
Unit - 4 □ Salient features, Provision and Implementation of Legislation with reference to Marriage and Divorce, Inheritance and Succession, Maintenance of Spouse and Children

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4.1 □ Concept

The term 'legislation' connotes sets of laws made and passed the legislature or parliament of a nation. Hence by the term 'social legislation' we mean a process of enactment of laws for the eradication of unhealthy social practices, taboos, etc. and in its place introduction of new practices which beneficial to the society altogether.

4.2 □ Marriage and Divorce

4.1.1 Marriage

Marriage as a social institution plays an important part in the family life of individuals in any society. There are various legislations namely Hindu Marriage Act of 1955, Special Marriage Act of 1954 etc. which governs and safeguards marriages in our society.

So far as Hindu Marriage Is concerned.

A marriage is solemnised when the bride and bridegrooms follow to customary rites 'homa' and saprapadi'. The term 'saptapadi' connotes taking seven steps round the holy fire. The marriages of Hindu of any sect or caste, Buddhists, Jains, Sikhs, and for anyone converted to Hinduism, are governed and protected under Hindu Marriage Act. Provisions for Hindu Marriage are :

- a) Both the bride and bridegroom must be Hindus.
- b) Neither the bride nor bridegroom be already married.
- c) Both the parties are not within degree of prohibited relationships unless the existing custom permits of a marriage between the two.
- d) Parties are not sapindas unless the custom permits a marriage between the two.
- e) Neither of the parties is a lunatic or retarded at the time of marriage.
- f) The bridegroom must complete 21 years of age and bride must complete 18 years of age at the time of marriage.
- g) The marriage has not taken place by force or fraud.

So far as Special Marriage is concerned.

Conditions relating to Solemnization of Special Marriage-

Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under The Special Marriage Act, if at the time of the marriage the following conditions are fulfilled namely:

- a) Neither party has a spouse living.
- b) Neither party -
 - i) is incapable of giving a valid consent to it in consequence of unsoundness of mind; or
 - ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as be unfit for marriage and the procreation of children; or
 - iii) has been subject to recurrent attacks of insanity or epilepsy.
- c) The male has completed the age of twenty-one years and the female the age of eighteen years.
- d) The parties are not within the degrees of prohibited relationship. Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship ; and
- e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends.

4.1.2. Divorce

So far as Hindu Marriage Act is concerned:

Dissolution of Marriage (Divorce): According to Section-13 of the Hindu Marriage Act, a husband or wife at any moment of time can dissolve the marriage ties on the grounds mentioned below :

Grounds for Divorce:

- a) Adultery: After solemnization of marriage, voluntary sexual intercourse with any person other than his or her spouse.
- b) Cruelty: After solemnization of marriage, when either of the husband or wife treat with cruelty (amounting to physical, mental or both) to other.
- c) Desertion: After solemnization of marriage, willful neglect or either husband or wife to their counterpart without reasonable cause or without consent or against the wish of the counterpart.
- d) Renunciation (Change of Religion): After solemnization of marriage, when either of the husband or wife has ceased to be a Hindu by conversion to any other religion or renounces the world for religion.
- e) Insanity: After solemnization of marriages, when either of the husband or wife be of unsound mind for a period not less than 3 years.
- f) Leprosy: After solemnization of marriage, when either of husband or wife been suffering from virulent and incurable form of leprosy for a period not less than 3 years.
- g) Venereal Disease: After solemnization of marriage, when either of husband or wife been suffering from communicable form of venereal diseases for a period not less than 3 years.
- h) When after solemnization of marriage, either husband or wife has not been heard of being alive for a period of seven years or more.

Dissolution of Marriage (Mutual Consent) : According to Section-13B of the Hindu Marriage Act (Amendment of 1976), after solemnization of marriage, dissolution of marriage by mutual consent can occur subject to the conditions that the following grounds are fulfilled: .

Grounds for Divorce through Mutual Consent:

- a) Both husband and wife have been living separately for a period of one year or more.
- b) They are not in a position to live together.
- c) They have agreed mutually that marriage be dissolved.

So far as the Special Marriage Act is concerned :

Dissolution of Marriage (Divorce): According to Section-27 of the Special Marriage Act, after solemnization of marriage, petition for divorce can be done to the District Court of the following grounds:

(1) Subject to the provisions of this Act and to the rules made thereunder, a petition for divorce may be presented to the District Court either by the husband or

the wife on the ground that the respondent-

- a) has, after the solemnization of the marriage had voluntary sexual intercourse with any person other than his or her spouse; or
- b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or
- c) is undergoing a sentence of imprisonment for seven years or more for an offence as defined in the Indian Penal Code (45 of 1860); or
- d) has since the solemnization of the marriage treated the petitioner with cruelty; or
- e) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind, and also to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation : In this Clause-

- a) the expression “mental disorder” means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;
- b) the expression “psychopathic disorder” means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence which results in abnormally aggressive or irresponsible conduct on the part of the respondent and whether or not it requires or is susceptible to medical treatment; or
- f) has been suffering from venereal disease in a communicable form; or
- g) has been suffering from leprosy, the disease not having been contracted from the petitioner; or
- h) has not been heard of as being alive for a period of seven years or more by those persons who would naturally have heard of the respondent if the respondent had been alive;

Explanation- In this sub-section, the expression “desertion” means desertion of the petitioner by the other party to the marriage without reasonable cause and without the consent or against the wish of such party and includes the wilful neglect of the petitioner by the other party to the marriage, and its grammatical variations and cognate expressions shall be construed accordingly.

(1 -A) A wife may also present a petition for divorce to the District Court on the ground-

- i) that her husband has, since the solemnization of the marriage, been guilty of rape, sodomy or bestiality;
- ii) that in a suit under Sec. 18 of the Hindu Adoptions and Maintenance Act, 1956 (78 of 1956), or in a proceeding under Sec. 125 of the Code of Criminal

Procedure, 1973 (2 of 1974), or under the corresponding Sec. 488 of the Code of Criminal Procedure, 1973 (2 of 1974), or under the corresponding Sec. 488 of the Code of Criminal Procedure, 1898 (5 of 1898), a decree or order, as the case may be, has been passed against the husband awarding maintenance of the wife notwithstanding that she was living apart and that since the passing of such decree or order, cohabitation between the parties has not been resumed for one year or upwards.

(2) Subject to the provisions of the Act and to the Rules made thereunder, either party to a marriage, whether solemnized before or after the commencement of the Special Marriage (Amendment) Act, 1970, may present a petition for divorce to the District Court on the ground-

- i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or
- ii) that there has been restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.

27-A. Alternate relief in divorce proceedings- In any proceedings under this Act, on a petition for a dissolution of marriage by a decree of divorce, except in so far as the petition is founded on the ground mentioned in Cl. (h) of sub-section (1) of Sec. 27, the Court may, if it considers it just so to do, having regard to the circumstances of the case, pass instead a decree for judicial separation.

Dissolution of Marriage by Mutual Consent: According to Section-28 of the Special Marriage (Amendment) Act 1970, petition for divorce by mutual consent can be done to the District Court of the following grounds :

- (1) Subject to the provision of this Act and to the rules made thereunder, a petition for divorce may be presented to the District Court by both the parties together on the ground that they have been living separately for a period of one year or more, that they have not been able to live together and that they have mutually agreed that the marriage should be dissolved.
- (2) On the motion of the both parties made not earlier than six months after the date of the presentation of the petition referred to sub-section (1) and not later than eighteen months after the said date, if the petition is not withdrawn in the meantime, the District Court shall, on being satisfied, after hearing the parties and after making such inquiry as it thinks fit that a marriage has been solemnized under this Act and that the averments in the petition are true, pass a decree declaring the marriage to be dissolved with effect from the date of the decree.

