

Block

4**SOCIAL LEGISLATIONS**

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BLOCK INTRODUCTION

There are four units in the Block 4 on 'Social Legislation'. All these are designed for socially disadvantaged sections of our society to engineer social change. Each unit provides legal provisions for a particular vulnerable section of society in the contemporary socio-political context of India.

Unit 1 is on 'Legal Provision for Women' and deals with rights and privileges of women, right of women under personal laws, on dowry, the laws for women with regard to immoral traffic, indecent representation and rape, the law governing sex selection, and the protection of women from domestic violence Act 2005. It is seen that the law specifically related to women's issues are too inadequate to bring about any substantial change. As social workers, you will certainly be able to enlighten the target groups on these important areas.

Unit 2 describes laws for those sections of society who suffer from various social, economic, physical or mental disabilities. It gives an overview of the various constitutional and legislative provisions. The unit particularly covers laws for persons with physical and mental disabilities, social disability and law, law for bonded labourers, law on right to compensation, and the laws governing women's right at work place.

Unit 3 on 'Legal Provision for Children' examines the legal rights and privileges bestowed on children in India. Knowledge on the constitutional and legislative efforts to support child rights, specific provisions for child labour, juvenile justice systems, and the laws governing abuse and trafficking of children are very important for social workers. The aim of this unit is to enable you to comprehend the strides made in India for the protection of child's rights.

The last unit on 'Legal Aid, Social Advocacy and Role of Social Worker' presents a discourse on the relationship between law and professional social work. The unit describe the concept and objectives of legal aid, legal aid to the poor, legal aid and government initiatives, judicial activism, social advocacy and public interest litigation, law and social activism: consumer protection and right to information; right of the disadvantaged and the role of social workers in dealing with legal aid and legal assistance for the clients.

It is expected that the above mentioned four units of this block will give you a clear picture on the social legislations that exist in India for the vulnerable groups such as women, person with disability, and children.



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UNIT 1 LEGAL PROVISION FOR WOMEN

Structure

*Ranjana Sehgal**

- 1.0 Objectives
- 1.1 Introduction
- 1.2 Rights and Privileges of Women in India
- 1.3 Rights of Women under Personal Family Laws
- 1.4 The Law on Dowry
- 1.5 The Laws Pertaining to Immoral Traffic, Indecent Representation and Rape
- 1.6 The Law Governing Sex Selection
- 1.7 The Protection of Women from Domestic Violence Act, 2005
- 1.8 Let Us Sum Up
- 1.9 Key Words
- 1.10 Further Readings and References
- 1.11 Answers to Check Your Progress

1.0 OBJECTIVES

Legislative provisions for women, is the focus of this Unit. The thrust is on making the learner understand the legal rights and privileges bestowed on women in India and the effectiveness of the laws enacted for them in the contemporary socio-political context. After studying this Unit you should be able to:

- give a bird's eye view of constitutional and legislative provisions and special initiatives adopted for women in India;
- analyze the legal provisions under the various personal laws with a special focus on women's rights;
- state the provisions of the law governing dowry and assess the impact of the law on the problem;
- critically examine the legal enactments for women and related offences such as immoral traffic, indecent representation and rape; and
- outline the main provisions of the Pre-natal Diagnostic Techniques Amendment Act 2002 and the Protection of Women from Domestic Violence Act 2005.

1.1 INTRODUCTION

Law is not only a tool for enforcing discipline, but, a potent instrument for engineering social change, if used efficaciously. Since the times of the social

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reformers, whose fight against injustice and oppression of women compelled the government to enact laws in support of their cause, law has been looked upon as a significant mechanism for helping the weak and the marginalized. The first landmark law for women, framed to remove the obstacles to the marriage of a widow, the Widow Remarriage Act, was passed in the year 1856. Laws prohibiting the practice of sati and child marriage followed soon. A plethora of laws have since flowed from the portals of our Parliament giving specific rights and privileges to women.

If the number of laws enacted for women are any parameter to measure gender equality, then without an iota of doubt, India would rank as one of the most progressive states in the world, committed to equality and social justice. The reality, albeit, is different as our laws, not only suffer from procedural lacuna but are dismally low on the implementation count. At home the women are victims of domestic violence and at workplace the employer is not always sensitive to their demands and requirements. Even though there are provisions in the Indian laws for punishing the person guilty of molestation, rape, eve-teasing and other manifestations of sexual harassment, they are seldom used as the criminal procedure is cumbersome and tedious. The investigating and enforcement authorities, usually, adopt a lackadaisical approach to these issues and it takes an unduly long time for the criminal courts to dispose of matters. Let us review some of the existing laws which impact the lives of Indian women.

1.2 RIGHTS AND PRIVILEGES OF WOMEN IN INDIA

As Constitutional Provisions related to women have been dealt with elaborately in the unit titled 'Social ideals of the Constitution' we shall refrain from discussing them in detail over here.

Constitutional Provisions

The Indian Constitution not only grants equality to women but also empowers the State to adopt measures of positive discrimination in their favour for neutralizing the cumulative effect of the socio-economic and political disadvantages faced by them over the years. Fundamental rights and directive principles of state policy, among others, ensure equality before the law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, and a guarantee of equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the constitution are of specific importance in this regard.

Legislative Provisions

Legal Rights: To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services, especially to women. Although women may be victims of any of the crimes such as 'murder', 'robbery', 'cheating' etc., the crimes, which are directed specifically against women, are characterized as 'Crimes against Women'. These are broadly classified under two categories.

1) **The Crimes Identified under the Indian Penal Code (IPC)**

- i) Rape (Sec.376 IPC)
- ii) Kidnapping & Abduction for different purposes (Sec.363-373)
- iii) Homicide for Dowry, Dowry Deaths or their attempts (Sec.302/304-B IPC)
- iv) Torture, both mental and physical (Sec.498-A IPC)
- v) Molestation (Sec.354 IPC)
- vi) Sexual Harassment (Sec. 509 IPC)
- vii) Importation of girls (up to 21 years of age)

2) **The Provisions under the Specific laws:**

Although all laws mentioned below are not gender specific, some of them affect women significantly. These laws have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Some Acts which have special provisions to safeguard women and their interests are:

- 1) The Factories Act, 1948
- 2) The Employees State Insurance Act, 1948
- 3) The Plantation Labor Act, 1951
- 4) Mines Act 1952
- 5) The Family Courts Act, 1954
- 6) The Special Marriage Act, 1954
- 7) The Hindu Marriage Act, 1955
- 8) The Hindu Succession Act, 1956
- 9) The Hindu Adoption and Maintenance Act, 1956
- 10) Hindu Minority and Guardianship Act 1956
- 11) Immoral Traffic (Prevention) Act, 1956
- 12) The Maternity Benefit Act, 1961 (Amended in 1995).
- 13) Dowry Prohibition Act, 1961
- 14) The Medical Termination of Pregnancy Act, 1971
- 15) The Contract Labor (Regulation and Abolition) Act, 1976
- 16) The Equal Remuneration Act, 1976
- 17) The Child Marriage Restraint (Amendment) Act, 1979
- 18) The Criminal Law (Amendment) Act, 1983
- 19) Indecent Representation of Women (Prohibition) Act, 1986
- 20) Commission of Sati (Prevention) Act, 1987
- 21) National Commission for Women Act, 1990

22) The Pre-natal Diagnostic Techniques Amendment Act 2002

23) The Protection of Women from Domestic Violence Act, 2005

Special Initiatives For Women

Apart from laws, various governments from time to time have undertaken special initiatives and affirmative programs for women, some of the important ones are mentioned below:

1) The National Commission for Women

In January 1992, the Government set-up the National Commission for Women with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, review the existing legislation to suggest amendments wherever necessary, etc.

2) Reservation for Women in Local Self-Government

The 72nd and 73rd Constitutional Amendment Acts passed in 1992 by Parliament ensure one-third of the total seats for women in all elected offices in local bodies, whether in rural or urban areas.

3) The National Plan of Action for Girl Child (1991-2000)

This Plan of Action was to ensure the survival, protection and development of the girl child with the ultimate objective of building up a better future for her.

4) National Policy for the Empowerment of Women, 2001

The Department of Women & Child Development in the Ministry of Human Resource Development prepared a “National Policy for the Empowerment of Women” in the year 2001. The policy aims at bringing about the advancement, development and empowerment of women.

Check Your Progress I

Note: Use the space provided for your answer.

1) Which crimes can be called as the “crimes against women”? List the crimes identified as such under the Indian Penal Code (IPC).

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2) What are the special initiatives taken by the government for women?

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1.3 RIGHTS OF WOMEN UNDER PERSONAL/FAMILY LAWS

In India, each religious community is governed by its own personal or family laws, as some prefer to call them. These laws are derived from the scriptures, customs, and statutory codifications and are recognized by the State. Social reforms down the centuries have brought about many modifications but as we still do not have a common civil code, these family laws continue to govern the Indians in important areas of their personal lives, such as marriage, divorce, adoption, maintenance etc.

Despite the rapid social and economic progress and change, century's old attitude towards women still persists. Laws, as they exist in India have only helped to codify the secondary status of women, irrespective of their religion, for its application to the life of a woman often makes it impossible for her to lead an independent life without male support. We shall now discuss the provisions under some important laws, which govern marriage, inheritance, adoption, maintenance, etc. among the dominant religious groups. As it is not possible to discuss all these laws in detail, the focus shall be on the rights of women.

Rights of Women under Hindu Law

India presents a strange contradiction with regard to position of women. Hindu mythology and tradition have so molded the Indian woman that mythological figures like Sita, Saraswati have become ideal figures of womanhood. The dominant characteristics of Hindu woman are loyalty to husband, steadfastness and chastity. A woman's husband is her lord, her master and she has no separate existence.

1) Marriage and Divorce

"In childhood a female must be subject to her father, in youth to her husband, when lord is dead, to her sons; a woman must never be independent", so said Manu, the father of Hindu law centuries ago. In the 19th century, the British rulers passed several laws to protect customs and traditions, while abolishing objectionable practices like sati. Some such revolutionary laws were Hindu Widows Remarriage Act 1865 and the Bramho Samaj Marriage Act 1872, the forerunner of the present Special Marriage Act.

The Hindu Marriage Act 1955 was enacted to amend and codify the law relating to marriage among Hindus. The Act has reformed the Hindu law of marriage and covers entire India except the state of Jammu & Kashmir. It contains 30 sections distributed over 6 chapters. Marriage is considered a sacred bond among Hindus. Before the passing of The Hindu Marriage Act 1955:

- Child marriage was rampant
- divorce was not allowed
- Polygamy was allowed but not polyandry.
- Women virtually worshipped their husbands and tolerated their cruelty

The Act has changed all this. The Act now

- Prohibits child marriage and polygamy
- Makes available the grounds of divorce to both men and women.

Conditions of Hindu Marriage

For a Hindu marriage to be valid the following conditions should be fulfilled:

- 1) neither party should have a spouse living at the time of marriage
- 2) the parties should be capable of giving a valid consent to the marriage
- 3) neither party, though capable of giving a valid consent should be suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage.
- 4) neither party should be suffering from recurrent attacks of insanity or epilepsy
- 5) bridegroom should have attained the age of 21 years and the bride the age of 18 years at the time of marriage.

The Hindu law lays down the conditions for registration of marriage but does not make registration mandatory. However, the parties can register the marriage anytime after it is solemnized.

Void and Voidable Marriages

Void marriage is one which produces no mutual rights and obligations between the parties. Such a marriage does not exist in the eyes of law. A Hindu marriage is void if,

- 1) either party has a spouse living at the time of marriage
- 2) the marriage is between parties within prohibited degrees of relationship

Voidable marriages are those which are void at the option of the aggrieved party. Such marriages can be annulled by a decree of nullity. The Hindu marriage has been considered a sacrament, thus, unbreakable and impossible to dissolve, but now a Hindu marriage is voidable under the following circumstances:

- 1) impotence of one party
- 2) unsoundness of mind or mental disorder making one party incapable of giving consent to the marriage
- 3) consent by force or fraud
- 4) woman pregnant by a man, not her husband, at the time of marriage.

Other grounds for separation and divorce are:

- 1) adultery
- 2) cruelty
- 3) desertion
- 4) venereal disease in a communicable form
- 5) leprosy,
- 6) presumption of death if a party has been unheard of being alive for at least 7 years
- 7) one year's separation
- 8) polygamy, husband's commission of rape, sodomy or bestiality are special grounds additionally available to the Hindu wife.

2) Woman's Right to Property Under the Hindu Succession Act 1956

During the British rule the legislative interference was restricted and adhoc, as they did not want to offend the popular Hindu sentiments. As a consequence, the Hindu law ceased to be responsive to the successive new challenges. According to **Gangrade**, the Hindu Woman's Right to Property Act 1937, though a piecemeal legislation, had repercussions on the pure Hindu laws of succession under the Mitakshara and Dayabhaga system. The catalyst effect of the preamble of the Indian Constitution combined with the guarantee of equality before law and abolition of discrimination on grounds of birth or sex, enshrined in Article 14 and 15 respectively, was the gift of Indian Republic to the Hindu women.

Succession to property can be either testamentary or intestate. The Hindu Succession Act 1956 comprises the law which deals with intestate succession and lays the rules for the distribution of the deceased's property among his or her legal heirs. It extends to the whole of India except Jammu and Kashmir and is the lengthiest of all Hindu family laws. It has 31 sections divided into four chapters. While the overall objective of the law was to evolve a fairly uniform system for all Hindus with respect to intestate succession, one aim was to remove the inequalities between men and women with regard to right of inheritance.

Appraisal

Though the law does not discriminate on the basis of sex, it does put certain restrictions on the rights of the female heirs. They are restrained from claiming partition in the family dwelling house, till the male heirs choose to divide their shares. However, the following rights have been given to the Hindu female by this law:

- 1) Section 14 of the Act has brought about revolutionary change in the rights of females to hold and dispose of property, removing the distinction between stridhana and non stridhana. She can now be an absolute owner of any movable and immovable property.
- 2) The property inherited by a female from her parent's side passes on to her children or grand children. In their absence, it reverts back to her parental family.
- 3) Son and daughter get equal share in property.
- 4) Any Hindu female can, by will, dispose of property, provided it can be disposed of by will.
- 5) In majority of the cases, the share of the coparcener in the joint family property now devolves on class I heirs, thereby improving the position of the female relatives mentioned in class I to the schedule. This means that the class I heirs inherit both the self acquired and the joint family property.
- 6) A widow of a predeceased son or predeceased grandson etc. cannot claim a right to the property of the intestate, if remarried on that date. However subsequent remarriage does not affect the right to property already vested in her.
- 7) The Hindu succession (Amendment) Act, 2005 significantly enlarged the rights of the daughters over their father's property and makes them co-parceners of the father's Hindu Undivided Family and she can also become the Karta of her father's HUF.

3) Adoption and Maintenance

i) Right to Adopt

Adoption is a socio-legal process whereby adults become parents to children not born to them. According to our Vedas “endless are the worlds of those who have sons, there is no place for the man who is destitute of male offspring”. As having an offspring, that too a son was essential for a Hindu to attain ‘moksha’, adoption in ancient times was ‘taking of son’. The Hindu Adoption and Maintenance Act, 1956, deals with adoption by Hindus, Sikhs, Buddhists and Jains only. In the face of stiff opposition from the Muslim and Parsis, the government’s efforts since Independence to pass a uniform secular law on adoption, have proved futile.

- 1) The law aims to regulate and codify the process of adoption among the Hindus and at the same time give certain rights to the Hindu female, hitherto, unavailable to her under the traditional Hindu law.
- 2) Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption. A person who already has a son or a grandson cannot adopt a son, same goes in case of daughters. A valid adoption cannot be cancelled.
- 3) Any Hindu female who is of sound mind, not a minor, can adopt even if unmarried or a divorcee. A woman whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind, also, has the capacity to take a son or daughter in adoption.
- 4) Only the father or mother or the guardian of a child have the capacity to give the child in adoption. Normally a father alone has the right to give in adoption, but not without the consent of the mother unless the mother has been declared by a court of competent jurisdiction to be of unsound mind.
- 5) The mother may give the child in adoption, in case the father is dead, has finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.
- 6) If the adoption is of a female, by a male, or vice-versa, the adoptive parent should be at least twenty-one years older than the person to be adopted.

ii) Right to Maintenance

a) Maintenance of wife

Hindu wife is entitled to be maintained by her husband during her lifetime. A Hindu wife shall be entitled to live separately from her husband and claim maintenance:

- if he is guilty of desertion;
- has treated her with such cruelty;
- is suffering from a virulent form of leprosy;
- has any other wife living;
- keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere;

A Hindu wife shall not be entitled to separate residence and maintenance from her husband,

- if she is unchaste
- has ceased to be a Hindu by conversion to another religion.

b) **Maintenance of widowed daughter-in-law**

A Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained after the death of her husband by her father-in-law. Such obligation shall cease on the re-marriage of the daughter-in-law.

4) **Minority and Guardianship**

Rights under the Hindu Minority and Guardianship Act, 1956

- Natural guardians of a Hindu minor are listed under Section 6, and a welcome feature is that women are also recognized as a natural guardian, albeit after the father. It is pertinent to note that the right of guardianship of a minor first vests in the father and after him in the mother. The custody of a minor who has not completed the age of five years shall be with the mother, in view of its tender age. Here guardianship should not be confused with custody as the guardianship continues to vest with the father.
- This discriminatory approach has since been done away by the Supreme Court judgment, whereby now the mother is recognized a natural guardian, even if the father is living.
- The natural guardian in relation to the person and property of a minor married girl is her husband.
- Section 7 talks about the guardianship of a minor adopted son, which is the same as mentioned in Section 5 regarding the natural child. However there is no provision in the Act as to the natural guardianship of an adoptive daughter, even though a minor girl can also be given and taken in adoption under the Hindu Adoption and maintenance Act.
- Section 9 enlists the testamentary guardians and their powers. According to the provision, the father of a minor legitimate minor can by Will, appoint a guardian for the minor's person as well as property. However, this appointment shall not come into effect, if the father predeceases the mother, but shall revive if the mother dies without appointing by will any person as guardian.
- Previously under the Hindu law, even the mother could be excluded from the guardianship by the father. She had no power to appoint a testamentary guardian but this Act has bestowed, more or less, equal rights on the father and the mother, as far as, the appointment of a testamentary guardian is concerned.

Rights of Women under Muslim Law

1) **Marriage and Divorce**

Muslim law in India is largely uncodified and has to be deduced from the sacred texts. The personal law of the Muslims is complicated and differs from community to community. However, Shariat is the central core of Islam and is the infallible

guide to ethics. Koran considered as the divine revelation (the word of God) is the highest source of Islamic law. It consists of nearly 2000 verses. Only 200 verses embody the legal principles and eighty deal with law of personal status (Agnes, 1999) Sunnis and Shias are the two main sects of Islam. Sunnis are in majority in India.

a) Requisites of a Muslim Nikah

- Muslim marriage requires proposal (Ijab) from one party and acceptance (Qubul) from the other, as is required for a contract.
- There can be no marriage without free consent and such consent should not be obtained by means of coercion, fraud or undue influence.
- Just as in case of contract, entered by a guardian, on attaining majority, so can a marriage contract in Muslim Law be set aside by a minor on attaining the age of puberty.
- Stipulation of mehr/dower at the time of marriage is an important aspect of Muslim marriage, which is meant as a safe guard to the woman. Dower can be in cash or in kind. Till the dower is paid the widow has the right to retain possession of her husband's property.
- The parties to a Muslim marriage are free to enter into an ante-nuptial or post-nuptial agreement which is enforceable by law. These agreements stipulate conditions regarding dissolution of marriage; the wife is entitled to divorce without the intervention of the court. A woman can stipulate conditions such as her husband would not enter into a second marriage. If the husband violates the conditions like any other contract, there is also provision for the breach of marriage contract.

Other Prohibitions

- Unlawful conjunction
- Marrying a fifth wife
- Marrying a woman undergoing iddat
- Marrying a non-Muslim
- Absence of proper witnesses
- Woman contracting a second marriage during the subsistence of the first marriage
- Marrying a pregnant women
- Marrying own divorced wife
- Marrying during pilgrimage.

b) Divorce

Marriage under Islam is only a civil contract and not a sacrament. Divorce in the form of Talaq pronounced by the husband is an extra judicial pronouncement, hence, outside the ambit of our courts. A Muslim man who has attained puberty and is of sound mind has the right to divorce his wife

without giving any reason. If the intention to divorce is clear, it can be pronounced even in the absence of wife. Talaq in Muslim law is a unilateral divorce at the behest of the husband. A husband can leave his wife without any reasons merely by pronouncing the word “talaq” thrice or once in certain situations.

A Muslim woman cannot divorce the husband by ‘talaq’. To obtain divorce certain conditions are essential, which are to be fulfilled, for her to get the marriage dissolved under the Dissolution of Muslim Marriage Act 1939. The husband and the wife with mutual agreement can also put an end to the marriage. The Muslim Women (Protection of Rights on Divorce) Act, 1986 protects the rights of Muslim women who have been divorced by or have obtained divorce from their husbands.

2) **Right of Inheritance**

Muslim law of succession is based on rules of succession as laid down in the Shariat. Although the Muslim law contains many positive features which safeguard the interests of the woman, they have got diluted due to socio-cultural reasons and rigidity of the orthodox sections of the community. Prevalence of purdah, child marriage, poverty and illiteracy have rendered women vulnerable and increased their dependence on men.

- In the matter of inheritance, Muslim law does not recognize the rule of survivorship.
- It recognizes the woman as the absolute owner of any property inherited from a male or a female.
- A woman’s share under the Muslim law is not equal to her male counterpart. A male heir of the same class takes a double share of a female heir of the same class e.g. husband takes double the share of a widow and son of a daughter.
- The man has to provide the mehr for his wife and bear the marriage expenses of his unmarried daughters and sisters from his share of inheritance. A Muslim cannot will away more than one-third of his property, not even in the favour of the legal heirs, as they have to inherit as per the rules of succession.

3) **Maintenance**

Maintenance under the Muslim law becomes obligatory by the virtue of three reasons — namely, marriage, relationship and property. Accordingly, the following are entitled to maintenance:

- 1) Wife
- 2) Descendants (son, daughter, grandson, grand daughter)
- 3) Ascendants (parents and grand parents)
- 4) Collaterals

i) **Maintenance of Wife:** A wife, according to Muslim law, is entitled to maintenance from the husband, irrespective of the fact, that she has means to maintain herself or not. Wife’s right to get maintenance is absolute. A husband can have four wives, but if he marries a second woman, the first wife may claim separate residence and maintenance.

Wife is not entitled to maintenance, if

- She has not attained puberty.
- She refuses access to husband or refuses to live with him without any lawful excuse.
- Has been living in adultery or separately by mutual consent.
- She has been imprisoned.
- Maintenance of wife under an Agreement

4) **The Statutory Provisions**

The statutory efforts in the field of Muslim law have been ‘The Dissolution of the Marriage Act, 1939’ and ‘The Muslim Women (Protection of Rights on Divorce) Act 1986’. The Dissolution of the Marriage Act, 1939, touches on the grounds on which a Muslim woman may claim divorce through court; however, it does not contain the elaborate provisions found in other marriage laws in India. The Muslim marriage is not governed by the Indian Majority Act, 1875. The principles that govern marriage under Muslim law are similar to trade contracts based on offer, acceptance and consideration. According to Muslim Law, marriage / ‘nikah’ is a contract underlying a permanent relationship based on mutual consent.

The Muslim Women (Protection of Rights on Divorce) Act, 1986 lays down the criterion for women to be granted maintenance after divorce. The wife is entitled to have a reasonable and fair provision of maintenance from her former husband. In case of children born to her before or after her divorce, a reasonable and fair provision has to be made and paid by her former husband for a period of two years from the respective dates of birth of such children; Further, an amount equal to the sum of mehr or dower agreed at time of her marriage also has to be given. In addition, the Act also provides that where a divorced Muslim woman is unable to maintain herself after the period of iddat, the magistrate shall order such of her relatives, as would be entitled to inherit her property on her death, to pay such reasonable and fair maintenance to her, as he may deem fit and proper, having regard to the needs and standard of life of the divorced woman.

In the absence of such relatives, the magistrate may direct State Wakf Board functioning in the area, to pay such maintenance as determined by him. An application of divorced wife under Section 3(2) can be disposed of under the provisions of Sections 125 to 128, Cr. P.C. if the parties so desire. There is no provision in the Act which nullifies orders passed under Section 125, Cr. P.c. The Act also does not take away any vested right of the Muslim woman. All obligations of maintenance, however, end with her remarriage.

The Act, thus, secures to a divorced Muslim woman sufficient means of livelihood so that she is not thrown on the street without a roof over her head and without any means of sustaining herself.

Laws for Christians

1) **Marriage and Divorce**

- i) **Marriage:** An Act known as “Indian Christian Marriage Act, 1872”, relates to solemnization of marriage of persons professing Christian religion.

Christian marriages can be solemnized by a person who has received Episcopal ordination; any clergyman of the Church of Scotland; any Minister of Religion licensed under the Act; a Marriage Registrar appointed under the Act; any person licensed under Section 9 to grant certificates of marriage. Marriage under Christian Law requires a free and voluntary consent between the parties. When there is a minor, as defined in the Act, the consent of father or guardian is necessary. Marriage is not permissible between the parties who are within the prohibited degrees of relationship under the Act. There is no legal impediment for marriage between a Catholic and a Protestant. By marriage, the husband and wife become one person.

ii) **Divorce:** The law regarding divorce, judicial separation and allied matters is contained in the Indian Divorce Act, 1869. The grounds for Divorce are as follows:

- That the respondent was impotent at the time of marriage and institution of the suit,
- That the parties are within the prohibited degree of consanguinity or affinity,
- That either party was suffering from mental illness at the time of marriage.
- That the former husband or wife of either party was living at the time of marriage and the said marriage was then in force.
- Nothing shall affect the jurisdiction of the High Court to make decrees of nullity of marriage on the ground that the consent of either party was obtained by force or fraud.

The wife can seek the dissolution of marriage on the following grounds:

- That her husband has gone through a form of marriage with another woman.
- Incestuous adultery.
- Bigamy with adultery.
- Marriage with another woman with adultery.
- Rape, sodomy or bestiality.
- Adultery coupled with cruelty.
- Adultery coupled with desertion without reasonable cause for two years or more.

2) **Maintenance**

A Christian woman can claim maintenance from her spouse through criminal proceeding or/and civil proceeding. Interested parties may pursue both criminal and civil proceedings, simultaneously, as there is no legal bar to it. In criminal proceedings, the religion of the parties does not matter at all, unlike in civil proceedings.

If a divorced Christian wife cannot support herself in the post divorce period, she need not worry as a remedy is in store for her in law. Under Section 37 of the

Indian Divorce Act, 1869, she can apply for alimony/maintenance in a civil court or High Court and, husband will be liable to pay her alimony, as the court may order, till her lifetime. The Indian Divorce Act, 1869 which is only applicable to those persons who practice the Christianity religion inter alia governs maintenance rights of a Christian wife.

Secular Law

The Special Marriage Act, 1954

The Special Marriage Act, 1954 was enacted to provide a special form of marriage for any person in India and all Indian nationals in foreign countries, irrespective of the religion or faith followed by them. The Act is a blessing for those who want to marry across religious, caste and regional barriers. For the good of the Indian citizens abroad, the Act provides for the appointment of diplomatic and consular officers as marriage officers for solemnizing and registering marriages between Indian citizens abroad. Notice of intended marriage in writing in specified form is to be given to the Marriage Officer. On receiving the notice, the marriage officer enters it into the notice book. The marriage may be solemnized in any form, which the parties may choose to adopt. However, no marriage is complete and binding unless each party says to the other in the presence of the Marriage Officer and the three witnesses in any language understood by the parties, 'I take thee to be my lawful wife/husband'. After the marriage has been solemnized the Marriage Officer shall enter it in the Marriage Certificate Book and this shall be signed by the parties to the marriage and the three witnesses and shall be conclusive evidence of the marriage.

Maintenance

Alternatively, as previously mentioned Sec.125 of Cr.P.C.1973 is always there in the secular realm. Under the Code of Criminal Procedure, 1973 (2 of 1974), right of maintenance extends not only to the wife and dependent children, but also to indigent parents and divorced wives. Claim of the wife, etc., however, depends on the husband having sufficient means. Claim of maintenance for all dependent persons was limited to Rs 500 per month but now it has been increased and the magistrate can exercise his discretion in adjudging a reasonable amount. Inclusion of the right of maintenance under the Code of Criminal Procedure has the great advantage of making the remedy both speedy and cheap.

Check Your Progress II

Note: Use the space provided for your answer.

- 1) What rights are enjoyed by the Hindu woman under the Hindu Succession Act, 1956?

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2) What are the requisites of a Muslim Nikah?

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3) Elaborate on the provisions governing marriage and divorce among the Christians?

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1.4 THE LAW ON DOWRY

In India there has been a custom since very ancient times, wherein the parents of the bride give presents to the bride at the time of her marriage. The landed property was inherited by the sons and the daughter was given her share in the form of gold and other utility items at the time of marriage. The valuables given were known as 'stridhan' and happily given by the parents, without any demand being made from the groom's side. These were passed onto her children after her or to her parents, if she died childless. It is difficult to say at what specific point in history, stridhan transformed into dowry, but what was once a voluntary gesture, gradually became compulsory, so much so that it became a social problem.

The custom of dowry has, today, taken monstrous dimensions and given rise to many other problems such as indebtedness, unwanted marriages, prostitution, dowry deaths and suicides. As the evil of dowry was assuming serious dimensions, the matter was raised in the very first session of the Lok Sabha. On account of increasing political and social pressure, the Dowry Prohibition Act, 1961 was passed. Although some States already had the State laws like the Bihar Dowry Restraint Act 1950, the Andhra Pradesh Dowry Restraint Act 1958, a central uniform legislation to curb the menace was very much needed.

The Salient Features of the Dowry Prohibition Act, 1961

This Act aims to prohibit the giving or taking of dowry. It has 10 sections and extends to the whole of India.

Section 2 defines "Dowry" as any property or valuable security given or agreed to be given either directly or indirectly;

- a) by the one party to a marriage to the other party to the marriage; or
- b) by the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person at or before or any time after

the marriage in connection with the marriage of the said parties but does not include dower or mehar in the case of persons under Muslim personal law.

Dowry, thus, is a transaction between two parties involving cash, or other valuable articles such as precious metals, gems, clothing, vehicles, real estate or goods for entertainment, made as a condition for solemnizing a marriage.

