

UNIT -4 SOCIAL LEGISLATIONS ON DISADVANTAGED

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4.0 OBJECTIVES

After studying this unit, you will understand:

- Types of groups which are called disadvantaged ones due to physical, mental or economic conditions.
- Laws, which have been made to remove discrimination against them.
- National level monitoring commission, its need and functions with respect to Backward Classes

4.1 INTRODUCTION

In the society, there are certain groups of people who, due to one or the other reasons (social, economic, physical mental etc.), have remained, disadvantaged lot. Minimum of attention has been given to their problems. In one era or the other, they have further been exploited because of being among the disadvantaged.

Ancient system of usury, under which the debtor or his descendents or dependents had to work for the creditor without reasonable wages or with no wages to liquidate the debt, exists in different parts of the country even today. Thus, bonded labour is the most prominent manifestation of this inhuman and degrading practice prevailing in the society even today.

Similarly, in the global scenario of human rights jurisprudence, little has been done to recognize the rights of the physically disadvantaged groups. In the fields of medical care, education, training and employment, a discriminatory attitude exists against them. Those who are mentally ill and are in need of treatment are also discriminated. Among the caste groups, excluding SC/ST, there are many castes which are both socially and economically backward, or to put it in other words, the national benefits have not reached to such castes either due to indifference of the State or due to some societal compulsions. In order to remove these disabilities and to provide help to these disadvantaged groups, the State through the instrumentality of law, has tried to overcome this particularly after independence.

Article 23(1) of the Constitution of India prohibits 'Begar' and other forms of forced labour. It also states that contravention of it in any case amounts to an offence punishable in accordance with law. This power to punish a person is conferred on the State by virtue of Article 35(a) (iii) of the Constitution. It is in the backdrop of these provisions of law that the Parliament passed the Bonded Labour System (Abolition) Act, 1976.

In case of physically disadvantaged group, the Asian and Pacific Decade of the Disabled Persons 1993-2002, convened by the Economic and Social Commission for Asian and Pacific Region held at Beijing on 15th of December 1992, adopted a proclamation on the full participation and equity of people with

disabilities in Asia and Pacific region. India is a signatory to the said proclamation, therefore, it was incumbent for the Indian State to frame its own law in the light of the proclamation. Hence came into existence the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995.

In the preceding unit, social legislations in relation to specific castes and tribes have been discussed and reasons given for their enactment. In addition to these caste based groups in India, it was felt that a sizeable section of society, either because of geographical remoteness or due to economic or social backwardness, also deserve protective discrimination. To monitor this, a Commission at National level was created in 1993.

Similarly, for those who suffer from mental illness, deserve societal sympathy, the Mental Health Act, 1987 was enacted.

Let us have a brief analysis of these social legislations for proper understanding of their purpose/object and achievements.

4.2 BONDED LABOUR ABOLITION ACT, 1986

To give practical shape to Article 23(1) and 35(a) (ii) of Constitution of India Bonded Labour System (Abolition) Ordinance 1975 was promulgated by the President on 24th October 1975. By the said Ordinance, the bonded labour system was abolished and bonded labourers freed and discharged from any obligation to render any bonded labour and their bonded debts were also waived off. The said ordinance was finally given the shape of a Bill and passed by the Parliament in 1976. Thus, the present Bonded Labour Abolition Act was enacted in the year 1976.

Meaning of Bonded Labour System

This Act provides for the abolition of bonded labour system and matters connected or incidental to such system. While Bonded Labour System means the system of forced or partly forced labour under which a debtor enters or is presumed to have entered into any agreement with the creditor to the effect that —

- i) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, due on such advance, or
- ii) in pursuance of any customary or social obligation, or
- iii) in pursuance of an obligation devolving on him by succession, or
- iv) for any economic consideration received by him or by any of his lineal ascendants or descendants, or
- v) by reason of his birth in any particular caste or community.

He would —

- 1. render, by himself or through any member of his family, or any person dependant on him, labour or service to the creditor or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or
- 2. forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or
- 3. forfeit the right to move freely throughout the territory of India, or
- 4. forfeit the right to appropriate or sell, at market value, any of his property or product of his labour or the labour of a member of his family or any person dependent on him, and includes the system of forced, or partly forced labour under which a surety for a debtor enters, or has, or is presumed to have entered into an agreement with the creditor to the effect that in the vent of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor.

