Keeping in view the needs and aspirations of the common Indians, Panchayati Raj institutions have been involved, in the programme implementations in rural areas.

However, all these executive initiatives were insufficient to guarantee a proper improvement in rural infrastructure. Hence, the Parliament of India enacted an Act to provide enhancement of livelihood security of the households in rural areas of the country by enacting **National Rural Employment Guarantee Act, 2005**. The name of the Act has now been amended and is now known as the **MAHATMA GANDHI NATIONAL RURAEMPLOYMENT GUARANTEE ACT 2005**.



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



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



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

There are penal provisions in the Act penalizing the persons in cases of non-compliance of the provisions of the Act. The violators may be convicted for a fine upto ₹1,000/-.

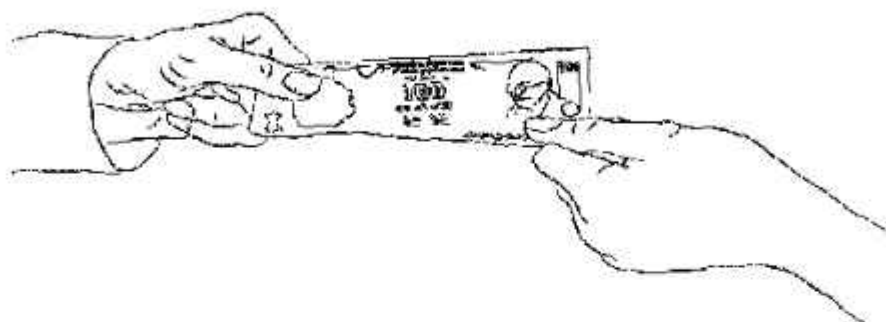
The adult members of every household in a rural area can make applications to do unskilled manual work under the Scheme. They have to submit their names, age and address of the household to the Gram Panchayat in the respective jurisdiction. When an application is received, the Gram Panchayat authorities are bound to register it and it is in force for 5 years. The Panchayat has the responsibility to issue a **Job Card** containing details of adult members of a household.

The persons included in the Job Card are entitled to get employment opportunities under the Scheme for a guaranteed minimum of 100 days with daily wages. Period of such employment shall ordinarily be for 14 continuous days and six days in a week.



The Mahatma Gandhi National

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



In Sikkim, under the Mahatma Gandhi National Rural Employment Guarantee Scheme, the Sikkim State Legal Services Authority has been holding number of legal awareness camps on the subject above to make the public aware of the said Act. Further, Lok Adalats under the MGNREG Act 2005 has also been established in all the Districts and Talukas (Sub-Divisions) of Sikkim for people to address their complaints before such Lok Adalats.



LESSON 14

SOCIAL SECURITY OF UNORGANIZED WORKERS

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

Who is an 'unorganized worker'? **The Unorganized Worker's Social Security Act, 2008** defines an unorganized worker, as a home based worker, a self employed worker, wage workers in unorganized sector and also the workers in organized sector not covered by the social security schemes under various Acts, such as **the Workmen's Compensations Act, 1923, Industrial Disputes Act, 1947, Employee's State Insurance Act, 1948, Employee's Provident Funds and Miscellaneous**

Provisions Act, 1952, Maternity Benefit Act, 1961 and Payment of Gratuity Act, 1972. The workers employed in homes like domestic workers, temporary and casual workers are beneficiaries of the Social Security Act, 2008.



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



ISSUE OF SMART CARD

The Central Government has the responsibility to formulate a Welfare Scheme for unorganized workers on the matters relating to their life and disability to cover health and maternity benefits, old age protection, etc. Indira Gandhi National Old Age Pension Scheme, National Family Benefit

Scheme and Janani Suraksha Yojana, Handloom Weavers' Comprehensive Welfare Scheme are some of the schemes notified in the Schedule by the Government under the Act.

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



LESSON 15

RIGHT TO INFORMATION

Are you entitled for any scholarship from the Government? What are the concessions and facilities you are entitled to from the School and Public Agencies?

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

**THE RIGHT
TO KNOW**
**KEEPING GOV'T
ACCOUNTABLE**

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

expanding the scope of freedom of opinion and expression.

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

An applicant can approach the Public Authorities by filing an application for information to its Public Information Officers. As per the Rules applicable in Sikkim, there is a prescribed form of application for information and the identification of the applicant is another pre-requisite. There are Public Information Officers in all the Central and State Government departments to receive, process and issue information as per the Act, on receipt of fee prescribed under the Act.

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

RTI FORM RS 10



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

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



Right to information not only gives the right to get copies of the documents, but also gives the right to inspect of work, documents and records. On receiving an application for

information, the Public Information Officer is bound to give it at the earliest within 30 days. If he is not able to issue such information within time, the applicant is entitled for the information free of cost. If an application is rejected or not responded within time or the information is incomplete, the applicant can file an appeal before the appellate authority against the action of the Public Authority. If he is aggrieved by the order of the appellate authority, he has a remedy to file an appeal before the Information Commission. There is a Central Information Commission in New Delhi dealing with matters of Public Authorities under the Central Government or Central Laws and a State Information Commission at Gangtok dealing with Public Authorities under the State Government or State Acts.



Section 8 of the Act enumerates exemption from disclosure of information. Information can be denied under the Act in the matters affecting sovereignty and integrity of India; security, strategic, scientific or economic interest of the State; relation with a foreign state etc. Information which has been expressly forbidden to be published by any court of law or tribunal and such information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislatures are also exempted. Exempted information includes cabinet papers and information available in the fiduciary capacity.