4.3 □ Inheritance and Succession

When we talk about Inheritance and Succession, the act which automatically comes into our mind is The Hindu Succession Act of 1956. After the enactment of this law, there was a all-round change in the concept of property rights so far as Hindus are concerned. The men and women started getting equal rights towards ancestral property. The main provisions of the act are as follows :

The Hindu Succession Act of 1956.

General rules of succession in the case of males :

The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter-

- a) firstly, upon the being the relatives specified in class I of the Schedule;
- b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;
- c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and
- d) lastly, if there is no agnate, then upon the cognates of the deceased.

Order of succession among heirs in the Schedule

Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; in the first entry in class II shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

Distribution of property among heirs in class I the Schedule

The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules :

Rule 1 - The intestate's widow, or if there are more widows than one, all the widows together, shall take one share.

Rule 2 - The surviving sons and daughters and the mother of the intestate shall each take one share.

Rule 3 - The heirs in the branch of each pre-deceased son each pre-deceased daughter of the intestate shall take between them one share.

Rule 4 - The distribution of the share referred to in Rule 3-

- i) among the heirs in the branch of the pre-deceased son shall be made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of his predeceased sons gets the same portion;
- ii) among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

Distribution of property among heirs in class II of the Schedule

The property of an intestate shall be divided between the heirs specified in any one entry in class II of the Schedule so that they share equally.

Order of succession among agnates and cognates

The order of succession among agnates or cognates, as the case may be, shall be determined in accordance with the rules of preference laid down hereunder:

Rule 1 - Of two heirs, the one who has fewer or no degrees of ascent is preferred.

Rule 2 - Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent.

Rule 3 - Where neither heir is entitled to be preferred to the other Rule 1 or Rule 2 they take simultaneously.

Computation of degrees

- (1) For the purpose of determining the order of succession among agnates or cognates, relationship shall be reckoned from the intestate to the heir terms of degrees of ascent or degrees of descent or both, as the case may be.
- (2) Degrees of ascent and degrees shall be computed inclusive of the intestate.
- (3) Every generation constitutes a degree either ascending or descending.

Property of a female Hindu to be her absolute property

(1) Any property possessed by a Female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation : In this sub-section, “property” includes both movable and immovable property acquired by a female Hindu by inheritance or device, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.

(2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil court or under an award where the terms of the gift, will or other instrument or the decree, order or award prescribe a restricted estate in such property.

General rules of succession in the case of female Hindus

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16 :

a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

- b) secondly, upon the heirs of the husband;
- c) thirdly, upon the mother and father;
- d) fourthly, upon the heirs of the father; and
- e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1)-

a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence on any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in subsection (1) in the order specified therein, but upon the heirs of the father; and

b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

Order of succession and manner of distribution among heirs of a female Hindu

The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heirs shall take place, according to the following rules, namely :-

Rule 1 - Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry and those including in the same entry shall take simultaneously.

Rule 2 - If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3 - The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

Special provisions respecting persons governed by Marumakkattayam and Aliyasatana laws

The provision of section 8,10,15 and 23 shall have effect in relation to persons who would have been governed by the marumakkattayam law or aliyasantana law if this Act had not been passed as if-

(i) for sub-clauses (c) and (d) of section 8, the following had been substituted, namely:

“(c) thirdly, if there is no heir of any of the two classes, then upon his relatives, whether agnates or cognates.”,

(ii) for clauses (a) to (e) of sub-section (1) of section 15, the following had been substituted, namely :-

“(a) -firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the mother;

(b) secondly, upon the father and the husband;

(c) thirdly, upon the heirs of the mother;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the husband.”,

(iii) clause (a) of sub-section (2) of section 15 had been omitted;

(iv) section 23 had been omitted.

General Provisions Relating To Succession

Full blood preferred to half blood

Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.

Mode of succession of two or more heirs

If two or more heirs succeed together to the property of an intestate, they shall take the property-

(a) save as otherwise expressly provided in this Act, per capita and not per stripes; and

(b) as tenants-in-common and not as joint tenants.

Right of child in womb

A child who was in the womb at the time of death of an intestate and who is subsequently born alive has the same right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate.

Presumption in cases of simultaneous deaths

Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other, then for all purposes affecting succession to property, it shall be presumed, until the contrary is proved, that the younger survived the elder.

Preferential right to acquire property in certain cases

(1) Where, after the commencement of this Act, interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or

conjunction with others, devolve upon to two or more heirs specified in class I of the Schedule, and any one of such heirs propose to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

Explanation : In this section, “court” means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.

Special provision respecting dwelling houses

Where a Hindu intestate has left surviving him or her both male and female heirs specified in class I of the Schedule and his or her property includes a dwelling-house wholly occupied by members of his or her family, then, notwithstanding anything contained in this Act, the right of any such female heir to claim partition of the dwelling-house shall not arise until the male heirs choose to divide their respective shares therein; but the female heir shall be entitled to a right of residence therein:

PROVIDED that where such female heir is a daughter, she shall be entitled to a right of residence in the dwelling-house only if she is unmarried or has been deserted by or separated from her husband or is a widow.

Certain widows remarrying may not inherit as widows

Any heir who is related to an intestate as the widow of a pre-deceased son, the widow of a pre-deceased son of a pre-deceased son or the widow of a brother shall not be entitled to succeed to the property of the intestate as such widow, if on the date the succession opens, she has re-married.

Murderer disqualified

A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

Convert's descendants disqualified

Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens.

Succession when heir disqualified

If any person is disqualified from inheriting any property under this Act, it shall devolve as if such person had died before the intestate.

Disease, defect, etc. not to disqualify

No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Act, on any other ground whatsoever. ESCHEAT

Failure of heirs

If an intestate has left on heir qualified to succeed to his or property in accordance with the provision of this Act, such property shall devolve on the government; and the government shall take the property subject to all the obligations and liabilities to which an heir would have been subjected.

4.4 ☐ Maintenance of Spouse and Children

In every case of lawful marriage, separation, divorce, the husband has the obligation and liability for maintenance of wife and children. These are governed according to various personal laws and procedure codes enacted from time to time.

Section-125, Criminal Procedure Code of 1973 :

Under Section-125 of Cr.PC, right of maintenance extends not only to the wife and dependent children, but also to the indigent parents and divorced wives. Claims of course depend on the means of the husband. Only in cases of exception, where women receive maintenance from the safeguards of personal law, such women cannot claim maintenance under Cr.PC 125.

Hindu Adoptions and Maintenance Act of 1956 :

1. Under the Hindu Adoptions and Maintenance Act of 1956, a Hindu wife can claim maintenance from her husband if she is unable to support herself. In cases where wife stays from husband for unavoidable circumstances, in that case also, the wife is eligible to get maintenance for her husband.

The circumstances may be:

- Desertion by husband.
- Cruelty of husband.

- Husband has leprosy or other virulent disease.
- Bigamy of husband.
- Illicit relationship of husband with other women.
- Husband has got converted to other religion.

[It has to be noted that if the wife is living in adultery or changed her religion or has got remarried she will not be entitled for maintenance.]

(2) Under the Hindu Adoptions and Maintenance Act of 1956, children, old and infirm parents have the right to get maintenance, if they are unable to maintain themselves out of their income or out of the income of their property.

- Here 'children' means legitimate or illegitimate minor children - they have right to get maintenance from their parents.
- Old and infirm parents have right to get maintenance from their children (Sons and daughters).

(3) Under the Adoptions and Maintenance Act of 1956, if a Hindu Widow is unable to support herself from her own income or property, she is entitled to get maintenance from:

- Her husband's property or from her parents.
- Her sons or daughters or their property.
- In absence of the above from father-in-law or his property.

[If she (widow) remarries, she will not be entitled to get maintenance from her father-in-law.]