Though the definition is very clear, doubts have been raised from time to time as to whether a contract labourer or inter-state migrant workman could come within this definition. With a view to overcome these difficulties, labourers who are required to render labour or services in circumstances of the nature mentioned in

subclause (1) of clause (12) of section 2 (please see above given) or are subjected to any of the disabilities referred to in Sub-clause (1) to (4) (see above given) thereof, shall be deemed to be working under bonded labour system within the meaning of the said clause.

In view of this, on the commencement of this Act, any custom, tradition or contract, agreement or any other instrument by virtue of which a person is required to do any work or render any service as bonded labourer, shall be void and inoperative.

Extinguishment of Liability to Repay Bonded Debt

It is better to understand as to what is meant by bonded debt. It means an advance obtained, or presumed to have been obtained by a bonded labourer under or in pursuance of the bonded labour system.

The effect, which was immediate after the commencement of this Act, was that such debt, whether partly paid or not, shall be deemed to have been extinguished.

Similarly, no suit or proceeding shall lie before any civil court or any authority for the recovery of any bonded debt or part thereof. Every decree passed before this Act, even if it has not been satisfied, shall be deemed to have been satisfied. In relation to any attachment made before for recovery of any bonded debt shall stand vacated now and, in pursuance of such attachment if any moveable property of the bonded labourer has been seized and removed from his custody it shall be restored as soon as may be practicable. Similarly, any property taken forcibly by a creditor shall be restored back.

In case the restoration of property is not made within thirty days from the commencement of the Act, the aggrieved person may, within such time as may be prescribed, apply to the authority for restoration of possession of such property, after giving a creditor a reasonable opportunity of being heard, the authority may direct the creditor to restore to the applicant the possession within stipulated time fixed by authority. However, if a creditor has taken property from the bonded labourer, through decree against the bonded debt and has sold the same, this Act shall have no effect.

Discharge of Mortgage or Charge

All such property, which is vested in a bonded labourer and is under any mortgage, charge, lien or other encumbrances in connection with any bonded debt, shall stand freed and discharged from such encumbrance. In case any delay is made in resorting property from the person in whose possession it lies either in mortgage, charge, lien, etc., the court may ask the person concerned to pay such profits to the labourer along with property.

No creditor, whose claim on property of the bonded labourer gets extinguished after this Act, can accept payment against extinguishing the debt. Any one found to do so will be punished with imprisonment, which may go upto three years and fine.

No eviction from Homestead

The most important and significant feature of this Act is that once a bonded labourer is freed from the creditor, he cannot be asked to evict the house or premises where he was living or occupying. In case some one is made to evict, then executive magistrate incharge of sub-division, within whose jurisdiction such home or premises is situated, shall, as early as practicable, restore the possession of such homestead or other residential premises to the bonded labourer. This provision is indicative of the concern for rehabilitation of such labourers and is vital.

Authorities & Duties under the Act

District Magistrate is the primary authority to whom the state may impose duties necessary for the proper implementation of the Act. Magistrate has the power to specify other officers who shall assist in carrying out the duties imposed. The basic duty imposed on such authorities is to promote the welfare of the free bonded labourer by securing and protecting the economic interests of such bonded labourer, so that he may not have occasion or reason to contract any further bonded debt. Another duty is to keep a strict vigil about the existence of such evil. If found, i.e., anybody indulging in bonded labour system, the authority concerned shall immediately take action to eradicate the enforcement of such forced labour.

To give proper meaning to this Act, and to provide assistance, help and advice to authorities, vigilance committies have been recommended to be constituted in each district and each sub-division.

Offences and Penalties

Anyone, who is found to continue with the practice of bonded labour, shall be punished with imprisonment, which may be for a maximum of three years and fine, which may extend to thousand rupees.

Anyone, who advances a debt, treating it to be a bonded debt, shall be punished with imprisonment for a maximum of three years and fine extendable to two thousand rupees.

