

UNIT 17 LAW OF LEGAL AID

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17.0 INTRODUCTION

The very basic references to India include: the world's largest democracy, the second most-populated country and the largest growing economy. This growth is, however, not an indication of the improvement of the rule of law and human rights standards in the country. Constitution of India, more importantly, assures to each citizen political, social and economic justice. Access to justice, in more real terms, would include the sum total of all those rights and remedies available to a person through which he can seek the enforcement of his or her rights. The issues of poverty, social deviance and access to justice talked very much since the birth of the country have also been considered to be the prime factors for non-availability of social justice for all.

It is important to note that a plethora of laws in the realm of social welfare have been passed by the legislatures at the national and state levels to provide legal aid services. Statistical data highlights that welfare laws are not only an indicator to curb social evil but also aimed at social justice, in real sense. The issues of poverty, illiteracy, helplessness, disability and/or socially and economically disadvantaged position delimit the people to approach the court or to have access to justice to redress their grievances. Of course, a number of measures have been taken to improve the quality of justice dispensing system in India including speeding-up of the judicial decision-making process by strengthening the legal and judicial institutions and bringing them up to the world standards.

To reassure the mandate of international human rights documents, the constitutional courts have remarkably recognized the right to speedy justice through free legal aid and Lok Adalat as form and part of the law of the land. To response to the judicial directives, constitutional amendments and statutory enactments were made to that extent. These initiatives helped the people to exhaust an alternative means of dispute resolution system at national, state, district and taluk levels.

The pivotal aim of these measures is not only to protect the people from unwarranted destruction but also to ensure justice at all levels. In this Unit, we will, therefore, highlight different forms and means of legal aid available to the disadvantaged so as to ensure protection of their rights.

17.1 OBJECTIVES

After you go through this Unit, you should be able to:

- Explain the need and significance of the Constitutional and Statutory rights in respect of free legal aid and Lok Adalats in India;
- Discuss the role of Non-Governmental Organisations, Social Action Groups and other Non-State Actors to ensure justice to all;
- Appreciate the current developments both in terms of legislative and judicial means of access to justice;
- Avail and promote different types of legal aid and services available in India; and
- Encourage and assist the needy people to identify and assert to enforce their legal rights through different opportunities available to protect their integrity, personal life and property as our Constitutional goal.

17.2 LEGAL AID SERVICES: BACKGROUND, CONCEPT AND ORIGIN

It is presumed that the justice dispensation system in India does not discriminate between the poor and the rich. But, fact is that the large number of people are living below poverty line, are illiterate and ignorant, and are not aware of their legal rights. It has resulted in lack of their access to justice in the court to redress their grievances. However, access to justice is essential to ensure that the justice dispensation system serves the poor through effective promotion, protection and fulfillment of human rights and the rule of law.

In India, humanism is the source and the strength of legality. Social scientists advocate protection of the rights of all, irrespective of their socio-economic status through the process of involving the community in the administration of justice through legal aid. This is considered to be the basic means legitimizing the legal order through the willing sanction of the social order.

Hindu and Muslim Rulers of Pre-Constitution India had witnessed unsophisticated methodology of disposing justice to the poor, inexpensively and immediately. In short, justice to the citizens – high or low – has been an Indian creed. Eminent judges of the constitutional courts envisioned creating semi-voluntary legal aid societies as early as 1924.

Indian Constitution does not directly guarantee any right to free legal aid and assistance by the States as a mandatory part. However, there are constitutional articles to ensure equality before law, equal protection, right to life including livelihood and the safeguards to the persons who are arrested both under regular criminal law and preventive detention laws. The Supreme Court and High Courts assured various mandates of constitutional articles and declared that right to life includes right to engage counsel to get judicial redress. Subsequently, to protect the life and personal liberty, as a constitutional mandate, voluminous measures have been initiated by the parliament both by making constitutional amendments and legislative enactments.

The matter of legal aid is referred in the Law Commission Reports. Responding to the recommendations of the Law Commission, in 1960, the Government of India prepared a national scheme providing legal aid in all courts including tribunals. It also envisaged the establishment of committees at the State, District and Teshil level. The commission also suggested that an autonomous Corporation be set up, law clinics be established in the Universities and lawyers be urged to help. However, due to the inability of the States to implement the scheme because of lack of finance the scheme did not survive. XIV Report of the Law Commission (1995-97) categorically highlights that the free legal aid is a service which should be provided by the State to the poor. The State must, while accepting the obligation, make provisions for funds to provide legal aid.

The judicial and legal community must play a pivotal role in accepting the responsibility for administration and working of the legal aid scheme. Meanwhile, the judicial attitudes towards legal aid became more progressive and resulted in effective Legal Aid in India. Constitutional Courts have also acted as watchdogs to effective implementation of the legal aid programmes. It was a moral and social obligation and, therefore, the Bar Association should take a step forward

in rendering voluntary legal aid. These include representation by lawyers at government expenses to the accused persons in criminal proceedings, in jails and in appeals.

17.2.1 Meaning and Definition of Legal Aid

There is no specific definition of the term 'legal aid' either in the Constitution of India or in any enactment to that extent. The Encyclopedia Britannica defines 'legal aid' as a "phrase which acquired, by usage and court decisions, a specific meaning of giving to persons of limited means grants or nominal fees for advice or counsel to represent them in a court in civil or criminal matters".

Section 2(1)(c) of the Legal Services Authority Act, 1987 describes 'Legal service' as the rendering of any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter. This definition is not exhaustive, rather an illustrative one.

17.2.2 Constitutional and Statutory Provisions related to Legal Aid

Article 39-A (of the Constitution of India, 1950): To give due concern to the judicial directives and the law Commissions recommendation, the Parliament of India, in 1976, inserted Article 39-A in Part IV of the Constitution. It (Article 39-A) mandates the State to see that the legal aid system promotes justice on the basis of equal opportunity for all its citizens. It must, therefore, arrange to provide free legal aid to those who cannot access justice due to economic and other disabilities such as poverty, illiteracy and helplessness. Persons, who are arrested, have certain rights — both at the time of arrest and immediately thereafter — which are inherent in Articles 21 and 22(1) of the Constitution. The Supreme Court has observed in several decisions that these rights are to be recognised and scrupulously protected. However, it is not enforceable before the court of law which indirectly confers an option on the part of government.

Code of Civil Procedure, 1908: Order XXXIII Rule 1 to 16, Civil Procedure Code, 1908 provides that suits may be instituted by indigent persons.

Code of Criminal Procedure, 1973: Section 304 of Criminal Procedure Code, 1973 authorises that, if the accused does not have sufficient means to engage a lawyer, the court must provide one for the defense of the accused at the expense of the State.

17.2.3 Legal Aid, Public Interest and Judicial Responsibility

One of the basic functions of the Constitutional Courts is to declare the constitutional validity of the laws in force. However, for achieving the constitutional mandate the paradigm shift has taken place which is helping to widen and extend their arm. Interestingly, the concept of judicial review is not expressly designated in Constitution nor in any statute in India. Nevertheless, the various judgments of the Supreme Court and High Courts unhesitatingly recognized the concept of judicial review as an essential ingredient of basic structure of the Constitution.