LESSON 16

PREVENTION OF DAMAGE TO PUBLIC PROPERTY

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



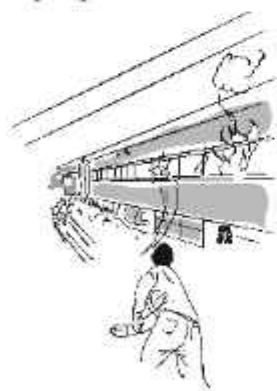
We have an Act called the '**Prevention of Damage to Public Property Act, 1984**' enacted by the Parliament to ensure punishment for persons involved in damage to public property. Now, what constitutes public property? An immovable property or movable property which is owned, possessed or is under the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

Panchayats, Municipalities or Corporations, or Public companies and Public Corporations or Institutions or concerns notified by the Central Government will come under the purview of 'public property'.

Severe punishments are provided under the Act, which would depend on the nature of mischief committed by an offender. The term of imprisonment may vary from 6 months to 10 years depending on the nature of offence. The Supreme Court in a recent decision issued guidelines to protect the public properties from damage in connection with violence in



hartals, bandhs and organized protests and strikes. As per the decision of the Supreme Court, the persons responsible for such hartals, bandhs, protests or strikes are also responsible for paying compensation in cases of damage caused to public properties.



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

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

LESSON 17

LEGAL AID AND LEGAL SERVICES UNDER THE LEGAL SERVICES AUTHORITIES ACT, 1987

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



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

Free Legal Aid



The expression 'legal services' include rendering advice on legal issues and also rendering services in conducting cases or other legal proceedings. The Act authorizes to constitute Lok Adalats to determine and to arrive at a compromise or settlement of litigation between the parties, either already pending or initiated as a fresh one. Such Lok Adalats are presided over by serving or retired Judicial Officers and such other persons, as may be decided by appropriate authorities or committees.

A Court may refer a pending litigation to the concerned Lok Adalat, if one of the parties to the litigation makes an application or all the parties jointly make an application.

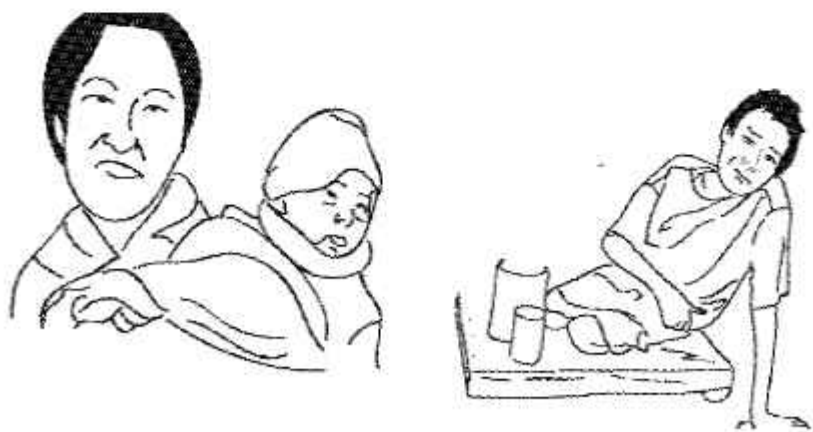


The Court may make such referrals if it is satisfied that there are chances of such settlement or the matter is an appropriate one to be taken cognizance of by the Lok Adalat. The Lok Adalat can dispose of the matter by arriving at a compromise or settlement between the parties. But if no settlement is arrived at, then the Lok Adalat may return the case to the Court from to which the case was referred.

In fresh matters, if the dispute is at the Lok Adalat, it shall advise the parties to seek remedy in a Court of Law. Every award of the Lok Adalat shall be final and binding on the parties to the dispute and has the equal force of a decree of a Civil Court or an order of the Court which referred the case to the Lok Adalat.

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

The State Legal Services Authority establishes the Permanent Lok Adalat headed by a Chairman, who is or has been a District Judge or Additional District Judge or has held Judicial Office higher in rank than that of a District Judge. It also consists of two other members having adequate experience in public utility services. Permanent Lok Adalat has the power to resolve a dispute before it on merits or by settlement and an award by it shall be final and binding on all parties thereto.



The following persons are entitled to free legal services under Section 12 of the Legal Services Authorities Act, 1987

- (1) A member of a Scheduled Caste or Scheduled Tribe.
- (2) A beggar or a victim of trafficking in human beings.
- (3) A woman or a child.
- (4) A mentally ill or otherwise differently abled person.
- (5) A victim of mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster.
- (6) An industrial workman.
- (7) A person in custody.
 - i. in a protective home under the provisions of Immoral Traffic (Prevention) Act, 1956.
 - ii. In a Juvenile Home under the provisions of the Act dealing with Juvenile Justice.
 - iii. In a Psychiatric hospital or Psychiatric Nursing Home under the provisions of Mental Health Act, 1987.
- (8) A person whose annual income is less than Rupees One Lakh in the state of Sikkim.



annual income of less than one
lakh

There are different kinds of Legal Services Authorities constituted under the Act.

There is a National Legal Services Authority at the highest level. The Chief Justice of India is the Patron-in-Chief of the National Authority. It has an Executive Chairman who is or was a Judge of the Supreme Court and such other members with a Member Secretary.