Anyone, who still enforces any custom, tradition, contract, agreement by which bonded labour practice continues, will be punished with maximum three yrs. imprisonment and two thousand rupees as fine. Out of the fine, if recovered, payment shall be made to the bonded labourer at the rate of Rs. 05/- for each day for which bonded labour was extracted.

Whoever abets any offence under this Act shall, whether or not the offence abetted has been committed, be punished with the same punishment as provided for the offence, which has been abetted.

Every offence under this Act is cognizable (Police can arrest without warrant from court of law) and bailable.

The offence under this Act may be committed even by companies and they shall be guilty in the same manner in which an individual is. In case of companies, it is the director, manager, secretary or any other official to whom such offence is attributed.

Check Your Progress 1

Write your answers in the space provided below

1. What do you understand by "bonded labour system"?

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2. What do you understand by 'no eviction from homestead'?

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3. Who are the authorities under the Act? What powers do they have?

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4.3 MENTAL HEALTH ACT, 1987

Group of persons, who are disadvantaged due to psychiatric problem, are also in need of protection both of their person and property. In case of protection of person, the pertinent questions, which arise are as to where to get them treated, at whose cost to be treated and the liability of maintenance of such persons. With regard to their property, possession, custody and management are the crucial areas. Above these is the protection of human rights of mentally ill persons. Hence, to consolidate and amend the law relating to the treatment and care of mentally ill persons and to make better provisions with respect to their property and matters

incidental thereto, the Parliament enacted the Mental Health Act, 1987. The main features of the Act are as under :-

Mental Health Services and Authorities

Mental Health Services, in addition to the Psychiatric hospitals and psychiatric nursing homes, include observation wards, day care centers, in-patient treatment in general, ambulatory facilities and other facilities, convalescent homes and half way homes for mentally ill persons.

The State or the Central Government shall establish an authority with such designation as it may deem fit. The authority shall be incharge of regulation, development, direction and co-ordination with respect to mental health services and all other matters, which are related to it. It shall also supervise the psychiatric hospitals, nursing homes and other mental health service agencies, including places in which mentally ill persons may be kept or detained. The authority shall also advise the government on all matters relating to mental health.

Establishment & Maintenance of Psychiatric Hospitals

It's the duty of the government to establish or maintain psychiatric hospitals or nursing homes for the admission, treatment and care of mentally ill persons at places, as it thinks fit. Separate hospitals may be established and maintained for following categories.

- a) Those under the age of 16 years.
- b) Those who are addicted to alcohol or other drugs, which lead to behavioural changes in a person.
- c) Who have been convicted of any offence.

The maintenance and establishment is only in case of a licensed hospital established after the commencement of this Act or a hospital established before, which but obtained the license within three months from coming into force of this Act.

Admission & Detention

Admission can be made either on voluntary basis or under special circumstances. In case of voluntary basis, any person who's not a minor and considers himself/herself to be mentally ill and deserves to be admitted, may request the medical officer incharge for admission as a voluntary patient. In case of a minor, the request can be made by the guardian of the minor.

On receipt of request, the medical officer shall make such enquiry as he may deem fit within a period not exceeding 24 hours and if satisfied, may admit the applicant as a voluntary patient. Similarly, the discharge is to be made of such patients within 24 hours, of receiving the request of the medical officer. However, where the discharge may not be in the interest of such patient within 72 hours of request it is necessary to constitute a board and seek its opinion.

In special circumstances, where a person is unable to make application himself for admission; on his behalf, if it is made either by a relative or a friend, the medical officer may admit him/her as an inpatient for a period exceeding 90 days. Every such application made shall be in a prescribed form certified by two medical practitioners of whom one shall be in the service of government. The certificate should testify that the condition of such mentally ill person is such that he should be kept under observation/treatment in a hospital.

Reception Orders

In addition to the above stated procedures of admissions, mentally ill person can also be admitted to hospital on the basis of reception orders made by the magistrate. For obtaining reception orders, an application can be made by a medical officer, in-charge of hospital where an ill person is undergoing treatment or it can also be made by the husband, wife or other relations of the mentally ill person. It's made when it's felt that, in the interests of mentally ill persons or for the protection of others, his detention is necessary. Once the application is made to the magistrate of the jurisdiction, the orders may be made on his satisfaction and by following due procedures.

