

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

No. 33 OF 1989

[11th September, 1989.]

An Act to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fortieth Year of the Republic of India as Follows:

Chapter I: PRELIMINARY

1. Short title, extent and commencement

1. This Act may be called the Scheduled Castes and the Scheduled extent and Tribes (Prevention of Atrocities) Act, 1989.
2. It extends to the whole of India except the State of Jammu & Kashmir.
3. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions

1. In this Act unless the context otherwise requires -
 - a. "atrocities" means an offence punishable under section 3
 - b. "Code" means the Code of Criminal Procedure, 1973 (2 of 1974)
 - c. "Scheduled Castes and Scheduled Tribes" shall have the meanings assigned to them respectively under clause (24) and clause (25) of article 366 of the Constitution
 - d. "Special Court" means a Court of Session specified as a Special Court in section 14
 - e. "Special Public Prosecutor" means a Public Prosecutor specified as a Special Public Prosecutor or an advocate referred to in section 15
 - f. words and expressions used but not defined in this Act and defined in the Code or the Indian Penal Code (45 of 1860) shall have the meanings assigned to them respectively in the Code, or as the case may be, in the Indian Penal Code.
2. Any reference in this Act to any enactment or any provision thereof shall in relation to an area in which such enactment or such provision is not in force, be construed as a reference to the corresponding law, if any, in force in that area.

CHAPTER II: OFFENCES OF ATROCITIES

3. Punishment for offences of atrocities

1. Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe -
 - i. forces a member of a Scheduled Caste or a Scheduled Tribe to drink or eat any inedible or obnoxious substance
 - ii. acts with intent to cause injury, insult or annoyance to any member of a Scheduled Caste, or a Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;

- iii. forcibly removes clothes from the person of a member of a Scheduled Caste or a Scheduled Tribe or parades him naked or with painted face or body or commits any similar act which is derogatory to human dignity
- iv. wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or a Scheduled Tribe or gets the land allotted to him transferred;
- v. wrongfully dispossesses a member of a Scheduled Caste or a Scheduled Tribe from his land or premises or interferes with the enjoyment of his rights over any land, premises or water
- vi. compels or entices a member of a Scheduled Caste or a Scheduled Tribe to do 'begar' or other similar forms of forced or bonded labour other than any compulsory service for public purposes imposed by Government
- vii. forces or intimidates a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote to a particular candidate or to vote in a manner other than that provided by law
- viii. institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe
- ix. gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe
- x. intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view
- xi. assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe with intent to dishonour or outrage her modesty
- xii. being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed
- xiii. corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or a Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used
- xiv. • denies a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to
- xv. forces or causes a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village or other place of residence

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

• Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe -

- i. gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death
- ii. gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled

Tribe to be convicted of an offence which is not capital but punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine

- iii. commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine
- iv. commits mischief by fire or any explosive substance intending to cause or knowing it to be likely that he will thereby cause destruction of any building which is ordinarily used as a place of worship or as a place for human dwelling or as a place for custody of the property by a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine
- v. commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine
- vi. knowingly or having reason to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall be punishable with the punishment provided for that offence; or
- vii. being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence

4. Punishment for neglect of duties

Whoever, being a public servant but not being a member of a Scheduled Caste or a Scheduled Tribe, wilfully neglects his duties required to be performed by him under this Act, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year.

5. Enhanced punishment for subsequent conviction

Whoever, having already been convicted of an offence under this Chapter is convicted for the second offence or any offence subsequent to the second offence, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

6. Application of certain provisions of the Indian Penal Code

Subject to the other provisions of this Act, the provisions of section 34, Chapter III, Chapter IV, Chapter V, Chapter VA, Section 149 and Chapter XXIII of the Indian Penal Code (45 of 1860), shall, so far as may be, apply for the purposes of this Act as they apply for the purposes of the Indian Penal Code.

7. Forfeiture of property of certain persons

1. Where a person has been convicted of any offence punishable under this Chapter, the Special Court may, in addition to awarding any punishment, by order in writing, declare that any

property, movable or immovable or both, belonging to the person, which has been used for the commission of that offence, shall stand forfeited to Government.

2. Where any person is accused of any offence under this Chapter, it shall be open to the Special Court trying him to pass an order that all or any of the properties, movable or immovable or both, belonging to him, shall, during the period of such trial, be attached, and where such trial ends in conviction, the property so attached shall be liable to forfeiture to the extent it is required for the purpose of realisation of any fine imposed under this Chapter.

8. Presumption as to offences

In a prosecution for an offence under this Chapter, if it is proved that -

- a. the accused rendered any financial assistance to a person accused of, or reasonably suspected of committing, an offence under this Chapter, the Special Court shall presume, unless the contrary is proved, that such person had abetted the offence
- b. a group of persons committed an offence under this Chapter and if it is proved that the offence committed was a sequel to any existing dispute regard-ing land or any other matter, it shall be presumed that the offence was committed in furtherance of the common intention or in prosecution of the common object.

9. Conferment Powers

1. Notwithstanding anything contained in the Code or in any other provision of this Act, the State Government may, if it consider it necessary or expedient so to do -
 - a. for the prevention of and for coping with any offence under this Act, or
 - b. for any case or class or group of cases under this Act,

in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government, the powers exercisable by a police officer under the Code in such district or part thereof or, as the case may be, for such case or class or group of cases, and in particular, the powers of arrest, investigation and prosecution of persons before any Special Court.

2. All officer of police and all other officers of Government shall assist the officer referred to in sub-section (1) in the execution of the provisions of this Act or any rule, scheme or order made thereunder.
3. The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under sub-section (1).

CHAPTER III: EXTERNMENT

10. Removal of person likely to commit offence

- a. Where the Special Court is satisfied, upon a complaint, or a police report that a person is likely to commit an offence under Chapter II of this Act in any area included in 'Scheduled Areas' or 'tribal areas', as referred to in article 244 of the Constitution, it may, by order in writing, direct such person to remove himself beyond the limits of such area, by such route and within such time as may be specified in the order, and not to return to that area from which he was directed to remove himself for such period, not exceeding two years, as may be specified in the order.
- b. The Special Court shall, along with the order under sub-section (1) communicate to the person directed under that sub-section the grounds on which such order has been made.
- c. The Special Court may revoke or modify the order made under sub- section (1), for the reasons to be recorded in writing, on the representation made by the person against whom such order

has been made or by any other person on his behalf within thirty days from the date of the order.

11. Procedure on failure of person to remove himself from area and enter thereon after removal

1. If a person to whom a direction has been issued under section 10 to remove himself from any area -

- a. fails to remove himself as directed; or
- b. having so removed himself enters such area within the period specified in the order,

otherwise than with the permission in writing of the Special Court under sub-section (2), the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.

2. The Special Court may, by order in writing, permit any person in respect of whom an order under section 10 has been made, to return to the area from which he was directed to remove himself for such temporary period and subject to such conditions as may be specified in such order and may require him to execute a bond with or without surety for the due observation of the conditions imposed.
3. The Special Court may at any time revoke any such permission.
4. Any person who, with such permission, returns to the area from which he was directed to remove himself shall observe the conditions imposed, and at the expiry of the temporary period for which he was permitted to return, or on the revocation of such permission before the expiry of such temporary period, shall remove himself outside such area and shall not return thereto within the unexpired portion specified under section 10 without a fresh permission.
5. If a person fails to observe any of the conditions imposed or to remove himself accordingly or having so removed himself enters or returns to such area without fresh permission the Special Court may cause him to be arrested and removed in police custody to such place outside such area as the Special Court may specify.

12. Taking measurements and photographs, etc. of persons against whom order under section 10 is made

1. Every person against whom an order has been made under section 10 shall, if so required by the Special Court, allow his measurements and photographs to be taken by a police officer.
2. If any person referred to in sub-section (1), when required to allow his measurements or photographs to be taken resists or refuses to allow his taking of such measurements or photographs, it shall be lawful to use all necessary means to secure the taking thereof.
3. Resistance to or refusal to allow the taking of measurements or photographs under sub-section (2) shall be deemed to be an offence under section 186 of the Indian Penal Code (45 of 1860).
4. Where an order under section 10 is revoked, all measurements and photographs (including negatives) taken under sub-section (2) shall be destroyed or made over to the person against whom such order is made.

13. Penalty for non compliance of order under section 10

Any person contravening an order of the Special Court made under section 10 shall be punishable with imprisonment for a term which may extend to one year and with fine.

CHAPTER IV: SPECIAL COURTS

14. Special Court

For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for each district a Court of Session to be a Special Court to try the offences under this Act.

15. Special Public Prosecutor

For every Special Court, the State Government shall, by notification in the Official Gazette, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

CHAPTER V: MISCELLANEOUS

16. Power of State Government to impose collective fine

The provisions of section 10A of the Protection of Civil Rights Act, 1955 (22 of 1955) shall, so far as may be, apply for the purposes of imposition and realisation of collective fine and for all other matters connected therewith under this Act.

17. Preventive action to be taken by the law and order machinery

1. A District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate or any police officer not below the rank of a Deputy Superintendent of Police may, on receiving information and after such inquiry as he may think necessary, has reason to believe that a person or a group of persons not belonging to the Scheduled Castes or the Scheduled Tribes, residing in or frequenting any place within the local limits of his jurisdiction is likely to commit an offence or has threatened to commit any offence under this Act and is of the opinion that there is sufficient ground for proceeding, declare such an area to be an area prone to atrocities and take necessary action for keeping the peace and good behaviour and maintenance of public order and tranquility and may take preventive action.
2. The provisions of Chapters VIII, X and XI of the Code shall, so far as may be, apply for the purposes of sub-section (1).
3. The State Government may, by notification in the Official Gazette, make one or more schemes specifying the manner in which the officers referred to in sub-section (1) shall take appropriate action specified in such scheme or schemes to prevent atrocities and to restore the feeling of security amongst the members of the Scheduled Castes and the Scheduled Tribes.

18. Section 438 of the code not to apply to persons committing an offence under the Act

Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act

19. Section 360 of the Code or the Provisions of the Probation of Offenders Act not to apply to persons guilty of an offence under the Act

The provisions of section 360 of the Code and the provisions of the Probation of Offenders Act, 1958 (20 of 1958) shall not apply to any person above the age of eighteen years who is found guilty of having committed an offence under this act.

20. Act to override other laws

Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

21. Duty of Government to ensure effective implementation of the Act

1. Subject to such rules as the Central Government may make in this behalf, the State Government shall take such measures as may be necessary for the effective implementation of this Act.
2. In particular, and without prejudice to the generality of the foregoing provisions, such measures may include -
 - i. the provision for adequate facilities, including legal aid to the persons subjected to atrocities to enable them to avail themselves of justice
 - ii. the provision for travelling and maintenance expenses to witness-es, including the victims of atrocities, during investigation and trial of offences under this Act
 - iii. the provision for the economic and social rehabilitation of the victims of the atrocities
 - iv. the appointment of officers for initiating or exercising supervision over prosecutions for the contravention of the provisions of this Act
 - v. the setting up of committees at such appropriate levels as the State Government may think fit to assist that Government in formulation or implementation of such measures
 - vi. provision for a periodic survey of the working of the provisions of this Act with a view to suggesting measures for the better implementation of the provision of this Act
 - vii. the identification of the areas where the members of the Scheduled Castes and the Scheduled Tribes are likely to be subjected to atrocities and adoption of such measures so as to ensure safety for such members
3. The Central Government shall take such steps as may be necessary to co-ordinate the measures taken by the State Governments under sub-section (1)
4. The Central Government shall, every year, place on the table of each House of Parliament a report on the measures taken by itself and by the State Governments in pursuance of the provisions of this section.

22. Protection of action taken in good faith

No suit, prosecution or other legal proceedings shall lie against the Central Government or against the State Government or any officer or authority of Government or any other person for anything which is in good faith done or intended to be done under this Act.

23. Power to make rules

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

V. S. RAMA DEVI,
Secy. to the Govt. of India.



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(I.S.S.N 2321- 6417 (Online))

Ph: +919310053923 Website: journal.lawmantra.co.in

E-mail: info@lawmantra.co.in contact@lawmantra.co.in

CHILD PROTECTION LAWS IN INDIA AND SPECIFIC ISSUES WITH REGARD TO THEM *

ABSTRACT

The future of any State depends on the healthy growth and development of its children. Since independence, India has framed a wide range of laws for the protection and harmonious growth of children. The Constitution of India guarantees these rights to children through Chapter III and IV. Apart from this, India is also a signatory to the United Nations Conventions on Rights of the Child, 1989 which has incorporated in its various articles rights of children without any discrimination whatsoever. It is based on four basic principles- non-discrimination, best interest of the child, right to life survival and development and the right to be heard. In addition to this, there are three protocols to the Convention of which two have been signed by India. Both the Constitution and the UNCRC provide the basis for the formulation of legislations about rights of children.