17.2.3.1 The Concept of Public Interest Litigation

The very basis to get judicial redress is injury to person, i.e. *ubi jus ibi remedium* (Where there is injury there is remedy). However, the fact is that all injured or affected cannot seek redress in courts in all situations. Interestingly, to provide remedy to weaker sections of the society – the downtrodden, the poor, the illiterate, women and other socially and economically disadvantaged – the Public Interest Litigation (PIL) was discovered. PIL is used as a device for the welfare of every section of society and also considered as working as an important instrument of social change. The innovation of this legitimate instrument proved beneficial to the under-privileged and unrepresented in the society. PIL has been used as a strategy to combat the atrocities prevailing in society. It is an institutional initiative towards the welfare of the needy classes of the society. PIL today offers such a paradigm which locates the content of informal justice without the formal legal system. PIL had already molded the State into the instrument of socio-economic change. Social justice is the byproduct of this and transcends beyond the formal legal system.

17.2.3.2 Evolution of Public Interest Litigation

Indian Public Interest Litigation is the improved version of the United States of America's jurisprudence. The Council for Public Interest Law, set up by the Ford Foundation in USA, in its Report of Public Interest (1976) defines: Public Interest Law as "the name that has recently been given to efforts that provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others." PIL emerged as a result of an informal nexus of pro-active judges, media persons and social activists. This trend shows stark difference between the traditional justice delivery system and the modern informal justice system where the judiciary is performing administrative judicial role.

A new branch of proceedings known as 'Social Interest Litigation' or 'Public Interest Litigation' was evolved with a view to render complete justice to the weaker sections of the society. Representative actions and test-litigations were entertained in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass the real issues on the merits by suspect reliance on peripheral procedural shortcoming. It is to be noted that in India there is no definition for the concept of Public Interest Litigation either in Constitution or in any statute. Similarly, in India, there is no Article to exhaust jurisdiction to initiate PIL in any part of the Constitution. However, Article 32 of the Constitution of India ensures that "the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed". Article 226 of the Constitution of India also confers jurisdiction on the High Courts to enforce their fundamental rights.

Justice V. R. Krishna Iyer, Justice P. N. Bhagwati and Justice Chandrachud of the Supreme Court are the chief architects of Public Interest Litigation in India. During emergency, State repression and governmental lawlessness was widespread. Thousands of innocent people including political opponents were sent to jails and there was complete deprivation of civil and political rights. The

post-emergency period provided an occasion for the judges of the Supreme Court to openly disregard the impediments of Anglo-Saxon procedure in providing access to justice to the poor. In the post-emergency period when the political situations had changed, investigative journalism also began to expose gory scenes of governmental lawlessness, repression and custodial violence, thus, drawing attention of lawyers, judges and social activists. PIL has become necessary to reject *laissez faire* notions of traditional jurisprudence.

In a leading case, *Indian Banks' Association, Bombay and Others v M/s Devkala Consultancy Service and other* (2004, p.587), the Supreme Court held that: "In an appropriate case, where the petitioner might have moved a court in her private interest and for redressal of the personal grievance, the court in furtherance of Public Interest may treat it as a necessity to enquire into the state of affairs of the subject of litigation in the interest of justice. Thus, a private interest case can also be treated as public interest case". The rule of *locus standi* was diluted and relaxed to a person acting bonafide and having sufficient interest in the proceeding both to wipe out violation of fundamental rights and genuine infraction of statutory provisions. It is not available to a person for personal gain or private profit or political motive or any oblique consideration. *Pro bono publico* constituted a significant state in the present day judicial system. However, PIL provided the dockets with much greater responsibility for rendering the concept of justice available to the disadvantaged sections of the society. The Court in place of disinterested and dispassionate adjudicator became active participant in the dispensation of justice.

In *Akhil Bharatiya Soshit Karamchari Sangh (Railway) v Union of India & Others* (1981 p.298), the Supreme Court held that 'class actions', 'public interest litigation', and 'representative proceedings' are broad-based and people-oriented, and envision access to justice to those who otherwise cannot have access to it so easily. Indeed, for little Indians in large numbers seeking remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigations, it is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concepts of 'cause of action', 'person aggrieved' and 'individual litigation' are becoming obsolescent in some jurisdictions.

17.2.3.3 Aspects of Public Interest Litigation

Different aspects of Public Interest Litigation are as follows.

- 1) **Remedial in Nature:** In Public Interest Litigation cases the court can fashion any relief to the victims. Remedial nature of PIL departs from traditional *locus standi* rules. It indirectly incorporated the principles enshrined in part IV of the Constitution of India into part III of the Constitution. By riding the aspirations of part IV into part III of the Constitution and by introducing flexibility in the procedural part, it had changed the procedural nature of the Indian law into dynamic welfare one.
- 2) **Representative Standing:** The concept of Public Interest Litigation is a modified version of class action. Earlier, the person injured alone can approach the court for want of legal remedy against the violation of fundamental right. However, the doctrine of citizen standing marked a significant expansion of the court's rule, from protector of individual rights

to guardian of the rule of law wherever threatened by official lawlessness. Irrespective of status any citizen, person, association, body corporate, civil society and Non-Governmental Organisation can initiate any proceedings in the Constitutional Courts.

- 3) **Relaxation of strict rule of Locus Standi:** The strict rule of locus standi has been relaxed by way of initiating petition by a person as a member of public having 'sufficient interest' to maintain a petition under Article 32. The rule of *locus standi* has been relaxed and a person acting bonafide and having sufficient interest in the proceeding can approach the court to wipe out violation of fundamental rights and genuine infraction of statutory provisions. However, relaxation of *locus standi* is not for personal gain or private profit or political motive or any oblique consideration. Constitutional court has to strike a balance between two conflicting interests — individual rights and government duty. In doing so, the courts also give due consideration to avoid public mischief through mischievous petitions with an ulterior motives.
- 4) **Non-adversarial litigation:** It seems that the application or non-application of adversarial procedure under Article 32 is a vital question. The inability of the vast masses of our people to produce relevant evidence before the court is too well known. PIL is a totally different kind of litigation from the ordinary traditional litigation, which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and the other opposing such claim or resisting such relief. Non-adversarial litigation has two aspects. The court has to manage the collection of facts, data and evidence on its own by appointing committees.
- 5) **Epistolary Jurisdiction:** For enforcing fundamental human right the petitioner has to file a petition with all the traditional procedure. In PIL cases, the Supreme Court and the High Courts have the flexibility introduced in the adherence to procedural laws. This dilution is somehow different from collective action. Effective dilution of traditional procedure in PIL cases all over India provided the footing or at least platform to the needy-class of the society. For want of an effective remedy, person with *pro bono publico* who writes letters and sends postcards and telegrams to that effect would be considered as a prima facie for taking cognizance.
- 6) **By devising new techniques of fact-finding:** In most of the cases, the court has appointed its own socio-legal commissions of inquiry or has deputed its own official for investigation. Sometimes, it has taken the help of National Human Rights Commission or Central Bureau of Investigation (CBI) or the experts to inquire into human rights violations. This may be called investigative litigation. By creating a new regime of human rights it has expanded the meaning of fundamental right to equality, life and personal liberty. In this process, the right to speedy trial, free legal aid, dignity, means of livelihood, education, housing, medical care, clean environment, right against torture, sexual harassment, solitary confinement, bondage and servitude, exploitation and so on emerge as human rights.