There are State Legal Services Authorities in each State with the Chief Justice of the High Court as the Patron-in-Chief and a serving or retired Judge of the High Court as the Executive Chairman. The State Authority has a Member Secretary, who is a District Judge of State Higher Judicial Service and such other members nominated by the State Government in consultation with the Chief Justice of the High Court. In the State of Sikkim there is Sikkim State Legal Services Authority at Gangtok since 1998.

In every District, there is a District Legal Service Authority headed by the District Judge as its Chairman. There are other members in the District Authority nominated by the Government in consultation with the Chief Justice of the High Court.

In addition to these, there are Legal Services Committees in the Supreme Court and all the High Courts. There are also Sub Divisional Legal Services Committees in every Taluk (Sub Division of the Districts) to render legal services to eligible persons and to conduct Lok Adalats to determine and settle the cases under their respective jurisdictions.

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

Establishment of the Sikkim State Legal Services Authority

Consequent upon the enforcement of the Legal Services Authorities Act, 1987, in the State of Sikkim, the Sikkim State Legal Aid and Advice Board, constituted under Sikkim State Legal Aid and Advice Scheme, 1982, was dissolved in 1998.

Thereafter, the Sikkim State Legal Services Authority was constituted under the Legal Services Authorities Act, 1987 as a separate establishment vide Notification No. 2/LD/98 dated 09.04.1998, in terms of Section 6 of Legal Services Authorities Act, 1987 read with Rule 3 of Sikkim State Legal Services Authority Rules, 1995.



As per sub-section 2 (a) and (b) of Section 6 of the Legal Services Authorities Act, 1987, the Sikkim State Legal Services Authority consists of the Chief Justice of the High Court who is the Patron-in-Chief and a serving or retired Judge of the High Court as the Executive Chairman with 10 Ex-Officio members and 7 Other members nominated by the State Government in consultation with the Chief Justice of the High Court. The State Authority in Sikkim also has a Member Secretary, who is a District Judge of the Sikkim State Higher Judicial Service.

Establishment of District Legal Services Authority & Taluk Legal Services Committee

In terms of Section 9 of the Legal Services Authorities Act, 1987, read with Rule 10 of the Sikkim State Legal Services Authority Rules, 1995, a District Legal Services Authority for all the four districts in the State of Sikkim was established in the month of April 1998 by the State Government. The District Authorities is headed by the Ld. District & Sessions Judge as the Chairman with the District Magistrate, Superintendent of Police, Ld. Civil Judge/Judicial Magistrate and Advocate-cum-Public Prosecutor as the Ex-Officio members and 3 Other Members nominated by the Government in consultation with the Chief Justice of the High Court of Sikkim.

Similarly vide Section 11A (1) of the Legal Services Authorities Act, 1987, Taluk Legal Services Committees at Chungthang in the North, Pakyong in the East, Soreng in the West and Ravangla in the South was constituted in November 1998 and later at Rongli in the East in 2000. Likewise at the Taluka level, the Taluk Legal Services Committees comprises of Ld. Civil Judge-cum-Judicial Magistrates as the Ex-Officio Chairperson with the Sub-Divisional Magistrate and Sub-Divisional Police Officer of the respective Tulakas as Ex-Officio member and 12 other persons as members nominated by the Government in consultation with the Chief Justice of the High Court of Sikkim.

Establishment of High Court Legal Services Committee

The Sikkim State Legal Services Authority also constituted the High Court Legal Services Committee under

section 8 A of the Legal Services Authorities Act, 1987 in April 1998. The High Court Legal Services Committee is headed by the Sitting Judge of the High Court of Sikkim as the Chairman with the President and General Secretary, Sikkim High Court Advocates Bar Association, Registrar General or Registrar of the High Court of Sikkim as the Ex-Officio Members with 13 Other members nominated by the Hon'ble Chief Justice of the High Court of Sikkim.

Legal Aid

The Sikkim State Legal Services Authority provides free and competent legal services to all persons, who fulfill the requisite criteria laid down under Section 12 of the Legal Services Authorities Act, 1987 read with Regulation 28 and 29 of the Sikkim State Legal Services Authority Regulation, 1998. The income ceiling for those entitled u/s 12(h) of the Act has now been raised from ₹ 75,000/- per annum to ₹ 1,00,000/- per annum.



A person found eligible under Section 12 of the Legal Services Authorities Act, 1987 can approach the Legal Services

Authorities and Legal Services Committees of respective jurisdiction to get free legal services of an Advocate in the Panel maintained by the Sikkim State Legal Services Authority to conduct their cases or to avail legal advice under the law,

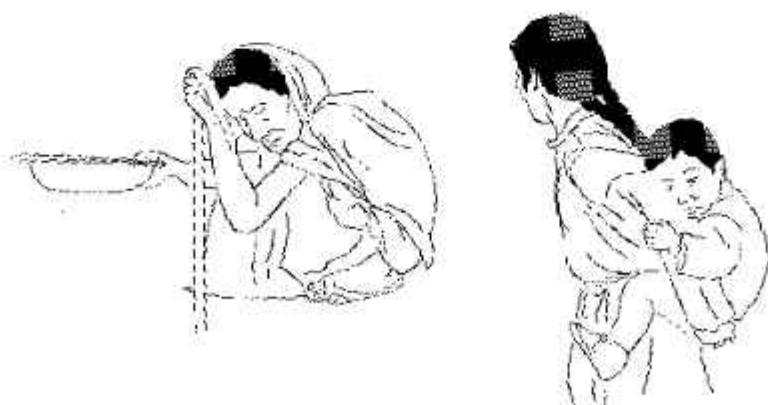
a) What is the nature of legal services provided by the Sikkim SLSA?