4.5 References

1. Bare Act - "The Hindu Marriage Act of 1955" - Hind Publication House, Allahabad, Uttar Pradesh, India.
2. Bare Act - "The Hindu Succession Act of 1956" - Clarion Law Books, New Delhi, India.
3. Bare Act - "The Hindu Adoption and Maintenance Act of 1956" - Hind Publication House, Allahabad, Uttar Pradesh, India.
4. www.google.co.in

4.6 Exercises

1. Describe in brief the salient provisions of The Hindu Succession Act of 1956.
2. What are the grounds of dissolution of marriage (Divorce) under The Hindu Marriage Act of 1955 ?
3. Who all are Class-I and Class-II Heirs specified under The Hindu Succession Act of 1956 ?

Unit - 5 □ Laws Safeguarding the Rights of Women and Children

Structure

- 5.1 Introduction**
- 5.2 Juvenile Justice (Care and Protection of Children) Act, 2000**
- 5.3 Child Labour (Protection and Regulation) Act, 1986**
- 5.4 Dowry Prohibition Act, 1961**
- 5.5 Child Marriage Restraint Act, 1929**
- 5.6 Equal Remuneration Act, 1976**
- 5.7 Maternity Benifit Act, 1961**
- 5.8 Medical Termination of Pregnancy Act, 1971**
- 5.9 Conclusion**
- 5.10 Recapitulation**
- 5.11 Exercises**

5.1 □ Introduction

Traditionally women and children are the most vulnerable sections, especilly in a developing country like ours. Although the Preamble to our Constiutution refers to the promise of social justice, and the Constitution itself has provisions for affirmative action in favour of women and children, as well as, special laws enacted to promote gender justice and the rights of the child, the status of women and children continues to be a cause of concern not only in our country by also in most countries of the world.

At the International level, prohibition against gender discrimination and the rights of the child for :-

- Protection
- Survival
- Development
- Participation

are being voiced from the United Nations Charter of 1945 and the Universal Declaration of Human Rights of 1948 onwards,. Since then, virtually all human rights instruments have reinforced and extended protection against discrimination. The International Covenant on Civil and Political Rights adopted in 1966 guarantees equal protection of the law to both sexes. The International Covenant on Economic, Social and Cultural Rights also adopted in 1966 promises women equality of status. The Fourth World Conference on Women, held at Beijing brought us further forward by reaffirming gender equality as a fundamental pre-requisite for social justice.

Perhaps the most important conceptual advance in the international law of women's rights is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), effective 1981, which provides that women be given rights equal to those of men on equal terms. The Preamble of CEDAW maintains that "the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields."

The Convention on the Rights of the Child (CRC) is the human rights instrument that sets out the rights of children and adolescents, taking into account their particular needs for protection, and the opportunities they require for growth and development. According to article 1 of the Convention on the Rights of the Child, a child is very human being the age of 18 (this includes adolescents) unless, under the law applicable to the child, majority is obtained earlier.

In India, our Constitution provides for distributive and social justice enshrined in the Preamble, the chapters on Fundamental Rights and Duties, and Directive Principles of State Policy and other articles. Article 14 confers on men women equal rights and opportunities in the political, economic and social spheres. Article 15 prohibits discrimination against any citizen on the grounds of religion, race, caste, sex, etc. Article 15(3) makes a special provision enabling the State to make affirmative discriminations in favour of women. Similarly, Article 16 provides for equality of opportunities in matter of public appointments for all citizens. Article 39(a) lays down that the State shall direct its policy towards securing all citizens, men and women, equally, the right to means of livelihood, while Article 39(c) ensures equal pay for equal work. Article 42 directs the State to make provision for ensuring just and humane conditions of work and maternity relief. Above all, the Constitution impose a fundamental duty on every citizen through Article 51A (e) to renounce the practices derogatory to the dignity of women.

In tune with various provisions of the Constitution, the State has enacted many 'women-specific' and 'women-related' legislations to protect women against social discrimination, violence and atrocities and also to prevent social evils like child marriages, dowry, rape, practice of Sati, etc. We will discuss some of them below.

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

An Act to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment 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 this enactment.

5.2.1. Act 56 of 2000

The Juvenile Justice (Care and Protection of Children) Bill having been passed by both the House of Parliament received the assent of the President on 30th December, 2000. It came on the Statute Book as THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN); act, 2000 (56 of 2000).

5.2.2. Department Concerned in the State

It is the Social Welfare and Women & Child Development Department of the concerned state.

5.2.3. Scope of Service

It is to provide Care & Protection to the Destitute & Neglected Delinquent children accordingly to the Provision of the Act.

5.2.4. Eligibility Conditions

The eligibility condition is, as per the provision of the Juvenile Justice (Care & Protection of Children Act, 2000, the child should be within the age of 18, whether male or female.

5.2.5. Step by Step Procedure

1. Destitute & neglected children are admitted in the children homes where their case files are completed and are transferred to the Juvenile Homes within a period of three months. Boarding and lodging and medicines etc. are provided free to the children.
2. In the Juvenile Homes children are cared up to the age of 18 years where the children complete their studies.
3. If the Children have not completed their education then they are transferred in the After Care Homes, where they remain up to the age of 21 years. Neglected/Destitute Children are admitted in the children homes.

5.2.6. Delinquent Children

Delinquent Children are admitted by Juvenile Justice Boards and they are kept in the Special Home.

5.2.7. Format of Application Form

No format of application is required, any person can produce destitute neglected and needy child can be produced before the child welfare committee for the admission in the children homes.

5.2.8. Check List of Document

No check list of documents is prescribed Child Welfare Committee is empowered to admit the child while exercising the powers conferred by the Code of Criminal Procedure, 1973 on a magistrate of 1st Class according to the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2000.

5.2.9. Verification Procedures

No prior verification is required, as it is within the powers of Child Welfare Committee to admit/discharge the destitute/neglected child.

5.2.10. Prescribed Time Schedule

Child Welfare Committee will complete its process with in three months.

5.2.11. Fee Prescribed

No fee is required destitute/neglected/delinquent children are admitted and cared and socialized according to the provisions of Juvenile Justice (Care & Protection of Children) Act, 2000.

5.2.12. Sanctioning Authority

- For Destitute and Neglected Children - Child Welfare Committee of the Concerned District.
- For Delinquent Children - Juvenile Justice Board of the concerned District.

5.2.13. Grievance Redressal System

It consists of the concerned Child Welfare Committee and Juvenile Justice Boards.

5.2.14. Implementation Strategy and Objectives of the Act

The Juvenile Justice (Care and Protection of Children) Act, 2000 lays down the Primary law for not only the care and protection of the children but also for the adjudication and disposition of matters relating to children in conflict with law. For the implementation of the Act, the Ministry is implementing a plan Scheme called, 'A Programme for Juvenile Justice.' The objectives of the Programme for Juvenile Justice are :

- To extend help to State Governments to bear the cost of infrastructure and services development under the Juvenile Justice Act in order to ensure that in no circumstances the child in conflict with law is lodged in a regular prison.
- To ensure minimum quality standards in the juvenile justice services.
- To provide adequate services for prevention of social maladjustment and rehabilitation of socially maladjusted juveniles.

- Ensure participation of community and other organizations into the care and protection of children in conflict with law who are perhaps more vulnerable than other groups of children.

Under the scheme, the Ministry provides 50% assistance to State Governments and Union Territory (UT) Administration for establishment and maintenance of various levels of institutions for juveniles in conflict with law and children in need of care and protection. During the year 2003-04, an amount of Rs. 16.37 crore was released to 22 States/UTs.

5.2.15. Implementation Status in West Bengal

1. 2 Juvenile Justice Boards have been constituted for all Districts of the State.
2. Child Welfare Committees have been constituted covering all Districts of the State.
3. 5 Observation Homes run by Government have been established.
4. 5 Special Homes run by Government have been established
5. 13 Children Homes have established and are run by Government.
6. 21 Shelter Homes run by NGOs have been recognized.
7. 8 After Care Homes are being run.
8. Formulation of Rules under consideration of Government.

