
UNIT -1 SOCIAL LEGISLATIONS ON CHILDREN

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1.0 OBJECTIVES

After reading this unit, you should be able to:

- Understand the meaning, characteristics and significance of Social Legislation.
- Know the groups for which such laws are made.
- Know the reasons for making these laws in favour of children.

- Understand the scope of various laws protecting children against abuse /exploitation /health hazards and
- Know the various punishments in case any one violates these laws.

1.1 INTRODUCTION

Even at the cost of repetition, it sounds reasonable to understand that in our society, certain groups of persons, on the basis of age, sex, caste and physical disabilities, stand discriminated against others. Thus, due to these socially created disabilities, they have been the subjects of exploitation.

To protect them from exploitation and prohibit discriminatory attitude of society towards them, assistance of law as a strong tool of social change has been sought by the state. After independence, India adopted the ideal of a socialistic pattern of society, therefore, formulated social welfare programmes in various spheres. The aim was to secure social order, which would eradicate exploitation, secure equal opportunities to all its citizens, ensure that they share just obligations and enjoy social security (Constitution of India). To achieve the above laudable objectives of socialistic society and to bring equality among equals, to eradicate poverty, caste sex and race based discrimination, the State adopted peaceful and democratic means by enacting suitable laws relating to these groups of persons. In fact state interference in the form of social legislation is necessary for social reform and protection of people from various walks of life particularly the disadvantaged sections of the society.

1.2 MEANING AND SIGNIFICANCE OF SOCIAL LEGISLATION

When unequal distribution of wealth exists in a society or when social justice is denied to certain sections of people, laws are enacted by the State to bring back equilibrium. These laws (legislations) are called social legislations.

In the words of Hogan and Inni, "Social legislation embraces action by government authority to eliminate elements, which are objectionable and substitute

elements for which the system does not make provision". Social legislation, therefore, endeavors to remove inequalities, thus, benefiting the whole community rather than, few individuals. It adjusts, supplements and, at times, replaces the existing law. Social legislation, therefore, not only ameliorates the social conditions of people, but also bridges the gap between the demands/expectations of a society at a given time and the existing laws.

Significance of Social Legislation

- Social legislation is different from other legislations, as its emphasis is mainly to reflect the legislative policy of establishing social justice on humanistic and egalitarian principles.
- It comes to the help of the weak, oppressed and disadvantaged sections of the society.
- It always attempts to remove exploitation and bring about social, economic and political justice.

Social legislation, therefore, has two basic functions; (i) to provide for orderly regulation of social relationship and (2) to provide for the welfare and security of all individuals in the social unit (Hogan).

The aim of such legislation, therefore, is of establishing social equality in society. This is done by adjusting the needs of the society and preventing those who try to create imbalance or inequalities.

Requisites for an effective social legislation

No law, which is framed, works in a vacuum more so a social legislation. Under the separation of powers doctrine, legislature, judiciary and executive are separate from each other in India and the job of enacting of SWL (Social Welfare Legislations) lies in the hands of the legislature. However, to make its impact felt and to let the people for whom it is made taste its fruits, is the job of executive, judiciary and the society too. Hence adequate administrative machinery is the first requirement to enforce it. In the absence of such a machinery, the legislative action (law passed) may create more problem than it solves - may breed corruption and

bribery. Secondly, a judge, while administering legal justice (Justice according to law) must try to do social and economic justice, if he can, without hurting his judicial conscious. No doubt, a judge cannot assume the power of legislature, however, he can create the law where there is inaction on the part of legislature, or wherever there is conflict, he should try to bridge the gap between old and new, keeping in view the present conditions in the society. Hence, the judge's role in interpreting a social legislation should be that of social engineering or forward looking and liberal rather than rigid or static. Finally, the psychological preparedness of the society to accept such a social welfare legislation is equally important. The right time and public opinion, which, in turn, results in creating public awareness, is the most important aspect for the success of a social-legislation. Justice Holmes, while dealing with the relationship between law and public opinion, observed that "Every dominant opinion tends to become law". Hence, an effective public opinion is the prerequisite of social legislation. In the words of Violet Alva, we need a revolution within us (within society) for the evolution of social legislation and, more so, for its success, without which it will not achieve results. Thus, there is little use in passing laws without adequate provision being made for their effective enforcement with the backing of public opinion.

Keeping this background in mind, let us try to analyse and understand a few important social legislations passed over the years for the welfare of children, schedule castes/tribes and disadvantaged groups of the society.

1.3 SOCIAL LEGISLATIONS RELATING TO CHILDREN

All of us agree that children are the most important asset of society. They represent the future of a country therefore, their development and treatment has occupied the place of priority on our National Agenda as per the National Policy of 1974. However, as discussed at the beginning of this unit, they, due to their immature understanding or other social and economic pressure, are being exploited in the society. Law has, therefore, tried to put to rest these forms of exploitation by enacting suitable legislations. The enactments (Legislations) in relation to children are many. However, for our purposes, we will discuss the following five:

- i) The Child marriage Restraint Act, 1929.

- ii) The Child Labour (Prohibition and Regulation) Act, 1986
- iii) The Juvenile Justice (Care and Protection) of Children Act, 2001
- iv) Hindu Adoption & Maintenance Act, 1956.
- v) Infant Milk Substitute, Feeding Bottle and Infant Foods (Production/Supply) Act, 1992.

