

NALSA's Guidelines for Establishment and Functioning of “Legal Literacy Club” in Schools



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NATIONAL LEGAL SERVICES AUTHORITY

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GUIDELINES FOR LEGAL LITERACY CLUBS

1. INTRODUCTION:

Justice is the corner stone and fundamental goal of every civilized nation. The chief purpose of law is justice which reflects in an orderly advancement of a given society. Lack of knowledge about the basic legal and civil liberties, human rights, constitutional directives that protect the dignity, liberty and freedom of people manifests itself in the society in the form of problems such as child labour, human trafficking etc., that threatens the safety of all. Due to lack of awareness on the part of people, for whose benefit laws are enacted, ignorance of rights and privileges under the law, they are unable to identify any wrong or injury caused to them as a legal wrong or injury capable of redress through the legal process. It is, therefore, absolutely necessary to create legal awareness amongst the people. The masses should be aware of the laws of the land. It is all the more important that youth are educated about the laws so that they grow up to be law abiding citizens. In the said backdrop, Legal Literacy Clubs in Schools and Colleges are expected not only to boost legal literacy but will also help in strengthening the capacity of youth to effectively advocate for human rights and Access to Justice for vulnerable population.

2. STRUCTURE OF LEGAL LITERACY CLUB

Legal Literacy Club shall be run under the guidance of school/college teacher called "Teacher-in-Charge" to be nominated by the Headmaster/Principal. Headmaster / Principal of the respective High School/College shall have overall supervision of the Legal Literacy Club. Members of the LLC should be selected by Teacher-in-Charge under the guidance of Head Master/Principal. At the School level, Members shall preferably be students from Class 9th and 11th.

3. BASIC REQUIREMENTS AT THE CLUB

To ensure effective functioning of Legal Literacy Clubs, the following basic requirements would have to be met: -

Furniture consisting of a Table and 3 Chairs	Rs.5,000/-
Books	Rs.10,000/-
Almirah	Rs.10,000/-
Computer (Desktop)	Rs.35,000/-
Total cost per Legal Literacy Club	Rs.60,000/-

The aforesaid table is the suggested break-up of the basic requirements. Computer is a part of the Legal Literacy Club so as to access to huge data resource qua child rights available on the inter-net but also to access to NALSA/SLSAs portals and other in related websites. It will also come handy to access Child Rights Portal which shall be launched by NALSA soon under the aegis of ‘All India Legal Services Cell on Child Rights’.

4. ASSISTANCE TO BE PROVIDED BY LEGAL SERVICES AUTHORITIES:

4.1 Legal Services Authority shall provide booklets/brochure/pamphlets published in user friendly language to Legal Literacy Club. The said booklets etc. shall be kept in the Legal Literacy Club and shall be available for Members of Legal Literacy Clubs and other students for reading and reference purposes.

4.2 Plan of Action spelling out the various activities to be carried by Students under Legal Literacy Clubs shall be formulated by Legal Literacy Clubs in coordination with District Legal Services Authorities. Legal Services Authority shall render effective assistance in devising action plans.

4.3 Legal Services Authorities shall provide necessary guidance from time to time to Legal Literacy Club for carrying out various activities, apart from providing resource persons in the form of empanelled Legal Services Advocates, Para Legal Volunteers, Academicians, Retd./Serving Judicial Officers, DLSA Functionaries. Members of Legal Literacy Clubs be apprised about the various basic laws so that they can further spread legal awareness amongst students.

4.4 Schools with Legal Literacy Clubs will have the facility to arrange visit of children of 9th to 12th standard to District Court Complexes in batches of 40-50 with the help of DLSAs. Secretaries, DLSA or panel lawyer will brief them with regard to court functioning and they will be able to interact with judges, public prosecutors and others. They will be served snack boxes by DLSAs.

5. MAINTENANCE OF REGISTERS:

The club shall maintain four separate Registers for the purposes as follows:-

5.1 MEMBERSHIP REGISTER - to reflect the names of the Club members in every Academic year with signature of all the members as well as the name and signature of the Teacher-in-Charge.

5.2 RESOLUTION REGISTER - to contain all the Resolutions passed by the Club with their respective dates, signature of the Teacher-in-Charge of the Club.

5.3 ACTIVITIES REGISTER - to contain a brief description of the activities undertaken by the club with date, place, number of members participated etc.

6. ACTIVITIES

The activities of Legal Literacy Club may include:

- 6.1 Holding of Legal Awareness discourses for Students of the School/College. The said discourses can touch topics such as Child Labour, Child Marriages, Ragging, Female-Foeticide, Road Safety, Cleanliness, POSCO etc.
- 6.2 Students Legal Literacy Club may organize debates, discussions, essay competitions, poetry/short competitions and painting/cartoon drawing competitions on the issues pertaining to Legal Literacy & Awareness on Legal Services Day, Constitution Day, Annual Day, Children Day etc.
- 6.3 Awareness lectures be also organised by Legal Literacy Club for spreading awareness about the importance of Fundamental Duties as envisaged in Article 51A of the Constitution of India.
- 6.4 The LCCs can be encouraged to bring to the notice of Teacher-In-charge incidents of ragging, bullying of any other kind of injustice or atrocity of any nature with the students/staff of the school so as to ensure that remedial steps are taken for avoiding recurrence of such incidents in future.