There are criticisms against the expansive role of the Supreme Court and High Courts for ensuring free legal aid in all means. It is also to be noted that Public Interest Litigation on account of trumpety proceedings initiated before the courts,

innumerable days are wasted, which time otherwise could have been spent for the disposal of cases of genuine litigants. Unless the appropriate government is ready to take up that task, it is often impossible to expect it to happen in reality.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

1) Define Legal Aid.

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2) What are the constitutional safeguards available to an accused?

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3) Define Public Interest Litigation.

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4) Analyse the role of government in providing free legal aid.

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17.3 LEGAL SERVICES AUTHORITIES ACT, 1987

Inability to consult or to be represented by a lawyer may amount to the same thing as being deprived of the security of law. To resurrect the mandate of the Constitution and judicial directives, the Parliament of India enacted Legal Services Authorities Act, 1987. Preamble of the Legal Services Authorities Act, 1987 describes it as an Act to constitute legal services authorities to provide free and competent legal service 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, and to organise Lok Adalats to secure that the operation of the legal system promotes justice on the basis of equal opportunity. The very mandate of government is to ensure free legal aid at all levels. To realize intended goal of the Act and to provide legal aid at all levels, Legal Services Authorities are set up at different levels. Let us examine the important aspects and procedures of Legal Aid Schemes.

17.3.1 Entitlement to Legal Aid Services

Sections 12 and 13 of the Legal Services Authorities Act, 1987 describe entitlement to free legal aid services in India. According to Section 12, every person who has to file or defend a case shall be entitled to legal services under this Act if that person is:

- a member of the scheduled castes or tribes;
- a victim of trafficking in human beings or beggar;
- a woman or child;
- a person with disability;
- a victim of mass disaster, ethnic violence, caste atrocity, flood, drought, earth quake, industrial disaster and such other circumstances of undeserved want;
- an industrial workman;
- in custody, including protective custody;
- facing a charge which might result in imprisonment;
- poor (with an annual income of not more than Rs.50,000/- for cases in the Supreme Court and Rs.25,000 in other courts).

But, according to Section 13 it is clear that: 1) Persons who satisfy any of the criteria specified in section 12 shall be entitled to receive legal services provided that the concerned Authority is satisfied that such person has a prima-facie case to prosecute or to defend; and 2) An affidavit made by a person as to his income may be regarded as sufficient for making him eligible to the entitlement of legal services under this Act unless the concerned Authority has reason to disbelieve such affidavit.

The Supreme Court has also extended and prescribed the qualification for providing free legal aid to the person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence and incommunicado situation.

In addition to the above, legal service may be granted in cases of great public importance considered as special cases deserving of legal services.

17.3.1.1 Cases for Which Free Legal Aid is Not Available

Though the right to free legal aid is a statutory one, for the following cases right to free legal aid is not available.

- Cases in respect of defamation, malicious prosecution, contempt of court, perjury, etc;
- Proceedings relating to election;
- Cases where the fine imposed is not more than Rs.50/-;
- Economic offences and offences against social laws;
- Cases where the person seeking legal aid is not directly concerned with the proceedings and whose interests will not be affected, if not represented properly.

17.3.1.2 Authorities that Can be Approached for Free Legal Aid

The person who needs free legal aid can approach the Legal Services Authority at any level — national, state, district or taluk (Sections 3, 6, 9 and 11). The request can be made to:

- the Senior Civil judge nominated as the chairperson of the Mandal/Taluk Legal Services Authority;
- the Secretary, District Legal Services Authority at the district level;
- the Secretary, High Court Legal Services Committee at the state level;
- the Secretary, Supreme Court Legal Services Committee at the higher level;
- the member secretary of the State Legal Services Authority;
- the magistrate before whom s/he is produced; or
- the custodial authorities, if under detention.

17.3.1.3 Procedures for Filing and Withdrawal

For availing the entitlement to legal services the applicant has to follow the below mentioned procedures such as:

- A written application can be made to the concerned authority.
- Where the person cannot read or write, the legal services authority will record his/her statement along with thumb impression. Such a statement is treated as an application.
- The person who claims legal aid has to file an affidavit of his income.

The legal services committee can withdraw the services if,

- the aid is obtained through misrepresentation or fraud;
- any material change occurs in the circumstances of the aided person;
- there is misconduct, misbehavior or negligence on the part of the aided person;
- the aided person does not cooperate with the allotted advocate;
- the aided persons appoint another legal practitioner; and
- the aided person dies, except in civil cases.

17.3.2 Legal Services Authorities

To implement the directives of the Constitution and the Legal Services Authorities Act, the government has set up National Legal Services Authority, State Legal Services Authority and District Legal Services Authority under the Legal Services Authorities Act. Let us analyse the Constitution, Composition, Powers and Functions of these Legal Services Authorities.

17.3.2.1 National Legal Services Authority

Chapter II of the Legal Services Authorities Act, 1987 deal with different aspects of National Legal Services Authority.

Constitution of the National Legal Services Authority (Section 3): The Central Government shall constitute a body to be called the National Legal Services Authority to exercise the powers and perform the functions conferred on, or assigned to, the Central Authority under the Legal Services Authorities Act {Sub-section (1)}.

Composition of National Legal Services Authority: The Central Authority shall consist of:

- **Patron-in-Chief:** The Chief Justice of India.
- **Executive Chairman:** A serving or retired Judge of the Supreme Court to be nominated by the President, in consultation with the Chief Justice of India.
- **Members:** Such number of other members, possessing such experience and qualifications, as may be prescribed by the Central Government, to be nominated by that Government in consultation with the Chief Justice of India {Sub-section (2)}.
- **Member Secretary:** The Central Government shall, in consultation with the Chief Justice of India, appoint a person to be the Member-Secretary of the Central Authority, possessing such experience and qualifications as may be prescribed by that Government, to exercise such powers and perform such duties under the Executive Chairman of the Central Authority as may be prescribed by that Government or as may be assigned to him by the Executive Chairman of that Authority {Sub-section (3)}.

Service Conditions and Salaries and Allowances: The terms of office and other conditions relating thereto of members and the Member-Secretary of the Central Authority shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India {Sub-section (4)}.

Other Officials: The Central Authority may appoint such number of officers and other employees as may be prescribed by the Central Government, in consultation with the Chief Justice of India, for the efficient discharge of its functions under the Legal Services Authorities Act {Sub-section (5)}.

The officers and other employees of the Central Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the Central Government in consultation with the Chief Justice of India {Sub-section (6)}.

The administrative expenses of the Central Authority, including the salaries, allowances and pensions payable to the Member-Secretary, officers and other employees of the Central Authority, shall be defrayed out of the Consolidated Fund of India {Sub-section (7)}.

All orders and decisions of the Central Authority shall be authenticated by the Member-Secretary or any other officer of the Central Authority duly authorised by the Executive Chairman of that Authority {Sub-section (8)}.

