Indira Gandhi
National Open University
School of Law

BLE-001
Introduction to the Indian Legal System

Block

4

ACCESS TO JUSTICE

Expert Committee

Prof. (Dr.) N.R. Madhava Menon
Member, Commission on Centre-State Relations, New Delhi
Former Director, NLSIU, Bangalore and National Judicial Academy, Bhopal

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Former Professor of Criminal Law
Law Faculty, University of Delhi

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Country Director
Action Aid India
New Delhi

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New Delhi

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University of Burdwan, West Bengal

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Professor, School of Law, IGNOU

Ms. Gurmeet Kaur
Asst. Prof., School of Law, IGNOU

Ms. Suneet Kashyap
Asst. Prof., School of Law, IGNOU

Mr. Anand Gupta
Asst. Prof., School of Law, IGNOU

Ms. Mansi Sharma
Asst. Prof., School of Law, IGNOU

Block Preparation Team

Programme Coordinator : Prof. Srikrishna Deva Rao and Mr. Anand Gupta

Unit Writers :
Unit 10 : Jaishree Suryanarayanan
Unit 11 : Prof. Parmanand Singh
Unit 12 : Dr. Doel Mukherjee
Unit 13 : Rainmaker Training and Recruitment Pvt.Ltd.

Content Editor : Mr. Parmanand Singh

Language Editor : Malikar Communications

Consultant : Ms. Jaishree Suryanarayanan

Material Production

Mr. Yashpal
Section Officer (Publication)
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BLOCK 4 ACCESS TO JUSTICE

An important function of law is to ensure substantive equality and social justice. We have given ourselves a set of constitutional ideals as spelt out in the preamble. It is the duty of the State to enact laws and policies to ensure that all are able to realise their rights and live a life with dignity and realise one's potential and aspirations. This also ensures the legitimacy of the law in every ones' eyes and fosters respect for the law. Otherwise, law becomes irrelevant to people's lives except for criminalising their lives, such as destitute persons and urban poor.

Despite legislations prohibiting and penalising social evils like dowry, child labour and untouchability, enforcement is very weak. We know that the formal justice system is difficult to access for reasons, such as, long distances involving huge travel costs, difficulty in engaging a lawyer and time spent in negotiating the system to get justice. Facilitating access to the legal system is one way of ensuring social justice and substantive equality. In this block, we will introduce you to some of the mechanisms and innovative strategies that have been tried out to facilitate access to justice.

The tenth unit explores the concept and scope of the right to legal aid. Statutory institutions at different levels have been set up to provide legal aid and services. Even while this system has been widely critiqued as being too narrow and ineffective, it is the outcome of the State acknowledging legal aid as a constitutional mandate. We will introduce you to the judicial innovation of Public Interest Litigation (PIL) in the eleventh unit. It has been recognised as a strategic arm of the legal aid movement to make law and the legal system responsive to the needs of the impoverished.

For the ordinary and poor people it is important to get quick, easy and affordable justice near their homes. Traditional justice systems fulfil this requirement and it is important to recognise their role and engage with them. In the twelfth unit, we will identify some such traditional systems like the caste *panchayats* and *panchayats* of indigenous people and community-based committees and groups that have been evolved by NGOs. We will explain their features and highlight certain limitations as traditional institutions may not always be able to deliver fair and equitable justice according to human rights standards.

The thirteenth and last unit of this course has been designed as a guide to enable you to use the Right to Information Act, 2005. This legislation is the outcome of sustained campaign by civil society and has revolutionary potential to ensure a corruption free system, wherein people can access their legitimate entitlements.

UNIT 10 LEGAL AID

Structure

10.1 INTRODUCTION

All of us are equal before the law and have equal protection of the law. We realise our legal entitlements through the courts by following a legally ordained process. Our constitution envisages substantive equality and not just formal equality. This is evident from the fact that the State can take affirmative action in respect of certain vulnerable groups. Protective discrimination in the form of reservation is one such constitutional provision to ensure substantive equality.

We have inherited a very formal system of justice administration from the British. The courts exclude a vast number from using them on account of complicated laws and procedure. This is aggravated by ignorance, social and economic circumstances, delay in getting relief, costs involved and the distance. This is starker in case of the Supreme Court, which along with the High Court can interpret the Constitution, is situated in Delhi. Even through the Constitution provides for setting up of other benches this has not been done. Our first instinct is to keep away from Courts. However, if rule of law is to be upheld and if we are not to take the law in our own hands, the wronged do not have any option but to navigate through the rigid legal system. Legal aid can to some extent alleviate the consequences of deprivation – social and economic.

In this unit, we will explain the evolution, nature and programmatic content of the right to legal aid. We will explore the factors responsible for ineffective delivery of legal aid and services and identify some alternative delivery methods to strengthen the quality of legal services that is provided under the Legal Services Authority Act, 1987.

10.2 OBJECTIVES

After studying this unit, you should be able to:

- ✓ explain the nature, content and scope of the right to legal aid;
- ✓ describe the process of development of the right to legal aid;
- ✓ explain the scheme and the main provisions of the National Legal Services Authority Act;
- ✓ explain what the scope of legal aid should be in the criminal justice system to meet the fair trial standard;
- ✓ identify the role of paralegals in providing legal aid.

10.3 WHAT IS THE RIGHT TO LEGAL AID?

Shyama has been forced into prostitution and is arrested during a raid.

Sarojini, a widow who lives on the pavement and survives by begging at the Hanuman temple, Connaught Place, Delhi is arrested by the police and taken to the beggar's court.

Bharat is involved in a hit and run case while returning home one night after a party. Best lawyers are deployed by his resourceful family. He is acquitted on the ground that evidence is inadequate.

Raju is beaten up by his father and made to beg and is arrested.

Salim, a twelve years old boy, is working in a dhaba.

Raji is beaten every day by her husband.

Can we help victims of impoverishment in any way when they get drawn into the criminal justice system? Law criminalises the survival strategies of the poor. The poor mostly interact with the law as a victim or an accused. There are innumerable instances of the poor languishing in prisons as 'under trials' or serving out their sentence of imprisonment in other custodial institutions like the beggar homes and protective homes. While we challenge such laws, on the one hand, we also need to provide immediate succour to people like *Shyama* and *Sarojini* to ensure that their voices too are heard before justice is meted out by a court.

Provision of legal aid is one such mechanism to ensure that all have equal access to justice. Any legal system needs to be responsive to the prevailing social and economic context in order to earn credibility, legitimacy and the respect of its people. Hence, the State needs to provide legal aid to very citizen to ensure the constitutional goal of social justice. Though the right to legal aid is an unenforceable directive principle, our judiciary has responded to the needs of the poor by interpreting the right to equality and the right to life (Articles 14 and 21) to include the right to legal aid.

Effective legal aid can make the difference between liberty and incarceration for *Shyama* and *Sarojini*. The right to legal aid is an essential part of the right to equal access to justice. What is the scope of this right? How has this right evolved in our country? We will now take you through some significant developments which have shaped the content and extent of this right.

10.3.1 Constitutional Provisions

Constitutional basis for the right to legal aid:

- Article 21 – Right to life
- Article 39A – State shall secure free legal aid to ensure equal opportunities for accessing justice

Every accused has the right to be represented by a lawyer of his/her choice under Article 22 (1) of our Constitution. The right to legal aid at the State's expense, however, was introduced as an unenforceable directive principle of state policy by a constitutional amendment in 1976. This directive principle contained in Article 39A makes it obligatory for the State to secure equal justice to all and provide free legal aid by appropriate laws or schemes.

The Supreme Court has, through creative interpretation of the fundamental right o life guaranteed by Article 21, made the right to legal aid a fundamental right by reading it into the right to life. In *M.H. Hoskot* v *State of Maharashtra*,[1] the Supreme Court read the right to legal aid as forming part of the enforceable fundamental right to life. We will highlight some leading decisions of the Supreme Court pertaining to this point in the following section on 'Judicial Response'.

10.3.2 Statutory Provisions

The Code of Criminal Procedure (CrPC) was re-enacted in 1973 with the objective of providing a fair trial, a speedy trial and a fair deal to the poorer sections. In the new Cr.P.C., Section 304 which provides for legal aid to the accused before the sessions court only fails to fulfil these objectives. The Cr.P.C. does not provide for the right to legal aid in other criminal proceedings or at any of the other stages of the criminal process. This is a major lacuna which needs to be remedied for the realisation of the right to equal access to justice as the poor are the invisible victims of the criminal justice.

We will discuss the other legislation dealing with delivery of legal aid, the Legal Services Authority Act, 1987, in the following sections.

Self-assessment Question

1) 'The fundamental right to legal aid is available at all stages of the criminal justice administration.' Is this statement true?

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[1] AIR 1978 SC 1548.

10.4 CATALYSTS: SOME SIGNIFICANT DEVELOPMENTS

10.4.1 Expert Committees

Effective and quality legal aid and services is seen as a necessity for ensuring a more holistic ideal of access to justice. Various expert committees appointed by the central and state governments have deliberated upon the scope of the right to legal aid and its implementation and delivery mechanisms. These expert committees include the committee appointed by the government of Gujarat in 1971 under the chairmanship of Justice P.N. Bhagwati, the Expert Committee on Legal Aid appointed in 1973[2] and the Juridicare Committee appointed in 1977[3]. The 1977 Juridicare Committee was appointed with a view for establishing an adequate legal service programme in all the states on a uniform basis. This culminated in the appointment of the Committee for Implementing Legal Aid Schemes (CILAS), again by the government of India in 1980.

All these committees recognised the right to legal aid as a fundamental right which has to be guaranteed by the State to ensure equal access to justice. All the expert committees agreed that the scope of legal aid needs to be broadened to include legal advice and preventive strategies, apart from legal representation. They brought out the linkages between legal aid and problems of poverty in our socio-economic context. Preventive and strategic legal aid is necessary to ensure social justice. Legal aid should also include law and institutional reform. Issues of law and poverty need to be addressed.

There was an emphasis on alternate dispute redressal mechanisms. Conciliated settlements ought to be encouraged through legal aid.

Legal aid should be made available at all stages in the criminal justice system as required by the fair trial standard – on arrest, during investigation, at trial and post trial. Regular arrangement should be made for legal aid and advice to inmates of prisons and other custodial institutions.

On the delivery mechanism, the committees stressed on the need for a 'public sector' in the legal profession to fill the gap in services to all created by a highly privatised bar. This was to be done by encouraging lawyers' cooperatives. Law students were to be involved for paralegal work. Legal aid institutions should be independent of executive control. They should be located within communities.

10.4.2 Judicial Response

The seventies and eighties in the post emergency era saw the Supreme Court, especially, Justices P.N. Bhagawati and Krishna Iyer, who had been part of the expert committees on legal aid, open an avenue for any public spirited person to approach the court seeking enforcement of fundamental rights of people who

[2] This committee was appointed by the Ministry of Law and Justice, Government of India under the chairmanship of Justice V.R. Krishna Iyer and submitted the report, *Processual Justice to the People*.

[3] This committee was appointed by the Government of India and consisted of Justices P.N.Bhagwati and V.R.Krishna Iyer and submitted the *Report on National Juridicare: Equal Justice – Social Justice*.

due to socio-economic reasons or loss of liberty can not come before the court. This was made possible by relaxation of the formal rule of *locus standi* to enable socially conscious citizens to initiate social action litigation on behalf of groups of people like under trials, mentally ill, bonded labourers to seek redressal for violation of their fundamental rights. This came to be known as public interest litigation (PIL).[4]

The poor till then were invisible victims of the criminal justice administration. In Moti Ram v State of Uttar Pradesh,[5] the accused had obtained an order for being granted bail, but the magistrate had directed him to produce a surety for a sum of Rs. 10,000/- before he could be released on bail, which the accused could not furnish because of his poverty. Allowing the petition, the Supreme Court explained the unequal operation of the law in respect of bail and observed that the pre-requisite of the surety amounted to a denial of the right of the accused to be released on bail and held that bail covers release on one's own bond without surety as well.

Similarly, in *Hussainara Khatoon* v *State of Bihar*,[6] the Supreme Court found that thousands of undertrial prisoners charged of bailable offences were in prison because they were not aware of their right to be released on bail, and because of poverty could not engage a lawyer. Justice Bhagwati observed that bail provision as provided in our criminal justice administration is anti-poor and denies justice to the poor by keeping them in pre-trial detention for many years and therefore away from their homes.

Highlighting the importance of PIL, the supreme Court observed in the Asiad workers case,[7]

"….Public Interest Litigation is a strategic arm of the legal aid movement and it intended to bring justice within the reach of the poor masses…."

Through a series of judgements, the Supreme Court promoted legal aid as part of the larger agenda of access to justice.

Self-assessment Question

2) Briefly explain the scope of the right to legal aid as recommended by the various expert committees.

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10.5 THE LEGAL SERVICES AUTHORITY ACT, 1987 (LSAA)

[4] Please refer to Unit 11 of this block which deals exclusively with the growth and impact of public interest litigation (PIL).

[5] AIR 1978 SC 1594.

[6] (1980) 1 SCC 98.

[7] *Peoples' Union for Democratic Rights* v Union of India AIR 1982 SC 1473.

The Legal Services Authority Act, 1987 was enacted to constitute legal services authorities to provide free legal services to the weaker sections and to organise *lok adalats*. Apart from the prescribed income criteria, the LSAA gives a list of persons entitled to legal aid. It provides for a hierarchy of legal services authorities at different levels.

Section 2(1)(c) of the Legal Services Authorities Act, 1987 defines 'legal services' as including 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.