7. SUGGESTED TOPICS WHICH CAN BE TAKEN BY LEGAL LITERACY CLUBS

- 7.1 Constitution Values
- 7.2 Child Marriage
- 7.3 Rights of Senior Citizens
- 7.4 Ragging
- 7.5 Road Safety
- 7.6 Protection of Women from Domestic Violence Act, 2005
- 7.7 Dowry prohibition
- 7.8 Human Rights
- 7.9 Fundamental Duties
- 7.10 Rights of disabled persons
- 7.11 Right of Destitute of Women and Children
- 7.12 Female Foeticide
- 7.13 Environment
- 7.14 Right to Education

- 7.15 Right to Information.
- 7.16 Career Guidance & Counselling.

8. SUGGESTED COMPETITIONS WHICH CAN BE HELD ON AFORESAID TOPICS

- 8.1 Declamation contest
- 8.2 Poetry recitation
- 8.3 Debate
- 8.4 Essay writing
- 8.5 On the spot painting
- 8.6 Slogan writing
- 8.7 Power Point Presentation.
- 8.8 Law Olympiads.

9. CERTIFICATE

District Legal Services Authorities shall award certificates on the recommendation of School Authority to the Students who actively participate in LLC activities.

10. LIST OF SUGGESTED BOOKS TO BE KEPT IN LEGAL LITERACY CLUBS

10.1 MULTIPLE ACTION RESEARCH GROUP (MARG)

- Hamare Maulik Adhikar
- Hamare Kanoon
- Pamphlets/Leaflets on Dowry, MACT, Senior Citizens Act-2007, Child Labour, Viklango ke Liye Kanooni Suraksha, FIR, Vetan kanoon, Etc.

10.2 NATIONAL BOOK TRUST

- Aapka Sochna ka Adhikar
- Dande ka Darr
- Kanoon ke Fayede
- Mukti ka Marg
- Pustak Ki Dukan
- Jhuth Ka Parinam
- Mat Ro Sukhiya
- Pustak Mera Mitr
- Mobile Devta
- Raees
- “Human Rights” in Urdu
- “Right to Information” in Urdu

10.3 HAQ CENTRE FOR CHILD RIGHTS

- Bachon ki Suraksha
- Handbook on Children’Right to Adequate Houseing
- Combating Child Trafficking –A User’s Handbook (Hindi)
- Blind Alley – Juvenile Justice in India

10.4 HINDI BOOK CENTRE

- Bharat Ka Samvidhan
- Jaydedad ka Haq
- Hamare Adhikar Aur kartavya
- Aurat Ke Kanooni Adhikar
- Beta Beti Ek Saman
- Hamare Adhikar Aur Kanoon
- Kanoon Ka Kamal

**10.5 INDIAN SOCIAL INSTITUTE/BHARTIYE SAMAJIK SANSTHAN,
LODHI ROAD, NEW DELHI**

- Do You Know your Fundamental Rights
- What Should You Know About F.I.R.
- Bhartiye Nyayik Pranali
- Giraftari Ke Samay Aapke Adhikar
- Right to Free and Compulsory Education Act, 2009
- Law Relating to Human Rights in India
- Legal Aid For Poors
- Remedies of Eradication of Child Labour & Right to Primary Education
- Law Related to Anti-Corruption
- Law Against Pollution for Ensure Safe Environment.

**10.6 ANY OTHER BOOK IN VERNACULAR LANGUAGE LOCALLY AVAILABLE IN THE STATE IN
RELATION TO LEGAL RIGHTS, ETC.**

Legal Literacy Study Kit

11. FUNDAMENTAL DUTIES

Fundamental Duties in the Constitution of India

Just as we have rights, we have some responsibilities too. The Fundamental Duties of citizens were added to the Constitution by the 42nd Amendment in 1976, upon the recommendations of the Swaran Singh Committee. Article 51 A was included in the Constitution of India in Part IVA. Originally ten in number, the Fundamental Duties were increased to eleven by the 86th Amendment in 2002. Article 51 A of the Constitution of India begins with the words "It shall be the duty of every citizen of India". The fundamental duties in Article 51 A of the Constitution of India are as under:

1. TO ABIDE BY THE CONSTITUTION AND RESPECT ITS IDEALS AND INSTITUTIONS, THE NATIONAL FLAG AND THE NATIONAL ANTHEM (Clause (a))

The first and the foremost duty assigned to every citizen of India is to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.

The IDEALS of the Constitution are summed up in the Preamble;

JUSTICE, social, economic and political;

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

EQUALITY of status and of opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation

These words represent basic values. Social justice denotes the equal treatment of all citizens without any social distinction based on caste. Economic justice denotes the non-discrimination between people on the basis of economic factors. It involves the elimination of glaring inequalities in wealth, income and property. Political justice implies that all citizens should have equal political rights, equal access to all political offices and equal voice in the government. The words liberty, equality and fraternity in our Preamble have been taken from the French Revolution. Equality means to provide equal opportunity to all

citizens of India rather than special provisions to some sections of society. Fraternity means a sense of brotherhood. It is our duty to keep in mind the aforesaid ideals of the constitution. Every Citizen of India must remember and practice in life these ideals of the Constitution.

The principal institutions of the Constitution are the Executive, the Legislature and the Judiciary. It is a duty of every citizen to respect these institutions.