Section 3 of the Act provides for a penalty for giving or taking dowry. Any person, who gives or takes or abets the giving or taking of dowry is punishable under this Act, for a term which shall not be less than five year and with fine which shall not be less then fifteen thousand rupees or the amount of the value of such dowry, whichever is more.

Section 4 of the act prohibits and penalizes demanding of dowry. If any person, demands any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which may extend to ten thousand rupees:

Section 4-A puts a ban on any advertisement offering any share in property or money or a share in any business or other interest as consideration for the marriage of one's son or daughter and makes it punishable with imprisonment for a term which shall not be less than six months, but which may extend to five years, or with fine which may extend to fifteen thousand rupees.

While section 5 makes any agreement for the giving or taking of dowry void, Section 6 provides that dowry be for the benefit of the wife or her heirs, thereby making an attempt to revert to the old concept of Stridhan.

A new Section 8-A has been inserted in the Act by the Dowry Prohibition (amendment) Act, 1986 which has shifted the onus to the accused. In other words, where a person is prosecuted for taking or abetting the taking of any dowry Under Section 3, or the demanding of dowry Under Section 4, the burden of proving that he has not committed the offence shall lie on him. The insertion of the new section 8-B by the Dowry Prohibition (Amendment) Act 1986, provides for the appointment of the Dowry Prohibition Officers, entrusted with the following powers and functions, namely:

- To see that the provisions of this Act are complied with
- To prevent, as far as possible, the taking or the demanding of, dowry
- To collect such evidence as may be necessary for the prosecution of persons committing offence under the Act

There is a further provision for the appointment of an advisory board for the purpose of advising and assisting the Dowry Prohibition Officer in the efficient performance of their functions under this Act, consisting of, among others, not more than five social welfare workers (out of whom at least two shall be women)

The complaint in a dowry case can be made within ten years of marriage. The court can take cognizance of the offence either suo motu or on a police report or on a complaint made by the aggrieved person, his/her relative or parent or by a recognized welfare institution or organization. The Act also provides for setting up of family courts for the trial of dowry cases.

Dowry is the classic example of an Indian social evil. Despite the incessant campaign for its abolition and four and a half decades during which the giving and taking of dowry has been formally declared as an offence, the evil practice continues unabated. What is even more interesting is the fact that dowry, which has been an evil, primarily associated with the Hindu society, has today permeated all sections, be it Muslims, Christians or Sikhs. Here the other religious groups have no qualms about accepting a predominantly Hindu practice. Legal restraints notwithstanding, dowry continues to be an important ingredient of Indian marriages, which goes to show that the spread of education and the anti dowry law has not been able to contain the menace of dowry from making inroads into those castes and communities which traditionally did not adhere to the dowry system. This goes to show that in our country social pressures are more powerful than the law, even when the pressure is to do the wrong thing.

Positive Features: There are some welcome features of the law such as the stringent punishments, making even the demand of dowry punishable, appointment of the dowry prohibition officer etc. The Dowry Prohibition (amendment) Act 1986 makes the provisions of the original law more stringent and effective. The definition of the term dowry has now become comprehensive. Now a list of presents received by the bride and the bride groom is to be maintained in accordance with the rules. Failure makes the giver and receiver liable for punishment.

On paper it is a good law, which aims at removing a social evil and providing legal protection to women. The offences have been made cognizable and non-compoundable. The penalty for giving and taking of dowry has been enhanced under the amendment act.

Drawbacks: However, the working of the Act over the years has revealed that the law, though good on paper, has been poorly implemented. The provisions under the law have been largely ineffective in arresting the dowry menace.

- Lack of proper enforcement machinery and apathetic attitude of the police and poor conviction rate have reduced the efficacy of the law.
- The law depends heavily on common police for enforcement which is already burdened. Having regard to the country's size and population the successful implementation of the Act requires gigantic administrative machinery. The original Act failed in the absence of such a machinery so has the amended one. A well organized and efficient statutory machinery unfortunately is still not available.
- Dowry is all pervasive in Indian society, more so in the rural areas, where common law is hardly understood. Rural women may not even be aware that such a law exists, let alone its provisions.
- The amount of fine imposed should be equivalent to the value of dowry taken or demanded.
- The law does not seek active cooperation of the professional social workers for its enforcement and implementation.

What should be done?

Dowry is a socio-legal problem; hence, law may not be the be all and end all of the problem. The legal remedy needs to be backed with concerted effort by all sections of the society. Dowry has wide social acceptance and can be eliminated by creating awareness against the negative effects of dowry among the masses, leading to fundamental change in their attitudes. There is an urgent need to mobilize public opinion against dowry through intensive educational programmes at all levels, particularly in the rural pockets.

It is also suggested that the investigation in dowry case should preferably be entrusted to women police officers as far as possible because they may be socially and psychologically more equipped to handle such cases. Besides punishing the erring husband or his relative, as the case may be, with a term of imprisonment, he should be deprived of certain civic rights such as disqualifying him from holding any public office, holding elections etc. and his name should be widely publicized in local newspapers.

Recently, a number of non-governmental agencies and social organizations have done commendable work in helping the dowry victims and exposing the perpetrators of this crime with community assistance and guidance. The legal-aid workers including professional social workers, the law teachers and students should also take the initiative in the dowry eradication campaigns through an intensive legal literacy programme, not only in the cities and the towns but in remote village areas as well.

Check Your Progress III

Note: Use the space provided for your answer.

- 1) Give a critical appraisal of the Dowry Prohibition Act and explain what should be done to make the implementation of the law more effective?

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1.5 THE LAWS PERTAINING TO IMMORAL TRAFFIC, INDECENT REPRESENTATION AND RAPE

The Indecent Representation of Women (Prohibition) Act, 1986

Vulgar and indecent representation of women in writings and advertisements stare us from posters, magazine, news papers and television on a regular basis. It is a common sight to see scantily dressed women depicted in an indecent way, provocatively positioned over cars and bikes to attract consumers. What is alarming is that these trends are on the rise. More and more companies are resorting to provocative depiction of women, suggestively posed, which is an insult to any woman's dignity. It is indeed unfortunate that women continue to be depicted as sex objects. As a consequence of the campaigns and complaints of various women organizations, the Indecent Representation of Women (Prohibition) Act was finally

passed in December, 1986. It has the objective to prohibit the indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner and for the matters connected therewith or incidental thereto.

Section 2 prohibits the advertisements containing indecent representation of women. It says that no person shall publish, or cause to be published, or arrange or take part in the publication or exhibition of, any advertisement which contains indecent representation of women in any form.

Section 3 provides that no person shall produce sell, let to hire, distribute, circulate or send by post any books, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which contain indecent representation of women in any form.

Section 4 gives the power to any gazetted officer, authorized by the State Government, to enter and search place in which he has reason to believe that an offence under this Act has been or is being committed. It also gives him the right to seize any advertisement or any book, pamphlet, paper, slide, film, writing, drawing, painting, photograph, representation or figure which he has reason to believe contravenes any of the provisions of this Act;

Under Section 5 the offender shall be punishable, on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and in the event of a second or subsequent conviction with imprisonment for a term of not less than six months but which may extend to five years and also with a fine not less than ten thousand rupees but which may extend to one lakh rupees. In case of offences by companies, Section 6 provides that every person, who, at the time the offence was responsible to the company for the conduct of its business, shall be proceeded against and punished accordingly. The offences under the Act are cognizable and bailable.

Appraisal

Though the law fills up a long standing lacuna on the issue of indecent representation of women, it has failed to make any impact on the problem, which is assuming alarming proportions by the day. The Act has failed to touch upon some crucial points.

- Firstly, though the purpose of the Act is to prevent indecent representation of women in hoardings, literature, and other visual representations, it is silent about advertising on television.
- Secondly, there is nothing in the law which makes the action under this Act obligatory. If the officials charged with implementing the law do not perceive any indecency in a particular advertisement or poster, they may not be obliged to do anything about it.
- Thirdly, the machinery required for the effective implementation of the law is conspicuous by its absence, making this piece of legislation yet another case of the proverbial paper tiger that lacks the bite.
- Lastly, the conviction rate under this law has been a virtual zero.

Thus, we see that the law is vague on many pertinent points and inadequate to attend to the magnitude of the problem of sexist depiction of women in media. As

aply put by **Nandita Gandhi**, the law can well become a case study of a still born legislative effort. Complaints and disgust are not always enough for the making of a comprehensive and effective legislation.

The Immoral Traffic (Prevention) Act, 1956

The problem of human trafficking is not a contemporary problem but has been there at all times in all societies, the magnitude, albeit, is unparalleled. The shrinking globe, the increasing mobility, the porous borders have made the problem intense and remedial action difficult. The Immoral Traffic (Prevention) Act, 1956 was passed by parliament pursuant to the International Convention signed at New York on the 9th day of May, 1950, for the prevention of immoral traffic. The Act prescribes punishments for the various acts related to prostitution. The following acts have been made punishable:

- Keeping or managing of a brothel and knowingly living of the earnings of a prostitute (the punishment gets more stringent, if such earnings relate to the prostitution of a child or a minor)
- Procuring, inducing or taking a person for the sake of prostitution; if the person in respect of whom an offence under this sub- section is committed is a child, the punishment gets more rigorous
- Detaining a person on premises where prostitution is carried on, with or without her consent. If a person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence.
- Prostitution in or in the vicinity of public place i.e. places which are within a distance of two hundred meters of any place of public religious worship, educational institution, hotel, hospital, nursing home etc.
- Permitting prostitutes for purposes of their trade to remain in one's place.
- Seducing or soliciting for purpose of prostitution, as to be seen or heard from any public place or house.
- The Act makes provision for the appointment of special police officers and advisory body for dealing with offences under this Act. If a Magistrate has reason to believe that a person is living, carrying, or is being made to carry on, prostitution in a brothel, he may direct a police officer not below the rank of a sub-inspector to enter such brothel and to remove such person and produce her before him.
- A person who is carrying on, or is being made to carry on prostitution, may make an application, to the Magistrate within the local limits jurisdiction for an order that she may be kept in a protective home, or provided care and protection by the court
- The State Government may in its discretion establish as many protective homes and corrective institutions under this Act as it thinks fit, which shall be maintained in the prescribed manner.

Appraisal

There are a few provisions in the Act which go to make it a good piece of Social Legislation.

- 1) As social workers we are happy to see that this law is not in favour of excessive institutionalization.
- 2) For the enforcement of a law, the help of a social worker has been taken which is a good provision.
- 3) This law takes care of all the victims, irrespective of the fact whether they have violated law or not. Protection is given to those victims also who are in the danger of getting trapped into prostitution or likely to become the victims. There are three approaches to any problem, namely, Preventive, curative and After-care and this law takes care of all these.

Loopholes

- 1) The first difficulty in the enforcement of this law is the lack of women police officers. Another grave hindrance is the corruption prevalent among the police officials; they more than often have a regular share in the income of the brothels. This trade cannot survive without the assistance of the police.
- 2) If the police come to know that in a particular area a brothel is being run to raid the place they need bogus customers. Often they fail to convince people for this job because people refrain from getting themselves involved in these things. They have to make panchnama enquiry for which they require five witnesses which again are difficult to secure. Here they don't get cooperation of common public.
- 3) The law only concentrates on the supplier side. No provision is there to punish the customers.
- 4) The advisory committee including social workers is usually for name sake only.
- 5) The number of protective and corrective homes is inadequate and insufficient.

The law makes prostitution difficult but not impossible. The idea is not to render prostitution per se a criminal offence. If carried on in a public place or by two or more people it is punishable. So it is plausible to conclude that the law is not serious about eradicating this age old practice but only interested in ensuring that it is not a public nuisance. There are many difficulties in enforcing this law and it seems that some laws are made only to be violated. One thing is sure; social evils cannot be removed through law alone, no matter how excellent. The law does not seem to have made much impact on the evil of prostitution in this country, hence has not truly served the purpose for which it has been enacted.

The Law on Rape

Rape is a gruesome reality that exists, no matter how much we would like it to perish. Rape, the mere mention of the word has always evoked terror and fear among women since time immemorial, yet the society has not given it the serious attention, it deserves. . "When the body of a woman is violated, physically, mentally and emotionally she goes through a phase of shock, disbelief, anger and shame." Despite the existing long Indian legislative history, it is indeed unfortunate that we are still nowhere near a single comprehensive piece of legislation, which deals with sexual offences as a category. While there is no law to define sexual harassment, for rape, a woman has to seek relief under the common law – The Indian Penal Code – an archaic law reflective of the partisan mindset of our

legislators, enforced by a judiciary quite often exhibiting a similar mindset. In India rape is defined by our traditional common law, the Indian Penal Code Under Section 375, as follows:

A man is said to commit rape, if he has sexual intercourse with a woman in circumstances falling under any of the six following descriptions:

- against her will.
- without her consent.
- with her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
- with the consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
- with her consent when at the time of giving such consent by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
- with or without her consent when she is under 15 years of age.

To put it simply, a man is said to have committed rape, if he has sexual intercourse with a woman other than his wife and being his wife, below 15 years of age, by force or threat of force. Marital rape is not an offence, except where the girl is below 15 years of age or is judicially or customarily separated from her husband. We can classify rape into five categories.

Classification of Forms of Rape

Type	Explanation	Punishment
Child Rape	Rape of a girl below 12 years	Rigorous punishment for a term not less than 10 years of imprisonment for life plus fine.
Custodial	Rape by a police officer/ Public servant/ staff of a jail or remand home/ management or staff of a hospital.	Rigorous punishment for a term not less than 10 years or imprisonment for life plus fine.
Gang Rape	Rape by more than one person	Rigorous punishment for a term not less than 10 years or imprisonment for life plus fine.
Rape of a Pregnant	Rape of a Pregnant Women	Rigorous punishment for a term not less than 10 years or Women imprisonment for life plus fine.
Marital Rape	Forced sexual intercourse with ones own wife below 15 years of age or when she is judicially or customarily separated.	Rigorous punishment for a term not less than 10 years or imprisonment for life plus fine.
Ordinary Rape	All other rapes except the ones mentioned above.	Rigorous punishment for 7-10 years.

In all the above cases of rape, there is a proviso, which gives discretionary powers to the court to impose a lesser sentence for adequate and special reasons to be mentioned in the judgment.

Appraisal of the Law

The Indian Penal code was amended to provide that in any situation of custodial rape where the question is whether or not sexual intercourse was without the consent of the woman and she gives evidence before the court that she did not consent, the court would presume she did not consent to such intercourse. The law now also provides that the trial of rape must be held behind closed doors and introduces prohibition against the disclosure of the identity of the victims of rape (Under Section 228-A CRPC)

According to **Justice Saldanha**, rape is defined as sexual intercourse without the consent of the woman and has nothing to do with moral character; even a prostitute has the right to choose her client. He also recommended some changes in the judicial function in regard to the quantum of punishment given to the accused. “If a minor has been raped, the punishment should be stepped up to a death penalty. There is a controversy surrounding the death penalty, but if the judge uses his discretion, the death penalty can be awarded.”

How to Make the Law Effective?

The following are recommended to make the law effective in dealing with the problem of rape:

- A comprehensive separate law on rape should be enacted without any delay.
- An anti-rape cell should be established to secure speedy justice for rape victims.
- Special courts should be set up in every state to deal with rape cases in court.
- The cases must be handled with sensitivity by investigating officers and the hearings of the rape victims must be held without taunts and derision from the prosecuting party.
- Women judges should be assigned to hear such cases and there must be mandatory deadline of six months prescribed for the cases to be disposed of.
- The police needs to be sensitized to handle the cases of rape so that more women come forward to register the offence with the police.
- Though marital rape is the most common and repugnant form of masochism, Indian law does not consider it a crime. There should be a reappraisal of the statute to cover marital rape.
- The punishments should be made more stringent and rape victim should be offered compensation. If a minor has been raped, the punishment should be stepped up to a death penalty.
- Professional social workers, NGOs and other women’s organizations should be involved in the implementation of the Act especially to help victims reshape their lives.

The trauma suffered by the victims of rape and the social handicaps faced, thereafter, have not received the attention they deserve from the society at large and the law makers in particular. The victim's suffering is further compounded by insensitive and inefficient medical and forensic examinations, police investigations and lack of counseling. The specific law on Rape, whenever passed, should envisage a greater role for professional social workers.

Check Your Progress IV

Note: Use the space provided for your answer.

- 1) The Indecent Representation of Women (Prohibition) Act, 1986 is a stillborn law. Do you agree? Give reasons in support of your views.

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- 2) What are the major drawbacks of the Immoral Traffic (Prevention) Act, 1956? How effective has the law been in controlling the problem of prostitution?

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- 3) What constitutes Rape under the IPC? How can the law on Rape be made more effective?

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1.6 THE LAW GOVERNING SEX SELECTION

Gender discrimination has been a perennial problem and son preference its most evident manifestation in our society. Modern science and technology have not helped the situation, albeit made it worse. Science and technology, blatantly misused for perpetuating and aiding discrimination against women, has in fact, helped us to progress from the traditional female infanticide to the modern sex selective abortions. Sex ratio in the 0-6 group has seen a drastic decline over the years from 979 females per 1,000 males in 1981 to 945 per 1,000 in 1991 and down to 927 per 1,000 in 2001. This data from our census bears testimony to the deeply entrenched son preference and this had to be checked. The Pre Natal Diagnostic Tests (Regulation and Prohibition of Misuse) Act, 1994, the PNDT Act, in short, has been the first step in this direction. The passing of the law was no easy task and

owes its existence to the incessant campaign and struggle of The Forum against Sex Determination and Sex Pre-selection, (FASDSP).

The PNDT Act, despite being in force since January 1996, had not shown any evidence of stopping the practice of female foeticide. The indifferent attitude of the State to the issue and the poor implementation of the law lead to the filing of a Public Interest Litigation in the Supreme Court by **Sabu George**, the Centre for Enquiry into Health and Allied Theme (CEHAT) and the Mahila Sarvangeen Utkarsh Mandal (MASUM). They urged the Supreme Court for the effective implementation of the PNDT Act. The Supreme Court passed an order on 4th may 2001 entrusting the responsibility of examining the necessity of amending the Act to the central supervisory board and to make necessary recommendations to the Central Government based on it's order. Subsequently, the parliament passed the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 2002. (PCPNDT Act) aimed at banning the pre-conception sex selection techniques and prohibiting the misuse of pre-natal diagnostic techniques for sex-selective abortions.

Salient Features

- The Act makes mandatory, the compulsory registration of all diagnostic clinics and laboratories. It also makes mandatory the registration of ultra sound machines for use in the pre diagnostic tests with the appropriate authority.
- Now under the law, all genetic counseling centers, genetic laboratories, genetic clinics and ultra sound clinics involved in diagnosis for gynecological or other purposes have to maintain records of all the tests conducted by them. Any person who does ultra- sound test/ scan/procedure has to keep records indicating the woman's complete name, address, husband's name as well as name and address of the doctor/medical practitioner who referred the case along with the reasons for the referral.
- One of the objectives of the PIL was the upgradation of the PNDT Act by bringing into its ambit the recently developed pre-conception sex selection techniques. In line with this demand, techniques like Ericsson method (X and Y chromosome separation) and Pre-implantation Genetic (PGD) have now been covered by this law.
- The Act prohibits communicating the sex of the foetus to any one. It states that no person can communicate to the concerned pregnant woman or her relatives or any other person the sex of the foetus by words signs or any other manner while conducting prenatal diagnostic procedures.
- The Act now allows only qualified persons to use prenatal diagnostic techniques. The reasons for testing have to be recorded in writing and can be done in conditions given below.
 - The pregnant woman should be above 35 years;
 - She has undergone two or more spontaneous abortions or foetal loss;
 - She had been exposed to potentially teratogenic agents such as radiation, infection or chemicals.
 - She has a family history of mental retardation or physical deformities.

- With a Central Supervisory Board already in operation at the centre, the Act provides for the constitution of State Level Supervisory Boards (SLB) to monitor the implementation of the Act. The SLBs shall comprise members from Minister in-charge of Family Welfare in the state to various health officials. It shall also include ten members to be appointed by the State Government, two each from amongst —
 - Eminent Social Scientists
 - Eminent Women Activists
 - Eminent Gynecologists & Obstetricians.
 - Eminent Pediatricians.
 - Eminent Radiologists

The Supervisory Body, besides other functions shall create public awareness against the practice of pre-conception sex selection; review the activities of the appropriate authorities and take appropriate action in case of dereliction of duty; and monitor and review implementation of the provisions of the Act.

- Any violation of the Act, including unlicensed labs, leads to seizure of equipments. The fine for those who indulge in sex selection procedure has been doubled from Rs. 50,000 to Rs. 1 lakh with additional provisions for the suspension and cancellation of the registration of those as a medical Practitioner by the concerned Medical Council/ any other Registering Authority.

Appraisal of the Act

The Act was passed with the aim to regulate the use of Pre-natal diagnostic techniques for the purpose of detecting genetic abnormalities and the prevention of the misuse of these for the purpose of pre-natal sex determination leading to female foeticide. It has thus filled a long standing legal vacuum. The implementation of the PNDT Act 1994 and the subsequent PCPNDT Act 2002, however, have left a lot to be desired. The various bodies provided under the Act have either not been constituted, or even if constituted, have been largely ineffective in preventing the contravention of the Act.

- The private laboratories and clinics are only required to be registered, than banned from carrying out sex-determination tests. Actions have rarely been taken on the complaints made by the activist groups. With the proliferation of the private labs and clinics, it has become difficult to exercise any controls over them. The law is not an end in itself or adequate by itself to mitigate any problem. Though impossible to keep vigilance over thousands of Sex Determination clinics spread over the country, strict action against a few defaulters can have a salutary effect.

The health activists, legal bodies, women's organizations, NGO'S, media and professional social workers in collaboration with the Indian Medical Association need to take strong measures to stop the menace by building strong public opinion against the abuse of sex-determination and sex pre-selection techniques. Hence these stake holders should come together and see that the provisions of the Act are implemented to its fullest extent. Whatever may be the constraints of the present legal system and the broader social system, within which it operates, a

more comprehensive nation-wide law on sex determination tests is urgently needed, notwithstanding the fact that law is no means an end in itself, nor will it be sufficient to deal with the problem.

Check Your Progress V

Note: Use the space provided for your answer.

- 1) What are the distinguishing features of the new PCPNDT Act? How this law can be effectively implemented?

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1.7 THE PROTECTION OF WOMEN FROM VIOLENCE ACT, 2005

The Protection of Women from Domestic Violence Act, 2005 came into force from 26th October, 2006. Domestic or Family violence is one of the leading causes of female oppression in our country. Presently, domestic violence is addressed under Section 498 A of the Indian Penal Code, 1860. This section, however, has proved its inadequacy in seriously tackling this endemic problem. The Protection of Women from Domestic Violence Act, 2005 was enacted for effective protection of the rights of the women as guaranteed under the Constitution.

Main Features of the Act

- 1) Domestic violence as defined under Section 3 of the Act includes actual abuse or the threat of abuse, whether physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives is also covered under this definition.
- 2) The information regarding an act or acts of domestic violence does not necessarily have to be lodged by the aggrieved party but by “any person who has reason to believe that” such an act has been or is being committed. The implication is that even the neighbours, social workers, relatives etc. can all take initiative on behalf of the victim. [Chapter III - Sec. 4.]
- 3) The fear of being driven out of the house effectively silenced many women. The court, by this new Act, can now order that she not only reside in the same house but that a part of the house be allotted to her for her personal use, even if she has no legal claim or share in the property. [Chapter IV- Sec. 17]
- 4) The Act protects the woman not only from acts of violence to which she is subjected but even acts that are likely to take place in the future and also prohibits the aggressor from dispossessing the aggrieved person or in any other manner disturbing her possessions or entering the aggrieved person’s place of work. [Chapter IV- Sec. 18]

- 5) The accused can also be restrained from attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral, written, electronic or telephonic contact. He can even be prohibited from entering the room/area/house that is allotted to her by the court.
- 6) The Act empowers the magistrates to impose monetary relief and monthly payments of maintenance and even ask the accused to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of domestic violence and can also cover loss of earnings, medical expenses etc. The accused can also be asked to pay compensation and damages for injuries including mental torture and emotional distress caused by acts of domestic violence.
- 7) The offences under the Act are cognizable and non-bailable and invite a penalty of up to one year imprisonment and/or a fine up to Rs. 20,000/- and just on the testimony of the aggrieved person, the court may conclude that an offence has been committed by the accused”

Positive Features

- Primarily meant to provide protection to the wife or female live-in partner from violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women who are sisters, widows or mothers.
- A unique feature of the Act is that it ensures speedy justice, as the court has to start proceedings and have the first hearing within 3 days of the complaint being filed in court and every case has to be disposed of within a period of sixty days of the first hearing.
- Sometimes in camera proceedings can protect the aggrieved woman from a lot of humiliation and shame especially in cases where explicit acts of sexual abuse and violence are being discussed in an open court and it allows for her dignity and privacy to be maintained.
- Another good feature is that the Act makes provision for the assistance of welfare experts to the aggrieved, if found necessary by the Magistrate. The Act provides for appointment of Protection Officers and NGOs to assist the woman for medical examination, legal aid, safe shelter, etc.
- A novel feature of the Act is that non-compliance and improper discharge of duties by the Protection Officer has also been made an offence under the Act.

Drawbacks

- Chances of the Act being misused are enormous. The presence of the malafide intentions on part of one party to harass the other cannot be ruled out.
- The trial should be held in camera not when either party so desires but only if the aggrieved party so desires. Also, the aggrieved party should be allowed to be accompanied by a relative/woman social worker etc. of her choice for moral support.
- There is also a doubt as to whether this Act can be thoroughly implemented by the administrative bodies. Can the Police, Protection Officers and NGO's really do their work efficiently? This is a question with no sure answer.

The objectives of the Act can be achieved only with an effective implementation in the rural areas, where access to legal justice is still a distant reality. The government should ensure a wide publicity of the provisions of the Act in these areas through every possible means. Within the existing unjust and unequal system, the Act of legislature that gives oppressed women some respite. Hopefully, the contradictions will be so heightened that society will have to go in for more long-lasting solutions.

Check Your Progress VI

Note: Use the space provided for your answer.

- 1) Give a critical appraisal of the Protection of Women from Domestic Violence Act, 2005.

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1.8 LET US SUM UP

Indian women continue to be a voiceless mass. It is high time that the women of our country get a respectable and dignified place in the society, not as an act of charity but as a matter of right. Our Constitution and the various laws enacted from time to time have conferred various rights and privileges on women. The Constitution has endowed them, among other rights, the all important right to equality. Laws such as Dowry Prohibition Act, Immoral Traffic Prevention Act, the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, Maternity Benefit Act, Indecent Representation of Women Prohibition Act have been significant legislative enactments for women. Personal laws governing marriage, divorce, adoption, maintenance etc. among different religions, have further strengthened their position. However, a review of the implementation of these laws often leaves much to be desired. The non-implementation of the laws on dowry, immoral traffic, child marriage, sex selection, are glaring examples. There is a growing disillusionment among women organizations about the effective role of law. According to most, the laws specifically related to women's issues are too inadequate to bring about any substantial change. The general observation has been that though the Government enacts progressive legislations under popular demand, they drag their feet at the time of their implementation. The bodies which are vitally important for the actual implementation of the Act are mostly not constituted and if constituted rarely function effectively. The lack of political will along with rampant corruption have been major hurdles in the implementation of several progressive legislations.

Many laws specifically enacted for women have been in existence for a good number of years, but their impact on the targeted problems and issues is yet to be seen; the Prohibition of Dowry Act is a case in point. Dowry, an evil, primarily associated with the Hindu society, has today permeated all sections of society, be it Muslims, Christians or Sikhs. Legal restraints notwithstanding, dowry continues to be an important ingredient of Indian marriages, which goes to show that the spread of education and the anti dowry law has not been able to contain the

menace of dowry from making inroads into those castes and communities, which traditionally did not adhere to the dowry system.

If the number of laws enacted for women are any parameter to measure gender equality, then India, undoubtedly, would beat all countries of the world. The reality, however, is altogether different, as our laws, not only suffer from procedural lacuna but are dismally low on the implementation count. Even though there are provisions in the Indian laws for punishing the person guilty of molestation, rape, eve-teasing and other manifestations of sexual harassment, they are seldom used because the criminal procedure is cumbersome and it takes an unduly long time for the criminal courts to dispose of matters. The investigating and enforcement authorities, usually, adopt a lackadaisical approach to these issues. At home the women are victims of domestic violence and at workplace the employer is insensitive to their demands and requirements.

Law by itself is dormant and neutral. Not only our laws but the machinery for its implementation too, such as the police, legal professionals and judiciary needs to be sensitized. It is important that the various laws enacted for women do not remain on the statute book. The need is to simplify procedures in the court by making them less cumbersome, reduce costs and delays, and make the machinery for the implementation of the laws more approachable, efficient and corruption free. Finally, women themselves have to play a key role in changing the status quo. They can begin by being conscious of their rights, and realising that they are entitled to as much dignity and respect as men.

1.9 KEY WORDS

Coparcener	: A coparcener is a person to whom an estate descends through inheritance, jointly, with another person or persons.
Cognizable offence	: An offence for which the police can arrest the person who is suspected to have committed the offence without a warrant.
Guardian	: One who legally has the responsibility for the care and management of the person or the estate or both of a child during its minority.
Maintenance	: Money paid for the sustenance of the dependant family member. It is governed by the personal laws and the code of criminal procedure code.
Stridhan	: The property of a woman, over which she has full or unrestricted ownership.
Succession	: Succession under the law signifies the inheritance of property.
Testamentary	: Here the person disposes of his property through a will succession.
Intestate	: where the person dies without making a will clearly succession specifying how the property is to be distributed after him.

- Divorce** : The termination of marriage by a court order or by custom where it is recognized by the statute.
- Partition** : The division of property held by a joint family.
- Summary proceedings** : A procedure used for trial or proceedings without following the usual legal formalities and procedures, in order to promote speedy disposal of the case.

1.10 FURTHER READING AND REFERENCES

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UNIT 2 LEGAL PROVISIONS FOR PERSONS WITH DISABILITY

Structure

*Ranjana Sehgal**

- 2.0 Objectives
- 2.1 Introduction
- 2.2 Laws for the Persons with Physical and Mental Disabilities
- 2.3 Social Disability and Law
- 2.4 Law for Bonded Labour
- 2.5 Law on Right to Compensation
- 2.6 The Laws Governing Women's Rights at Work Place
- 2.7 Let Us Sum Up
- 2.8 Key Words
- 2.9 Further Readings and References

2.0 OBJECTIVES

This Unit primarily deals with laws for those sections of society who are disadvantaged on different counts and suffer from various social, economic, physical or mental disabilities. The unit gives an overview of the various constitutional and legislative provisions for these marginalized and weaker sections. The thrust is on making the learner understand the deprivations faced by these groups and the rights and privileges endowed on them through laws, specifically enacted for them. After studying this Unit you should be able to:

- outline the main provisions of the Laws for Persons with Physical and Mental Disabilities;
- state the provisions of the Laws for Scheduled Castes and Scheduled Tribes;
- take a critical look at the Law for Bonded Labour;
- give a brief insight into the various provisions on the Right to Compensation; and
- understand the efficacy of the laws governing the rights of women at work place.