Police officer of the area may take into protection any person found wandering within the limits of a station whom he has reason to believe to be mentally ill or incapable of taking care of himself or is dangerous by reason of mental illness. Police officer is duty bound to inform such persons or his relatives of his reasons for taking into custody. Police officer may also produce the person before the magistrate for obtaining receipt orders for his detention in a hospital after following due procedures of law.

During the intervening period, the mentally ill person may be placed at such a place as may be deemed appropriate by the magistrate.

Inspection, Discharge & Removal

The Central government may appoint not less than five visitors for every psychiatric hospitals of whom one should be a psychiatrist and two social workers. Not less than three visitors shall, atleast once in a month, make joint inspection. If a visitor does not participate in the joint inspection for three consecutive months, he shall cease to hold the office.

A mentally ill person, on the recommendation of two medical practitioners, may be discharged from the hospital in case he/she is not a voluntary patient. Any mentally ill person, other than the voluntary ill patient can be removed from one psychiatric hospital to another within the State or outside the State by special order and may be admitted there until he's removed or discharged under the law.

Care of the Property of Mentally Ill

Where a mentally ill person possesses property, an application for holding an inquisition into the mental condition of such person is made by any of his relatives or by a public curator by Advocate General to the district court. On completion of inquisition, the court may record its findings on whether the alleged person is, in fact, mentally ill or not and if ill, is, incapable of taking care of himself and of managing his property. It shall make order for the appointment of a guardian to take his care and a manager to take his property's care.

Protection of Human Rights

Every mentally ill person, during his treatment, should not be subjected to any indignity, physical or mental or to any cruelty. (Nor can he be used as a subject of research unless research is of direct benefit to him or for the purpose of diagnosis or treatment).

Any proceeding under this Act or before a district court in relation to mentally ill person shall be represented by a legal practitioner at the cost of the State.

Check your progress 2

Write your answer in the space provided below

1. Point the difference between voluntary admission and detention on receipt.

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2. State the categories in whose favour psychiatric Hospitals/Nursing Homes shall be created by the Government. Give reasons.

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3. How is the care of person and property of mentally ill assessed under law?

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4. Give two examples to illustrate that Human Rights of Mentally ill are recognized.
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4.4 PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995

Being signatory to the Beijing proclamation, it is imperative for India to enact a suitable legislation to spell out the responsibility of the State towards the prevention of disabilities, protection of rights and creation of provisions for medical care, education, training and rehabilitation of persons with disabilities. In the light of this, the present enactment was made by the Parliament in the year 1995 and came into effect from 1st January, 1996.

Co-ordination Committee

The State as well as the Central government has the power to constitute a body known as the co-ordination Committee, which shall have the function to serve as the focal point on disability matters and facilitate the continuous evolution of a comprehensive policy towards solving the problems faced by persons with disabilities. It has the power to co-ordinate and review the activities of all

departments of government and N.G.O.s dealing in matters relating to this disadvantaged group, to develop a national policy to address issues faced by this group advise central government on formulation of policies, programmes, legislations and projects in relation to disability. It monitors and evaluates the impact of policies and programmes designed for achieving equality and full participation of person with disabilities.

In order to carry out and implement the decisions of the co-ordination Committee, the government has the power to appoint the Executive Committee.

Prevention & Early Detection of Disability

It's obligatory on the part of the government to undertake surveys, investigation and research concerning the cause of occurrence of disabilities, promote methods to prevent them; screen all the children at least once in a year for the purpose of identifying "at risk" cases, provide training to the staff at primary health centers, sponsor awareness camping and disseminate information for general hygiene health and sanitation.

It is equally mandatory to take measures for pre-natal and post-natal care of mother and child; educate public through schools, primary health centers, village level and anganwadi workers; and create awareness through print and electronic media on the causes of disabilities and the preventive measures to be adopted.