In addition to these legislative enactments, India's abiding interest in the welfare of children, as an expression of country's commitment to the welfare of its single most populous group, is enshrined in Constitution; particularly in the Preamble and other provisions.

It is, therefore, important for us to know these provisions, before we take up each legislation for analysis.

Constitutional Mandate

A close look at the Preamble, will make it clear that the main purpose of the Constitution is to secure justice, liberty, equality and fraternity for all its citizens including - children.

Similarly, Article 15(3) empowers the state to make special laws in favour of children and women. Thus, preferential treatment of children is a constitutional right provided due to the fact that this group is basically weak, therefore, is in need of protective/preventive legislations. Thus, discriminatory treatment in favour of children and women has been upheld as constitutional even by various judicial pronouncements. Similarly, every child has a right to be adequately nourished as a means of attaining and maintaining health.

Again, under Article 23, trafficking in human beings and other similar forms of forced labour are prohibited. Any violation of this will have penal consequences. The protection provided by this provision is not only against State exploitation but even against a private person.

Article 24 provides that "No child below the age of 14 years should be employed to work in any factory or mine or in any hazardous employment". This

protection has been well accepted by judiciary through important pronouncements like *People's union for democratic rights v. Union of India* AIR 1982 SC 1473; *Rajangam Secretary D.B.W.U. v. State of Tamil Nadu* (1991) SCC 299.

To conclude, constitution empowers the State to make special laws in favour children, which are valid, and children need to be protected from exploitation both from State and Private individual and any violation has penal sanction. For better understanding, let us now take up each legislation and analyze its objectives, broad provisions, and related infrastructure provided.

1.4 THE CHILD MARRIAGE RESTRAINT ACT, 1929

Due to customs prevalent in certain States in India, marriages were solemnized at very young age between two parties (girl and boy) who were even not capable of entering into any other contract. Permitting marriage below a specified age is against the rights of child, and violative of certain other existing laws.

In order to place an end to this practice, Child Marriage Restraint Act was passed. The salient features of the Act are.

Age

Primarily, the age limit for male was eighteen years and for female it was fourteen years. Subsequently, the age limit for females was raised to fifteen years by an amendment in 1949. The question of increasing the minimum age of males and females was further considered due to an urgent need to check the growth of population in the country. As increase in age could mean lowering the total fertility period on account of shorter span of married life, including responsible parenthood and better health of mother and child. The bill was presented with these reasons in Lok-Shaba on 25th August 1976, but lapsed due to dissolution of Lok Sabha on January 18, 1977. However, it was re-introduced and passed on 1st of October 1978. Hence, the male, at present, should have completed the age of 21 years, while female should have completed 18 years. Anything less in this age will put them in the category of child and they will be subjected to the process of law under this Act.

Type of Offence

After the amendment in 1978, the offence committed under this Act has been made cognizable. Meaning thereby that a police officer can arrest the person without warrant. A person can be guilty of offence (a) either as contracting party (b) as a person promoting or helping this marriage or (c) as a guardian, who has remained silent or has permitted the solemnization of marriage.

Further, the offence being Penal (Punishable) in nature, it is immaterial whether the offender is Indian or a foreigner - on whose land such an act may not be an offence. The court of Metropolitan magistrate or Judicial magistrate of Ist class has the jurisdiction to try such cases.

Punishments

Punishments are different for different categories of offenders.

- a) A male above 18 years but below 21 years. if found guilty of child marriage, can be subjected to simple imprisonment of 15 days and fine of Rs. 1000/-.
- b) A male above 21 years found guilty of child marriage, can be subjected to simple imprisonment of three months and fine.
- c) A parent or a guardian who remains silent or helps to perform or solemnize child marriage can be subjected to simple imprisonment of three months and fine. However, if such guardian happens to be a woman, then in her case, no imprisonment can be given.

From the above three groups it seems that an adult above 21 years has higher punishment than below 21 years. Similarly, parents/guardian has higher punishment as perpetrator of this crime - because he is either guilty of promoting it or is guilty of willful silence.

Preventive Steps

In case court comes to know either through a complaint or otherwise that child marriage has been arranged or is about to be solemnised, it can issue an injunction (stay order) prohibiting such marriage. Once such order is issued, any

person violating such an order can be punished with three months imprisonment and fine of 1000/- rupees. However, before giving injunctions, the court should give an opportunity to such person or persons against whom such allegations have been made to appear before the court to present their point of view.

To sum up, one can understand that a social evil existing in society has been attempted to be curbed by the instrumental of law. Thus, the above noted Act was passed. No doubt, the Act has been amended from time to time so far as age and punishment provisions are concerned. However, it seems that no infra-structure at the grassroot level like prevention officers have been appointed, who could counsel the parties regarding marriage before they do any such activity, which may amount to an offence under this Act.

Child marriage still seems to exist in a few parts of the country, particularly in Rajasthan and Madhya Pradesh, in spite of the existence of this legislation. The reason may be attributed to strong societal approval of such marriage and least adherence to this social legislation. This paradoxical situation exists where social legislation is brought into force (with least public opinion). Hence, social awareness leading to the acceptance that child marriage is negation of the right of child and a hazard to his health is necessary for the success of this law.

Check your progress 1

Note: a) Write your answers in the space provided below.

b) Check your answers with the model answers provided at the end of this unit.

Write short notes on the following:

a) Difference between a minor and a child under Child Marriage Restraint Act.

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b) What punishment exists for parents/guardians. Does it make any difference if the guardian is a female?