The Indian National Flag and National Anthem are the symbols of our national pride. It is our duty to respect the Constitution, National Flag and National Anthem. Showing insult to the country's national symbols, including the flag, constitution and anthem is punishable under the Prevention of Insults to National Honour Act, 1971

Following points, amongst other things, regarding the Indian National Flag must be kept in view:

- The National Flag shall be a tri-colour panel made up of three rectangular panels or sub-panels of equal widths. The colour of the top panel shall be India saffron (Kesari) and that of the bottom panel shall be India green. The middle panel shall be white, bearing at its centre the design of Ashoka Chakra in navy blue colour with 24 equally spaced spokes. The Ashoka Chakra shall preferably be screen printed or otherwise printed or stencilled or suitably embroidered and shall be completely visible on both sides of the Flag in the centre of the white panel.
- The Flag shall not be used as a drapery in any form whatsoever except in State/Military/Central Para military Forces funerals as provided in the National Flag Code 2002.
- The Flag shall not be draped over the hood, top, sides or back of a vehicle, train or boat.
- The Flag shall not be used or stored in such a manner as may damage or soil it.
- When the Flag is in a damaged or soiled condition, it shall not be cast aside or disrespectfully disposed of but shall be destroyed as a whole in private, preferably by burning or by any other method consistent with the dignity of the Flag.
- The Flag shall not be used as a covering for a building.

- The Flag shall not be used as a portion of a costume or uniform of any description. It shall not be embroidered or printed upon cushions, handkerchiefs, napkins or boxes.
- Lettering of any kind shall not be put upon the Flag.
- The Flag shall not be used in any form of advertisement nor shall an advertising sign be fastened to the pole from which the Flag is flown.
- The Flag shall not be used as a receptacle for receiving, delivering, holding or carrying anything: Provided that there shall be no objection to keep flower petals inside the Flag before it is unfurled, as part of celebrations on special occasions and on National Days like the Republic Day and the Independence Day

2. TO CHERISH AND FOLLOW THE NOBLE IDEALS WHICH INSPIRED OUR NATIONAL STRUGGLE FOR FREEDOM (clause b)

It is our duty to remember the sacrifices made by our forefathers for the cause of the country. We must remember, imbibe and follow the ideals which marked our struggle for freedom. Our freedom fighters wanted to build a just society. They wanted to have a society free from exploitation of man by man. They wanted to have a society marked by freedom, equality, non-violence, brotherhood and world peace. We, the citizens of India, must remain aware of sacrifices made by our freedom fighters. Freedom is a gift, given to us by our freedom fighters. They sacrificed their whole lives so that we could live in a free country. We must always remain conscious and committed to these ideals, and make India a better country each day.

3. TO UPHOLD AND PROTECT THE SOVEREIGNTY, UNITY AND INTEGRITY OF INDIA (Clause c)

India is a sovereign country. It means that our state is internally powerful and externally free. She is free to determine for herself without any external interference. To defend our sovereignty is our own responsibility. In India sovereignty rests with the people of India.

We should not do anything which may damage the sovereignty, unity and integrity of India. Even reasonable restrictions are permitted on freedom of

speech and expression in the interests of the "sovereignty and integrity of India. Following points must be remembered:

- Any conduct which seeks to destroy or damage unity is punishable under Section 153-A of the Indian Penal Code(IPC).
- Imputations and assertions prejudicial to national integration are punishable under Section 153-B of the IPC.
- Statements or reports containing alarming news which tend to promote enmity etc. are punishable under Section 505 (2) of the IPC.

4. TO DEFEND THE COUNTRY AND RENDER NATIONAL SERVICE WHEN CALLED UPON TO DO SO (Clause (d))

Every citizen must be ready to defend the country against war or external aggression. Sometimes, civilians may be required also to take up arms in defence of the country. It is a Fundamental Duty entrusted to the common man. Those citizens who belong to any of the three defence forces are entrusted constantly with this Fundamental Duty. We must protect our country not only against the external aggression but also from armed rebellion within the country.

5. 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 (Clause (e))

India is a multi-religious & multi-linguistic country. Its beauty lies in its unity in diversity. People from about seven main religions live in India. These religions include Hinduism, Islam, Christianity, Buddhism, Jainism, Sikhism & Zoroastrianism. Spirit of brotherhood should come very normally among the citizens of a country like India where the norm has been to consider the entire world as one family. It is the duty of every citizen of India to promote communal harmony and the spirit of brotherhood amongst all people irrespective of caste, creed and colour. The need is to strengthen the bonds of brotherhood. This bond should not become thinner

and thinner between the fellow beings. Being Indians, we should work in unity to build a stronger and prosperous nation.

The Constitution also casts upon us the Fundamental Duty of ensuring that all practices derogatory to the dignity of women are renounced. This again should come normally to a country where it is believed that Gods reside where women are worshiped. It is for us to rise above the later day degenerations and deviations which tarnished the image of our society. Many laws have been passed by the Union Government and the State Governments which punish practices derogatory to the dignity of women. Articles 14, 15 and 16 of the Constitution of India prohibit discrimination.

According to a report prepared by India's National Crime Records Bureau (NCRB), a crime has been recorded against women in every three minutes in India. Every 60 minutes, two women are raped in this country. Every six hours, a young married woman is found beaten to death, burnt or driven to suicide. We must stop crime against women. It is our fundamental duty.