Legal Services include the rendering of any service in the conduct of a case or legal proceeding before any Court/Authority/Tribunal and the giving of advice on a legal matter. These are provided by way of:

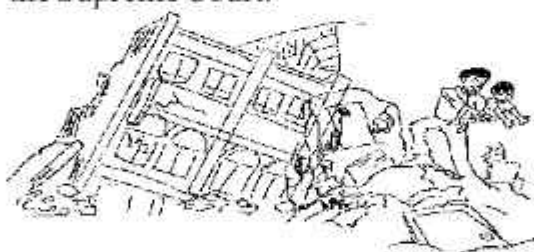
- Providing Advocates at State expenses;
- Paying Court fee on behalf of the eligible persons;
- Bearing expenses regarding preparation of documents;
- Paying expenses for the summoning of witnesses; and
- Paying other incidental expenses connected with litigation

b) Who is eligible to receive free legal services?

Any persons who is



- a member of a Schedule Caste/Schedule Tribe; or
- a victim of human trafficking or a 'beggar' as referred to in Article 23 of the Constitution; or
- a woman or a child; or
- a person with disability as defined in clause (i) of Section 2 of the persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995; or
- a victim of mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake, or industrial disaster; or an industrial workman; or
- in custody, including that of a protective home, juvenile home, psychiatric hospital, psychiatric nursing home; or
- having annual income upto ₹1,00,000/- per annum or such other higher amount as prescribed by the State Government if the case is before a court other than the Supreme Court.



c) What is the subject matter in which legal services may be availed?

- All cases of a civil nature such as property disputes,

matrimonial and custody matters, labour or service matter, compensation in motor accident cases, consumer disputes, etc.

- All cases involving criminal offences.
- All cases involving violation of fundamental rights as guaranteed by the Constitution of India.



d) Types of cases in which legal aid cannot be availed?

- Defamation;
- Malicious prosecution;
- A person charged with contempt of court proceedings or perjury;
- Proceedings relating to any election;
- Proceedings in respect of economic offences and offences against social laws, such as complaints against untouchability or caste basis or prejudices.

e) When can legal services be withdrawn?

- Where the aided person is possessed of sufficient means.

- Where the aided person obtained legal services by misrepresentation or fraud.
- Where the aided person does not co-operate with the Legal Services Authority/Committee or with the legal services advocate.
- Where the person engages a legal practitioner other than the one assigned by the Legal Services Authority/Committee.
- In the event of death of the aided person except in the case of civil proceedings where the right or liability survives.
- Where the application for legal services or the matter in question is found to be an abuse of the process of law or of legal service.

f) Whom to contact for legal services?

For obtaining free legal services, the following persons may be contacted:-

- Member Secretary, Sikkim State Legal Services Authority, Near Power Sub-Station, Sichey, Gangtok;
- District Judge of every District who is the Chairperson of District Legal Services Authority;
- Civil Judge of every Taluk who is Ex-Officio Chairperson of Taluk Legal Services Committee.

Alternate Dispute Resolution in Sikkim

As already discussed in Lesson 3 of Part A the people now have the option of settling their disputes out of court by means of Alternative Dispute Resolution systems such as Lok Adalats, Counselling and Conciliation and more recently through the process of Mediation.

Alternative Dispute Redressal Centres for East District is being established next to the existing District Court Premises for the East District at Gangtok. ADR Centres for North District has already been established at Pentok, Mangan, North Sikkim. ADR Centres for the South and West Districts are being established next to the existing District Court Premises for the South at Namchi and West at Gyalshing.

MEDIATION

In India, **Section 89 of Code of Civil Procedure 1908** provides mediation as one of the method of alternative dispute resolution. Alternative Dispute Resolution (ADR) is not a substitute for courts but is a complementary mechanism to shed off the work load of the courts. The need of the ADR is real and urgent. It is a mechanism to mitigate the existing deficiency in



the judicial system. It provides an opportunity to resolve the differences, conflicts or the disputes creatively, efficiently, effectively and amicably.

Mediation is a non-binding negotiation process, in which a neutral third person facilitates the parties in disputes in arriving at a mutually acceptable settlement. To assist the parties, the Mediator uses specialized negotiation and communication techniques to arrive at dispute resolution. The mediation process is structured and informal. Parties control the outcome of the dispute which is in the form of an agreement/settlement. The mediator controls the process through which parties arrive at their settlement. The entire process is confidential.

Mediation Centres have also been established by the Sikkim SLISA for the East District in the office of Sikkim State Legal Services Authority, for the South District in the District Court at Namchi, for the West District in the Civil Court, Gyalshing and for the North District at Pentok in Mangan.

Sikkim now has a number of specially trained Judicial Officers, Advocates, Non Governmental Organizations and Doctors as Mediators for the Mediation Centres in Sikkim. These mediators have been trained by Mediators from Mediation & Conciliation Project Committee, Supreme Court of India, New Delhi.