Right to Education & Employment

The appropriate government the local authorities are duty bound to ensure that every child with disability has access to free education in an appropriate environment till he/she attains the age of 18 yrs. The significant duty imposed is to endeavour to promote the integration of students with disabilities in normal schools, provide vocational training and facilities wherever necessary. The government should also conduct part time classes, impart non-formal education through open schools or open universities and conduct class and discussion through interactive and electronic media. In order to achieve this, it is essential to create disabled friendly environment at all such places to facilitate them to achieve education.

As regards employment, identification of posts and reservation of posts is in consonance with the Constitutional parameters and an affirmative action/discriminatory schemes in favour of disabled can be created.

Non-Discrimination & Social Security

In the transport sector, within the limits of their economic capacity, special measures for the benefit of persons may be taken. Adapt rail compartments, buses, aircrafts, etc. with disabled friendly access. Similarly, toilets in rail compartments, aircrafts and waiting rooms need to be adapted to permit the wheel chair users to use them conveniently. Install signals at red lights, make ramps and grade on the surface of Zebra crossing for visually impaired and devise appropriate symbols for the disadvantaged.

Provide financial assistance to N.G.Os. for the rehabilitation of persons with disabilities, form insurance schemes for the benefit of such employees or provide alternative security schemes including unemployment allowance.

Check your progress 3

Write your answers in the space provided below

1. Give reasons for the enactment of Protection of Rights - Disabilities Act, 1995.

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2. State the Rights of Education and Employment of persons with disabilities.

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3. What are the protection provided for non-discrimination? Also state the social security measures available.

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4.5 NATIONAL COMMISSION FOR BACKWARD CLASSES

ACT, 1993

The constitutional mandate of reservation of jobs in favour of Backward Classes under Act 16(4) received its impetus on 16th of Nov. 1992 by the judgement of the Supreme Court, which directed the government of India to constitute a permanent body within four months from the date of this judgement for entertaining and examining requests made to it for inclusion in the list of Backward Classes of citizens. The court also observed that the permanent body must be empowered to examine complaints relating to such matters and pass appropriate orders. It's opinion/advice should ordinarily be binding upon the government.

As the Parliament was not in session and the government was bound to comply with the directions of the Supreme Court within the time specified, the President therefore, promulgated on 1st February 1993 the National Commission for

Backward Classes Ordinance 1993, which was finally enacted into the Act on 2nd of April 1993.

SALIENT FEATURES

Constitution of the Commission

It should consist of the members nominated by the Central government and includes a chairperson, three other members and a member secretary. The chairperson should not be less than a high court or a Supreme Court judge. The two members appointed should have special knowledge in matters relating to Backward Classes, whereas the third member should be a social scientist, while member secretary should, in no case, be less than the rank of a Secretary to the government of India.

Functions and Powers

The commission shall examine requests for inclusion of any class of citizens and can also hear complaints of over inclusion or under inclusion of any Backward Class. It has the power to advise the central government, which shall be binding.

The powers of the Commission are as that of a civil court trying a suit in a particular respect, which means summoning of a person, requiring the discovery or production of any document, receiving evidence on affidavits, requisitioning any public record from any court or office and issuing Commission for the examination of witness and documents.

Check your progress 4

1. What were the reasons for the creation of a Commission? State the jurisdiction also.
2. What are the powers of the Commission?

4.6 LET US SUM UP

The discrimination against certain disadvantaged groups in the society has been plugged through the instrumentality of law, which is either preventive or prohibitive in nature. The disadvantage may either be of a physical nature or economic compulsion or deprivation. The government has come out, at different intervals of time with certain social legislations to improve the lot of these vulnerable groups, be it the Bonded Labour Abolishing Act, Mental Health Act, Protection of Rights of Disabled Persons Act. In addition to this, to carry the Constitutional imperative to its logical conclusion, a monitoring national body in the form of National Commission for Backward Classes was created in 1993 by an enactment of Parliament.

In spite of these legislative developments the incidents of bonded labour are still reported in the country. Similarly, violation of the Mental Health Act, through prisons and institutions of confinement are well documented. Implementation of the disabled friendly measures is accepted more in its violation than its adherence.

What's important, therefore, is to strengthen the implementation mechanism, so that better thought advantages may descend to the groups.

4.7 SUGGESTED READINGS

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