Though the functions prescribed for the various authorities under LSAA are quite comprehensive and in keeping with the recommendations of the expert committees[8], organising *lok adalats* remains the main activity of the authorities.

10.5.1 Beneficiaries under the LSAA

The Act lists out categories of persons who are entitled to legal services irrespective of their income, namely:

- a member of a Scheduled Caste or Scheduled Tribe;
- a victim of trafficking in human beings or a beggar;
- a woman or a child;
- a person with disability
- a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial dispute; or
- an industrial workman; or
- a person in custody, including custody in a protective home, or in a juvenile home, or in a psychiatric hospital or psychiatric nursing home; or

Apart from the above categories, any person who satisfies the prescribed income criteria will also be entitled to legal services under the Act.[9]

10.5.2 Authorities under the LSAA

The National Legal Services Authority Act was enacted in 1987 and enforced from 1996. This Act provides for a hierarchical structure for the delivery of legal services. Legal services authorities at national, state, district and *taluk* levels have been constituted under the Act. The Supreme Court and High Courts have their own legal aid committees.

The National Legal Services Authority constituted by the Central Government under Section 3 consists of:

- The Chief Justice of India who shall be the Patron-in-Chief;
- A serving or retired judge of the Supreme Court, nominated by the President, in consultation with the Chief Justice of India, who shall be the Executive Chairman; and
- Such other members, in possession of such experience and qualifications as may be prescribed and nominated by the Central Government.

[8] Section 4, LSAA

[9] Section 12, LSAA

This Central Authority constitutes under Section 3-A, the Supreme Court Legal Services Committee, the Chairman of which is a sitting judge of the Supreme Court. The State Authorities are headed by a sitting High Court judge and the Chief Justice of the High Court is the Patron-in-Chief.

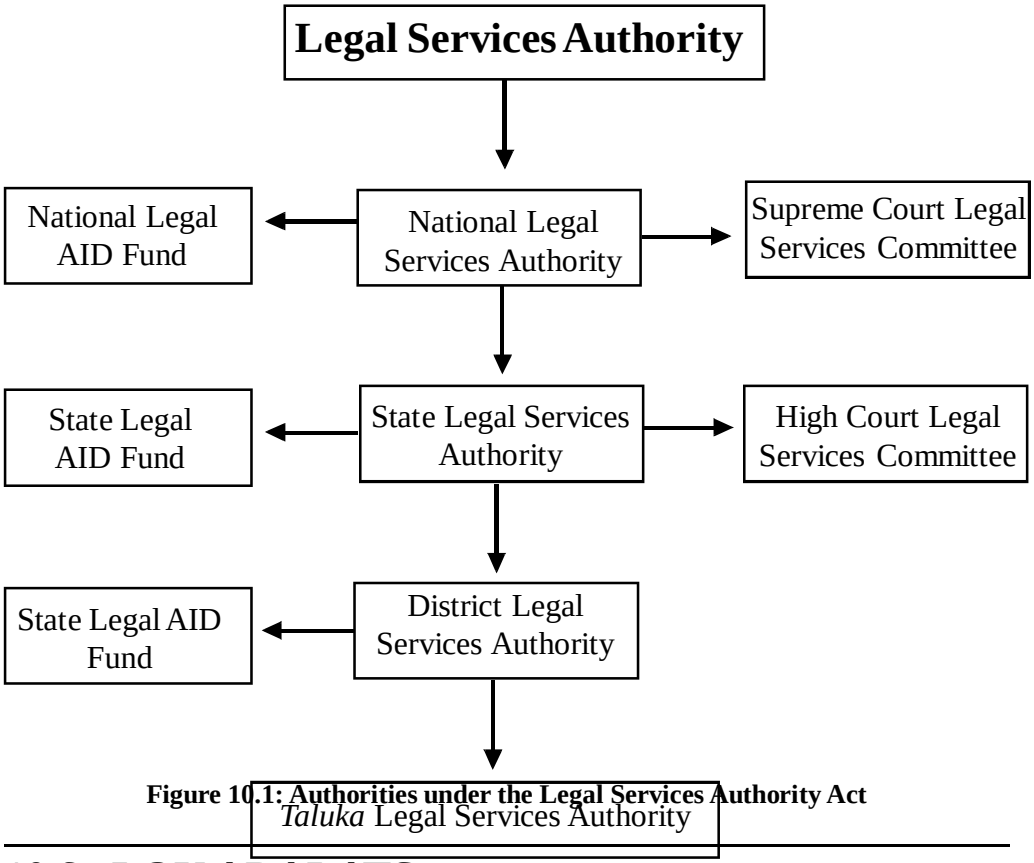

Figure 10.1: Authorities under the Legal Services Authority Act

10.6 LOK ADALATS

The primary aim of legal reforms is reduction of backlog of cases and delay. The search for alternative mechanisms for dispute resolution led to the establishment of *lok adalats* as a mechanism for promoting conciliation and binding resolution of disputes. Though they were in existence before the enactment of LSAA, they now acquired a statutory status.

Lok adalats remain the major area of activity of the LSAA. Section 2(1) (d) of the LSAA defines '*lok adalat*' to mean a *lok adalat* organised under Chapter VI of the Act. *Lok adalats* are organised by legal services authorities at the state, district and *taluka* levels in each state.

A case that is pending in a court can be referred to a *lok adalat* by any one of the parties to the litigation. There is no court fee and any fee paid in the court is refunded provided the dispute is settled in the *lok adalat*. Cases in a *lok adalat* are settled through conciliation and compromise. In case of failure of the parties to arrive at a settlement, the case reverts back to the court from where it is referred.

A *lok adalat* is presided over by a sitting or retired judge and usually has a lawyer and a social worker as its members. *Lok adalats* are generally held within the court premises. The decision of a *lok adalat* is binding on the parties and the order can be executed like any decree passed by a court. There is no right of appeal against the decision of a *lok adalat*. A *lok adalat* has jurisdiction to try all matters

except those relating to non-compoundable offences.

The Act provides for establishment of **permanent *lok adalats*** in bodies providing public utility services like telephone, insurance, transport, electricity and water. Apart from conducting conciliation proceedings, permanent *lok adalats* can also decide a dispute on merits. In doing so, they are not bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872; instead, they are to be guided by "the principles of natural justice, objectivity, equity and other principles of justice".[10]

A Critique

The term '*lok adalat*' is misleading as there is no peoples' involvement in the process of decision making, unlike the traditional/informal modes of disputes resolution.[11] Critiques of *lok adalats* point out that the functioning of *lok adalats* do not necessarily result in 'justice' for the parties concerned as the emphasis is more on reduction in the number of cases before a court. Hence, the approach taken by lok adalats often involves pressuring the parties to compromise. The litigants too succumb as the alternative will entail many years of waiting for justice to be delivered by a court. For example, from the litigant's perspective, getting a compensation of Rs. 20,000/- is preferable to waiting for a further 6 years to get the due compensation of a much higher amount.

The finality of awards made by permanent lok adalats is criticised on the ground that these forums set up ostensibly for pre-litigation conciliation and settlement can also decide matters on merit if the parties fail to arrive at a settlement.[12]

10.7 FACTORS IMPACTING ON QUALITY OF LEGAL AID SERVICES

We will begin this section with a brief narrative of what happens in the lives of the most vulnerable sections of people like the homeless.

A typical day in the beggar's court at Delhi[13]

A lawyer from a panel of lawyers along with some law students from Law Faculty, Delhi University was present when the raiding team comprising officials of Social Welfare Department arrived in the Reception cum Classification Centre with a group of men arrested from different parts of the city on the charge of begging. This motley group represents the most vulnerable population who barely manage to survive in the city. It includes a drug addict who is released there and then as the officials do not want to take on the hassle of dealing with an addict!

After '*jamatalashi*' (search of the person), a remand sheet for the 22 accused persons was presented to the Magistrate by an official of the Social Welfare department and remand obtained for 14 days. The legal aid lawyer was allowed access to the arrested persons only after remand was obtained. During the remand period, a Social Investigation Report (SIR) is prepared by the Probation

[10] Section 22 D, LSAA, inserted through an amendment in 2002.

[11] Please refer to Unit 12 of this block for a detailed discussion on informal dispute redressal mechanisms.

[12] Section 22E, LSAA.

[13] A legal aid scheme was set up in the beggar's court, Delhi by two organisations – Aashray Adhikar Abhiyan and Human Rights Law Network under the aegis of Delhi Legal Services Authority. The writer was a part of this initiative and this narration is based on her experience.

Officer, which forms the basis of the proceeding before the Magistrate. Initially, there was a lot of reluctance on the part of the Department and Court to give a copy of the SIR to the Legal Aid lawyer. However, the lawyers managed to gain access to the SIR on the ground that the accused has a right to know the grounds on which the Magistrate will proceed.

It emerged from the SIRs that the persons arrested on that particular day include:

- a wandering *Sadhu* on his way to Vaishnodevi
- a palmist
- a rickshaw puller
- a person suffering from tuberculosis
- a casual worker whose work changes with the need of the city. For example, he was waiting for *prasad* outside a temple (which would be his main meal for the day) after having worked the whole night as a band player at a wedding
- a person belonging to a de-notified tribe whose caste dictates that he should seek alms on every Saturday, in keeping with the religious belief of most Hindus, that by giving alms on Saturdays, one can ward off evil spirits
- a disabled person who lives on the pavement and who survives by begging outside a temple.

If for some reason the SIR is not ready during the 14 day remand period, the remand was mechanically extended by the Court for another 14 days despite objection by the Legal Aid lawyer. On the date of the hearing, the proceedings went like this (in Hindi):

Magistrate taking the case of the rickshaw puller:

Where have you come from?

Accused: *Bihar*

Legal Aid lawyer: *Your Honour, he is a rickshaw puller and does not beg*.

Magistrate: *OK, I will release you (after admonition). But go back to where you have come from. If you are caught again, I will put you away for two years.*

The Legal Aid lawyer was able to get most of the accused released on admonition. The person with disability was sentenced to two years' imprisonment, against which an appeal was to be filed.

The person belonging to the de-notified tribe is represented by a private lawyer, as his family is confident of securing his release on bail by bribing the court officials, which the Legal Aid lawyer will not do.

Now the questions that the above narration raises give us an idea about the factors that impact on the effective delivery of legal aid and the limitations of providing legal aid without law and institutional reforms. Some questions that will come to your mind are:

1) Need to look for more than one delivery mechanism to suit all situations
2) Need for legal aid to address itself to law and institutional reforms
3) Peoples' perception of legal aid
   – Legal Aid lawyer will not bribe
   – Free service may not be good enough

4) Legal needs cannot be divorced from socio-economic context and basic entitlements
5) Role of paralegals.

What is the role of legal aid in our context? How Can We Identify Legal Needs?

We are a society with divisions based on caste, economic capacity, opportunity, religion, gender and age. The impoverished and disempowered inhabit a universe very different from those who have the economic and social capacity to be able to aspire and the opportunity to realize their aspirations. The role of law and legal processes in impoverishing people needs no elaboration. Impoverishment can be attributed to processes of evicting people from 'public' land, displacement caused by dams and SEZ, eviction of hawkers… Law with its rigid requirement of legality makes sure that the survival methods of the poor remains in the realm of illegality.

Let us go back to our narration. What are the legal needs of the persons depicted in the examples? An effective legal aid programme needs to address the legal needs. Legal aid needs to go beyond legal representation, which was the traditional role of legal aid. The programmatic content of legal aid as it has developed does envisage a greater role for legal aid in the larger agenda of access to justice.

10.8 ROLE OF PARALEGALS

A paralegal is a person who has functional knowledge of different laws and the legal system and is trained in skills necessary to assist in the delivery of legal services for securing rights and/or seeking redressal for violations and offers preventive legal aid involving advice, counselling and mediation. A legal aid lawyer's role is normally confined to legal representation; whereas a paralegal's role will include the rendering of any legal service in the conduct of a case, at all stages, except legal representation

A social justice paralegal will facilitate access to the legal system to secure rights – civil, political, social, economic and cultural – of socially and economically underprivileged individuals; act as a bridge between the community and lawyers for this purpose. Some of the areas where paralegals can work are:

- Criminal justice system
- Women's rights
- Child rights
- Panchayats

Role of paralegals

Nature of work

- Act as a bridge between the affected individual/s and the lawyer
- Demystify the law and the legal procedures to ensure legal remedies available under different laws can be accessed
- Spread awareness about rights and remedies
- Public advocacy for reforms

Skills required

- Functional knowledge of laws and legal system
- Basic legal research and writing
- Respect for constitutional values
- Communication skills and ability to gain the trust of the affected individual/s
- Basic counselling skills
- Ability to engage with officials

Potential employers

- Civil society groups
- Peoples' movements
- Human rights commissions – national and state
- Other commissions – women's, SC and ST, children's
- Legal Services authorities – national and state

10.9 SUMMARY

✓ The right to legal aid at the State's expense, however, was introduced as an unenforceable directive principle of state policy by a constitutional amendment in 1976. This directive principle contained in Article 39A makes it obligatory for the State to secure equal justice to all and provide free legal aid by appropriate laws or schemes. The Supreme Court has, through creative interpretation of the fundamental right o life guaranteed by Article 21, made the right to legal aid a fundamental right by reading it into the right to life.