LOK ADALAT

Lok Adalat as the very name suggests means people's Court. "Lok" stands for people and the vernacular meaning of the term "Adalat" is Court. Generally speaking, it is not a

“Court” as understood by or may call it by that name. It hardly has anything in common with the law Court except, that both are tools in the legal system to deliver justice. A difference is that a law Court sits at its premises where the litigants come with their lawyers and witnesses to seek justice, whereas Lok Adalat itself goes to the people to deliver justice at their door-steps. So it is a kind of a forum provided by the people themselves or by interested parties including social activists, legal aiders and public spirited people belonging to every walk of life. In order to ensure that the settlement is fair and according to law, the forum



may consist of legally trained people who are respected in the community where the Lok Adalats are constituted. Their function is not to act as a judge of a law Court but to enable the respective parties who voluntarily seek the Adalat's intervention to understand their respective rights and obligations with reference to the disputes brought before it and to help to keep the dialogue going in a fair manner. They do not judge the issues thrown up in the discussion. Their role is to clarify the law and by gentle persuasion convince the parties how they stand to gain by an agreed settlement. It is thus a forum where voluntary effort aimed at bringing about settlement of disputes between the parties is made through conciliatory and persuasive efforts.

Lok Adalats are functional at the High Court level, District level and at the Sub-Division (Taluk) level. The bench of the Lok

Adalat consist of the Hon'ble sitting Judge of the High Court with "Other Persons" as its members, while at the District level, the Ld. District Judge is the Lok Adalat Judge with "Other Persons" and at the Taluk level the Ld. Civil Judge is the Lok Adalat Judge.

Permanent and Continuous Lok Adalat u/s 19 to the Legal Services Authorities Act, 1982 have been established in all the four districts and five Talukas of Sikkim viz. East at Gangtok, North at Mangan, South at Namchi, West at Gyalshing and subdivisions in the North at Chungthang, South at Ravangla, West at Soreng, East at Pakyong and Rongli.

The Sikkim State Legal Services Authority apart from constituting the above Lok Adalats have also established the following:-

Lok Adalat for Mahatma Gandhi National Rural Employment Guarantee Scheme under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005, Permanent and Continuous Lok Adalat for Public Utility Services and Permanent and Continuous Lok Adalat for Government Departments and Statutory bodies have also been established in Sikkim.

PARA-LEGAL VOUNTEER SCHEME

As per the scheme of National Legal Services Authority, Para Legal Volunteers are intended to bridge the gap between the people who suffer the problems of "access of justice" and the legal services institutions which are often located in towns and

cities, far away from villages and geographically inaccessible areas. Para-legal volunteers are a group of people with basic training in the laws and legal system of our country, who like the “barefoot doctors” in China, can provide primary assistance to the common people who face problems relating to their rights conferred by law.



Para-legal volunteers help the poor and disadvantaged to free them from the stranglehold of the mighty and powerful for protecting their legal rights. The ultimate object of para legal volunteers is to help the legal services institutions established under the Legal Services Authorities Act, 1987 for bringing the voice of the voiceless to be heard and to get their grievances redressed. It is indeed a part of the preventive and strategic legal aid programme contemplated under Section 7 (2) (c) of the Legal Services Authorities Act, 1987.

The Sikkim State Legal Services Authority has trained para-legal volunteers in all the Districts comprising of the members of Zilla & Gram Panchayat Units, NGOs and Social Workers.

Legal Aid Clinics

As per the scheme of National Legal Services Authority, Legal Aid Clinics are intended to function as first aid centres in the field of legal services. The legal aid clinics are organized at Block levels with the assistance of the Block Development Officer, Panel Advocates and Panchayats.

The lawyers-consultant in the legal aid clinic employs the techniques of mediation or conciliation for resolving the dispute within the clinic itself. He can advice the parties to take up the matter before the Legal Services Authority/Committee for referring the same to the Lok Adalat or about the futility of litigation.



The Lawyer-consultant also help parties to draft simple petitions, applications and even to fill up Forms. The legal aid clinics serve as a 'Pre-litigation Centre' for that Block. The clinics are suitably named as "Pre-litigation Centre" or "Legal Aid Centre", "Nyaya Seva Sadan" or by any other suitable name.

In the State of Sikkim, the Sikkim State Legal Services Authority, in coordination with the Rural Management and Development Department has already taken necessary steps for holding legal aid clinics in all the Block Administrative Centres in all the four Districts of Sikkim.

In addition to the legal services, the Legal Services Authorities in Sikkim holds legal literacy camps & programmes to ensure basic legal education and legal awareness to various sections of society like students, women, the under privileged to enlighten the public of their legal rights.



LESSON 18

PROTECTION OF RIGHTS OF CONSUMERS

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

Marketing a product is not an easy task in a society where the consumer is properly educated. Goods are introduced or marketed through advertisements and promotional schemes in the market. Reduction sales, prizes and installment schemes offered by the distributors may induce the common people to



purchase things which are not of good quality. Apart from selling of goods, services are also rendered to customers. Such services may include those rendered by a repairing house or a Consulting agency. There are also instances of complaints made by the consumers against the service providers due to deficiency in services.