Currently the legislations such as the Indian Penal Code, 1860, Juvenile Justice (Care and Protection of Children) Act, 2015, The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act, 2000, Child Marriage Restraint Act, 1929 (Amended in 1979), Child Labour (Prohibition and Regulation) Act, 1986, Protection of Children from Sexual Offences Act, 2012, The Child Labour (Prohibition and Regulation) Amendment Bill, 2012, The Right of Children to Free and Compulsory Education Act, 2009 etc. provide for the child rights and their protection in India. There are however, numerous challenges faced for implementation and upgradation of these Acts which will be discussed in detail in this paper.

Key Words: *Child Rights, Juvenile Justice, Convention on Rights of Child.*

* Mahoor, Student, B.A. LL.B. (Hons.), Faculty of Law, Jamia Millia Islamia, New Delhi.

Introduction

The hallmark of culture and advance of civilization consists in the fulfillment of our obligation to the young generation by opening up opportunities for every child to unfold its personality and rise to its full stature, physical, mental, moral and spiritual.¹ The importance of children and their welfare cannot be underestimated since the welfare of the entire community, along with its growth and development, depends on the health and well-being of its children. It can be said that the welfare of the children is the prime concern for both national and international community. Kofi A. Annan, Secretary-General of the United Nations, observed that:² “There is no trust more sacred than one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and want and that they grow up in peace.”

In the ancient times, in India, the Laws of Man identify the child, though located very near the bottom of a social pyramid, but was bestowed with the society’s protection. In those times, children were only to be beaten with a rope or bamboo stick split at the end, which does not inflict much pain. Even this punishment had to be carried out only on the back and not on the head or the chest.

There is a plethora of statutes, Acts, legislations, judicial pronouncements at national and international levels dealing with the protection of child rights. Most of these have provisions to deal with the rehabilitation and protection of the socially and economically abused and neglected children. Though the word child has not been defined under the Constitution of India, the Constitution makers were conscious of the fact that the children require special treatment on account of their physical and mental immaturity. The various laws and legislations on the rights of child have been mentioned further.

United Nations Convention on the Rights of the Child (UNCRC) 1989

The UNCRC consists of fifty-four articles that exclusively mention child rights and the way governments ought to work along to grant them to all children irrespective of any discrimination. Under the terms of the convention, governments are needed to fulfill children’s basic desires and

¹ V.R. Krishna Iyar, Jurisprudence of Juvenile Justice: A Preambular Perspective.

² Foreword by Kofi A. Annan in The State of the World’s Children, 2000.

facilitate them to reach their full potential. The main objective behind it is to acknowledge that each kid has basic elementary rights. It sets up the following goals,

- Life, survival and development
- Protection from violence, abuse or neglect
- An education that permits youngsters to fulfil their potential
- Be raised by, or have a relationship with, their folks
- Express their opinions and be listened to

In 2000, two optional protocols were included to it. These are the Optional Protocol to CRC on Sale of Children, Child Prostitution and Child Pornography and the Optional Protocol to CRC on the involvement of Children in Armed Conflict. One asks governments to confirm that youngsters underneath the age of eighteen don't seem to be forcibly recruited into their soldiers. The second calls on states to ban prostitution involving children, pornography and also the sale of children into slavery. These have currently been sanctioned by quite one hundred twenty states.

Furthermore, a third optional protocol was introduced in 2011, the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure which permits youngsters whose rights are desecrated to complain on to the International Organization Committee on the Rights of the Child.

Home to every fifth of the world's children, India has sanctioned the Convention on Rights of the Child in 1992, granting standards in health care, education and legal, civil and social services. The passage of the Education Bill, and therefore the Prohibition of Child Labour and Child Marriage Act shows how the Indian Government is championing the rights of children. Progress has been seen towards distinguishing and addressing child protection violations and targeting essential services to marginalized teams. The National Commission for the Protection of Child Rights was established in India in March 2007 and a few State Commissions are additional.

However, the challenges to the implementation of these rights still remain. Widespread and entrenched exploitation, gender discrimination and caste bias in India cannot be ignored for long. The recent world fuel, food and economic crises will also have an effect on the country's social progress, posing an obstruction to the recent gains in child survival and education. We have a

tendency to assure that rights will be declared, and policies developed, however, unless the lifetime of the child within the family and community is improved, all our efforts within this realm are nonsense. We as common voters should pledge to not settle for work from children, not tolerate child marriage and guarantee all children, particularly women, the right to complete their education.

Constitutional Provisions Regarding Rights of Children

The Constitution of India guarantees certain rights to the children of India which are mentioned in its Part III (Fundamental Rights) and Part IV (Directive Principles of State Policy). These are elaborated below,

Part III:

Article 14: Voters of India, as well as children, should be treated equally before law and should be equal protection by the law with no discrimination.

Article 15(3): Discrimination is prohibited by the constitution. However, it shall not hold a ground to forestall the state from creating special provisions for children for his or her advantage.

Article 21: Nobody shall be bereft of his life or personal liberty unless by a due process of law. An individual should have proper and adequate food, shelter, clothing, etc. Such life shall not mean mere animal existence.

Article 21A: The State shall offer free and required education to any or all the children falling within the age group of six to 14 years in such manner which the State could, by law, determine.

Article 23: Prohibits trafficking in citizenry and beggar or the other sort of forced labour.

Article 24: Prohibits employment of youngsters beneath the age of fourteen years in an exceedingly mill, mine or in the other dangerous employment.

Part IV:

Article 39 (e): The state shall thrive to make sure that the tender age of youngsters isn't abused, and that people aren't forced by financial necessity to enter into activities which are unsuited to their age or strength.

Article 39 (f): The state shall guarantee children opportunities and facilities to develop in an exceedingly healthy manner and in conditions of freedom and dignity. It should even be ensured that childhood and youth of the child is protected against exploitation and against unethical and material abandonment.

Article 41: The state is obligated to, among its economic capability and development, secure provisions for academic opportunities and facilities.

Article 44: The state shall create all potential efforts to secure an identical Civil Code for all the citizens, thereby implying an identical code for the adoption of youngsters.

Article 45: The state shall endeavor to produce free and required education to kids till they attain they age of fourteen years.

Article 46: It's the duty of the state to push the economic interests of weaker sections of the society with special care and thus, the children in that.

Article 47: The state is obligated to boost the extent of nutrition and also the normal of living and to enhance public health, as well as that of youngsters.

Article 51(c): International laws and treaties shall be revered by the state to each potential extent, as well as the CRC and its optional protocols.

Article 51(k): It shall be the duty of each national of India who may be a parent or guardian to produce opportunities for education to his kid or, because the case could also be, ward between the age of six and fourteen years.

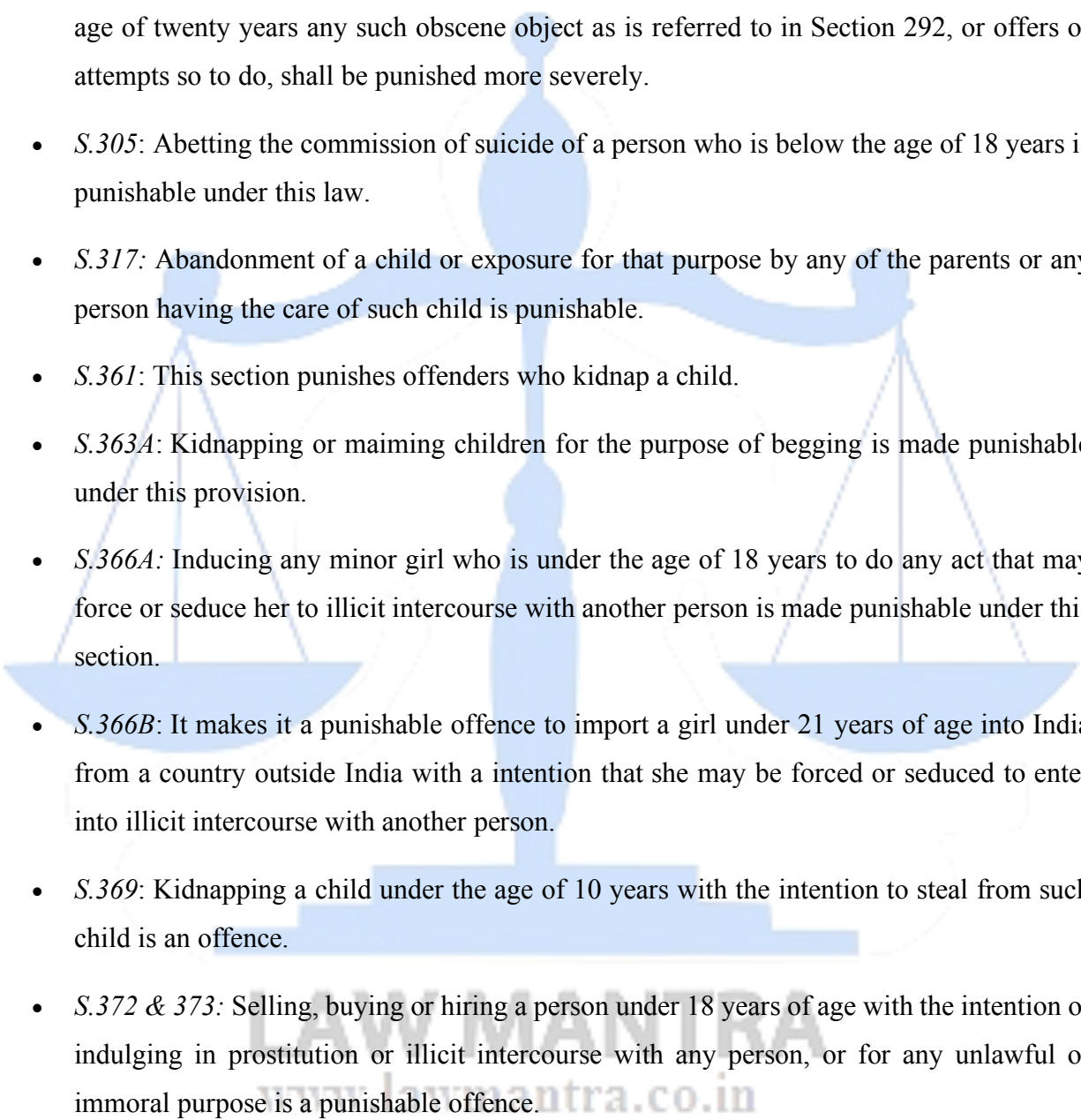
Article 243G: It provides for the institutionalization of child care by seeking to entrust programs of Woman and Child Development to Panchayat (Item twenty-five of Schedule 11).

Indian Penal Code 1860

The Indian Penal Code offers protection to children and their rights by its various sections.

Some of these sections are:

- S.83: An offence which is done by a child above seven years of age and under twelve, and has thereby not attained sufficient maturity in order to understand the nature and consequences of his action shall not be liable for the same.

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- *S.292 & 293*: Selling, distribution, publishing, public exhibition or circulation of obscene material such as books, magazines, drawings, paintings, etc. is prohibited under Section 292. Whoever sells, lets to hire, distributes, exhibits or circulates to any person under the age of twenty years any such obscene object as is referred to in Section 292, or offers or attempts so to do, shall be punished more severely.
 - *S.305*: Abetting the commission of suicide of a person who is below the age of 18 years is punishable under this law.
 - *S.317*: Abandonment of a child or exposure for that purpose by any of the parents or any person having the care of such child is punishable.
 - *S.361*: This section punishes offenders who kidnap a child.
 - *S.363A*: Kidnapping or maiming children for the purpose of begging is made punishable under this provision.
 - *S.366A*: Inducing any minor girl who is under the age of 18 years to do any act that may force or seduce her to illicit intercourse with another person is made punishable under this section.
 - *S.366B*: It makes it a punishable offence to import a girl under 21 years of age into India from a country outside India with a intention that she may be forced or seduced to enter into illicit intercourse with another person.
 - *S.369*: Kidnapping a child under the age of 10 years with the intention to steal from such child is an offence.
 - *S.372 & 373*: Selling, buying or hiring a person under 18 years of age with the intention of indulging in prostitution or illicit intercourse with any person, or for any unlawful or immoral purpose is a punishable offence.
 - *S.375*: This section defines rape as intercourse with a woman without her consent or with a woman below 16 years of age.
 - *S.376*: The section provides for stringent punishments if:

- rape is committed by management or staff of Remand Home or any other place of custody established by law or children's institution,
- rape is committed upon a woman under 12 years of age,
- gang rape is committed.
- *S.376C*: Inducing or seducing a woman into sexual intercourse by the Superintendent or manager of a remand home or a place of custody as 'children's institution' by taking advantage of his position, he is entitled to stringent punishment under this provision.

Guardians and Wards Act 1890

This Act is said to supersede all the laws relevant to the guardianship of a child. It is treated as a universal code specifically designed for Muslims, Parsis, Christians and Jews, since their personal laws do not permit full adoption but only guardianship. This Act deals only with the guardianship of the person and property of the minor. In appointing or declaring the guardian of the minor the court shall take into consideration the circumstances of the case for the welfare of the minor and consistent with the law to which the minor is subject. Among the entire factor considered by the court, the welfare of the child is the paramount consideration.³

Immoral Traffic (Prevention) Act (Amended in 1986), 1956

This Act particularly deals with person or persons who procure or attempt to procure any child for the purpose of prostitution or person who is found with a child in a brothel (then it will be presumed that child has been detained for this purpose) and provides punishment for them. It also lays provisions for the care of rescued children.