2.1 INTRODUCTION

Amartya Sen has rightly said that “human beings are thoroughly diverse. We differ from each other not only in external characteristics (e.g. in inherited fortunes, in the natural and social environment in which we live) but also in our personal characteristics (e.g. age, sex, proneness to illness, physical and mental abilities).

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The assessment of claims of equality has to come to terms with the existence of pervasive human diversity.” There have been and are at all times of history, certain social groups whom we consider as oppressed and who are compelled to live as second class citizens because they are denied access to opportunities and benefits that are taken for granted by the mainstream groups. These are the groups who for reasons of age, sex, race, physical and mental disabilities and for social forces beyond their control, find themselves in difficult situations. ‘Oppression is systematic and is produced and reproduced in everyday social practices and processes in ways that serve the dominant group. It is not a technical problem amenable to technical solutions, but a moral and political problem requiring transformation of the entire constellation of the society’s oppressive rules, processes and practices’ **(Bob Mullay)**

The diversity of our country has produced a colorful mosaic, which conceals within itself another diversity which has resulted in a social order characterized by social inequalities and denial of opportunities. Even after 60 years of independence these disparities persist. Today, we have bureaucratic values and systems which are out of sync with the needs of the people. Our track record has been dismal as far as the elimination of child labor, prevention of atrocities on scheduled castes and scheduled tribes, protection of the rights of the women is concerned.

Disability of any kind is a curse. Despite the existing laws and the various policies and programs of the government and the non-government sector, people with disabilities continue to face socio-cultural and attitudinal hurdles. Their social exclusion, neglect and discrimination subsist despite an increasing consciousness about the rights of the disabled. If we want to create a social order which is just, fair and equitable, we have to shed our traditional construct of the concept of disability and give the disadvantaged groups their rightful place in society. One who is socially or economically handicapped may also be handicapped to defend his or her legal rights; as not only is litigation expensive but complex as well. However, the time has now come for the Indian justice system to wage a war against injustice and inhumanity, to ensure that new institutions based upon principle of equality and non-discrimination be set up to safeguard the interest of these sections.

2.2 LAWS FOR THE PERSONS WITH PHYSICAL AND MENTAL DISABILITIES

Conventionally one mechanism adopted by democratic societies has been to translate their social policy prescriptions into law. Historically, persons with physical and mental disabilities have been characterized by poverty and have been a neglected, segregated and isolated lot. Not only have they been subjected to numerous deprivations, they still are waiting for their chance to be integrated into the mainstream society. It is not to say that there have been no special measures undertaken for these groups. The government since independence did accept its responsibility towards the disabled sections of the population and launched various schemes and programs for their welfare and rehabilitation, focusing on measures to promote their education and employment opportunities. The voluntary organizations working in the field have been the beneficiaries of the Government grant-in-aid services. Promotion of rehabilitation and technological research, direct

assistance and measures for the prevention and early detection of disability are some of the other initiatives taken by the Government. However, the measures adopted so far have been largely adhoc and piecemeal and defined by lack of coordination among different agencies. The person suffering from disability requires support, albeit, a change in society's attitude which should now adapt its environment, structures and activities to his needs. The society needs to modify itself to meet their needs.

Table 2.1

Data on Disability

S.No.	Head	Persons	Males	Females
A	Total Population	1,210,193,422	62,37,24,248	58,64,69,174
B	Total Disabled Population	26,810,557	14,986,202	11,824,355
C	Type of Disability:			
	(a) In seeing	5,032,463 (18.8%)	2,638,516 (17.6%)	2,393,947 (20.20%)
	(b) In speech	1,998,535 (7.5%)	1,122,896 (7.5%)	875,639 (7.4%)
	(c) In hearing	5,071,007 (18.9%)	2,677,544 (17.9%)	2,393,463 (20.20%)
	(d) In movement	5,436,604 (20.3%)	3,370,374 (22.5%)	2,066,230 (17.50%)
	(e) Mental	2,228,450 (8.3%)	1,286,440 (8.6%)	9,42,010 (8.0%)

(The above data exclude figure on multiple disability and any other type of disability in India)

Source: Census of India 2001 India

(Excludes Mao-Maram, Paomata and Purul sub-divisions of Senapati district of Manipur.)

The data on disability as presented in the table above does not present a happy picture. According to the Census of India, 2001, there are nearly 27 million persons with various physical and mental disabilities, of which nearly 15 million are men and 12 million are women. The data reveal in movement (physical disability) constitute the majority group (20.3%) of the total population of disabled, followed by those suffering from disability in hearing (18.9%) and in seeing (18.8%). The persons suffering from mental disability and speech disability also constitute a significant number i.e. (8.3%) and (7.5) respectively.

The question before us, that needs an honest answer is that, have we as a nation taken serious measures to integrate the persons with disabilities into the mainstream society and ensure their participation in all walks of life? Let us have an overview of the legislative measures adopted by the Indian State for their upliftment and empowerment.

Article 15 of the Indian Constitution prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Interestingly though, persons with disabilities as a group do not find a specific mention here, the constitutional guarantee is available to all. Again we need to ask, have we put in place the machinery and mechanisms to reach these constitutional guarantees to those for whom they are meant? The truth of the matter is that laws for the persons with mental and physical disabilities have been virtually non-existent till a few years ago. The following legal enactments are now available to these persons in our country to protect their Rights:

- ‘The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995
- The Mental Health Act, 1987
- Rehabilitation Council of India Act, 1992
- Protection of Human Rights Act, 1993
- The National Trust for Welfare of Persons with Autism, Cerebral Palsy Mental Retardation and multiple Disabilities Act, 1999.

As it is not possible to examine all these laws in detail, we shall be reviewing the two important enactments, namely, ‘The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 and the Mental Health Act 1987.

A major landmark step on the legislative front has been the enactment of ‘The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 which has filled up the legislative lacuna for the rights of the persons with physical disabilities only recently.

‘The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995’

This law was passed by the parliament in the forty-sixth year of the Republic of India. It has 74 sections spread over 14 chapters, making it a fairly long and comprehensive piece of legislation.

Salient Features

Disability under section 2 has been defined to include the following seven categories:

- 1) Blindness
- 2) Low vision
- 3) Leprosy-cured
- 4) Hearing impairment

- 5) Locomotors disability
- 6) Mental retardation
- 7) Mental illness

Who is a Person with Disability? – According to “The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995”, the disability should not be less than 40 per cent. A person is said to be blind when he/she suffers from total absence of sight, or visual acuity not exceeding 6/160 or 20/1200 (snellen) in better eye with correcting lenses, or limitation of the field of vision subtending an angle of 20 degree or worse. A person is diagnosed as of low vision when he comes with impairment of visual functioning even after treatment or standard refractive correction but uses vision for the planning or execution of a task with appropriate assistive device. Diagnosis for the Leprosy-cured is done when a person has been cured of leprosy but is suffering from, loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eyelid or/ and extreme physical deformity as well as advanced age which prevents him from undertaking any gainful occupation. The hearing impaired is one who is having loss of sixty decibels or more in the better ear in the conversational range. Locomotor disability means a disability of bones, joints, muscles leading to substantial restriction of the movement of limbs or any form of cerebral palsy. Mental retardation means a condition of arrested or incomplete development of mind of person which is specially characterized by sub normality of intelligence, another diagnosis of disability made under the head of mental illness means any mental disorder other than mental retardation.

Provisions for the Prevention and Detection of Disabilities – The Act enjoins upon the appropriate governments and local authorities to take the following steps for the prevention of occurrence of disability as given below:

- Investigation and research into the causes of occurrence of disability,
- Promotion of various methods of preventing disabilities ,
- Screening all children at least once in a year for the purpose of identifying “at-risk” cases,
- Providing facilities for training to the staff at the primary health centers for identifying and guiding those who has a problem,
- Running awareness campaigns for the causative factors of disabilities,
- Taking measures for pre-natal, intra-natal and postnatal care of mother and child.

Provisions for Education— Appropriate government and local authorities are to take the following steps for the education of the persons with disabilities:

- Ensure that every child with a disability has access to free education till the age of eighteen years,

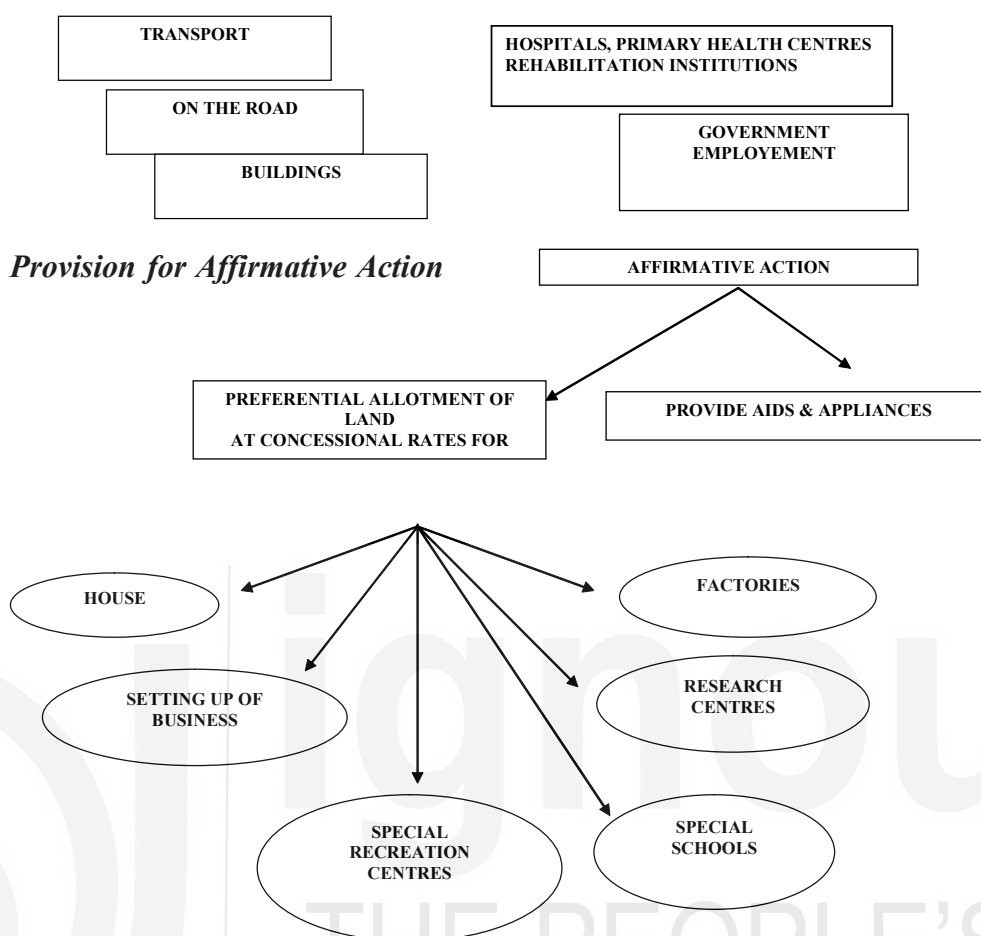
- Promote the integration of students with disabilities in the normal schools,
- Promote setting up of special schools,
- Promote vocational training in special schools,
- conduct part time classes for those who could not continue their studies on a whole- time basis,
- Conduct part time classes for providing functional literacy for age group sixteen and above,
- Impart education through open schools or open universities,
- Provide free of cost special books and equipments needed for education,
- Provide transport facilities for children with disabilities to attend school,
- Remove architectural barriers from schools, colleges or other institutions who are providing vocational and professional training,
- Supply books, uniforms and other materials to children with disabilities attending school,
- Grant scholarship to students with disabilities, and restructure the curriculum for their benefit.

Provision for Employment – Social workers in order to make their clients with disability self dependent should know the provisions of the Act for their employment. According to the Act appropriate governments and local authorities are to take the following steps for the employment of persons with disabilities:

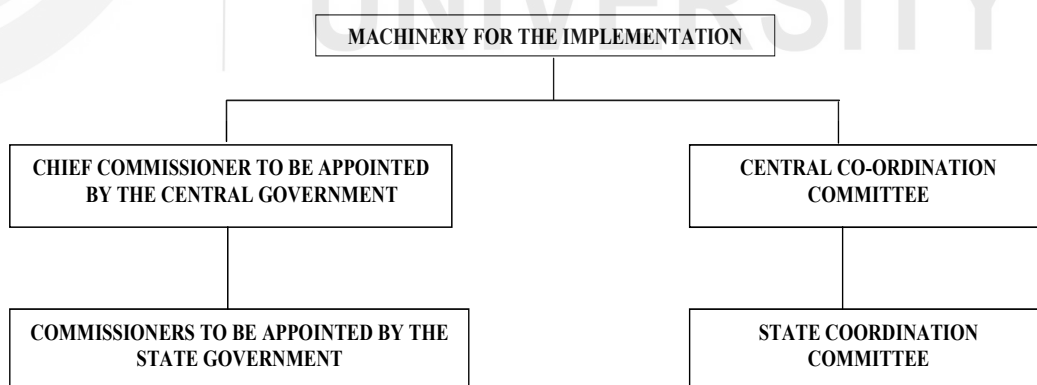
- identify posts to be reserved and review them every three years,
- reservation, not less than 3 per cent, in jobs,
- special employment exchange,
- launch schemes for ensuring employment,
- reservation of 3 per cent seats in all educational institutions and poverty alleviation schemes, one percent each for blind, hearing impaired, and those having loco motor disability or cerebral palsy.

Provisions for Non- Discrimination— Discrimination on grounds of disability, which does not even find a mention in our constitution, is recognized under this law wherein explicit legal safeguards have been provided against discrimination on the basis of disability in matters of public employment and access to public facilities. A chapter entitled Non- Discrimination makes provisions as depicted below:

NON – DISCRIMINATION IN



Machinery for the Implementation of the Act— The following machinery has been provided for implementation the law:



Appraisal

The Act is a major landmark in the evolution of jurisprudence protecting the rights of the persons with disabilities. An area which barely had any visibility has suddenly come into focus. Welfare is not a matter of charity but are today oriented to Prevention – Development – Rehabilitation. From curative and custodial approach we have moved to the developmental approach which is indeed a step in the right direction. The present law is an expression of India's policy on the differently able and reflects this changed attitude and perspective to the disability issue.

Positive Features

- The law is a welcome step in the right direction filling up a long standing legal lacuna; a reflection of the changed societal attitude to the special needs of the differently able.
- An ambitious endeavor as it lists the desirable goals for the persons with disabilities in the field of education, employment and access to public life.
- Not only are the appropriate Governments asked to identify posts which can be reserved for persons with disabilities, but also they have to at periodical-intervals not exceeding three years, review and update the list.
- The provision for three per cent reservations in jobs, one per cent each for those who are blind, have hearing impairment, have loco motor disability or cerebral palsy is significant.
- Provision for establishment of special exchange to which the employer in every establishment has to furnish information about vacancies for persons for disability is the recognition of the right of the persons with disabilities to seek gainful employment and lead a dignified life.
- From the perspective of the persons with the disabilities the provisions relating to education are of great significance. For the first time there is provision for a comprehensive education package for this group with a thrust on inclusive and integrated education. (special and integrated education/ pre-school/ non formal/ part time)
- The need for awareness building and emphasis on prevention of exploitation is a unique feature of this law.

Loopholes

Though a great piece of social legislation, the twelve years of its enforcement have revealed many weaknesses. As is the case with most of our social laws, this one too is poor on the implementation front. Under pressure from the disability movement, the government has agreed to review the Act and even constituted a committee for the purpose, however, a concrete proposal before the parliament to plug the loopholes has yet to emerge.

- The law seems to be only a half hearted attempt to address the disability issue in the absence of clear mandatory directions inviting penal action.
- There is a gap between what the need is and what has been provided. The law promises a great deal but gives no firm assurance in terms of sanctions for non-achievement of goals and marking of financial resources.
- Family focus is totally missing. The focus on family for preventive and curative measures to address the disability issue is ignored in the Act. Most of the disabled come from families who are afflicted by poverty, which require immediate support to take care of their disabled child.
- Discriminatory approach is evident in the law, wherein, the Government institutions and officials are given immunity, while a penalty is prescribed for the Parent/relatives who reportedly neglect, reject or ill treat a child with disability.

- Those with disability have not been given adequate opportunity to represent their own cause on the coordination committee. Their voice should find adequate representations on the various committees.
- There should be a nodal body to coordinate all the programs and services for the persons with disabilities. Everything has been left to the discretion of the government authorities.

The law can be successful only when it is backed by positive community awareness about needs of persons with disabilities, which still seems a long way.

The Mental Health Act, 1987

The attitude of the society towards persons afflicted with mental illness has changed considerably and it has now been universally realized that no stigma should be attached to such illness as it is curable, particularly, when diagnosed at an early stage. The mentally ill persons should be treated like any other sick persons and the environment around them made as normal as possible. The Indian Lunacy Act, 1912 had become out-moded and had outlived its relevance in the modern day society because of the advances in the field of Psychiatry. With the rapid advance of medical science and the understanding of the nature of malady, it had become necessary to have fresh legislation with provisions for treatment of mentally ill persons in accordance with the new approach. The Mental Health Act, 1987 has been a step in the right direction, which has filled the long standing legal lacuna in the area of mental health law.

Salient Features of the Act

The Mental Health Act, 1987 was passed to consolidate and amend the law relating to the treatment and care of mentally ill persons, to make better provisions with respect to their property and affairs and for matters connected therewith or incidental thereto. It is a fairly long Act comprising 98 sections divided into 10 chapters and extends to all the States and Union Territories.

Statement of Objects and Reasons of Act

The Act has the following objects:

- To regulate admission to psychiatric hospitals or psychiatric nursing homes of mentally ill-persons and to protect the rights of such persons while being detained;
- protect society from the presence of mentally ill persons who have become or might become a danger or nuisance to others;
- To protect citizens from being detained in psychiatric hospitals or psychiatric nursing homes without sufficient cause;
- To regulate responsibility for maintenance charges of mentally ill persons who are admitted to psychiatric hospitals or psychiatric nursing homes;
- To provide facilities for establishing guardianship or custody of mentally ill persons who are incapable of managing their own affairs;
- To provide for the establishment of Central Authority and State Authorities for Mental Health Services;

- To regulate the powers of the Government for establishing, licensing and controlling psychiatric hospitals and psychiatric nursing homes for mentally ill persons;
- To provide for legal aid to mentally ill persons at State expense in certain cases.

Authorities under the Act

Under chapter 2 the Central Government and the State Governments have been empowered to establish Central Authority and State authority for Mental Health services, respectively.

Psychiatric Hospitals and Psychiatric Nursing Homes

Chapter 3 empowers the Central and State governments to establish or maintain psychiatric hospitals and psychiatric nursing homes for the admission, and care of mentally ill persons at such places as it thinks fit.

It prohibits establishment or maintenance of any psychiatric hospital or psychiatric nursing home by any person, unless he holds a valid license granted to him under the Act. It also lays down that every psychiatric hospital/nursing home shall be maintained properly and will be under the charge of a medical officer who is a psychiatrist. The license can be revoked if the psychiatric hospital or psychiatric nursing home is not maintained in accordance with the prescribed conditions or run in a manner detrimental to the moral, mental or physical well-being of other in-patients thereof.

Admission and Detention in Psychiatric Hospital or Psychiatric Nursing Home

Chapter 4 provides for the procedures for the admission and detention in psychiatric hospital or psychiatric nursing home.

Inspection, Discharge, Leave of Absence and Removal of Mentally Ill Persons

Chapter 5 makes provision for appointment of visitors not less than five, of whom at least one should be a psychiatrist or at least a medical officer and two social workers for every psychiatric hospital/nursing home. It provides for monthly joint inspection by not less than three visitors in respect of the management and condition of such hospital or nursing home and of the in-patients thereof. It also makes provision for discharge of mentally ill person from the psychiatric hospital or psychiatric nursing home after being duly certified by the psychiatrist on the undertaking of relatives or friends for due care of such mentally ill person, where such person is detained, in a psychiatric hospital or psychiatric nursing home, shall, once in every three months visit such person at the place where he is detained, in order to assess the state of mind of such person and make a report thereon to the authority under whose order such person is so detained.

Inquisition Regarding Alleged Mentally Ill Person Possessing Property, Custody of his Person and Management of his Property

Chapter 6 makes the following provisions:

- Application for judicial inquisition where an alleged mentally ill person is possessed of property,

- Issues on which finding should be given by District Court after inquisition,
- Appointment of Guardian of mentally ill person,
- Appointment of manager for management of property of mentally ill person,
- Appointment and Remuneration of guardians and managers,
- Duties of Guardians and managers.

Liability to Meet Cost of Maintenance of Mentally Ill Persons Detained In Psychiatric Hospital or Psychiatric Nursing Home

Chapter 7 provides that except where a mentally ill person has an estate or any person legally bound to maintain such person has means to maintain such ill person, maintenance of mentally ill person shall be at the Government cost.

Protection of Human Rights of Mentally Ill Persons

Chapter 8 has as its objective the protection of the Human Rights of mentally ill persons and hence is a legal recognition of the same. It states that no mentally ill person shall be subjected to any indignity (whether physical or mental) or cruelty during treatment. Further it purports that no mentally ill person under treatment shall be used for purposes of research, unless such research is of direct benefit to him for purposes of diagnosis or treatment.

Penalties and procedures

Chapter 9 provides for penalty for establishment or maintenance of psychiatric hospital/nursing home in contravention of the provisions of Chapter III. It also makes provision for penalty for improper reception of mentally ill person.

Appraisal

Positive aspects

- The Act attempts to remove the stigma attached to mental illness.
- The perspective present in the Indian Lunacy Act that the mentally ill are a threat to society is thankfully not visible in this act. It strives to provide for the diagnosis and treatment of the mentally ill.
- The law upholds the rights of the mentally ill to health and medical services
- Mental health institutions are not only woefully deficient in infrastructure and trained personnel but often characterized by appalling inhuman conditions which this law aims to regulate and monitor.

Shortcomings

- An obvious shortcoming is that it perceives institutional care as the only arrangement for the care and protection of persons with mental illness.
- The law does not lay down any specific guidelines for the minimum standards in mental health institutions.
- There is no assurance for the protection of the person's property and privacy of communication.

- There is no role envisaged or outlined for the psychiatric social worker.
- In institutions the possibilities of human rights violations increase manifold as there could be misuse of authority.

Areas left out

- Social security — After release from the institution there is no provision for jobs, after care, programs for awareness and social acceptance. With the help of the audio-visual programs awareness of the family and society can be increased
- Rehabilitation — vocational training programs do not find a place.
- Educational — no scheme for assistance in education programs.
- Counseling by psychiatric social workers.

Tasks for social workers

Only if the social worker has knowledge of the provisions of the law, she can ensure the protection of the rights of the mentally ill.

- She should know about the procedures for admission and discharge of the patients.
- She can counsel the family and the community regarding the rights of the mentally ill and their special needs with respect to their illness.
- She can see to it that the authorities comply with the provisions of the law and do not exceed their limits and misuse the power vested in them.
- The psychiatric social worker has an important role to play in increasing awareness about mental health.

Check Your Progress I

Note: Use the space provided for your answer.

- 1) What are the educational and employment benefits available to the persons with physical disabilities under the law in India?

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- 2) What are the legal initiatives taken by the government for the mentally ill and how have they been benefited?

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2.3 SOCIAL DISABILITY AND LAW

The democratic tradition of independent India has upheld the principle of equality before law. However, the recognition of this principle, which flows from our constitution, does not necessarily ensure its practice as equality before law does not always ensure equality of opportunities. This is true in the case of the scheduled castes and scheduled tribes, as democracy has failed to ensure equal opportunity for them. Both groups are socially, politically and economically marginalized and while there are some problems that are common to both, some are peculiar to each group. Problems common to both groups are- their alienation from the mainstream, their vulnerability on almost all fronts, their exploitation by the dominant groups, abject poverty, forced to work as landless and bonded labourers and soft targets of atrocities. However, they face some distinct problems as well, for instance, the scheduled castes are the victims of the age old evil practice of untouchability and social disabilities arising there from. While they are relatively better off in cities, where they get to mingle with the higher caste groups without being discriminated, it is a known fact that the practice of untouchability continues to be rampant in our rural pockets. The scheduled tribes on the other hand are cut off from the society and are still unable to access the fruits of development. They dwell in isolated hilly and forest areas, are geographically isolated and mostly in the clutches of money lenders who are non-tribal.

On the basis of the constitutional guarantees to the scheduled castes and scheduled tribes we have a policy which provides for reservations to these groups in proportion to their percentage in the population. There are also a large numbers of developmental programs specifically meant for their upliftment. To help them defend and protect themselves at all levels, we need to create various mechanisms, of which enactment of law is one. As Constitutional Provisions related to SC/ST have been discussed in detail in the unit entitled 'Social ideals of the Constitution', we shall skip a discussion on them at this juncture, but, it would be appropriate to keep them in mind here. Besides the constitutional efforts for protecting and promoting the interests of the SC/ST, State has enacted laws transforming constitutional guarantees into legally enforceable rights.

'The Protection of Civil Rights Act, 1955' was enacted in furtherance of Article 17 of the Constitution to abolish untouchability and its practice in any form. Further, in order to check and deter crimes against SC/ST by persons belonging to other Communities, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was brought into force from 30 January 1990. These enactments have extended the positive discrimination in favour of SC and ST to the field of criminal law in as much as they prescribe penalties that are more stringent than the corresponding offences under Indian Penal Code (IPC) and other laws. For speedy trial of cases registered exclusively under these Acts, special Courts have been established in major States. In addition, in pursuance of the Constitution's 65th Amendment Act, 1990, National Commission for SC and ST was constituted w.e.f. 12 March 1992 with wide functions and powers of Civil Court to take up matters which are of vital importance for socio-economic development of SC and ST.

Untouchability and the Law

The idea of untouchability which conveys a sense of pollution and defilement has existed in the Indian society since ancient times. Let us see how the law tackles this age old problem.

The Protection of Civil Rights Act, 1955

This Act, formerly known as “Untouchability (offences) Act, 1955”, was passed by parliament in the sixth year of the Republic of India. The symbolic significance of this law is that it has made the targets of untouchability feel that they are no longer helpless or alone but have the law on their side. This has done wonders for their self image. According to this Act, anyone who enforces against another person any social disability on grounds of untouchability shall be punishable.

Social disability count : Untouchability is counted when a person restricts or restrains another person from accessing any shop, public restaurant, hotel or place of public entertainment facilities; using property which is for the use of general public; practicing any profession or occupation, trade, business or employment in any job; using natural resources which he has a right to use; using any resources which is dedicated to general public use; using any public conveyance; constructing and occupying any residential premises in any locality; observing any social or religious custom, and taking part in any religious, social or cultural procession; using ornaments; taking admission in hospital, dispensary, educational institution, which is running for the use of general public or discriminating after admission; purchasing any goods which are sold to general public. If any of these acts are done by any person, it shall be counted under untouchability and will be an offence according to the Act.

Who is the offender : Any one who restrains any person from exercising any right which is provided after the abolition of “untouchability”, or any one who molests, injures, annoys, obstructs or attempts to cause obstruction to any person in the exercise of any such right, or any one who encourages any person, class of persons, public generally by words (written or spoken), visible representation to practice “untouchability”, or any one who insults or attempts to insult, on the ground of “untouchability” will be proclaimed as an offender under the “The Protection of Civil Rights Act, 1955”.

What will be punishment of the offender: The punishment of offender varies according to the nature of the offences. For committing the offence for the first time, the offender shall be punishable with an imprisonment for a term of not less than one month and not more than six months and also with fine which shall be not less than one hundred rupees and not more than five hundred rupees. For the second offence, the offender shall be punishable with imprisonment of a term of not less than six months and not more than one year, and also with fine which shall be not less than two hundred rupees and not more than five hundred rupees, and for the third offence, he shall be punished with imprisonment for a term not less than one year and not more than two years, and also with fine which shall be not less than five hundred rupees and not more than one thousand rupees.

Appraisal of the Act

There is an inherent fundamental contradiction. While on one hand the, our Constitution declares all citizens to be equal, on the other, the gross socio-economic exploitation of the scheduled castes continues unabated. Law by itself cannot bring about the desired results. The impact of any law should not be measured by the number of prosecutions but by the change it has brought about in the patterns of behavior by promoting new patterns in place of the old. Though the urban centers do reveal a change in attitude, the deep prejudice against the untouchables has, by and large, prevented their integration into the main stream

society. They are economically, socially and politically exploited and neither the legislature nor the executive machinery has been successful in protecting their rights and interests. Though the Law has many shortcomings as a penal provision; it also has many enabling features.

Positive Features

- This law has given to all citizens of India, their caste notwithstanding, the right and freedom to enter any place of public worship, shop, hotel, place of public entertainment, bathing ghats and other such public places which the lower castes were earlier restrained from entering.
- The law in fact is a list of do's and don'ts and every provision is in relation to some particular disability to which the untouchables have been traditionally subjected.
- All the disabilities which the untouchables have suffered over decades are now removed and punishments prescribed for those who are found violating the provisions of this law.
- The offences under the Act are cognizable and non- compoundable.
- The State Governments have been empowered to appoint officers for initiating and exercising supervision, to set up special courts, undertake periodic surveys for the identification of areas of disabilities.

Drawbacks

- The term untouchability has not been defined leading to ambiguous interpretations. No criteria have been given but examples of its practice are the benchmark.
- The Act has failed to have the desired impact due to the fact that there is no central agency and no clear cut built in statutory machinery which could actively coordinate and direct enforcement. In the absence of a central agency that coordinates and directs enforcement, the law makes for poor implementation.
- The experience of the working of the Act has been largely unsatisfactory, a weak and uncommitted government being the main reason. Though a Central law, the responsibility of its enforcement, like all Central laws, lies with the States. It is unfortunate that neither the Central Government nor the State Governments have undertaken any executive measures to ensure the effective implementation of the law.
- Legal efficacy is all about making those who are not directly the law breakers to obey the law. The cases are ignored or at best compromised without being registered. Complainants and the witnesses needed to prove the case are seldom available, if available, are vulnerable to intimidation and reprisals.
- Anti disabilities prosecution depends on the initiative of the local police and sympathetic judiciary both of who show obvious disinterest leading to considerable delay in the disposal of cases.
- The conviction rate has been poor under the Act for various reasons, namely:
 - the complainants and witnesses turn hostile

- exaggeration and concoction of complaint
- delay in lodging the complaint for want of evidence
- compromise between the parties
- Where conviction is secured, the punishment is hardly a deterrent, hence not worth the trouble, expense and the accompanying threats.