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c) What is a cognizable offence?

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1.5 THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

If we go through a number of legislations, which have been passed prior to the present one in relation to child labour, we can easily understand that no doubt, employment below a particular age is prohibited. However, no procedure is laid down to decide in which types of employment child labour should be banned. Nor does there exist any such law, which regulates the working conditions of children in such employments where they are not prohibited from working and they continue to

work in most exploitative fashion. It is with this reason that the above Act has been passed.

Objectives

For your convenience, let us find the broad contours of the Act:-

- a) It bans the employment of children (who have not completed the age of 14) in specified occupations and process.
- b) It regulates the conditions of work of children in employment where they are not prohibited from working.
- c) Lays down procedure for inclusion of other such occupations under banned category, and.
- d) Prescribes penalties to be imposed on those who violate the norms of the Act.

The salient features

- i) By coming into force of this Act, the earlier legislation, i.e. Employment of Children Act, 1939, has been repealed.
- ii) Keeping in view the tender age and capacity of the child, the Act prohibits engagement of a child (who has not completed his fourteenth year of age) in occupations and processes, which are harmful and unsafe. For better understanding of the subject, the safe occupations and processes have been specifically stated as follows :

Any occupation connected with —

- i) Transport of passengers, goods or mails by railway,
- ii) Cylinder picking, clearing of an ash pit or building operation in the railway premises;

- iii) Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from one platform to another or into or out of a moving train;
- iv) Work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines;
- v) A port authority within limits of any port.

Similarly among the processes the following have been included—

1. Bidi-making
2. Carpet-weaving
3. Cement manufacture, including bagging of cement
4. Cloth printing, dyeing and weaving
5. Manufacture of matches, explosives and fire-works
6. Mica-cutting and spitting
7. Shellac manufacture
8. Soap manufacture
9. Tanning
10. Wool-cleaning
11. Building and construction industry

However, a workshop is excluded wherein the process is carried out by the occupier with the aid of his family. Nor does it apply to any school established by or receiving assistance or recognition from government. Further, Central government can add to the above noted occupations and processes any another by giving proper notification in the official Gazette, at least, three months before such addition. For such additions, a technical advisory committee can be constituted by the Central government. Such committee can have one chairman and not more than ten members at a time. The meetings of the committee are not fixed. The committee can create a sub-committee, whereby it can seek opinion on matters through a person who, otherwise, is not the member of the committee.

Hours of work

The total working hours, including the rest hours and time spent in waiting, shall not exceed more than six hours per day. The period of work at a stretch should be not more than three hrs. after which, there shall be rest interval. No overtime is permitted. A child, in no case, should work in two establishments on one single day. Each child worker shall get one holiday per week, which shall be specified by the occupier and shall not be altered more than once in three months.

The Inspector of the area in whose Jurisdiction such establishment falls should be informed about the name of the occupier, person in actual management, address of communication and nature of occupation, within a period of thirty days from the date of such establishment about the employment of child.

Health and Safety

1. The appropriate Government, which means the State or Union Government, depending upon the nature of establishment, may, by notification in the Official Gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments.
2. Without prejudice to the generality of the foregoing provisions, the said rules may provide for all or any of the following matters, namely :-
 - a) cleanliness at the place of work and its freedom from nuisance;
 - b) disposal of waste and effluents;
 - c) ventilation and temperature;
 - d) dust and fume;
 - e) artificial humidification;
 - f) lighting;
 - g) drinking water;
 - h) latrine and urinals;
 - i) spittoons;

- j) fencing of machinery;
- k) work at or near machinery in motion;
- l) employment of children on dangerous machines;
- m) instructions, training and supervision in relation to employment of children on dangerous machines;
- n) device for cutting off power;
- o) self-acting machines;
- p) easing of new machines;
- q) floor, stairs and means of access;
- r) pits, sumps, openings in floors, etc;
- s) excessive weights;
- t) protection of eyes;
- u) explosive or inflammable dust, gas, etc;
- v) precautions in case of fire;
- w) maintenance of buildings; and
- x) safety of buildings and machinery.

The list, in no case is exhaustive, therefore, more items can be added or some of the existing can be deleted, depending upon the nature and scope of establishment.

Offences and Penalties

In cases of employment of children in violation of the provisions of this Act, the penalty of three months to one year of imprisonment or fine of not less than 10,000 to 20,000 rupees or both can be imposed. In case of repetition of same offence, the imprisonment of not less than six months to two years is prescribed. Hence, a repeater may get enhanced jail term, though the fine remains the same.

In addition, violation in following the procedure of maintaining a register or giving notice shall be punishable with one month simple imprisonment and Rs. 10,000/- as fine.

Any person, police officer or inspector can file a complaint of the commission of an offence in any court of competent jurisdiction. Analysis of the broad parameters of this Act makes it clear that the Government, through law, is determined to bring reform in the case of child labour problem in the country. The Act not only prohibits child labour in hazardous places but also prescribes regulations for those establishments where child employment is permitted. However, the will of the Central Government gets reflected by the fact that the above Act was passed in 1986 with a view to safeguard the interest of the child workers, but it has been enforced with effect from 26th of May, 1993. Further, the implementation of Part III (Regulations dealing with children in employment) have been left to the discretion of State government for implementations. Such delay in the implementation of a social legislations gives more space for the exploitation of those who deserve protection.