The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act 2000

The primary objective of this Act is the regulation and prevention of the pre-natal sex determination in order to prevent female foeticide. The Act intends to address the issue of female foeticide and Sex-Selection by imposing a ban on pre-conception tests or other procedures for the purpose of ensuring or increasing the probability that the child will be of a particular sex. Medical advancement in the field of assisted reproduction necessitated such

³ Section 17, Guardians and Wards Act, 1860.

provisions. The Act also provides for strict regulation of genetic clinics, laboratories or centers with minimum standards prescribed in terms of space, equipment and qualification of staff.

As per the provisions under the Act, before conducting any prenatal diagnostic procedure, the medical practitioner must obtain a written consent from the pregnant woman in a local language that she understands. Prenatal tests can only be performed in specific circumstances, such as risk of chromosomal abnormalities in the case of women over 35, and genetic diseases evident in the family history of the couple.⁴ In *Vinod Soni vs. Union of India*⁵, the constitutionality of Pre-Conception and pre-Natal Diagnostic Techniques (Prohibition of Sex-Selection) Act, 2003, was challenged on the basis of right to privacy. Mumbai High Court upheld the Act as constitutional.

Protection of Children from Sexual Offences Act, 2012

This Act is aimed at punishing the offenders guilty of sexual offences against children (below the age of 18 years of age). It also prescribes procedures for trial, such as, the name of victim shall not be disclosed since he is a child, proceedings of the case will be conducted in the court with cameras recording the trial, and that the accused is not to be kept in-front of the child victim while the examination or cross-examination is being conducted.

The Act defines different forms of sexual abuse, such as penetrative and nonpenetrative assault, including sexual harassment and pornography, and also deems a sexual assault to be “aggravated” under certain circumstances, such as when the child abused is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-a-vis the child, like a family member, police officer, teacher, or doctor. People who traffic in children for sexual purposes are also punishable under the provision relating to abetment in the said Act. The Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine. In keeping with the best international child protection standards, the said Act also provides for mandatory reporting of sexual offences. This casts a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence, if he fails to do so, he may be punished with six months’ imprisonment and/or a fine.

⁴ Section 4(3).

⁵ 2005 Cr LJ 3408: 2005 (3) Mah LJ 1131: 2005 (4) Rec Cri R 590.

The Act also casts upon the police, the role of acting as a child protector during the investigative process. Thus, the police personnel receiving a report of sexual abuse of a child are given the responsibility of making urgent arrangements for the care and protection of the child, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, should the need arise. The police are also required to bring the matter to the attention of the Child Welfare Committee (CWC) within 24 hours of receiving the report, so the CWC may then proceed where required to make further arrangements for the safety and security of the child. The said Act makes provisions for the medical examination of the child in a manner designed to cause as little distress as possible. The examination is to be carried out in the presence of the parent or other person whom the child trusts, and in the case of female child, by a female doctor.

The Right of Children to Free and Compulsory Education Act, 2009

The Right of Children to Free and Compulsory Education Act, 2009 defines ‘child’ as a male or female child of the age of six to fourteen years.⁶ Elementary education means the education from first class to eight classes⁷ ‘Capitation fee’ means any kind of donation or contribution or payment other than the fee notified by the school.⁸ According to this law, a child belonging to disadvantaged group means a child belonging to the Scheduled Caste, the Scheduled Tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economic, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification⁹ and child belonging to weaker section means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification.¹⁰

The Act guarantees that no child shall be denied admission in a School for lack of age proof.¹¹ For the purposes of admission to elementary education, the age of a child shall be determined on the basis of the birth certificate issued in accordance with the provisions of the Births, Deaths and Marriages Registration Act, 1886 or on the basis of such other document, as may be

⁶ Section 2(c), The Right of Children to Free and Compulsory Education Act, 2009.

⁷ Section 2(f) *ibid.*

⁸ Section 2(b), *ibid.*

⁹ Section 2(d), *ibid.*

¹⁰ Section 2(e), *ibid.*

¹¹ Section 14(2), *ibid.*

prescribed.¹² The Right to Free and Compulsory Education Act prohibits a School from holding back a child in any class or expelling a child from School till the completion of elementary education.¹³ The Act also prohibits the School from giving any type of physical punishment or mental harassment to any child¹⁴ and whoever contravenes this provision shall be liable to disciplinary Action under the service rules applicable to such person.

The Juvenile Justice (Care and Protection of Children) Act, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015 has come into force from 15th January, 2016 and repeals the Juvenile Justice (Care and Protection of Children) Act, 2000. It follows certain principles such as the Principle of presumption of innocence, Principle of dignity and worth, Principle of participation, Principle of best interest, Principle of family responsibility, Principle of safety, Positive measures, Principle of non-stigmatizing semantics, Principle of non-waiver of rights, Principle of equality and non-discrimination, Principle of right to privacy and confidentiality, Principle of institutionalization as a measure of last resort, Principle of repatriation and restoration and other principles like the Principle of fresh start, that is all past records of any child under the Juvenile Justice system should be erased except in special circumstances.

The Commissions for the Protection of Child Rights Act, 2005

In view of the National and International development and concern towards child rights violation the need for a National Commission for Protection of Child Rights has been articulated by many social scientists and non-governmental organizations. The Government accordingly decided to set up the National Commission for Protection of Child Rights and for better protection of their rights by providing speedy trial of offences against children or for violation of child rights. The States have also been authorized to set up State Level Commission for Protection of Child Rights in their respective states. India has also participated in the United Nations General Assembly Summit in 1990 which adopted a Declaration on Survival, Protection and Development of children.

The National Commission of the Protection of Child Rights consists of, one Chairperson and six members. The Chairperson shall be a person of eminence who has done outstanding work for

¹² Section 14(1), The Right of Children to Free and Compulsory Education Act, 2009.

¹³ Section 16, *ibid*.

¹⁴ Section 17, *ibid*.

promoting the welfare of the children.¹⁵ Out of six members, at least two should be women. The other members should be persons of eminence, ability, integrity, standing and experience in the field of education, child health care, and welfare and child development, juvenile justice care of neglected or marginalized children or children with disabilities, elimination of child labour or children in distress, child psychology or sociology or Laws relating to children.

The Prohibition of Child Marriage Act, 2006

It restrains child marriage until the minimum age, i.e. 21 for male and 18 for female, has been attained by them. It applies to the people of all the religions. The basic objective of the Prohibition of Child Marriage Act, 2006 is to provide for the prohibition of solemnization of child marriages and for matters connected therewith or incidental thereto.

Child Labour (Prohibition and Regulation) Act, 1986

This act regulates the working conditions for children in employment and prohibits working of children in certain kinds of employments.

The Act prohibits the employment of children in certain occupations and processes set forth in Part A58 and Part B59 of the Schedule.¹⁶ The Court also must strive to interpret the statute as to protect and achieve the objective and purpose of the enactment. Any narrow or technical interpretation of the provisions would defeat the legislative policy. The Court must, therefore, keep the legislative policy in mind in applying the provisions of the Act to the facts of the case. The Act also provides that the Central Government may, by notification in the Official Gazette, constitute an Advisory Committee to be called the Child Labour Technical Advisory to advise the Central Government for the purpose of addition of occupations and processes to the Schedule.¹⁷ The Committee shall consist of a Chairman and such other members not exceeding ten, as may be appointed by the Central Government. The Act penalizes the person who employs any child or permits any child to work in contravention of the provisions of section 3, with imprisonment for a term which shall not be less than three months, but which may extend to one year or with fine which shall not be less than ten thousand rupees, but which may extend to twenty thousand rupees or with both. Upon

¹⁵ Section 3(1), The Commission for the Protection of Child Rights Act, 2005.

¹⁶ Section 3, Child Labour (Prohibition and Regulation) Act, 1986.

¹⁷ Section 5(i), Child Labour (Prohibition and Regulation) Act, 1986.

repeating the act of employing the child in contravention of provisions of section 3, the employer shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years.¹⁸

The Medical Termination of Pregnancy Act, 1971

In order to save the pregnant women's health, strength and sometimes, life, the Medical Termination of Pregnancy Act was passed in 1971. It legalized abortions under certain conditions. So, it is obvious that the Medical Termination of Pregnancy Act, 1971 is made in favour of mother and as well as in favour of unborn child. It put forth the principal that death is better than sufferings, as the Act allows killing of child in mother's womb, where there is substantial risk that the child, if born, would suffer from deformities and diseases. The provisions of this Act are however, sometimes misused. The right to abortion is essential for a woman to have control over her reproductive process. But in Indian society, the reason behind a large number of abortions is neither the health of the woman, nor reproductive right but the sex of the unborn child. Abortions are generally performed to get rid of the child who is female (sex-determination test), which is illegal and criminal both on the part of parenting as well as doctor who performs such abortion.

Specific Issues: Child abuse and Child Right Violation

Child welfare has been given considerable importance both nationally and internationally. But it is also true that child abuse and Child Rights violation is rampant at large scale. According to Black's Law Dictionary,¹⁹ child abuse is defined as any form of cruelty to a child's physical, moral or mental wellbeing. It is also used to describe some forms of sexual attack which may or may not amount to rape. Child abuse is a state of emotional, physical, economic and sexual maltreatment meted out to a person below the age of eighteen years and is a globally prevalent phenomenon. The extent, magnitude and trend of the problem have not been understood properly in the developing countries. The growing complexities of life and the dramatic changes brought about by socioeconomic transition in India have played a major role in increasing the vulnerability of children to various and newer forms of abuse. Child abuse is a violation of basic human rights of a child and is an outcome of a set of inter-related, familial, social, psychological and economic

¹⁸ Section 14(2), *ibid.*

¹⁹ 5th Edition.

factors. The problem of child abuse and human rights violation of a child is one of the most critical matters on the International Human Rights agenda.

Problem of Forced Labour

It is widely known that forced labour is a growing menace in our society. Although laws have been enacted to prevent this, but we have not been able to achieve the desired results. Article 23 and 24 – which takes upon itself, to curb this menace for almost, thirty years, could not be activated effectively in controlling bonded labour. But after 1982 especially due to the *Asiad Workers case*,²⁰ these articles have been used as potent weapons to combat this menace. Article 23(1) States that all kinds of trafficking in human beings or any form of forced labour is prohibited and that any contravention of this law is punishable. In this case, the condition of the workers was miserable, they were denied their minimum daily wages, they were living in hovels, their children dying of malnutrition and they themselves frequently becoming victims of accidents. These terrible working conditions of the workers were first brought to public notice by the Fact-Finding Team of the People's Union for Democratic Rights (PUDR). The report found that “almost all the major laws were being violated by the contractors, right in the heart of the Indian capital and under the nose of the Union Government.”²¹

In the *Sanjit Roy vs. State of Rajasthan*,²² the Apex Court held that even during the famine relief work minimum wages should be paid to those who are employed for famine relief. Although it was the contention of the State that it was only providing relief to the affected people and that if required to pay the minimum wages it could affect the State's potential to help the famine affected people, the judges fell back on the *Asiad workers case* emphasizing that Article 23 was aimed at eradicating the pernicious practice of forced labour. Another landmark case highlighting the judicial attitude towards bonded labour is found in the *Bandhua Mukti Morcha vs. Union of India*.²³

Trafficking, Exploitation and Sexual Abuse

Children constitute the weakest and most vulnerable and defenseless section of human society. It is thus, the duty of the State to protect and promote their human rights with a view to ensuring full

²⁰ People's Union in Democratic Rights vs. Union of India AIR 1982 SC 1473.

²¹ “The other face of Asiad 82”, PUDR Report, October 1982, p.4

²² AIR 1983 SC 328.

²³ AIR 1984 SC 802

development of their personality and with human dignity, otherwise, the right to life and liberty would become meaningless for them. In spite of the specific constitutional mandate, child labour exists in almost all parts of the country. Their tender age and strength is exploited. They are denied the right to live with human dignity. In *Vishaljeet vs. Union of India*,²⁴ the Court issued that all State Governments must direct their law enforcing authorities to take appropriate speedy steps against child trafficking and also directed to set-up an advisory Committee with experts from all fields to make suggestions regarding measures for eradication of child prostitution, for care and rehabilitation of rescued girls, for setting up of rehabilitation homes, and for surveying the existence of devdasi and jogin traditions in their respective States.

*Gaurav Jain vs. Union of India*²⁵ is a historic judgment on rights of child of prostitutes. The petitioner filed a Public Interest Litigation seeking appropriate directions from the Union of India for the improvement, protection and rehabilitation of the children of prostitutes. In *Jayesh Thakkar vs. State of Maharashtra and Internet users Association of India (Interveners)*²⁶ the Mumbai High Court appointed a Committee which laid down several restrictions on cyber cafes to provide for an adequate degree of supervision and control so that minors are protected from being exposed to pornographic sites on the internet in cyber cafes. The Committee recommended child friendly or child safe Cyber Zones where minors could safely access and use the internet for information, education, communication and entertainment.