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

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

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

The Protection Councils have the duty to see that these

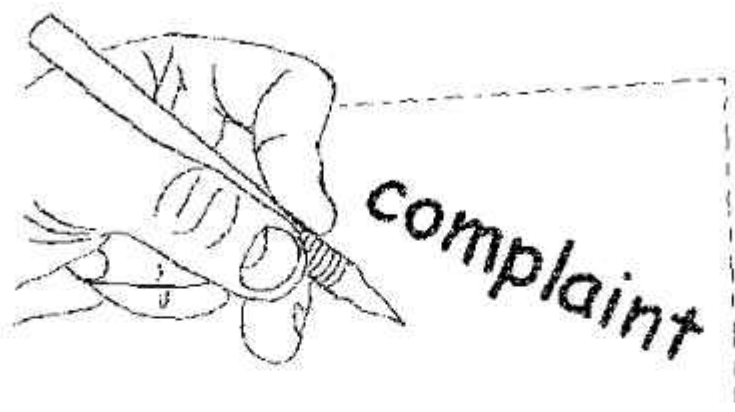
rights are protection with respect to a consumer. Additionally, the consumer has the right to be heard and right to seek redressal against unfair trade practices or unscrupulous exploitation.

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

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

A complaint can be filed by a consumer, any incorporated voluntary consumer association, the Central Government or the

State Government or by one or more consumers, if they are having same interest in the subject matter of the complaint. If the aggrieved consumer is dead, his legal heirs or representatives can prosecute the matter before the redressal agencies.



A complaint before the redressal agencies must be in writing and along with, remittance of fee prescribed.

In Sikkim, at the District Forum a Complainant is liable to remit fee of ₹100/- for a complaint covering dispute upto ₹1 lakh and ₹500/- for a complaint covering dispute above ₹1 lakh to ₹5 lakhs. The fee is ₹1,000/- for a complaint covering dispute above ₹5 Lakhs to ₹10 lakhs and the fee is ₹2,000/- for a complaint covering dispute above ₹10 lakhs to ₹20 lakhs.

The complaint must be filed within 2 years from the date on which the cause of action has arisen. However, the redressal agencies can condone the delay in filing the complaint, if the complainant is able to explain the delay satisfactorily.

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

1. When any trader or service provider has adopted an unfair trade practice or restrictive trade practice.

When a trader adopts an unfair method or unfair or deceptive practices for the purpose of promoting the sale, use or supply of any goods or for providing any services, such practices amount to unfair trade practices. A false representation made on the standard, quality, quantity, grade, composition, style or model of goods is an unfair trade practice. A false representation made on the standard, quality and grade of services is also an unfair trade practice. False presentation of rebuilt, second hand, renovated, reconditioned or old goods as new goods is an unfair trade practice. Making false or misleading representation on the need for or the usefulness of any goods or services is also an unfair trade practice. Advertisements by misleading declaration of price of goods or services will also amount to unfair trade practices.

Such trade practices which tend to bring about manipulation of price or its conditions of delivery or to affect the flow of supplies in the market will come under the purview of restrictive trade practices.

When a trade practice requires a consumer to buy, hire or avail of any goods or services as



condition precedent to buying, hiring or availing of other goods and services, it will amount to restrictive trade practices. When the trader or service provider delays the supply of goods or service beyond the agreed date intending to raise the prices of goods or service, such practices amount to restrictive trade practices.



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

Service like banking, finance, insurance, transport, processing, supply of electricity, boarding and lodging, house construction, entertainment etc will come under the purview of the Consumer Protection Act. Any person who buys goods for a consideration which has been paid or promised, or partly paid or partly promised or the use of such goods will come under the expression of 'consumer' under the Act. With respect to hiring or availing of services, a person who hires or avails any service for

a consideration which has been paid or promised or partly paid or partly promised and also any beneficiary of such service is a consumer entitled for remedy under the Act. Only the purchase of goods or hiring or availing of service for end consumption is covered under the Act. Sale of goods or availing of service by two traders or between two parties for commercial purpose is outside the purview of the Act and such persons are not considered 'consumers' under the Act.

If the Orders of the Redressal Agencies are violated or not complied by a person against whom a complaint is made, such violators can be subjected to punishment of imprisonment for a period between 1 month to 3 years or with fine between ₹2,000 to ₹10,000 or with both imprisonment and fine.

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



LESSON 19

PROTECTION OF ENVIRONMENT

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

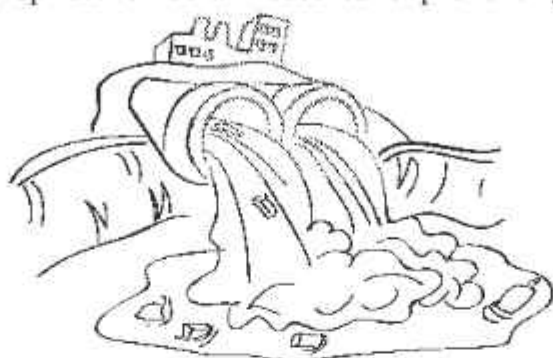
What does it mean? There is only this earth and hence there is no other home for us other than the earth. It is home not only to human beings but also to all the animate and inanimate.

We will fail to exist in the absence of a healthy environment and pollution free atmosphere. Air, water and soil must be kept free of impurities for a pollution free atmosphere. Nuisance from sound must be reduced. Natural resources shall be used with utmost care. We are bound to safely entrust the globe to the next generation. Environmental laws are made for preserving the globe.



In India, The Water (Prevention and Control of Pollution) Act of 1974 was enacted for the prevention and control of water pollution and to maintain and restore the purity of water. Central

and State Pollution Control Boards are constituted as per the Act to promote and ensure the cleanliness of streams and wells by making appropriate remedial measures for preventing pollution.