5.2.16. Review of the Act

The Juvenile Justice Act, 2000 is the primary law for children in need of care and protection. The JJ Act designed for the care, protection, development and rehabilitation of neglected and delinquent juveniles, as well as for the adjudication of and disposal of certain matters related to them.

The Juvenile Justice Act, 1986 has been replaced by a new Act called 'The Juvenile Justice (Care and Protection of Children) Act, 2000'. This new law is more child-friendly and provides for proper care and protection as also for ultimate rehabilitation of children in need of care and protection. A clear distinction has been made in the new law between the juvenile offender and the neglected child. The other salient features of this enactment are :

- it prescribes a uniform age of 18 years below which both boys and girls are to be treated as children
- the Act directs that the cases related to juveniles should be completed within a period of three-four months
- it has been made compulsory to set up Juvenile Justice Board (previously known as Juvenile Court) and Child Welfare Committee (previously known as Juvenile Welfare Board) either for District or a group of Districts
- special emphasis has been given for rehabilitation and social re-integration of the children and the alternatives provided for this are adoption, foster

care, sponsorship and after-care. The new Act allows for adoption of a child within the purview of the Act by community. The Juvenile Justice Board has been empowered to give such children in adoption even to a single parent and to parents to adopt a child of same sex irrespective of number of biological sons or daughters. > it has been provided that there is to be no joint proceeding of a juvenile and a person not a juvenile

The Juvenile Justice Rules, 2002 under the 2000 Act have already been framed by the State Governments. It has also been decided to constitute a JJ Board and Child Welfare Committee (CWC) in each District.

The programme for Juvenile Justice endeavours to provide for full coverage of services envisaged under the Juvenile Justice Act so as to ensure that no child under any circumstances is lodged in prison; to bring about qualitative improvement in the juvenile services and to promote voluntary action for the prevention of juvenile social maladjustment and rehabilitation of socially maladjusted juveniles.

Under the Programme for Juvenile Justice, the Government of India provides assistance to the State Government for establishment and maintenance of Observation Homes, Juvenile Homes, Special Homes and after-care institutions for children in conflict with law and children in need of care and protection. The cost of maintenance of the inmates of the Observation Homes is borne by the State Government on a 50:50 sharing basis a Centrally Sponsored Plan Scheme.

5.2.17 Amendment

The Social Justice and Empowerment Minister Dr. Satyanarayan Jatiya introduced the Juvenile Justice (Care and Protection of Children) Amendment Bill, 2003 in the Lok Sabha on 24th April, 2003. The bill seeks to amend the sections 32, 33, 56, 57 and 59 of the Juvenile Justice (Care and Protection of Children) act, 2000. The amendment has been necessitated following the observation made by the Delhi High Court in a 'Public Interest Litigation' that certain provisions of the Act merited reconsideration. Keeping in view these observations, the amendment proposes to have a minimum time period within a child should be produced before the Child Welfare Committee. It seeks that the child shall be produced before the Committee without any loss of time but within a period of 24 hours excluding the time necessary for the journey. The amendment bill also proposes to do away with the association of any untrained police officer from the inquiry process and seeks to substitute the word 'any police officer or special juvenile police unit' with the 'any member of a special juvenile police unit'. The amendment bill also propose exclusion of or-local authority from the provisions authorizing them to discharge or transfer a child in need of care and protection or juvenile from the children home or special home. It also propose to provide for a flexible period of leave that may be given to the child on special occasions like examination, marriage of relations, death of kith or kin or accident or serious illness of parent or any emergency of the like nature.

5.3 □ Child Labour (Protection and Regulation) Act, 1986

The government has made efforts to prohibit child labor by enacting Child labor laws in India including the 1986 Child Labor (Prohibition and Regulation) Act that stated that children under fourteen years of age could not be employed in hazardous occupations. This act also attempted to regulate working conditions in the jobs that it permitted, and put greater emphasis on health and safety standards.

5.3.1. Act 61 of 1986

Based on the recommendations of Gurupadaswamy Committee, the Child Labour (Prohibition & Regulation) Act was enacted on 23rd December, 1986. The Act prohibits employment of children in certain specified hazardous occupations and processes and regulates the working conditions in others. The list of hazardous occupations and processes is progressively being expanded on the recommendation of Child Labour Technical Advisory Committee constituted under the Act.

In consonance with the above approach, National Policy of Child Labour was formulated in 1987. The Policy seeks to adopt a gradual a sequential approach with a focus on rehabilitation of children working in hazardous occupations & processes in the first instance.

5.3.2. Department Concerned in the State

In the state the concerned department is the Labour Department.

5.3.3. Prohibition of Employment of Children

This Act prohibits the engagement of children below the age of 14 years in certain employments and regulates the conditions of work of children in certain other employments. The Act prohibits employment of child in about 13 occupations and about 51 processes.

5.3.4. Regulatory Provisions

The Act provides no child shall be permitted or required to work between 7p.m. and 8 a.m., for more than 3hrs before he has an interval for rest at least one hour. Every child employed in an establishment shall be allowed in each week a holiday for one whole day.

5.3.5. Administrative Machinery

All the Inspecting Officers of the Labour Department are notified as inspectors for the purpose of this Act. On receipt on complaints inspection are conducted by the inspectors. For any violation prosecution is filled in the Court of respective are Metropolitan Magistrate by the Inspectors.

5.3.6. Objective of the Act

It is an Act to prohibit engagement of children in certain employments and to regulate the conditions of work of children in certain other employments.

5.3.7. Penalties

Whoever employs or permit any child to work in the occupations and process in which employment of children is prohibited shall be punishable with imprisonment up to one year with fine not less than Rs. 10,000/- or with both. For other contraventions the penalty is up to one months imprisonment or with fine up to Rs. 10,000/- or with both.

5.3.8. Review of the Act and the Rehabilitative Machinery

India has all along followed a proactive policy in the matter of tackling the problem of child labour, and always stood for constitutional, statutory and developmental measures that are required to eliminate child labour. India has ratified six ILO conventions relating to child labour and three of them as early as in the first quarter of the twentieth century. Legislative provisions have been made in various laws to protect children from exploitation at work and to improve their working conditions. Concerted attempts have been made to follow a pro-active policy in the matter of tackling the problem through constitutional, statutory and developmental measures. Article 24,39 and 45 of the Constitution consciously incorporate provision to secure labour protection and free and compulsory education for children up to the age of 14 years.

In addition, a comprehensive law namely the Child Welfare (Prohibition and Regulation) Act, 1986 prohibits employment of children in certain hazardous occupations and processes and regulates their employment in some other areas. Through subsequent Notifications in 1999 and 2006, the Schedule to the Act has been substantially enlarged bring the total number of occupations and processes listed in the Schedule to 14 and 57 respectively. As per the provisional figures of Census 2001, there are 12.5 million working children in age group of 5-14 years as compared to the child population of 252 million.

The salient features of this Act are as follows :-

- Provision for CHILD LABOUR TECHNICAL ADVISORY COMMITTEE : The central government may by notification constitute a child Labour technical advisor committee to advise the central govt. for the purpose of addition of occupations to the schedule of the Act. (Section-5).
- Provision for HOURS AND PERIOD OF WORK: No child shall be required or permitted to work in any establishment in excess number of hours prescribed (Section-7). The period of work on each day shall not exceed three hours and no child shall work for more than three hours before he has had an interval for rest for at least one hour. No child shall be permitted or required to work between 7 p.m. and 8 a.m. No child shall be required or permitted to work overtime. (Section-7).
- Provision for WEEKLY HOLIDAY: Every child shall be allowed in each week a holiday of one whole day. (Section-8)

- WHO CAN FILE PROSECUTIONS :
 1. Any person
 2. Police Officer
- Section 14 of the provides for penalties for contravention of the various provision under the Act.