6. TO VALUE AND PRESERVE THE RICH HERITAGE OF OUR COMPOSITE CULTURE (Clause (t))

Indian culture is one of the oldest and unique cultures in the world. Even people from other countries respect our Indian culture so much and want to know about it. It is our duty to respect and protect our Indian Culture. India is one of the most ancient civilizations of the world. India can take legitimate pride in having been a civilizational unity without a break for more than five thousand years. We all are part of this great civilization and culture. We must remember the following:

- Our contributions in the field of art, sculpture, architecture, mathematics, science, medicine, etc. are well known.
- Some of the oldest and deepest philosophical thoughts and literature were born in India.
- We have several historical monuments of great archaeological value spread over the entire country. These include forts, palaces, temples, cave paintings, mosques, churches, etc.
- India is a birth place of several great religions like Hinduism, Buddhism, Jainism and Sikhism.

- Our past has shown us the path of peace, love, nonviolence and truth.

As citizens of this country, it is the responsibility of all of us to work for the preservation of this rich heritage and its cultural values and live in love and harmony. Our cultural heritage is one of the noblest and the richest. Also, it is part of the heritage of the earth. To preserve the rich heritage of our composite culture is another Fundamental Duty of every Indian citizen. What we have inherited from the past, we must preserve and pass on to the future generations. We should protect the monuments and pieces of art.

7. TO PROTECT AND IMPROVE THE NATURAL ENVIRONMENT INCLUDING FORESTS, LAKES, RIVERS AND WILD LIFE, AND TO HAVE COMPASSION FOR LIVING CREATURES (Clause (g))

Since time immemorial, people across the world have always made efforts to preserve and protect the natural resources like air, water, plants, flora and fauna. Ancient scriptures of different countries are full of stories of man's zeal to protect the environment and ecology. Our sages and saints always preached and also taught the people to worship earth, sky, rivers, sea, plants, trees and every form of life. Majority of people still consider it as their sacred duty to protect the plants, trees, rivers, wells, etc., because it is believed that they belong to all living creatures. It is the duty of every citizen to protect and improve natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures. The rising air, water and noise pollution and large-scale denudation of forest are causing immense harm to all human life on earth. By protecting our forest cover, planting new trees, cleaning rivers, conserving water resources, reforesting wastelands, hills and mountains and controlling pollution in cities, villages and industrial units, we can help save the future of our fellow citizens and of planet earth itself. Various laws have been enacted for the protection of environment and wild life.

8. TO DEVELOP THE SCIENTIFIC TEMPER, HUMANISM AND THE SPIRIT OF INQUIRY AND REFORM(Clause(h))

Scientific temper means outlook founded on organised knowledge and experience. Scientific temper discards obsolete learning. The society develops only when the people shun superstitions. Lack of Scientific temper is the biggest impediment for the progress of country. In our country, where a large section of the society is still caught in various superstitions and unscientific practices, inculcating scientific temper among the citizens is of paramount importance for development of the nation.

We should not forget that India in the ancient time was quite advanced, and the people professed scientific temper. Indian contributions to mathematics were not limited to numbers and algebra. Trigonometric functions and algorithms were described and developed.

Medicine was the other major science that was highly developed in early India. The Charaka Samhita (first century C.E. or earlier) has remarkable statements about diagnosis. It advocated a system of medicine that depended on skill and human intervention rather than on the divine or superhuman.

It is our duty to ensure the India's presence in the world of science and technology. Let knowledge, like the sun, shine for all and that there should not be any room for narrow-mindedness, blind faith and dogma.

9. TO SAFEGUARD PUBLIC PROPERTY AND TO ABJURE VIOLENCE (Clause (i))

It is very unfortunate that destruction of public property has become a popular medium for airing grievances. Destruction of public property is also an offence under Prevention of Damage to the Public Property Act, 1984. We must not take law in our hands. Burning of trains, buses and other public property to register protest during bandhs, hartals, agitations or political demonstrations causes loss to the nation.

It is most unfortunate that in a country which preaches non-violence to the rest of the world, we see from time to time scenes of senseless violence and destruction of public property indulged in by a few of its citizens. It is our fundamental duty to abjure violence. Violent methods to ventilate grievances must be avoided.

10. 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 (Clause (j))

Excellence is the key to success. "Excellence" is the secret of all development. It is our fundamental duty to make sure that our country constantly rises, and achieves heights. The drive for excellence in all spheres of individual and collective activity is the demand of times. "Excellence" is the secret of all development and all success. Japan and Singapore are living examples. It is amazing that Japan stood up head and shoulders in such a short time after the devastation in Hiroshima and Nagasaki in the Second World War. The open secret is "Excellence". It is our duty to work hard. We should not adopt shortcut ways devoid of hard work and excellence.

(11) TO PROVIDE OPPORTUNITIES FOR EDUCATION BY THE PARENT OR THE GUARDIAN, TO HIS CHILD, OR A WARD BETWEEN THE AGE OF 6-14 YEARS AS THE CASE MAY BE (clause k)

Education is the most important factor in the development of a country. Education is one of the important means through which we can improve our society. Primary education is the foundation on which the development of every citizen and the nation depends upon. Free and compulsory education to all children has also become fundamental right of all children of age group 6-14 years. The passing of the Right of Children to Free and Compulsory Education (RTE) Act 2009 is an important enactment to ensure education for all children of the age group 6- 14 years. The said Act provides for the following:

- Every child between the age of six to fourteen years, shall have the right to free and compulsory education in a neighbourhood school, till completion of elementary education.
- For this purpose, no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.
- Where a child above six years of age has not been admitted to any school or though admitted, could not complete his or her elementary education, then, he or she shall be admitted in a class appropriate to his or her age.

Parents and Guardians must realize that giving education to children is of utmost importance. Education helps in the development of children. Education transforms country as a whole.