Other Matters of Protection of Rights of Children

The judiciary in India has shown its deep concern for the human rights of these children. In *M.C. Mehta vs. State of Tamil Nadu*,²⁷ the SC while keeping the interest of the children, as also the constitutional mandate in view held that employment connected with manufacturing process in the match factory is not to be given to children. They can, however, be employed in packing process and the packing must be done in area away from the place of manufacture.

²⁴ AIR 1990 SC 1412 Cr. LJ 1469: (1990) 3 SCC 318.

²⁵ AIR 1997 SC 3021: 1997 AIR SCW 3055: (1997) 8 SCC 114.

²⁶ *Suo Motu Writ Petition No. 1611 of 2001*, (Mumbai High Court).

²⁷ AIR. 1991 SC. 417

In *Lakshmi Kant Pande vs. Union of India*,²⁸ a letter was written by an advocate to the judges of the Supreme Court complaining about the malpractices by some social organizations and other voluntary agencies engaged in offering Indian children in adoption to foreign parents. The Court treated this letter as a writ petition in the nature of public interest litigation. After observing the absence of legal framework in the area of inter-country adoption and failure of the Parliament to enact law in this regard, the SC formulated the guidelines and norms which must be observed in permitting inter-country adoption.

Besides the above discussed issues, there are other problems that prevail in the Indian Society, where every day rights of the child are violated and are deprived of such as abuse of child as domestic help, problem of genocide, but it is not possible to make a study of each and every SC cases regarding the relevant aspects. Hence a glance through these cases clearly and remarkably spells out the changing role of the judiciary from its earlier conservative and narrow stance to a very broad and socially sensitive institution of the State constantly guarding Human Rights of all children.

Role of Judiciary

Human rights today occupy the top slot in priority, nationally and internationally, over other issues relating to mankind. Unfortunately, its observance leaves much to be desired. With a growing tendency of the legislature and executive to be apathetic towards human rights, the very survival of mankind is under threat. Large scale human rights violations take place right under the nose of the government. At times the State itself is a perpetuator of this crime. Under such circumstances, the role of judiciary in protecting human rights of children become crucial and important. Judiciary in India has been able to restore the human rights to the people. But even the judiciary has been found wanting at times while dealing with these issues.

Apex Court is established at the apex of the judicial system as the final interpreter and guardian of the Constitution and of the fundamental human rights of the people. In the course of its functioning it had many opportunities to expand its scope of operation through its power of interpretation. It would not be overstating that that judiciary has played a crucial and central role in protecting

²⁸ AIR 1984 SC. 469.

human rights. A large number of cases decided in the last two decades go to show that judiciary is working relentlessly towards the goal of achieving “all humans’ rights for all”.

Conclusion

The welfare of the entire community depends on the health and welfare of the child. The betterment of the child is the betterment of the community because child is the future leader. As rightly observed by Milton, ‘child shows the man as morning shows the day’. Obviously, a neglected and abused child will never become a good and responsible citizen. During the past few decades, the problem of child abuse and Child Right violation is on the rise perhaps, because of the poverty and illiteracy. The problem of child labour, poverty, nutrition, education, employment and respecting their rights at every front has acquired a very chronic nature and things cannot be done instantly, it requires time and patience. These problems further aggravated because of the greedy needs of parents, relatives, employers and society at large. Parents and relative put them to work to meet the daily needs of family and slowly become dependent on their income. The employer employs children in various dangerous and hazardous works as they are economically submissive and easy to control. Society at large employs child as domestic help.

The National Policies for the welfare of children must be dynamic and adopt itself to the changing situations and help in anticipating possible consequences of social changes. The National Policy should also view the needs of children both normal as well as those suffering from various types of handicaps, (physical, mental and social) and should also maintain provisions to promote their development into society. The children of economically weaker sections, delinquent, destitute, neglected and abandoned children must be provided facilities to overcome their difficulties and to become good citizens.

The constitutional obligation to provide free and compulsory education to all children upto the age of fourteen years must be fulfilled without any hesitation and delay. There is a need to insert a comprehensive separate chapter on the ‘Fundamental Rights of Children’ in the Constitution to protect their fundamental rights in tune with the other persons.

India is prolific legislator but a habitual defaulter. In India legislative initiatives are not lacking but their enforcement is impoverished. Legislative measures concerning children, like most other laws, inevitably remain flawed, inadequately observed, and in need of constant revision. It is very

clear that through the existing laws, children do not receive the best that mankind has to offer but they can only be shielded from the worst. There is strong evidence of the existence of well-established legal principles set out in various human rights and humanitarian legal instruments and under the Constitution of India which shows that children as such are entitled to special treatment.

There are a variety of legal provisions under various enactments for child rights protection. But for the effective application of these laws, a sensitive and effective judicial system is required. It is very rare that cases of child right violation are brought to the notice of courts under normal circumstances. The working of Juvenile Justice System in our country needs a thorough revision. There is, thus, a need that courts should take keen interest in changing the lot of abused, neglected and exploited children.

In conclusion in spite of, both legislative and constitutional provisions for the protection, as well as prevention from the sexual abuse of children, there is no stoppage of such type of incidents of exploitation and abuse. On the other hand, number of such cases is alarmingly increasing day by day. As a result, judicial intervention has been felt necessary, but such intervention is not sufficient enough to meet the necessities of time to control the exploitation of children. It has been also observed from various judgments of decided cases that in many cases at the time of pronouncing punishment for committing offence against the children, mainly in case of sexual offence, judiciary often give the lesser punishment in comparison with the gravity of offences committed by the offender.

The role of the highest court of the country is laudable in this regard and draws attention to certain alarming features of Indian society. But the judiciary alone cannot be seen to be responsible for resolving the entire problem. In fact, it should be our last resort—prevention is better than cure.

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**Disability Rights
(Rights of Persons with Disabilities
Act & National Trust Act) and Mental
Healthcare Act**



(RESEARCH DIVISION)

NATIONAL HUMAN RIGHTS COMMISSION, INDIA

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Manav Adhikar Bhawan, C-Block

GPO Complex, INA, New Delhi - 110 023

Email : dsr.nhrc@nic.in

Website : www.nhrc.nic.in

Editorial & Technical Assistance :

(Research Division)

Content writing / development of sections on RPwD Act. & NT Act by MARG & Prashansa Pandey, Junior Research Consultant, NHRC. Content writing and development of Section on Mental Healthcare Act by Dr. Seemi Azam, Research Officer, NHRC and Ms. Smriti Pandey, JRC, NHRC

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Phone : 011-23593541-42

E-mail : dolphinprinto2011@gmail.com

RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

The Rights of Persons with Disabilities (RPwD) Act was enacted in the year 2016 and came into force from 19th April, 2017. It replaced the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The objective of the RPwD



Act is to ensure that all persons with disabilities can lead their lives with dignity, without discrimination and with equal opportunities. The Act lays down specific provisions to uphold such rights. It incorporates the rights of persons with disabilities covered under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), to which India is a signatory.

SOME RIGHTS GUARANTEED UNDER THE RPwD ACT

Persons with disabilities have the right to equality, dignity and respect for integrity:

Section 3(1) of the RPwD Act requires the appropriate government to ensure that persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.

The Act ensures the rights of women and children with disabilities:

Section 4 states that the appropriate government and local authorities shall take measures to ensure that women and children with disabilities enjoy their rights equally with others. The section further states that all children with disabilities have the right to freely express their views on all matters affecting them and that, for this, support will be provided to keep in view their age and disability.

Persons with disabilities have the right to live in the community.

Section 5(2) of the Act states that appropriate government shall endeavour that persons with disabilities are not forced to live in any particular living arrangement and are given access to a range of in-house, residential and other community support services, including personal assistance necessary to support living with due regard to age and gender.

The Act provides protection to persons with disabilities from being subjected to torture, cruel, inhuman or degrading treatment:

Section 6 of the Act requires the government to take measures to prevent torture, cruel, inhuman or degrading treatment and ensure that no person with disability shall be a subject of any research without his or her free and informed consent. This is to be obtained through accessible modes, means and formats of communication and prior permission of a Committee for Research on Disability.

The Act ensures protection of persons with disabilities from abuse, violence and exploitation:

Section 7 of the Act states that victims of violence, abuse or exploitation shall be rescued, protected and rehabilitated. The government is also obligated to create awareness about the provisions and make it available to the public.

Any person or registered organization who or which has reason to believe that an act of abuse, violence or exploitation has been, is being, or is likely to be committed may inform the Executive Magistrate of the incident who thereafter is obligated to rescue, protect, rehabilitate and provide maintenance to the victim.

The police on receipt of complaint or knowing about such incidents are obligated to inform the victim of their rights to apply for protection, free legal aid, right to file a complaint and the particulars of the Executive Magistrate and the nearest organization/institution working for the rehabilitation of persons with disabilities.

Persons with disabilities are entitled to equal protection and safety in situations of risk, armed conflict, humanitarian emergencies and natural disasters:

Section 8 of the Act requires the National and State Disaster Management Authorities to ensure the inclusion of persons with disabilities in its disaster management activities for their safety and protection.

Children with disabilities not to be separated from their parents:

Section 9 states that no child with disability shall be separated from his or her parents on the grounds of disability except on an order of a competent court, if required, in the best interest of the child.

The Act recognizes the reproductive rights of persons with disabilities:

Section 10 states that the appropriate government shall ensure that persons with disabilities have access to appropriate information regarding the reproduction and family planning and that no person with any disability is subjected to any medical procedure which leads to infertility without his or her free and informed consent.

The Election Commissions to ensure that persons with disabilities can cast their vote:

Section 11 states that the Election Commission of India and the State Election Commissions shall ensure that all polling stations are accessible to persons with disabilities and all materials related to the electoral process are easily understandable by and accessible to them.

The Act addresses challenges faced by persons with disabilities in accessing the justice system:

Section 12 states that persons with disabilities have the right to access any court or anybody with judicial or quasi-judicial or investigative powers without discrimination and steps will be taken to provide suitable measures to support persons with disabilities, especially those living without a family and those requiring high support for exercising legal rights.

Further, the Section states that the National and State Legal Services Authority shall make provisions, including reasonable accommodation, to ensure access to any scheme, programme, facility or service offered by them. It is to make all public documents available in accessible formats and for this, all filing departments, registry, etc, will be supplied with necessary equipment. All necessary facilities and equipment to facilitate the recording of testimonies, arguments or opinions given by persons with disabilities in their preferred language and means of communication will be made available.

Legal rights of person with disabilities:

Section 13 states that the appropriate government shall ensure that persons with disabilities enjoy equal legal rights on an equal basis with others in all aspects of life and have the right to equal recognition everywhere as any other person before the law.

Appointment of Limited Guardian:

Section 14 states that if any designated authority finds that a person with disability, who had been provided adequate and appropriate support, is unable to take legally binding decisions, then he may be provided further support of a limited guardian to take legally binding decisions on his behalf in consultation with such person, in such manner, as may be prescribed by the state government. The notified court or authority may grant total support to the person with disability and in case of limited guardianship is granted repeatedly, the decision regarding the support to be provided shall be reviewed by the court or the designated authority to determine the nature and manner of support to be provided.

Persons with disabilities require high support:

Section 15 of the Act states that the appropriate government shall designate one or more authorities to mobilize the community and create social awareness to support persons with disabilities in the exercise of their legal capacity. The authorities so designated shall take measures for setting up suitable support arrangements to enable persons with disabilities living in institutions and those with high support needs to exercise their legal capacity.

EDUCATIONAL RIGHTS OF PERSONS WITH DISABILITIES

The RPwD Act, in **Section 16**, requires the appropriate government and the local authorities to ensure that all educational institutions funded or recognised by them provide inclusive education to the children with disabilities.



Responsibilities of mainstream schools to ensure inclusive education:

- Admit children with disabilities without discrimination;
- Provide education and opportunities for sports and recreation activities equally with others;
- Make buildings, campuses and various facilities accessible;
- Provide reasonable accommodation according to the individual's requirements;
- Provide necessary support individualised or otherwise in environments that maximise academic and social development consistent with the goal of full inclusion;
- Ensure that education to persons who are blind or deaf or both is imparted in the most appropriate language, mode or means of communication;
- Detect specific learning disabilities in children at the earliest and take suitable pedagogical and other measures to overcome them;
- Monitor participation, progress in terms of attainment levels and completion of education in respect of every student with disability;
- Provide transportation facilities to children with disabilities and also the attendant of the children with disabilities having high support needs.

Measures will be undertaken by the government to make inclusive education a reality:

Section 17 of the RPwD Act requires the Government and local authorities to:

- Conduct a survey of school-going children in every five years to identify children with disabilities, ascertaining their special needs and the extent to which these are being met: Provided that the first survey shall be conducted within a period of two years from the date of commencement of this Act;
- Establish adequate number of teacher training institutions;
- Train and employ teachers, including teachers with disability who are qualified in sign language and Braille, and also teachers trained in teaching children with intellectual disability;
- Train professionals and staff to support inclusive education at all levels of school education;
- Establish adequate number of resource centres to support educational institutions at all levels of school education;
- Promote the use of appropriate augmentative and alternative modes, including means and formats of communication, Braille and sign language to supplement the use of one's speech to fulfil the daily communication needs of persons with speech, communication or language disabilities and enable them to participate and contribute to their community and society;
- Provide books, other learning materials and appropriate assistive devices to students with benchmark disabilities free of cost up to the age of 18 years;
- Provide scholarships in appropriate cases to students with benchmark disability;
- Make suitable modifications in the curriculum and examination system to meet the needs of students with disabilities such as extra time for completion of examination paper, facility of scribe or amanuensis, exemption from second and third language courses;
- Promote research to improve learning.