✓ The scope and delivery mechanism of legal aid has been evolved by several expert committees. All the expert committees recognised the right to legal aid as a fundamental right which has to be guaranteed by the State to ensure equal access to justice. They all were unanimous in their view that the scope of legal aid needs to be broadened to include legal advice and preventive strategies, apart from legal representation. They brought out the linkages between legal aid and problems of poverty in our socio-economic context. Preventive and strategic legal aid is necessary to ensure social justice. Legal aid should also include law and institutional reform. Issues of law and poverty need to be addressed.

✓ Through some significant judicial decisions, Public Interest Litigation emerged as a strategic arm of the legal aid movement.

✓ The Legal Services Authority Act, 1987 was enacted to constitute legal services authorities to provide free legal services to the weaker sections and to organise *lok adalats*. Apart from the prescribed income criteria, the LSAA gives a list of persons entitled to legal aid. It provides for a hierarchy of legal services authorities at different levels.

✓ Though the functions prescribed for the various authorities under LSAA are quite comprehensive and in keeping with the recommendations of the expert committees, organising *lok adalats* remains the main activity of the authorities. Lok adalats have been critiqued on the ground that their main preoccupation is reduction of cases before courts and not delivery of justice.

✓ Several issues impact on the effective delivery of legal aid, such as, need to look for more than one delivery mechanism to suit all situations, need to address law

and institutional reforms, peoples' perception of legal aid and the fact that legal needs cannot be divorced from socio-economic context and basic entitlements.

10.10 TERMINAL QUESTIONS

1) Shekhar comes to you complaining of an offence under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Please advise him as to his remedies and how to seek them.

10.11 ANSWERS AND HINTS

Self-assessment Questions

1) False. This lacuna needs to be remedied for legal aid to make a difference in how the poor are treated in the criminal justice administration.

2) The main expert committees appointed to examine the matter of providing legal aid and advice recognised the right to legal aid as a fundamental right which has to be guaranteed by the State to ensure equal access to justice. They were unanimous in their view that the scope of legal aid needs to be broadened to include legal advice and preventive strategies, apart from legal representation. They brought out the linkages between legal aid and problems of poverty in our socio-economic context. Preventive and strategic legal aid is necessary to ensure social justice. Legal aid should also include law and institutional reform. Issues of law and poverty need to be addressed.

Terminal Questions

1) Refer to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and the Legal Services Authorities Act.

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UNIT 11 PUBLIC INTEREST LITIGATION

Structure

11.1 INTRODUCTION

Any person whose fundamental rights have been infringed upon can move the Supreme Court under Article 32 of the Constitution for enforcing them. S/he can also approach the High Court under Article 226 of the Constitution. The traditional rule is that only the person whose fundamental right has been violated can approach the court. The Supreme Court has now relaxed this traditional rule of *locus standi* and has allowed any public-spirited citizen or social action organisation to approach the Supreme Court or High Court on behalf of the victims of governmental lawlessness for the enforcement of their rights.

The court has opened its door for the poor and the disadvantaged people. It was due to this opening of the door by permitting Public Interest Litigation (also called Social Action Litigation) that the *Asiad* workers realised their dues, bonded labourers secured their freedom, children and women got special consideration and protection, pavement dwellers secured shelter, hawkers got the right to carry on their trade, and prisoners in jail got the right to be treated as human beings. The Supreme Court has opened a Public Interest Litigation Cell to which all letters addressed to the court are forwarded, which are placed before the Chief Justice after scrutiny by the staff attached to the cell.

11.2 OBJECTIVES

After completing this unit, you should be able to:

- ✓ explain the technique of public interest litigation as evolved by the Supreme Court;

- ✓ identify some areas where public interest litigation has been used successfully to create access to justice to the impoverished and disadvantaged sections of our people; and
- ✓ identify the issues that hamper the efficacy of public interest litigations.

11.3 EVOLUTION OF PUBLIC INTEREST LITIGATION (PIL)

Public interest litigation (we will refer to it as PIL) is a unique phenomenon in the Indian constitutional jurisprudence without any parallel in the world. This technique is concerned with the protection of the interests of a class or group of persons who are either the victims of governmental lawlessness and/or social oppression or denied their constitutional or legal rights, and who are not in a position to approach the court for the redress of their grievances due to lack of resources, or ignorance, or their disadvantaged social and economic position. In the area of human rights, judicial PIL was evolved in the post emergency period as a result of what has been called 'judicial populism'. The Indian Supreme Court began to identify itself as an institution of last resort when the other two branches of the government were facing a crisis of credibility. With the change in the political situation after the 1975-77 emergency, the judges began to realise that by strict adherence to the Anglo-Saxon model of adversarial litigation the human rights of the masses who had no access to justice could not be realised. Under the traditional system of adversarial litigation, only the person 'aggrieved' could approach the court for the redress of grievances. Thus, people who because of ignorance, poverty, lack of resources, or economic disability could not on their own approach the court had to suffer violations of their human rights. No one could speak on their behalf. The result was that the legal procedure became a hindrance for the vindication of the legitimate rights of the poor, the disadvantaged and the exploited. Realising this deficiency in our legal procedure, some judges, particularly Justices V.R. Krishna Iyer and P.N. Bhagwati openly started to disregard the impediments of Anglo-Saxon procedure to provide access to justice to the poor and disadvantaged sections of the society by relaxing the rule of *locus standi*.

11.4 FEATURES OF PIL

In *S.P. Gupta* v *Union of India*,[1] Justice P.N. Bhagwati articulated the concept of PIL as follows:

"Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of person by reason of poverty, helplessness or disability or socially or economically disadvantaged position unable to approach the court for relief, any member of public can maintain an application for appropriate direction, order or writ in the High Court under Article 226 and in case of any breach of fundamental rights of such persons or determinate class of persons, in this court under Article 32 seeking judicial redress for the legal wrong or legal injury caused to such person or determinate class of persons."

[1] AIR 1982 SC 149

The main features of PIL are as follows:

- The new procedure evolved by the Indian Supreme Court allows any member of public acting in a bonafide manner to put forward the cause of the victims of human rights violations. One can invoke the court's jurisdiction just by writing a letter or sending a telegram. This is known as 'epistolary jurisdiction'.

- Only a person acting in a bonafide manner and having sufficient interest in the proceedings of PIL has a *locus standi* and can approach the court to wipe out the tears of the poor and the needy suffering from violation of their fundamental rights, but not a person for personal gain, private profit, political motive or any oblique consideration.

- PIL proceedings entail new forms of fact finding, such as appointment of socio-legal commissions of inquiry and handing over the investigation to the National Human Rights Commission or CBI. The Court has taken the help of journalists, lawyers, district judges, bureaucrats, and expert bodies to ascertain the facts alleged in PIL proceedings. This is called 'investigative litigation'.

- In dealing with these cases, the courts have fashioned new kinds of relief for the victims of State lawlessness. For instance, the court can award interim compensation to the victims of governmental lawlessness. This stands in sharp contrast to the Anglo-Saxon mode of adjudication where interim relief is limited to preserving status quo pending final decision. The grant of interim relief in PIL cases does not preclude the aggrieved person from claiming damages from a civil court.

- In a PIL the grievance is mainly about the violation of constitutional or legal rights by governmental action or non-action. A PIL can be filed only before the Supreme Court under Article 32 and before a High Court under Article 226. It cannot be filed before lower courts.

11.5 PIL MOVEMENT AND RIGHTS OF THE POOR AND THE OPPRESSED

Ideologically, PIL activism addresses and confronts the dominant formations in civil society and activates public discourse on practices of power with the partnership of the media, legal academics, the bar and the judges. PIL has become a byword for judicial involvement for the protection of human rights in India. It is in essence a movement to involve the judicial process for the creation of norms of a just social order based upon the principles of justice and humanism. In this movement people participate in the activation of the judicial power to create a regime of human rights with the active support of social activists. The judges are asked not only to vindicate governmental commitments to human rights of the poor and the disadvantaged, but also to enforce public duties to protect and maintain collective and diffuse social rights and to prevent the decline in political morality.

Hussainara Khatoon v *State of Bihar*[2] was the first reported case of PIL seeking relief for the undertrial prisoners languishing in jails. The PIL proceedings in

[2] AIR 1979 SC 1360

this case resulted in the release of nearly 40,000 undertrial prisoners languishing in Bihar jails. *Anil Yadav* v *State of Bihar*[3] depicted police brutalities. About 33 suspected criminals were blinded by the police in a jail in Bhagalpur in Bihar by putting acid into their eyes and then burning the eyes. The Supreme Court quashed the trials of the blinded persons, condemned the police barbarity in the strongest terms and directed the Bihar government to bring the blinded persons to Delhi for medical treatment at the State's expense.

Self-assessment Question

1) List two main features of PIL

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11.5.1 Right against Custodial Torture

PIL activism has brought to the notice of the Supreme Court incidents of human rights violations by custodial institutions such as prisons, mental asylums and women's homes. Incidents of police brutalities and encounter killings have also attracted remedial attention.

In 1981, two professors of law drew the attention of the Supreme Court to the barbaric conditions of the inmates of Agra Protective Home for women.[4] The letter petition, after some initial difficulties, succeeded in securing humane conditions for the inmates.

The horrific conditions of institutions for the mentally ill in Ranchi and Delhi were chronicled by *R.C. Narain* v *State of Bihar*[5] and *B.R. Kapoor* v *Union of India*.[6] In response, the administration of these institutions was taken out of the hands of the local administration and broad guidelines were issued for better management of these mental asylums.

Police authorities strongly feel that handcuffing of the accused persons and suspects and parading them on the roads on the way to the court or jail will minimize crimes. But such treatment given to the accused is unfair and impermissible. In several cases the Supreme Court has held that the use of third degree method during the investigation of a crime is a violation of a person's fundamental right to life and personal liberty. Handcuffing of an accused is permitted only when there is a clear and present danger of escape and breaking out of police control. The adoption of 'third degree methods', solitary confinement and putting cross-bar fetters has been condemned by the Supreme Court.[7]

[3] (1981) 1 SCC 622.

[4] *Upendra Baxi* v *State of Uttar Pradesh* 1981 (3) SCALE 1136.

[5] 1988(2) SCALE 965.

[6] 1989(1) SCALE 278.

[7] *Prem Shankar* v *Delhi Administration* AIR 1980 SC 1535.

In *D.K. Basu* v *State of West Bengal*,[8] the Supreme Court acted upon a letter petition by the chairman of the Legal Aid Services, West Bengal, which referred to the increasing incidents of custodial deaths in West Bengal. The Court issued extensive directions to be followed by the police upon the arrest of a person and the minimum facilities to be made available to such person. The Court observed:

"Police is no doubt, under a legal duty and has a legitimate right to arrest a criminal and to interrogate him during the investigation of an offence but the law does not permit use of third degree methods or torture of the accused in custody during interrogation and investigation with a view to solve the crime."

The Court ruled that a relative of the arrested person must be promptly notified and that the police stations must prominently display the basic rights available to a detainee. The non-compliance of the directions would amount to contempt of court.

The compensation jurisprudence was most clearly articulated by the Supreme Court in 1993 in *Nilabati Behera* v *State of Orissa*[9] in response to a PIL alleging the death of a boy of 22 years of age in police custody. The Court evolved the principle of public law doctrine of compensation for violation of human rights. According to this doctrine, liability of the State for violation of human rights is absolute and admits of no exception such as sovereign immunity. In this case the court awarded Rs.1,50,000/- to the mother of the boy as compensation for custodial death.

11.5.2 Right against Sexual Harassment

Women's issues have increasingly been brought before the Supreme Court with the growth of the women's movement and investigative journalism exposing cases of dowry, rape, sexual harassment and discrimination. It is widely perceived that investigation into crimes against women have been unsatisfactory and in some cases even the judges have shown a gender bias.

In *Delhi Domestic Working Women's Forum* v *Union of India*,[10] the PIL arose out of sexual assault of six domestic servants travelling in a train from Ranchi to Delhi by some army personnel. The Supreme Court laid down broad guidelines to assist rape victims. These guidelines include legal assistance, anonymity, compensation and rehabilitation of rape victims. The National Commission for Women was directed to evolve a scheme for providing adequate safeguards to rape victims.

In *Vishaka* v *State of Rajasthan*,[11] the Supreme Court declared that sexual harassment of women at the workplace constitutes violation of gender equality and right to dignity which are fundamental rights. Taking note of the fact that the existing civil and penal laws in India did not provide adequate safeguards against sexual harassment at the work place, the court laid down 12 guidelines to be followed by every employer to ensure prevention of sexual harassment. Most important, the court ruled that all courts in India must construe the contents of

[8] AIR 1997 SC 610.

[9] AIR 1993 SC 1960.

[10] (1995) 1 SCC 14.

[11] AIR 1997 SC 3011.

fundamental rights in the light of international conventions so long as such conventions were not inconsistent with fundamental rights.

11.5.3 Right against Bondage

In India the bonded labour system continues to be the most pernicious form of human bondage. Under such a system, a worker continues to serve his master in consideration of a debt obtained by him or his ancestors. Bondage can be inter-generational or child bondage or loyalty bondage or bondage through land allotment. Most of these labourers come from the lowest strata of society such as the untouchables, *adivasis* or agricultural labourers. It occurred to the Indian government only in 1976 to pass a central legislation, Bonded Labour System (Abolition) Act, 1976. After the Act came into force, the bonded labour system was abolished, at least on paper and the practice of bonded labour has been made punishable.