Role of Social Workers

Problem of untouchability can be solved in the ultimate analysis only through revolutionary change in the socio-economic and political structure in India. Legislation alone is not enough. The creation of healthy public opinion to support legislative effort is imperative. It is often suggested that the failure to invoke the Act or to abide by its provisions is due to the lack of awareness of its provisions. Social workers are the people, who can address this problem, but before spreading awareness in society, it is imperative that they themselves have a good comprehension about the problem and its consequences, and the available legal mechanisms. For spreading the awareness among people, the social worker must convey the message loud and clear in their awareness campaigns, that practicing untouchability is an offence. They in collaboration with the lawyers can organize programs for propagating information to SC/ST about the facilities available to them under various schemes and provisions of law. They can conduct intensive tours of the rural and tribal areas and participate in the various para legal camps and meetings. They can constitute people's forums for discussion, planning and representations to the competent authorities in cases of atrocities and social discrimination. They can provide legal education, disseminate information and pressurize the government to pass laws beneficial to them. High caste lawyers may be disinclined to take up their cases, hence, social workers can bring forward their cases for legal redress. This is all the more necessary, in the light of the fact that though most States extend legal aid to untouchables, it is so inadequate that it is completely insignificant. Unless the guilty are punished, the practice of untouchability will continue unabated. The victims of untouchability may not find the Act as a promising means of redress in the absence of such supportive services.

Check Your Progress II

Note: Use the space provided for your answer.

1) What is social disability count?

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2) What are the drawbacks of the "The Protection of Civil Rights Act, 1955"?

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2.4 LAW FOR BONDED LABOUR

The bonded labor system stands abolished if we are to go by our Constitution. It also stands eradicated by the “Bonded Labor System (Abolition) Act, 1976” passed by parliament in the Twenty-Seventh year of the Republic of India on 9th February, 1976 and amended in 1985. Six decades of independence, yet bonded labour continues to exist, a stark reality India cannot deny, even if government records show otherwise. In the face of abject poverty and deprivation, perhaps, these people have no other choice.

THE BONDED SYSTEM (ABOLITION) ACT, 1976

Salient Features

The object of the Act is to provide for the abolition of bonded labor system with a view to preventing their economic and physical exploitation. The Act extends to the whole of India and has 27 sections.

The definition of **bonded labour** according to Act is a bit complex and long. To simplify, we can say that it means a system of forced, or partly forced, labor under which a debtor enters, into an agreement with the creditor that he would; render labor or service, by himself or through any member of his family for the benefit of the creditor, for a specified or unspecified period, without or for nominal wages. In the process, the debtor forfeits the freedom to work else where, the right to move freely throughout the territory of India, as also the right to sell property or product. Bonded labour system, thus, is a system of forced labour wherein the debtor enters into an agreement with the creditor to work for him in lieu of an advance obtained by him (debtor) or by any of his lineal ascendants or descendants; in pursuance of any customary or social obligation for any economic consideration received by him. (This obligation could have even devolved on him by succession);. The term **bonded labourer** construed accordingly means a labourer who incurs, or has, is presumed to have, incurred, a bonded debt.

Abolition of Bonded Labour System – With the commencement of the Act the bonded labor system stands abolished and every bonded labourer stands freed. Now no person can make any advance under the bonded labor system, and no person can compel any person to do bonded labor. Given below are the names of the bonded labour system abolished by the Act:

Adiyamar, Baramasia, Basahya, Bethu, Bhagela, Cherumar, Garru-galu, Hali, Hari, Harwai, Holya, Jana, Jeetha, Kamiya, Khundit-Mundit, Kuthia, Lakhari, Munjhi, Mat, Munish system, Nit-Majoor, Paleru, Padiyal, Pannayilal, Sagri, Sanji, Sanjawat, Sewak, Sewakia, Seri, Vetti;

Extinguishment of Liability to Repay Bonded Debt – A social worker should know that the liability to repay bonded debt has been extinguished by the Act. The Act says that, any bonded debt as remains unsatisfied shall be deemed to have been extinguished after the commencement of the Act, that the property of bonded laborer freed from mortgage, charge and restored to the possession of the bonded laborer, that any bonded laborer who has been freed is not to be evicted from residential premises, that no creditor shall accept any payment against any bonded debt which has been extinguished.

Implementing Authorities

The District Magistrate authorized by the State Government is the officer specified to ensure that the provisions of this Act are properly enforced. His duty is to inquire whether; any system or form of forced labour is being enforced. If any person is found to be enforcing the bonded labour system, he shall forthwith take such action as to eradicate the enforcement of such forced labour.

Vigilance Committees

Every State Government is enjoined to constitute such number of Vigilance Committees in each district and each Sub-Division as it may think fit consisting of the District Magistrate; three persons belonging to the Scheduled Castes or Scheduled Tribes; two social workers; not more than three persons to represent the official or non-official agencies in the district connected with rural development; and one person to represent the financial and credit institutions in the district.

Functions of Vigilance Committees

The functions of each vigilance committee range from advising the District Magistrate about the efforts for the proper implementation of the Act, to providing for the economic and social rehabilitation of the freed bonded labourers; co-coordinating the functions of rural banks and co-operative societies to keeping an eye on the number of offences of which cognizance has been taken under this Act, making a survey of it; and defending any suit or recovery of the whole or part of any deb.

Offences and Procedure for Trial – Any person who compels any person to do bonded labor or advances any bonded debt after commencement of the Act shall be punishable with imprisonment for a term which may extend to three years and also with fine which may extend to two thousand rupees. Any person who extracts bonded labor under the bonded labor system shall be punishable and out of fine, payment shall be made to the bonded laborer at the rate of rupees five for each day for which the bonded labor was extracted from him. Any person who doesn't restore the property of bonded labor within a particular time period is also punishable with imprisonment for a term which may extend to three years and a fine upto two thousand rupees and out of fine, payment shall be made to the bonded laborer at the rate of rupees five for each day for which possession of the property was not restored. Every offence under this Act shall be cognizable and bailable. All the offences under the Act are to be tried by Executive Magistrate having the powers of a Judicial Magistrate of the first or second class. An offence under this Act may be tried summarily by a Magistrate.

Burden of proof — Whenever any debt is claimed by a bonded labourer, or a vigilance committee, to be a bonded debt, the burden of proof that such debt is not a bonded debt shall lie on the creditor.

Appraisal

The Bonded Labour System which is an unjust and exploitative practice, though abolished by Article 23 of the Constitution, continues as a slur on India, striving to be recognized as a developed nation. It is indeed unfortunate that despite the progress made by us on the scientific, economic and social fronts we still have such regressive practices in our country.

Positive Aspects of the law

- The law lays down a provision for the prohibition of any form of bonded labour and the extinguishment of all bonded debts.
- To ensure that the implementation of this Act is not hampered by procedural delays, civil courts have been barred from granting injunction under this law.
- There is a provision for setting up of the vigilance Committees, giving due representation to the persons from scheduled caste and scheduled tribe category as well as social workers.
- The Act is a literal translation of Article 23 of the Constitution into legislative action.

Drawbacks

This social legislation does not appear to have made any substantial impact on the release and rehabilitation of bonded labour. There are formidable obstacles due to the ambiguities and loopholes of the Act, some of which are given below:

- This law, like most of our social laws is a victim of government apathy, hence, weak in implementation.
- The punishments prescribed are hardly stringent, hence, of no deterrent value, the law thus, proves to be the proverbial paper tiger.
- The bonded labourers are poverty stricken and not organized to demand their rights, therefore, laws such as this will not have substantial impact on their lives.
- The administrative machinery has been found to be weak and inefficient at most of the places.

Check Your Progress III

Note: Use the space provided for your answer.

- 1) Does this social legislation appear to have made any substantial impact on the release and rehabilitation of bonded labour? Give reasons for your answer.

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2.5 LAW ON RIGHT TO COMPENSATION**Rights of Workmen**

Complexities of modern day industrial age have exposed the Industrial workers to accidents and various occupational health hazards, often leading to physical and

economic disability. The Act known as the 'Workmen's Compensation Act' passed in the year 1923 and subsequently amended on various occasions, for the first time made the employer liable to pay monetary compensation to a disabled workman or his dependants in case of death. Today, the Employees State Insurance Act, 1948, which is a more comprehensive social security law, has replaced the Workmen's Compensation Act, but it governs the establishments outside the purview of the E.S.I. Act.

Employer's Liability for Compensation – According to the Act if personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation. But employer shall not be so liable—

- if injury does not result in the total or partial disablement of the workman for a period exceeding three days,
- if at the time the workman was under the influence of alcohol or drugs,
- had disobeyed the rules or order framed for the purpose of securing the safety of workman,
- if worker had removed the safety guard provided for the purpose of securing the safety of workman or,
- if it is not proved that the disease developed due to employment.
- no compensation can be granted if the physical disability does not result in loss of earning capacity.

Amount of Compensation

The amount of compensation depends on the extent of loss.

Right of Compensation in Case of Motor Vehicle Accidents

The Motor Vehicles Act, 1939 as amended in 1982 governs the rights of those involved in road accidents against the driver, owner and insurance companies. It lays down the procedure for claiming compensation, the amount of compensation to be claimed and those who can make a claim. To settle the claims under this law, a special Tribunal, called the Motor Accident Claims Tribunal have been set up in each State, to settle the claims. Though the format changes from State to State the applications on the prescribed form or on plain paper giving the requisite details can be addressed to the Tribunal having jurisdiction over the area in which the accident occurred. The claim of compensation can be made anytime after the accident but not later than six months after it happens. A person has a right to claim compensation with respect to death or permanent disablement not only on the principle of no fault under section 92-A, but also on the principle of fault (of the driver) under section 110-A of this Act or any other law for the time being in force. In hit and run motor accidents the compensation is to be paid from the Solatium fund established by the Central Government. The Tribunal on receiving the application shall, after giving the parties an opportunity of being heard, hold an enquiry into the claim and make an award deciding the amount of compensation and specifying the person/s to whom it is to be paid.

2.6 THE LAWS GOVERNING WOMEN'S RIGHTS AT WORK PLACE

According to United Nations, the women make up nearly 31 per cent of the official labour force in the developing countries and nearly 47 per cent world wide. Women who constitute nearly half of the world's population receive just one-tenth of the world's total income and less than one-hundredth of the world's total property. Women contribute to 68 per cent of the food production, are the driving force behind 70 per cent of the small scale enterprises with nearly 35 per cent of the families dependant on their earnings. Increasing population pressures, economic compulsions and changing social attitudes have compelled women to enter the labour market in large numbers. While women still constitute a large chunk of the agricultural sector, they are now taking advantage of the increasing employment provisions in the urban areas. Increasing globalization and liberalization has had an impact on the employment patterns in general and on women's work patterns in particular. There is a phenomenal growth in the service sector such as telecommunications, tourism as also the informal sector, such as home based enterprises, outsourcing, part time work wherein the women are playing a major role. While on one hand the women's participation in the workforce is increasing, on the other the conditions under which they work are not getting any better. Though our Indian Constitution bestows equal rights on men and women at work place, in reality the work places continue to subject the women to unequal treatment and discrimination, despite the prevailing laws that govern women's rights at workplace. Most of these laws are based on Constitutional provisions and are guided by the ILO conventions. India has ratified the Convention on the Elimination of all forms of Discrimination against Women on July 9, 1993. The implication of this ratification is that India now is under an obligation and commitment to address inequality and discrimination against women through its policies and legislative measures.

The workers of the unorganized sector are by and large subject to a legal apathy, more so the women, who constitute a large part of this sector as there are hardly any special laws to protect their rights. The government has somehow ignored the unorganized sector, may be, because of the peculiarities and complexities which characterize this sector, making the administration, monitoring and implementation of laws difficult, albeit, an impossible task. However, the Government has extended the application of some of the laws of the organized sector to the unorganized sector, but this has not helped the situation due to ineffectiveness of the enforcement machinery. In the organized sector, however, the women enjoy more protection under the various laws, such as equal remuneration, maternity benefit etc. While women enjoy the same rights as their male counterparts, under the various labour laws such as the Factories Act, Minimum Wages Act, The Plantation labour Act etc. there are two laws from among them with specific focus on women, namely, the Maternity Benefit Act, 1961 and the Equal Remuneration Act, 1976. In the Factories Act, 1948, there are special provisions for women. Let us briefly examine the existing laws that specifically aim at protecting the women's rights at work place.

Maternity Benefit Act, 1961

Discrimination suffered by women at work place is quite often due to their child bearing function and often the axe falls on their job when they become pregnant

and take leave to have children. The Maternity Benefit Act has come as a big boon for working women as it provides them protection at a point in their lives when they need it the most. Let us take a look at the law regulating the maternity benefits.

Salient Features of the Act

The object of the Act is to regulate the employment of women in certain establishments for certain period before and after child-birth and to provide for maternity and certain other benefits. The Act prohibits the employment of women during the six weeks immediately before and following the day of her delivery. (Under Section 3)

Further Under Section 4 of the Act a woman is entitled to a right to payment of maternity benefits at the rate of the average daily wage for the period of her actual absence, provided she has actually worked in the establishment for a period of not less than [eighty days] in the twelve months immediately preceding the date of her expected delivery. The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery.

The woman has to give notice in writing, to her employer, stating that her maternity benefit and any other amount to which she is entitled under this Act may be paid to her and that she will not work in any establishment during the period for which she receives maternity benefit. The amount of maternity benefit for the period preceding the date of her expected delivery shall be paid in advance by the employer to the woman on production of such proof that the woman is pregnant, and the amount due for the subsequent period shall be paid by the employer to the woman within forty-eight hours of production of such proof that the woman has been delivered of a child. The failure to give notice under this section however, does not disentitle a woman to maternity benefit if she is otherwise entitled.

If a woman entitled to maternity benefit, dies before receiving such maternity benefit or amount, the employer shall pay such benefit or amount to the person nominated by the woman in the notice given.

Every woman entitled to maternity benefit under this Act shall also be entitled to receive from her employer a medical bonus, of [two hundred and fifty rupees], if no pre-natal confinement and post-natal care is provided for by the employer, free of charge. (Under Section 7)

In case of miscarriage or medical termination of pregnancy, a woman shall, be entitled to leave with wages at the rate of maternity benefit, for a period of six weeks immediately following the day of her miscarriage or, her medical termination of pregnancy.

A woman suffering from illness arising out of pregnancy, delivery, premature birth of child, [miscarriage, and medical termination of pregnancy or tubectomy operation] shall, be entitled, in addition to the period of absence allowed to her leave with wages at the rate of maternity benefit for a maximum period of one month. (Under Section 10)

Every woman delivered of a child who returns to duty after such delivery shall, in addition to the interval for rest allowed to her, be allowed in the course of her

daily work, two breaks of the prescribed duration for nursing the child until the child attains the age of fifteen months.(Under Section 11)

The Act makes it unlawful for an employer to dismiss the woman who takes maternity leave during or on account of such absence or to vary to her disadvantage any of the conditions of her service.

Appraisal of the Act

Positive Features

- The law is a step in the right direction as it ensures not only leave with wages for during the crucial time of child birth but also works as a shield and protects the woman against any unlawful and unjust termination from service on account of her maternity.
- The Act goes a step further and even makes provision for leave in addition to the period of absence at the rate of maternity benefit for a maximum period of one month during miscarriage or any illness arising out of pregnancy, delivery, premature birth of child, medical termination of pregnancy or tubectomy operation etc.
- Another positive feature of the Act is that a woman who returns to duty after such delivery is allowed in the course of her daily work two breaks for nursing the child until the child attains the age of fifteen months.

Drawbacks

- The lacuna is that law is poor on implementation side and in many sectors employers continue with the practice of either doing away with her services or make the woman without pay for the period of her entitlement.
- In the unorganized sector the women continue to be deprived of the maternity benefit and most of the times are totally ignorant of their maternity rights under the law.
- The need of the hour is to extend the provisions of this Act even to those women who adopt a child and to widen the purview of the law to include paternity leave so that the responsibilities that ensue from child bearing are shared responsibilities.

Specific Provisions for Women under the Factories Act, 1948

Women workers require special treatment in view of their tenderness, sensitivity and their functions at home. In its study of 'Law and Women's Work' the I.L.O has described some of the special problems arising out of women's employment. According to the report, a woman is generally less resistant to physical strain, so that when she engages in manual work, she is exposed to special dangers. As a consequence a working woman can ruin her health, if certain protective measures are not taken. Another important step, apart from the maternity benefit, has been the special provisions for women incorporated in the Factories Act, 1948. While all the provisions of the Factories act are applicable to women workers, the following special provisions provide them with additional safeguards:

Crèche

Section 4 of the Factories Act makes it mandatory for the employer to maintain a crèche if the number of women employed in the establishment exceeds 29. The

crèche is to be maintained in a decent hygienic way with adequate lighting and ventilation and the children kept under the supervision of a qualified ayah. Many employers have found ways to flout this provision by deliberately keeping the number of women below 30. The need is to do away with these eligibility criteria and make it mandatory for all employers to provide a crèche and extend its services to all employees' children and to all work places.

Night Work

The women are restrained from working at night. They can be asked to work only between 7 p.m. to 6 a.m. With specific permission of the Government, however, they can be asked to work in a factory until 10 p.m. and after 5 a. m.

Weight

Women cannot be asked to lift weights beyond a certain limit.

Weekly Hours

Women cannot be asked to work beyond the mandatory 48 hours a week. They cannot be asked to work overtime.

Work on and Near Machinery in Motion and near cotton openers

The Factories Act restrains the women to work on or near machinery in motion and near cotton openers

Work in Hazardous Factories

The government may prohibit the employment of women in a factory, which exposes her to serious risk of bodily injury, poisoning or disease.

The Equal Remuneration Act, 1976

This law provides for the payment of equal money to men and women for same or similar nature of work. Under this law no discrimination is permitted in recruitment and service conditions and payments to men and women. The Central Ministry of Labour and the Central Advisory Committee is entrusted with the task of monitoring the enforcement of this law. The Act is a legal translation of constitutional provision under Article 39, which avers to give equal pay for equal work. The law lays down that an employer must neither discriminate on the basis of sex, while paying the workers for work of a similar nature nor while recruiting them. He is liable to be punished if he does so.

Sexual Harassment at Work Place

The discussion on the rights of women at work place will not be complete, if we leave out of its ambit the crucial issue of women's harassment at work place. Every woman has to live with the fact that she is vulnerable to sexual abuse. What is worse is, statistics show that crimes against women are on the rise. Societal pressures cause a lot of cases to go unreported, further suppressing the victim and emboldening the offender. While there is a strong chance of the offender going scot-free or being let off lightly, the already traumatised victim suffers acutely. Sexual Harassment at workplace is not an isolated phenomenon, but a manifestation of a larger discrimination' omni present in our society. It is a wide spread and everyday occurrence, though seldom recognized as such. Victims of sexual harassment are reluctant to even admit it, for fear of social stigma, ostracism and

fear of reprisals while men find the issue threatening and uncomfortable and either deny its existence and trivialize it. At present there is no law in India that specifically deals with sexual harassment at work place. The employer is least concerned or sensitive to the demands and requirements of a conducive work environment for women.

Victim of sexual harassment can seek legal remedies under the following provisions:

- IPC Sections 292 294: (obscenity)
- IPC Section 354 (Criminal force or assault intended to outrage modesty)
- IPC Section 375 (Rape)
- IPC Section 509 (word, gesture or act intended to outrage modesty)
- Protection of Human Rights Act, 1993
- Remedies in *Vishakha vs. State of Rajasthan* are in addition to IPC

In the *Vishakha vs State of Rajasthan*, a judgment delivered by J.S.Verma. CJ, on behalf of Sujata Manohar and B.N.Kirpal, JJ., on a writ petition filed by 'Vishakha' - a non Governmental organization working for gender equality by way of PIL seeking enforcement of fundamental rights of working women under Article.21 of the Constitution. It was in this landmark case that the sexual harassment was identified as a separate illegal behaviour. The immediate cause for filing the petition was the alleged brutal gang rape of a social worker of Rajasthan. The Supreme Court in absence of any enacted law gave certain guidelines as stated hereunder and declared that sexual harassment of working women amounts to violation of the right to gender equality. A logical consequence that follows is that it naturally hampers a woman's right to practice any trade, occupation or profession. In the absence of any law on sexual harassment, the Supreme Court attempted to fill the empty space by defining sexual harassment, laying down the preventive steps, the complaint mechanism and obligations of the employers.

These guidelines are applicable to:

- a) The employer or other responsible persons or other institutions to prevent sexual harassment and to provide procedures for the resolution of complaints;
- b) Women who either draw a regular salary, receive an honorarium, or work in a voluntary capacity— in the government, private or organized sector come under the purview of these guidelines.

Preventive Steps:

- 1) Express prohibition of sexual harassment should be notified and circulated.
- 2) Inclusion of prohibition of sexual harassment in the rules and regulations of government and public sector.
- 3) Inclusion of prohibition of sexual harassment in the standing orders under the Industrial Employment (Standing Orders) Act, 1946 by the private employers.
- 4) Provision should be made for appropriate work conditions for women.

What is sexual harassment

The Vishakha guidelines of the Supreme Court define sexual harassment as any unwelcome sexually determined behavior such as:

- Physical contact and advances
- Demand or request for sexual favors
- Sexually coloured remarks
- Showing pornography
- Any unwelcome physical, verbal or non-verbal conduct of sexual nature

Sexual harassment includes harassment not only at work place but also harassment in public or social situations, for example on the roads, in buses etc.; hostile and anti woman environment like pornography in public places and use of foul language etc. Scandals about the victim's character often represent her as the wrongdoer. Fearing such an outcome, women often abstain from speaking out against their tormentors and usually give up the job either quietly or under protest. Under-performance is a frequent excuse used to persecute a woman employer who rebuffs sexual advances.

Employer's Obligation

It shall be the duty of the employer or other responsible persons in work places to prevent or deter the commission of acts of sexual harassment and to provide for the resolution of acts of sexual harassment by taking all steps as given below:

- Create awareness
- Constitute complaints mechanism
- Initiate disciplinary action against perpetrators
- Initiate criminal action where required
- Provide support mechanisms to the victim

Complaint Mechanism

An appropriate complaint mechanism ensuring time bound treatment of complaints should be created in the organization for the redressal of the complaint made by the victim. The complaints committee should be headed by a woman and not less than half of its members should be women. It should include a member from NGO or the other body familiar with the issue of sexual harassment. The complaints committee must make an annual report to the government with the action taken report. The complaints mechanism has to be understood in the context of evolving concepts of fair procedure. It is now beginning to recognize victim's rights, both in the criminal law as well as in service law. There shall be the assistance of a special counselor or other support service to the complainant. Further confidentiality in the proceedings is to be ensured. The victim has the option to seek the transfer of the perpetrator or her own transfer.

Implementation of Vishakha Guidelines

Although the guidelines given by the Supreme Court are as good as any law, people take law more seriously, which probably accounts for the guidelines not being

implemented in all earnestness. Neither the employers nor the government have taken serious appropriate steps to implement the guidelines in all sincerity. In the Vishakha case the court had also observed the need for a proper law on the subject. The National Commission for Women has prepared a bill entitled 'Sexual Harassment of Women at their Work Place (Prevention) Bill, 2003' to translate the Vishakha guidelines into an Act. The bill is still to get the assent of the parliament. A copy of this proposed Bill is given in the appendix. Genuine implementation of Vishakha will require conducting intensive attitudinal change programs for men and women in all institutions. Orientation programs for persons in complaints committees needs to be conducted. Further trained social workers are needed to assist the victims during the enquiry procedure. A panel of approved NGO's needs to be set up in every district either by NHRC or women's commissions, to assist in cases of sexual harassment.

Check Your Progress IV

Note: Use the space provided for your answer.

- 1) What are the salient features of the Maternity Benefit act 1961?

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- 2) What are the initiatives taken by the Supreme Court of India for protecting the women against sexual harassment at workplace?

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2.7 LET US SUM UP

This Unit primarily deals with laws for those sections of society who are disadvantaged on different counts and suffer from various social, economic, physical or mental disabilities. The Unit gives an overview of the various constitutional and legislative provisions for these marginalized and weaker sections.

Historically, persons with physical and mental disabilities have been characterized by poverty and have been a neglected, segregated and isolated lot. Not only have they been subjected to numerous deprivations, they still are waiting for their chance to be integrated into the mainstream society. The government since independence did accept its responsibility towards the disabled sections of the population and launched various schemes and programs for their welfare and rehabilitation. A major landmark step on the legislative front has been the enactment of 'The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which only a decade ago has filled up the legislative lacuna as far as the rights of the persons with physical and mental disabilities were

concerned. The law is a welcome step in the right direction and mirrors the changed societal attitude to the special needs of the differently able. The attitude of the society towards persons afflicted with mental illness has changed considerably and it has now been universally realized that no stigma should be attached to such illness as it is curable, particularly, when diagnosed at an early stage. Thus, the mentally ill persons should be treated like any other sick persons and the environment around them made as normal as possible. The Indian Lunacy Act, 1912 had outlived its relevance in the modern day society. With the rapid advance of medical science and the understanding of the nature of malady, it had become necessary to have fresh legislation with provisions for treatment of mentally ill persons in accordance with the new approach. The Mental Health Act, 1987 has been a step in the right direction, which has filled the long standing legal lacuna in the area of mental health.

Apart from the constitutional efforts for protecting and promoting the interests of the persons with Physical and Mental disabilities, State has transformed constitutional guarantees into legally enforceable rights for the scheduled caste / scheduled tribe by enacting the 'The Protection of Civil Rights Act, 1955' and 'The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.' The bonded labor system stands abolished if we are to go by our Constitution. It also stands eradicated by the Bonded Labor System (Abolition) Act, 1976. Six decades of independence, yet bonded labour continues to exist, a stark reality India cannot deny, even if government records show otherwise.

Indian Constitution bestows equal rights to men and women at work place but in reality the work places continue to subject the women to unequal treatment and discrimination, despite the prevailing laws that govern women's rights at workplace. Discrimination suffered by women at work place is quite often due to their child bearing function and often the axe falls on their job when they become pregnant and take leave to have children. The Maternity Benefit Act has come as a big boon for working women as it provides them protection at a point in their lives when they need it the most. Sexual Harassment at workplace is not an isolated phenomenon, but a manifestation of a 'larger discrimination' rampant in our society. At present there is no law in India that specifically deals with sexual harassment at work place. The employer is least concerned or sensitive to the demands and requirements of the conducive work environment for women. The Supreme Court in absence of any enacted law has given certain guidelines and declared that sexual harassment of working women amounts to violation of the right to gender equality. The Supreme Court has attempted to fill the empty space by defining sexual harassment, laying down the preventive steps, the complaint mechanism and obligations of the employers.

2.8 KEY WORDS

Disability	: Any restriction or lack of ability to perform any activity in the manner or within the range considered normal for a human being. (W.H.O)
Impairment	: Any loss or abnormality of psychological, physiological or anatomical structure or function (W.H.O)
Handicap	: A disadvantage for any given individual resulting from an impairment or disability (W.H.O)

Compensation : Amount of money payable for damage caused to a person or property.

Non – Compoundable : Compounding is settlement of a criminal offence dispute between the persons involved, wherein the victim agrees not to take further steps in the prosecution. Non-compoundable offence is one in which parties cannot settle the dispute by striking compromise for withdrawing the case.

2.9 FURTHER READINGS AND REFERENCES

Disability Manual (2005) National Human Rights Commission, New Delhi.

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Malik, P.L., *Handbook of Labour and Industrial Law*. 6th Edition, Eastern Book Company.



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THE PEOPLE'S
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भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 18] नई दिल्ली, मंगलवार, अप्रैल 23, 2013/ वैशाख 3, 1935 (शक)

No. 18] NEW DELHI, TUESDAY, APRIL 23, 2013/ VAISAKHA 3, 1935 (SAKA)

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 23rd April, 2013/Vaisakha 3, 1935 (Saka)

The following Act of Parliament received the assent of the President on the 22nd April, 2013, and is hereby published for general information:—

THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013

(No. 14 OF 2013)

[22nd April, 2013.]

An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;

AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

Be it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:---

CHAPTER I

PRELIMINARY

Short title,
extent and
commencement

1. (1) This Act may be called the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. In this Act, unless the context otherwise requires,---

(a) "aggrieved woman" means---

(i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;

(ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house;

(b) "appropriate Government" means---

(i) in relation to a workplace which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly---

(A) by the Central Government or the Union territory administration, the Central Government;

(B) by the State Government, the State Government;

(ii) in relation to any workplace not covered under sub-clause (i) and falling within its territory, the State Government;

(c) "Chairperson" means the Chairperson of the Local Complaints Committee nominated under sub-section (1) of section 7;

(d) "District Officer" means an officer notified under section 5;

(e) "domestic worker" means a woman who is employed to do the household work in any household for remuneration whether in cash or kind, either directly or through any agency on a temporary, permanent, part time or full time basis, but does not include any member of the family of the employer;

(f) "employee" means a person employed at a workplace for any work on regular, temporary, *ad hoc* or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name;

(g) "employer" means---

(i) in relation to any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit of the appropriate Government or a local authority, the head of that department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit or such other officer as the appropriate Government or the local authority, as the case may be, may by an order specify in this behalf;

(ii) in any workplace not covered under sub-clause (i), any person responsible for the management, supervision and control of the workplace.