Let us now analyze the third legislation in relation to children. The two preceding enactments of the unit are mostly prohibitive in nature. As persons are prohibited from employing children in employment of hazardous nature, similarly, restriction is being imposed for marrying children of tender age. The third one in the series is a bit different, it actually deals with the method of handling children who turn deviant due to different factors operating in society. It simultaneously provides the mechanism for treatment of those children who have been exploited, or who have been neglected and stand as potential delinquents.

Check Your Progress 2

1. The passing of the Act of 1986 resulted into the repeal of----- Act.

2. Are the following unsafe occupations (mark the correct one's)
- | | |
|-------------------------|-----------------------|
| i) Railway construction | ii) Laundry |
| iii) A family workshop | iv) Working on a ship |
| iv) Bindi-making | vi) Wool-cleaning. |
3. Tick the correct one within brackets.
- a) Punishment of six months to two years imprisonment (first offender, repeater)
- b) A complaint can be lodged by; (co-worker, Employer)

1.6 JUVENILE JUSTICE (CARE AND PROTECTION) OF CHILDREN ACT, 2000

The law to deal with Juveniles who are delinquent or neglected is not new in India. Even before independence, State Laws were in existence, which dealt with the problem of Juvenile delinquency. The Bombay Children Act, 1948, the West Bengal Children Act 1959, Madras Children Act, etc. can be cited as examples of pre-independence, enactments dealing with juvenile delinquency. After independence, efforts were made to make a model Act which can be applied to Union Territories primarily. The efforts resulted in the formulation and enforcing of the Children Act, of 1960. This Act, along with State enactments relating to Juvenile delinquents, etc., remained in existence till 1986 when due to the intervention of Supreme Court and some changes relating to children at the international level became reasons to pass a uniform legislation, "Juvenile Justice Act, 1986". The Act, of course was a comprehensive legislations dealing separately with delinquents and neglected juveniles, both at pre-inquiry and post inquiry stage: It also had delineated a comprehensive infrastructure for its proper functioning like Courts, boards, homes, visitors, funds, etc. However, before any empirical 'assessment could have been made, the present legislation, after a period of 14 years, was passed, which superceded all earlier laws in relation to Juveniles. The new law was introduced in the form of Bill in Parliament and it received the assent of President on 30th of December 2000. Thus, the present Act called as Juvenile Justice (Care and Protection) of Children Act 2000- is the law to deal with both

Juvenile who has violated the law (Juvenile in Conflict of law) and those who are neglected or otherwise exploited by society.

The reason for such quick shifts from 1986 to 2000 has been attributed to three main factors.

- a) Adoption of Convention of Rights of Child 1986 by the General Assembly of United Nations and subsequent ratification of it by the Government of India.
- b) Passing of the United Nations Standard Minimum Rules for the administration of Juvenile Justice, 1985 (Beijing Rules).
- c) Passing of United Nations Rules for the Protection of Juveniles Deprived of their liberty (1990) and other related development globally.

India being signatory to those conventions, it became necessary for it to translate international rules into Municipal law, thus, the inevitable change resulted in the latest enactment of 2000.

Underlying Philosophy for Separate Legislation

In case we look at the statute like Indian Penal Code of 1860, we find that the Penal law also has made concessions on the basis of age (immature understanding), i.e., why a child below seven years has no culpability, while a child above seven but below twelve years has reduced culpability for the crime committed as compared to the adult.

Secondly, our system of criminal justice is adversarial in nature where Police, Courts and Procedure result in protracted and cumbersome justice delivery system. A child is different from an adult, therefore, can not be and should not be processed through the same mill, hence separate laws and procedure to deal with him is in the interest of the rights of child as provided under Convention of Rights of Children (CRC).

Indian Constitution under Article 15(3) gives power to the State to provide differential treatment in favour of children/women/and other vulnerable sections of society. The state has made separate law for children. Thus, the whole thrust is on

minimizing the stigma and keeping with the developmental needs of juveniles or the child.

Objectives of the Present Law:

- 1) To bring Juvenile law in conformity with United Nation's Convention on Rights of Child.
- 2) To provide for effective and alternative methods of rehabilitation and social reintegration.
- 3) To prescribe the role of the State as facilitator rather than doer by involving voluntary organisations and local bodies for the implementation of law.
- 4) To enable increased accessibility to the Juvenile or the child by establishing Juvenile Justice Boards, Child Welfare Committee and homes in each district.

Salient features of the Act:

This Act has divided Juveniles into two broad categories; (a) Juvenile in conflict with law and (b) Child in need of Care and Protection.

The age in case of both has been prescribed to be not more than 18 years. The first category includes a Juvenile (child not above 18 years), who is alleged to have committed offence. While offence for the purpose of this Act means an offence punishable under any law, which is in operation. The second category includes a child (not above 18 years of age), who suffers with nine disabilities; like, without home and means of subsistence or who resides with any person who may not be his guardian and who has threatened him to kill or injure, has killed, abused or neglected any other child and this threat persists in the mind of the child or who is mentally or physically challenged or suffers with terminal, or incurable disease and has no one to look after, or who has an incapacitated parent or guardian or who does not have any parent/guardian and is abandoned or who is being grossly tortured, abused or exploited sexually or who is found vulnerable and is likely to be inducted into drug abuse or trafficking or who is abused or likely to be abused for unconscionable gains and who is a victim of any armed conflict, civil commotion or

natural calamity.