12. PROHIBITION OF CHILD MARRIAGE

Introduction

Child marriage is a violation of the human rights of a child. It has an extremely harmful effect on the health and well being of a child. It is a denial of childhood and adolescence. It is a denial of educational opportunities. Although a boy is also affected by child marriage but the girl child is the severely affected and suffers irreparable damage to her physical, mental, psychological and emotional development. The National Family Health Survey of 2005-2006 (NFHS-3) carried out in twenty- nine states of India confirmed that 45% of women currently aged 20-24 years were married before the age of eighteen years. As per the District Level Household and facility Survey (DLHS). in India, nearly half (43%) of women aged 20 to 24 are married before the age of 18.

The Child Marriage Restraint Act (CMRA), 1929, prohibited marriage of girls below the age of 15 years and boys below the age of 18. In 1978, the law was amended to raise the minimum age of marriage to 18 years for girls and 21 years for boys. The Prohibition of Child Marriages Act (PCMA), 2006 replaced the CMRA. It came into effect from 1st November, 2007. The Prohibition of Child Marriage Act 2006 (PCMA) seeks to prevent child marriages by making certain actions punishable and by appointing certain authorities responsible for the prevention and prohibition of child marriages.

1. To whom the Act applies

The Prohibition of Child Marriage Act 2006 (PCMA) applies to all citizens of India irrespective of religion. It does not apply to the State of Jammu & Kashmir. It excludes the Renoncants of the Union Territory of Pondicherry from its application. For them the French Civil Laws are applicable as they are treated as citizens of France.

2. Who is Child under the Act?

Child is a male, who has not completed twenty one years of age; and a female who has not completed eighteen years of age.

3. What is Child Marriage?

The Prohibition of Child Marriage Act (PCMA) defines child marriage as marriage in which either the girl or the boy is underage, i.e., the girl is under 18 years of age or the boy is under 21 years of age.

Illustration:

Reema, a girl, is aged 10 years. Reema is married to Sohan, who is 30 years ago. The marriage between Reema and Sohan is a Child Marriage.

Rita is 30 years old. Rita is married to Mohan, who is aged 19 years. The marriage between Rita and Mohan is a Child Marriage.

Seema is 15 years old. Rohan is 19 years old. If a marriage between Seema and Rohan takes place, it is a Child marriage.

4. Whether child Marriage is an offence or not ?

Child marriage is an offence punishable with rigorous imprisonment, which may extend to 2 years, or with fine up to Rs.1 Lakh, or both. A woman, however, cannot be imprisoned under this Act. However, woman can be penalized by way of imposition of a fine. Offences under the Act are cognizable and non-bailable.

Meaning of Cognizable offence: a cognizable offence is a criminal offence in which the police is empowered to register an FIR investigate, and arrest an accused without a court issued warrant.

Non-bailable offence: If a person is arrested for an offence which is non bailable, in that case court on its discretion can grant bail.

Persons who can be punished under the law:

5. Can the groom be punished under this Act?

A male adult above 18 years marrying a child will be treated as an offender and can be punished. (Section 9, PCMA 2006)

6. Can parents of children being married be punished?

The guardians or parents of the child, including any member of any organization or association that associates with child marriage or is negligent about preventing it can be punished. Section 11, PCMA 2006

7. Is performing or participating in child marriage punishable?

Those performing, participating or abetting child marriage can be prosecuted.

Offenders could Include Amongst Others

- The guardians/parents of both parties
- Priests
- Relatives/friends of both parties
- Persons who give patronage to such marriages
- Marriage bureaus/persons responsible for fixing marriages
- Traffickers
- The bridegroom if he is over 18 years of age
- Caterers and other service providers

8. Whether courts can issue injunction prohibiting solemnization of child marriage?

- A Judicial Magistrate of the first class or a Metropolitan Magistrate can issue injunction order under this Act after satisfying that a Child Marriage has been arranged or is about to be solemnized

An injunction is a court order requiring a person etc to stop doing a certain activity.

- Injunction can be issued on an application of the Child Marriage Prohibition Officer or on receipt of information through a complaint or otherwise from any person
- Injunction order can be issued for prohibiting child marriage against any person including a member of an organization or an association of persons.
- A First Class Judicial Magistrate is also empowered to take suo moto. Cognizance of any reliable report of information of child marriage.

(Suo Moto refers to a situation wherein a judge acts without request by either party to the action before the court. Court acts of its own motion)

(Cognizance: A judge's decision to take note of or deal with a cause).

9. Can a person violating injunction order be punished?

The person, who knows that an injunction order has been passed against him disobeys such injunction shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to one lakh rupees or with both. A woman, however, cannot be imprisoned under this Act. However, a woman can be penalized by way of imposition of a fine.

10. Who can file complaint?

1. A person who has reason to believe that a child marriage is likely to take place.
2. A person who has personal information.
3. A parent or guardian of the child.
4. The Child Marriage Prohibition Officer or persons appointed to assist her/him.
5. A non-governmental organization having reasonable information.

11. Where to file complaint?

- (1) Police
- (2) A complaint can also be filed with a Judicial Magistrate of First Class or a Metropolitan Magistrate.

12. What is the legal status of child marriage?

- Child Marriages are voidable and can be annulled.

A voidable marriage is a marriage which can be canceled at the option of one of the parties. The marriage is valid but is subject to cancellation if contested in court by one of the parties to the marriage.

- The annulment of child marriage can be sought within a period of 2 years after the child who was a party to the marriage has attained majority (**Section 3(3), PCMA 2006**).

