UNIT 12 LEGAL AID AND SERVICES

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12.1 INTRODUCTION

The Constitution of India has taken elaborate steps to ensure the protection of the rights of citizens of India. The Constitution, in the Fundamental Rights as well as in the Directive Principles of State Policy provides for ample mechanisms for the same. There is perhaps no greater violation of human rights of an individual than human trafficking. A case of human trafficking implies that all fundamental rights are simultaneously violated. Thus, victims of human trafficking, especially women and children, should receive complete protection and “unconditional” assistance.

12.2 OBJECTIVES

After studying this unit, you should be able to:
1. describe the concept of Legal Aid;
2. analyse how the system of Legal Aid functions in India;
3. discuss the hierarchy of the Legal Services Authorities; and
4. analyse how a victim of trafficking may be provided with legal aid and support.

Note for teacher

After completion of this unit the student must be able to understand the concepts of legal aid for victims/witnesses in cases of trafficking. As trafficking cannot be stopped without prosecution and conviction of traffickers, it is very important for students to learn that legal aid is available and can be easily provided to all victims of trafficking.

12.3 LEGAL AID – CONCEPT AND HISTORY

Article 39A of the Constitution of India provides that State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure
that opportunities for securing justice are not denied to any citizen by reason of economic or other disability.

Articles 14 and 22(1) also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all.

Legal aid strives to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society. Since 1952, the Govt. of India also started addressing to the question of legal aid for the poor in various conferences of Law Ministers and Law Commissions. In 1960, some guidelines were drawn by the Govt. for legal aid schemes. In different states legal aid schemes were floated through Legal Aid Boards, Societies and Law Departments. In 1980, a Committee at the national level was constituted to oversee and supervise legal aid programmes throughout the country under the Chairmanship of Justice P.N. Bhagwati, then a Judge of the Supreme Court of India. This Committee came to be known as CILAS (Committee for Implementing Legal Aid Schemes) and started monitoring legal aid activities throughout the country. The introduction of Lok Adalats added a new chapter to the justice dispensation system of this country and succeeded in providing a supplementary forum to the litigants for conciliatory settlement of their disputes. In 1987 Legal Services Authorities Act was enacted to give a statutory base to legal aid programmes throughout the country on a uniform pattern. This Act was finally enforced on 9th of November, 1995 after certain amendments were introduced therein by the Amendment Act of 1994. Justice R.N. Mishra the then Chief Justice of India played a key role in the enforcement of the Act. National Legal Services Authority was constituted on 5th December, 1995.

12.4 ELIGIBILITY CRITERION FOR LEGAL AID

Section 12 of the Legal Services Authorities Act, 1987 prescribes the criteria for giving legal services to the eligible persons. Section 12 of the Act reads as under:

“Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is

a) a member of a Scheduled Caste or Scheduled Tribe;
b) a victim of trafficking in human beings or begar as referred to in Article 23 of the Constitution;
d) a mentally ill or otherwise disabled person;
e) 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 disaster; or
f) an industrial workman; or

g) in custody, including custody in a protective home within the meaning of clause (g) of Section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956); or in a juvenile home within the meaning of clause.

j) of Section 2 of the Juvenile Justice Act, 1986 (53 of 1986) or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of Section 2 of the Mental Health Act, 1987 (14 of 1987), ……”

Thus there is a special provision for providing access to legal aid to victims of trafficking, as well as for women and children.
12.5 LEGAL SERVICES AUTHORITIES – HIERARCHY

Legal Services Authorities after examining the eligibility criteria of an applicant and the existence of a prima facie case in his favour provide him counsel at State expense, pay the required Court Fee in the matter and bear all incidental expenses in connection with the case. The person to whom legal aid is provided is not called upon to spend anything on the litigation once it is supported by a Legal Services Authority. A nationwide network has been envisaged under the Act for providing legal aid and assistance. National Legal Services Authority is the apex body constituted to lay down policies and principles for making legal services available under the provisions of the Act and to frame most effective and economical schemes for legal services. It also disburses funds and grants to State Legal Services Authorities and NGOs for implementing legal aid schemes and programmes. In every State a State Legal Services Authority is constituted to give effect to the policies and directions of the Central Authority (NALSA) and to give legal services to the people and conduct Lok Adalats in the State. State Legal Services Authority is headed by the Chief Justice of the State High Court who is its Patron-in-Chief. A serving or retired Judge of the High Court is nominated as its Executive Chairman. District Legal Services Authority is constituted in every District to implement Legal Aid Programmes and Schemes in the District. The District Judge of the District is its ex-officio Chairman. Taluk Legal Services Committees are also constituted for each of the Taluk or Mandal or for group of Taluk or Mandals to coordinate the activities of legal services in the Taluk and to organise Lok Adalats. Every Taluk Legal Services Committee is headed by a senior Civil Judge operating within the jurisdiction of the Committee who is its ex-officio Chairman.