What one can draw from the above categorisation clearly is the fact that the present legislation has made a shift and, at least, taken care of child victims, particularly of abuse (whether done within family or outside family), victims of armed conflict and natural calamities, child victims suffering from diseases. Thus, the law seems to be more humane and treatment oriented. Even in case of those who are in conflict with law, treatment is the process rather than any punitive action.

Procedure with respect to Juvenile in Conflict with law

Juvenile Justice Board for each district or group of districts can be constituted to deal with Juvenile in conflict with law. The Board shall have a Metropolitan Magistrate or a Judicial Magistrate of first class and two social workers (at least one to be woman). The law prescribes a restriction for appointment of a Magistrate to the Board in case he does not have special knowledge in child psychology or child welfare. Similarly, a social worker deserves appointment only when he/she has been actively involved in health, education or welfare activities relating to children at least for seven years. The term and the manner of resignation may be prescribed.

A child in conflict with law can be immediately produced before a board if it is sitting or before a member when the board is not sitting and such a child may be sent to an observation home during pendency of an inquiry. While after the inquiry is complete, such a child may be sent for the purpose of rehabilitation to a special home. Thus the board prescribes two places--observation home and special home. The former is meant for reception of Juveniles in conflict with law during pendency of inquiry, while the latter receives them after completion of inquiry for Rehabilitation. Such homes can be district wise or may belong to group of districts, it can be of the Government or of any Voluntary Organization recognized by the Government for this purpose.

The Act, therefore, has made the use of recognized, voluntary services which is a step in the right direction.

Arrest and Bail

Such a Juvenile, when apprehended by police, shall immediately be handed over to the Special Juvenile Police Unit or the designated police officer who shall immediately report the matter to the member of the Board.

The Law prescribes for the creation of special Juvenile police for apprehension and arrest of the juveniles. As regards Bail, Juvenile in conflict with law, as per the provision of criminal procedure code 1973, should be released on bail by the police officer with or without surety, however in case he feels that such release is not in favour of the Juvenile, he may not do so. In case the release under bail does not take place, the Juvenile is to be kept in observation home.

The Police officer should also inform the parent/guardian of the Juvenile and direct him to be present before the Board where Juvenile is to be presented. Similarly, probation officer of the Jurisdiction has also to be informed, so that he will place the information regarding antecedents of the Juvenile before the Board to assist it to arrive at a proper conclusion.

The Board, after making inquiry (the maximum period is four months from the date of commencement), exceptions apart, can make order of sending the Juvenile to home, release him on probation, ask to attend group counseling, i.e. take into account all methods, which ultimately are useful for his social reintegration and rehabilitation.

No order of death sentence, life imprisonment or imprisonment of any other kind can be made by the Board. However, if a Juvenile has attained the age of 16 yrs and the Board thinks it dangerous to send him to a special home or any other place under the Act, the Board may make an order to keep such Juvenile at some place of safety and shall report the case for order of the state Government.

Procedure for Child in Need of Care and Protection

A child welfare committee consisting of a chairperson and four other members (at least one shall be a woman and other a child expert). Qualification for Chairperson and members and the tenure for which they may be appointed may be prescribed by the Government.

Any child in need of care and protection can be produced before the Committee by any police officer or special Juvenile Police Unit (which have not been established yet), any public servant, child line, a voluntary organization recognized by the State Government, any social worker or spirited citizen authorized by the State Government or the child himself.

The Committee has the final say in disposing of the case as per the need of the child after an inquiry is held (maximum period is four months). The child, if he/she is abandoned, neglected or otherwise, may be ordered to be placed in children home or shelter home till suitable rehabilitation is found.

Rehabilitation and Social Reintegration

The method, as alternative for quick rehabilitation and social reintegration, can be:

- a) **Adoption:** This is to be provided through institutions recognized for this purpose under rules and guidelines issued from time to time. This is mostly used in case of children who are orphans, abandoned, neglected or abused. Further, minimum of two members of the Committee can declare the child legally free for placement in the category of abandoned or surrendered children. Board may allow the child to be given in adoption to a single parent or to a parent to adopt child of the same sex, irrespective of the number of living biological sons or daughters.
- b) **Foster Care:** It is used for temporary placement for those infants who are given in adoption.
- c) **Sponsorship:** This programme provides supplementary support to families, children homes, special homes to meet medical, nutritional, educational needs of children with a view to improve their quality of life. These can be individual to individual or individual to group sponsorships.
- d) **After Care:** Though provision for such services for the first time has been made, but no progress has been done in this regard. It is because of lack of coordination between various agencies involved in correction and

rehabilitation, equally followed by lack of involvement of NGOs in such a programme.

Raising of Funds

Funds through voluntary donation, contribution or subscription by individuals or organizations may be raised, and the authority for its administration can be the State Advisory Board.

No doubt, the above Act is a step towards the improvement of conditions of victimized children on one hand and providing differential treatment to delinquent children on the other hand. But the fact remains that the infrastructure meant to carry the objectives of the Act to its logical conclusion is wanting - be it Juvenile aid police Unit, the members of Board/Committees specialized in child psychology, etc., be it the raising of fund or the ultimate alternative of adoption, sponsorship or after care.

Check Your Progress 3

Write your answers in the space provided below.

Answer the following questions in not more than a paragraph.

1. What is the philosophy behind the creation of creating special legislations for Juvenile Delinquents?

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2. State the procedure to be followed by the Board for dealing with a Juvenile in conflict with law? How far do you agree with the punishment provided, keeping in view the present scenario of Juvenile crime.?