13. Who can file a petition for annulment of marriage?

- Only the children in the marriage themselves can file a petition for voidability or annulment of marriage; and
- if the petitioner is a minor as per PCMA, the petition can be filed through a guardian or the next best friend of the married child (who must be an adult of 18 years or more), along with the Child Marriage Prohibition Officer (CMPO) (**Section 3 (2), PCMA 2006**).
- The annulment of child marriage can also be sought within a period of 2 years after the child who was a party to the marriage has attained majority (**Section 3(3), PCMA 2006**). The girl can file a petition till she

becomes 20 years of age and a boy till he becomes 23 years of age.

Illustration:

Seema was married when she was just 10 years old. Her husband was 11 years old then. They were both minors at the time of marriage. Their marriage can be declared void or can be annulled if they wish. However they cannot file an application for annulment or voidability of marriage on their own as long as they are minors. This application will have to be filed by their parent/guardian or an adult friend/well-wisher, along with the Child Marriage Prohibition Officer.

Either of them can also file an application for annulment or voidability of marriage with the District Court within 2 years of attaining majority as per PCMA.

14. In which Court an application for annulment of child marriage can be filed?

It can be filed in the District Court. The District Court can grant nullity of marriage. The District Court includes the Family Court and Principal Civil Court of Original Jurisdiction, and any other civil court specified by the State Government (Sections 3 and 2(e), PCMA 2006).

15. Whether maintenance order in case of annulment of marriage can be passed or not ?

The district court may also make an interim or final order directing the male contracting party to the child marriage to pay maintenance to the female contracting party to the marriage until her remarriage.

In case the male contracting party to such marriage is a minor, his parent or guardian can be directed to pay maintenance to the female contracting party to the marriage until her remarriage.

The amount of maintenance may be directed to be paid monthly or in lump sum.

16. Whether residence order in case of annulment of marriage can be passed or not ?

In case the party making the petition under section 3 is the female contracting party, the district court may also make a suitable order as to her residence until her remarriage.

17. Whether child marriage is null and void under certain circumstances?

Under following circumstances, child marriage is null and void

- (1) Where a marriage has been solemnised despite an injunction order

passed under section 13 to prevent the child marriage from taking place (Section 14, PCMA 2006)

(2) Where the child is taken away from their lawful guardian by enticement, force or use of deceitful means (Section 12 (a) and (b), PCMA 2006)

(3) When the child is sold or trafficked for purpose of marriage or through marriage (Section 12 (c), PCMA 2006).

16. What is the legal status of children born from a child marriage?

Children born from a child marriage are legitimate for all purposes even after the marriage has been annulled.

17. Whether custody order of children born from the child marriage can be made or not ?

The district court can make an appropriate order for the custody of such children. The welfare and best interests of the child are kept in view while making custody orders.

An order for custody of a child may also include appropriate directions for giving to the other party access to the child in such a manner as may best serve the interests of the child

The district court may also make an appropriate order for providing maintenance to the child by a party to the marriage or their parents or guardians.

18. Whether District Court can revoke, modify or add to order relating to maintenance and custody of children born from a child marriage?

A District Court is empowered to add to, modify or revoke any order relating to maintenance and custody of children born from a child marriage (Section 7, PCMA 2006).

19. What are the various authorities under the Act ?

The authorities identified under the present law are:

1. Child Marriage Prohibition Officer
2. District Magistrate
3. First Class Judicial Magistrate or Metropolitan Magistrate
4. Police
5. Family Courts

6. Any person(s) called upon by the State Government to assist the Child Marriage Prohibition Officer. These could include - respectable member of the locality with a record of social service, officer of the Gram Panchayat or Municipality, officer of the government or public sector undertaking, office bearer of any non-governmental organization.

20. What are the duties of Child Marriage Prohibition Officer?

- a. to prevent solemnization of child marriages
- b. (Solemnization refers to the performance of a formal marriage ceremony)
- c. to collect evidence for against persons who violate the law.
- d. to advise or counsel individuals or the residents of the locality generally not to indulge in promoting, helping, aiding or allowing the solemnization of child marriages;
- e. to create awareness of the evil which results from child marriages;
- f. to sensitize the community on the issue of child marriages;
- g. to furnish such periodical returns and statistics as the State Government may direct; and
- h. to discharge such other functions and duties as may be assigned to him by the State Government.

21. What are the duties and powers of District Magistrate?

- (1) To prevent solemnisation of mass child marriages on certain days such as *Akshaya Trutiya*,
- (3) The District Magistrate also have additional powers to stop or prevent solemnization of child marriages and for this purpose, he may take all appropriate measures and use the minimum force required.

13. THE MAINTENANCE AND WELFARE OF PARENTS AND SENIOR CITIZENS ACT, 2007

Introduction:

Indian culture has always been respectful and supportive of elders. Elder abuse was never considered as a problem in India. It was always

thought of as a western problem.

However, the rapid urbanization has been bringing changes in the social structure in India. Joint family system is breaking down. Traditional values have been declining considerably. A child used to learn at home in a joint family civic virtues of love, co-operation, obedience, tolerance, discipline and renouncement, which enabled the child to grow up as a good citizen. It is no longer happening.

Due to the said changing social structure in India, elderly in India no longer receive care and respect within families. Many of them silently suffer abuse at the hands of their progenies. Disrespect, neglect and physical and verbal abuse have become common features.