Self Assessment Question
2) What is the hierarchy of Legal Services Authority?

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12.6 **LEGAL AID AND TRAFFICKING VICTIMS**

The National Legal Services Authority has initiated a scheme in the form of All India Legal Aid Cell on Child Rights to cater specifically to the needs of children in need of care and protection. This legal Aid Cell is expected to provide the following functions:

**a) Legal Representation**

Children in need of immediate assistance shall be provided with such care and protection as required by law. Any such action shall be in accordance with the procedures established by law and may be through complaints/representation before various authorities of law enforcement and/or other social justice and welfare mechanisms and courts of law. For e.g., the Cell may receive a complaint of a trafficked child being abused and acting upon the case, the Cell may send a person with the legal opinion on the course of action to be taken by the Police/Magistrate/other relevant authority for appropriate action for rescue of child, prosecution of trafficker and rehabilitation of child.

The Cell will also coordinate with SLSAs to provide suitable legal aid to pursue cases. SLSAs shall provide suitable legal support in their respective cases.

**b) Legal Counselling**

Complainants in need of legal aid/assistance/advice in cases of violations of child rights may seek all aid/assistance from the Legal Aid Cell, even for pursuing cases filed for the prosecution of child traffickers, etc., by counseling the child/witnesses who are the victims, so that they are able to testify in court without fear. Psychological support in such cases can also be extended.

**c) Legal Advice**

The Cell shall render such aid/assistance/advice to the complainant as well as send its legal opinion in such cases to the concerned govt. authorities for suitable action. Governmental and Non Govt. Organisations, Civil Societies, Self Help Groups, Voluntary Organisations, Parents, Relatives, Concerned Friends and Members of the public may, on behalf of the Children in need of care & protection, approach the Cell and receive legal advice regarding the legal rights of children and the means for accessing those rights. The Cell will provide requisite information and advice to the concerned regarding the legal options available for protecting the interest of the children. The Cell will also assist the concerned in making a decision regarding various options available to pursue the case and if required help in formulation of complaints, petitions, etc.

*Steps will be taken for sensitization of Judicial officers, Govt. officers, Police officers, etc. and conduct skill enhancement programs for panel lawyers.*
d) Coordination with all SLSAs and Govt. Departments

The Cell will operate a Network Referral System, whereby victims can be referred to the State Legal Services Authorities for legal services in resolving legal issues. If a information is received by the Cell about an offence committed or likely to be committed in another State, the concerned SLSA would be informed and requested to render all assistance in the case and to further submit an action take report, for effective coordination. Also a person in need of help, who is located in another State, can be directed by the Cell towards the nearest point of assistance in that State. The Cell will actively build this network and stimulate the free flow of information and constructive thinking concerning child rights in India.

e) Undertake Research based survey and make suitable suggestions

The Cell shall take up Research based surveys and make suitable suggestions to the Central or State Governments for effective implementation of laws on child rights especially dealing with prohibition of Child Labour and ensuring social re-integration and rehabilitation.

f) Publication of informative legal material for general awareness like handbills, pamphlets, etc., for general awareness.

g) Academic activities including development of Standard Operating Procedures, legal rules and guidelines on specific cases, publication of periodical newsletter, etc.

h) Periodical reporting of follow up actions about rescued/assisted children shall be undertaken by the Legal Aid Cell. State Legal Services Authorities and/or other govt. authorities will apprise and assist the Cell in cases of follow up.

i) Information Collection and Data Management: The Legal Aid Cell will collect complaints and other information regarding cases of the violation of child rights from various sources and all data concerning cases will be recorded in a database system of BBA, for the sake of the correct and mutually comparable recording of relevant data.

12.7 SUMMARY

Indian Constitution provides under Article 39A free legal aid to the poor and the needy. Various provisions of the Constitutions of India form the basis of the concept of legal aid. Committee for implementing legal aid schemes was constituted in 1980 to monitor legal aid activities throughout India. In 1987, Legal Services Authority Act was enacted to provide a statutory base to legal aid programmes. The National Legal Services Authority has initiated a scheme in the form of All India Legal Aid Cell for Child Rights to cater the needs of child in care of need and protection.

12.8 TERMINAL QUESTIONS

1) Write a not on the history of Legal Aid?
2) What are the functions of the All India Legal Aid Cell on Child Rights Reform?
12.9 ANSWERS AND HINTS

Self Assessment Questions
1) Refer to Section 12.4
2) Refer to Section 12.5

Terminal Questions
1) Refer to Section 12.3
2) Refer to Section 12.6

12.10 REFERENCES AND SUGGESTED READINGS

1) <http://causelists.nic.in/nalsa/>
2) National Legal Services Authority Act, 1987