Most of the PIL proceedings on bonded labour sought to implement the Act. The first major PIL on this issue was *Bandhua Mukti Morcha* v *Union of India*,[12] filed in 1981 and decided on December 16, 1983. The action was brought for the identification, release and rehabilitation of hundreds of bonded labourers working in the stone quarries of Haryana. The court issued 21 directions to the Haryana government. During the proceedings, the court monitored its own directions and appointed a number of commissions of inquiry. Unfortunately, most of the directions remained unimplemented for many years. The court acknowledged its limited capacity in monitoring the schemes of rehabilitation. In 1992 the court recounted the history of the case and was shocked to note that there was not the slightest improvement in the conditions of the workers of the stone quarries. The litigation ended with one more warning to the government to be responsive to judicial directions. Despite the initial failure of *Bandhua Mukti Morcha* case in terms of effectiveness, PILs were brought before the courts for the liberation of bonded labour in Madhya Pradesh,[13] Tamil Nadu[14] and other states.

11.5.4 Rights of the Child

Public interest actions on children have sought the implementation of constitutional and statutory obligations towards children. Early PIL cases focused on the children in prisons. In 1981, the Supreme Court's attention was drawn to a news report about sexual exploitation of children by hardened criminals in Kanpur jail.[15] The court directed the District Judge, Kanpur to visit the jail and report. The report confirmed the crime of sodomy committed against the children. The court directed the release of the children from jail and their transfer to a children's home. No punishment was, however, given to the administrators of the jail. Another PIL exposed the inhuman conditions of children in Tihar Jail, Delhi.[16]

A major PIL on juveniles in jails was filed by a journalist, Sheela Barse in 1985.[17] She asked for the release of children below the age of sixteen and for information

[12] AIR 1984 SC 802.

[13] *Mukesh Advani* v *State of Madhya Pradesh,* AIR 1985 SC 1363.

[14] *H.P. Sivaswamy* v *State of Tamil Nadu* 1983 (2) SCALE 45.

[15] *Munna* v *State of Uttar Pradesh* (1982) 1 SCC 545.

[16] *Sanjay Suri* v *Delhi Administration* 1987 (2) SCALE 276.

[17] (1986) 3 SCC 632. Also see *SCLAC* v *Union of India* (1989) 2 SCC 325.

on the number of such children. The court was also asked to ensure that adequate facilities were provided to the children in the form of juvenile courts, homes and schools, and that district judges should be directed to visit jails and so on. There were many orders from 1985 onwards which remained unimplemented for a long time. In the meantime, Parliament passed the Juvenile Justice Act, 1986. The court's attention was now diverted to the implementation of the Act. In its final order in 1989 the Supreme Court stressed the need to create juvenile courts, homes and schools. A committee of advocates was appointed to prepare a draft scheme for the proper implementation of the Act. The PIL in this case was ultimately effective, as today the country has no juvenile delinquents in jails.

Let us now briefly address the problem of child labour. PIL on child labour began in the early 1980s in response to a large number of news reports exposing the exploitation of children in fireworks and match factories of Sivakasi in Tamil Nadu and in carpet industries in Mirzapur, Uttar Pradesh. Investigative journalism coupled with these cases led to the passing of the Child Labour (Prohibition and Regulation) Act, 1986. This Act prohibits the employment of children in hazardous industries.

In response to a PIL, the Supreme Court appointed a commission of inquiry to look into the employment of child labour in carpet industries in Uttar Pradesh. The report indicated a high incidence of child labour. With the help of the local administration, these children were released.[18]

In 1986, a major PIL was brought before the Supreme Court complaining that thousands of children were employed in match factories in Sivakasi, Tamil Nadu.[19] These children were exposed to fatal accidents occurring frequently in the manufacturing process of matches and fireworks. The court directed the state government to enforce the Factories Act and to provide facilities for recreation, medical care and basic diet to the children during working hours and facilities for education. The court also advocated a scheme of compulsory insurance for both adults and children employed in hazardous industries. Every employee has to be insured for a sum of Rs.50,000/-. A committee was appointed to monitor the judicial directions. In its final judgment delivered in 1996, the Supreme Court directed that the offending employer of child labour in match factories will pay Rs. 20,000 which would then be deposited in a Child Labour Rehabilitation-Cum-Welfare Fund. The children illegally employed would receive education at the cost of the employer.

In one case, a PIL was filed by a social action organization for a direction for the effective implementation of the law banning sex selection and sex determination.[20] The court expressed its deep concern over the non-action of the executive in preventing pre-natal sex determination leading to female foeticide. The court observed that discrimination against the girl child still prevails, perhaps because of the prevailing uncontrolled dowry system, despite the Dowry Prohibition Act. The court attributed this to the lack of any change in the mindset, insufficient education and the tradition of women being confined to household activities. Sex selection and sex determination further aggravates this adversity. The court

[18] *Bandhua Mukti Morcha* v *Union of India* 1986 (Supp) SCC 553.

[19] *M.C. Mehta* v *State of Tamil Nadu* AIR 1991 SC 417.

[20] AIR 2003 SC 3309.

referred to all its earlier directions to the central and state governments and found it very unfortunate that they had not been implemented.

Judicial intervention to end female foeticide has not made much impact. For instance, a study conducted by a research group has indicated that the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act.1994 has not been used as stringently as it should have been to book the guilty. The report says that the practice of female foeticide is on the increase in the ravines of Mornea and Bhind in Madhya Pradesh where hundreds of unborn baby girls are being killed secretly and in silence and the offences go largely unreported. The ultrasound clinics providing a safe haven for illegal foetal sex determination are proliferating with widespread social acceptance of eliminating the girl child. Not one case of female foeticide has been reported in the State so far.

11.5.5 Right to Food and Satisfaction of Basic Human Needs

The Supreme Court has recognised various social rights, such as, right to means of livelihood, right to adequate healthcare, right to housing and right to education as aspects of 'Right to Life' guaranteed by Article 21 of our Constitution.

A *food petition*[21] filed before the Supreme Court in 2001 arising out of starvation deaths in certain parts of the State of Orissa has given rise to a claim that right to food should be declared a fundamental right. The National Human Rights Commission of India (NHRC) has also been dealing with the reports of starvation deaths since 1996. The Supreme Court has issued certain directions to the state government from time to time to take preventive and curative measures to avoid starvation deaths and provide for adequate food supply to the needy people. In the Food Petition, the petitioners sought a direction for the enforcement of the Famine Code and immediate release of food grains lying in the stocks of the government of India. Directions were also sought requiring the government to frame fresh schemes of public distribution for the scientific distribution of food grains. The court expressed its deep concern that despite the fact that plenty of surplus food grains were lying in the stocks of the union of India or in drought-affected areas, people were dying of starvation. The court recalled that between 2001 and 2003 it had passed various directions to see that food was provided to the aged, infirm, disabled and destitute men and women who were in danger of starvation, pregnant and lactating women and destitute children, especially in cases where they or members of their family did not have sufficient funds to provide food. It was unfortunate that plenty of food was available but distribution of the same among the very poor and destitute was scarce leading to starvation, malnutrition and other related problems.

The matter of denial of the right to food and means of livelihood was brought to the attention of the Supreme Court by way of another PIL. The PIL arose from a newspaper report that due to non-payment of salary for a long time resulting in the starvation of an employee of Bihar State Agro-Industries Development Corporation, that employee had tried to immolate himself. This employee later succumbed to his burn injuries. It was also reported that apart from the employees of public sector undertakings, even the teaching and non-teaching staff of unaided schools, *madarsas*, and colleges had been facing a similar fate. It was reported that about 250 employees died due to starvation or committed suicide owing to

[21] *People's Union for Civil Liberties* v *Union of India* 2003 (9) SCALE 835.

an acute financial crisis resulting from non-payment of salary to them for a long time. Holding corporate entities liable to respect the life and liberty of all citizens in terms of Article 21 and also their own employees, the court came to a finding that food, clothing, and shelter are the core human rights in a civilized society and the state of Bihar made itself liable for mitigating the suffering of the employees of the public sector undertakings and government companies. The court directed the state of Bihar to deposit Rs. 50 crores with the High Court for disbursement of salaries to the employees of the corporations. The court recognized that hunger was a violation of human rights and the State has an obligation to satisfy basic human needs.

Self-assessment Questions

2) Name a landmark case where the Supreme Court issued guidelines to be followed by the police with regard to arrests.

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3) What did the Supreme Court decide in *Vishaka's* case?

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11.6 PIL AND GOVERNANCE

Since the other branches of the State have been facing a crisis of credibility due to the growing decline of public morality, people utilise the strategy of PIL for seeking corruption-free and honest governance. Over the years the focus of PIL cases has drifted from issues of human rights to the issues of public accountability and governance. Through PIL, the judges have unearthed 'scams' where bribes were given to high-profile politicians and bureaucrats through '*hawala*' in return for favours in the grant of government contracts, and exposed cases of political corruption and abuse of power in distributing State largesse. People raise issues of governance before the courts as other avenues of redress of grievances have become ineffective and unreliable.

The PIL has generally been perceived as a success in providing access to justice to the poor and the downtrodden, while others have sought to condemn the PIL movement, often with the specific charge that it has caused the judiciary to usurp the powers assigned to the executive and legislature, thus disturbing the doctrine of separation of powers.

The courts have given directions as to:

- how blood should be collected, stored and given for blood transfusion free from hazards;
- how to impart knowledge about environmental protection;
- how the children of prostitutes should be educated;
- how the CBI should be insulated from extraneous influence while conducting investigation of corruption against persons holding high offices;
- what procedure should be adopted and what precautions should be taken while allowing Indian children to be adopted by foreign adoptive parents;
- what guidelines should be followed to prevent sexual harassment of women at workplace,
- how to prevent noise pollution by loudspeakers and fire crackers;
- how to design the reservation and educational policy.

11.7 PROMISES AND PERILS OF PIL

The most abiding contribution of PIL has been the emergence of new human rights, such as, right to speedy trial, right against torture, right against bondage, right against sexual harassment, right to shelter and housing, right to dignity, right to a clean environment, right to education, right to legal aid and right to healthcare. It creates a new jurisprudence of accountability of the State for constitutional and legal obligations, especially with regard to the weaker sections of society. It reminds and alerts the political executive of its failings and lapses. In performing the function of exposing such failings, the judges remind the governmental functionaries to perform their public duties and maintain rule of law.

In environmental cases the court has addressed issues of environmental degradation, such as vehicular pollution,[22] leakage of oleum gas from a factory,[23] danger to the Taj Mahal from Mathura refinery,[24] pollution caused by shrimp farming,[25] and tanneries.[26] The court has taken several activist measures to ensure compliance of pollution standards. However, judicial activism in this area has been criticised on the ground that the court has not taken into account the interest of the workers and their families while passing orders for the closure of polluting industries.

PIL has produced astonishing results, which were unthinkable two decades ago. Degraded bonded labourers, tortured under trials and women prisoners, humiliated inmates of protective women's home, blinded prisoners, exploited children and many others have been given relief through judicial intervention. The greatest contribution of PIL has been to enhance the accountability of the governments towards the human rights of the poor. Although, judges by themselves cannot provide effective responses to state lawlessness, they can surely seek a culture

[22] *M. C Mehta* v *Union of India* AIR 1998 SC 2663.

[23] *M. C Mehta* v *Union of India* AIR 1987 SC 1965.

[24] AIR 1997 SC 734.

[25] *S. Jagannath* v *Union of India* AIR 1997 SC 811.

[26] *Vellore Citizens Welfare Forum* v *Union of India* AIR 1996 SC 2721.

formation where political power becomes increasingly sensitive to human rights. When peoples' rights are invaded by dominant elements, PIL emerges as a medium of struggle for the protection of their human rights. The legitimacy PIL enjoys in the Indian legal system is unprecedented. PIL activism interrogates power and makes the courts, peoples' courts.

There are, however, certain weaknesses of PIL. PIL actions may sometimes give rise to the problem of competing rights. For example:

- When a court orders the closure of a polluting industry, the interests of the workmen and their families who are deprived of their livelihood may not be taken into account by the court.
- A court order for the closure of a polluting abattoir may deprive butchers of the means of subsistence.
- The construction of a dam to provide water to the people may deprive other citizens of their right to shelter.

There is yet another disturbing feature. Some PIL matters concerning the exploited and disadvantaged groups keep pending for many years. Inordinate delays in the disposal of PIL cases may render many leading judgments to be merely of academic value.

We also encounter the problem of wilful defiance of judicial directions. Surprisingly, the courts are unwilling to punish the violators of their own orders through the exercise of their contempt power. Frequent defiance of judicial orders dilute the credibility of the courts.

In its early stages, PIL was understood to be a medium to liberate the oppressed and the poor. Unfortunately, PIL today has been appropriated for corporate, political and personal gains. Today PIL is no more limited to the problems of the poor and the oppressed. This technique is being used to cure all ills afflicting Indian society. It seems that the dominant concern of PIL activism today is to focus on the interests of Indian middle classes. For instance, PILs seeking to ban the Koran, implementation of consumer protection law, removal of corrupt politicians, invalidation of irregular allotment of petrol pumps and government accommodation, prosecution of politicians and bureaucrats for accepting kickbacks through *hawala* transactions, better service conditions for members of lower judiciary, quashing the selection of university teachers are some examples of middle-class interests.

It is undoubtedly true that in recent years the cause of social justice and emancipation of the oppressed groups has been advanced in many ways through the device of PIL, but the fact that in some cases PIL has achieved positive success does not certify this technique as a sovereign remedy to protect the human rights of the poor. Mass production of rights through PIL has resulted in heightened expectations from the judges that they are available to provide relief from all miseries and misfortunes. Human rights of the poor and the disadvantaged groups will be better protected by subjecting PIL to discipline and control, which should be limited only to the cases focusing on hapless victims of domination and governmental lawlessness. Overuse of PIL for every conceivable public interest might dilute the original commitment to use this remedy only for enforcing human rights of the victimised and the disadvantaged groups.