Validity of an action of the Authority: No act or proceeding of the Central Authority shall be invalid merely on the ground of the existence of any vacancy in or any defect in the constitution of the Central Authority {Sub-section (9)}.

Functions of the Central Authority (Section 4): The Central Authority shall perform all or any of the following functions, namely:

- a) Lay down policies and principles for making legal services available under the provisions of the Legal Services Authorities Act;
- b) Frame the most effective and economical schemes for the purpose of making legal services available under the provisions of the Legal Services Authorities Act;
- c) Utilise the funds at its disposal and make appropriate allocations of funds to the State Authorities and District Authorities;
- d) Take necessary steps by way of social justice litigation with regard to consumer protection, environmental protection or any other matter of special concern to the weaker sections of the society and for this purpose, give training to social workers in legal skills;
- e) Organise legal aid camps, especially in rural areas, slums or labour colonies with the dual purpose of educating the weaker sections of the society as to their rights as well as encouraging the settlement of disputes through Lok Adalats;
- f) Encourage the settlement of disputes by way of negotiations, arbitration and conciliation;
- g) Undertake and promote research in the field of legal services with special reference to the need for such services among the poor;
- h) To do all things necessary for the purpose of ensuring commitment to the fundamental duties of citizens under Part IV-A of the Constitution of India;
- i) Monitor and evaluate implementation of the legal aid programmes at periodic intervals and provide for independent evaluation of programmes and schemes implemented in whole or in part by funds provided under the Legal Services Authorities Act;
- j) Provide grants-in-aid for specific schemes to various voluntary social service institutions and the State and District Authorities from out of the amounts placed at its disposal for implementation of the legal services schemes under the provisions of the Legal Services Authorities Act;
- k) Develop, in consultation with the Bar Council of India, programmes for clinical legal education and promote guidance and supervise the

establishment and working of legal services clinics in universities, law colleges and other institutions;

- l) Take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures;
- m) Make special efforts to enlist the support of voluntary social welfare institutions working at the grass-root level, particularly among the Scheduled Castes and the Scheduled Tribes, women and rural and urban labour; and
- n) Coordinate and monitor the functioning of State Authorities, District Authorities, Supreme Court Legal Services Committee, High Court Legal Services Committees, Taluk Legal Services Committees and voluntary social service institutions and other legal services organisations and give general directions for proper implementation of the legal services programmes.

Duty of Central Authority to work in coordination with other agencies: In the discharge of its functions under this Act, the National Legal Services Authority shall, wherever appropriate, act in coordination with other governmental and non-governmental agencies, universities and others engaged in the work of promoting the cause of legal services to the poor (Section 4).

17.3.2.2 State Legal Services Authority

Chapter III of the Legal Services Authorities Act, 1987 deals with different aspects of State Legal Services Authority.

Constitution of State Legal Services Authority (Section 6): Every State Government shall constitute a body to be called the Legal Services Authority for the State to exercise the powers and perform the functions conferred on, or assigned to a State Authority under the Legal Services Authorities Act {Sub-section (1)}.

Composition of the State Legal Services Authority: A State Authority shall consist of:

- *Patron-in-Chief:* The Chief Justice of the High Court.
- *Executive Chairman:* A serving or retired Judge of the High Court to be nominated by the Governor, in consultation with the Chief Justice of the High Court.
- *Members:* Such number of other members, possessing such experience and qualifications as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court (Sub-section 2).
- *Member Secretary:* The State Government shall, in consultation with the Chief Justice of the High Court, appoint a person belonging to the State Higher Judicial Service, not lower in rank than that of a District Judge, as the Member-Secretary of the State Authority, to exercise such powers and perform such duties under the Executive Chairman of the State Authority as may be prescribed by that Government or as may be assigned to him by the Executive Chairman of that Authority.

- Provided that a person functioning as Secretary of a State Legal Aid and Advice Board immediately before the date of constitution of the State Authority may be appointed as Member-Secretary of that Authority, even if he is not qualified to be appointed as such under this sub-section, for a period not exceeding five years (Sub-section 3).

Service Conditions and Salaries and Allowances: The terms of office and other conditions relating thereto the members and the Member-Secretary of the State Authority shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court (Sub-section 4).

Other Officials: The State Authority may appoint such number of officers and other employees as may be prescribed by the State Government, in consultation with the Chief Justice of the High Court, for the efficient discharge of its functions under the Legal Services Authorities Act (Sub-section 5).

The officers and other employees of the State Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court (Sub-section 6).

The administrative expenses of the State Authority including the salaries, allowances and pensions payable to the Member-Secretary, officers and other employees of the State Authority shall be defrayed out of the Consolidated Fund of the State (Sub-section 7).

All orders and decisions of the State Authority shall be authenticated by the Member Secretary or any other officer of the State Authority duly authorised by the Executive Chairman of the State Authority (Sub-section 8).

Validity of an act by the Authority: No act or proceeding of a State Authority shall be invalid merely on the ground of the existence of any vacancy in or any defect in the constitution of the State Authority (Sub-section 9).

Functions of the State Authority (Section 7): These are as follows.

- 1) It shall be the duty of the State Authority to give effect to the policy and directions of the Central Authority.
- 2) Without prejudice to the generality of its functions, the State Authority shall perform all or any of the following functions, namely:
 - a) Give legal service to persons who satisfy the criteria laid down under the Legal Services Authorities Act;
 - b) Conduct Lok Adalats including Lok Adalats for High Court cases;
 - c) Undertake preventive and strategic legal aid programmes; and
 - d) Perform such other functions as the State Authority may, in consultation with the Central Authority, fix by regulations.

State Authority to act in coordination with other agencies, etc., and be subject to directions given by Central Authority (Section 8): In the discharge of its functions the State Authority shall appropriately act in coordination with other governmental agencies, non-governmental voluntary social service institutions,

universities and other bodies engaged in the work of promoting the cause of legal services to the poor and shall also be guided by such directions as the Central Authority may give to it in writing.

17.3.2.3 District Legal Services Authority

Sections 9 to 11 of Legal Services Authorities Act deal with different aspects of District Legal Services Authority.

District Legal Services Authorities (Section 9): The State Government shall, in consultation with the Chief Justice of the High Court, constitute a body to be called the District Legal Services Authority for every District in the State to exercise the powers and perform the functions conferred on or assigned to the District Authority under this Act (Sub-section 1).

Composition of District Legal Services Authority: A District Authority shall consist of (Sub-section 2):

- *Chairman:* The District Judge; and
- *Members:* Such number of other members, possessing such experience and qualifications, as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.

The State Authority shall, in consultation with the Chairman of the District Authority, appoint a person belonging to the State Judicial Service not lower in rank than that of a Subordinate Judge or Civil Judge posted at the seat of the District Judiciary as Secretary of the District Authority to exercise such powers and perform such duties under the Chairman of that Committee as may be assigned to him by such Chairman (Sub-section 3).

Terms of Service and Salaries and Allowance: The terms of office and other conditions relating thereto the members and Secretary of the District Authority shall be such as may be determined by regulations made by the State Authority in consultation with the Chief Justice of the High Court (Sub-section 4).