Explanation.—For the purposes of this sub-clause “management” includes the person or board or committee responsible for formulation and administration of policies for such organisation;

(iii) in relation to workplace covered under sub-clauses (i) and (ii), the person discharging contractual obligations with respect to his or her employees;

(iv) in relation to a dwelling place or house, a person or a household who employs or benefits from the employment of domestic worker, irrespective of the number, time period or type of such worker employed, or the nature of the employment or activities performed by the domestic worker;

(h) “Internal Committee” means an Internal Complaints Committee constituted under section 4;

(i) “Local Committee” means the Local Complaints Committee constituted under section 6;

(j) “Member” means a Member of the Internal Committee or the Local Committee, as the case may be;

(k) “prescribed” means prescribed by rules made under this Act;

(l) “Presiding Officer” means the Presiding Officer of the Internal Complaints Committee nominated under sub-section (2) of section 4;

(m) “respondent” means a person against whom the aggrieved woman has made a complaint under section 9;

(n) “sexual harassment” includes any one or more of the following unwelcome acts or behaviour (whether directly or by implication) namely:—

(i) physical contact and advances; or

(ii) a demand or request for sexual favours; or

(iii) making sexually coloured remarks; or

(iv) showing pornography; or

(v) any other unwelcome physical, verbal or non-verbal conduct of sexual nature;

(o) “workplace” includes —

(i) any department, organisation, undertaking, establishment, enterprise, institution, office, branch or unit which is established, owned, controlled or wholly or substantially financed by funds provided directly or indirectly by the appropriate Government or the local authority or a Government company or a corporation or a co-operative society;

(ii) any private sector organisation or a private venture, undertaking, enterprise, institution, establishment, society, trust, non-governmental organisation, unit or service provider carrying on commercial, professional, vocational, educational, entertainment, industrial, health services or financial activities including production, supply, sale, distribution or service;

(iii) hospitals or nursing homes;

(iv) any sports institute, stadium, sports complex or competition or games venue, whether residential or not used for training, sports or other activities relating thereto;

(v) any place visited by the employee arising out of or during the course of employment including transportation provided by the employer for undertaking such journey;

(vi) a dwelling place or a house;

(p) "unorganised sector" in relation to a workplace means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.

Prevention of
sexual
harassment.

3. (1) No woman shall be subjected to sexual harassment at any workplace.

(2) The following circumstances, among other circumstances, if it occurs or is present in relation to or connected with any act or behaviour of sexual harassment may amount to sexual harassment:—

- (i) implied or explicit promise of preferential treatment in her employment; or
- (ii) implied or explicit threat of detrimental treatment in her employment; or
- (iii) implied or explicit threat about her present or future employment status; or
- (iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or
- (v) humiliating treatment likely to affect her health or safety.

CHAPTER II

CONSTITUTION OF INTERNAL COMPLAINTS COMMITTEE

Constitution
of Internal
Complaints
Committee.

4. (1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee":

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

(2) The Internal Committee shall consist of the following members to be nominated by the employer, namely:—

(a) a Presiding Officer who shall be a woman employed at a senior level at workplace from amongst the employees:

Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to in sub-section (1):

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organisation;

(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment:

Provided that at least one-half of the total Members so nominated shall be women.

(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer or any Member of the Internal Committee,---

(a) contravenes the provisions of section 16; or

(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest,

such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

CHAPTER III

CONSTITUTION OF LOCAL COMPLAINTS COMMITTEE

5. The appropriate Government may notify a District Magistrate or Additional District Magistrate or the Collector or Deputy Collector as a District Officer for every District to exercise powers or discharge functions under this Act.

Notification
of District
Officer.

6. (1) Every District Officer shall constitute in the district concerned, a committee to be known as the "Local Complaints Committee" to receive complaints of sexual harassment from establishments where the Internal Complaints Committee has not been constituted due to having less than ten workers or if the complaint is against the employer himself.

Constitution
and
jurisdiction of
Local
Complaints
Committee

(2) The District Officer shall designate one nodal officer in every block, taluka and tehsil in rural or tribal area and ward or municipality in the urban area, to receive complaints and forward the same to the concerned Local Complaints Committee within a period of seven days.

(3) The jurisdiction of the Local Complaints Committee shall extend to the areas of the district where it is constituted.

7. (1) The Local Complaints Committee shall consist of the following members to be nominated by the District Officer, namely:--

Composition,
tenure and
other terms
and conditions
of Local
Complaints
Committee

(a) a Chairperson to be nominated from amongst the eminent women in the field of social work and committed to the cause of women;

(b) one Member to be nominated from amongst the women working in block, taluka or tehsil or ward or municipality in the district;

(c) two Members, of whom at least one shall be a woman, to be nominated from amongst such non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment, which may be prescribed:

Provided that at least one of the nominees should, preferably, have a background in law or legal knowledge:

Provided further that at least one of the nominees shall be a woman belonging to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes or minority community notified by the Central Government, from time to time;

(d) the concerned officer dealing with the social welfare or women and child development in the district, shall be a member *ex officio*.

(2) The Chairperson and every Member of the Local Committee shall hold office for such period, not exceeding three years, from the date of their appointment as may be specified by the District Officer.

(3) Where the Chairperson or any Member of the Local Complaints Committee ----

(a) contravenes the provisions of section 16; or

(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest,

such Chairperson or Member, as the case may be, shall be removed from the Committee and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

(4) The Chairperson and Members of the Local Committee other than the Members nominated under clauses (b) and (d) of sub-section (1) shall be entitled to such fees or allowances for holding the proceedings of the Local Committee as may be prescribed.

Grants and
audit.

8. (1) The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the State Government grants of such sums of money as the Central Government may think fit, for being utilised for the payment of fees or allowances referred to in sub-section (4) of section 7.

(2) The State Government may set up an agency and transfer the grants made under sub-section (1) to that agency.

(3) The agency shall pay to the District Officer, such sums as may be required for the payment of fees or allowances referred to in sub-section (4) of section 7.

(4) The accounts of the agency referred to in sub-section (2) shall be maintained and audited in such manner as may, in consultation with the Accountant General of the State, be prescribed and the person holding the custody of the accounts of the agency shall furnish, to the State Government, before such date, as may be prescribed, its audited copy of accounts together with auditors' report thereon.

CHAPTER IV

COMPLAINT

Complaint of
sexual
harassment

9. (1) Any aggrieved woman may make, in writing, a complaint of sexual harassment at workplace to the Internal Committee if so constituted, or the Local Committee, in case it is not so constituted, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident:

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing:

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

(2) Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

Conciliation

10. (1) The Internal Committee or, as the case may be, the Local Committee, may, before initiating an inquiry under section 11 and at the request of the aggrieved woman take steps to settle the matter between her and the respondent through conciliation:

Provided that no monetary settlement shall be made as a basis of conciliation.

(2) Where a settlement has been arrived at under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall record the settlement so arrived and forward the same to the employer or the District Officer to take action as specified in the recommendation.

(3) The Internal Committee or the Local Committee, as the case may be, shall provide the copies of the settlement as recorded under sub-section (2) to the aggrieved woman and the respondent.

(4) Where a settlement is arrived at under sub-section (1), no further inquiry shall be conducted by the Internal Committee or the Local Committee, as the case may be.

11. (1) Subject to the provisions of section 10, the Internal Committee or the Local Committee, as the case may be, shall, where the respondent is an employee, proceed to make inquiry into the complaint in accordance with the provisions of the service rules applicable to the respondent and where no such rules exist, in such manner as may be prescribed or in case of a domestic worker, the Local Committee shall, if *prima facie* case exist, forward the complaint to the police, within a period of seven days for registering the case under section 509 of the Indian Penal Code, and any other relevant provisions of the said Code where applicable:

Inquiry into complaint

45 of 1860.

Provided that where the aggrieved woman informs the Internal Committee or the Local Committee, as the case may be, that any term or condition of the settlement arrived at under sub-section (2) of section 10 has not been complied with by the respondent, the Internal Committee or the Local Committee shall proceed to make an inquiry into the complaint or, as the case may be, forward the complaint to the police:

Provided further that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee.

45 of 1860.

(2) Notwithstanding anything contained in section 509 of the Indian Penal Code, the court may, when the respondent is convicted of the offence, order payment of such sums as it may consider appropriate, to the aggrieved woman by the respondent, having regard to the provisions of section 15.

(3) For the purpose of making an inquiry under sub-section (1), the Internal Committee or the Local Committee, as the case may be, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely:—

5 of 1908

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents; and

(c) any other matter which may be prescribed.

(4) The inquiry under sub-section (1) shall be completed within a period of ninety days.

CHAPTER V

INQUIRY INTO COMPLAINT

12. (1) During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or the Local Committee, as the case may be, may recommend to the employer to—

Action during pendency of inquiry

(a) transfer the aggrieved woman or the respondent to any other workplace; or

(b) grant leave to the aggrieved woman up to a period of three months; or

(c) grant such other relief to the aggrieved woman as may be prescribed.

(2) The leave granted to the aggrieved woman under this section shall be in addition to the leave she would be otherwise entitled.

(3) On the recommendation of the Internal Committee or the Local Committee, as the case may be, under sub-section (1), the employer shall implement the recommendations made under sub-section (1) and send the report of such implementation to the Internal Committee or the Local Committee, as the case may be.

Inquiry report.

13. (1) On the completion of an inquiry under this Act, the Internal Committee or the Local Committee, as the case may be, shall provide a report of its findings to the employer, or as the case may be, the District Officer within a period of ten days from the date of completion of the inquiry and such report be made available to the concerned parties.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has not been proved, it shall recommend to the employer and the District Officer that no action is required to be taken in the matter.

(3) Where the Internal Committee or the Local Committee, as the case may be, arrives at the conclusion that the allegation against the respondent has been proved, it shall recommend to the employer or the District Officer, as the case may be---

(i) to take action for sexual harassment as a misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;

(ii) to deduct, notwithstanding anything in the service rules applicable to the respondent, from the salary or wages of the respondent such sum as it may consider appropriate to be paid to the aggrieved woman or to her legal heirs, as it may determine, in accordance with the provisions of section 15:

Provided that in case the employer is unable to make such deduction from the salary of the respondent due to his being absent from duty or cessation of employment it may direct to the respondent to pay such sum to the aggrieved woman:

Provided further that in case the respondent fails to pay the sum referred to in clause (ii), the Internal Committee or, as the case may be, the Local Committee may forward the order for recovery of the sum as an arrear of land revenue to the concerned District Officer.

(4) The employer or the District Officer shall act upon the recommendation within sixty days of its receipt by him.

Punishment
for false or
malicious
complaint and
false evidence

14. (1) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is malicious or the aggrieved woman or any other person making the complaint has made the complaint knowing it to be false or the aggrieved woman or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer, as the case may be, to take action against the woman or the person who has made the complaint under sub-section (1) or sub-section (2) of section 9, as the case may be, in accordance with the provisions of the service rules applicable to her or him or where no such service rules exist, in such manner as may be prescribed:

Provided that a mere inability to substantiate a complaint or provide adequate proof need not attract action against the complainant under this section:

Provided further that the malicious intent on part of the complainant shall be established after an inquiry in accordance with the procedure prescribed, before any action is recommended.

(2) Where the Internal Committee or the Local Committee, as the case may be, arrives at a conclusion that during the inquiry any witness has given false evidence or produced any forged or misleading document, it may recommend to the employer of the witness or the District Officer, as the case may be, to take action in accordance with the provisions of the service rules applicable to the said witness or where no such service rules exist, in such manner as may be prescribed.

15. For the purpose of determining the sums to be paid to the aggrieved woman under clause (ii) of sub-section (3) of section 13, the Internal Committee or the Local Committee, as the case may be, shall have regard to --

Determination of compensation.

(a) the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;

(b) the loss in the career opportunity due to the incident of sexual harassment;

(c) medical expenses incurred by the victim for physical or psychiatric treatment;

(d) the income and financial status of the respondent;

(e) feasibility of such payment in lump sum or in instalments.

22 of 2005

16. Notwithstanding anything contained in the Right to Information Act, 2005, the contents of the complaint made under section 9, the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and inquiry proceedings, recommendations of the Internal Committee or the Local Committee, as the case may be, and the action taken by the employer or the District Officer under the provisions of this Act shall not be published, communicated or made known to the public, press and media in any manner:

Prohibition of publication or making known contents of complaint and inquiry proceedings.

Provided that information may be disseminated regarding the justice secured to any victim of sexual harassment under this Act without disclosing the name, address, identity or any other particulars calculated to lead to the identification of the aggrieved woman and witnesses.

17. Where any person entrusted with the duty to handle or deal with the complaint, inquiry or any recommendations or action to be taken under the provisions of this Act, contravenes the provisions of section 16, he shall be liable for penalty in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist, in such manner as may be prescribed.

Penalty for publication or making known contents of complaint and inquiry proceedings

18. (1) Any person aggrieved from the recommendations made under sub-section (2) of section 13 or under clause (i) or clause (ii) of sub-section (3) of section 13 or sub-section (1) or sub-section (2) of section 14 or section 17 or non-implementation of such recommendations may prefer an appeal to the court or tribunal in accordance with the provisions of the service rules applicable to the said person or where no such service rules exist then, without prejudice to provisions contained in any other law for the time being in force, the person aggrieved may prefer an appeal in such manner as may be prescribed.

Appeal

(2) The appeal under sub-section (1) shall be preferred within a period of ninety days of the recommendations.

CHAPTER VI

DUTIES OF EMPLOYER

19. Every employer shall --

Duties of employer.

(a) provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;

(b) display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee under sub-section (1) of section 4;

(c) organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;

(d) provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;

(e) assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;

(f) make available such information to the Internal Committee or the Local Committee, as the case may be, as it may require having regard to the complaint made under sub-section (1) of section 9;

(g) provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force; 45 of 1860.

(h) cause to initiate action, under the Indian Penal Code or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place; 45 of 1860.

(i) treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;

(j) monitor the timely submission of reports by the Internal Committee.

CHAPTER VII

DUTIES AND POWERS OF DISTRICT OFFICER

Duties and powers of District Officer.

20. The District Officer shall, --

(a) monitor the timely submission of reports furnished by the Local Committee;

(b) take such measures as may be necessary for engaging non-governmental organisations for creation of awareness on sexual harassment and the rights of the women.

CHAPTER VIII

MISCELLANEOUS

Committee to submit annual report

21. (1) The Internal Committee or the Local Committee, as the case may be, shall in each calendar year prepare, in such form and at such time as may be prescribed, an annual report and submit the same to the employer and the District Officer.

(2) The District Officer shall forward a brief report on the annual reports received under sub-section (1) to the State Government.

Employer to include information in annual report

22. The employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the annual report of his organisation or where no such report is required to be prepared, intimate such number of cases, if any, to the District Officer.

Appropriate Government to monitor implementation and maintain data

23. The appropriate Government shall monitor the implementation of this Act and maintain data on the number of cases filed and disposed of in respect of all cases of sexual harassment at workplace.

Appropriate Government to take measures to publicise the Act

24. The appropriate Government may, subject to the availability of financial and other resources, --

(a) develop relevant information, education, communication and training materials, and organise awareness programmes, to advance the understanding of the public of the provisions of this Act providing for protection against sexual harassment of woman at workplace,

(b) formulate orientation and training programmes for the members of the Local Complaints Committee.

25. (1) The appropriate Government, on being satisfied that it is necessary in the public interest or in the interest of women employees at a workplace to do so, by order in writing,---

Power to call for information and inspection of records

(a) call upon any employer or District Officer to furnish in writing such information relating to sexual harassment as it may require;

(b) authorise any officer to make inspection of the records and workplace in relation to sexual harassment, who shall submit a report of such inspection to it within such period as may be specified in the order.

(2) Every employer and District Officer shall produce on demand before the officer making the inspection all information, records and other documents in his custody having a bearing on the subject matter of such inspection.

26. (1) Where the employer fails to---

(a) constitute an Internal Committee under sub-section (1) of section 4;

(b) take action under sections 13, 14 and 22; and

(c) contravenes or attempts to contravene or abets contravention of other provisions of this Act or any rules made thereunder,

Penalty for non-compliance with provisions of Act.

he shall be punishable with fine which may extend to fifty thousand rupees.

(2) If any employer, after having been previously convicted of an offence punishable under this Act subsequently commits and is convicted of the same offence, he shall be liable to---

(i) twice the punishment, which might have been imposed on a first conviction, subject to the punishment being maximum provided for the same offence:

Provided that in case a higher punishment is prescribed under any other law for the time being in force, for the offence for which the accused is being prosecuted, the court shall take due cognizance of the same while awarding the punishment;

(ii) cancellation, of his licence or withdrawal, or non-renewal, or approval, or cancellation of the registration, as the case may be, by the Government or local authority required for carrying on his business or activity.

27. (1) No court shall take cognizance of any offence punishable under this Act or any rules made thereunder, save on a complaint made by the aggrieved woman or any person authorised by the Internal Committee or Local Committee in this behalf.

Cognizance of offence by courts

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(3) Every offence under this Act shall be non-cognizable.

28. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Act not in derogation of any other law.

29. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power of appropriate Government to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) the fees or allowances to be paid to the Members under sub-section (4) of section 4;

(b) nomination of members under clause (c) of sub-section (1) of section 7;

(c) the fees or allowances to be paid to the Chairperson, and Members under sub-section (4) of section 7;

- (d) the person who may make complaint under sub-section (2) of section 9;
- (e) the manner of inquiry under sub-section (1) of section 11;
- (f) the powers for making an inquiry under clause (c) of sub-section (2) of section 11;
- (g) the relief to be recommended under clause (c) of sub-section (1) of section 12;
- (h) the manner of action to be taken under clause (i) of sub-section (3) of section 13;
- (i) the manner of action to be taken under sub-sections (1) and (2) of section 14;
- (j) the manner of action to be taken under section 17;
- (k) the manner of appeal under sub-section (1) of section 18;
- (l) the manner of organising workshops, awareness programmes for sensitising the employees and orientation programmes for the members of the Internal Committee under clause (c) of section 19; and
- (m) the form and time for preparation of annual report by Internal Committee and the Local Committee under sub-section (1) of section 21.

(3) Every rule made by the Central Government under this Act shall be laid as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(4) Any rule made under sub-section (4) of section 8 by the State Government shall be laid, as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House.

Power to
remove
difficulties.

30. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty:

Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

P.K. MALHOTRA,
Secy. to the Govt. of India.

CORRIGENDA

THE PREVENTION OF MONEY-LAUNDERING (AMENDMENT) ACT, 2012

(2 of 2013)

At page 18, in line 2, for "Arts", read "Art".

At page 21, in line 14, for "Protection", read "(Protection)".

CORRIGENDUM

THE UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT ACT, 2012
(3 of 2013)

At page 6, in line 22, *for* "clause", *read* "clause".

CORRIGENDUM

THE BANKING LAWS (AMENDMENT) ACT, 2012
(4 of 2013)

At page 8, in line 29, *for* 'sections 30', *read* 'section 30',.

CORRIGENDUM

THE APPROPRIATION ACT, 2013
(9 of 2013)

At page 1, in the marginal heading to section 2, *for* "4715,54,00,000",
read "49715,54,00,000".

UNIT 3 LEGAL PROVISION FOR CHILDREN

Structure

*Ranjana Sehgal**

- 3.0 Objectives
- 3.1 Introduction
- 3.2 Rights of the Child: Constitutional and Legislative Initiatives to Support Child Rights
- 3.3 Specific Provisions for Children Under Family Laws
- 3.4 Laws Regulating Child Labour
- 3.5 Juvenile Justice System
- 3.6 The Laws Governing Abuse and Trafficking among Children
- 3.7 Let Us Sum Up
- 3.8 Key Words
- 3.9 Further Reading and References
- 3.10 Answers to Check Your Progress

3.0 OBJECTIVES

This Unit reviews the legal rights and privileges bestowed on children under different Indian laws. The legal framework covers rights of children in different domains spawning issues like child labour, neglected and delinquent children etc. The aim of this unit is to enable the learner comprehend the strides made in India for the protection of child's rights and the existing lacunae in the legislative arena. After studying this Unit the learner shall be able to:

- understand the perspective on the Rights of the Child;
- outline the provisions for children under the prominent Family Laws pertaining to custody, adoption and maintenance;
- critique the laws enacted to address the problems of child labour;
- analyze the extent to which the Juvenile Justice Act 2000 has been effective in protecting the rights of the neglected and delinquent children; and
- critically review the legal perspective on issues of child trafficking and sexual abuse.

3.1 INTRODUCTION

Way back in 1974, the National Policy for Children declared that the nation's children were its most important asset. With more than one-third of its population below 18 years, India has the largest young population in the world and ironically, also, the highest number of child labourers in the world. Though we have made some significant strides towards ensuring the basic rights of children, as evident from the progress in overall indicators such as infant mortality rates, child survival,

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literacy and school dropout rates, the situation continues to be dismal. UNESCO's revelation about the status of children in India does not make us proud as a nation. While India boasts of 93 per cent enrolment in schools at present and a target of 100 percent till 2010, the UN estimates tell another story. As per their estimates, 72 million children in India do not have access to education and India would not be able to provide education to all children even till 2015. Out of every 100 children who enroll in schools, 70 drop out by the time they reach the secondary level and of every 100 children who drop out of school, 66 are girls. Regarding health and nutrition status there are no encouraging trends either. One out of every 16 children die before the age of 1, and one out of 11, before 5 years of age. As many as 35 per cent of the developing world's low-birth-weight babies are born in India. One in every three malnourished children in the world lives in India. The declining number of girls in the 0-6 age-group is another cause for alarm. For every 1,000 boys there are only 927 females and 65 per cent of girls in India are married by the time they attain adulthood and become mothers soon after. Census 2001 reports that 1.67 per cent of the total population within the age-group 0-19 years (46,38,26,702) are disabled.

The issues of child labour, juvenile delinquency and child abuse continue to dominate discussions at seminars and various public forums to be only pushed to the backburner, thereafter. India does not lack legislation for children, with various laws that touch upon subjects like guardianship, adoption, maintenance, custody and child labour, among others in place.. As we are aware laws relating to children's rights are enacted with good intentions but they fail to address the real issues at stake as they are violated with impunity. The existence of a plethora of laws does not necessarily ensure a safe childhood for our children, in the absence of amenities such as education, health and a conducive social environment. Most of the children are exposed to dangers of physical and emotional abuse. It is still not too late. If the rights of children are to be enforced; a concerted effort has to be made to increase awareness about their plight rights. As directed by the Supreme Court, we should promise our children a dignified existence. Laws, if framed judiciously and implemented stringently, can be an effective weapon to protect a child's rights.

3.2 RIGHTS OF THE CHILD: CONSTITUTIONAL AND LEGISLATIVE INITIATIVES TO SUPPORT CHILD RIGHTS

On November 20, 1989, the UN General Assembly adopted the Convention on the Rights of the Child (CRC). The world leaders came to a consensus that children, till 18 years of age, require special care and protection. They also wanted to make sure that the world recognized that children, too, had human rights. The Convention is the first legally binding international instrument that spawns the full range of human rights-civil, cultural, economic, political and social rights in the context of child. It has set minimum entitlements and freedoms of children that the governments are supposed to protect regardless of race, colour, gender, language, religion, wealth, birth status or ability. On January 26, 1990, the opening day of the session, 61 countries signed the convention.

The Convention which is divided into three parts and fifty four Articles, articulates five sets of basic rights, based on four core guiding principles of:

- equality and non-discrimination;
- best interests of the child;
- the right to life, survival and development; and
- respect for the views of the child.

Every right spelled out in the Convention is inherent to the human dignity and all round development of every child. Briefly stated the Convention delineates the Rights of the Child as follows:

- The right to survival;
- The right to develop to the fullest;
- The right to protection from harmful influences,
- The right against abuse and exploitation; and
- The right to participate fully in family, cultural and social life.

The Rights of the Child under the Indian Constitution

Most of the 'Rights of the Child' find prominent place among the Fundamental Rights guaranteed under the Indian Constitution to all Indian citizens and the Directive principles of State Policy. All the seven sets of Fundamental Rights in the Constitution are available to children with as much authority and accessibility as to the adult citizens.

Let's briefly look at the list of rights for children under our Constitution.

- While the right of equality and equal protection before the laws is available to any person (including children), Article 15(3) empowers the State to make special laws for children, to enable them to enjoy the fruits of the equality guarantee.
- Taking note of the prevailing exploitative practice of trafficking in human beings, particularly children, Article 23 of the Constitution has put a total ban on forced labour and makes such practices punishable under law.
- The Constitution in Article 24 prohibits the employment of children below the age of 14 years in any factory, mine or in any other hazardous activity.

The provisions in Part-IV of the Indian Constitution which have enabled the judiciary to promote the jurisprudence of child rights are Articles 39(e), (f), 42, 45 and 47. Article 39 states that the State shall, in particular, direct its policy towards securing-

- that the health and strength of workers and the tender age of children are not abused and that citizens are not compelled by economic necessity to enter avocations unsuited to their age or strength; {39 (e)}

- that children are given opportunities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. {39 (f)}
- The State shall make provision for securing just and humane conditions of work and for maternity relief. {42}
- The Directive principle under Article 45, which provides for free and compulsory education for all children until they complete the age of fourteen years is now available as a fundamental right to the children.
- The State shall regard raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drinks and of drugs which are injurious to health. { 47}

Thus, we see that the rights given to the children under our Constitution are very much in line with the spirit and principles of the Convention on the Rights of the Child. With India's ratification of the Convention in 1992, there has been a renewed concern on the policies and priorities, obligations and commitments vis-a-vis children. However, in order to translate this concern into concrete actions, there must be available trained personnel and accountable government machinery. The judiciary, too, of late has taken child rights and principles governing them seriously, particularly with regard to the neglected and the delinquent children.

Legislative Efforts to Support Child Rights

According to the Constitution, the State is entrusted with the responsibility for framing laws and policies for "protecting children and youth against exploitation and moral and material abandonment." If laws are to mean anything significant, they have to be brought into greater conformity with the UN Convention. The State has to take initiative to formulate legislation on child rights issues that ensure maximum positive discrimination in favor of children. Children should be guaranteed all existing Constitutional rights. Respecting the Rights of the children is a step towards recognizing them as stakeholders and participants, not mere mute beneficiaries. The State has to own up to its accountability not only for the recognition of a particular right but also for putting in place a non discriminatory delivery system.

The Parliament and the State Assemblies have been doing their bit in bringing forward appropriate legislation to support the status and welfare of children. A long list of beneficial laws has been put in the statute book translating Constitutional directives and guarantees into legislative enactments. By way of legislative support to Child's Rights, the State has enacted the Child Labour Prohibition laws, the Juvenile Justice Act, Child Marriage Restraint Act, etc. Apart from this, constant endeavors are being made to bring forth new laws to plug the existing gaps and to repeal outdated laws and practices in respect of children. Of late there has been a spurt of legislative action on child rights issues. For example, the recent Protection of Child Rights Act, 2005, the Juvenile Justice (Care and Protection of Children) Act, 2006, the proposed Immoral Traffic (Prevention) Amendment Bill 2006, Offences against Children Bill, and the Child Marriage Bill that has recently been passed by the Rajya Sabha. Another welcome measure, awaited since long for the protection of child rights has finally translated into reality with the passing of

the Commissions for Protection of Child Rights, 2005. The Act deals with the constitution of a National Commission and State Commissions for the protection of child rights. It provides for the constitution of children's courts for speedy trial of offences against children or violation of child rights. Surely this decade is seeing a high rate of legislative action on issues pertaining to children in the history of India, and a definitive shift from addressing children's issues as a matter of charity to a matter of justiciable and deliverable rights.

Still there are glaring gaps. We still do not have a law against child sexual abuse; child marriage is rampant, in spite of amendments to the law. Although education is a fundamental right, the process of delivery of this vital right faces major funds constraint and administrative hurdles. Despite the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, female foeticide is rampant. There are gaps in laws relating to health, education; housing and employment, where compromises have been made, which do not always maintain the highest principles of the dignity of childhood, the Constitution and the Convention. On child prostitution, rights of disabled and neglected street children there are either no comprehensive laws or the ones there are, suffer from serious inadequacies and shortcomings. Let us critically review the various measures of legislative protection offered to the children in India.

Check Your Progress I

Note: Use the space provided for your answer.

- 1) Enumerate the 'rights of the child' as provided in the Indian Constitution.

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3.3 SPECIFIC PROVISIONS FOR CHILDREN UNDER FAMILY LAWS

The family relations in India are still governed by a bewildering variety of customary, religion-based and feudalistic personal laws applicable to persons depending on their birth into one or other religion.

Provisions Governing Custody of a child under Hindu, Muslim, and Christian Family Laws

Many of the religions practicing in India have their own personal laws and different personal laws have different notions of custody. Child custody is a term used to define legal guardianship of a child under the age of 18. During marriage annulment proceedings, the issue of child custody often becomes a bone of contention into which the court is asked intervene. Family courts generally base decisions on the best interests of the child, rather than the arguments of each parent. In general, courts tend to award physical custody to the parent who demonstrates the maximum financial security and adequate parenting skills. Both parents continue to share legal custody of minor till the age of 18 which means that either parent can make

decisions which affect the welfare of the child, such as medical treatment, religious practices etc. Physical custody means that one parent is held primarily responsible for the child's housing, educational needs and food. In most cases, the non-custodial parent still has visitation rights.

Under the Hindu Law, the marriage laws make provisions for dealing with the issue of child custody which are invoked only when there are some proceedings pending under them. Hindus have an additional Act, viz. the Hindu Minority and Guardianship Act 1956 (HMGA). Apart from this, there is the Guardians and Wards Act 1890 (GWA) which is a secular law for appointment and declaration of guardians and allied matters, irrespective of caste, community or religion. In determining the question of custody and guardianship, the paramount consideration is the welfare of the minor, which interalia includes the child's, moral as well as physical well-being, and also the ties of affection. The Hindu Minority and Guardianship Act, 1956 contains a provision which lays down that custody of a child upon the age of five should ordinarily be with the mother. Under other personal laws, though, there is no such statutory provision; the Indian courts have consistently taken the view that the mother is a suitable person to take charge of the child. Ordinarily, custody should be given to either parent but in the interest of the child, the custody may be given to a third person also, such as grand parents.

Under the Muslim Law, the mother has the first and the foremost right to have the custody of the child till disqualified. This right is known as right of *hizanat* and it can be enforced against the father or any other person. The mother's right of *hizanat* is solely recognized in the interest of the child and in no sense an absolute right. Among the Hanafis the mother is entitled to the custody of her daughters till the age of puberty and among the Malilikis, Shafiis and the Hanabalīs the mother's right of custody over her daughters continues till her marriage. The mother has the right of custody of her children up to the ages specified, irrespective of the fact whether the child is legitimate or illegitimate. In the absence of both the parents or on their being disqualified the grandfather is entitled to custody. The Shia law is very categorical and lays down that a person who has ceased to be Muslim is not entitled to the custody of the child. The cardinal principal of *hizanat* in Muslim law is the "welfare of the child".

The Christian Law, per se does not have any provision for custody but the issues are well solved by the Indian Divorce Act which contains provisions relating to custody of children. In any suit for obtaining a judicial separation, the Court may from time to time, before making its decree, make such interim orders, as it deems proper with respect to the custody, maintenance and education of the minor children, the marriage of whose parents is the subject of such suit,.

Adoption

Adoption is the transplantation of a child from the family in which he is born, into another family by gift by his natural parents to his adoptive parents. In India we still do not have a uniform law governing adoption among different religious communities. Adoption is recognized under the Hindu personal law, but is not recognized by Muslims, Christian and Parsis. Personal law of Muslims, Christians, Parsis and Jews does not recognize complete adoption. As non-Hindus do not have an enabling law to adopt a child legally, those desirous of adopting a child can only take the child in 'guardianship' under the provisions of The Guardian and Wards Act, 1890.