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3. How far adoption is a suitable alternative for rehabilitation of a child?

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**1.7 THE HINDU ADOPTION AND MAINTENANCE
ACT, 1956**

Immediately after the 6th year of adoption of Indian Constitution, attempt was made to consolidate and codify the law relating to the adoption and maintenance among Hindus. The basic reason to do so was the passing of the Hindu Marriage Act, 1955; which in turn necessitated change in laws of adoption and maintenance of children and wives, as the case may be. It was also widely felt that the Hindu law is urgently required to be put on a more rational basis, so that all "Hindus are closely knit into one brotherhood of equals and are governed by one law, irrespective of differences in caste, creed, sex and the like.

To whom this Act applies

This Act (law) applies to any person, who is a Hindu by religion in any of its forms and developments including a Virashaiva, a Lingayat or the follower of the Brahmo, Prathana or Arya Samaj (all these are different sects, which, more or less, follow the Hindu Vedic style of life).

It also applies to any person who is a Buddhist, Jaina or Sikh by religion. It does not apply to any person who is a Muslim, Christian, Parsi or Jew by religion or to any such person in whose case it can be proved that the Hindu law can not be applied in relation to matters for which it was passed in the present form.

It is evident that this law applies to all those who are Hindus, Buddhists, Jainas or Sikhs by religion, while it excludes Muslims, Christians, Jews and Parsis in general. It is further explained that in the category of Hindus, etc. the following too can be included :-

- a) any child, legitimate or illegitimate, whose parents are Hindus, Buddhists, Jainas or Sikhs by religion, or
- b) one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged, and
- c) any person who is converted or reconverted to the Hindu, Buddhist, Jaina or Sikh religion.

An additional category, which has been added to the above category in 1962, includes any child, legitimate or illegitimate, who has been abandoned both by his father and mother or whose parentage is not known and who, in either case, is brought up as a Hindu, Buddhist, Jaina or Sikh.

On the analysis of the above a, b and c, d, categories it is clear that stress is being placed more on the environment in which a child (legitimate or illegitimate) is brought up, to include him into the category of Hindu. Meaning thereby that it is the “Sanskaras”, habits, methods, rituals of living life like those of Hindus which can put a child into this category, particularly where either the parentage is disputed or where the child is abandoned and no parentage can be claimed. The overall effect of this Act has been that all laws in force relating to this area for Hindus ceases to operate from the date of its operation.

Meaning of Custom and Maintenance

The word custom or usage, signify the rules which have been continuously and uniformly observed for a long time and have obtained the force of law among Hindus in any local area tribe, community, group or family. Hence, continuity and uniformity are the basic attributes of a custom or usage. It should never be unreasonable or opposed to public policy. Where it is being used by one family only,

then the discontinuity of that usage or custom by that family, at any stage, will take it away from the category of usage or custom.

As regards maintenance, it includes, in all cases (irrespective of age, sex, etc.), the provision for food, clothing, residence, education and medical attendance and treatment. In addition to this, in case of unmarried daughter, it includes reasonable expenses of her marriage.

Adoption and essentials of a valid adoption

The basic purpose of adoption among Hindus has been to find a successor to their property, particularly, where they have none or, at times, to displace a natural line of succession. Therefore, the law is clear that proof of factum of adoption and its validity must be proved by the person who adopts by placing sufficient material on record.

The Hindu Adoption & Maintenance Act (HAMA) clearly stipulates that only those adoptions by Hindus will be valid, which are made in accordance with the provisions of this Act and none else. Any adoption made in contravention to the provisions of HAMA shall be void (invalid). Thus, any adoption, which is void, does not create any right in favour of a child in the adoptive family. In order that adoption is done as required by HAMA, the following essentials need to be followed :-

- i) The person who is adopting, has the capacity and also the right to take in adoption.
- ii) The person taking in adoption has the capacity to do so.
- iii) The person adopted is capable of being taken in adoption and
- iv) The adoption is made in compliance with the other conditions mentioned in this chapter.

Let us explain each of the above essentials in detail.

Persons capable of taking in adoption

Every male Hindu, who is of sound mind and is not a minor, can adopt a son or daughter.

In case he is married and his wife is living, then the consent of wife is necessary for such adoption. However, if married, and wife has completely and finally renounced the world or has ceased to be a Hindu or has been declared, by a court of competent jurisdiction, as unsound then, in such cases the consent of wife has no significance for adoption. Similarly, if a person has more than one wife living at the time of adoption (though monogamy is the rule in case of Hindus, however under certain customary laws bigamy is permitted) then, in such a case, consent by all is necessary, unless the consent of any one of them is unnecessary due to the reasons stated above, i.e., renunciation, conversion or unsoundness etc.

In the same way, a major female Hindu of sound mind has the capacity to adopt a son or a daughter, provided such a Hindu female is unmarried or if married, whose marriage has been dissolved, the husband is dead or has completely and finally renounced the world, or has ceased to be a Hindu or has declared, by a court of competent jurisdiction (court having the power to do so), to be of unsound mind.

However, where there is evidence to show that that female Hindu was seriously ill mentally or physically, she has no capacity to adopt. This is the interpretation made by courts.

Persons capable of giving a child in adoption

Broadly speaking, it is either mother, father or guardian of a child who has the capacity to give a child in adoption.