Other officials: The District Authority may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions (Sub-section 5).

The officers and other employees of the District Authority shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court (Sub-section 6).

The administrative expenses of every District Authority, including the salaries, allowances and pensions payable to the Secretary, officers and other employees of the District Authority shall be defrayed out of the Consolidated Fund of the State (Sub-section 7).

All orders and decisions of the District Authority shall be authenticated by the Secretary or by any other officer of the District Authority duly authorised by the Chairman of that Authority (Sub-section 8).

Validity of an act of the District Legal Services Authority: No act or proceeding of a District Authority shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the Constitution of, the District Authority (Sub-section 9).

Functions of District Authority (Section 10): These are as follows.

- 1) It shall be the duty of every District Authority to perform such of the functions of the State Authority in the District as may be delegated to it from time to time by the State Authority (Sub-section 1).
- 2) Without prejudice to the generality of its functions, the District Authority may perform all or any of the following functions, namely:
 - a) Co-ordinate the activities of the Taluk Legal Services Committee and other Legal Services in the District;
 - b) Organise Lok Adalats within the District; and
 - c) Perform such other functions as the State Authority may fix by regulations.

District Authority to act in coordination with other agencies and be subject to directions given by the Central Authority, etc (Section 11): In the discharge of its functions under this Act, the District Authority shall, wherever appropriate, act in coordination with other governmental and non-governmental institutions, universities and others engaged in the work of promoting the cause of legal services to the poor and shall also be guided by such directions as the Central Authority or the State Authority may give to it in writing.

17.3.3 Legal Services Committees

To make an effective verification of the legal aid programmes the central government had established Legal Services Committees such as Supreme Court Legal Services Committee, High Court Legal Services Committee and Taluk Legal Services Committee.

17.3.3.1 Supreme Court Legal Services Committee

Section 3A provides for Supreme Court Legal Services Committee.

Constitution of the Supreme Court Legal Services Committee: The Central Authority shall constitute a committee to be called the Supreme Court Legal Services Committee for the purpose of exercising such powers and performing such functions as may be determined by regulations made by the Central Authority (Sub-section 1).

Composition of Supreme Court Legal Services Committee: The Committee shall consist of (Sub-section 2):

- **Chairman:** A sitting Judge of the Supreme Court.
- **Members:** Such number of other members possessing such experience and qualifications as may be prescribed by the Central Government, to be nominated by the Chief Justice of India. There is no restriction as for as this appointment is concerned.

Secretary: The Chief Justice of India shall appoint a person to be the Secretary to the Committee, possessing such experience and qualifications as may be prescribed by the Central Government (Sub-section 3).

Terms of Office and Salaries and Allowances: The terms of office and other conditions relating thereto the members and Secretary of the Committee shall be such as may be determined by regulations made by the Central Authority (Sub-section 4).

Other officials: The Committee may appoint such number of officers and other employees as may be prescribed by the Central Government, in consultation with the Chief Justice of India, for the efficient discharge of its functions (Sub-section 5).

The officers and other employees of the Committee shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the Central Government in consultation with the Chief Justice of India (Sub-section 6).

17.3.3.2 High Court Legal Services Committee

Section 8A provides for High Court Legal Services Committee.

Constitution of the High Court Legal Services Committee: The State Authority shall constitute a Committee to be called the High Court Legal Services Committee for every High Court for the purpose of exercising such powers and performing such functions as may be determined by regulations made by the State Authority (Sub-section 1).

Composition of the High Court Legal Services Committee: The Committee shall consist of (Sub-section 2):

- **Chairman:** A sitting Judge of the High Court.
- **Members:** Such number of other members as may be determined by regulations made by the State Authority, to be nominated by the Chief Justice of the High Court.

Secretary: The Chief Justice of the High Court shall appoint a Secretary to the Committee possessing such experience and qualifications as may be prescribed by the State Government (Sub-section 3).

Terms of Office and Salaries and Allowances: The terms and other conditions relating thereto the members and Secretary of the Committee shall be such as may be determined by regulations made by the State Legal Services Authority (Sub-section 4).

Other officials: The Committee may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions (Sub-section 5).

The officers and other employees of the Committee shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court (Sub-section 6).

17.3.3.3 Taluk Legal Services Committee

Sections 11A and 11B deal with different aspects of Taluk Legal Services Committee.

Taluk Legal Services Committee (Section 11A): The State Authority may constitute a Committee to be called the Taluk Legal Services Committee for each taluk or mandal or for group of taluks or mandals (Sub-section 1).

Composition of the Taluk Legal Services Committee: The Committee shall consist of (Sub-section 2):

- **Chairman:** The Senior Civil Judge operating within the jurisdiction of the Committee shall be the ex-officio chairman.
- **Members:** Such number of other members possessing such experience and qualifications as may be prescribed by the State Government, to be nominated by that Government in consultation with the Chief Justice of the High Court.

Other officials: The Committee may appoint such number of officers and other employees as may be prescribed by the State Government in consultation with the Chief Justice of the High Court for the efficient discharge of its functions (Sub-section 3).

Salaries and Allowances: The officers and other employees of the Committee shall be entitled to such salary and allowances and shall be subject to such other conditions of service as may be prescribed by the State Government in consultation with the Chief Justice of the High Court (Sub-section 4).

The administrative expenses of the Committee shall be defrayed out of the District Legal Aid Fund by the District Authority (Sub-section 5).

Functions of Taluk Legal Services Committee (Section 11B): The Taluk Legal Services Committee may perform all or any of the following functions, namely:

- a) Coordinate the activities of legal services in the taluk;
- b) Organise Lok Adalats within the taluk; and
- c) Perform such other functions as the District Authority may assign to it.

17.3.4 Legal Aid Fund

For effective implementation of the Legal Services Authority, Legal Services Committee, Lok Adalat and Permanent Lok Adalat the government has specifically established Legal Aid fund such as National Legal Aid Fund, State Legal Aid Fund and District Legal Aid Fund. The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Central Authority, by way of grants, such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

17.3.4.1 National Legal Aid Fund

Section 15 of the Legal Services Authorities Act, 1987 provides for National Legal Aid Fund.

- 1) The Central Authority shall establish a fund to be called the National Legal Aid Fund and there shall be credited thereto:

- a) All sums of money given as grants by the Central Government,
 - b) Any grants or donations that may be made to the Central Authority by any other person for the purposes of the Legal Services Authorities Act,
 - c) Any amount received by the Central Authority under the orders of any court or from any other source.
- 2) The National Legal Aid Fund shall be applied for meeting:
- a) The cost of legal services provided under this Act including grants made to State Authorities;
 - b) The cost of legal services provided by the Supreme Court Legal Services Committee;
 - c) Any other expenses which are required to be met by the Central Authority.

17.3.4.2 State Legal Aid Fund

Section 16 of the Legal Services Authorities Act, 1987 provides for State Legal Aid Fund.