Currently, the adoption under Hindu Law is governed by The Hindu Adoption and Maintenance Act, 1956. The Hindu Adoption and Maintenance Act, 1956 extends to only the Hindus, which are defined under Section-2 of the Act. This act aims to amend and codify the law relating to adoptions and maintenance among Hindus. Any adoption made in contravention of the said provisions shall be void. No adoption which has been validly made can be cancelled, nor can the adopted child renounce his or her status as such and return to the family of his or her birth. Also no person shall receive or agree to receive any payment or other reward in consideration of the adoption of any person.

1) Requisites of a valid adoption

No adoption shall be valid unless—

- 1) The person adopting has the capacity and the right, to take in adoption;
- 2) The person giving in adoption has the capacity to do so;
- 3) The person adopted is capable of being taken in adoption; and
- 4) The adoption is made in compliance with the other conditions under this act.

2) Capacity of a male Hindu to take in adoption

Any male Hindu who is of sound mind and is not a minor has the capacity to take a son or a daughter in adoption.

3) Capacity of a female Hindu to take in adoption

Any female Hindu who is of sound mind, who is not a minor, who is not married, or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind, has the capacity to take a son or daughter in adoption.

4) Persons capable of giving in adoption

No person except the father or mother or the guardian of a child shall have the capacity to give the child in adoption. The father, if alive, shall alone have the right to give in adoption, but such right shall not be exercised without the consent of the mother unless the mother has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind.

The mother may give the child in adoption if the father is dead or has completely and finally renounced the world or has ceased to be a Hindu or has been declared by a court of competent jurisdiction to be of unsound mind. Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself.

5) **Persons who may be adopted**

No person shall be capable of being taken in adoption unless

- he or she is Hindu,
- has not already been adopted,
- has not been married, unless there is a custom which permits married persons to be taken in adoption,
- he or she has not completed the age of fifteen years.

6) **Effects of adoption**

An adopted child shall be deemed to be the child of his or her adoptive father or mother for all purposes with effect from the date of the adoption and from such date all the ties of the child in the family of his or her birth shall be deemed to be severed and replaced by those created by the adoption in the adoptive family. The child cannot marry any person whom he or she could not have married if he or she had continued in the family of his or her birth, any property which vested in the adopted child before the adoption shall continue to vest in such person subject to the obligations, if any, attaching to the ownership of such property including the obligation to maintain relatives in the family of his or her birth. The adopted child shall not divest any person of any estate which vested in him or her before the adoption.

The Guardian and Ward Act (GWA), 1890

Muslims, Christians and Parsis can take a child under the said Act only under foster care. Once a child under foster care becomes major, he is free to break away all his connections. Besides, such a child does not have legal right of inheritance. Foreigners, who want to adopt Indian children, have to approach the court under the aforesaid Act. In case the court has given permission for the child to be taken out of the country, adoption according to a foreign law, i.e., law applicable to guardian, takes place outside the country. Adoption in the Hindus is covered by The Hindu Adoptions Act, 1956. The general law relating to guardians and wards is contained in the Guardians and Wards Act, 1890. It clearly lays down that father's right is primary and no other person can be appointed unless the father is found unfit. It also provides that the court must take into consideration the welfare of the child while appointing a guardian. The child, however, does not get the same status as a child born biologically to the family. Unlike a child adopted under the Hindu Adoption and Maintenance Act, 1956 the child cannot become their own, take their name or inherit their property by right. This Act confers only a guardian-ward relationship. This legal guardian-ward relationship exists until the child completes 21 years of age. Foreigners, who seek to adopt an Indian Child, can do so under this Act to assume legal Guardianship of the child, after giving an assurance to the court, that they would legally adopt the child as per the laws of their country, within two years after the arrival of the child in their country.

Maintenance

Maintenance of children

A Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children. A legitimate or illegitimate child may claim maintenance from

his or her father or mother so long as the child is a minor. The obligation of a person to maintain his or her daughter who is unmarried extends in so far as the unmarried daughter, as the case may be, is unable to maintain herself out of his or her own earnings or other property.

Maintenance of dependants

The heirs of a deceased Hindu are bound to maintain the dependants of the deceased out of the estate inherited by them from the deceased. Dependants, among others, include Deceased person's son, unmarried daughter, minor illegitimate son, so long as he remains a minor, illegitimate daughter, so long as she remains unmarried.

Age of Child

A child is defined variously. Whether one is a child or not, depends upon the law which is being invoked in a given case. The Hindu Minority and Guardianship Act (HMGA), 1956, in Section 4 (a), defines a 'minor' as a person who has not completed the age of 18. The age of majority for the purposes of appointment of guardians of person and property of minors, according to the Dissolution of Muslim Marriages Act, 1939, is also completion of 18 years. Christians and Parsis also reach majority at 18. Significantly, under the Child Marriage Restraint Act, 1929, which is a secular law, the age of marriage is 21 years for males and 18 years for females. But the age of marriage in Muslim personal law is the age of puberty (around 14 years). It was held that Muslims are not exempted from this law. If the marriage of a Muslim girl is performed while she is a minor, the marriage cannot be void, but the persons who participated in the marriage are not immune from the legal punishment provided under Sections 4, 5 and 6 of the Child Marriage Restraint Act. A Muslim girl can marry on attaining the age of puberty, and her marriage cannot be declared void because she is below the age of 18, according to the Child Marriage Restraint Act. Thus, the definition of a child is differently interpreted under different laws presenting a peculiar dilemma before us, yet to be resolved. While the Convention clearly states that a child is one who has not attained the age of 18 years, in India we are still undecided as will be evident from the chart given below:

Indian Laws and Age of Child

	Acts (In Years)	Age of Child
1.	The Child Marriage Restraint Act 21 for male and 18 for female	
2.	The Indian Majority Act	18
3.	The Hindu Minority and Guardianship Act, 1956	18
4.	The Child (pledging of Labour) Act, 1933	15
5.	The Factories act, 1948	14
6.	The Child Labour (Prohibition and Regulation) Act, 1986	14
7.	The Apprentices Act, 1961	14
8.	The Juvenile Justice Act, 2000	18
9.	The Immoral Traffic (Prevention) Act	16

The Child Marriage Restraint Act, 1929

“The Child Marriage Restraint Act, 1929” was passed to restrain the solemnization of child marriage.

Child” means a person who, if a male, has not completed twenty one year of age, and if a female, has not completed eighteen years of age.

Punishments prescribed for the offences under the Act:

- 1) If a male above eighteen years of age and below twenty one, contracts a child marriage, he shall be punishable with simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both.
- 2) Whoever, being a male above twenty one years of age, contracts a child marriage, he shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine.
- 3) Whoever performs conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine unless he proves that he had reason to believe that the marriage was not a child-marriage.
- 4) Where a minor contracts a child marriage, any person having charge of the minor (below 18 years), whether as parent or guardian or in any other capacity, lawful or unlawful, does any act to promote the marriage or permits it to be solemnized, or negligently fails to prevent it from being solemnized, shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine.

Check Your Progress II

Note: Use the space provided for your answer.

- 1) What are the provisions governing custody of a child under Hindu, Muslim, and Christian family laws?

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3.4 LAWS REGULATING CHILD LABOUR

Child labour is a malady which is slowly eating up the childhood of millions of our children. Laws are available to cure this disease but what is most needed is their strict application by the implementing agencies. Census reports clearly point to a rise in the number of child labourers in the country from 11.28 million in 1991 to 12.59 million in 2001. Although the number of children employed in the agricultural sector, in domestic work, roadside restaurants, sweetmeat shops, automobile mechanic units, rice mills and many such sectors is not known, there is ample evidence to suggest that more and more children are entering the labour force and are being exploited by their employers. The existing law on child labour that

allows children to work in occupations that are not considered harmful contradicts the right of every child to free and compulsory education. No attempt has been made to address this paradox. A PIL has been filed with the Supreme Court of India challenging the validity of the Child Labour Act in the wake of the Constitutional guarantee of the right to education for children in the 6-14 age-groups.

Child Labour (Prohibition And Regulation) Act, 1986

“The Child Labour (Prohibition And Regulation) Act, 1986” was passed by parliament in the thirty-seventh year of the Republic of India.

Salient Features of the Act

- 1) The Act extends to the whole of India. It defines a ‘child’ as a person who has not completed his fourteenth year of age; an adolescent’ means a persons who has completed his fourteenth year of age but has not completed his eighteenth year;
- 2) It prohibits the employment of children in certain occupations and processes set forth in part A and B of the schedule, to which the Central Government, may add any occupation or process. The Central Government is empowered to constitute an advisory committee to be called the Child Labour Technical Advisory Committee for the purpose of addition of occupations and processes to the Schedule.
- 3) The conditions of work of Children, such as hours and period of work have been regulated as follows:
 - No child shall work for more than three hours before he has had an interval for rest for at least one hour.
 - The period of work of a child shall be so arranged that inclusive of his interval for rest, it shall not be spread over more than six hours, including the time spent in waiting for work on any day.
 - No child shall be permitted or required to work between 7 p.m. and 8 a.m.
 - No child shall be permitted or required to work overtime.
 - No child shall be permitted or required to work in any establishment on any day on which he has already been working in another establishment.
 - Every child employed in an establishment shall be allowed in each week, a holiday.

There shall be maintained a register by every occupier in respect of children employed which is to be available for Inspection at all times during working hours, specifying the hours of work and the intervals of rest to which he is entitled; and the nature of work of any such child; Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purposes of this Act, be conclusive evidence as to the age of the child. The appropriate Government may, by notification in the official Gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments such as, cleanliness in the place of work,

disposal of wastes and effluents, ventilation and temperature, dust and fume, artificial humidification, employment of children on dangerous machines excessive weight, etc.

Appraisal

The most prominent economic sectors that employ children are agriculture, carpet, stone quarries, brick kilns, construction, garments, sarees, diamond cutting and polishing, slate, glass and bangles, matches and fireworks, beedi, lock, restaurants, garages etc. The children working in these areas, to a large extent, are found in bondage. They are made to work for 12-14 hours under most appalling conditions with no wages. Disease or injury during the work is blatantly ignored by the employer. The existing law on child labour that allows children to work in occupations that are not considered harmful is juxtaposed against the right of every child to free and compulsory education. The dismal performance of the governments in the implementation of the child labour laws and alarming rise of 4 per cent per annum of the menace, speak volumes of the absence of the political and administrative will. It is well known that the present child labour laws have flaws and anomalies, but then, that does not absolve the government of its proper implementation.

The three consecutive reports of Parliamentary committee on child labour, various reports of commissioners of Supreme Court and the report submitted by the Commission on Labour Standards all indicate the abject failure to check violation of child labour laws. The reports had brought some meaningful suggestions to improve the situation, but the government chose to conveniently push them in cold storage, leave alone contemplating on them. The present Child Labour Law (1986) which provides for a fine up to 20,000 and imprisonment from 3 months to 2 years is a toothless law fraught with many loopholes. For example, out of the 4000 cases registered against the offenders of child labour law, nearly 3,500 were let off with paltry penalty of less than Rs 200. The rest are still gathering dust in various courts. It is a fact that till date that not even the worst child exploiter has been punished.

Other Indian Statutory Provisions on Child Employment are contained in the following Acts:

Children (Pledging of labour) Act, 1933

Factory Act, 1948

Mines Act, 1952 & 2015

Plantation labour Act, 1959

Motor Transport Act, 1961

Beedi and Cigar Workers Act, 1966

Employing Children Act, 1938

Merchant Shipping Act, 1958

State Shops and Commercial Establishments Act

The Apprentice Act, 1961

The Contract Labour Act, 1970

Check Your Progress III

Note: Use the space provided for your answer.

- 1) How far the “The Child Labour (Prohibition And Regulation) Act, 1986” has been successful in regulating child labour in our country?

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3.5 JUVENILE JUSTICE SYSTEM

The Indian Penal Code (IPC), the primary penal law in India, contains two special provisions in relation to children—

- 1) It declares that nothing done by a child below the age of 7 is an offence
- 2) That all children above the age of 7 but below the age of 12 are presumed to have the mental capacity that makes a person liable for commission of an offence.

Thankfully though, the Juvenile Justice Act, 2000 provides for no punishment but only corrective measures for all children below the age of 18 found to have committed an offence. The criminal justice system as available for the adults is not suitable to be applied to a juvenile or a child. As a step towards achieving the Constitutional aims, the Juvenile Justice Act, 1986, was enacted “to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to, and disposition of, delinquent juveniles”. The Juvenile Justice (Care and Protection of Children) Act, 2000” was passed by parliament in the fifty-first year of the Republic of India which an improvement of its earlier version passed in 1986.

The Juvenile Justice (Care and Protection of Children) Act, 2000

The Juvenile Justice (Care and Protection of Children) Act, 2000 (JJA 2000) is applicable to the whole of India, except the state of Jammu and Kashmir, and lays down a non-penal protective juvenile justice system. JJA 2000 applies to all children below the age of 18 years, who may have committed an offence or may be in need of care and protection. This legislation was passed to bring the law in conformity with international legal provisions contained in the UN Convention on the Rights of the Child.

Important provisions

From the statement of the objectives embodied in the preamble of the Act, it is clear that the Act caters to provide:

- Care
- Protection
- Treatment

- Rehabilitation

to two categories of children namely,

- 1) children in need of care and protection
- 2) juveniles in conflict with law by catering to their development needs and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under the Act.

“Child in need of care and protection” should meet any of the following conditions, to qualify as such—

- 1) who is without any home and without any ostensible means of subsistence,
- 2) who resides with a person there is a reasonable likelihood of the child in question being injured, killed, abused or neglected.
- 3) who is mentally or physically challenged or ill or suffering from terminal diseases or incurable diseases having no one to support or look after; whose parents or guardian are unfit or incapacitated to exercise control.
- 4) whose parents have abandoned him and has no body to take care or has run away and the parents cannot be found; who is found vulnerable and is likely to be inducted into drug abuse or trafficking,
- 5) who is or is likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts,
- 6) who is victim of any armed conflict, civil commotion or natural calamity;

The Act envisages the constitution of two parallel set of authorities for the two categories of children, namely the delinquents and the neglected. The Act mentions the procedure of how and when they will function.

Authorities Constituted under the Act

Juvenile in Conflict With Law	Child in Need of Care and Protection
Juvenile Justice Board • Comprising a Magistrate and two social workers of whom at least one should be a woman. Magistrate should have the knowledge or training in child psychology. • On arrest, the concerned police officer shall inform- (a) the parent or guardian of the juvenile, if he can be found, and direct him to be present at the Board before which the juvenile will appear;	Child Welfare Committee • Comprising a Chairperson and four other members of whom at least one shall be a woman and another, an expert on matters concerning children. • Any child in need of care and protection may be produced before the committee by one of the following persons 1. any police officer or special juvenile police unit. 2. Any public servant. 3. childline. 4. Any social worker or public spirited citizen authorized by the state government. 5. Child himself.

(b) the probation officer of such arrest to enable him to obtain information regarding the antecedents and family background of the juvenile likely to be of assistance to the Board for making the inquiry. • In case the JJB finds that the child has committed an offence, it may pass any of the following orders: 1) release after due admonition and counseling to him/her and the family; 2) Keep under the supervision of parents/ guardian/probation officer/fit person or institution; impose fine; send for community service; order group counseling; send to special home. 3) No child can be sent to death or imprisonment or to prison in default of payment of fine. In case the child is above 16 years of age and commits a very serious offence, he/she may be ordered to be kept in safe custody. A child dealt with by the JJB does not suffer any disqualification attached to conviction for an offence.	• The Committee shall have the powers to restore any child in need of care and protection to his parent, guardian, fit person or fit institution.
Observation homes • Established and maintained by state government itself or along with voluntary organizations, in district or group of districts. • For temporary reception of any juvenile in conflict with law during the pendency of any inquiry regarding them under this Act. • The state government has to provide funds for the	Children's Home • Established and maintained by State Government or in association with voluntary organizations, in district or group of districts. • For the reception of child in need of care and protection during the pendency of any inquiry and subsequently for their care, treatment, education, training, development and rehabilitation. • To provide for the care, treatment, education, training, development

management of the observation homes and for the rehabilitation and social integration of a juvenile • Every juvenile sent to an observation home shall be initially kept in a reception unit of the observation home for preliminary inquiries, care and classification of juveniles according to age group, giving due considerations to physical and mental status and degree of the offence committed, for further induction into observation home.	and rehabilitation of the child. • The state government has to provide fund for the management of the children's homes and rehabilitation of the children. • Social auditing: The Central Government or State Government may monitor and evaluate the functioning of the children's homes..
Special Homes • Established and maintain by State Government by itself or with voluntary organizations, in every district or group of districts. • Where the state government is of opinion that any institution other than a home established is fit, it may certify such institution as a special home for the purpose of this Act. • fund for the management of the special homes and for the socialization of a juvenile delinquent to be provided by State Government.	Shelter homes • Reputed and capable voluntary organizations may be recognized and provided assistance to set up and administer shelter homes. • shall function as drop-in-centres for the children in the need of urgent support who have been brought to such homes. • To provide for the care, treatment, education, training, development and rehabilitation of the child.

After-care organization- The State Government is empowered to draw the rules that provide:

- a) for the establishment of after-care organisation and their functions;
- b) for a scheme of after-care programme to be followed by such organizations for the purpose of taking care of juveniles or children after they leave the homes and for the purpose of enabling them to lead an honest, industrious and useful life;
- c) for the preparation or submission of a report by the probation officer in respect of each juvenile or the child prior to his discharge from a special or children's home, regarding the necessity, nature and period of after-care and the period of such after-care;

- d) for the standards and the nature of services to be maintained by such after care organisation;

No rule shall provide for such juvenile or child to stay in the after-care organisation for more than three years:

Provided further that a juvenile or child over seventeen years of age but less than eighteen years of age would stay in the after-care organization till he attains the age of twenty years.

Positive features

- The law is based on the premise that institutionalization is not the best option, hence offers a variety of options to be exercised by the Board in the best interest of the juvenile, such as, allow the juvenile to go home after advice; direct the juvenile to participate in group counseling or to perform community services; released on probation of good conduct etc. The law recognizes that the primary responsibility for providing care and protection to children shall be that of the family.
- The Act also prescribes that each police station should have a special police officer to deal with children - whether arrested for committing an offence or in need of care and protection. These police officers should have special training to deal with children in a friendly manner.
- Chapter iv is of immense significance for professional social workers as it speaks the language of social work as when it lays emphasis on the concept of rehabilitation and social integration of the child. There is great scope for a social worker's role in this Act because of its correctional nature.
- During the stay of the child in a children's home or special home, the rehabilitation and social reintegration of children shall be carried out alternatively by (1) adoption, (2) foster care (3) sponsorship (4) sending the child to an after-care organization, to ensure family care to children. Provisions for adoption of children under this Act are much wider than those under the Hindu Adoption and Maintenance Act as any person can adopt any child, irrespective of religion, the number or sex of natural-born children, the adoptive parent may already have. Adoption under JJA 2000 was implemented as a measure to provide for the welfare and care of children and not as a religious act. Observation homes fulfil the need to provide shelter to the child when the case is under procedure.
- No report in any newspaper, magazine or visual media, of any inquiry regarding a juvenile in conflict with law under this Act shall disclose any particulars so as to lead to the identification of the juvenile nor shall any picture of any such juvenile be published. There is, thus, an endeavor to conceal the identity of the delinquent and thereby save him from a stigma.
- The sponsorship programme is another unique feature of the Act designed to provide supplementary support to families, to children's homes and to special homes to meet medical, nutritional, educational and other needs of the children with a view to improving their quality of life. The State Government has been empowered to make rules for the purposes of carrying out various schemes of sponsorship of children, such as individual to individual sponsorship, group sponsorship or community sponsorship.

- The Juvenile Justice Act, thus, has helped to ensure a uniform juvenile justice system throughout India. While the legislation was enacted with good intentions, there are still many road blocks in its implementation. In a country where millions do not have birth certificates, to determine whether an offender is a child or not. Let us take a look at some of its drawbacks:

Drawbacks

- While the legislation has been made with the best intentions, its tardy drafting has invited much criticism.
- Its implementation, also, has been piecemeal. The biggest problem faced in implementation is the absence of all-India data relating to the status of children in India. There certainly are no figures available on the number of children in need of care and protection as defined under JJA 2000. In the absence of basic data relating to children, proper planning is not possible.
- The largest number of cases that come before the Courts under this legislation have been for determination of the age. In the absence of a birth certificate, a child may easily be excluded from the operation of the JJA and denied its care and protection.
- Many juvenile courts do not have presiding officers; there is inordinate delay in disposal of cases proceedings and lack of infra-structural support. All these have made the whole system counter-productive, authoritarian and inimical to child rights.
- The Act does not deal with child sexual abuse and makes no provision for safe custody and treatment for a child as a victim. The child should be seen as deserving of sympathy and assistance and not as part of a criminal network. The Juvenile Justice Act was amended and rewritten in 2000, but it makes no attempt to identify sexual abuse on children. Sec. 23 of the Act only deals with assault, exposes, willful neglect, mental and physical suffering, for which imprisonment for a term of just 6 months is prescribed.

Check Your Progress IV

Note: Use the space provided for your answer.

- 1) Give a critical appraisal of the “The Juvenile Justice (Care and Protection of Children) Act, 2000”

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3.6 THE LAWS GOVERNING ABUSE AND TRAFFICKING AMONG CHILDREN

India has the world’s largest number of sexually abused children, with a child below 16 raped every 155th minute, a child below 10 every 13th hour, and at

least one in every 10 children sexually abused at some point in time. According to some estimates nearly 53 per cent of Indian children face sexual abuse.

The first ever national-level study by the Ministry of Women and Child Development covered 13 of India's 29 states with a sample size of 12,447 children in the 5-12 age-group, and 2,324 young adults. The study divided abuse into three categories, namely physical, sexual and emotional abuse. The study revealed that over 50 per cent of children had experienced physical abuse, with nearly 88.6 per cent subjected to it by their own parents. Nearly 65 per cent of schoolchildren reported being beaten by their teachers, mostly in government schools. A shocking 53 per cent of children admitted having faced sexual abuse and half of them were targeted by people known to them. While 41 per cent of children in the 5-12 age-groups complained of being forcibly kissed, the number came down to 25 per cent in the 13-14 age-group. Similarly, around 26 per cent of teenagers reported being forced to exhibit their private parts; the relevant figure for those below 12 was 36 per cent. What makes the situation grave is that around 70 per cent of abused children never reported the matter to anyone. While Assam (86%) topped the list of states where children faced sexual abuse, Andhra Pradesh and Delhi followed closely at 73 per cent and 72.26 per cent respectively. Rajasthan reported the lowest complaints at 29.36 per cent.

Sexual Abuse and the law

Every child is vulnerable to sexual abuse. We live in an age in which childhood and its innocence is under greater threat more than ever before and ironically the threat is more often from those whom we know and trust, such as neighbours, uncles, caretakers, etc., than strangers. Parents must realize that there is a possibility that someone might hurt or take advantage of their child. The abuse can take any form:

- Sexual touching and fondling.
- Exposing children to adult sexual activity or pornographic movies and photographs
- Having children to reveal or undress
- Rape, attempted rape or molestation

Paedophilia, is the physical or mental violation of a child with sexual intent, usually by an older person who is in some position of trust and/or power, vis-à-vis the child. The term paedophile refers to any adult who habitually seeks the company of children for the gratification of his/her sexual needs. There are a number of laws related to children, but no single comprehensive law that discusses the issue of child abuse or sexual abuse in general. The law, as it stands currently, is unable to take any concrete steps to hold these people in check. Child sexual abuse occurs in three ways typically: incestuous abuse (i.e. by family members of victims), sexual abuse by strangers, and child prostitution. In conservative societies, as ours is, incest is less likely to be reported to the police, because of fear of social disgrace. Families often be hushed about it and try to 'resolve' the issue privately because they view it as not a criminal matter. From the victim's point of view, however, incest may be more traumatic than rape by strangers, because such behaviour may be continued over a period of time and the victim remains helpless to protect herself from such abuses. In addition, it may have long-term psychological

effects. The victim develops an inner sense of guilt and depression, which may have long-lasting effects on her personality development. We still do not have a law against child sexual abuse; child marriage is rampant in spite of amendments to the law; although education is a fundamental right, the process of delivery of this most vital right faces major funds constraints and administrative hurdles; and the huge increase in the number of missing girls has not yet been arrested despite the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act.

The laws dealing with sexual offences do not specifically address child sexual abuse and do not take any notice of the innocence of the child and the indelible harm that his fragile psyche has been subjected to. Only rape and sodomy can lead to criminal conviction, anything less than rape amounts to 'outraging the modesty'. Our laws are problematic when applied to adult women, but even more so when applied to children. While sec. 376 of IPC seeks to provide women redress against rape, it is rarely interpreted to cover the broad range of sexual abuses, particularly of children. Thus, there is only one avenue available to the sexually abused child: the Indian Penal Code, 1860. The disadvantage is that the Indian Penal Code has no specific provisions with regard to child sexual abuse and the offence is called as "rape." Thus, if rape cannot be proved, the child is unable to get justice. Another loophole is that the Code always talks of rape victims as female and the offender as a male. The rape of a boy is not even recognized by the Code, under the Indian law, the rape of a boy amounts to an "unnatural offence". Unfortunately, while consenting adult homosexuals are penalized, pedophiles, who prey upon hapless children, get away easily.

Child Trafficking

Scores of children in India are forced into the sex trade because of their poverty and often sold into prostitution by their parents, who then live off their earnings. When the brothels are raided, these children find themselves "rescued" under the Juvenile Justice Act, 1986, and held in State-run juvenile rehabilitation centres, the brothel-keepers, who should have been prosecuted, generally get away. Thousands of women and children are being trafficked every year making it as the third largest industry, after the arms and drugs trade. A recent study of 412 brothel owners from 12 states revealed that there were six girl-children on average per brothel. One-hundred-and-sixty traffickers interviewed admitted that young girls were their main target. In 35 per cent of cases, it is families that sell their women into the flesh trade for as little as Rs 1,000-Rs 5,000

The Prevention of Immoral Traffic Act (PITA) was passed for prevention of immoral traffic. All persons, whether male or female, exploited sexually for commercial purposes come under the purview of PITA. The Act also distinguishes between "child" and "minor." A "**child**" is a person under sixteen year of age and a "**minor**" is between sixteen and eighteen years of age. Under the Act, offences that involve children are dealt with strictly by enhancing the period of imprisonment. Sec. 5 of the Immoral Traffic Prevention Act, 1956 prescribes punishment of not less than 7 years for inducing a child into prostitution, but does not directly address child abuse. Despite the stringent provisions of PITA, it is estimated that there are about 5, 00,000 child sex workers in India and there is an annual increase of 8 to 10 per cent. India's child-flesh industry is considered the second largest in the world with children also smuggled abroad for such purposes. In Mumbai, 30 per cent to 35 per cent sex workers are children, and the age of the

child sex worker is reducing every year. Young girls continue to be the main target of the traffickers, especially since clients are eager to have sex with virgins. Transactions in prostitution are reported to gross Rs 40,000 crore per annum, with revenues being shared between procurers, pimps, brothel keepers and the police. What is needed in order to remedy the situation is not so much the enactment of new laws as the adherence to the ones that are in place. More than anything else what we need to ensure is that the Indian law abides by the spirit in which the UN Convention for the Rights of the Child was enacted. Promotion, respect and appreciation of the rights of the child by the society is the only effective way to prevent the abuse of children, merely paying lip sympathy on the International Day for the Rights of the Child - 19th November - is insufficient. What we need is continuous development of law and civil society responses to this problem. In the legal arena, the problems in addressing child abuse are not so much related to the absence of law, as to the lack of awareness and information, which makes this problem that much challenging.

Check Your Progress V

Note: Use the space provided for your answer.

- 1) Critically review the legislative initiatives taken to control sexual abuse and trafficking among children in our country.

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3.7 LET US SUM UP

Legislation for the children is a mirror that reflects the concern of a nation for its children. India is a signatory to the UN Convention on the Rights of the Child 1989. India ratified this Convention in 1992. This International Convention obligates member States to protect and promote the physical and psychological health of children. They must take affirmative action to protect children from all forms of sexual abuse, neglect, exploitation, torture, or any form of cruelty. Most of the above 'Rights of the Child' find prominent place among the Fundamental Rights and the Directive principles of State Policy. The Supreme Court, as part of the system of governance of the country has been involving these principles in interpretation of statutes and in implementation of fundamental human rights.

The Parliament and the State Assemblies have been doing their bit in bringing forward appropriate legislation to support the status and welfare of children. A long list of beneficial laws has been put in the statute book translating constitutional directives and guarantees into legislative enactments. As a legislative support to Child's Rights, the State has enacted the Child Labour Prohibition laws, the Juvenile Justice Act, Child Marriage Restraint act, etc. Apart from this constant endeavors are being made to bring forth new laws to plug the existing gaps and to repeal outdated laws and practices in respect of children. But still there are glaring gaps. We still do not have a law against child sexual abuse; child marriage is rampant in spite of amendments to the law. Although education is a fundamental

right, the process of delivery of this vital right faces major funds constraint and administrative hurdles; and the huge increase in the number of missing girls has yet to be arrested despite the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act.

On child prostitution, rights of disabled children and neglected street children, there are either no comprehensive laws or the ones there are, highly inadequate when compared to the principles and standards of the Convention. In India we still do not have a uniform law governing adoption among different religious communities. Adoption is recognized under the Hindu personal law, but is not recognized by Muslims, Christian and Parsis. The existing law on child labour that allows children to work in occupations that are not considered harmful contradicts the right of every child to free and compulsory education. No attempt has been made to address this paradox. The present Child Labour Law (1986) is a toothless instrument fraught with loopholes. The Juvenile Justice (Care and Protection of Children) Act, 2000 lays down a non-penal protective juvenile justice system for all children who have not completed the age of 18 years who may have committed an offence or may be in need of care and protection. The Act envisages the constitution of two parallel set of authorities for the two categories of children, namely the delinquents and the neglected. There are a number of laws related to children, but no single comprehensive law that discusses the issue of sexual child abuse or sexual abuse in general. Thousands of women and children are being trafficked every year. Young girls continue to be the main target of the traffickers, especially since clients are eager to have sex with virgins. Under PITA, offences that involve children are dealt with strictly by enhancing the period of imprisonment.