Self-assessment Question

4) Do you think PIL has been effective in certain areas?

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11.8 SUMMARY

Let us sum up the contents of this unit:

- ✓ Public interest litigation (PIL) is a unique phenomenon in the Indian constitutional jurisprudence. This technique is concerned with the protection of the interests of a class or group of persons who are either the victims of governmental lawlessness and/or social oppression or denied their constitutional or legal rights, and who are not in a position to approach the court for the redress of their grievances due to lack of resources, or ignorance, or their disadvantaged social and economic position.
- ✓ The most abiding contribution of PIL has been the emergence of new human rights, such as, right to speedy trial, right against torture, right against bondage, right against sexual harassment, right to shelter and housing, right to dignity, right to a clean environment, right to education, right to legal aid and right to healthcare.
- ✓ PIL creates a new jurisprudence of accountability of the State for constitutional and legal obligations, especially, with regard to the weaker sections of society.
- ✓ There are, however, certain weaknesses of PIL. PIL actions may sometimes give rise to the problem of competing rights and consequently, a prioritisation of rights by the judiciary. Inordinate delays in the disposal of PIL cases may render many leading judgments to be merely of academic value. There is also the problem of wilful defiance of judicial directions. Frequent defiance of judicial order might also dilute the credibility of the courts.
- ✓ In its early stages, PIL was understood to be a medium to liberate the oppressed and the poor. Unfortunately, PIL today has been appropriated for corporate, political and personal gains. Today PIL is no more limited to the problems of the poor and the oppressed. The dominant concern of PIL activism today seems to focus on the interests of Indian middle classes.

11.9 TERMINAL QUESTIONS

1) Do you think PIL has been a successful device for creating corruption-free governance in India?

2) How far, through PIL activism, has a new regime of human rights been created by the judiciary?

11.10 ANSWERS AND HINTS

Self-assessment Questions

1) The two main features of PIL are:

   a) Any member of public acting in a bonafide manner can invoke the court's jurisdiction

   b) Investigative litigation is a new feature of PIL where the court takes the help of journalists and expert bodies to ascertain facts in the PIL.

2) *D.K. Basu* v *State of West Bengal*

3) It held that sexual harassment of women at the workplace constitutes gender inequality and violation of the right to dignity.

4) Yes, they have been helpful in cases relating to environment, women's dignity in the workplace and child labour.

Terminal Questions

1) Refer to Section 11.6 and 11.7

2) Refer to Section 11.5

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UNIT 12 INFORMAL DISPUTE RESOLUTION MECHANISMS

Structure

12.1 INTRODUCTION

Informal dispute resolution mechanisms include non-state traditional justice systems that have evolved through time and recently evolved community based institutions. The traditional systems include the caste *panchayats* and *panchayats* of indigenous people whereas, community-based committees and groups formed by NGOs, for example, *Nari Adalats* have evolved recently. Unlike formal agencies, such as the police, prosecution, courts, and custodial institutions whose functions are based in law, the informal justice systems that are referred to in this unit are community-based dispute resolution mechanisms falling outside the scope of the formal justice system and the State.

There are dispute resolution systems that are semi-formal and are run by the State, such as *Lok Adalats*, family courts, juvenile justice boards and *gram nyaylayas*, which have not been considered in this unit as these systems function on the basis of legislations and fulfil the obligation of the State. The informal traditional justice systems, on the other hand, are based in the community where rules are made and followed with the support of the community leaders or elders. Religious courts such as *Sharia* courts have been discussed in this unit as these courts are used widely and have social sanction.

We know that the formal justice system is difficult to access for reasons, such as, long distances involving huge travel costs, difficulty in engaging a lawyer and time spent in negotiating the system to get justice. For the ordinary and poor people it is important to get quick, easy and affordable justice near their homes.

Traditional justice systems fulfil this requirement. Added to these advantages is the confidence with which communities access their traditional systems as they know that the people who run them are a part of their own lives. Some of these systems have been in existence since pre-independence and are based on customary laws and practices of the area.

There are several traditional systems in different forms in different parts of the country. Each of these institutions may be known by different names in different areas, yet they show certain common characteristics and processes while delivering justice. This unit is structured to enable you to identify local traditional justice delivery mechanisms in rural and urban areas to which the poor, the vulnerable and ordinary people turn because they can get quick and affordable justice.

The traditional justice systems have certain limitations and may not always be able to deliver appropriate, fair and equitable justice according to human rights standards. Very often they violate the rule of law by prescribing regressive punishment. It is, however, important to recognise the role of traditional justice systems and engage with them. We can work towards promoting the positive aspects of these systems and reform the negative aspects, by working together with both the community users and leaders.

12.2 OBJECTIVES

After going through this unit, you should be able to:

- ✓ identify components of the justice delivery mechanism other than those in the formal justice delivery system;
- ✓ describe the common characteristics of traditional informal justice systems;
- ✓ identify the limitations of such systems;
- ✓ identify ways in which a paralegal can engage with these systems; and
- ✓ analyse how linkages can be made between formal and informal justice systems.

12.3 WHAT ARE INFORMAL TRADITIONAL JUSTICE SYSTEMS?

Before progressing any further, it is important to understand what these informal traditional justice systems are. A common definition is that these are community dispute-solving systems other than the formal justice system. These systems are based on customary practices where the decisions taken by the community leaders are enforced within the immediate jurisdiction. The decisions of such institutions are based on non-regulated mechanisms of social control and are spontaneous.

Informal justice systems refer to dispute resolution mechanisms that fall outside the scope of the formal justice system and which may be traditional, indigenous, popular, and community based. These parallel systems exist in many parts of the country, especially in rural areas.

A definition used by the United Nations Development Programme (UNDP), which works with community-based informal justice institutions, is:

Justice is the ability of people to seek and obtain a remedy through formal or informal institution of justice which adhere to human rights standards.

12.3.1 Why are Informal Traditional Justice Systems Important?

Most marginalised people in both rural and urban areas prefer to use the informal traditional systems over the formal justice system for the following reasons:

- Formal justice systems are costly to access
- Illiteracy and ignorance of legal processes
- Poor quality advocates and lack of proper legal assistance
- Tendency of secrecy in the formal system
- Refusal to register complaints by the police
- Lack of awareness about legal rights
- Misconception that justice is not meant for the poor
- Corruption
- Religious prohibitions for women in '*pardah*'
- Political interference

The informal traditional justice systems are prevalent throughout the country and they are used by a vast majority of people. Although, making and enforcing laws is one of the core functions of the state, traditional and indigenous justice systems often fill the gap when the State is not able to fulfil its duties or when people simply opt to use traditional systems. Vulnerable groups, especially, the poor, *dalits* and others who feel marginalised find it easier to use the traditional justice system. For many reasons it is important to acknowledge their existence so that the justice sector reform process being attempted by the government and civil society can engage with these systems in a more fruitful manner and sensitise them to constitutional values, due process and principles of rule of law.

It is, however, important to remember that traditional justice systems have certain limitations and may not always be able to deliver appropriate, fair and equitable justice. Many of the failings of the formal justice system can also be seen in the informal traditional justice system - nepotism, corruption, human rights abuses, gender bias, etc. Research studies on traditional justice systems in India have shown that these systems are susceptible to being dominated by the elite and serve the interests of the ruling class and power centres, thereby creating biases and jeopardising justice for the vulnerable groups. Some of the punishments given by these systems are regressive and violate basic principles of human rights.

12.3.2 How can one Identify Traditional Justice Systems?

As mentioned earlier, these traditional justice systems are, by and large, administered by the community elders and accessed by the community.

Some of the common characteristics of the informal justice system are:[1]

- Collective interests are mostly brought before the system.
- Decisions are based on the process of consultation.
- There is emphasis on reconciliation and restoring social harmony.
- Arbitrators are appointed from within the community on the basis of status or social position.
- Public participation is a common characteristic.
- The rules of evidence and procedure are flexible.
- There is no professional legal representation.
- The process is voluntary and the decision is based on agreement.
- They have a high level of acceptance and legitimacy.
- Informal justice systems often deal with civil and criminal cases.
- Enforcement of decisions is secured through social pressure.

Some common examples of the traditional informal justice systems documented in this unit are *Jati Panchayat*, *Gaon Panchayat* and *Sharia* courts. These examples are drawn from a UNDP-Government of India study on documentation of these institutions in the states of Haryana, Madhya Pradesh and Maharashtra.[2]

12.4 SELECT TRADITIONAL JUSTICE SYSTEMS

12.4.1 *Jati Panchayat*

Profile and functions

In rural areas, individuals try to resolve problems and conflicts by first visiting their family or a *jati panchayat*. The *jati panchayat* and caste *panchayat* have certain similarities in most of the states. The victims and complainants visit a state institution when they find that there is no satisfactory solution in the traditional system. In cognizable offences, such as, rape and murder, the community most often decides to refer the case to the police. But there are instances when the community decisions have prevailed and curtailed individual rights and the right to fair and equitable justice by letting the matter get resolved within the inner sphere of the family or community.

Composition

The members are mostly senior and respected members of the caste. They are those who are perceived to be courageous, compassionate, and knowledgeable, with good communication skills and a sense of fairness while dealing with caste issues. However, certain families, by hereditary right, find a place in the *panchayats*. Women find no representation in the *panchayat*. This is a body of elders of a

[1] Ewa Wojkowska**,** *Doing Justice: How informal justice systems can contribute* (UNDP, 2006) available at http://www.undp.org/oslocentre/docs07/DoingJusticeEwaWojkowska130307.pdf

[2] Shirish N. Kavadi et al, *Strengthened Access to Justice: Mapping Informal Justice Institutions in Maharashtra* (Pune: National Centre for Advocacy Studies, 2008) available at http:// www.ncasindia.org/Public/Whatnew/saji.pdf; Mapping of the Informal Justice System in Madhya Pradesh (National Law University Institute, Bhopal, 2008); Mapping of the Informal Justice System in Haryana (Kurukshetra University, 2008).

particular caste, who determine social, cultural, religious and even economic affairs of the caste members. In some places, persons mature in age, having experience and social status are nominated by the community. The number of *panch* averages ten. In cases where the territorial jurisdiction extends beyond one single village, the system provides for representation from each of the villages covered.

Types of cases

Issues that are closely linked, such as community customs, traditions and identity, marital relationships, inter-caste marriages, love affairs and family disputes are dealt with by the *jati panchayats.* Special meetings are held to decide inter-caste marriages. Caste *panchayats* also decide the matters related to immovable property, agricultural land, partition, theft, atrocities against women.

Jurisdiction

Jurisdiction of most *jati panchayats* is limited to the village and community. However, there are exceptions, for example, in Maharashtra the *Bhilla Jat Panchayat* hears cases of disputants even from Karnataka and Andhra Pradesh. The *mahapanchayats* represent the entire community and hence the jurisdiction extends beyond state borders, for example, some of the denotified tribes which have their origins in Karnataka or Andhra Pradesh may have to appear for a *mahapanchayat* held in those states and the other way round.

Denotified Tribes

These are tribes that were originally listed under the Criminal Tribes Act of 1871. Once a tribe became 'notified' as criminal, all its members were required to register with the local magistrate, failing which they would be charged with a crime under the Indian Penal Code. The Criminal Tribes Act of 1952 repealed the notification, i.e. 'de-notified' the tribal communities. This Act, however, was replaced by a series of Habitual Offenders Acts, under which the police investigate a suspect's criminal tendencies and whether his/her occupation is 'conducive to settled way of life'. The denotified tribes were reclassified as habitual offenders in 1959. The UN's anti-discrimination body Convention on the Elimination of all Forms of Racial Discrimination (CERD) has asked India to repeal the Habitual Offenders Act and effectively rehabilitate the denotified and nomadic tribes.

Implementation

The decision is arrived at by a consensus and is always implemented immediately. The *panchayat* itself undertakes to ensure the implementation of its decision. The *panch* are entrusted with the responsibility of implementation and also authorised to take action against those who defy the decision, which is not a common occurrence. People, by and large, are wary about going against the *panchayat* because of the fear of antagonising the community in which they live. However, this is not to say all decisions are readily accepted or are seen as being fair. Controversies may break out and tensions may erupt but it is in a rare case when *panchayats* may seek police assistance. Generally, every possible effort is made to defuse disturbances by the community *panchayat* itself. Sometimes those creating the disturbances are warned or threatened with excommunication.

It is observed by experts that caste panchayats are almost absent amongst the higher castes but more common among the lower (*Dalit*) castes such as *Mahars*, *Mang*, and *Chambhar*.[3] An important reason that is ascribed to this particular phenomenon is the urban base of the former and the fact that their means of livelihood is no longer tied to their caste. Studies on the informal justice systems have also confirmed that these systems are predominantly found among lower castes, the nomadic tribes, denotified tribes, and *adivasi* communities.

12.4.2 *Gaon Panchayat*

Profile and functions

The *gaon panchayat* is a village panchayat represented by all communities from the village. These *panchayats* are found in Maharashtra and parts of Gujarat. This is a non-statutory body unlike the *gram panchayat*. In a *gaon panchayat*, the *panch* are usually village elders. Any villager, irrespective of caste or community, can take the dispute to the *gaon panchayat*.