- 1) A State Authority shall establish a fund to be called the State Legal Aid Fund and there shall be credited thereto:
 - a) All sums of money paid to it or any grants made by the Central Authority for the purposes of the Legal Services Authorities Act,
 - b) Any grants or donations that may be made to the State Authority by the State Government or by any person for the purposes of the Legal Services Authorities Act,
 - c) Any other amount received by the State Authority under the orders of any court or from any other source.
- 2) A State Legal Aid Fund shall be applied for meeting:
 - a) The cost of functions referred to in section 7;
 - b) The cost of legal services provided by the High Court Legal Services Committees;
 - c) Any other expenses which are required to be met by the State Authority.

17.3.4.3 District Legal Aid Fund

Section 17 of the Legal Services Authorities Act, 1987 provides for District Legal Aid Fund.

- 1) Every District Authority shall establish a fund to be called the District Legal Aid Fund and there shall be credited thereto:
 - a) All sums of money paid or any grants made by the State Authority to the District Authority for the purposes of this Act;
 - b) Any grants or donations that may be made to the District Authority or by any person, with the prior approval of the State Authority, for the purposes of this Act.
 - c) Any other amount received by the District Authority under the orders of any court or from any other source.

- 2) A District Legal Aid Fund shall be applied for meeting:
 - a) The cost of functions referred to in the Legal Services Authorities Act, and
 - b) Any other expenses which are required to be met by the District Authority.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

5) Who are entitled to claim Legal Aid?

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6) When are the Legal Aid Services withdrawn to a person?

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7) Describe the Composition of National Legal Services Authority.

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8) Explain the functions of the District Legal Services Authority.

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17.3.5 Lok Adalats

Lok Adalats have been constituted and functioning as voluntary and conciliatory agencies without any statutory backing for their decisions. It is felt that such a statutory support would not only reduce the burden of arrears of work in regular courts, but would also take justice to the door-steps of the poor and the needy and make justice quickly and with less expense.

Chapter VI of the Legal Services Authority Act, 1987 mandates the states to set up a permanent Lok Adalat for settling the dispute when the disputes are pending before the competent court in the territory of India. Lok Adalats are judicial and adjudicatory bodies set up for the purpose of facilitating peaceful resolution of dispute between litigating parties. Lok Adalats are described as *peoples' courts* which can try to promote amicable and mutually acceptable solutions outside the formal judicial set-up through conciliation. Lok Adalats have the powers of an ordinary civil court including summary and examining evidence, etc., for the disposal of large number of cases expeditiously and without much cost.

According to the Legal Services Authorities Act, 1987 "Lok Adalat" means a Lok Adalat organised under Chapter VI of the Legal Services Authorities Act. Lok Adalats are being constituted at various places in the country for the disposal, in a summary way and through the process of settlement between the parties, of a large number of cases expeditiously and with lesser costs. It has been proved to be very popular in providing for a speedier system of administration of justice. The award of Lok Adalat are like any court order but the parties cannot make any recourse and appeal against such order which is final and binding.

Let us examine organization, cognizance of cases, award and powers of Lok Adalat in detail below.

17.3.5.1 Organisation of Lok Adalats

Section 19 of the Legal Services Authorities Act, 1987 deals with organisation of Lok Adalats.

- 1) Every State Authority or District Authority or the Supreme Court Legal Services Committee or every High Court Legal Services Committee or, as the case may be, Taluk Legal Services Committee, may organise Lok Adalats at such intervals and places and for exercising such jurisdiction and for such areas as it thinks fit.
- 2) Every Lok Adalat organised for an area shall consist of such number of:
 - a) Serving or retired judicial officers; and
 - b) Other persons of the area as may be specified by the State Authority or the District Authority or the Supreme Court Legal Services Committee or the High Court Legal Services Committee or, as the case may be, the Taluk Legal Services Committee, organising such Lok Adalat.
- 3) The experience and qualifications of other persons referred to in clause b) of sub-section 2) above, for Lok Adalats organised by the Supreme Court Legal Services Committee shall be such as may be prescribed by the Central Government in consultation with the Chief Justice of India.

- 4) The experience and qualifications of other persons referred for Lok Adalats other than those referred to in clause b) of sub-section 2) for Lok Adalats other than those referred to sub-section 3) above shall be such as may be prescribed by the State Government in consultation with the Chief Justice of the High Court.
- 5) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of:
 - i) any case pending before; or
 - ii) any matter, which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organized.
 - Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.

17.3.5.2 Cognizance of Cases by Lok Adalats

Section 20 of the Legal Services Authorities Act, 1987 deals with cognizance of cases by Lok Adalats.

- 1) Where, in any case referred to in clause (i) of sub-section (5) of Section 19:
 - i) a) The parties thereof agree; or
 - b) One of the parties thereof makes an application to the court, for referring the case to the Lok Adalat for settlement and if such court is prima facie satisfied that there are chances of such settlement; or
 - ii) The court is satisfied that the matter is an appropriate one to be taken cognizance of by the Lok Adalat, the court shall refer the case to the Lok Adalat.
 - Provided that no case shall be referred to the Lok Adalat under sub-clause (b) of clause (i) or clause (ii) by such court except after giving a reasonable opportunity of being heard to the parties.
- 2) Notwithstanding anything contained in any other law for the time being in force, the Authority or Committee organising the Lok Adalat under sub-section (1) of section 19 may, on receipt of an application from any one of the parties to any matter referred to in clause (ii) of sub-section (5) of section 19 that such matter needs to be determined by a Lok Adalat, refer such matter to the Lok Adalat, for determination:
 - Provided that no matter shall be referred to the Lok Adalat except after giving a reasonable opportunity of being heard to the other party.
- 3) Where any case is referred to a Lok Adalat under sub-section (1) or where a reference has been made to it under sub-section (2), the Lok Adalat shall proceed to dispose of the case or matter and arrive at a compromise or settlement between the parties.
- 4) Every Lok Adalat shall, while determining any reference before it under the Legal Services Authorities Act, act with utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by the principles of justice, equity, fair play and other legal principles.

- 5) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, the record of the case shall be returned by it to the court, from which the reference has been received under sub-section (1) for disposal in accordance with law.
- 6) Where no award is made by the Lok Adalat on the ground that no compromise or settlement could be arrived at between the parties, in a matter referred to in sub-section (2), that Lok Adalat shall advise the parties to seek remedy in a court.
- 7) Where the record of the case is returned to the Court under sub-section (5) to the court, such court shall proceed to deal with such case from the stage, which was reached before such reference under sub-section (1).

17.3.5.3 Award of Lok Adalat

Section 21 of the Legal Services Authorities Act, 1987 deals with Award of Lok Adalat.

- 1) Every award of the Lok Adalat shall be deemed to be a decree of a civil court or, as the case may be, an order of any other court and where a compromise or settlement has been arrived at, by a Lok Adalat in a case referred to it under sub-section (1) of Section 20, the court-fee paid in such case shall be refunded in the manner provided under the Court Fees Act (7 of 1870).
- 2) Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.

17.3.5.4 Powers of Lok Adalats or Permanent Lok Adalat

Powers of Lok Adalats or Permanent Lok Adalat are specified under Section 22 of the Legal Services Authorities Act, 1987.