The existing laws must be strengthened and mindsets changed. Laws intended for the needy, neglected and vulnerable groups are passed by our legislature to help, protect and uplift them but somewhere in the mind lurks a fear whether these laws will be fully and fairly implemented. Infact, this is true of most of our laws, more so the ones enacted for children. Despite the existing laws, policies and commitments, the actual situation for India's children in areas of health, education, nutrition, care and protection is quite alarming. Knowing fully well that they are too vulnerable to stand up and fight for their Constitutional and legal rights, they continue to face deprivation and neglect, often at the hands of their own people. The prevailing distortions need correction and urgently at that, lest we have a childhood – abused, exploited and neglected- stepping into an impoverished youth. In reality, all the odds are stacked against the children and the poor children have it even worse, as they do not have the wherewithal to stand up and fight for their rights. The State must take affirmative action in protecting children from all forms of sexual abuse, neglect, exploitation, torture, or any form of cruelty.

3.8 KEY WORDS

- Child** : Rights the full range of human rights-civil, cultural, economic, political and social rights in the context of child Juvenile means a person who has not completed eighteenth year of age;
- Guardian** : One who is legally responsible for the care and management of the person or estate or both of a child during its minority.
- Juvenile** : Delinquent means a juvenile who is alleged to have committed an offence;

Child Sexual : The exploitation of the child for sexual purpose in any form, such as sexual touching and fondling, exposing children to adult rape, attempted rape or molestation etc.

Paedophile any adult who habitually seeks the company of children for the gratification of his/her sexual needs

Legal Provision for Children

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UNIT 4 **LEGAL AID, SOCIAL ADVOCACY AND ROLE OF SOCIAL WORKER**

Structure

*Ranjana Sehgal**

- 4.0 Objectives
- 4.1 Introduction
- 4.2 Concept and Objectives of Legal Aid
- 4.3 Legal Aid to the Poor and the Constitution
- 4.4 Legal Aid and Government Initiatives
- 4.5 Judicial Activism, Social Advocacy, and Public Interest Litigation
- 4.6 Law and Social Activism: Consumer Protection and Right to Information
- 4.7 Rights of the Disadvantaged, Impediments and Professional Social Worker
- 4.8 Role and Functions of Social Workers in Legal Aid and Legal Assistance
- 4.9 Let Us Sum Up
- 4.10 Key Words
- 4.11 Further Readings and References
- 4.12 Answer to Check Your Progress

4.0 OBJECTIVES

This Unit presents a discourse on the relationship between law and professional social work. The aim is to make the learner understand the concepts of social advocacy, legal aid and legal assistance and emphasize how a professional social worker can seize these remedies to further the goals of her profession. After studying this Unit you should be able to:

- understand the concepts of legal aid, legal assistance, social advocacy and public interest litigation;
- state the remedies available under the law governing the right to information and consumer protection;
- analyze the relationship between law and social work; and
- delineate the role of professional social workers in legal aid, legal assistance and social advocacy.

4.1 INTRODUCTION

Constitution promises justice, liberty and equality to all and our laws in their entirety are based on that premise. However, even after 58 years of having

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adopted the Constitution, we still have to deliver on these promises. Administration of justice stays out of reach of millions of Indians, especially the poor and marginalized sections. Though substantial social legislation has been enacted for the weaker sections since Independence, it is doubtful if the benefits have actually reached them, given their ignorance of the constitutional and legal rights. Increasing judicial activism, leading to the emergence and acceptance of the concepts like social advocacy, public interest litigation and legal aid, is finally bringing justice within the reach of the common man by enabling him to access the judicial system through these mechanisms.

In the process of accommodation and adjustment among the different groups in a plural society, the judiciary plays a key role, often deciding the direction and pace of the adjustment of the conflicting interests. The courts are under a perennial obligation to uphold the Constitution, even if sometimes, it entails taking on the role of a policy formulating or legislating agency, which is not truly its domain. The courts have to sometimes, supplement and promote executive and legislative tasks, especially, in situations when issues of human rights and social justice are at stake. The judiciary cannot be a mute spectator to the executive failure in the implementation of the programs and policies sanctioned by the legislature. Social work acknowledges that social problems do exist, and social work intervention helps people to cope with or adjust to an existing institution or to modify existing policies in a limited fashion. The time has, however, come to orient and motivate the social workers to make their presence felt in the legal arena by actively fighting for and upholding the rights of the oppressed through mechanisms of legal assistance, social advocacy and public interest litigation.

4.2 CONCEPT AND OBJECTIVES OF LEGAL AID

According to *Gangrade*, legal aid, as it was understood a few years ago meant defending an accused from criminal charge or helping the needy in litigation in civil cases and was primarily in the domain of the lawyers, who gave advice and fought cases on their behalf, free of cost. Free legal aid in a popular sense is a legal service to the weaker sections of the society. However, conceptually speaking, the vista of legal aid is very broad and can encompass within its fold a wide range of activities, the objective being social justice.

Legal aid should not be restricted to mean only the advice and litigation help by the practicing lawyer. It is a vast concept and includes activities like:

- spreading literacy by educating people of their basic rights, by supporting their litigation, by reducing the cost of litigation and delay in justice,
- bringing test cases before the courts,
- identifying the general problems of the community and conducting the legal studies,
- suggesting new law reforms, by making the judiciary, lawyers and administrators sensitive to the problems of people,
- identifying the problems of the poor and the backward and suggesting suitable changes in the law,
- advising the habitual litigants about the disadvantages of unnecessary litigation and counseling them to avoid litigation, particularly in those cases which have impact on the family,

- giving legal counseling so that disputes could be resolved either mutually by the parties themselves or through conciliatory processes etc.

Legal aid, thus, actually helps in the process of social justice and legal order. One of the basic cause of the failure of policy and program of legal aid has been the impression in the public mind that if legal aid is encouraged, it would bring in more litigation which would bring in disequilibrium, adversely affecting justice and legal order. Hence the concept of legal aid has to be understood in the correct perspective so that its objectives can be achieved, which is not possible without the active participation of the lawyers, courts, police, administrators, law teachers, trained social workers and public at large.

Objectives of Legal Aid

- To provide legal help for every one, especially the poor and weaker sections of society.
- To procure financial support from State for those advocates who provide legal aid.
- To motivate voluntary organizations to provide legal assistance.
- To provide legal help to those who are in prison and deserve justice.

The nature of the aid could be all or any of the types given below:

- 1) Court fees, order fees, expenses on books and papers, advocate fees.
- 2) Providing advocate.
- 3) Providing copies of decision, orders, comments given in the legal procedure.
- 4) Drafting of legal documents.
- 5) Providing legal advice.

Who deserve legal aid?

In view of the limited resources which are available, legal aid cannot be made available to all at all time. The Krishna Iyer committee on legal aid has done a good job by identifying the following groups deserving of legal aid:

- i) The geographically deprived, ii) The villagers, iii) The agricultural labour, iv) Industrial workers, v) Women, vi) Children and the young, vii) Scheduled Castes and Scheduled Tribes, viii) Minorities, ix) Prisoners, x) and any other socially, physically and mentally disadvantaged groups.

Check Your Progress I

Note: Use the space provided for your answer.

- 1) What is legal aid and who deserve it?

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4.3 LEGAL AID TO THE POOR AND THE CONSTITUTION

Enforcement of rights is only possible if people know the law of the land and have the means to access it. It is very difficult to describe poverty precisely, however, its net effect is that one is unable to maintain his/her physical or mental efficiency and participate in the development of society. Unfortunately, our legal system is frightfully expensive and suffers from so much delay that justice seems to be out of bounds for the poor and they have little faith in it. When people are ignorant of the legal processes and unable to access them, they become victims of injustice. Similarly, if the law looks good only on paper and is not translated into reality, it becomes meaningless. We are well aware of how our system works, heavily loaded as it is in the favour of the economically strong and powerful. To neutralize this bias which is deeply embedded into our system, the weaker sections of society require legal aid and assistance to set right the system. Legal aid service programs, thus, become a great tool of socio-economic justice in such a scenario. Our Constitution provides for the creation of structures from the national to the district level for free legal aid.

The concept of legal aid is enshrined in our Constitution under Article 39. The concept of legal aid as embodied in our Constitution reads as under:

‘The State shall secure that the operation of the legal system promotes justice on the 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 disabilities.’ This Article is a directive to the State to give a level play field to all the litigants of the case by providing free legal aid. The judgment of the Supreme Court in a case {(1908) ISCC 99} further gives strength to the right of the poor to legal aid as a fundamental right. It says that ‘the right to free legal service to the poor and needy is an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it must be held implicit in the Fundamental Right to life and Liberty guaranteed under Article 21 of the Constitution.’ This judgment puts a seal on the right of every accused to engage a lawyer and secure legal service.

In compliance of the Constitutional directive, the Government of India started a legal aid scheme in 1981 which we shall now examine.

Check Your Progress II

Note: Use the space provided for your answer.

1) How is the concept of legal aid enshrined in our Constitution?

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4.4 LEGAL AID AND GOVERNMENT INITIATIVES

Broadly there are four institutions for legal aid.

- 1) State
- 2) Courts
- 3) Lawyers
- 4) Voluntary agencies/social workers

In India all these forms of legal aid exists, albeit in a small measure. Since 1952, the Government of India started addressing 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 Government for legal aid schemes. In different states legal aid schemes were floated through Legal Aid Boards, Societies and Law Departments. The program of legal aid took off when the Government of India set up a committee Krishna Iyer Committee in September 1980, with Justice Shri P. N. Bhagwati of Supreme Court as its president. This Committee came to be known as CILAS (Committee for Implementing Legal Aid Schemes) and started monitoring legal aid activities throughout the country. The committee was entrusted with the responsibility of planning the legal help scheme and its implementation with the objective of removing backwardness from different parts of the country. With the committee planning to establish in every state a 'State Legal Help and Advisory Board', legal aid to the poor finally became a reality.

The committee planned providing legal aid in two steps, first on the basis of case and second on basis of solution. On the basis of the case the legal aid was provided by the State legal help and advisory board'. For providing legal aid in the Supreme Court for poor, the government formed the 'Supreme Court Legal Aid Committee' in 1981. The committee also focuses on the awareness and education of legal rights, done through television, radio, newspapers, books on law, establishment of legal aid clinics in law colleges and universities, arranging the legal aid camps, arranging local courts, etc.

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. National Legal Services Authority was constituted on 5th December, 1995, which became properly functional by February, 1998.

Section 12 of the Legal Services Authorities Act, 1987 prescribes the criteria for giving legal services to the eligible persons. 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 Castes or Scheduled Tribes;
- b) a victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;
- c) a woman or a child;
- 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 under Immoral Traffic (Prevention) Act, 1956 or in a juvenile home or in a psychiatric hospital under the Mental Health Act, 1987 (14 of 1987); or
- h) has an annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Govt.

‘Legal service’, according to the Act includes 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.

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. In every State a State Legal Services Authority is constituted to give effect to the directions of the Central Authority. District Legal Services Authority is constituted in every District and Taluk. Legal Services Committees are constituted for each of the Taluk or Mandal or for policies group of Taluk or Mandals to coordinate the activities of legal services.

Effectiveness of Legal Aid Services

According to the member secretary, National Legal Service Authority, till 30.6.2000 about 31.47 Lakhs of persons had taken the benefit of legal aid through Legal Services Authorities, out of whom about 5 Lakhs belonged to Scheduled Castes, over 2 Lakhs to Scheduled Tribes, about 2.75 Lakhs were women and about 9,000 were children. Most of the offices of the State Legal Services Authorities are now equipped with modern gadgets that help legal service functionaries to act swiftly to provide legal aid and assistance to the eligible persons in a meaningful manner.

It can hardly be disputed that in a country like India, where the society is marked by extreme social and economic inequalities and poverty, where ignorance and illiteracy affect large sections of the community, the traditional legal service program, which is confined only to giving legal aid and advice to those who come for it, may not succeed. The traditional legal service program postulates for its success two requirements, namely, awareness and assertiveness. Both these pre conditions are conspicuous by their absence in our country, rendering the traditional service program ineffective. Reality is that a large segment of our population who are in need of legal aid and assistance live in the villages. The legal service program has to extend its protective umbrella to these rural have-nots and provide legal service to them as the legal aid office may be beyond their means and capacity. Further, on account of ignorance and illiteracy, they would not even be aware of the rights, benefits and privileges conferred on them by our Constitution and the various laws. They may even fail to identify their problems as legal problems which can

be solved by the process of law, hence, may not think of going to the legal aid office, even if they otherwise could. Above all after being oppressed for many years, they would not have the courage to go to the legal aid office, especially, if the opponent is powerful, belonging to the dominant section of the society.

According to Justice Bhagwati, apart from the program of legal literacy, it is necessary that the state board should organize training and orientation programs for legal aides directly involved in the legal service program as well as for others, such as lawyers, judges and other groups. He recommends a minimum of one or two weeks of intensive training and orientation for legal aid lawyers, for whom the selection of material for study and detailed manual of procedure should be prepared in advance. He feels an effective organization of training and orientation program would go a long way towards augmenting the efficiency and purposiveness of the legal service program.

Role of Social Workers

It would be apt to quote Justice Bhagwati, on legal aid, who truly can be considered as the father of Public Interest Litigation in India. His views are especially relevant for social workers. "I must impress upon you that legal service program should have a dynamic and activist content and it must play many roles and perform diverse functions in the socio-legal system. It would help to protect the poor and disadvantaged to take advantage of the ameliorating provisions of social legislation and to protect and effectuate their rights under the law of the land. It would help to bring into focus the legal problems of the poor in our system and the deficiencies of our socio-economic factors bearing on legislative provisions and their strengths and infirmities. Legal service would thus not only provide relief and succor to the less privileged sections and to certain special groups of our society in their problems, but would also provide most valuable feedback to our legislative and administrative processes. It would assist in the task of bringing the socio-economic performances of our laws and our legal system within the reach of common man. It would also help to check the alienation of those below the poverty line and those in close proximity to the poverty line. Hand in hand with social and economic legislation and with schemes of social welfare and economic development, legal aid and advice would help to strengthen the views of a pulsating participatory democracy and a vibrant citizenry aware of its rights and its obligations and armed with the strength to protect itself and to safeguard the social fabric. Legal aid and advice would also improve the quality of justice and equalize the protection of laws. There can be no doubt that as part of the national process of social engineering, legal aid and advice has a significant role to play and it behoves us to explore and exploit its full potentiality as an instrument of social change and as a bulwark of the rule of law.

The views of Justice Bhagwati on legal aid, point to the need of a service which can ideally be carried out by professional social workers as this role cannot be left to the legal fraternity alone. Legal aid and assistance to the weak and downtrodden is a task best suited to the professional social workers in the light of their professional goals, which are committed to the welfare of the poor and needy. To fill the existing lacuna there is a need to introduce a substantial component in our training, to equip the social work trainees on how to give legal aid and assistance. They should be essentially equipped with the knowledge of the Constitution, the existing laws especially social laws, the legal system etc. Social workers by combining their social work skills with the para- legal skills can make a lot of difference to

the existing legal aid and assistance services and make it a potent instrument of social change as envisaged by justice Bhagwati. Professional social workers have to assume a greater responsibility along with the members of the legal profession to promote and encourage social advocacy and social action litigation.

Check Your Progress III

Note: Use the space provided for your answer.

- 1) Which are the main institutions for legal aid in India?

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- 2) What is the effectiveness of legal aid services in India and how can professional social workers contribute in making these services more effective?

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4.5 JUDICIAL ACTIVISM, SOCIAL ADVOCACY AND PUBLIC INTEREST LITIGATION

Judicial Activism

Legal aid to the poor and marginalized litigants, though an important mechanism to access justice, is no longer sufficient by itself. A creative activist judicial role is the need of the hour. We cannot undermine the need and importance of an active judiciary, which is not only sensitive but creatively engages in the task of balancing the interests of different groups in the society. The preamble and the Directive Principles of the State Policy have already given our courts a frame of reference to resolve fresh challenges to human rights. In exercising constitutional jurisdiction to oversee the functioning of the executive and the legislature, one expects the judiciary to play the role of a watch dog and ensure a fair and honest implementation of the constitutional commitments and guarantees to the people. An independent, creative and people oriented judiciary is the pride of any nation and judicial creativity and activism, especially, in the present social context of unprecedented changes, a distinct asset of any society.

During the past few years, the Indian courts have shown a, judicial activism which is unprecedented opening up new vistas for the judicial process and giving a new hope to the millions. Over the last decade our supreme court has adopted an activist approach to stymie the limitations that define our conventional legal system. Traditionally, our judiciary subscribed to judicial passivism and restraint was exercised by most of our judges. But since the time of Justice P.N. Bhagwati there

has been a marked shift from judicial passivism to judicial activism. Justice Bhagwati was of the view that in a country like India, where we want to bring about social and economic change, improve the lives of the people and make basic human rights available to them, it is necessary for a judge to adopt an activist approach. In a climate of exploitation, the judges are no longer justified in taking on a passive role.

Social Advocacy

Today, we often hear the terms social advocacy and public interest litigation being increasingly used in the context of social justice and human rights. These are tools against unjust policies and practices and in the present era of judicial activism are the alternate ways of securing justice for the common man. Our Constitution ensures each of us the right to live a life with dignity, but every day, every where we witness this dignity is being annihilated through various oppressive institutions that exist in the society. Social advocacy can be used by social workers, activists, journalist or any public spirited individual for the larger good of the society, especially the weak, oppressed and the marginalized groups. Through social advocacy they can support a public cause or launch a struggle on behalf of those groups who are not able to fight injustices by themselves and are resigned to suffer in silence. While Raja Mohan Roy who launched a movement against the social evils like sati and child marriage is considered the father of social advocacy by some, Medha Patkar can easily be considered its modern day champion.

1) What is Social advocacy?

According to David Cohen, 'any organized attempt to resolve a problem in a non-violent way by negotiation, persuasion, perseverance and by convincing the other party is practicing advocacy.' Advocacy is pleading in support of a cause or a person. Thus, the technique of resolving any conflict or a problem has come to be known as advocacy. It is very much visible in the court, when an advocate or a lawyer on behalf of his or her client tries to convince the judge about the cause of the client. When the word advocacy is prefixed by the term social it comes to mean supporting or pleading for a cause, through which the common interest or good of the society is secured.

2) Steps or Guidelines

Though there does not exist any specific framework, social advocacy may comprise of the following stages or steps in the process of fighting and advocating for the rights of the victimized and oppressed classes. These steps are only by way of guidelines

- i) **Identify the issue or the problem and become the voice of the voiceless:**
The very first step is that the issues which merit advocacy have to be first identified. Any action by the government, individual or by group, if it is exploitative or against the common good becomes an issue. For example, social advocacy can be been effectively used for bringing relief to the bonded labourers, where any landlord is seen exploiting them and violating the provisions of the Bonded Labour Abolition Act, 1976. When due to poverty and lack of awareness, the vulnerable sections are not able to raise their voice; social advocacy can help in making their voice heard against the atrocities done to them. Social advocacy voices the issues of common men which otherwise may have been never heard.

- ii) **Collect data about the problem:** Medha Patkar, a professional social worker has through her Narmada Bachao Andolan strongly advocated the cause of thousands of inhabitants affected and left homeless by the construction of a dam. She collected data and presented before the government and courts in her bid to secure justice for the project affected. She collected information of the people affected, the human costs, the ecological implications and other such related information with its full data to build a strong case for them.
- iii) **Analyze the problem and chalk out a plan for solution:** Social advocacy entails an analysis of the problems of human rights and injustice in a systematic perspective. It is evident that problems that cause mass suffering such as pollution can't be solved by helping a few victims here and there. Suffering has to be alleviated by bringing about large scale changes in our existing social, political and economical structures. Before we take any issue for social advocacy, we have to deeply analyze the problems, its causes and implications and then chalk out a plan of action offering possible solutions.
- iv) **Network, forming alliances and mobilize public support:** Social advocacy involves coordinating with like-minded people, organizations, groups and institutions, which then collaborate with each other in their struggle for justice. Medha Patkar in her campaign for the rights of the displaced by the Narmada Dam project had as a first step coordinated the groups and organizations who were already working for the cause. This helped in making the fragmented efforts into a more concerted one. For social advocacy to be successful an effective networking of organizations and individuals who share the same interests is important. There is a need to liaison with radical and existing advocacy groups who have to be located and their support garnered for the cause. An alliance of this nature helps in bringing the issue into the limelight and makes for much faster implementation of the action plan.
- v) **Generate public awareness:** Build up a strong case against the injustice which is perpetuated by making the people aware of their rights and the implications of its denial. These have to be made public; hence an awareness campaign becomes an integral part of social advocacy. As is the case in India, most of the people, especially the marginalized group are not even aware of their rights to begin with. Awakening of the consciousness of the public plays a key role in the success of the campaign.
- vi) **Plan and execute the campaign:** A proper planning should precede the action, defining the modus-operandi and the strategies and techniques to be utilized during the campaign. Pressures may have to be built upon the government authorities by taking recourse to varied mechanisms and strategies. Morchas, dharnas, presentation of memorandum, sympathy meetings addressed by good speakers may have to be organized. All details must be worked out before hand so that the actual campaign does not go off the track.
- vii) **Enlist media support:** The support of media can be an effective tool in mobilizing the support of the people and attracting the attention of the authorities to the matter. It is the fastest means of communication and the issue can be circulated far and wide even among people living in remote and far away places. Media support can give the necessary push to the campaign.

For example, had the media not highlighted the protests in Singur and Nandigram, against the forcible land acquisition by the West Bengal Government, it would not have not paid a serious attention to its Special Economic Zones policy.

- viii) **Get favorable judicial pronouncements:** PIL has become an important and effective tool of social advocacy. According to Justice Bhagwati, “PIL is essentially a cooperative effort on part of the petitioner, the public authority and the court to secure the observance of the constitution and the legal rights and privileges conferred upon the vulnerable section of the community to reach social justice to them. Through a spate of Public Interest Litigation favorable judicial pronouncement have been obtained on many issues such as the problems of the Bonded Labour, displaced, project affected etc. PIL has today awakened the consciousness of the people and created awareness on how to access the courts for their human rights
- ix) **Build pressure and lobby for suitable legislation:** Through social advocacy pressure can be built upon the members of parliament and legislative assemblies to amend an existing law or enact a new one in keeping with the changing needs of the society. Lobbying with the opposition members of the house can be done to raise an issue in the Parliament and State Legislative so as to impel a ruling party to take cognizance of the issue.

Following the above guidelines social workers can increasingly use social advocacy as a device for organized social action for bringing about social change.

Public Interest Litigation (PIL)

One of the best things to have happened in the country in recent years is the development of PIL. Until the emergence of PIL, justice was a remote reality for the mass of illiterate, underprivileged and exploited persons in the country, unaware of the laws and their legal rights. PIL has opened the portals of our judicial palaces to the common man on the street. Today, the adversarial model of litigation stands replaced by new mechanisms of ‘lawyering and justicing,’ making the laws more meaningful to the poor. If the legal rights of an individual or class of persons are violated and if by reason of poverty or disability, they cannot approach the courts for judicial redress, any public spirited individual acting in good faith (not vengeance) can move the court. A new partnership between the lawyers, media, social action groups and social workers has fostered the effective strategy of Social Action Litigation or Public Interest Litigation, as it is popularly called.

i) What Is Public Interest Litigation?

‘Public interest litigation means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.’ (Black’s Law Dictionary)

To put it simply, PIL simply means fighting for someone else’s cause, even though one has no personal stake in it, except the public interest. Public interest litigation (PIL) or social action litigation, as Upendra Baxi would like to call it, is a new type of litigation initiated by the Supreme Court of India to enable the poor and the vulnerable sections of society to approach the High Court and Supreme Court to enforce their fundamental rights. PIL was initiated and pioneered by Mr. Justice

P.N. Bhagwati and has grown at a fast pace in our country, drawing its support and inspiration from the judiciary. According to the Supreme court of India, 'public interest litigation, which is the strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the ordinary traditional litigation.' Public interest litigation is not for enforcing the right of one individual against the other as in the case of ordinary litigation.

Locus Standi

Locus Standi is a Latin word which means the legal right of a person, to seek judicial remedy, who has suffered or is going to suffer a legal injury because of violation of his legal right. The traditional concept of locus standi implies that only the person who has been affected can appear in the court and seek judicial redress. However, our Supreme Court has given a new interpretation to the concept of locus standi, relaxing the traditionally strict, which means that only the complainant can move the court. In the case of *S.P. Gupta & others vs Union of India*, the Supreme court elaborated on the concept of locus standi, in the following words " where a legal wrong or 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 without authority of law or any such wrong or legal injury or illegal burden is threatened and such person or determinate class of person is, by reasons of poverty, helplessness or disability or socially or economically disadvantageous position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction order or writ seeking judicial redress."

In the opinion Justice Bhagwati, this broadening of the rule of locus standi is largely responsible for the development of public law, because it is the only available judicial remedy which invests law with meaning and purpose or else the law would remain merely a paper parchment, a teasing illusion and a promise of unreality. It is only by liberalizing the rule of locus standi that it is possible to effectively police the corridors of powers and prevent violations of law.

ii) Characteristics of PIL

Based on the above discussion the characteristics of PIL can be summed up as follows:

- It does not arise out of a dispute between private parties about a private right.
- The intention is to promote the public interest based on the premise that the injury to the rights of the poor, oppressed, socially and economically disadvantaged do not go unnoticed and unredressed.
- It is a judicial remedy which brings law within the reach of the poor and weak by liberalizing the rule of locus standi and consequently preventing violations of law.
- Lawsuit in PIL is shaped by the courts and the parties rather than any Statute.
- Outcome of PIL can result in enactment of legislation.

- PIL involves research, citizen's education, media awareness and negotiation

iii) **Who Can File a PIL?**

Any Public Spirited Person, such as

- 1) Social workers
- 2) Lawyers
- 3) Journalists
- 4) Voluntary Organizations

Can file a PIL under Article 32 in supreme Court or under Article 226 in High court.

iv) **Impact**

- 1) PIL has awakened consciousness of people towards their rights to live life with dignity.
- 2) With PIL Supreme Court and High Courts have become the messiah of the havenots.
- 3) Through its interim orders and directions the courts have sought to improve the administration by making it more responsive.
- 4) PIL has brought legal remedy within the reach of the common man and the underprivileged by giving them easy access to the Supreme Court.

v) **Drawbacks in Indian context**

- Public Interest Litigation is still in an experimental stage.
- Decisions of PIL promise more but deliver less.
- Most Public Interest Litigations are not pursued to their logical end and there is insufficient follow up. If the Government does not take active interest in follow up actions, courts by themselves can do precious little.
- Many times cases are based on newspaper reports which may not always be reliable.
- There is apathy towards PIL on the part of the legal profession.
- PILs take a long time to decide, thereby defeating their very purpose. If the benefits do not reach today, they may become irrelevant tomorrow.
- The orders of the Courts are violated with impunity. Until the Courts come down heavily on the contemnors, PIL may be ineffective tools of judicial remedy.
- Real benefits may accrue only when PIL's are also taken up by the lower courts at the instance of the social workers. Social workers have to get involved on a big scale to make PIL a success.

Let us not forget that PIL can within the existing judicial restraints promote the cause of people's justice only up to a certain point and not beyond. But as PILs

promote the increasing participation of the people in the administration of justice, they will be instrumental in evolving a democratized jurisprudence tempered with a new respect for human rights of the common man.

Check Your Progress IV

Note: Use the space provided for your answer.

1) What do you understand by social advocacy?

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2) What is Public Interest Litigation?

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3) What do you understand by 'locus standi'?

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4.6 LAW AND SOCIAL ACTIVISM: CONSUMER PROTECTION AND RIGHT TO INFORMATION

Social Activism and Law

The year 2005 can be seen as a historic year as it witnessed the enactment of the Right to Information Act, which if implemented properly can become instrumental in effectively monitoring the working of different organs of the government. Information helps people to make informed choices and puts a restraint on the politicians, bureaucrats and others in similar positions of power, from indiscriminate and unbridled use of their authority. The government departments have finally started giving information, albeit a bit reluctantly, which hitherto was under wraps on the pretext that it was 'confidential'. The political class and the bureaucracy is now beginning to bow before the right to information law, thanks to activism of the civil society.

A consumer who after being stuck with defective goods or services had no choice but to write it off as a dead loss, till a few years ago, can now not only recover his money but also claim damages. Thanks again to the consumer movement in the country carried on by various consumer forums and social activists, which lead to

the enactment of the *Consumer Protection Act*, nearly two decades ago. The *Consumer Protection* and the *Right to Information Acts* are the typical examples of social activism's impact and influence in legal arena. Had it not been for the pressures generated through social activism, these laws would never have seen the light of the day. Undoubtedly, there is a definite relationship between social activism and law not only in the post independence era, but also in the pre independence era. Who can forget the movement started by Raja Ram Mohan Roy against child marriage and sati pratha. The role of social work cannot be undermined in field of law. There is an imperative need for the profession to assume a leadership role. Social action as a method and social advocacy as a tool needs to be used more and more by the young and budding social workers in getting more laws like the Consumer Protection Act and Right to Information.

Law for Consumer Protection

We are all consumers –as the buyer or recipient of any product and service. In case there is any defect or deficiency in the product purchased or service sought, for which payment has been made we are entitled to redress in the shape of appropriate compensation. The need of every individual to be aware of his rights as a consumer and to be able to voice the same is capsuled in Consumer Protection Act, 1986. This Act was basically passed to protect the interests of the consumers. The 17 year old Act over the years had revealed, despite a good beginning, many limitations and inadequacies. These were increasingly bothering both consumers and consumer activists. To make the Act more functional and purposeful, a comprehensive amendment was carried out by the Consumer Protection Act (Amendment) Act of 2002, which came into force on 15th March 2003. The inadequacies were rectified by the Amendment Act of 2002. As many as 30 amendments were made to CPA, 1986 aimed at facilitating quicker disposal of complaints, enhancing the capability of redressal agencies, strengthening them with more powers, streamlining the procedures and widening the scope of the Act to make it more effective and purposeful.

1) Salient Features of the Consumer Protection Act, 1986

- The Act applies to whole of India except the State of J&K and to all goods and services.
- It covers all sectors – private, public and cooperatives unless specifically exempted.
- A complainant can be i) a consumer, ii) any voluntary consumer association registered under the companies Act, 1956, iii) the central or State Government.
- The Act provides for an elaborate machinery to achieve its objectives. There are two distinctive portions of the Act, one deals with the establishment of the consumer protection councils and the other with the establishment of the consumer disputes redressal agencies. It provides for the establishment of the following bodies with varying powers and jurisdiction:

- 1) Councils : 1) The Central Consumer Protection Council
- 2) State Consumer Protection Councils

2) Disputes

Redressal

- Agencies:
- 1) District Forum
 - 2) State Commission
 - 3) National Commission

The Central Consumer Protection Council

The Central Government is empowered to establish a council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council), which shall meet least once an year. The council will uphold the following rights:

- The right to be protected against marketing of goods which are hazardous to life and property.
- The right to be informed about the quality, quantity, potency, purity, standard and price of the goods so as to protect the consumers against unfair trade practices.
- The right to be assured, wherever possible, access to a variety of goods at competitive prices.
- The right to be heard and to be assured that consumer interests will receive due consideration at appropriate forums.
- The right to seek redressal against unfair trade practices or scrupulous exploitation of consumers.
- Right to consumer education.