The National Policy on Child Labour was formulated in 1987 which apart from requiring enforcement of legal provision to protect the interests children, envisages focusing of general development programmes for the benefit of child labour and project-based plan of action in areas of high concentration of child labour. Under the project action plan of the policy, National Child Labour Projects (NCLP) have been set up in different areas to rehabilitate child labour. A major activity undertaken under the NCLP is the establishment of special schools to provide non-formal education, vocational training, supplementary nutrition, etc., to children withdrawn from employment.

The programme for the elimination of child labour received further impetus after the announcement of the new programme for the rehabilitation of children working in hazardous employments. Under the programme, 77 projects have been sanctioned to cover around 1.5 lakh working children in Andhra Pradesh, Madhya Pradesh, Gujarat, Orissa, West Bengal, Bihar, Rajasthan, Uttar Pradesh, Maharashtra, Kamataka and Tamil Nadu. The Cabinet Committee on Economic Affairs (CCEA) in their meeting on 20 January, 1999 approved continuance of the scheme of National Child Labour Project (NCLP) during the Ninth Plan period. The CCEA also approved increase of the projects from 76 to 100.

The number of working children who have been covered by special schools is a minuscule of the total number of working children waiting to be released and rehabilitated. The ultimate objective of the National Child Labour Projects is to convert working children into productive and participative members of society. Considering the magnitude of tire problem and paucity of resources - human, material and financial, a sequential, gradual but intergrated approach has been adopted.

The Government commitment to address the problem of child labour is reflected in the announcement made in the National Agenda for Governance (1998). The agenda states that the aim is to ensure that no child remains illiterate, hungry or lacks medical care and that measures will be taken to eliminate child labour. The need for time-bound action has also been emphasized by the Honorable Supreme Court. The Supreme Court of India, in its judgement dated 10 December, 1996 in Writ Petition (Civil) No. 465/1986 has been certain directions regarding the manner in which the children working in the hazardous occupations are to be withdrawn from work and rehabilitated as also the manner in which the working conditions of the children working in non-hazardous occupations are to be regulated, and improved upon.

The important directions given in the judgement include payment of compensation

amounting to Rs. 20,000 by the offending employers for every child employed in hazardous occupations, constitution of the Child Labour Rehabilitation-cum-Welfare Fund, giving alternative employment to an adult member of the family in place of the child withdrawn from the hazardous occupation or payment of an amount of Rs. 5,000 for each child employed in hazardous employment by the appropriate Government., completion of the survey of working children within a period of six months (i.e., by 10 June, 1997), Payment of interest on the corpus of Rs. 25,000 (Rs. 20,000 to be paid by the employer and Rs. 5,000 to be contributed by the appropriate government) to the family of the child withdrawn from work, provision of education in a suitable institution for the child withdrawn from work, etc. The Government has already initiated steps for giving effect to the directions of the Supreme Court.

5.3.9. Amendment

The latest amendment to the Child Labor (Prohibition and Regulation) Act, 1986 has come about in August, 2006 and prohibits Child Domestic Work and employment of children in roadside tea stalls and dhabas. By this Amendment Indian government is banning the employment of children under age 14 as domestic servants or as workers in hotels and restuarants.

The proposed ban will be effective from October 10. The West Bengal minister for labour, Mrinal Banerjee announced that West Bengal will implement the law and also plans to declare an anti child labor law of the state.

5.4 O Dowry Prohibition Act, 1961

5.4.1. Act 28 of 1961 (Amendment in 1984 and 1986)

It is a woman-specific legislation and is an Act to prohibit the giving or taking of dowry. It came into force on 1st July, 1961.

5.4.2. Department Concerned in the State

It is the Social Welfare and Women & Child Development Department of the concerned state.

5.4.3. Administrative Machinery

In exercise of the powers conferred by Section 10 of the Dowry Prohibition Act, 1961, the State Government has framed the Dowry Prohibition Rules, 2000. Government has appointed the Sub-Division Magistrates as the Dowry Prohibition Officers to hear complaints on dowry-related matters and take appropriate steps in accordance with the provisions of the law. Govt. has also constituted Advisory Boards in each Sub-division to assist the Dowry Prohibition Officer (DPO) in discharge the functions under the law in dowry-related matters. During the current year, steps have been taken to revamp the Boards to ensure that the Dowry Prohibition Officer's functions are carried out properly.

5.4.4. Grievance Redressal System

The dowry system has been a great social and health problem. So many cases of burns, hamicides, and suicides are reporting to the medical casualty in the hospitals. These cases are mainly due to the fact the dowry was not given according to the exception of bridegroom party. As the value of male child has been fixed much higher as compare to girl and women status is also low, the bride's parent has to offer costly gifts, and spend lot of money on arranging household goods to present even before the marriage which is illegal. If any person violates the Act may be punished with the imprisonment for a term not less than 5 years and with fine which shall not less than Rs. 15,0007- or the amount of the value of such dowry, whichever is more. Under the Amended Act of various states many types of prohibitions like advertisement, scope of dowry, gift, presens, and joint accounts are also included.

The Dowry Prohibition (Maintenance of list of presents to the bride and bridegroom) Rules 1885 prescribes that list of gifts, and other items should be made and kept. Where the death of a women is couosed by any burns or bodily injury within 7 years of her marriage and shown that soon before death she was subjected to curelty or harassment by her husband or any relatives is known as dowry death and punishment is for not less than 7 years but which may extend to life term imprisonment.

5.4.5. Implementation Status in West Bengal

All employees, including officers of the West Bengal Government, have to submit a written declaration to the authorities of their respective departments that they had not accepted dowry "before, after or at the time of marriage" from 2003 onwards. Penal action is to be taken against those whose testimonies were found to be untrue. "Those found guilty of having accepted dowry could suffer imprisonment for it is considered a criminal offence under Section 173 of the Indian Penal Code. Anti-dowry legislation has been in force in the State since 1961 but this most recent development comes in the wake of a notification issued by the State Government following an amendment to the West Bengal Dowry Prohibition Act, 1989."

The declaration is to be submitted to the departmental heads and will have to be certified by spouse, father and father-in-law of the individual concerned. After screening the undertakings, the authorities will send them to the recently-appointed Cheif Dowry Prohibition Officer of the Social Welfare Department for further action if deemed necessary.

"The post Dowry Prohibition Officer has also been earmarked for each district of the State. The officer will be entrusted the job of inquiring into any charge against a State employee of having accepted dowry at the time of his or her wedding in the case of doubt arising over the veracity of the declaration submitted."

The officer will forward the findings of the inquiry to the department headquarters in Kolkata. He will also be empowered to file a first information report with the local

police on any case where the acceptance of dowry has been ascertained. Suspension notices, which could be followed by a charge sheet, will be served on the guilty employee.

5.4.6. Review of the Act

In order to establish the implicit connection between the dowry system and the dowry deaths it is essential to look at the different provision of the Act along with the provisions of other enactments. While section 2 of the Act defines the term “Dowry” as any property or valuable security given in connection with a marriage, section 3 thereof makes giving or taking the dowry as a punishable offence. Section 4 provides penalty for demanding dowry and section 4-A bans advertisements on matrimonial based on the ground of dowry. Section 5 makes void an agreement for giving and taking the dowry, section 6 contemplates a legal obligation on the person who actually receives the dowry to transfer the same to the women in whose marriage it is given or to her children, heirs or parents as the case may be, in the event of her death. Section 7 and 8 provide provision as to the cognizance of offence. Section 8-A provides provision as to the burden of proof in certain cases and section 8-B provides for the appointment and powers and function of the Dowry prohibition Officers. Section 9 and 10 empower respectively the central as well as the State Government to make rules. While section 113-A of the Indian Evidence Act provides presumption as to the abetment of suicide in case where a married woman who commits suicide within 7 years of her marriage. Section 113-B thereof provides presumption as to the commission of dowry death where a person subjects a woman to cruelty or harassment for or in connection with any demand for dowry soon before her death.