- 1) The Lok Adalat or Permanent Lok Adalat shall, for the purposes of holding any determination under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:
 - a) The summoning and enforcing the attendance of any witness and examining him on oath;
 - b) The discovery and production of any document;
 - c) The reception of evidence on affidavits;
 - d) The requisitioning of any public record or document or copy of such record or document from any court or office; and
 - e) Such other matters as may be prescribed.
- 2) Without prejudice to the generality of the powers contained in sub-section (1), every Lok Adalat shall have the requisite powers to specify its own procedure for the determination of any dispute coming before it.
- 3) All proceedings before a Lok Adalat or Permanent Lok Adalat shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code (45 of 1860) and every Lok Adalat or Permanent Lok Adalat shall be deemed to be a civil court for the purpose of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

17.3.6 Permanent Lok Adalat

Pre-Litigation Conciliation and Settlement: Chapter VI-A of the Legal Services Authority Act, 1987 mandates the States to constitute a Permanent Lok Adalat for speedy disposal; before approaching any regular court when the dispute is relating to essential services.

Permanent Lok Adalat has the jurisdiction to deal with Public Utility Services. According to the Legal Services Authorities Act, Public Utility Services means any *transport* services for the carriage of passengers or goods by air, road or water, *postal*, telegraph or telephone service, *supply* of power, light or water to the public by any establishment; *system* of public conservancy or sanitation; *service* in hospital or dispensary; *insurance* service and includes any service which the Central Government or the State Government, as the case may be, may in the public interest, by notification, declare to be a public utility service for the purposes of the Chapter VI-A of the Legal Services Authority Act, 1987.

17.3.6.1 Establishment of Permanent Lok Adalat

Section 22B describes the process under which Permanent Lok Adalats are established. According to it (Sub-section 1): *Notwithstanding anything contained in Section 19*, the Central Authority or, as the case may be, every State Authority shall, by notification, establish Permanent *Lok Adalat* at such places and for exercising such jurisdiction in respect of one or more public utility services and for such areas as may be specified in the notification.

Composition of Permanent Lok Adalat (Sub-section 2): *Every Permanent Lok Adalat established for an area notified under sub-section (1) of Section 22B shall consist of the following* appointed by the Central Authority or, as the case may be, the State Authority:

- *Chairman:* a person 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.
- *Members:* Two other persons having adequate experience in public utility services to be nominated by the Central Government or, as the case may be, the State Government on the recommendation of the Central Authority or, as the case may be, the State Authority, establishing such Permanent *Lok Adalat* and the other terms and conditions of the appointment of the Chairman and other persons referred to shall be prescribed by the Central Government.

17.3.6.2 Cognizance of Cases by Permanent Lok Adalat

Section 22C: 1) Any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent *Lok Adalat* for the settlement of dispute:

- Provided that the Permanent *Lok Adalat* shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law;
- Provided further that the Permanent *Lok Adalat* shall also not have jurisdiction in the matter where the value of the property in dispute exceeds ten *lakh* rupees;
- Provided also that the Central Government may, by notification, increase the limit of ten *lakh* rupees specified in the second proviso in consultation with the Central Authority.

- 2) After an application is made under sub-section (1) to the Permanent Lok Adalat, no party to that application shall invoke jurisdiction of any court in the same dispute.
- 3) Where an application is made to a Permanent Lok Adalat under sub-section (1), it:
 - a) shall direct each party to the application to file before it a written statement, stating therein the facts and nature of dispute under the application, points or issues in such dispute and grounds relied in support of, or in opposition to, such points or issues, as the case may be, and such party may supplement such statement with any document and other evidence which such party deems appropriate in proof of such facts and grounds and shall send a copy of such statement together with a copy of such document and other evidence, if any, to each of the parties to the application;
 - b) may require any party to the application to file additional statement before it at any stage of the conciliation proceedings;
 - c) shall communicate any document or statement received by it from any party to the application to the other party to enable such other party to present reply thereto.
- 4) When statement, additional statement and reply, if any, have been filed under the above circumstances to the satisfaction of the Permanent Lok Adalat, it shall conduct conciliation proceedings between the parties to the application in such manner as it thinks appropriate taking into account the circumstance of the dispute.
- 5) The Permanent Lok Adalat shall, during conduct of conciliation proceedings under sub-section (4), assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner.
- 6) It shall be the duty of every party to the application to cooperate in good faith with the Permanent Lok Adalat in conciliation of the dispute relating to the application and to comply with the direction of the Permanent Lok Adalat to produce evidence and other related documents before it.
- 7) When a Permanent Lok Adalat, in the aforesaid conciliation proceedings, is of opinion that there exist elements of settlement in such proceedings which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give to the parties concerned for their observations and in case the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement agreement and the Permanent Lok Adalat shall pass an award in terms thereof and furnish a copy of the same to each of the parties concerned.
- 8) Where the parties fail to reach at an agreement under sub-section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute.

17.3.6.3 Procedure of Permanent Lok Adalat

Section 22D: The Permanent Lok Adalat shall, while conducting conciliation proceedings or deciding a dispute on merit under this Act, be guided by the

principles of natural justice, objectivity, fair play, equity and other principles of justice, and shall not be bound by the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872.

17.3.6.4 Award of Permanent Lok Adalat to be Final

Section 22E: 1) Every award of the Permanent Lok Adalat under this Act, made either on merit or in terms of a settlement agreement, shall be final and binding on all the parties thereto and on persons claiming under them.

- 2) Every award of the Permanent Lok Adalat under this Act shall be deemed to be a decree of a civil court.
- 3) The award made by the Permanent Lok Adalat under this Act shall be by a majority of the persons constituting the Permanent Lok Adalat.
- 4) Every award made by the Permanent Lok Adalat under this Act shall be final and shall not be called in question in any original suit, application or execution proceedings.
- 5) The Permanent Lok Adalat may transmit any award made by it to a Civil Court having local Jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.

b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

9) Describe the jurisdiction of the Lok Adalat.

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10) Examine the validity of the Award of Permanent Lok Adalat.

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17.4 LET US SUM UP

Constitution of India guarantees a set of fundamental rights, which inter alia, include the right to life and personal liberty, the right to equality and the right to approach a court of law and also seek free legal aid in the event of violation of these rights. There are provisions in the legislations that mandate the state to accept their commitment towards legal aid services. However, the issue of poverty, illiteracy and other disadvantages among the people reveal that mere promises in legal provisions cannot strive to achieve social and economic justice and stability among such people. The Public Interest Litigation and Judicial Activism are the twin concepts that need to continue with the task of justice delivery in its true sense and spirit, in particular to those who have been constantly deprived of justice on account of the above mentioned issues. For reinforcing the constitutional mandate the work of the NGOs is highly commendable in the world which had come forward for protecting the human rights. Legal Services Authorities Act, 1987 was enacted by the Parliament to redress grievances of the needy people by providing legal aid services through legal services authorities, legal services committees, lok adalats and permanent lok adalat. This unit, therefore, adequately highlighted the important aspects of legal services and lok adalats, among others, so as to enable you promote the same in the real life situation, and also to help yourself or other needy-people in appropriate circumstances.