Longevity has increased. Elderly population is increasing in India. As per 2001 Census, total population of Senior Citizens (60+) was 7.7 crore, of which population of males and females was 3.8 crore and 3.9 crore, respectively.

Both the share and size of elderly population is increasing over time. From 5.6% in 1961 it is projected to rise to 12.4% of population by the year 2026. According to official population projections, the number of elderly persons will rise to approximately 140 million by 2021.

The well-being of senior citizens is mandated in the Constitution of India under Article 41. It says

“ The state shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of underserved want”.

Nowadays elderly are exposed to various kinds of problems such as lack of physical, social, emotional and financial support. To overcome such difficulties and to face new challenges, the Government of India, in consonance with Article 41 of the Constitution of India, has enacted The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 law in the fifty- eighth year of republic so as to provide maintenance and protection to parents and senior citizens.

1 What are the objectives of the Act?

- A. To set up appropriate mechanism to provide maintenance to the parents and senior citizens.
- B. Providing better medical facilities to senior citizens.
- C. Provide for protection of life and property of older persons.
- D. Setting up of old age home in every district.

2. Who is entitled to Maintenance under the Act?

- (a) Parents;
- (b) grand-parents; and
- (c) senior citizens

who are unable to maintain themselves from their own income and property.

(Parents include biological and adoptive parents and step fathers and step mothers.)

3. Who is senior citizen?

Senior citizen means any person

- a) Who is a citizen of India, and
- b) Who has attained the age of 60 years or above.

4. Whether parent below 60 years of age can claim maintenance under the Act?

Age is prescribed only for senior citizen. Parent below 60 years of age can claim maintenance under the Act.

5. What is the definition of Maintenance under the Act?

The "Maintenance" includes provision for food, clothing, residence and medical attendance and treatment.

6. Against whom the parent and grand parent can file an application for maintenance under the Act?

Parent or grandparent can file an application for maintenance against one or more of his children. Children include son, daughter, grandson and granddaughter. Children does not include a minor.

7. Before which authority an application for maintenance can be filed?

The application for maintenance can be filed before the Tribunal which is headed by the Sub-Divisional Officer.

8. Can a childless senior citizen claim maintenance under the Act?

Yes, childless senior citizen can claim maintenance under the Act from the relative who:-

- (a) is not minor; and
- (b) is in possession of property of Senior Citizen; or
- (c) would inherit the property of senior citizen after his death.

9. Where the maintenance proceedings can be initiated?

Maintenance proceedings may be initiated against any child/children or relative in any district where:-

- (a) the parent or senior citizen lives; or
- (b) last lived; or
- (c) where the child/children or relative live.

10. Whether the application for Maintenance is to be filed by parent or senior citizen himself/herself before the Maintenance Tribunal?

Application for maintenance under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 can be filed :

- (a) by a senior citizen or a parent as the case may be; or
- (b) If the senior citizen or parent is incapable of filing application by himself/herself then any person or organization (voluntarily association

registered under the Societies Registration Act 1860) can be authorized to file the application for maintenance; or

(c) Tribunal may take cognizance suo moto.

(Suo Moto refers to a situation wherein a judge acts without request by either party to the action before the court. Court acts of its own motion)

11. What Tribunal does after receiving an application?

Upon receipt of the application, the Tribunal would issue notices to the children, conduct hearings and take evidence. After that the Tribunal may order maintenance. Tribunal may also refer the case for reconciliation or pass interim orders for maintenance.

12. Can parent or senior citizen claim maintenance under the Maintenance and Welfare of Parents and Senior Citizens Act and Chapter IX of the Code of Criminal Procedure simultaneously?

Parent or Senior citizen is entitled for maintenance under Code of Criminal Procedure and also under the Maintenance and Welfare of Parents and Senior Citizens Act can claim maintenance under either of those Acts. They cannot claim maintenance simultaneously under both the Acts.

13. Can copy of the order of maintenance be got free of cost?

As per section 11 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, the copy of the order of maintenance and order regarding expenses of proceedings, as the case may be, is to be given to the parent or senior citizen without payment of any fee.

14. Is there any penal provision for enforcement of maintenance order of the Tribunal?

The Maintenance Order given by the Tribunal will have the same effect as the maintenance order passed under Section 125 of Cr. PC. This will include imprisonment upto one month and also issuance of warrant for levying the amount due in the manner provided for levying fines.

15. Is there any upper limit for maintenance allowance?

State Government may provide for the maximum maintenance allowance which may be given per month. In any case, maintenance allowance shall not exceed ten thousand rupees per month.

16. Can the Tribunal alter, cancel or vary the monthly allowance for the Maintenance?

The Maintenance Tribunal can alter the monthly allowance for maintenance:-

- (a) On proof of misrepresentation; or
- (b) On proof of mistake of fact; or
- (c) On proof of a change in the circumstances of any person receiving a monthly allowance.

The Maintenance Tribunal can cancel or vary the monthly allowance for maintenance in consequence of any decision of a competent civil court.

17. Can Senior Citizen or parent file an appeal, if aggrieved by the order of Tribunal?

Yes, Senior Citizen or parent, if aggrieved by an order of a Tribunal, may within sixty days from the date of order prefer an appeal to the Appellate Tribunal.

18. Within what time the appeal is to be decided by the Appellate Tribunal?

Section 16(5) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 provides that Appellate Tribunal shall make an endeavor to pronounce its order in writing within one month of the receipt of an appeal.