Elected representatives from the *gram panchayat*, the *Sarpanch*, Police *Patil* and a few village elders nominated for their knowledge and experience hold office of *panch* in a *gaon panchayat*. Women are permitted to be nominated as a *panch*. The number of *panch* is not usually fixed.

In some villages the statutory *gram panchayat* undertakes informal dispute resolution. A common feature in such instances is that the villages invariably are dominated by a single caste or community.

Jurisdiction and nature of disputes

The jurisdiction of a *gaon panchayat* is limited to the village. It entertains disputes related to agricultural land, marital issues and family disputes. In some rare cases, disputes outside the village or district can also be resolved by the *gaon panchayats*. Some *gaon panchayats* in Thane district, Maharashtra are known to entertain disputes related to harassment of women due to dowry.

Self-assessment Questions

1) Why do people like to access the informal traditional justice system instead of the formal justice system?

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[3] Vasudha Dhagamwar, 'The Shoe Fitted Me and I Wore It: Women and Traditional Justice Systems in India', *in* Kalpana Kannabiran ed., *The Violence of Normal Times: Essays on Women's Lived Realities* (New Delhi: Women Unlimited, 2005).

2) What are the common disputes that occur in the rural areas which make their way to the informal justice systems?

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12.4.3 *Sharia* Courts

Sharia courts have a historical genesis and are used by the followers of Islam. These courts deal with settlement of disputes relating to matters, such as, marriage, divorce and inheritance. These courts or *Dar ul Qaza* are located in different parts of the country. The machinery set up for the enforcement of *Sharia* injunctions and resolution of disputes are called *Qaza* and the person entrusted with the responsibility of a *Qaza* is called *Qazi*. The courts normally have three different judges who work independently – one *Qazi* and two *Nayabs*. It is not a hierarchical system and has a permanent establishment in the Muslim community. The courts have registered *ulemas* or lawyers who are trained in interpreting both civil and criminal cases.

These are found in Uttar Pradesh, Orissa, Bihar, Madhya Pradesh, Maharashtra, Rajasthan, Delhi, West Bengal, Assam and Gujarat. The All India Muslim Personal Law Board (AIMPLB), which represents both the *Shia* and *Sunni* sects, is the apex body and was established in 1973. It takes decisions regarding establishment of new *Sharia* courts. These courts have wide acceptability among the Muslim community. If the disputants are not satisfied with the verdict of the *Sharia* court, they are free to access the formal courts.

Procedure

The judgment is arrived at by only one judge, unlike in a *panchayat* or *gram nyaylaya*. These courts are easy to approach and are cost effective as fees are nominal. Both parties are given an opportunity to present their respective cases. The disputants appear personally before the court and there are no restrictions on deposition by their family members. Two witnesses from each side are required for the identification of the disputants. The court can issue summons seeking attendance of a person. Parties and witnesses are examined on oath.

Normally judges do not hear cases of their family members – these are passed on to other judges. There is no period of limitation prescribed for filing a case. On an average, 45 to 50 cases are resolved each year by one *Sharia* court.

These courts do not allow any other outside authorities to influence their decisions. Therefore, each case is instituted and tried afresh. Records of cases are maintained in Urdu. A Hindi version of the judgment can be obtained.

Usually there is no enforcement mechanism available in the form of punitive sanctions or social boycott. The only driving force is the personal belief of an individual. The *Dar-ul Qaza* is a platform to facilitate mutual agreement and reconciliation.

Sharia courts, like the other traditional informal systems, have been criticised for giving regressive verdicts against women, especially in rape cases. For example, in the case of Imrana in Uttar Pradesh (2005) where she was raped by her father-in-law, the *Sharia* court passed a verdict that the woman cannot remain married to her husband.

12.5 RECENT COMMUNITY-BASED INFORMAL JUSTICE SYSTEMS

Some informal disputes resolution mechanisms have developed recently due to peoples' loss of confidence in the formal and traditional justice institutions. Some of these recent developments have their basis in community support and are facilitated by civil society organisations. To prevent gender-biased judgments, women's platforms have formed *Nari Adalats*. Which have emerged as a response to domestic violence.

There are voluntary agencies such as the *Shramajeevi Sangathana* (SS), which was established nearly three decades ago inspired by the socialist movement and Jayprakash Narayan's idea of Total Revolution. In 1979 a *Vidhaayak Sansad* was set up to give voice to the urban poor of the Mumbai slums but its work was soon extended to the neighbouring Thane district. The initial orientation was towards charitable and welfare activities. But the presence of bonded labour among the *adivasis* of the areas and the fact that the Bonded Labour System (Abolition) Act had little impact in the area motivated the organisation to take up this issue. The SS began as a trade union of freed bonded labourers, and soon became a union of workers earning their livelihood through work on farms. The SS engages in mobilising the local tribal communities to protect and promote their basic rights and fundamental freedoms.

The *Shramajeevi Sangathana* (SS) operate in 855 villages from 13 *talukas* (blocks) in Thane, Mumbai and Nasik. The SS is a membership-based organisation with 25,000 members across Maharashtra. Every member pays Rs. 30/- towards annual membership and thereby entitles himself or herself to the benefits accruing to a member, one of which is assistance in dispute resolution.

The *Sangathana*, because of the nature of its work, also serves as an informal institution for dispute resolution. The key role of SS being promotion, protection and enforcement of human rights of tribal and vulnerable sections, the villagers come to the SS with their grievances related to government schemes, harassment by upper caste or class or non-tribals in the village, harassment by the police exploitation based on social discrimination and violence committed against women within the family, the village or by the system. Land boundary disputes, a young girl/boy eloping with a boy or girl from a different community, sexual exploitation of women working on farms or brick kilns by the employers, caste-based atrocities and denial of legal rights by the police may be listed as some of the major issues that are usually addressed by the SS committees.

No person from any other organisation is permitted to attend and speak at the committee meeting. In case of disputes related to land, local government officials like the *talathi* are invited for the meeting, as they are responsible for the implementation, but no police intervention or interference is sought or allowed.

The SS has a hierarchical organisational structure. In every village where it has members there is a *gaon*/village committee comprising a minimum of 20 members. Committee members are elected and only members of the *Sanghatana* are eligible to contest. The members are elected based on their credibility and public image. There is a zonal committee, which is made of individuals heading the village/*gaon* committees. Similar committees are formed at *taluka*, and district levels. At the top of the hierarchy is the state level committee.

12.6 DO TRADITIONAL JUSTICE SYSTEMS UPHOLD THE RULE OF LAW?

From the above it is certain that the traditional justice systems are biased and provide little or no representation to the most vulnerable groups, such as, women and *dalits*. They follow social hierarchies which are discriminatory towards certain groups. Although they are less constrained by procedures and technicalities, unlike formal justice systems, they are bound by caste/tribe customs, traditions and superstitions. The quality of justice is often dependent on the individual knowledge, skills and moral values of those engaged in mediation or arbitration in these institutions. At the core of their functioning is the idea that all disputes involving members of a caste/tribe concern the group alone and hence it is imperative to settle these within the caste/tribe itself.

The punishments meted out by the traditional justice system are sometimes contrary to human rights standards. Practices commonly found among the *dalits*, nomadic and denotified tribal *panchayats* such as the *pardhis* involve retrieving a coin from the bottom of a pot filled with boiling water or oil or handling a red hot iron axe with bare hands to determine the truth. There are two arguments behind such inhuman practices: one, that the community always knows the truth and no one can lie to the tribe and get away with it, and the second involves an assumption that an 'innocent' person will not burn his or her hand. However, what happens in most cases is that out of sheer fear of the consequences most people confess. They know that undertaking the task will burn their hands and that they would anyhow have to face punitive action. A great deal of force and violence is used in producing evidence and getting disputants to admit their guilt.

Efforts are made to ensure that all decisions are taken by consensus. 'Consensus' in decision making in *panchayats* can sometimes be misleading. The ability to shout down the opposition can push a decision towards a certain kind of a 'consensus'. Some may argue that a decision taken by a majority voice is in keeping with the notions of liberal democratic principles. It ignores the fact that justice in such cases may actually be denied and grave injustice done, merely because a brute majority has its way in pushing the *panchayat* towards a certain 'consensus'.

Resolving a dispute even in caste *panchayats* can be complex and even more difficult than formal justice systems as there are no written laws against which a

case can be decided. In a formal system there are technical aspects of law rather than merely notions of justice that determine a verdict.

Gender bias exists in almost all traditional justice systems. These can range from lack of representation to punishments meted out to women who are the victims. Informal justice systems may be physically more accessible, but they often reflect the social and political inequities which define many poor and rural communities. The poor, women and *dalits* face challenges in accessing informal justice due to a lack of neutrality, unclear standards and guidelines and sometimes a lack of capacity on the part of the informal justice system actors.

Legal framework

The *jati panchayats* have no written laws. The norms and tenets that guide the *panchayat* in deciding disputes are age-old customs of the community. The *panchayat* and the disputing parties may also draw upon precedents. Similarly, the *gaon panchayats* have no basis in law. Voluntary organisations such as *Shramajeevi Sangathana* work to protect and promote human rights and base themselves partly in formal law and partly in local customs. They are participatory and open with emphasis on reconciliation. They are guided by principles of human rights and constitutional guarantees. The decision making is also considered as an opportunity for legal empowerment of the vulnerable.

12.7 HOW CAN PARALEGALS ENGAGE WITH TRADITIONAL JUSTICE SYSTEMS?

It is important for paralegals and human rights defenders to be aware of the role of informal traditional justice institutions as a large number of rural poor use them. We can facilitate better quality justice in traditional informal justice institutions through the following processes:

By understanding the normative framework of justice and simplifying it and building the capacities of the users of such systems. The normative framework has the capacity to both protect and defend the interests of the poor. This makes it possible for the users of the system to claim better quality justice.

Legal awareness is critical to securing access to justice. Poor and disadvantaged groups often fail to make use of laws and rights precisely because they are not aware of them. Poor communities need to be aware of the law, of available remedies and how to access those remedies. Once equipped with legal knowledge, the poor and disadvantaged require adequate access to both informal and formal justice systems to seek remedies.

Building access to these systems includes establishing monitoring mechanisms or overseeing bodies; ensuring representation for disadvantaged groups in local-level institutions; capacity building and building bridges between formal and informal systems. Public confidence in legal institutions is dependent on timely, independent and consistent application of applicable norms, free of political intervention. It also requires accountability to the public. Therefore, the people using these systems and the leaders or actors of the traditional justice institutions must be in a position to develop transparent functions which can be supervised by an overseeing body which will look into the grievances of those who do not receive fair and equitable justice.

Recommendations on to how to engage with the traditional justice systems

A paralegal needs to undertake the following:

- Identify those who are most vulnerable and those who use these systems
- Identify the community leaders of the system
- Assess and analyse the capacity gaps of users to be able to claim their rights and leaders to be able to meet their obligations and subsequently use the analysis to capacity build and sensitise the two groups
- Capacity development for access to justice requires building on existing strengths and solutions. Work with informal justice systems and attempt to promote the positive aspects of the informal systems and reform the negative aspects;
- Find solutions for problems with the community and refrain from adopting new models in the area as this leads to conflict.
- Work together with both the community users and leaders.

12.8 SUMMARY

✓ The informal justice systems that are referred to in this unit are community-based dispute resolution mechanisms falling outside the scope of the formal justice system and the state. These are non-state-administered mechanisms and processes which are traditional, indigenous, customary and popular. There are dispute resolution systems that are semi formal and are run by the state, such as *Lok Adalats*, family courts, juvenile justice boards and *gram nyaylayas*, which have not been considered in this unit as these systems function on the basis of legislations and fulfil the obligation of the State.

✓ There are several traditional systems in different forms in different parts of the country. Each of these institutions may be known by different names in different areas, yet they show certain common characteristics and processes while delivering justice. These systems are based on customary practices where the decisions taken by the community leaders are enforced within the immediate jurisdiction. The decisions of such institutions are based on non-regulated mechanisms of social control and are spontaneous. Some common examples of the traditional informal justice systems documented in this unit are *Jati Panchayat*, *Gaon Panchayat* and *Sharia* courts.

✓ The *jati panchayat* and caste *panchayat* have certain similarities in most of the states. Women find no representation in the *panchayat*. This is a body of elders of a particular caste, who determine social, cultural, religious and even economic affairs of the caste members. The *jati panchayat* deals with issues, such as, community customs, traditions and identity, marital relationships, inter-caste marriages, love affairs, family disputes, matters related to immovable property, agricultural land, partition, theft and atrocities against women.

✓ The *gaon panchayat* is a village panchayat represented by all communities from the village. This is a non-statutory body unlike the *gram panchayat*. In a *gaon panchayat*, the *panch* are usually village elders. Any villager, irrespective of caste or community, can take the dispute to the *gaon panchayat*.