17.5 ANSWERS TO 'CHECK YOUR PROGRESS' QUESTIONS

- 1) There is no specific definition for the term 'legal aid' either in the Constitution of India or in any enactment to that extent. The Encyclopedia Britannica defines legal aid as a "phrase which has acquired, by usage and court decisions, a specific meaning of giving to person of limited means grants for nominal fees, advice or counsel to represent them in court in civil or criminal matters".
- 2) Article 39-A of the Constitution of India mandates, as the duty of the State, to see that the legal aid system promotes justice on the basis of equal opportunity for all its citizens. It must, therefore, arrange to provide free legal aid to those who cannot access justice due to economic and other disabilities such as poverty, illiteracy and helplessness. Persons, who are arrested, have certain rights — both at the time of arrest and immediately thereafter — which are inherent in Articles 21 and 22(1) of the Constitution. Section 304 of Criminal Procedure Code, 1973 authorises that, if the accused does not have sufficient means to engage a lawyer, the court must provide one for the defense of the accused at the expense of the State. The Supreme Court has observed in several decisions that these rights are to be recognised and scrupulously protected.
- 3) The Council for Public Interest Law, set up by the Ford Foundation in USA, in its Report of Public Interest (1976) defines: Public Interest Law as "the name that has recently been given to efforts that provide legal representation to previously unrepresented groups and interests. A new branch of proceedings known as 'Social Interest Litigation' or 'Public Interest Litigation' was evolved with a view to render complete justice to the weaker sections of the

society. Representative actions and test-litigations were entertained in keeping with the current accent on justice to the common man and a necessary disincentive to those who wish to bypass the real issues on the merits by suspect reliance on peripheral procedural shortcoming.

- 4) PIL is used as a device for the welfare of every section of society and also considered as working as an important instrument of social change. It is the sword of every one used only for taking the justice. The innovation of this legitimate instrument proved beneficial for the under privileged and unrepresented in the society. PIL has been used as a strategy to combat the atrocities prevailing in society. It is an institutional initiative towards the welfare of the needy-class of the society. PIL today offers such a paradigm which locates the content of informal justice within the formal legal system. PIL had already molded the State into the instrument of socio-economic change.
- 5) According to Section 12 of the Legal Services Authorities Act, 1987 every person who has to file or defend a case shall be entitled to legal services under this Act if that person is:
 - a member of the scheduled castes or tribes;
 - a victim of trafficking in human beings or beggar;
 - a woman or child;
 - a person with disability;
 - a victim of mass-disaster, ethnic violence, caste atrocity, flood, drought, earth quake, industrial disaster and such other circumstances of undeserved want;
 - an industrial workman;
 - in custody, including protective custody;
 - facing a charge which might result in imprisonment;
 - poor (with an annual income of not more than Rs.50,000/- for cases in the Supreme Court and Rs.25,000/- in other courts).
- 6) The legal services committee can withdraw the services if,
 - the aid is obtained through misrepresentation or fraud;
 - any material change occurs in the circumstances of the aided person;
 - there is misconduct, misbehavior or negligence on the part of the aided person;
 - the aided person does not cooperate with the allotted advocate;
 - the aided person appoints another legal practitioner; and
 - the aided person dies, except in civil cases.
- 7) Sub-sections (2) and (3) of Section 3 of Legal Services Authorities Act provide for the Composition of National Legal Services Authority, which shall consist of:
 - *Patron-in-Chief*: The Chief Justice of India.
 - *Executive Chairman*: A serving or retired Judge of the Supreme Court to be nominated by the President, in consultation with the Chief Justice of India.

- *Members*: Such number of other members, possessing such experience and qualifications, as may prescribed by the Central Government, to be nominated by that Government in consultation with the Chief Justice of India {Sub-section (2)}.
 - *Member-Secretary*: The Central Government shall, in consultation with the Chief Justice of India, appoint a person to be the Member-Secretary of the Central Authority, possessing such experience and qualifications as may be prescribed by that Government, to exercise such powers and perform such duties under the Executive Chairman of the Central Authority as may be prescribed by that Government or as may be assigned to him by the Executive Chairman of that Authority {Sub-section (3)}.
- 8) Functions of District Authority as specified under Section 10 of Legal Services Authorities Act include:
- i) It shall be the duty of every District Authority to perform such of the functions of the State Authority in the District as may be delegated to it from time to time by the State Authority.
 - ii) Without prejudice to the generality of its functions, the District Authority may perform all or any of the following functions, namely:
 - a) Co-ordinate the activities of the Taluk Legal Services Committee and other Legal Services in the District;
 - b) Organise Lok Adalats within the District; and
 - c) Perform such other functions as the State Authority may fix by regulations.
- 9) A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of:
- i) any case pending before; or
 - ii) any matter, which is falling within the jurisdiction of, and is not brought before, any court for which the Lok Adalat is organized.
 - Provided that the Lok Adalat shall have no jurisdiction in respect of any case or matter relating to an offence not compoundable under any law.
- 10) According to Section 22E of Legal Services Authorities Act:
- i) Every award of the Permanent Lok Adalat under this Act made either on merit or in terms of a settlement agreement shall be final and binding on all the parties thereto and on persons claiming under them.
 - ii) Every award of the Permanent Lok Adalat under this Act shall be deemed to be a decree of a civil court.
 - iii) The award made by the Permanent Lok Adalat under this Act shall be by a majority of the persons constituting the Permanent Lok Adalat.
 - iv) Every award made by the Permanent Lok Adalat under this Act shall be final and shall not be called in question in any original suit, application or execution proceedings.
 - v) The Permanent Lok Adalat may transmit any award made by it to a Civil Court having local Jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

17.6 REFERENCES

Bakshi, P. M. 2006. *Public Interest Litigation*. New Delhi: Ashoka Law House.

Ford Foundation. 1976. *Report of Public Interest Law*. USA: Council for Public Interest Law.

Justice P. S. Narayana. 2002. *Public Interest Litigation*. Hyderabad: Asia Law House.

Kailash Rai. 2005. *Public Interest Law: Legal Aid and Para Legal Services*. Allahabad. Central Law Publications.

Legal News & Views Magazine. 01 Dec 2007.

Mamta Rao. 2004 *Public Interest Litigation, Legal Aid and Lok Adalat*. Lucknow: Eastern Book Company.

National Law Commission. 1997. *XIV Report of the Law Commission (1995-97)*. New Delhi: Ministry of Law and Justice.

The Encyclopaedia Britannica Online.

The Legal Services Authorities Act, 1987 (Bare Act). New Delhi: Universal Law Publishing Company Private Limited.

Cases

Akhil Bharatiya Soshit Karamchari Sangh (Railway) v Union of India & Others. 1981. AIR SC 298.

Indian Banks' Association, Bombay and others v M/s Devkala Consultancy Service and other. 2004. J. T. (4) SC 587.

Suggested Readings

Durga Das Basu. 1994. *Human Rights in Constitutional Law*. New Delhi: Prentice-Hall of India Private Limited.

Mahendra P. Singh. 2008. *Human Rights and Basic Needs: Theory and Practice*. (Ed) New Delhi: Universal Law Publishing Co.

Ronald Dwarkin. 1977. *Taking Rights Seriously*. New Delhi: Universal Book Traders.