In 1981, The Air (Prevention and Control of Pollution) Act was enacted to provide for the prevention, control and abatement of air pollution. Presence of air pollutants in the atmosphere such as any solid, liquid or gaseous substance including noise which are present in the atmosphere which are injurious to human beings or other living creatures or plants or property or environment amounts to air pollution under the Act. The Boards constituted under the Water (Prevention and Control of Pollution) Act, 1974 has additional powers to improve the quality of air and to prevent, control and abate air pollution.



The Parliament of India enacted the Forest (Conservation) Act, 1980 to prevent deforestation since it was found that the large scale activities of deforestation causes ecological

imbalance in the country. As per the Act, use of any forest land for any non-forest purpose is regulated and the assignment of forest land to private persons is controlled. The Act also requires the State Government to maintain the reserve forests, subject to the guidelines of the Central Government.

For the protection of forests and the environment in Sikkim, we also have the Sikkim Forest, Water Courses and Road Reserve (Preservation and Protection) Act, 1988, (Act No. 6 of 1988).

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

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

Although we have a strong and extensive system to implement the anti-pollution laws, its working would be more effective if there is greater public participation. We have to

develop an environmental culture by educating ourselves, about the importance of a pollution free environment. We should report the instances of environmental pollution to the authorities, timely and properly, for the effective control and regulation of pollution of water, land and air.

As per the law on water pollution, nobody shall be allowed to drain waste water towards any running water without permission from the Pollution Control Board. Draining of rain water to a river by mixing it with industrial chemicals is also water pollution. Requirement of a license for starting an industry from the Pollution Control Board is one of the mechanisms to regulate water pollution under the Act. The Act also mandates the establishment of effluent treatment plants for purifying industrial waste water. If the provisions of the Act are violated by an industry, the Board is empowered to order for closing down of such industry.



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



LESSON 20

NEGOTIABLE INSTRUMENTS ACT

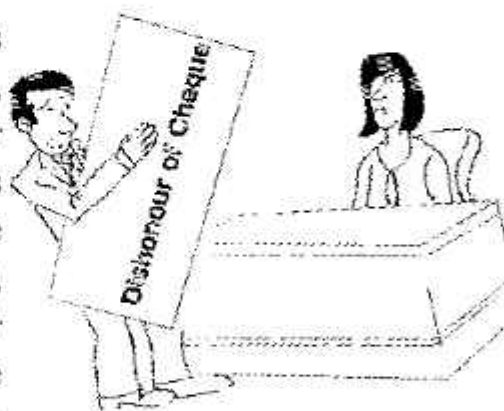
Dishonour of Cheque is an Offence

Cheques, Demand Drafts, Pay Orders, etc. are the instruments exceedingly typical, not only in the commercial circle, but also in the ordinary lives of the people. A cheque is a common instrument used for money transactions, which is a Negotiable Instrument, regulated by the provisions of the **Negotiable Instruments Act, 1881**. It is a device facilitating easy money transaction with the help of a Banker, wherein the account holder keeps his accounts. A cheque can be drawn or issued by the account holder in favour of himself or in favour of another person. Validity of a Cheque is for six months from its date of execution and any material alteration in the cheque will make the cheque invalid, as the Banker may refuse to honour such a cheque.



When a cheque is issued to another with a clear indication of honouring of cheque on its presentation to the Bank, the dishonour of such cheque is an offence punishable under the Negotiable Instruments Act, 1881. A cheque may be returned from the bank on any ground, but when it is returned with a reason that the amount in the account is insufficient to honour the cheque amount or it exceeds the amount arranged to be paid from the account, such an omission on the part of the maker of the cheque is punishable with imprisonment of a maximum of two years or with fine which may be twice the amount in the cheque or with both. Even instances like a cheque returned for the reason that the account holder instructed stop-payment or account is closed are sufficient reasons to presume commission of an offence under the Act.

When a cheque is returned from the Bank, with a memo of return, for the aforesaid reasons, it is mandatory to issue a notice to the account holder, intimating the dishonour and with a demand of the cheque amount. Such



notice shall be issued within 30 days of receipt of such memo from the Bank. If the addressee of such notice accepts the notice or refuses the notice or caused the return of notice as unserved, in such situations, a complaint can be filed before the Court of Judicial Magistrate First Class against the maker of the cheque/account holder after 15 days to enable him to pay the

cheque amount, but within 45 days of such receipt or return of such notice.

Such a complaint can be filed in the Court of Judicial Magistrate First Class, situated either in the place of issuance of cheque or the place of drawing of cheque, place of presentation of cheque for collection to the Bank, place of dishonour or return of cheque by the Bank or at the place where the account holder resides or ordinarily carries his business.



**Imprisonment of maximum
2 years
or
Fine which may be twice
the amount in the cheque
or
Both**

When the signature in the cheque is admitted or liability in support of issuance of cheque is proved beyond doubt, the punishment will follow either as imprisonment or as direction to grant compensation or with both. Even in cases wherein the makers of cheques allege misuse of blank and signed cheques by its holder, the Court refuses to consider such a plea, in absence of strict proof of non-liability towards the holder of the cheque on the side of the maker of the cheque. It is an important fact that the offence can be compounded or the subject matter of dispute can be settled at any stage of the litigation, between the parties with the permission of the Court. Now-a-days the remedy available under the Act, is widely utilized by the litigant people to redress the grievances of non-payment of debts or liabilities, which are secured by issuance of cheques.