- ✓ *Sharia* courts have a historical genesis and are used by the followers of Islam. These courts deal with settlement of disputes relating to matters, such as, marriage, divorce and inheritance. These courts are located in different parts of the country.
- ✓ Some informal disputes resolution mechanisms have developed recently due to peoples' loss of confidence in the formal and traditional justice institutions. Some of these recent developments have their basis in community support and are facilitated by civil society organisations. To prevent gender-biased judgments, women's platforms have formed *Nari Adalats*. These have emerged as a response to domestic violence by rural women's collectives.
- ✓ Voluntary organisations also resolve disputes informally. For example, the *Shramajeevi Sangathana* began as a trade union of freed bonded labourers, and soon became a union of workers earning their livelihood through work on farms. The organisation engages in mobilising the local tribal communities to protect and promote their basic rights and fundamental freedoms and also serves as an informal institution for dispute resolution. Villagers come to the organisation with their grievances related to government schemes, harassment by upper caste or class or non-tribal in the village, harassment by police and powerful, exploitation based on social discrimination, violence committed against women within family, village and by the system.
- ✓ Traditional informal justice systems may be physically more accessible, but they often reflect the social and political inequities which define many poor and rural communities. These systems may not always be able to deliver appropriate, fair and equitable justice. Gender bias exists in almost all traditional justice systems. These can range from lack of representation to punishments meted out to women, who are the victims. The poor, women and *dalits* face challenges in accessing informal justice due to a lack of neutrality, unclear standards and guidelines and sometimes a lack of capacity on the part of the informal justice system actors.
- ✓ It is, however, important to recognise the role of traditional justice systems and engage with them. We can work towards promoting the positive aspects of these systems and reform the negative aspects, by working together with both the community users and leaders

12.9 TERMINAL QUESTIONS

1) Informal traditional justice systems do not comply with human rights standards. Identify some features of these systems that go against principles of human rights and rule of law.

2) Identify some ways in which we can strengthen traditional justice systems.

12.10 ANSWERS AND HINTS

Self-assessment Questions

1) Common disputes which are handled by the traditional justice institutions are: dispute over cow slaughter, family matters, land-related issues, adultery, murder, rape, theft, teasing, dacoity, elopement, witchcraft.

2) Most marginalised people in both rural and urban areas prefer to use the informal traditional systems over the formal justice systems for the following reasons:
   - Formal systems are costly to access
   - Illiteracy and ignorance of legal processes
   - Poor quality advocates deter people from approaching the formal systems and lack of proper legal assistance
   - There is a tendency of secrecy in the formal systems
   - Refusal to register complaint by police
   - Lack of awareness about legal rights
   - Lack of confidence in the formal systems due to bias such as caste
   - The formal justice system is not user friendly, but costly and time consuming
   - The formal justice system gives a misconception to the people that justice is not meant for the poor
   - Corruption
   - Religious prohibitions for women in '*purdah*'
   - Political interference

Terminal Questions

1) Refer to Section 12.7
2) Refer to Section 12.8

12.11 REFERENCES AND SUGGESTED READINGS

Vasudha Dhagamwar, 'The Shoe Fitted Me and I Wore It: Women and Traditional Justice Systems in India', *in* Kalpana Kannabiran ed., *The Violence of Normal Times: Essays on Women's Lived Realities* (New Delhi: Women Unlimited, 2005).

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UNIT 13 RIGHT TO INFORMATION

Structure

13.1 INTRODUCTION

In this unit you will study the Right to Information Act (we will refer to it as 'the Act') and its usefulness as an institutional mechanism to provide greater transparency and accountability in governance. We will begin by discussing the development of the right to information and the purpose of the Act. This unit will be a useful guide for submitting an application and obtaining information under the Act.

13.2 OBJECTIVES

After studying this unit, you should be able to:

- ✓ define the 'right to information' and its significance to ordinary citizens;

- ✓ explain the development of the right to information in India;
- ✓ describe the salient features of the Right to Information Act, 2005; and
- ✓ prepare an application seeking information under the Act.

13.3 EVOLUTION OF THE RIGHT TO INFORMATION

Right to information is a significant step towards making institutions of governance more accountable to the people. Information in the hands of ordinary citizens prevents corruption and increases efficiency in governance. The greater the access people have to information, the greater shall be the responsiveness of the government to community needs. Without information, people cannot adequately exercise their rights and responsibilities as citizens, or make informed choices.

The right to information in India has a lengthy history, as old as the Constitution itself. However, this right, as enjoyed by citizens today, is a relatively recent phenomenon. Our present experience with right to information is the result of a long campaign by civil society groups to bring about transparency and accountability in government by incorporating a procedure for the application of this right. In the space of less than a decade, the movement for right to information has succeeded in institutionalising the right and empowering ordinary citizens with the ability to exercise far greater control over the State.

The movement for right to information did not create a new right – rather, it generated conditions for the effective exercise of this right. Although the Constitution of India does not contain a specific reference to the right to information, this right has been read into the chapter on Fundamental Rights – particularly the right to freedom of speech and expression under Article 19 (1) (a) of the Constitution. The recognition of the right to information as a fundamental right is significant since, as you learnt earlier in the course, 'fundamental rights' cannot be violated by either executive or legislative action, and act as a powerful check on the exercise of governmental powers.

The Supreme Court of India has, in many cases, favoured the disclosure of governmental information and transparency, but the strongest articulation of a fundamental right to information was in the case of the *State of Uttar Pradesh* v *Raj Narain*[1] where the Court explicitly recognized the right to information as being derived from the right to freedom of speech and expression, and therefore, also a fundamental right under the Constitution.

Despite judicial recognition of the right, no laws were passed guaranteeing the right to information and the executive continued to deny citizens access to government information. The movement for the right to information was led by a people's organization, the *Mazdoor Kisaan Shakti Sangathan* (MKSS). This movement, which began in Rajasthan, led to a nationwide campaign for a law to guarantee the right to information to every citizen. The first right to information law was passed in Rajasthan, and other states too passed similar laws guaranteeing the right. The central Right to Information Act, 2005 became operational from 12 October 2005.

[1] AIR 1975 SC 865.

13.4 PURPOSE OF THE RIGHT TO INFORMATION ACT, 2005

The Act was introduced in 2005 with the aim of providing a practical regime to operationalise the right to information in India. The Act enables every citizen to access documents that may otherwise be available only at the discretion of the government. This Act overrides and has supremacy over the Official Secrets Act, 1923, wherever the latter is applicable.

13.5 OVERVIEW OF THE ACT

Section 1 deals with the extent, commencement and application of the Act. Section 2 deals with definitions. Chapter II establishes the right of all citizens to information and deals with the obligations of public authorities, which include the obligation to make voluntary declarations and appoint Public Information Officers (PIO) to assist the public in obtaining information. This Chapter also provides the mechanism for submitting applications, and the procedure to be followed by PIOs in the disposal of applications.

Chapters III and IV deal with the establishment of the Information Commissions. Chapter V details the powers and functions of the Information Commissions. Citizens are provided with a two-tier system of appeal, and the freedom to complain before the appropriate Commission regarding the non-implementation of the Act (Sections 18 – 20).

Finally, Chapter VI deals with residuary matters like protection of acts done in good faith, overriding effect of the Act, power to make rules, non-application of the Act to certain organisations, jurisdiction of courts etc. There are two Schedules to the Act. A more detailed analysis of the Act is provided in the following sections.

13.6 APPLICATION OF THE ACT

The Act gives every citizen the right to information. This means the right to obtain information from all public authorities, and binds all public authorities to provide such information to citizens in the manner provided in the Act. It is important, therefore, to identify clearly what constitutes a 'public authority' for the purposes of the Act.

Section 2 (h) defines 'public authority' to mean any authority or body or institution of self-government established or constituted:

a) by or under the Constitution;

b) by any other law made by parliament;

c) by any other law made by state legislature;

d) by notification issued or order made by the appropriate government, and includes any:
   - body owned, controlled or substantially financed, and
   - non-governmental organisation substantially financed,
   - directly or indirectly by funds provided by the appropriate government.

Apart from offices directly under the central, state or local government, information can be sought from universities, public sector companies and statutory authorities.

The Act specifically exempts intelligence and security organisations specified under Schedule II of the Act from the operation of the Act, unless the information sought relates to an allegation of corruption or a violation of human rights.

On the whole, the Act does not apply to private bodies that are not substantially financed by the government. However, the extent to which the Act applies to cooperative bodies and societies differs amongst the states. There is a growing demand that the Act should be extended to apply equally to private bodies, particularly those that engage in the delivery of public services.

13.7 WHO CAN ACCESS INFORMATION UNDER THE ACT?

Only a 'citizen' is empowered to access information under the Act. The right to information is only applicable to citizens – and therefore – individuals. Companies, societies and other organisations are not permitted to seek information under the Act.

The practical significance of this is that any application seeking information must be submitted by a citizen in his/her individual capacity. It is important that you include your name and signature in the application.

This does not mean that all applications on behalf of a corporation or society will be automatically rejected. The Central Information Commission (CIC) in its decisions has held that an application submitted by an office bearer, on the company's letterhead, is valid, and cannot be rejected by the PIO since it is presumed to have been submitted in his individual capacity.[2] However, the legal position on this point is still unclear.

Self-assessment Question

1) Discuss application of the Act – who is bound by the Act and who can make use of its provisions?

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13.8 MEANING OF 'INFORMATION' UNDER THE ACT

13.8.1 What Constitutes Information under the Act?

Information forms the subject matter of the Act. Therefore, it is important that we have a clear understanding of what constitutes 'information' under the Act.

[2] Decision No. CIC/WB/A/2006/00336 at www.cic.gov.in/CIC-Orders/Decision_09082006_1.pdf.

> Section 2 (f) defines information as: "any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force".

'Information' therefore does not include 'any' information. It refers only to information as is recorded, stored and/or disseminated by the public authority. Information relating to a private body must be capable of being accessed by a public authority in order to be included under the Act. For example, news itself is not information, but statements and newsletters released by the Public Relations Officers are information within the meaning of Section 2 (f). Information that is otherwise open and available is not information under the Act – one cannot ask the PIO about rail or air transport timings!

13.8.2 Right to Information under the Act

The right to information is defined under Section 2 (j) and recognises the right of every citizen to inspect government documents and records, obtain certified copies of documents and records, obtain certified samples of material, and, if information is stored in a computer or any other device, obtain information through an electronic mode. Any citizen can exercise this right by making a request in writing under the Act.

A person can ask for any information related to the government's functioning, such as, copies of contracts of various government works, status of any application filed with the government, status of corruption cases pending, sample materials of any government work, documents related to various policies and budgets of the governments. In short, a citizen can access any information that relates to administration, and which the authorities under the Act are obliged to publish or record.

There are two limitations to the exercise of this right by a citizen. First, the information in question must be 'held by or under the control of any public authority'. Secondly, the information requested must not be exempt from disclosure under Section 8 of the Act.

13.8.3 Exempted Information

The Act also provides that certain types of information are exempt from disclosure to the general public (Sections 8 and 9 of the Act). 'Exempted information' constitutes information:

a) that would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific and economic interests of the State, relation with a foreign State or lead to incitement of an offence;

b) the disclosure of which may constitute contempt of court;

c) the disclosure of which would cause a breach of privilege of parliament or a state legislature;

d) the disclosure of which would harm the competitive position of a third party, such as, commercial confidence, trade secrets or intellectual property;

e) available to a person in his fiduciary (i.e. held in trust) relationship;

f) received in confidence from a foreign government;

g) the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

h) which would impede the process of investigation or apprehension or prosecution of offenders;

i) Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;

j) which relates to personal information, the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual;

k) involving infringement of copyright held by a person other than the State.

A request for exempted information may be rejected by the PIO. The same may be made available to the public in cases where the PIO or appellate authority decides that the public interest served by revealing the information outweighs the harm to protected interests. Also, where part of the document is exempted but the other part (which is severable, or can be separated from the exempted portion) can be disclosed, the PIO cannot reject the request for the latter part.

Decisions of the Cabinet, the reasons thereof, and the material on the basis of which decisions were made shall be made public after the decision has been taken, unless they relate to any subject, which is otherwise exempt from disclosure under the exemption clauses. Also, any information that pertains to a matter that is twenty years prior to the date of the request shall be made available to the public.

Public Interest

The Act does not define 'public interest'. However the term is used in several instances, particularly related to the disclosure of exempted or third party information. The CIC in a 2006 decision held that for the purpose of the Act, public interest includes disclosure of information that leads to greater transparency and accountability in the working of a public authority.[3]

A more general definition of public interest was provided in *State of Gujarat* v *Mirzapur Moti Kureshi Kasab Jamat*[4] where the Supreme Court held that "the interest of the general public (public interest) is of a wide import covering public order, public health, public security, morals, economic welfare of the community, and the objects mentioned in Part IV of the Constitution i.e. Directive Principles of State Policy.

13.8.4 Third Party Information

A 'third party' is a person other than the citizen making the request for information, and includes a public authority. The issue of third party information arises when a PIO intends to disclose information that relates to a third party or has been

[3] Decision No. CIC/OK/A/2006/00046, dt. 02.05.2006; www. cic.gov.in/CIC-Orders/Decision_02052006_5.pdf .

[4] AIR 2006 SC 212.

provided by that party, and has been treated as confidential by the concerned authority.

In such an event, the third party has the right to be informed of the PIO's intention to disclose the information, and to make written or oral submissions in this regard, which must be considered by the PIO while taking a decision on the matter. However, except in the case of trade or commercial secrets, disclosure of third party information may be permitted if the public interest outweighs the possible harm to the third party.

Self-assessment Questions

2) What is the definition of 'information' under the Act?

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3) Under what circumstances can exempted information be disclosed to the public?

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13.9 OBLIGATIONS OF PUBLIC AUTHORITIES UNDER THE ACT

13.9.1 Voluntary Declarations

Every public authority, under Section 4, is duty bound to maintain and publish information, such as:

a) particulars of the organisation, its functions and duties;

b) powers and duties of its officers and employees;

c) procedure followed in the decision-making process;

d) norms set by the authority for the discharge of its functions;

e) rules, regulations, instructions, manuals and records held by the authority;

f) directory of its employees and remuneration received by them;

g) budget allocated to each department; and

h) names, designation and details of the PIOs.