The father alone has a right to give a child in adoption. But such right should be exercised by father after seeking the consent of the mother. Mother's consent is not necessary or has no significance in the following situations;

- a) where she has renounced the world, or
- b) where she ceases to be a Hindu (conversion etc.),
- c) she has been declared of unsound mind.

Quite parallel to this a mother can also give the child in adoption only in situations:

- a) where the father is dead,
- b) father has completely and finally renounced the world,
- c) father ceases to be a Hindu, or
- d) has been declared of unsound mind.

Where both father and mother are dead or have renounced the world or have abandoned the child or have been declared, by a court, as unsound of mind or where the parentage of a child is not known; in such situations, the guardian of the child is competent to give child in adoption, with previous permission of the court, to any person including himself.

The permission of the court, in the above situation, can be obtained only when the court is satisfied that such adoption is for the welfare of the child and no monetary consideration exists between the parties for such adoption. The court may give due consideration to the wishes of the child, having regard to the age and understanding of the child.

The mother and father, as discussed above, who are competent to give a child in adoption, excludes the adoptive ones. Meaning thereby that a child once given in adoption can not further be given in adoption. Similarly, guardian means a person who takes care of the child or of his property or both and is appointed by the will of child's father or mother or appointed or declared by a court of law (this is the situation where the child is abandoned/parentage is not known or both the parents are dead).

Who may be adopted

A person can be taken in adoption only if he fulfills the following conditions:

(a) He or she is a Hindu (b) he or she has not already been adopted (c) he or she is not married (except if the custom of the parties permits it and (d) he or she has completed 15 yrs. of age (except if custom permits any relaxation in age).

In addition to the above conditions, which are essential for a valid adoption the additional conditions, which are of equal importance and need to be followed are as under:

In case a son is adopted, the adoptive parents, at the time of adoption, should not have a Hindu son, son's son or son's son's son (whether legitimate or by adoption) living at that time. Similarly, in case of daughter being adopted, then the existence of a Hindu daughter or son's daughter will invalidate the same. Further, if adoption is by a male that of a female, the difference between adopted father and daughter must be of at least of 21yrs. and the same should be the case where adoption is by a female that of a male. Again, the same child may not be adopted simultaneously by two persons.

Neither the subsequent birth of a child (son/daughter) from adoptive parent/parents, nor the subsequent marriage of the adoptive mother will invalidate the previous adoption.

Effects of Adoption

As has already been stated above, adoption actually takes place to find out a legal successor to the property of the adoptive parent/parents. Hence, the effects are mostly related to the rights of the adopted child vis-a-vis the duties of the parents, who have taken the child in adoption.

To remove a most common doubt is that an adoptive parent (mother/father) can dispose off their property inter-vivos or by will, unless there is an agreement at the time of adoption that she/he will not do the same. Further, the property, which is vested in the adopted child before the adoption, shall continue to be vested in such person, provided he fulfills all obligations attached to such ownership, including the obligation to maintain relatives in the family of his birth.

A strong provision has been incorporated in the Act with a view that child trafficking may not take place under the garb of adoption. The provision is penal in nature and the person found to have made adoption against consideration shall be punished with imprisonment, which may extend to six months or with fine or with both.

To conclude, the adoption of a child is permitted, keeping in view the interest of the child and the protection he should receive in the family. Similarly, it is important in case of abandoned children, and the childless couples can approach such agencies (who work as guardians) for legal and valid adoption. However, procedure of law needs to be followed.

Check your progress 4

Write your answers in the space provided below.

1. Discuss the scope of this enactment.

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2. Write notes on the following :

a) Essentials of custom

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b) Penalty for the violation of rules of adoption

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c) Effects of adoption

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3. Who may be adopted and by whom?

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4. Enumerate the essentials of a valid adoption.

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**1.8 THE INFANT MILK SUBSTITUTES, FEEDING BOTTLES
AND INFANT FOODS (REGULATION OF
PRODUCTION, SUPPLY AND DISTRIBUTION)
ACT, 1992.**

International recognition to the rights of child after adopting the U.N. Convention on Rights of Child (CRC) has made all States to take care of children, including the right of health. One of the component of better health is better nourishment, particularly at the stage of infancy, as infant malnutrition is a major contributory cause of high incidence of infant mortality and physical and mental

handicaps. To overcome this problem, breast feeding has been recommended world over. It is the key aspect of self-reliance and primary health care.

Inappropriate feeding practices lead to infant malnutrition, morbidity and mortality in our children. Promotion of infant milk substitutes and related practices like feeding bottles and teats constitute a health hazard. In spite of this, the promotion of milk substitutes has been more vigorous rather than dissemination of breast feeding. In the absence of strong interventions designed to protect, promote and support breast feeding, its decline can assume dangerous proportions, subjecting millions of infants to greater risks of infections, malnutrition and death.

In view of the above, it becomes necessary to regulate marketing of such products for the proper health and nutrition of world's children. Thus, the World Health Assembly adopted in May 1981 an International Code for the marketing of Breast Milk substitutes. The Government of India recognised and adopted the Indian code for the Protection and Promotion of breast feeding (hereinafter referred as code) in December 1983. In the light of this code, as late as 19th December, 1992 that a fullfledged law was passed in the form of the Act; [Infant milk substitutes, feeding bottles and infant foods (Regulation of Products, Supply and Distribution) Act 1992].

Salient Features

To understand the extent to which this Act makes restrictions for the sale and promotion of the infant milk substitutes, feeding bottles and infant foods, it is imperative to analyse the provisions of the statute.