LESSON 21

WOMEN'S COMMISSION

Commissions for Women to safeguard their interest

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

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

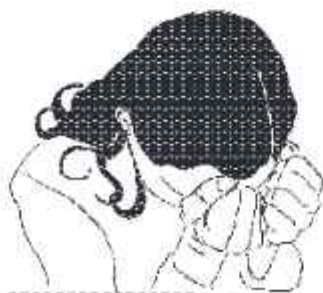
the issues arising out of such matters with appropriate authorities.

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

WOMEN'S PRISON



Any instances of harassment or atrocities or physical or mental torture committed towards women, generally and against a female of any age group, can be reported to the Women Commission. On receipt of such a report or information, The Commission headed by its Chairperson and other members will order a preliminary investigation. On receipt of a report in preliminary investigation, the Commission will hold inquiry in appropriate cases, if they find there is sufficient grounds to proceed further in the subject matter of the complaint. After the conclusion of the inquiry, the Commission will forward its recommendation to the Government for appropriate action. In



cases in which offences are committed against women, the Commission will initiate steps against the offenders under the provisions of respective laws.

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

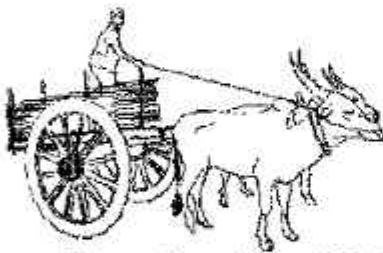
In Sikkim, the Sikkim State Women Commission has been constituted and has its head office at Gangtok.



LESSON 22

LAW RELATING TO MOTOR VEHICLES

In the earlier days, people travelled along the “PATH-ways”. Pathways become larger to form “CART-ways” with vehicles like hard carts, bullock carts etc. When there was no rush and traffic was less, no one faced difficulty in using these “WAYS” safely.



Thereafter, these “WAYS” were used for driving motor vehicles. Vehicles fitted with machines and motors posed to be dangerous to the general public and any other road users when these mechanized vehicles were used under bad conditions or by persons without proper training and or without proper order or discipline. Accidents became common due to the above conditions. Therefore these ill consequences or accidents caused due to mechanical defects, negligence or untrained use and lack of discipline had to be tackled with.

Human behaviour can be controlled by making laws. Therefore, the Motor Vehicles Act was made in 1939 mainly for

the purpose of avoiding danger to the public road user. The law first classified the various motor vehicles like two wheelers, three wheelers, light motor vehicles, heavy motor vehicles etc. They also varied in degrees of the danger posed. Therefore, it is desirous that vehicles are kept in good condition and used safely and carefully by competent persons to make sure that such motor vehicles do not pose any danger to general users of roads. The safety of the general public should be safeguarded. The Law relating to use of Motor Vehicles was thus primarily made to achieve these purposes.

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

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



car/jeep/van etc which are generally called Light Motor Vehicles or a two-wheeler like a scooter/motor cycle/moped, etc. or a heavy vehicle like trucks/buses/or the special vehicles like trailer.



Light Motor Vehicle



Heavy Motor Vehicle



Two Wheeler

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

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

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

For better and disciplined driving, there are guidelines on the streets by way of signs and signals. You might have seen signals or sign boards placed on the road sides. These help a driver to understand the road and how he should regulate his driving at certain places. 'Speed-breaker' signs are placed on the road-sides for drivers to prepare the vehicles to slow down. They are generally placed in junctions, near hospitals and school gates to avoid accidents. At some important places, there are signs showing 'no use of horns' as these are considered a disturbance to the regular activities in the areas. In short, all signs are to help drivers to follow the rules of road use like those mentioned above.



Signals are normally voiceless communication/ instructions to drivers to regulate their vehicle to proceed in a disciplined and orderly manner at busy and important places to avoid accidents. Such signals are generally given by lights fitted in visible positions. At times signals are given by hand movements by the traffic officers. On several occasions one driver will have to communicate with the driver of another vehicle. He may want to indicate his intention to overtake or turn

to sides or stop his vehicle and he will let the other know. These can also be done by indicator lights fitted on their own vehicles or by hand movements. The other passengers in vehicles should therefore avoid careless hand movements outside the vehicle as this would be mistaken as a signal. All these signals should be generally common or else the signal shown by one will not be understood by the other. Therefore, the law clearly says what signals can be shown by drivers or the traffic police officials and how they should be understood by the other drivers. There are officers who will constantly keep watch on the drivers on the road. They will find out those who violate the rules and report. There are punishments for all such violations. The punishments are fine or even imprisonment.

No one should drive motor vehicles after consuming any alcoholic drink or any narcotic substance. These make the human brain ineffective and incapable of decision making.

These drivers are sure to cause accidents as they cannot think or act quickly. They are to be discouraged. Those who encourage them by travelling along with them when they drive can also be stopped and punished. The punishments for such driving are severe.



Since accidents are caused due to mechanical failures on account of non-maintenance of vehicles, by rash and negligent driving, by drunken driving, due to bad roads and bad weather conditions, careless pedestrian, etc. it mostly results in suffering of innocent victims. Therefore, the law makes everyone who is responsible for causing any loss, injury or death by an accident liable to be punished and also to compensate such innocent sufferers. Since some of the drivers are monetarily incapable of compensating such losses, the law makes it compulsory for all owners of motor vehicles to arrange for insurance cover for such purposes by paying small affordable installments. Therefore, the Insurance Companies pay the necessary compensation to the victims even if the driver cannot pay such compensation.

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