The salient features of this Act are :-

- Agreement for Giving or Taking Dowry is void.
- Section 3 of the Act restrains the parents of the bride the giving of some property or valuable security even to their own daughter out of whatever little they could possess in connection with and in consideration of the marriage. As already mentioned, it also prohibits a bride/wife giving any property or valuable security to her bridegroom/husband and vice versa. The time span as provided by the Act under Section 2 ranges from birth to the death of the parties to the marriage in so far as giving or taking Dowry at or before or after the marriage is concerned.
- Sub-Section (1) of Section 3 of the Act contemplates that giving or taking or abetting the giving or taking of Dowry is a punishable offence. But Sub-Section (2) of section 3 permits the giving of customary presents at the time of marriage, provided there shall not be any demand for such presents. Further, the value of these presents shall not be in excess of the financial status of the person who presents the same or on whose behalf these are made, and that the same are to be listed in the prescribed form as required under the rules framed in accordance with the provisions of the Act. What

is important in this Sub-Section is that the presents shall be made only at the time of the marriage.

The Parliament has also attempted to combat the problem of dowry deaths and to stem their increase in recent years by inserting Section 304-B in the Indian Penal Code. This Section provides the following :-

- the death of a woman is caused by burns or bodily injuries or occurs, otherwise than under normal circumstances;
- within seven years of marriage;
- it is shown that just before her death, she was subjected to cruelty and harassment by her husband or his relations for or, in connection with any demand for dowry, such death is known as a 'dowry death'. The section also provides that the husband or the relatives shall be assumed to have committed the offence, if the above circumstances are proved.

5.4.7. Amendment

The Amendent Act of 1986 further amended the 1961 Act. After the above two amendments, the Act became more stringent. The 1986 Act introduced new section 8-A and 8-B Sec. 8-A says that the burden of proving that one has not committed offence u/s. 4 (demanding dowry) is on the person charged.

5.5 Q Child Marriage Restraint Act, 1929

5.5.1. ACT 19 of 1929

The Child Marriage Act aims to restrain the solemnization of child marriages. It extends to the whole of India [except the State of Jammu and Kashmir]; and it applies also to all citizens of India without beyond India.

5.5.2. Department Concerned in the State

The concerned department is The Department of Social Welfare and Women and Child Development.

5.5.3. Grievance Redressal System

Section 6 of the Act says that punishments are prescribed for

- male adult below twenty-one years of age marrying a child with a simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both.
- Punishment for male adult above twenty-one years of age marrying a child with simple imprisonment which may extend to three months and shall also be liable to fine.
- Punishment for solemnizing a child marriage 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.

- Punishment for parent or guardian concerned in a child marriage with simple imprisonment which may extend to three months and shall also be liable of fine.
- Provide that no woman shall be punishable with imprisonment.

For the purpose of this section, it shall be presumed, unless and until the contrary is proved, that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnized.

There is also to be a Child Marriage prevention officer, in charge of prevention and restraint of child marriages, about to be solemnized, and for those that have already taken place, to see that the perpetrators are charged with the Act.

5.5.4. Review of the Act

It is estimated that in roughly half of all marriages taking place in India in a year, the girls are underage. According to the Rapid Household Survey conducted across the country, 58.9 percent of women in Bihar were married off before age 18; 55.5 percent in Madhya Pradesh; and Karnataka 39.3 percent. Despite high female literacy, close to one-tenth of Kerala women are married off are minors.

India's Parliament adopted the Child Marriage Restraint Act in 1978 (a revision of the British Child Marriage Prevention Act of 1929 and the following amendment of 1949) setting 18 as the minimum age for women to get married and 21 for men. However the 1929 Child Marriage Restraint Act is perplexing because it pronounced all child marriages illegal but 'Void' (invalid). This made the Act violative of several international conventions including the UN Convention on the Rights of the Child (UNCRC). The Universal Declaration of Human Rights (UDHR) and CEDAW (Convention on the Elimination of all forms of Discrimination Against Women) which make child marriages invalid. Prevention of child marriages is imperative not merely from the child and human rights perspective but also in the interest of meeting several national goals and Millennium Development Goals, such as decreasing poverty, MMR and IMR.

According to the Chairpersons of the National Commission for Women (NCW), Girija Vyas, child marriage can be tackled by stringent law implementation and increased social awareness. The NCW has taken up the issue with the Government at length and made following recommendations :-

- Child Marriage Prevention officers should be appointed immediately by the Government.
- The punishment provided under section 23 the Child Marriage Restraint Act should be amended and made more stringent.
- Marriages performed in contravention of the Act should be made void.

- It should be penal obligation for every person attending a child marriage, to prevent it or report it to the concerned authorities.
- Awareness should be generated among masses about the evils of child marriage.
- An offence under the Child Marriage Restraint Act should be made cognizable.

The National Human Rights Commission has also recommended amendment of the Act. The Commission has recommended that the Child marriage Restraint Act, 1929 should be recast so as to. provide for higher penalty for the violations of the provisions of this Act and also to make the offence cognizable and non-bailable. Further, it was of the view that a provision should be made in the amended Act to take action organizers/ associations who organize child marriage on a mass-scale.”

The Ministry of Women and Child Development implements a Centrally Sponsored Scheme entitled “Balika Samridhi Yojana” under which funds are released to the State Governments and the Union Territory Administrations to provide financial assistance to the girls born on or after August 15,1997. The financial assistance is in the nature of periodic deposit in the account of the girl child, including scholarship for successful completion of study in each class. The accumulated value of deposits becomes payable to the beneficiary on attaining the age of 18 years and having remained till then. Under the scheme, a sum of Rs. 40 crores has been released during 1999-2000 to benefit eight lakh girl children.

5.5.5. Amendment

The Child Marriage Restraint Act of 1929, also known as the Sarda Act, was amended in 1978 to raise the minimum marriage age of girls to 18 years and for boys to 21 years. Under the new Act, police officers are competent to investigate offences as if they are cognizable but would not be able to arrest any person without a warrant or an order of a Magistrate. However, the Act does not invalidate child marriages as it could adversely affect status of girls.

In order to curb practice of child marriage in the country, the National Human Rights Commission recommended to the Central Government (Department of Women & Child Development) a number of amendments to the Child Marriage Restraint Act, 1929 in July 2002. In pursuance of these recommendations, the Central Government (Legislative Department, Ministry of Law & Justice) introduced a Bill entitled the Prevention of Child Marriage Bill, 2004 in the Rajya Sabha on 20.12.2004 incorporating almost all the recommendations of the Commission.

5.6 Q Equal Remuneration Act, 1976

5.6.1. ACT 25 of 1976

The Equal Remuneration Bill was passed by both the Houses of Parliament and it received the assent of the President on the 11th February, 1976. It came on the Statute Book as THE EQUAL REMUNERATION ACT, 1976 (25 of 1976). This is an A* to provide for the payment of equal remuneration to men and women workers

and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.

5.6.2. Department Concerned in the State

The concerned department in the state is the Labour Department.

5.6.3. Enforcement of The Act

The Inspecting Officers/Inspectors of the Labour Department enforce the provisions of the Act in the jurisdictions assigned to them under the administrative control of the respective Labour Officers, Assistant Labour Commissioners and Deputy Labour Commissioners.

During the year 2002 2826 and up to September 2003 1233 inspections were carried out respectively by the Inspectorate staff.

5.6.4. Penalty

In case contravention of the provisions the Act, the punishment provided is fine which shall not be less than Rs. 10,000/-, but which may extend to Rs. 20,000/- or with the imprisonment for a term, which shall not be less than three months, but which may extend to one year or with both, for the first offence and imprisonment which may extend to two years for the second and subsequent offences.