Prohibitions Prescribed

Under Section 3, 4 and 5, no person can take part in the publication of any advertisement for the distribution, sale or supply or give an impression that infant milk substitutes are better in the promotion of use or sale.

Similarly, prohibition is placed on the supply or distribution of samples, contacting any pregnant woman or the mother of an infant or offering of inducement

of any other kind for the promotion of infant milk substitute. Likewise, prohibition for the donation or distribution of such substitutes exists. However, donations or distribution of material or items is permitted through health care system. However, no health care system should be exploited for the sale or distribution of material or promotion of infant milk substitute.

Duty of Information

Every such container or any label attached to such a container, which contains milk substitute (without violating prevention of Food Adulteration Act) shall indicate in a clear, conspicuous and in easily reliable and understandable manner the words "Important Notice" in capital letters in such language as may be prescribed and shall indicate the following, namely :

- a) a statement "mother's milk is the best for your baby" in capital letters.
- b) Substitutes for infant milk and food should be used only on the advice of a health worker.
- c) A warning that it is not the sole source of nourishment for an infant, along with details of ingredients used including composition, storage conditions, batch number, date of manufacture and expiry.

Besides this, the law prohibits the use of picture of infant or woman or both or any other picture, which can increase its saleability on the container or label.

The Act under Section 7, specifically provides that it is necessary to create awareness among masses about the advantages of breast feeding. For that, every such effort made either through audio or visual methods relating to pre or post natal care of feeding of an infant should include the information about the benefits of breast feeding, harmful effects on breast feeding due to partial adoption of bottle feeding, the financial and social implications and the health hazards of bottle feeding.

Observations of Prescribed Standards

A person, who sells or distributes an infant milk substitute, has to conform to certain standards specified under various laws. Primarily, it should conform to the standards laid down by the Prevention of Food Adulteration Act, 1954, meaning thereby that the contents of the food, in no way, should be adulterated, and violative of Food Adulteration Act. Similarly, the container should have relevant standard mark specified by the Bureau of Indian standards, established under Indian Standards Act, 1986.

Powers of search, confiscation and adjudication

Any food inspector appointed under the prevention of Food Adulteration Act 1954 or any officer not below the rank of Class I officer, authorised by the state Government, if he has reason to believe that the information, as required by law, has not been provided or standards have not been followed, may enter and search, at any reasonable time, any factory building, business premises or any other place where any trade or commerce in infant milk substitute or feeding bottles is carried on.

The power extends to the confiscation of such products. However, in case of search, the inspector can retain the seized item only for 90 days, beyond which the approval of the district judge is necessary. In case of confiscation, the court adjudging the matter has the power to ask for payment in lieu (substitute) of the confiscated property. However, if the confiscated items are returned, he has to make it sure that, in future, all rules required will be followed.

Cognizance of Offences and Penalty

Court can take cognizance (notice) of an offence under this Act only when a complaint is made. The complain can be made by any such authority prescribed by this Act, i.e., either by a food inspector or by a Ist Class Officer authorised by the state government. In addition to these, a representative of a voluntary organisation (VOG) engaged in the field of child welfare and developmend and child nutrition can also make a complaint.

Once the complain is made, the court will proceed against a person (either an individual or a company as body corporate) under the provision of criminal

procedure code. Thus, a guilty person can be subjected to minimum of six months and maximum of three years imprisonment and fine of five thousand rupees. However, a person found guilty of concealment of information (under Section 6) has reduced fine of two thousand rupees. The Court may, in certain cases, have adequate reasons to take a lenient view, where the sentence of imprisonment cannot be less than three months and more than two years and fine of one thousand rupees only.

Check your progress 5

1. State the objective of the Act.

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2. Discuss the prohibition prescribed under the Act.

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3. Who can take cognizance of the offence and what are the penalties?

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4. Right of information under the Act includes the duty to create awareness - Discuss.

1.9 Let Us Sum Up

In this unit, we discussed the meaning and importance of social legislations and some of the social legislations we have for the benefit of children. Social legislations are meant to help and protect the weak, oppressed and disadvantaged sections of the society. It aims to bring about equality in the society. We have discussed five main social legislations relating to children.

- a) The Child marriage Restraint Act, 1929 came into existence to put an end to the social evil of children forced to get married, who are below the age of 18 years in the case of girls and 21 years in the case of boys.
- b) In order to ban the employment of children (who have not completed the age of 14 years), the Child Labour (Prohibition and Regulation) Act, 1986 has been passed.
- c) The Juvenile Justice (Care and Protection) of Children Act, 2000 came into force for the welfare and rehabilitation of children mainly, who come in conflict with law.
- d) The Hindu Adoption and Maintenance Act, 1956 is meant to provide legal family to the children needing parents and to give the joy parenthood to the couple longing for it.
- e) Taking into consideration, the infant's right to health, in order to promote breast feeding, 'The Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of production, Supply and Distribution) Act, 1992 was passed.

1.10 Suggested Readings

Child Marriage Restraint (Amendment) Act, 1978.

Constitution of India: Part IV; Directive Principles of State Policy.

Juvenile Justice: Care and Protection Act for children 2000.

Panda M.K; Child Labour in India; 1979.

Report of the National Commission on Labour; 1969.

Srivastava, S.P.; Juvenile Justice in India: policy, programme and perspective; 1989.

Ved Kumar; Treaties and Juvenile Justice Act, 1986; 1983; Indian Law Institute, New Delhi.