Voluntary disclosures are usually accessible on the website, notice board, or publications of that public authority.

13.9.2 Appointment of Public Information Officers (PIO)

Every public authority (government department) must appoint one or more special officers (called PIO) in all its administrative units to provide information to citizens.

Assistant Public Information Officers ('APIO') are also appointed at each sub-district level (*Tehsil*). The APIO will receive your application for information or appeal and forward it immediately to the concerned PIO or appellate authority.

13.10 PROCEDURE FOR ACCESSING INFORMATION UNDER THE ACT

The Act was introduced to provide a practical procedure through which citizens could exercise their fundamental right to information.

13.10.1 Application Format and Framing of Questions

The first step in writing an application for information is to identify the relevant public authority and to evaluate the information sought against the voluntary disclosures made by the authority. The next step is to frame questions keeping in mind the information you seek. Questions must be framed in a clear, specific, and comprehensive manner. Questions may be detailed and could be written in the form of a list. To avoid ambiguity, each point should address a single piece of information or work or record. There is no prohibition or limit on the number of questions or the range of subjects permitted in a single application. However, it is advisable to limit the questions raised in an application to a defined area and to cover a specific subject to ensure a timely and effective response by the PIO.

It is advisable to avoid framing questions in the form of complaints or requests for redressal. Failure to frame an application as a clear request for information could result in the application being rejected by the PIO.

The application for information may be written or typed in English, Hindi or the local language of the area and addressed to the designated PIO or APIO. If a request cannot be made in writing, the PIO must assist in reducing the request in writing. Some States even consider email communications and oral requests to be valid applications for information, subject to payment of the application fee.

The application need not be written according to a specific format. Although some states have provided a format for applications under their respective Rules, the CIC has clarified that an application can be made on a plain paper and cannot be rejected for not being submitted in a prescribed format. There is no format specified for applications to central authorities. However, in cases where a format is provided, it is better to write the application accordingly. Application forms can be obtained from the state government website or the website of the concerned public authority.

All applications must include the following information:

- applicant's full postal address and contact details;
- name and designation of the relevant P.I.O. (when known to the applicant); and
- applicant's name and signature.

The application should also describe the issue, location and period pertaining to

which information is sought. Significantly, the applicant is not required to reveal the reasons or justification for requesting the information to the public authority.

13.10.2 Procedure for Submitting the Application and Payment of Fees

The application can be submitted along with the application fee to the relevant PIO or APIO. Information regarding the designated PIO can be obtained through the voluntary declarations of the authority or from its website. A partial list of PIO/APIO and first appellate authorities for central and state governments is available at the website www.rti.gov.in.

The managers of Customer Care Centre (CCC) at all district head post offices are designated APIOs, and are authorised to receive applications for all central government ministries and departments. The application and the fee must be submitted to the relevant official. The APIO is responsible for delivering the application to the PIO concerned. A list of these post offices is available at the website www.indiapost.gov.in

If you are unable to locate the PIO, your application can be addressed to the head of the public authority, who will direct the application to the concerned PIO. If a public authority has failed to appoint a PIO under the Act, a complaint may be submitted to the Information Commission demanding the appointment of a PIO. Applications cannot be transferred between PIOs in the same department or authority. Transfer of an application is only possible if another public authority holds the requested information.[5]

The central and state governments have slightly different rules governing submission of an application and payment of fees. Applications to a central government department can be submitted on plain paper or electronically. All states accept applications submitted on plain paper, although the provision for electronic submission may not be practical at present.

Under the central government Rules ('Central Rules'), an application to a central authority must be accompanied by an application fee of Rs.10/-, which must be paid either in cash, or demand draft, or banker's cheque payable to the Accounts Officer of the concerned authority. Central government departments do not accept court fee stamps. State governments have prescribed different rates and methods of payment for application fees in their respective State Rules. Usually, the application fee does not exceed Rs.50/- per application. In all cases the fee must be reasonable and not prohibitive. No fees are charged of persons living below the poverty line. Rules of some states permit payment by court fee stamps. Of all the payment options available, this method is by far the most convenient.

Self-assessment Question

4) To whom is the application under RTI addressed?

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[5] Decision No. ICPB/C1/CIC/2006 at www.**cic**.gov.in/**CIC**-Orders/**CIC**_Order_Dtd_0603**2006**.pdf.

13.10.3 Response of the PIO to an Application for Information

Once an application for information is submitted, the concerned PIO may either supply the information sought or reject the request, in whole or in part, on the grounds provided under the Act.

Once the PIO decides to provide the information sought in the application, the PIO will send a 'decision notice' to the applicant containing the following information:

- further fee payable;
- advice about the applicant's right to appeal against the amount payable;
- details of the appellate authority;
- the time period within which the appeal should be filed; and
- any other information.

Information should be provided in the requested format.

If the request is rejected in whole or in part, the PIO must communicate the following information to the applicant:

- reasons for such rejection/decision;
- particulars of the appellate authority including his own name; and
- the time period within which an appeal must be filed.

The PIO must provide justification for rejecting the request for information.

A request for information may be rejected on the following grounds:

- if the information relates to organisations excluded under Section 24 of the Act;
- if the information is exempted under Section 8 of the Act;
- infringement of copyright laws under Section 9 of the Act; and
- where third party disclosures do not serve the public interest under Section 11 of the Act.

If only part of the requested information is rejected by the PIO, and the remaining part of the application can be separated from the rejected part, the PIO should provide the remaining information to the applicant under Section 10 of the Act.

13.10.4 Time Limit for Disposal of Application

The PIO must respond to an application within 30 days. The time period between the dispatch of the decision notice by the PIO and the payment of additional fees by the applicant is excluded when calculating this 30-day period. The CIC has recommended that the public authority should accept an advance deposit or payment made by the applicant at the time of submitting the application to ensure speedy response.

If a request has been made to an APIO, the time period for response is increased to 35 days. If the requested information relates to the life and liberty of a person, information must be given within 48 hours of receiving an application. In such cases, the application must be accompanied with substantive evidence that a threat to life and liberty exists.

If the information demanded pertains to an authority other than the one to which the application has been made, the PIO must transfer the application, within 5

days of receipt, to the relevant P.I.O. and inform the applicant of such transfer. In cases of human rights violations where the Information Commission's approval is required, the time period for response is extended to 45 days. If the interest of a third party is involved, the time limit for response by the PIO is 40 days.

If the PIO does not provide the information requested within the specified time limit, the PIO will be deemed to have refused the request for information.

13.10.5 Payment of Additional Fees

The PIO may ask for additional fees to be paid by an applicant before releasing information. As mentioned above, the applicant must be informed of the additional fee and also computation details, date by which payment must be made and details of the relevant appellate authority to whom the applicant may appeal against the amount payable. Additional fees may be required for providing copies of documents, inspection of records at the office and collection of samples.

In case the information is delivered after the mandatory time limit, information shall be provided free of charge and you may seek a refund of any fee that you paid.[6]

13.11 APPEALS

13.11.1 First Appeal

If you do not receive information or are dissatisfied with the information provided by the PIO, you can file an appeal with the First Appellate Authority within 30 days under Section 19 (1) of the Act. The Appellate Authority for first appeals is an officer appointed for this purpose by the public authority, or if no such officer is designated, an officer superior in rank to the PIO. More time, on reasonable grounds, may be granted for filing the first appeal. The central government has not prescribed a fee for first appeals till date.

The appeal can be drafted on plain paper. Some states have provided a format for first appeals, although no format is prescribed by the central government. In every case, the appeal must contain the following information:

- name/designation and address of the First Appellate Authority;
- name and contact details of the applicant;
- name and designation of the PIO;
- application ID no. and/or fee receipt no. issued by the authority at the time of applying, if any;
- photocopy of the application form;
- photocopy of the rejection letter or reply, if available;
- detailed 'grounds of appeal'; and
- the prayers or a list of the demands and requests to the Appellate Authority.

No fresh grounds may be raised at the appeal, unless they are found to be of such

[6] Decision No. CIC/AT/A/2005/00004 at www. cic.gov.in/CIC-Orders/CIC_Order_Dtd_ 06032006_3.pdf.

a nature that would warrant having to look into them.

An appellant has the right to be heard by the Appellate Authority though s/he is not required to attend such hearings in person.[7] In appeal proceedings, the PIO must prove before the authority that the rejection of the application was justified.

The first appeal should be disposed of within 30 days. This period can be extended by 15 days, with reasons being recorded for the extension. In the event that no response is received from the Appellate Authority within the mandatory time limit, the appeal is deemed to have been rejected.

13.11.2 Second Appeal

If the first appeal is partially or fully dismissed, a second appeal may be preferred before the State Information Commission (SIC) or the Central Information Commission (CIC) within 90 days of the order. More time may be provided to the applicant if the delay was on reasonable grounds. For the purpose of appeal, the CIC and SIC are parallel bodies and you cannot appeal to the CIC against the decision of a SIC.

Before arriving at a decision, the Information Commissioner has to first provide an opportunity of being heard to the designated PIO and then, either accept the appeal by giving some direction to the authority concerned or reject it outright. The Information Commission has the power to impose penalties and recommend disciplinary action against an officer who is found to have, without reasonable cause, obstructed the application. The Act does not prescribe a time limit for disposal of appeals by the Information Commission. Generally the CIC comes to a decision within 90 days of the filing of the appeal before the Commission.

Decisions of the Information Commission are final. No court can accept a case against any order made by the Information Commission. However, the writ jurisdiction of the Supreme Court and the High Courts under Articles 32 and 226 of the Constitution remain unaffected.

The Commission may review its own decision on the following grounds;

- where there is a technical error in the decision;
- if there was an omission to consider certain material facts relevant to the decision;
- if the appellant was not given an opportunity of being heard;
- if the PIO had not enclosed relevant supporting documents in his comments furnished to the Commission.

13.12 COMPLAINT

An applicant can file a complaint directly to the relevant Information Commission if his/her request for information is obstructed in any of the following ways:

- the public authority has failed to appoint a PIO/APIO;
- the PIO/APIO refuses to accept or transfer the request for information;

[7] Decision No. CIC/AT/A/2006/00040 dated 27.03.2006 at www. cic.gov.in/CIC-Orders/ CIC_Order_Dtd_27032006_3.pdf.

- the APIO refuses to transfer an appeal;
- the applicant is refused access to any information under the Act;
- the applicant was not given a response within the prescribed time limit;
- the applicant was required to pay a fee which he or she considers unreasonable;
- the applicant was given incomplete, misleading or false information; and
- with respect to any hurdle relating to any other matter relating to obtaining records and information under the Act.

There is no time limit for filing a complaint with the Information Commission. Unlike an appeal, a complaint can be filed directly with the Information Commission.

Self-assessment Question

5) What is the duty of the PIO if the request for application by a citizen is rejected?

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13.13 SUMMARY

- ✓ In this unit we have examined the evolution of the right to information in India, and have analysed the main features of the Right to Information Act, its applicability, and the procedure for accessing information under the Act.
- ✓ The aim of the Act is to provide a practical regime for implementing the right to information in India.
- ✓ It gives legal recognition to the right to information, and empowers ordinary citizens with the ability to obtain information from government sources as a matter of right.
- ✓ It provides for the procedure to be followed when applying for information (method of submission and payment of application fees) and the procedure for disposal of the application by the designated authority.
- ✓ The Act provides for the establishment of independent Central and State Information Commissions.
- ✓ Citizens are provided with a two-tier system of appeal, and the freedom to complain to the concerned Information Commission in case of any obstruction to the exercise of their right.
- ✓ Importantly, the Act provides for stringent penalty provisions for delay or denial of information or, indeed, for knowingly seeking to mislead an applicant.

13.14 TERMINAL QUESTIONS

1) What is the Right to Information? How is it used?

2) What is the procedure for accessing information under the Right to Information Act? Discuss the responsibilities of the PIO and the time frame for dealing with the application.

13.15 ANSWERS AND HINTS

Self-assessment Questions

1) Any Indian citizen can make use of the RTI Act and the government and every public authority/body/institution is bound by the Act.

2) 'Information' under RTI means any material in the form of records, documents, electronic forms etc.

3) Exempted information means any information that would prejudicially affect the sovereignty and integrity of the country or information which is confidential and its disclosure could erode public trust in the government.

4) The application under RTI Act is addressed to the Public Information Officer (PIO).

5) The PIO should give reasons in writing for such rejection, particulars of the appellate authority including his own name and the time period within which an appeal must be filed.

Terminal Questions

1) Refer to Sections 13.6, 13.7, 13.8.

2) Refer to Section 13.10.

13.17 REFERENCES AND SUGGESTED READING

The Right to Information Act, 2005.

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Society for Participatory Research in Asia, *Analysis of Judgments of the Central Information Commission on the Right to Information Act, 2005* (New Delhi: PRIA, 2007) available on http://www.pria.org.

Web Resources

http://www.cic.gov.in.

Ewa Wojkowska**,** *Doing Justice: How informal justice systems can contribute* (UNDP, 2006) available at

Salim, a twelve years old boy is working in a dhaba.

The Code of Criminal Procedure (CrPC) was re-enacted in 1973 with the objective of providing a fair trial, a speedy trial and a fair deal to the poorer sections. In the new Cr.P.C., Section 304 which provides for legal aid to the accused before the sessions court only fails to fulfil these objectives. The Cr.P.C. does not provide for the right to legal aid in other criminal proceedings or at any of the other stages of the criminal process. This is a major lacuna which needs to be remedied for the realisation of the right to equal access to justice as the poor are the invisible victims of the criminal justice.