5.6.5. Grievance Redressal System

Under section 9, the appropriate Government may, by notification appoint such persons as it may think fit to be Inspectors for the purpose of making an investigation as to whether the provisions of this Act, or the rules made thereunder, are being complied with by employers, and may define the local limits within which an Inspector may make such investigation.

It also provided that, under section 10,

- If after the commencement of this Act, any employer, being required by or under the Act, so to do-(a) omits or fails to maintain any register or other documents in relation to workers employed by him, or
 - ✓ omits or fails to produce any register, muster-roll or other document relating to the employment of workers, or
 - ✓ omits or refuse to give any evidence or prevents his agent, servant, or any other person in charge of the establishment, or any worker, from giving evidence, or
 - ✓ omits or refuses to give any information,

he shall be punishable 1 [with simple imprisonment for a term which may extend to one month or with fine which may extend to ten thousand rupees or with both.]

- If, after the commencement of this Act, any employer-

- ✓ makes any recruitment in contravention of the provisions of this Act, or
- ✓ makes any payment of remuneration at unequal rates to men and women workers, for the same work or work of a similar nature, or
- ✓ makes any discrimination between men and women workers in contravention of the provisions of this Act, or
- ✓ omits or fails to carry out any direction made by the appropriate Government under sub-section (5) of section 6,

he shall be punishable 2[with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with imprisonment for a term which shall be not less than three months but which may extend to one year or with both for the first offence, and with imprisonment which may extend to two years for the second and subsequent offences.]

- If any person being required so to do, omits or refuses to produced to an Inspector any register or other document or to give any information he shall be punishable with fine which may extend to five hundren rupees.

5.6.6. Review of the Act

The Act provides that no employer shall pay to any worker employed by him in an establishment or employment, remuneration whether payable in cash or in kind at the rates less fovourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment. The Act further provides that no discrimination should be made against women at the time of recruitment. The salient features of the Act includes :-

- Payment of equal remuneration to men and women workers for same or similar nature of work protected under the Act.
- No discrimination permissible in recruitment and service conditions except of women is prohibited or restricted by or under any law.

There is a provision under the Act for constitution of Advisory Committee for the purpose of providing increasing emplymnt opportunities for women. Government of National Capital Territory of Delhi has constituted an Advisory committee under the provision of the Act.

There is also provision for the Central Advisory Committee on equal Remuneration Rules, 1991, under sub-section (1) of section 6 of the Equal Remuneration Act, 1976.

5.6.7. Amendment

The Equal Remuneration (Amendment) Act, 1987 (49 of 1987) amends the Equal Remuneration Act, 1976, specifically to prohibit discrimination between men and women in relation to conditions of service subsequent to employment such as promotions, training, or transfer. The original Act contained no such provisions. Sections of the Act are also amended to provide for grreater penalties and for the

lodging of complaints by any person aggrieved and by any recognized welfare institution or organization, in addition to government officials.

5.7 □ Maternity Benefit Act, 1961

5.7.1. ACT 53 of 1961

With the object of providing maternity leave and benefit to women employee the Maternity Benefit Bill was passed by both the Houses of Parliament and subsequently it received the assent of President on 12th December, 1961 to become Act under short title and numbers “THE MATERNITY BENEFIT ACT, 1961 (52OF 1961)”.

5.7.2. Department Concerned in the State

The concerned department in the state is the Labour Department.

5.7.3. Application

This Act is a central legislation, which provides maternity benefits and is applicable to factories covered under the Factories Act, 1948. It also applies to Shops and Establishments in which ten or more workers are employed or were employed on any day of the preceding twelve months. The Maternity Benefit Act is thus applicable to notified establishments. Its coverage can therefore extend to the unorganized sector also, though in practice it is rare. A woman employee is entitled to 90 days of paid leave on delivery or on miscarriage.

5.7.4. Important Provisions

The provisions of this Act do not apply to any factory or establishment to which the provision of Employee state Insurance Act, 1948 apply. The Rules have been framed under this Act, according to which Inspector of Factories is ex-officio Chief Inspector under this Act in respect of factories registered under the Factories Act, 1948.

5.7.5. Forfeiture Of Maternity Benefit

If a woman works in any establishment after she has been permitted by her employer to absent herself under the provision of section 6 for any period during such authorized absence, she shall forfeit her claim to the maternity benefit for such period.

5.7.6. Penalty

This Act provides that :-

- If any employer fails to pay any amount of maternity benefit to a woman entitled under this Act or discharge or dismisses such woman during or on account of her absence from work in accordance with the provisions of this Act, he shall be punishable with imprisonment which shall not be less than three months but which may extend to one year and with fine which shall

not be less than two thousand rupees but which may extend to five thousand rupees; provide that the court may, for sufficient reasons to be recorded in writing, impose a sentence of imprisonment for a lesser term or fine only in case of imprisonment.

- If any employer contravenes the provision of this Act or the rules made thereunder, he shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with imprisonment which may extend to one year, or with fine which may extend to five thousand rupees, or with both; provided that where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the court shall, in addition, recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled thereto.

5.7.7. Review of the Act

The Central Government passed the Maternity Benefit Act in 1961 which extends to the whole of India, and to every establishment belonging to the government - industrial, commercial or agriculture. It provides for certain benefits which are granted to a woman during her pregnancy. Also she cannot be dismissed from service on account of her pregnancy.

The maximum permissible period of maternity leave is 12 weeks, with 6 weeks leave to be taken before delivery and 6 weeks immediately after the child is born. A woman can ask for light work before she goes off on leave. The employer cannot reduce her salary in this scenario. The maternity benefits can only be withdrawn if the employee joins some other organisation during that time.

It is a gender sensitive legislation for ensuring social security of pregnant women. Its salient features include :-

- Maternity benefits to be provided on completion of 80 days working.
- Not required to work during six weeks immediately following the day of delivery of miscarriage.
- No work of arduous nature; long hours of standing likely interfere with pregnancy/ normal development of foetus; which may cause miscarriage or is likely to affect health to be given for a period of one month immediately preceding the period of six weeks before delivery.
- On medical certificate, advance maternity benefit to be allowed - Rs. 250/ - as medical bonus to be given when no pre-natal confinement and post natal care provided free of charge.

5.7.8. Amendment

The Maternity benefit Act of 1961 has been amended several times by the :-

- The Central Labour Laws (Extension to Jammu and Kashmir) Act, 1970 (51 of 1970).

- The Maternity Benefit (Amendment) Act, 1972 (21 of 1972).
- The Maternity Benefit (Amendment) Act, 1973 (52 of 1973).
- The Maternity Benefit (Amendment) Act, 1976 (53 of 1976).
- The Maternity Benefit (Amendment) Act, 1988 (61 of 1988).
- The Maternity Benefit (Amendment) Act, 1995 (29 of 1995).

In the latest one, a number of improvements were made in relation to Maternity Protection for women at work including :-

- The period of Maternity Leave which attracts a payment was increased from 14 weeks to 18 weeks as and from 8 March 2001. > Additional unpaid maternity leave was doubled to 8 Weeks from March 2001.

5.8 □ Medical Termination of Pregnancy Act, 1971

5.8.1. ACT 34 of 1971, as amended by Act No. 64 of 2002

The medical termination of Pregnancy Act of 1971 is an Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto.

5.8.2. Department Concerned in the State

The concerned department for the state is the Department of Health And Family Welfare.

5.8.3. MTP Act, MTP Rules and MTP Regulations

The MTP Act is an Act of Parliament providing a board overview of the methodology of safe abortion practice and defining and delegating authority to central and state governments to make rules and regulations.

The MTP Rules are framed by the Central Government, but must be placed before each House of Parliament.

The MTP Regulations are framed by State Government and relate to issues involving opinions for termination, reporting and maintaining secrecy.