PROVISIONS FOR SKILL DEVELOPMENT AND EMPLOYMENT



Government is required to frame schemes for skill development and employment of persons with disabilities:

Section 19 of the RPwD Act requires the appropriate government to formulate schemes and programmes, including provision of loans at concessional rates, to facilitate and support the employment of persons with disabilities, especially for their vocational training and self-employment. The scheme and programmes are to provide for the following:

- Inclusion of persons with disabilities in all mainstream formal and non-formal vocational and skills training schemes and programmes with adequate provisions of support and facilities;
- Exclusive skill training programmes will be devised for those with developmental, intellectual, multiple disabilities and autism with active links with the market;
- Maintenance of disaggregated data on the progress made in the skill training and self-employment;
- Loans at concessional rates, including that of microcredit;
- Marketing of products made by persons with disabilities.

Persons with disabilities to have protection against discrimination in employment:

Section 20 states that no government establishment shall discriminate against any person with disability in any matter relating to employment, provided that the appropriate government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, exempt any establishment from the provisions of this section.

Persons with disabilities cannot be denied promotions on the grounds of disability:

Section 20 states that no promotion shall be denied to a person merely on the ground of disability.

RIGHTS OF PERSONS WITH BENCHMARK DISABILITIES

“Person with benchmark disability” means a person with not less than forty per cent of a specified disability, where specified disability has not been defined in measurable terms, and includes a person with disability, where specified disability has been defined in measurable terms, as certified by the certifying authority. The Schedule of Specified Disabilities enumerates the following disabilities:

1. PHYSICAL DISABILITY

- A. Locomotor disability:
 - Leprosy cured person
 - Cerebral palsy
 - Dwarfism
 - Muscular dystrophy
 - Acid attack victim
- B. Visual impairment:
 - Blindness
 - Low vision
- C. Hearing impairment:
 - Deaf
 - Hard of hearing

D. Speech and language disability

2. **INTELLECTUAL DISABILITY**

A. Specific Learning Disabilities

B. Autism Spectrum Disorder

3. **MENTAL BEHAVIOUR**

A. Mental Illness

4. **DISABILITY CAUSED DUE TO**

A. Chronic neurological conditions:

- Multiple Sclerosis
- Parkinson's Disease

B. Blood disorder:

- Haemophilia
- Thalassemia
- Sickle Cell Disease

5. **MULTIPLE DISABILITIES**

Note: The Central Government may notify any other category as per need.

Institutions of higher education to reserve seats and provide age relaxation:

Section 31 of the Act states that notwithstanding anything contained in the Rights of Children to Free and Compulsory Education Act, 2009, every child with benchmark disability between the ages of 6 to 18 years shall have the right to free education in a neighbourhood school, or a special school, of his choice. Further, **Section 32** requires all government institutions of higher education and other higher education institutions receiving aid from the government to reserve not less than 5% seats for persons with benchmark disabilities and to give an upper-age relaxation of five years for admission.

Government to identify suitable jobs for persons with benchmark disabilities:

Section 33 requires the appropriate government to:

- i. Identify posts in establishments which can be held by respective category of persons with benchmark disabilities in respect of the vacancies reserved as per the provisions of Section 34;
- ii. Constitute an expert committee with representation of persons with benchmark disabilities for identification of such posts; and
- iii. Undertake periodic review of the identified posts at an interval not exceeding three years.

Percentage of reservation provided to persons with benchmark disabilities in government employment and how it is to be distributed:

Section 34 requires every appropriate government to appoint in every government establishment not less than 4% of the total number of vacancies in the cadre strength in each group of posts meant to be filled with persons with benchmark disabilities of which, 1% each shall be reserved for persons with benchmark disabilities under clauses (a), (b) and (c) and 1% for persons with benchmark disabilities under clauses (d) and (e), namely

- (a) Blindness and low vision;
- (b) Deaf and hard of hearing;
- (c) Locomotor disability, including cerebral palsy, leprosy cured, dwarfism, acid attack victims and muscular dystrophy;
- (d) Autism, intellectual disability, specific learning disability and mental illness;
- (e) Multiple disabilities from amongst persons under clauses (a) to (d) including deaf-blindness in the posts identified for each disability

Provision for age relaxation provided:

Section 34 states that the appropriate government may, by notification, provide for such relaxation of upper age limit for employment of persons with benchmark disability, as it thinks fit.

Legal provision of employment in a private sector for persons with benchmark disability:

Section 35 requires the appropriate government and the local authorities

to, within the limit of their economic capacity and development, provide incentives to the employer in the private sector to ensure that at least 5% of their workforce is composed of persons with the benchmark disability.

Provision of reservation provided in poverty alleviation and development of schemes and programmes:

- a. 5% reservation in allotment of agricultural land and housing in all relevant schemes and development programmes, with appropriate priority to women with benchmark disabilities;
- b. 5% reservation in all poverty alleviation and various developmental schemes with priority to women with benchmark disabilities;
- c. 5% reservation in allotment of land on concessional rate, where such land is to be used to promote housing, shelter, setting up of occupation, business, enterprise, recreation centres and production centres.

OTHER PROVISIONS UNDER THE ACT FOR PERSONS WITH DISABILITIES

Special provisions for persons with disabilities with High Support Needs:

Section 38 states that any person with benchmark disability, who considers himself in need of high support, or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate Government, requesting to provide high support.

Government is required to ensure an adequate standard of living in the community for persons with disabilities:

Section 24 requires that within the limit of its economic capacity and development, the government shall formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities for adequate standard of living to enable them to live independently or in the community. The quantum of assistance to the persons with disabilities under such schemes and programmes shall be at least 25% higher than the similar schemes applicable to others.

Healthcare facilities for persons with disabilities

Section 25 states that facilities provided will include barrier-free access in all parts of government and private hospitals and other healthcare institutions and centres, priority in attendance and treatment and subject to income criteria free healthcare in the vicinity especially in rural areas.

Measures to be undertaken to prevent the occurrence of disabilities:

Section 25 also states that the appropriate government and local authorities shall take measures and make schemes or programmes to promote healthcare and prevent the occurrence of disabilities. To achieve this, they will:

- (a) undertake surveys, investigations and research concerning the cause of occurrence of disabilities;
- (b) promote various methods for preventing disabilities;
- (c) screen all the children at least once a year to identify “at-risk” cases;
- (d) provide facilities for training to the staff at the primary health centres;
- (e) sponsor awareness campaigns and disseminate information for general hygiene, health and sanitation;
- (f) take measures for pre-natal, perinatal and post-natal care of mother and child;
- (g) educate the public through the pre-schools, schools, primary health centres, village level workers and Anganwadi workers;
- (h) create awareness amongst the masses through television, radio and other mass media on the causes of disabilities and the preventive measures to be adopted;
- (i) healthcare during the time of natural disasters and other situations of risk;
- (j) essential medical facilities for life saving emergency treatment and procedures; and

- (k) sexual and reproductive healthcare especially for women with disability

The Act also mandates social audits of schemes and programmes for persons with disabilities:

Section 48 requires the appropriate government to undertake a social audit of all general schemes and programmes involving persons with disabilities to ensure that they do not have an adverse impact and meet the requirements and concerns of persons with disabilities.

Insurance schemes to be devised for employees with disabilities in government service:

Section 26 requires the appropriate government to notify and make insurance schemes for their employees with disabilities.

Steps to be undertaken for rehabilitation in the areas of health, education and employment:

Section 27 states that within the economic capacity and development of the government and local authorities, services and programmes of rehabilitation, particularly in the areas of health, education and employment for all persons with disabilities shall be undertaken. Rehabilitation policies shall be drawn up in consultation with NGOs and financial assistance shall be provided to NGOs for implementing services and programmes.

Measures to be taken to ensure persons with disabilities have a cultural life and participate in recreational activity:

Section 29 requires the appropriate government and local authorities to provide sponsorships to artists and writers with disability, establish a disability history museum, which chronicles and interprets their historical experiences, make art accessible, promote recreation centres and other associated activities, redesign courses in cultural and arts subjects to enable participation and facilitate participation in scouting, dancing, art classes, outdoor camps and adventure activities.

Section 29 also requires the development of technology, assistive devices and equipment to facilitate access and inclusion for persons

with disabilities in recreational activities and also ensuring that persons with hearing impairment can access television programmes with sign language interpretation or sub-titles.

Measures to be introduced to ensure accessibility in infrastructure, transport and other public spaces:



Persons with disability independently accessing an ATM

Sections 40, 41, 44-46 lay down specific provisions for development and improvement of facilities in the public spaces to ensure accessibility for persons with disabilities. This includes ensuring that newly constructed buildings adhere to strict rules of construction which include facilities for persons with disability and older buildings are renovated to include above mentioned facilities.



All public spaces must have special provisions for persons with disability

Transport must also be made more accessible so that persons with disability can enjoy the use of public spaces and facilities with dignity and freedom. Further, the appropriate government and the local authorities are required to formulate and publish an action plan for providing accessibility in all their buildings and spaces that offer essential services - such as all primary health centres (PHCs), civil hospitals, schools, railway stations and bus stops.

SCHEMES FOR THE WELFARE OF PERSONS WITH DISABILITY

Scheme of Assistance to Disabled Persons for Purchase/Fitting of Aids/ Appliances Scheme (ADIP Scheme)

ADIP scheme is a scheme of Assistance to Disabled Persons for Purchase/Fitting of Aids/Appliances. Its main objective is to assist the needy persons with disabilities in procuring durable, sophisticated and scientifically manufactured, modern, standard aids and appliances that can promote their physical, social and psychological rehabilitation, by reducing the effects of disabilities and enhance their economic potential. The aids and appliances that are supplied under the scheme must have due certification. A person with disabilities fulfilling the following conditions would be eligible for assistance under ADIP scheme.

- An Indian citizen of any age.
- Holds a 40% Disability Certificate.
- Has a monthly income from all sources not exceeding Rs 20,000/- per month.
- In case of dependents, income of parents/guardians should not exceed Rs 20,000/- per month.
- Who have not received assistance during the last 3 years for the same purpose from any source. However, for children below 12 years of age, this limit would be 1 year.

Aids/appliances which do not cost more than Rs. 10,000/ - are covered under the Scheme for a single disability. However, in the case of Students with Disabilities (SwDs), students beyond IX class, the limit would be raised to Rs.12,000/-. In the case of multiple disabilities, the limit will apply to individual items separately in case more than one aid/appliance is required.

Scholarships for Students with Disability

There are scholarships provided for SwDs under the Scheme of *National Scholarships for Persons with Disabilities*. Every year, 500 new scholarships are awarded for pursuing post-matric professional and technical courses of duration more than one year. However, for students with cerebral palsy, mental retardation, multiple disabilities and profound or severe hearing impairment, scholarship is awarded for pursuing studies from Class IX. Students with 40% or more disability, whose monthly family income does not exceed Rs. 15,000, are eligible for scholarship. A scholarship of Rs. 700/- per month to day-scholars and Rs. 1,000/- per month to hostellers is provided to the students pursuing Graduate and Post Graduate level technical or professional courses. A scholarship of Rs. 400/- per month to day-scholars and Rs. 700/- per month to hostellers is provided for pursuing diploma and certificate level professional courses. In addition to the scholarship, the students are reimbursed the course fee of upto Rs. 10,000/- per year.

Facilities for voters with disabilities

Voters having one among the 21 disabilities as mentioned by the Rights of Persons with Disabilities Act 2016 are termed as voters with disabilities. In addition, if a person who has reduced mobility and/or motor function and/or physical coordination due to age, temporary ailment, pregnancy and other disease, and needs to be facilitated to get registered and to vote are termed as electors/ voters with reduced mobility and physical functions.

An eligible person with disability or reduced mobility/ physical functions can get enrolled in electoral roll by filling Form 6 inclusive of information about one's disability online at www.nvsp.in and uploading the necessary documents. One can also enrol at voter enrolment centres or the offices of Electoral Registration Officers/ Assistant Electoral Registration Officers, which will be accessible for persons with disabilities and reduced mobility/ physical functions, by filling Form 6 in two copies which are available free of cost at such centres/ offices and annexing copies of the relevant documents. In case of any assistance/ facilitation of communication required in filling the form, the same would be provided at both offices. The forms can also be sent by post to Electoral Registration Officer/ Assistant Electoral Registration Officer.