The State Consumer Protection Councils

The State Council shall meet as and when necessary but not less than twice every year. The objects of every State Council shall be to promote and protect the rights of the consumers within the State.

Consumer Disputes Redressal Agencies

a) District Forum

The jurisdiction of District form extends to complaints where the compensation claim does not exceed 1 crore:

The following procedure to redress the complaints is adopted by the, District Forum:

- 1) receipt of a complaint,
- 2) copy of the complaint referred to the opposite party
- 3) reply within a period of thirty days
- 4) the opposite party may deny or dispute the allegations/ fail to represent case within the given time

- 5) the District Forum can then proceed to settle the consumer dispute. If the allegations about the services are proved, the District Forum shall issue an order to the opposite party directing him to do one or more of the following things, namely,
- To remove the defect from the goods or services in question.
 - To replace the goods with new goods of similar description.
 - To return to the complainant the price or the charges paid by the complainant.
 - To pay such amount as may be awarded by it as compensation for any loss or injury suffered by the consumer due to the negligence of the opposite party.
 - To discontinue the unfair trade practice or the restrictive trade practice or not to repeat them.
 - Not to offer the hazardous goods for sale.
 - To provide for adequate costs to parties.

Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed.

b) The State Commission

The jurisdiction of State Commission extends to:

- i) complaints where the compensation claimed does not exceed rupees 1 crore and is not less than 20 lakhs
- ii) appeals against the orders of any District Forum within the State.

c) National Commission

The jurisdiction of the National Commission extends to:

- i) complaints where the compensation claimed exceeds 1 crore rupees.
- ii) appeals against the orders of any State Commission within a period of thirty days.

Any person, aggrieved by an order made by the National Commission may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order.

Every order of a District Forum, State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final.

2) Appraisal

If there is any defect or deficiency in the product purchased or service sought for which payment has been made, the consumer is entitled to redress in the shape of appropriate compensation. The product may range from the purchase of a screw to a motor car and the service may range from the dry-cleaning of a saree to traveling in the airplane. With the passing of this Act consumerism in India has come of age.

Positive Features

- The Consumer Protection Act has a number of attractive features that differentiate it from other laws, such as, simple procedure, speedy redressal and the fact that a plaintiff does not have to engage the services of a lawyer.
- It provides consumers safe guards against unfair trade practices through the constitution of consumer protection councils, commission and forums at central, state and district level to promote and protect consumer rights.
- With the amendment, the limits of pecuniary jurisdiction of the redressal agencies has gone up significantly, with the result that the consumer will not have to trek too far for justice, and most cases can be filed in the district forums.
- The amendments have significantly eased the pressure on all the three tiers of the consumer courts, especially the State and National Commissions, which can now dispose of their huge backlog expeditiously.
- The Act also provides that no adjournment shall be ordinarily granted by the court unless significant cause is shown (the reason for grant of adjournment is to be recorded in writing by the court). In case of an adjournment, the cost will be awarded to the other side.
- Time frame for speedy justice: The complaint shall be heard as expeditiously as possible and an endeavor shall be made to decide the complaint within 90 days from the date of receipt of the notice by the opposite party. Where analysis or testing of the product is required, the complaint is expected to be disposed of within 150 days.
- Appearance of advocates restricted. The logic behind this provision is evidently to create a level-playing field for the consumer.
- Execution of orders has been now made easy: The most significant amendments are Sec 25 and 27 which are regarded as the teeth of the Consumer Protection Act. The amendment now enables the courts themselves to attach the property of a person who does not comply with their interim order. Even after the attachment if the person does not obey the order within three months property will be sold and the complainant will be awarded damages from the proceeds.

Drawbacks

- Our district forums are not really equipped to meet the additional burden. Hundreds of cases are pending here, and the additional burden could lead to the forum's collapse unless the government beefs up infrastructure and staff without resorting to no-fund excuse.
- Though a time frame for speedy justice has been given under the Act, the growing pendency of the cases in the three tiers of consumer courts is evidence enough to show that dispensing justice to the aggrieved consumer is not as easy as envisaged by the law makers.

Law on Right to Information

India, after long years of waiting has finally given to its citizens the right to information, which all the sections of the society were demanding, be it the Press

or the common man. In the face of stiff resistance from the bureaucracy and the political class, this distant dream has become a reality only after 60 years of independence. The Act has paved the way for transparency in the government affairs, which is not only a fundamental need in a democracy, but also the most crucial prerequisite for responsive, accountable and good governance. The judicial pronouncements have also endorsed this right. Information is a prerequisite for meaningful public participation. Higher the information levels of the citizens, greater the responsiveness of the government. The Right to Information Act, 2005 is a great landmark in legislative history of our country. Now, ordinary citizens, traditionally governed by the public functionaries, will be able to raise their voices against the oppressive, suppressive and exploitative attitudes of public officials. What no leader in the 60 years following independence has been able to give the common man, this legislation seeks to deliver it one stroke.

i) **Important Provisions of The Right to Information Act, 2005 (RTI)**

The two important definitions given Under Section 2 which are important to our understanding of the law are:

- i) Information
- ii) right to information

“Information” : Information is defined in the Act to mean “any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circular, 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”.

“Right to information” means the right of all citizens to access information held by or under a control of any public authority including the right to—

- 1) inspection of work, documents, records;
- 2) taking notes, extracts, or certified copies of documents, records;
- 3) taking certified, samples of material
- 4) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or printouts where such information is stored in a computer or in any other device.

Section 3 of the Act bestows upon all citizens the right to information.

Section 4 imposes obligations on public authorities to maintain duly indexed and catalogued records so as to facilitate the right to information.

Section 5 mandates every public authority at the Central and State level to designate Central/State Public Information officers and the Central/State Assistant Public Information officers at the sub-divisional or sub-district levels to discharge various functions in providing access to information.

Section 6 prescribes the procedure for obtaining information. A person, who desires to obtain any information under this act, shall make a request in writing or through electronic means in English or in Hindi or in the official language of the area in which the application is being made, accompanying the prescribed fee.

Section 7 lays down the procedure for the disposal of requests. The public information officer has to either provide the information requested for or refuse the same on the grounds provided for in the legislation within a period of 30 days of the request. When the request is concerning the life and liberty of a person then it is to be provided within 48 hours.

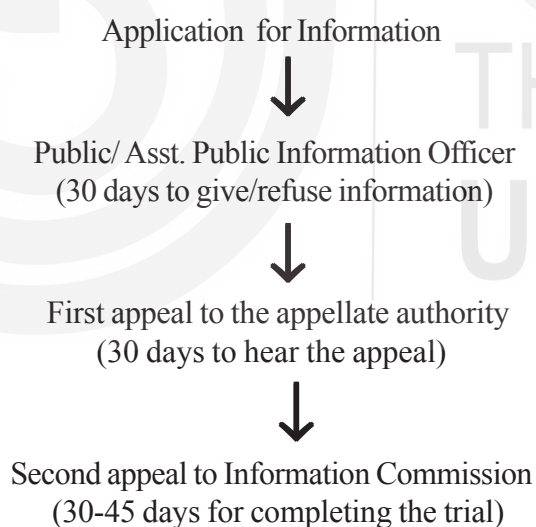
Section 8 deals with the exclusion clause spelling out the situations in which the information asked for can be denied, such as, when it invades privacy, it is personal information not related to public activity, it impedes investigation, endangers the source of information etc. However, any information can be given if public interest outweighs harm to protected interest.

Section 10 however, says that if part of the information can be given, it should be given.

Sections 12- 17 have created the authorities for the implementation of the Act namely the Central and the State Information Commissioners. These are regulatory authorities laced with various powers to supervise the information officers.

Section 18 lays down the powers and functions of the Information Commissions which primarily are to receive and inquire into the various complaints under the Act against the information officers and are vested with the same powers as that of a Civil Court while trying a suit under the Code of Civil Procedure Code, 1908.

Section 19 gives the following time frame as depicted below for listening and deciding of appeals.



Section 20 prescribes the penalties which include a fine of Rs.250 each day till the information is furnished, with a maximum limit of Rs. 25,000. A disciplinary action against the erring officer can also be recommended.

Section 25 deals with monitoring and reporting. The Central Information Commission or the State Information Commission have been mandated to prepare a report on the implementation of this Act as soon as practicable after the end of each year. Each ministry has been directed to collect this information from the public authorities within their jurisdiction and provide the information to the CIC or SIC so as to facilitate the preparation of the report which is to include the following details:

- the number of requests made to each public authority
- the number of decisions where the applicants were not entitled to access the documents pursuant to the request
- the number of appeals referred to the CIC or SIC
- disciplinary action if any taken against any officer
- amount of charges collected by each public authority
- recommendations for reform and for the development , improvement , modernization or amendment of the Act.

ii) **Appraisal of the Act**

It is undisputed that with right to information Act the common man feels empowered and many social workers, active citizens, NGO's and even the common man have been increasingly successful in exercising their right under the law.

Positive Features of the Act

The many positive features to the law which need to be appreciated are :

- The Act is a potent and strong weapon in the hands of the common man and can be used by the poorest of the poor, as the fees is nominal and those under Below Poverty Line are exempted from even paying that.
- The right to information has finally lifted the veil over official files and challenged the undue protection sought by officials under the pretext of official secrecy. Our bureaucrats consider documents and information regarding administration as their personal property and try to keep it unshared. They never cooperate in disseminating the information, especially in the cases when irregularities may be unearthed.
- There is a provision for constituting Central Information Commission and State Information commission. The Information Commissioners are to be persons with wide and rich experience from the field of social work, law, science and technology or journalism. To keep it free of political interference MP's MLA's and leaders of political parties and people sitting in offices of profit are kept out of the office of Central Information Commissioner.
- Penalties are provided which are essential, otherwise the officers would not take their duties under the Act seriously.

Drawbacks

The yardstick for measuring the effectiveness of any legislation is not only its provisions, but its implementation as well. The question that needs to be answered is that is the common man, the Little Indian" is able to reap the benefits of the law or does it only look good on paper? There is no dearth of people applying for information to different public offices but their experiences have not left them very happy. Madhuri Sahasrebuddhe of Pune, whose applications were rejected on more than one occasion, alleges that PIO have found ways to exploit the loopholes in the law and use convoluted language.

Some of the obvious flaws which need to be addressed are:

- Sometimes the information is denied or delayed on flimsy grounds. The process of going in appeal results in a further delay in getting the information, which puts off many in their endeavor to seek information. With the pendency of the cases of appeal before the CIC increasing by the day, many a times it takes one to two years to get the desired information, by which time it may lose its relevance.
- Currently the law provides for daily fine at the rate of Rs. 250 a day, subject to a maximum limit of Rs 25,000, for offences such as giving wrong or incomplete information or delaying, denying or destroying the records sought. There should have been more stringent punishments such as imprisonment
- The document of the RTI Act must be available in all Indian languages. Once available in all local languages, every common villager may be in a position to make sense of the Act and make use of it.
- The problem of evasion of responsibility by the government agencies and the authorities requires urgent redressal.
- The enactment must be simultaneously accompanied by awareness. Thus, systematic awareness campaigns must be conducted across the country in order to inform and educate people about the existence, objectives and benefits of the Act.
- The procedure can be made simpler if the individual can deposit the application in the local Panchayat office or at the Block Headquarters. In other words at any level of the three-tier Panchayati Raj system. It should be the duty of the office-bearers of such offices to channelize and send the application to the appropriate department/ministry. This will reduce the possibility of innocent villagers/ individuals being, harassed and misguided by the government officials
- Sensitization and training programmes should be conducted for the government officials. They should not treat clients and people with suspicion. It is a part of their job to help and inform the public. The functioning of the Act depends much on the cooperation of the officials..

iii) RTI and Professional Social Workers

The Enactment of the RTI Act is a significant landmark on the democratic landscape of independent India. Here is a law that seeks to ensure the accountability and transparency of the Indian governance system which is defined by the anti-democratic attitude and activities of the public authorities. If used sensibly, it can be a big ally of social workers. By accessing this Act, not only can the social workers expose the corrupt officials, but mobilize the masses to raise their voices against the oppressive, suppressive and exploitative attitudes of the public officials, thereby allocating social justice to the poor. This law can be very effectively used by the professional social workers for empowering the poor by securing their rights and build up a solid platform for making the public authorities answerable. Parivartan, a Delhi-based NGO, is a case in point. It has been bringing to limelight corruption in the municipal corporation and other departments in Delhi. It has also helped the citizens to demand information regarding the supply of rations; as a result, many families have been getting their respective fair share of rations at

the official price. Social workers should take initiatives to spread the awareness of RTI and mobilize people to make RTI a nationwide revolution and channelise their efforts to unearth corruption, expose scams, and inform the public and institute responsiveness and probity in administration. The Act will remain on paper unless used by the poor.

Check Your Progress V

Note: Use the space provided for your answer.

- 1) What according to you are some of the drawbacks of the RTI Act and what measures should be undertaken for the effective implementation of this law?

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- 2) Give a critical appraisal of the Consumer Protection Act, 1986.

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4.7 RIGHTS OF THE DISADVANTAGED, IMPEDIMENTS AND PROFESSIONAL SOCIAL WORKER

In this block we have already discussed the rights available to the various disadvantaged sections under the Indian Constitution and the various social laws, hence, it is unnecessary to repeat them here. However, what is more significant is to examine, as to how far these Rights and Privileges are actually enjoyed by them, the hurdles they face and how these rights can be made more accessible to them. Enacting a law and putting it on the statute book is one thing and actually enjoying the fruits of legislative enactment another. We look at our social legislation as some magical prescription, which will automatically resolve many of our social problems, once enacted. The reality, in fact, is quite far from it. It cannot be denied that in a country like ours, law has a profound significance for the emancipation of the disadvantaged sections, as it can create new situations and opportunities for change in the desired direction. However, we also realize that our laws cannot rise above the socio-economic and political conditions in which they are rooted. Let us take a look at some of the impediments which keep the justice system out of the reach of the weaker sections.

Ignorance of legislation and lack of legal knowledge

Leave alone the disadvantaged sections, gross ignorance of the provisions of existing laws is a characteristic feature of even our educated masses. Legal literacy

is pathetically low among Indians, more so among the weaker sections. Before you enforce your right, you should be aware of its existence on the statute book. If a person is unaware of the law, he can neither seek its protection, nor benefit from the privileges it confers on him.

Bias against the poor and the Disadvantaged

While it is relative easy and smooth for the dominant groups to access justice, for the poor it is even difficult to get a complaint registered in the police station. The police, who are expected to protect the interests of the weaker sections, often become the perpetrator of atrocities on the very people whom they are supposed to protect. The guardians of law suffer from an inherent bias against the poor and the disadvantaged.

Out of bounds

Justice is for those who can afford it; hence, it is obviously not for the poor, oppressed and the disadvantaged. The mounting legal expenses, the inability to hire good lawyers and their obvious disinterest in poor clients makes the courts and the judicial system out of the reach for a vast majority of our population who live below the poverty line. Theoretically speaking, anyone who is aggrieved can go to a court of law, as they are open to all, but it is a naïve assumption and all of us including the government and the judiciary are aware of it.

Procedural Delays

Notwithstanding the above hurdles, if the poor do reach the court of law, the undue delay in dispensing justice is the last straw. Delay not only makes litigation more expensive, but tilts the scales in favour of the accused, who may be rich and capable of hiring the best brains in the legal market. Sustaining a legal fight over a long period of time and expecting justice at the end of it, is virtually a non-existent reality for the deprived and disempowered.

Inadequacy of legal assistance

If the disadvantaged and the weaker sections have to access justice, from the above discussion it is abundantly clear, that they cannot do it on their own steam. A system wherein free legal aid and assistance is easily available, thus, becomes imperative. We are woefully aware of the inadequacy of the legal assistance as it is available today. For instance take the case of scheduled castes, many States extend some legal aid to scheduled castes but such aid is not generally available to them to fight their criminal cases. Not only are the legal aid services inadequate but are poorly distributed, making it extremely difficult for the members of the scheduled caste to easily reach, the courts, for various reasons. Withstanding social and economic pressures, if they do reach the court, the procedural delays, the expensive litigation, lack of evidence may invariably lead to the acquittal of the accused.

Time for social workers to step in

Social justice is ensured by the Constitution of India. Social workers are the people who through an effective use of the judicial system and social action translate the ideals of the Constitution into ground reality. By now it is abundantly clear that we have a big lacuna in the area of legal assistance. Legal assistance cannot be left to the lawyers alone and social workers in large numbers are

needed to fill the gap. Right from promoting legal literacy to giving legal advice in specific cases a professional social worker's services can be of immense value in bringing our justice system within the reach of the common man. A genuineness of concern and sincerity of purpose evinced will make the social worker stand apart. A social worker can give the following inputs among others:

- Make the person aware of legal and constitutional rights and understand the social-legal norms and the consequences of their violation.
- Give proper guidance, suggestions, information to chart the future course of action.
- Help in getting quality legal experts.
- Give emotional support, most needed in such situations.
- Build a strong supportive casework relationship and create an atmosphere wherein the person feels free to discuss his problems, frustrations, fears and anxieties.
- Have a non-judgmental attitude.

4.8 ROLE AND FUNCTIONS OF SOCIAL WORKERS IN LEGAL AID AND LEGAL ASSISTANCE

‘Effective access to justice can be seen as the most basic requirement—the most basic human right—of a system which purports to guarantee legal rights.’ (Cappellatti)

Role

The courts while, upholding the social ideals of the Constitution, interpreted many of its articles and laws with such dynamic liberalism and compassion unforeseen in the past, giving a new hope to the common man. ‘The Judiciary is now taking human suffering seriously and is prepared to act even on letters setting out illegal injustices. The court now holds a new portfolio of constitutional grievances, waking up to a profound institutional fundamental that law is only the means but justice is the end. The handicapped humanity of India for the first time is seeing a beam of social justice emanating from the court system. The supreme court and the high courts in PIL and Social Justice action have resorted to novel methods for discovering facts on their own for the reason that the poor are too feeble to collect evidence and present their case unlike the rich and powerful who have at their disposal legal resources in abundance. Today, the courts order commissions to report about actual conditions and even to enforce their orders through directions to officials or specially appointed teams answerable to the courts. In short, there is a significant transformation in the new judicial scenario, a sympathetic phenomenon which enlivens the social justice promise of the Constitution. (Iyer, Krishna)

In our already over burdened machinery for administration of justice, majority of those who are the victims of delayed justice are the marginalized groups of society. In such a scenario one sees a definite and significant role of the social worker as a watch dog and promoter of human rights. She can play the role of an enabler, activist, change agent, counselor, advisor depending on the issue and the needs of the clientele.

- We believe that the role of trained social workers in the legal aid and assistance programs is a crucial one, which has not been given the attention, it deserves. Recent years have seen an escalation in the awareness about one's rights. The social workers can play a significant role in improving the understanding and interpretation of the economic, social and cultural rights of the poor and the vulnerable, at the same time building public opinion in the favor of the next generation rights that are emerging. The rights of women and children, the rights of the elderly, the rights of the persons with disabilities are increasingly being talked about, highlighting the need to address their special requirements. Statutes and schemes have their own place, they, however, become meaningless in the face of a lack of commitment to implement and enforce them. The trained social workers should become an indispensable part of the para-legal force and the legal literacy program for the poor and the indigent. Not only should they inform the poor about their rights under various statutes but actively assist them in claiming these rights.
- The social workers should rally around the important social problems that plague the society, and agitate against social evils such as untouchability, dowry, child marriage. They should in dealing with any problem raise their voice for amendments to the law in the Parliament, through our elected representatives. Several rights which are enshrined in the books are yet to be translated into action. The social workers should not only strive towards the enactments of new laws but also their enforcement. Very often, in many cases our enthusiasm ends with the decision of a court. The most important thing is to see that the decisions are implemented.
- Legal aid does not mean merely filling cases in courts. The social workers could help immensely in those disputes which are not essentially of legal nature but involve personality problems. In matrimonial disputes, in probation cases, and in children's cases the services of social workers could be fruitfully utilized. The trained social workers could also help in conciliation and settlement of disputes which do not require litigation in the courts.

Thus, in the planning of any program of legal aid, the role of social workers should be especially demarcated and their services should be utilized at various stages of the program. In channelizing the energy of the marginalized and the deprived groups and in helping them to access justice the social workers have a definite role to play. The struggle for corruption free and egalitarian society should be the motto of the new generation of social workers. Today, number of cases, come before the courts which are not initiated by the victims themselves, they being too weak to meet the legal expenses and too overawed by the complex legal processes. Their cases are taken up by social activists and social workers, who fight on their behalf. The example of Medha Patkar is a case in point.

Areas and Functions

The social worker has a wide spectrum of functions to perform. At one end of the spectrum they have the watch dog functions to perform, where they can highlight the injustices heaped on the weaker sections and their human rights violations. They can draw the attention of the authorities to their plight, pressurizing them to undertake remedial measures. At the other end they can promote awareness about their legal and Constitutional rights and undertake measures to help and assist people to enjoy these rights. They can provide legal aid and assistance and function in different areas, some of which are given below by way of illustration:

In the area of Disability

There is an immense scope for social work in area of the rights of the differently abled. Government has provided many rights and facilities to them, of which they are largely ignorant and consequently unable to access them. A social worker should have knowledge of government's role in disability; else he will not be able to help the clients to access these facilities. These rights and services are available to the disabled when they are diagnosed under the head of any disability. A Social worker should know the criteria under which a person can be diagnosed as a disabled. If social worker will not have knowledge of the laws and regulations in the area of disability, she will not be able to help her clients in accessing these facilities. "Do not count disability, count ability"- a social worker should keep this in mind while working for the differently abled persons.

Education and employment of the disabled is another area where a social worker can be of great help, provided he has the knowledge of the government run programs and the provisions of the 'The Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995'. The Act enjoins upon the appropriate governments and local authorities to take certain steps for the education of disabled such as access to free education till the age of eighteen years, integration in the normal schools, setting up of special schools, vocational training and part time classes in special schools and functional literacy for age group sixteen and above, impart education through open schools or open universities, provide free of cost special books and equipments needed for his education, transport facilities for disabled children to attend school, grant of scholarship etc. Social work services are relevant and significant for getting these provisions enforced. Further in making the client self dependent the social worker should know what the Act says about their employment opportunities. The Act asks appropriate governments and local authorities to take certain steps for the employment of disabled, such as identify and make a list of the posts, which can be reserved for the persons with disability and up-date it once in three year, as also reservation up to three percent, one percent each for the blind, hearing impaired, those with locomotor disability or cerebral palsy. Hundreds of social workers are already working quietly among the less privileged in the remote areas of our country bringing about changes at the grass root level. Their work needs to be appreciated, highlighted and awarded.

Rights of Women

The social workers by promoting the legal awareness and making timely legal assistance available can be significantly helpful to women. The gender differences that prevail globally, place women at various disadvantageous positions. The most painful discrimination is the physical and psychological violence perpetuated on them. Equality is still a myth for millions of women for whom life is stalked by various kinds of violence within homes, at work place and in the educational system. As observed by Justice Saghir Ahmad, "Unfortunately a woman in our country belongs to a class or group of society who are in an disadvantaged position on account of several social barriers and impediments and have therefore, been victims of tyranny at the hands of men with whom they, unfortunately, under the Constitution enjoy equal status."

Seeking justice is a costly, time consuming and cumbersome affair. This acts as a discouraging factor for most women who lack the means and resources to fight

for their legal rights. To take a look at the problem of large scale incidents of dowry deaths, disputes out of non-payment of dowry etc., the cause of this problem is the social pressure that exists today which makes the parents spend money beyond their means to get their daughter married. Can we not do something to ease this situation? The social workers should undertake social action against, large scale spending on marriages.

As the traditional Indian society is opening up, females are taking up more and more jobs in various sectors. Here again the employees adopt a discriminating attitude towards women as regards providing equal opportunities, training, promotions, transfers, equal wages and various social benefits. In their workplaces, women suffer from sexual harassment, eve-teasing and molestations. This situation is worse when women come from the lower socio-economic group or are placed in the unorganized sector. The fear of losing jobs works as a deterrent for the victim to initiate any steps against the offenders. Legal assistance and counseling by the social workers can be of immense value to women in such a scenario.

Rights of the Elderly

There is a great need for the development of a legal assistance program for the elderly to solve their legal problems and save them from abuse and neglect. The growing numbers of the elderly and societal indifference to understand and address their needs, underlines the need for a greater and active role of the social workers in this area. Unfortunately, there is hardly any legal protection available to this segment which is in great need of protection against neglect and abuse by their children and loved ones. They are always in the potential danger of being deprived and thrown out of their own properties in the absence of any supportive legal assistance programs; hence in dire need of legal, protective and ameliorative services. The legal assistance programs of the social workers for the elderly could include free consultation, using the existing legal services, hiring lawyers, securing appointment with the lawyers, getting expert legal opinion, negotiating the fees and follow up. Social work role may be particularly relevant in the area of prevention of fraudulent practices by giving them timely legal advice. There is a wide array of functions that a social worker can perform in the area of the rights of the elderly. e.g. while giving away their property they should be guided to give a limited power of attorney, rather than handing over the entire property to the children. They can be made aware of the possible legal repercussion of their gullible actions.

Elderly are often frail to fight for their own rights vigorously therefore need advocacy for their rights, right from advocating for a strong legislation for protecting the elderly, to giving consultation and counseling in legal matters.

Ecology

The increasing urbanization and industrialization have given rise to new problems which cannot be ignored any more. The shortages of housing, water, electricity can be undisputedly attributed to this. The social workers have an increasing role to play in spreading awareness, proposing new laws for saving our fragile ecology. Today we need stringent laws for saving our environment and prevent encroachments. For long we have talked about our fundamental rights, it is time now to celebrate and uphold our fundamental duties. The social workers are the people who should propagate them among the masses using whatever methods

and techniques including law. They have to make law an instrument for social change. The latest trends of social advocacy and Public Interest Litigation are the hope of the present generation and become a potent tool in the hands of the social workers. They can make the government act on the basis of carefully drafted and documented reports and can stall the collapse of our fragile ecology.

Given above are only few areas by way of illustration, which call for social work intervention, other areas could be rights of the child, rights of the prisoners, medical negligence, disaster management etc. Legal cells could be attached to the schools of social work. manned by social workers, lawyers and other para legal staff. Their main task would be to help initiate legal action, wherever there is a violation of human rights.

Check Your Progress VI

Note: Use the space provided for your answer.

- 1) What role can a professional social worker play in the providing legal aid and assistance?

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- 2) Elaborate on any two areas in which a professional social worker can perform para- legal functions.

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4.9 LET US SUM UP

The aim of this Unit was to make the learner understand the concepts of social advocacy and legal aid and how a professional social worker can seize these remedies to further the goals of her profession. It has been wrongly presumed in our country that once our social policy is enacted into law, the prescribed legal procedures would, by themselves ensure effective application of the social policy. However, nothing could be farther from truth. We are all well aware how the scales of justice are always tilted in the favor of the rich and the resourceful. However, increasing judicial activism, leading to the emergence and acceptance of the concepts like social advocacy, public interest litigation and legal aid, has today brought justice within the reach of the common man by making it possible for him to access the judicial system through these mechanisms. The courts are under a perennial obligation to uphold the Constitution, even if sometimes, it entails taking on the role of a policy formulating or legislating agency, which is not truly its

domain. In exercising constitutional jurisdiction to oversee the functioning of the executive and the legislature, one expects the judiciary to play the role of a watch dog and ensure a fair and honest implementation of the constitutional commitments and guarantees to the people.

Legal aid, till a few years ago meant defending an accused from criminal charge or helping the needy in litigation in civil cases and was primarily in the domain of the lawyers, who gave advice and fought cases on their behalf, free of cost. However, conceptually speaking, the vista of legal aid is very broad and can encompass within its fold a wide range of activities, such as, spreading literacy by educating people of their basic rights, supporting their litigation, identifying the problems of the poor and the backward and suggesting suitable changes in the law etc. When the word advocacy is prefixed by the term social it comes to mean supporting or pleading for a cause, through which the common interest or good of the society is secured. Though there does not exist any specific framework, social advocacy may comprise of certain steps in the process of fighting and advocating for the rights of the victimized and oppressed classes such as, identifying the issue, collecting data, analyzing the problem, chalking out a plan for solution, forming alliances and mobilizing public support, generating public awareness and enlisting media support etc. A new partnership between the lawyers, media, social action groups and social workers has fostered the effective strategy of Social Action Litigation or Public Interest Litigation as it is popularly called. PIL is a significant arm of social advocacy, in India, but, is still in an experimental stage. The need of the hour is to consolidate and institutionalize these innovative developments, so that the judiciary can become the legitimate watch dog of society.

Legal aid and assistance to the weak and downtrodden is a task best suited to the professional social workers in the light of their professional goals which are committed to the welfare of the poor and needy. To fill the existing lacuna there is a need to introduce a substantial component in our training, to equip the social work trainees with skills of legal aid and assistance. They should be essentially equipped with the knowledge of the Constitution, the existing laws especially social laws, the legal system etc. They can function effectively and provide legal aid and assistance in various areas, such as, in the area of disability, woman empowerment, child rights, correctional administration and the like. By and large social work profession has been avoiding issues which are conflictual in nature but the need of the hour is to have a radical response to the burning social issues. Social workers by combining their social work skills with the legal skills can make a lot of difference to the existing legal aid and assistance services and make it a potent instrument of social change as envisaged by justice Bhagwati. Professional social workers have to increasingly assume a greater role along with the members of the legal profession to promote and encourage, social advocacy and social action litigation.

4.10 KEY WORDS

Judicial Activism : A judicial philosophy that departs from strict adherence to judicial precedent in favor of progressive and new social policies, which are not always consistent with the restraint expected of judges.

- Social Advocacy** : Supporting or pleading for a cause, through which the common interest or good of the society is secured.
- Public Interest Litigation** : Fighting for someone else's cause, even though one has no personal stake in it, except the public interest.
- Legal Aid** : An aid which allows people, who would not otherwise be able to afford it, to get help for their legal problems.

4.11 FURTHER READING AND REFERENCES

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