19. Whether abandonment of senior citizen is an offence?

Under Section 24, if anybody who is having the care or protection of a senior citizen leaves him/her in any place, with the intention of wholly abandoning him/her, such person shall be punishable under the Act with imprisonment of either three months or fine upto Rs. 5,000 or both. The

offence would be cognizable and bailable.

20. Can Senior Citizen reclaim the property transferred by him/her?

Senior Citizen can file an application before the Tribunal for declaring the transfer of property as void. The Tribunal may declare the transfer as void if the following conditions exist:

- (a) Any property transferred by way of gift or otherwise by senior citizen after the commencement of this Act.
- (b) The said property is transferred subject to the condition that transferee shall provide the basic amenities and basic physical needs to the senior citizen.
- (c) The transferee refuses or fails to provide such amenities and physical needs.

Illustration:

Sohan is 62 years old. He transfers by way of gift his house to his nephew Sumit. The house is transferred by Sohan to Sumit after the commencement of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007. The said house is transferred by Sohan subject to the condition that Sumit shall provide the basic amenities and basic physical needs to him. However, after the transfer, Sumit refuses or fails to provide the basic amenities and basic physical needs to Sohan. In the said circumstance, Sohan can file an application before the Tribunal for declaring the said transfer in favour of Sumit as void. The Tribunal may declare the transfer as void, and hence Sohan can get back his house.

21. What is provided for medical care of senior citizens in the Act?

The Act provides that State Government shall ensure that, -

- the Government hospitals or hospitals funded fully or partially by the Government shall provide beds for all senior citizens as far as possible;

- separate queues be arranged for senior citizens;
- facility for treatment of chronic, terminal and degenerative diseases is expanded for senior citizens;
- research activities for chronic elderly diseases and ageing is expanded;
- there are earmarked facilities for geriatric patients in every district hospital duly headed by a medical officer with experience in geriatric care.

22 Are there provisions with regard to Old-age Homes?

Under the Act State government may establish at least one old age Home in each District for indigent senior citizens.

Such Old age Home must have capacity to accommodate a minimum of one hundred fifty senior citizens who are indigent.

State government shall also prescribe a scheme for maintenance of old age home, including the standards and services to be provided by them.

14. LEGAL SERVICES AUTHORITIES

The Legal Services Authorities Act, 1987

- In 1987 Parliament passed the Legal Services Authorities Act which creates legal services authorities at different levels to, “provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities”.
- This law actualizes the right to free legal aid. It enable people who do not have the means to hire a lawyer to either file or defend a case, whether due to poverty or vulnerabilities owing to caste, creed or gender, to access legal aid so they too can be represented by a lawyer.

The Act establishes Legal Services Institutions at several levels. These are the Institutions which facilitate the provision of legal services:

- There is National Legal Services Authority at the Central level. The National Authority has set up a Supreme Court Legal Services Committee.
- There is a State Legal Services Authority at the State level. The State Authority has set up a High Court Legal Services Committee for the State High Court, and Taluk Legal Services Committees for each Taluk.
- There is District Legal Services Authority at the district level.

Services offered by a Legal Services Authority:

- Payment of Court and other process fees.
- Payment/reimbursement of charges for preparing, drafting and filing of any legal proceedings.
- Payment of fees/honorarium to the legal practitioner or legal advisor.
- Payment/reimbursement of costs of obtaining decrees, judgments, orders or any other documents in a legal proceeding.
- Payment/reimbursement of costs of all paper book, including printing and translation.

Who is eligible for free legal aid?

The Act puts down criteria for who is eligible. Section 12 of the Act States every person who has to file or defend a case will be entitled to legal aid if she/he is:

- A Member of a Scheduled Caste or Scheduled Tribe.
- Poor: this includes people whose income does not exceed Rs. 50,000 per annum for cases to be filed in the Supreme Court; prescribed income levels for cases in other courts are fixed by State Governments and vary across States.
- A victim of trafficking in human beings or beggars.

- Physically or mentally disabled.
- A women or child.
- A Victim of mass disasters, ethnic violence, caste atrocity, flood, drought or earthquake.
- An industrial workman.
- In custody, including custody in a protective home, juvenile home or psychiatric hospital. This means any person in custody-whether an undertrial or convict-is entitled to free legal aid.

To Note: Even if you fall into an eligible category, the appropriate Legal Services institution must decide whether a valid case to prosecute or defend exists or not. If there are not merits in your application requiring legal action, legal services will not be given.

Who to approach for free legal aid?

A Legal Services institution at any level-national, state, district or taluk can be approached. It is for that legal services institution to forward your request to the appropriate legal services authority for your cases, if necessary. The request can be made to:

- the Senior Civil Judge nominated as the Chairperson of the Taluk Legal Services Committee;
- the Secretary, District Legal Services Authority;
- the Secretary, High Court Legal Services Committee;
- the Secretary, Supreme Court Legal Services Committee;
- the Member Secretary of the State Legal Services Authority;
- the judicial magistrate before whom an arrested person is produced; or

- police and jail authorities, if under detention, who can facilitate contacting the appropriate legal services authority.
- Front Offices and Legal Services Clinics.

If you are in custody, the Court has a duty to ensure you have legal representation, whether you are in the pre-trial or trial phase. The Court must ask you if you have a lawyer when you are first produced, and if you do not, then the court should immediately appoint a lawyer at state expense.

How to request legal aid?

- Submit a written application.
- If you cannot read or write, the legal services authority will record your statement with your thumb impression. This can be treated as an application.
- If you are applying on the basis of income, you have to submit an affidavit of your income.