GRIEVANCE REDRESSAL AND SPECIAL COURTS

CHIEF COMMISSIONER OF PERSONS WITH DISABILITIES- NODAL GRIEVANCE REDRESSAL AUTHORITY

The Chief Commissioner for Persons with Disabilities is the nodal authority to address the grievances and issues of persons with disabilities. **Section 74** of the RPwD Act requires the appointment of a Chief Commissioner for Persons with Disabilities and two Commissioners to assist the Chief Commissioner, of which one Commissioner shall be a person with disability. Further, the Chief Commissioner shall be assisted by an advisory committee comprising of not more than 11 members drawn from the experts from different disabilities

Functions and Duties of the Chief Commissioner:

Section 75 requires the Chief Commissioner to:

- a) identify *Suo motu* or otherwise, the provisions of any law or policy, programme and procedures, which are inconsistent with the RPD Act and recommend necessary corrective steps;
- b) inquire, *Suo motu* or otherwise, deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the Central Government is the appropriate government and take up the matter with the appropriate authorities for corrective action;
- c) review the safeguards provided by or under the Act or any other law for the time being in force for the protection of the rights of persons with disabilities and recommend measures for their effective implementation;
- d) review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures;
- e) study treaties and other international instruments on the rights of persons with disabilities and make recommendations for their effective implementation;

- f) undertake and promote research in the field of the rights of persons with disabilities;
- g) promote awareness of the rights of persons with disabilities and the safeguards available for their protection;
- h) monitor implementation of the provisions of the Act and schemes, programmes meant for persons with disabilities;
- i) monitor the utilisation of funds disbursed by the Central Government for the benefit of persons with disabilities;
- j) perform such other functions as the Central Government may assign.

Powers of the Chief Commissioner:

Section 77 states that the Chief Commissioner shall, to discharge his functions under this Act, have the same powers of a civil court as are vested in a court under the Code of Civil Procedure, 1908, while trying a suit, in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of witnesses;
- (b) requiring the discovery and production of any documents;
- (c) requisitioning any public record or copy thereof from any court or office;
- (d) receiving evidence on affidavits;
- (e) issuing commissions for the examination of witnesses or documents.

Every state government required to appoint a State Commissioner for Persons with Disabilities:

Section 79 requires the State Governments to appoint a State Commissioner for Persons with Disabilities who shall be assisted by an advisory committee comprising of not more than five members drawn from the experts in the disability sector in such manner as may be prescribed by the State Government.

Section 80 requires the State Commissioner to:

- a) identify, *Suo motu* or otherwise, provision of any law or policy,

programme and procedures, which are inconsistent with this Act, and recommend necessary corrective steps;

- b) inquire, *Suo motu* or otherwise, into a deprivation of rights of persons with disabilities and safeguards available to them in respect of matters for which the State Government is the appropriate government and take up the matter with appropriate authorities for corrective action;
- c) review the safeguards provided by or under this Act or any other law for the time being in force for the protection of the rights of persons with disabilities and recommend measures for their effective implementation;
- d) review the factors that inhibit the enjoyment of rights of persons with disabilities and recommend appropriate remedial measures;
- e) undertake and promote research in the field of the rights of persons with disabilities;
- f) promote awareness of the rights of persons with disabilities and the safeguards available for their protection;
- g) monitor implementation of the provisions of this Act and schemes and programmes meant for persons with disabilities;
- h) monitor utilisation of funds disbursed by the state government for the benefit of persons with disabilities; and
- i) perform such other functions as the State Government may assign.

SPECIAL COURTS

Section 84 requires that for providing speedy trial, the state government shall notify for each district a Court of Session to be a Special Court to try the offences under this Act. This has to be done with the concurrence of the Chief Justice of the High Court of the state.

Public prosecutors shall be appointed in these courts:

Section 85 requires the state government to notify and specify a Public Prosecutor or appoint an advocate with experience of not less than 7 years as a Special Public Prosecutor for the purpose of conducting cases in the Special Court.

Forum under this Act for persons with disabilities to approach if they face discrimination in employment:

Section 23 requires the appointment of a Grievance Redressal Officer (GRO) by every government establishment for grievance redressal relating to the matters of employment. The appointment of a GRO has to be notified to the Chief Commissioner or State Commissioner Disabilities as the case may be.

Any person aggrieved with the non-compliance of the provisions relating to employment may file a complaint with the GRO who shall investigate it and shall take up the matter with the establishment for corrective action.

The GRO shall maintain a register of complaints in the manner as may be prescribed by the Central government and every complaint shall be inquired within two weeks of its registration.

If the aggrieved person is not satisfied with the action taken on his or her complaint, he or she may approach the District-Level Committee on disability.

OFFENCES AND PENALTIES



PENALTIES PRESCRIBED FOR OFFENCES COMMITTED UNDER THE ACT

- For the first contravention of provisions or rules under the Act, a fine up to Rs 10,000, and for subsequent contravention, a fine of Rs 50,000 up to Rs 5 lakh.
- If a company commits an offence and is proved that the offence has been committed with the consent, connivance or neglect by any director or other officer, such officer of the company shall be deemed to be guilty and liable to be proceeded against and punished accordingly.
- For fraudulently availing benefits meant for persons with benchmark disabilities, imprisonment up to two years or with fine up to Rs 1 lakh or with both.
- For insulting, intimidating, humiliating a person with disability within public view; assaulting or using force with intent to dishonour or outrage the modesty of a woman with disability;

denying food or fluids; sexually exploiting; injuring, damaging or interfering with the use of any limb or sense or any supporting device; performing, conducting or directing any medical procedures which leads to termination of pregnancy without her express consent, or that of a guardian and without the opinion of a registered medical practitioner; imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

- For will fully failing to produce any book, account or other documents or failing to furnish any statement, information or particulars, punishment with fine up to Rs. 25,000 for each offence, and in case of continued failure or refusal, with further fine up to Rs. 1,000 for each day after the date of the original order imposing the punishment of fine.

WHAT CAN A PERSON WITH DISABILITY DO IF PROVISIONS OF THIS LAW ARE NOT IMPLEMENTED?

- Make representations to the concerned government and/ or the concerned establishment, if there is deprivation or violation of any right provided under the Disabilities Act.
- If there is no response or if the response is negative/ inadequate, approach the concerned Commissioner of Disabilities.
- Alternatively, file a Writ Petition under Article 226 of the Constitution of India, in the concerned High Court.
- If there is any violation of a Constitutional right also, of national importance, file Writ Petition under Article 32 of the Constitution before the Supreme Court.

NATIONAL TRUST ACT, 1999

The “National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities” Act, 1999 provides for setting up a statutory body named National Trust to enable persons with disability to live independently by: (i) promoting measures for their protection in case of death of their parents, (ii) evolving procedures for appointment of their guardians and trustees, and (iii) facilitating equal opportunities in society.

The objectives of the National Trust in particular are:

- to enable and empower persons with disability to live as independently as possible within and as close to their community as possible;
- to facilitate the realisation of equal opportunities, protection of rights and full participation of persons with disability;
- to extend support to its registered organisations to provide need-based services; and
- to evolve procedures for appointments of guardians and trustees for persons with disabilities.

Disabilities under National Trust Act:

The National Trust works for the welfare of persons with any of the following four disabilities

- Autism Spectrum Disorder (ASD)
- Cerebral Palsy
- Mental Retardation (now termed as Intellectual Disability)
- Multiple Disabilities

What is Guardianship?

A guardian is a person who is appointed to look after another person or his property. He or she assumes the care and protection of the person for whom he/she is appointed the guardian. The guardian takes all legal decisions on behalf of the person and the property of the ward. The occasion for taking care of another person may be his minority

that is, a person who has not completed 18 years of age. It can also refer to guardianship of a person who because of physical and mental deficiencies is unable to take care of himself or his property. From early times, the condition of minority has been the ground for the appointment of guardians in all societies. This is because a minor person is considered unfit to make informed decisions for himself, which can be binding on him as regards others. Therefore, a minor person is treated in law as incompetent to enter into a contract with a person who is an adult. In all matters, therefore, a minor has also been considered unfit to represent himself except through his guardian. A guardian decides on behalf of the minor for protecting the interests of the minor and his property under the **Guardianship and Wards Act, 1890, Indian Contract Act, 1872 and Mental Health Act, 1987**

Constitution of Local Level Committee (LLC):

As per **Section 13 (1)** of the National Trust Act 1999, the Board shall constitute a Local Level Committee (LLC) for such area as may be specified from time to time.

As per **Section 13(2)**, a local level committee (LLC) shall consist of-

- An Officer of the Civil Service of the Union or of the State, not below the rank of a District Magistrate or a District Commissioner of a district;
- A Representative of a Registered Organization; and
- A Person with disability as defined in Clause (t) of Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Right & Full Participation) Act, 1995 (1 of 1996). *Section 13(1) and (2) of National Trust Act-1999.*

Local Level Committee (LLCs) have been advised to include following as co-opted members in addition to the statutory members to assist them in their functioning

- District Social Justice Officer/District Welfare Officer/District Rehabilitation Officer
- Civil Surgeon or Chief Medical Officer,
- A Psychiatrist of the District Hospital

- A Reputed Lawyer in the district

Apart from above, Local Level Committee (LLC) could involve any other Government Officer or Disability Experts for rendering justice to the case and effective functioning, as per *Guidelines issued in October 2007, based on Section 13(5) of National Trust Regulations.*

Schemes under National Trust Act

- 1. Disha (Early Intervention and School Readiness Scheme):** This is an early intervention and school readiness scheme for children in the age group of 0-10 years with the four disabilities covered under the National Trust Act and aims at setting up Disha Centres for early intervention for a person with disability through therapies, trainings and providing support to family members.
- 2. Vikaas (Day Care):** This is a day care scheme, primarily to expand the range of opportunities available to persons with disabilities for enhancing interpersonal and vocational skills as they are on a transition to higher age groups. The centre will also offer care giving support to the persons with disabilities during the time the person with disability is in the Vikaas centre. In addition, it also helps in supporting family members of the persons with disabilities covered under the National Trust Act to get some time during the day to fulfil other responsibilities.
- 3. Samarth (Respite Care):** The objective of Samarth scheme is to provide respite homes for orphans or abandoned, families in crisis and also for persons with disabilities from Below Poverty Line (BPL) & Low Income Group (LIG) families, including destitute with at least one of the four disabilities covered under the National Trust Act.
- 4. Gharaunda (Group Home for Adults):** The objective of Gharaunda scheme is to provide an assured home and minimum quality of care services throughout the life of the person with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities with adequate and quality care service with acceptable living standards including provision of basic medical care from professional doctors. Gharaunda Centre should provide vocational activities, pre-vocational activities and assistance for further training.

5. **Niramaya (Health Insurance Scheme):** The objective of Niramaya scheme is to provide affordable Health Insurance to persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities. All enrolled beneficiaries will get a health insurance cover of up to Rs. 1.0 lakh as defined in the chart OPD treatment including the medicines, pathology, diagnostic tests, etc.
6. **Sahyogi (Caregiver training scheme):** This scheme aims at setting up Caregiver Cells (CGCs) to provide training and create a skilled workforce of caregivers to provide adequate and nurturing care for persons with disabilities and their families who require it. It also seeks to provide parents an opportunity to get trained in care giving if they so desire. This scheme provides a choice of training through two levels of courses of primary and advanced levels.
7. **Gyan Prabha (Educational support):** The Gyan Prabha scheme aims to encourage people with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities for pursuing educational/ vocational courses like graduation courses, professional courses and vocational training leading to employment or self-employment. National Trust will provide a specific amount per course to a Person with Disability which will generally cover fees, transportation, books, out of pocket expenses (OPEs) etc.
8. **Prerna (Marketing Assistance):** Prerna is the marketing assistance scheme of National Trust to create viable and widespread channels for sale of products and services produced by Persons with disabilities (PwDs) covered under National Trust Act. The scheme also provides an incentive to the Registered Organisation (RO) based on the sales turnover of the products made by PwDs and fund their participation in sales such as exhibitions, melas, fairs, etc. to sell the products made by persons with disabilities.
9. **Sambhav (Aids and Assisted Devices):** This is a scheme to set up additional resource centres, one each in each city of the country with population greater than 5 million (As per 2011 census), to provide information and easy access to devices, appliances, aids,

software, etc. for betterment and empowerment of PwDs under the National Trust disabilities.

10. Badhte Kadam (Awareness and Community Interaction):

This scheme shall support Registered Organisations (RO) of The National Trust to carry out activities that focus on increasing the awareness of the National Trust disabilities. It aims at community awareness, sensitisation, social integration and mainstreaming of persons with disabilities. The National Trust shall sponsor a maximum of 4 events for each RO per year which is obligated to conduct at least 1 event in a year.

MENTAL HEALTHCARE ACT, 2017

It is the right of every person to have access to healthcare services, including mental healthcare. In order to ensure access to mental health assistance to all, the Mental Healthcare Act, 2017 was passed on 7 April, 2017 and came into force from 29 May, 2018.

What is Mental Illness?

The **Mental Healthcare Act, 2017** defines “**mental illness**” as a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behaviour, capacity to recognize reality or ability to meet the ordinary demands of life, mental conditions associated with the abuse of alcohol and drugs, but does not include mental retardation which is a condition of arrested or incomplete development of mind of a person, specially characterized by subnormality of intelligence.”