The importance of this distinction is the possible flexibility in introducing or modifying rules and regulations within the ambit of the Act without having to steer amendments through Parliament.

The potential for appropriate changes in rules and regulations to encompass medical methods is particularly significant, since this new development is not adequately reflected in the present rules and regulations.

5.8.4. When Pregnancies may be Terminated ?

A registered medical practitioner (RMP) is protected under law if a pregnancy is terminated in accordance with Section 3 of the MTP Act, based on opinion formed in good faith.

5.8.5. Duration of Pregnancy

According to Section 3 (2), pregnancies not exceeding 12 weeks may be terminated based on a single opinion formed in good faith. Since the use of medical methods governed by clear guidelines issued by Drug Controller is presently up to 49 days, the single clinical opinion is necessary and sufficient.

5.8.6. Grounds for Terminations

According to Section 3 - Sub-section (2) of the MTP Act, a pregnancy may be terminated for the following indications :-

- If the pregnancy would involve a risk to the life of the pregnant woman or of grave injury to her physical and mental health.
- If there is a substantial risk if the child was born, it would suffer physical or mental abnormalities as to be seriously handicapped.

The MTP Act does not permit induced abortions on demand. The responsibility rests with the medical practitioner to opine in good faith regarding the presence of a valid legal indication. These indications are also mandatory with medical methods.

5.8.7. Valid Legal Consent

Section 2 - Sub section (4) of the MTP Act mandates the presence of a valid legal consent, provided :-

- Termination of pregnancy in minors (under 18 years age) or lunatics (as defined in Section 3 of Indian Lunacy act, 1912) only with consent in writing of guardian.
- Termination of pregnancy in adult women over 18 years age permissible with their valid consent.

5.8.8. Where Pregnancies may be terminated ?

According to Section 4 of the MTP Act, pregnancies may only be terminated in the following settings.

- A hospital established or maintained by the Government.
- A place approved for the purpose of the Act by the Government.

5.8.9. Penalty

Notwithstanding anything contained in the Indian Penal Code (45 of 1860), the termination of a pregnancy by a person who is not a registered medical practitioner shall be an offence punishable under that Code, and that Code shall, to this extent, stand modified, according to sub-section (2) of section 5 of this Act, inserted by the first amendment to the Act!

5.8.10. Review of the Act

Voluntarily 'causing miscarriage' to a woman either child - other than in 'good faith for the purpose of saving her life' is a crime under Section 312 of the Indian Penal

Code, punishable by simple or rigorous imprisonment and/or fine. Consequent section (IPC Sections 313-316) relating to causing miscarriage without a pregnant woman's consent or causing material death due to the procedure are stricter with punishments ranging from up to 10 years imprisonment, and extending up to life imprisonment.

The MTP Act is an empowering legislation, which if adhered to completely, offers protective umbrella allowing clinicians to offer legal safe abortion services within well-defined limits. The use medical methods for early abortion is also completely covered by the MTP Act.

The Act seeks to liberalize certain existing provisions relating to termination of pregnancy on the following grounds :-

- As a health measure
- On humanitarian grounds
- On eugenic grounds

The salient features of this act are as follows :-

- In determining whether the continuance of a pregnancy would involve such risk of injury to the health as is mentioned in sub-section (2) of section 3, account may be taken of the pregnant woman's actual or reasonably foreseeable environment.
- No pregnancy of a woman, who has not attained the age of eighteen years, or, who having attained the age of eighteen years, is mentally ill person, shall be terminated except with the consent in writing of her guardian, according to clause (a) section 4.
- Save as otherwise provide in clause (a) of Section 4, no pregnancy shall be terminated except with the consent of the pregnant woman.
- The number of registered medical practitioners has relevance only with regard to the formation of the opinion. Once the opinion has been formed by the required number of registered medical practitioners, the actual termination of the pregnancy may be done by one registered medical practitioner. It is not necessary that more than one registered medical practitioner should act together to terminate a pregnancy.
- A pregnancy which is terminated on one or more of the grounds specified in Sec.3, should not be made at any place other than-
 - ❑ a hospital established or maintained by Government, or
 - ❑ a place for the time being approved for the purpose of the Act by Government.
- The Act empowers the Central Government to make regulations to provide for the maintenance of secrecy about the termination of pregnancies made under the Act.
- By sub-section (I) of sec. 3 a registered medical practitioner, who terminates to pregnancy in accordance with the provisions of the Act, is protected from

any prosecution for the termination of such pregnancy. By this section, he is protected from any civil action for compensation for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act. In order to be able to get this protection, the registered medical practitioner must establish that his action was done in good faith.

The MTP Act of 1971 has been the beacon of landmark social and medical legislation with farreaching positive benefits for the Reproductive Health of Women. It is an empowering act for the healthcare system and its beneficiaries, setting aside the application of the Indian Penal Code in certain welldefined situations.

Unfortunately, many of the traditional assumptions of the MTP Act, Rules and Regulations are out of step with contemporary medical methods. Even so, the MTP Act in its present form, with some fine tuning of MTP Rules and Regulations, is quite adequate to cover the introduction of this recent development which offers one more technique to achieve our goal of Safe Abortion.

5.8.11. Amendment

The two amendment Act are :-

- The Medical Termination of pregnancy (Amendment) Act, 2002 (64 of 2002)
- The Delegated Legislation Provision (Amendment) Act, 2004 (4 of 2005)

The latest amendment provides that no lawsuit can be brought against a registered medical practitioner who has done or intended to do in good faith any action that turns out to be damaging.

5.9 □ Conclusion

The conclusion of any socio-legal discussion of the existing legislations upholding the gender justice and safeguard the rights of women and children is one and the same - the mere presence of laws and provisions do not ensure that rights will be observed and protected. It requires the wholehearted participation of the community and all its strata, to ensure a suitable impact towards a positive social change.

5.10 □ Recapitulation

Thus from this chapter we learn:

- Traditionally, the most vulnerable sections in the society are the women and children.
- There are several national and international provisions for upholding their rights, including :-
 - ✓ Constitutional provisions
 - ✓ Laws like Juvenile Justice (care and Protection of Children) Act, 2000, etc,
 - ✓ International conventions like CEDAW, etc.

- The laws discussed are :-
 - ✓ Juvenile Justice (Care and Protection of Children) Act, 2000 for :-
 - Children in conflict with law
 - Children in need of care and protection
 - ✓ Child Labour (Protection and Regulation) Act, 1986
 - ✓ Dowry Prohibition Act, 1961
 - ✓ Child Marriage Restraint Act, 1929
 - ✓ Equal Remuneration Act, 1976
 - ✓ Maternity Benefit Act, 1961
 - ✓ Medical Termination of Pregnancy Act, 1971
- To conclude we find that without community participation there can be no opportunity of utilizing these laws for the upliftment of the present status of the majority of women and children in our country.

5.11 □ Exercises

1. Why, in your opinion, are the women and children especially vulnerable in any society, particularly in the third world countries ?
2. Mention the step by step procedure of implementing the Juvenile Justice (Care and Protection of Children) Act, 2000.
3. What are the salient features of the Medical Termination of Pregnancy Act, 1971.
4. If you are a social worker in charge of implementing the latest amendment to the Child Labour (Protection and Regulation) Act, 1986, how would you do it ?
5. Do you think the existing provisions of the Dowry Prohibition Act, 1961 is adequate to prevent the rising incidence of dowry deaths in our country ? Give reasons for your answer.
6. The Child Marriage Restraint Act, 1929 is one of the oldest standing laws in our country. How then would you explain the continued prevalence of child marriages in our country ?
7. Discuss the equal Remuneration Act, 1976 in the context of the Article 39 (c) of the Constitution.
8. What is the relevance of the Maternity Benefit Act, 1961 as a social security legislation ?
9. Apart from the 7 laws given here, can you think of any other appropriate law for upholding the rights of women and children ? Please write a short note on it.