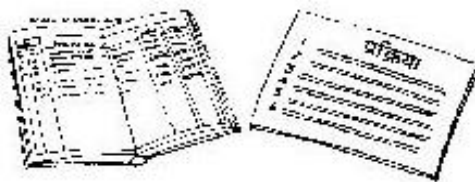
What is Mental Health Care?

Mental Healthcare includes analysis and diagnosis of a person's mental condition and treatment as well as care and rehabilitation for mental illness. The motive of this Act is to provide mental healthcare and services for persons with mental illness and to protect, promote and fulfil the rights of such persons during delivery of mental healthcare and services.

Rights of Persons with Mental Illness as given in the Mental Healthcare Act, 2017:



Mental Health Care



Access to Information and Record



No Discrimination



Right to Legal Aid



No cruelty and inhuman treatment

1. **Right to Access Mental Healthcare:** Every person shall have the right to access mental health services run or funded by the appropriate Government at affordable cost and the mental health services should be available in sufficient quantity without any discrimination on the basis of gender, sex, sexual orientation,

religion, culture, class, caste, political beliefs, disability or any other basis.

2. **Right to Information:** A person with mental illness or his nominated representative shall have the right to know the criteria of admission if the person is being admitted, know and understand the treatment plan and side effects (if any) of the proposed treatment and make application to the concerned Board to review the admission.
3. **Right to Access Medical Health Records:** All persons with mental illness shall have the right to access their basic medical records. However, the mental health professional (in charge of such records) may withhold specific information in the medical records if disclosure would result in serious mental harm to the person with mental illness or likelihood of harm to other persons.
4. **Right to Equality and Non-Discrimination:** Every person with mental illness shall be treated as equal to persons with physical illness which should include access to ambulance services, emergency service and other services without any discrimination
5. **Right to Confidentiality and Restriction on release of information in respect of mental illness:** A person with mental illness shall have the right to confidentiality in respect of his mental health, healthcare and treatment plan. Therefore, all health professionals providing treatment to a person with mental illness should keep the information confidential which has been obtained during the treatment. The right to confidentiality of person with mental illness shall also apply to all information stored in electronic or digital format in real or virtual space.
6. **Right to Free Legal Aid:** A person with mental illness shall be entitled to receive free legal services to exercise his rights given under the Mental Healthcare Act. It should be the duty of the magistrate, police officer, person in charge of the custodial officer or mental health establishment to inform the person with mental illness that he is entitled to free legal services.

7. **Right to make Complaints about Deficiencies and Provision of Services:** Any person with mental illness or his nominated representative shall have the right to complain regarding deficiencies in provision of care, treatment and services in a mental health establishment to the medical officer. If not satisfied, the person should send the complaint to the concerned Board or the State Authority if not satisfied by the response of the concerned Board.
8. **Right to protection from cruel, inhuman and degrading treatment:** Every person with mental illness shall have a right to live with dignity and they must be protected from cruel, inhuman or degrading treatment in any mental health establishment.
9. **Capacity to make Mental Healthcare and Treatment Decisions:**
 - i. Every person including a person with mental illness shall have the right to make healthcare or treatment decision, if the person is able to understand the information related to the treatment, communicate the decision by speech, expression or gesture and appreciate any reasonable consequence of a decision or a lack of decision on treatment.
 - ii. The information regarding the healthcare treatment shall be given in a language that is understandable to the person with mental illness, i.e. use of simple language, visual aids or sign language.
 - iii. The determination of a person's mental illness shall alone not imply or be taken to mean that the person is of unsound mind unless he has been declared as such by a competent court.
10. **Advance Directive:** Every person who is not a minor, shall have a right to make an advance directive in writing, specifying the way a person wishes to be cared and treated for a mental illness, and appoint individual or individuals as his nominated representative for taking decision related to his treatment in conditions when the person is unable to make treatment decisions for himself

Who is a Nominated Representative? A nominated representative is an individual, whom a person with mental illness appoints to represent and support him and to take decisions on his behalf during the process of his treatment in the mental healthcare system. A nominated representative might be a family member, close friend but not a minor, and should be competent to discharge the duties or perform the functions assigned to him.

Rights & Duties of the Nominated Representative: The nominated representative of the person with mental illness is mandated to provide support to him in making treatment decisions and have the right to seek information about diagnosis and treatment and be involved in discharge planning, have access to the family or home based rehabilitation services. The nominated representative shall have the right to withhold consent for letting the state authority obtain the knowledge and do relevant research on the mental health needs of the person with mental illness.

The Mental Healthcare Act specifies the **procedure and conditions of admission, treatment and discharge** of persons with mental illnesses including **minors**. Further, it states that minors so admitted shall be accommodated separately from adults, in an environment. Their age and developmental needs are kept under consideration.

The Act also prohibits the use of the following procedures on persons with mental illness:

- i. Electro-convulsive therapy without the use of muscle relaxants and anaesthesia
- ii. Electro-convulsive therapy for minors
- iii. Sterilisation of men and women, when such sterilization is intended as a treatment for mental illness
- iv. Chaining in any manner

Roles and Responsibilities of the Concerned Authorities:

1. Duties of the Appropriate Government:

- i. The appropriate government shall have a duty plan, design and implement programmes for the promotion of mental

health and prevention of mental illness in the country.

- ii. The appropriate Government shall have a duty to provide care, treatment and rehabilitation to a person, having severe stress and who attempted suicide, to reduce the risk of reoccurrence of attempt to commit suicide.
- iii. It shall also address the human resource requirements of mental health services in the country by planning and implementing educational and training programs in collaboration with institutions of higher education and training.
- iv. The appropriate Government shall train all medical officers in public healthcare establishments and all medical officers in the prison or jails to provide basic and emergency mental healthcare.
- v. The appropriate government shall make necessary arrangements for a range of services required by a person with mental illness and integrate mental health services into general healthcare services at all levels such as Health establishments in all districts in urban as well as rural areas.
- vi. Persons with mental illness living below the poverty line whether or not in possession of a below poverty line card , or persons who are destitute or homeless shall be entitled to mental health services free of any charge and at no financial cost, with free of cost medicines at all mental health establishment run or funded by the appropriate Government.
- vii. The Central Authority shall periodically review the use of advanced directives.

2. Duties of the State Mental Health Authority:

- i. **Development of Quality Standards:** The development of quality provision norms and standards for different types of mental health establishments shall be specified by regulations made by the State Authority.

- ii. **Registration of Mental Health Professionals:** The State Authority shall register clinical psychologists, mental health nurses and psychiatric social workers in the State to work as mental health professionals and publish the list of registered mental health professionals in each district.
- iii. **Constitution of Mental Health Review Boards:** The State authority shall constitute a Mental Health Review Board to address issues faced by persons with mental illness such as providing legal aid, provide a caregiver if a nominated representative is not available, etc.
- iv. **Research:** The State Authority must take informed consent from persons with mental illness for participation in any research involving interviewing the person or psychological, physical, chemical or medical interventions.

3. **Mental Health Review Board:**

- i. In conditions where no person such as relative or caregiver is available to be appointed by the person with mental illness, the Mental Health Review Board, constituted by the State Authority shall appoint the Director, Department of Social Welfare, or his designated representative as the nominated representative of the person with mental illness.
- ii. To receive and decide upon applications from persons with mental illness or their nominated representatives against the decisions of mental health professionals or in respect of non-disclosure of information in mental health establishments.
- iii. Where an establishment violates the rights of a person with mental illness, the Board or Authority may conduct an inquiry and take action to protect the rights of such persons.

4. **Mental Health Establishments:**

- i. Every person or organization that proposes, establishes or runs any mental health establishment shall register the said establishment with the Authority.

- ii. Every mental health establishment should meet the minimum standards of services and facilities and specified number of personnel engaged in the establishment for the purpose of registration and continuation of registration of the mental health establishment.
- iii. Every mental health establishment shall display the certificate of registration in a conspicuous place in the mental health establishment in such a manner that it is visible to all visitors.
- iv. An audit of all registered mental health establishments shall be conducted every three years under the supervision of Review Board.

5. **Mental Health Professionals:**

- i. No mental health professional or medical practitioner shall discharge any duty or perform any function not authorized by the Act or specify or recommend any medicine or treatment not authorized by the field of profession.
- ii. The mental health professional working in any mental health establishment must possess authentication or registration under the concerned authority.

6. **Responsibilities of Other Agencies:**

- i. **Duties of police officers in respect of person with mental illness:** Every officer in- charge of a police station shall have a duty to protect any person wandering at large (within the limits of the police station) if the officer has reason to believe that the person has mental illness and is incapable of taking care of himself and take him to the nearest public health establishment. In case of homeless persons wandering in the community, report of missing person shall be lodged at the concerned police station.
- ii **Duties of the Medical Staff:** The medical officer in- charge of the public health establishment shall be responsible for the assessment of the person and the needs of the person with mental illness.

- iii. **Duties of the Magistrate:** When any person with mental illness appears or is brought before the Magistrate, the Magistrate may order in writing that the person is conveyed to a public mental health establishment for assessment and treatment.

7. Offences and Penalties:

- i. **For Unregistered Mental Health Establishments:** Whoever carries on a mental health establishment without registration shall be liable to a penalty which should not be less than five thousand rupees which may be extended up to fifty thousand rupees.
- ii. **For Persons Working in Unregistered Mental Health Establishment :** Whoever knowingly serves as a mental health professional in a mental health establishment not registered under the Act, shall be liable to a penalty up to twenty thousand rupees.
- iii. **Punishment for the contravention of provisions made under the Act:** Any person who contravenes any provisions, rules or regulation of this Act, shall be punishable with imprisonment for a term which may extend to six months, or with a fine extended up to ten thousand rupees or both.
- iv. **Offences by Companies:** Where an offence has been committed by a company, every person who at the time of offence was in- charge for the conduct of the company shall be deemed to be guilty and punished accordingly.

PREVENTION OF MENTAL ILLNESS

There can be multiple causes contributing to mental illness. The following tips may be useful for prevention of the same:

- i. Eat nutritious food and exercise daily.
- ii. Engage yourself in a hobby or constructive activity.
- iii. Do not self-criticize and treat yourself with kindness and respect.
- iv. Learn how to deal with stress.

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- v. Set realistic goals.
- vi. Seek peer group support when feeling sad or depressed.
- vii. Approach teachers if there is any adjustment problem with classmates or peers.
- viii. Talk to parents regarding issues faced with studies, school or any social setting.
- ix. Stay away from cigarettes, alcohol and other drugs.
- x. Get help from a professional when you need it.

WOMEN AND LAW IN INDIA

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I. Introduction

The status of women in India has a very long and ever-changing story. In ancient times women used to enjoy rights and status equal to men. They used to be educated and independent. Their status is evident from facts like women used to enjoy the freedom to choose their husband in a ceremony commonly known as “Swayamwar”. There are instances in history that show that women used to be rulers, administrators, military commanders, teachers, writers, poets and what not.

Thereafter, after the invasion of Mughals during medieval period the position of women in India encountered a dramatic decline. Daughters and other women were kept inside homes and were not allowed to enjoy freedom. There are instances that depict that women were treated as slaves and were inflicted with sexual wrongs as well. All these reasons gave rise to customs like Purdah system, Sati, Johar etc. Due to all these, their position in society kept on deteriorating as their interference in administration, law making etc. had almost ended. They had no representation or say in almost everything.

Later on, during British rule, many social reformers came up and fought for the rights of women. Due to their efforts, many customs like Sati, Devdasi, Johar etc. could be ended. Schools were set up to provide free education to girls and many other efforts were taken to strengthen the position of females. Post-independence, Constitutional provisions were drafted in such a way that equal rights and opportunities can be provided to women so that they can also live and enjoy their basic human rights. Since then several legislations are being enacted for the welfare and development of women and their status in India.

II. Constitution of India and Women

Indian constitution has many provisions for protection of women rights. The preamble of Constitution of India also emphasizes on them. It guarantees the equality of rights of men and women in every possible way and prohibits discrimination on the ground of sex. The provisions are based on the principle of gender equality. This particular principle is featured in Preamble, Fundamental rights and Directive Principles. Indian constitution gives power to the States to make laws for the empowerment and the betterment of the women. Constitution allows the positive discrimination in favour of women by the States so that equality can be assured.

In the same sequence following are the specific provisions that are enshrined in Constitution of India related to the rights of women of country.¹

- **Article 14-** This provision talks about equality before law and equal protection of law. It means that no one is above law and every citizen of India will be subjected to the law of land. No matter the person is male or female law is same for both. Law sees both of them with same glasses. Law does not discriminate between men and women and treats them with equality. This provision allows for reasonable classification and by doing so special laws can be made for any class or group on the basis of reasonability.
- **Article 15(1) -** This Article says that any State will not discriminate against any citizen of India on any basis whether it is religion, race caste sex or place of birth. This provision includes “sex” also which means there can be no discrimination on the part of State on the basis of gender and man and woman should be treated equally.
- **Article 15(3) -** It provides for the special provision for women and children. It says that power of the State to make special laws for women and children will not be barred by this article. Hence positive discrimination can be there.
- **Article 16-** This article deals with the provision of equality of opportunity in matters of public employment. As per this provision, for any employment which comes under the control of State or any government employment there will be no discrimination against any person on the basis of religion, race, caste, sex, decent, residence, and place of birth. Hence for any government job nothing of the above mentioned can be the criterion. Ground of Sex cannot make a person eligible for public employment. Females are given the equal opportunity as males for this purpose.
- **Article 39(a) -** This article comes in the part IV of the Indian Constitution. It comprises the directive principles of State policy. This particular article says that State will form its policies for securing the equal rights of men and women towards an adequate means of livelihood. Women should be given equal opportunity as to men to earn their bread and butter and for fulfilling their essential requirements. There will not be any discrimination between a man and a woman.

¹ http://www.legalserviceindia.com/helpline/woman_rights.htm

- **Article 39(d)** - This clause of Art 39 provides that there should be equal pay for equal work for men and women. In a simple way, if two persons, a man and a woman are doing the same nature of work, their pay will be equal for that work. There should be no difference in their remuneration on the basis of their gender.
- **Article 42-** States are responsible to provide just and humane conditions of work to both the men and women. Further, it provides that women employees should be given maternity relief during their employment whether public or private. Earlier this used to be of 3 months paid leaves now it has been changed to 6months paid leaves along with other benefits.
- **Article 46-** This article provides that state will promote with special care and economic interests of the weaker sections of the people. Specially scheduled castes and scheduled tribes to protect them from social injustice and exploitation. The term weaker used here has wider scope and may include women in it. Hence state may form policy for women to protect them from exploitation and injustice.
- **Article 47-** This article says that the state has the duty to raise the level of nutrition and standard of living of its people. The word “people” is used here which include men and women both. Under this provision if required State may make policy or special laws for the nutrition and better living of females of any group or public at large. State cannot differentiate against women.
- **Article 51(a) (e)** - Part IV-A of the Constitution which contains the Fundamental Duties. It provides that it is the duty of every citizen of India to promote harmony and the spirit of Common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities to renounce practices derogatory to the dignity of women.
- **Article 243 D (3)** - Some provisions were added to the constitution by the 73rd and 74th Amendment in the year 1992. This article provided for the reservation of women in election. It says, not less than one –third (it includes the number of seats reserved for women who belong to scheduled castes and scheduled tribes) of the total number of the seats to be filled by direct election in every Panchayat to be reserved for women. Such seats to be allotted by rotation to different constituencies in a Panchayat.
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- **Article 243 D (4)** – It provides the reservation of chairman posts. It says that not less than one-third of total number of offices of chairpersons in the Panchayats at each level to be reserved for women.
- **Article 243 T (3)** – It says that no not less than one –third (it includes the number of seats reserved for women who belong to scheduled castes and scheduled tribes) of the total number of the seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality.
- **Article 243 T (4)** – It provides for the reservation of offices of chairpersons in municipalities for Scheduled castes, Scheduled tribes and women also. The legislature of the State may make law for the same.

Landmark Cases:

1. *Air India v. Nargesh Meerza* (AIR 1981 SC 1829)

In this case Supreme Court struck down the regulation no. 46 of the Air India and Indian Airlines Regulations which provided that an Air Hostess will be retired from service if she attains the age of 35 years or if she marries within 4 years of her service or if she gets pregnant whichever occurred earlier. Court held that the regulation was unconstitutional as it violated provisions of Article 14. Court called the provision as arbitrary, cruel and unreasonable as the impact of the law was open insult to Indian motherhood the most sacrosanct and cherished institution.

2. *Lata singh v. State of Uttar Pradesh and Another*, (2006, (6) SCALE 583)

In this case Supreme Court held that every woman who has attained the age of maturity and is mentally sound can marry the man of her own choice. Inter caste marriage is not ban under Hindu Marriage Act. Her fundamental rights provided in the constitution are well protected and cannot be infringed under the garb of social norms.

III. Personal Laws and Women

a. Unequal position of women – different personal laws and Directive principles of State Policy

In India there are different personal laws that supersede general laws applicable with respect to marriage, divorce, adoption, succession and maintenance. A person belonging to any specific religious community like Hindu, Muslim, Parsi, Christian etc. will be dealt under their specific personal laws for matters stated above. This creates a huge disparity in various provisions including the ones applicable for rights of women. Even though the Constitution provides for equality provisions for all genders but the provisions under specific laws (personal laws) defy the very purpose. In order to overcome this demerit Art. 44 of Indian Constitution falling under Part IV forming part of Directive Principle of State Policy provides for a Uniform Civil Code (UCC) that needs to be implemented throughout the nation.

Various provisions under different personal laws that implicate the disparity in rights of women in India are as follows:

Inheritance

The provisions relating to succession are dealt under succession acts applicable on different people. Under Parsi personal Law a non Parsi woman marrying a Parsi man or who is a widow of Parsi man cannot inherit her husband's property on his death.

Similarly, under Hindu Law if a married woman dies without having any children her estate devolves upon the heirs of her husband and not her own.

Under Travancore Christian Succession Act, 1916 and the Cochin Christian Succession Act, 1921 applicable on Christians in Kerala the daughter's right to inherit her father's property is limited to '*stridhan*' and only a life interest in any immovable property is recognised which is either terminated on her death or remarriage. Similar discriminatory provisions are there in laws applicable on Christians living in Goa and Pondicherry as well.

Under Muslim Law there is a vast discrimination in inheritance rights of male and females of same degree. The females can inherit only half of the share inherited by males.

Marriage and divorce

Polygamy and polyandry are not kept on equal footing under personal laws. In Muslim Law, a male can have up to 4 legally wedded wives but not vice versa. Similarly, in some Hindu

Communities in Goa and Daman and Diu polygamy is permissible under pre-merger laws which are still prevalent but not polyandry².

Under Parsi personal law, a Parsi woman marrying a non-Parsi man is not accepted as a member of Parsi community which is not the case if a Parsi man marries a non-Parsi woman.

In matters of divorce, there are certain differentiating provisions under Muslim law like a female Muslim can divorce her husband by following the legal procedure and only on some specified grounds but a male Muslim can do so even by three pronouncements of ‘*talaq*’ (*Talaq-e-bidat*/triple talaq) and on any reason howsoever meagre it is. Even though this provision of Muslim law has been struck down by Hon’ble Supreme Court in case of ***Shamim Ara v. State of U.P. & Anr***³ but there is still no codified law for this purpose.

Further, a Muslim female cannot remarry a man who has divorced her unless she has first married another man and consummated the marriage. This is again a provision that undermines the modesty of a woman and defeats the very purpose enshrined in the Constitution.

Guardianship and adoption

Under Hindu Law, women have been given an inferior right to adopt a child as compared to a man. A woman can adopt only if her husband has either renounced the world, becomes insane or has ceased to be a Hindu. Also, the mother under Hindu Minority and Guardianship Act, 1956 is the second natural guardian of a legitimate child, father being the first being given custody of child up to certain age only (5 years). Similar are the provisions under Muslim Law as well where father is the natural guardian of a child and mother has only rights of custody (*Hizzanat*) of child up to a certain age depending on the sex of child (up to puberty if female and up to 7 years (in Sunnis) or 2 years (in Shias) if male).

This unequal position of rights of mother was challenged in ***Githa Hariharan v. Reserve Bank of India***⁴ where Hon’ble Supreme Court declared this provision as violative of gender justice guaranteed under Indian Constitution and interpreted the term ‘after’ in section 6 as including absence, total apathy or inability as well along with the death of the father. But it does not still guarantee the equal position of women.

² https://www.asthabharati.org/Dia_Jan10/wom.htm

³ AIR. 2002 SC 3551.

⁴ AIR 1999 2 SCC 228.

Maintenance

Maintenance provisions are basically aimed at supporting the dependents. There are various controversies concerning maintenance among spouses. It is argued that under IPC only wife can claim maintenance from husband but not vice versa. In context of present situation women have grown to become financially independent in which case they shall not be allowed maintenance in every case. In fact, in situations where the husband is not working he shall be eligible for maintenance from the wife. Such controversies have been done away with under Hindu Law but similar provisions still prevail in other personal laws.

Under Muslim Law the maintenance of wife by the husband is subject to certain conditions like she must be accessible to the husband and shall obey his reasonable commands. Also, the husband need not maintain the divorced wife after three months from divorce. Such provisions undermine the position of the women and leave them in a vulnerable situation.

b. Uniform Civil Code towards gender justice

In light of the discriminatory provisions under different personal laws it is advocated that the Uniform Civil Code shall be applicable throughout the nation replacing all the personal laws so that the benefit of equality provisions can reach all the female citizens of the country in order to achieve the gender justice. Personal laws mirror the patriarchal structure of the society and reflect the gender biasness which is a result of absence of engagement of women in their formation. UCC on the other hand are set of civil laws aimed at extending the gender just provisions of personal laws to everyone uniformly so as to ensure empowerment of women and marginalised sections of society.

But it is very unfortunate that these days UCC has become more of a political agenda rather than being a measure of development. It has remained in controversy in past few years because of some baseless arguments like it seeks to reform Muslim Laws only in India which is not true as not only Muslim Law but all personal laws are almost on equal footing in the matter of gender inequality. Also, there is no other method better than implementing a Uniform Civil Code so as to effectuate gender justice in India. The courts have also expressed this view in various landmark judgements⁵ that the certain provisions under personal laws are violative of Articles 14, 15 and 21 of Indian Constitution and that UCC is the best way out so as to ensure that basic fundamental rights do not become a legal battle for women.

⁵ *Mohd. Ahmed Khan v. Shah Bano Begum & Ors.*, AIR 1985 SC 945; *Prakash & Ors. v. Phulavati & Ors.*, Civil Appeal No.7217 of 2013; *Shamim Ara v. State of U.P. & Anr.* AIR 2002 SC 3551 etc.

IV. Criminal laws and women

It will not be wrong to say that women have always been subjected to the cruelty in the society since the ancient times. In every patriarchal society women were never given the status and rights equal to men. Hence laws were required to protect women rights not only as individual but as a human also. Following are the criminal provisions of Indian penal code which are specifically related to women:

Adultery- Section 497 of Indian Penal Code deals with the offence of adultery. It says that if a man has sexual intercourse with some woman who is the wife of other person and for the same no consent was obtained from her husband. Such act will be called adultery not rape. Accused of this offence be punished with imprisonment up to 5 years or with fine or with both.

This provision shows weak position of women, as if with the consent of husband a woman can be treated as a sex slave by other man. The provision was made for protection of women, but interpretation of this law may lead to other meanings as well. This law has been criticised for treating women as property owned by men. Hence Supreme Court in *Joseph Shine v. Union of India*⁶ called this law as anti-women and held that adultery cannot be a criminal offence but it may be a ground of offence.

Rape⁷- Dictionary meaning of Rape means “unlawful sexual intercourse or any other sexual penetration of the vagina, anus, or mouth of another person, with or without force, by a sex organ, other body part, or foreign object, without the consent of the victim”. Rape is defined under section 375 of Indian Penal Code and its punishment is given under section 376. With the passage of time many developments have taken place in the laws related to rape.

1860- Earlier, Ss. 375 to Section 376E of the IPC were referred to as ‘sexual offenses. Definition of rape was very narrow. Sex with a woman under the age of 16 was also defined as ‘statutory rape’. Also, there was absence of the concept of marital rape.

1983 – A rape category “custodial rape” was included in IPC to describe rape with women in custody of public servants. Section 114(A) was also added in Indian Evidence Act. This change in law took place after Mathura Case which was a custodial rape case but accused policemen got acquittal on the basis of victim being habitual of pre-marital sex. After lot of hue and cry in the society difference came that court were bound to rely on the testimony of victim about the absence of consent.

⁶ decided on 27 Sept 2018.

⁷ <https://www.youthkiawaaz.com/2018/08/indias-anti-rape-laws-the-evolution/>

2002- Victims of rape used to be afraid of reporting case because the trial procedure was so humiliating for them. After a PIL in *Sakshi v. Union of India*⁸ an amendment was made in section 155(4) of Indian Evidence Act regarding the cross examination of victim and to protect the victim from character assassination and this provision was repealed. SC issued directions that at the time of trial of sexual offence there must be some arrangement to cover the face and body of the victim. Questions of cross examination should be given to the judge first and should be relevant. Victim will be allowed to take break during the procedure as per requirement. 2 fingers medical test was also challenged by this case which used to be done on rape victims by inserting 2 fingers in vagina.

2012- Amendment was made in Protection of Children from Sexual Offences (POSCO) Act. Sexual crimes were made gender equal. Inclusion of child sexual abuse, non-penetrative assault, sexual harassment and child pornography was made as an offence. Fast tracking of such cases with maximum punishment was also added.

2013- After Delhi Gang Rape Case⁹ this amendment took place. Definition of rape was given broad scope and minimum punishment was increased. This led to the changes in Juvenile Justice Act. It changed the age of accused to be called for the purpose of trial from 18 to 16. Situation emerged after rape as vegetative state and death in such state was also included. New offences such as stalking, acid attacks, and voyeurism were added as offences.

2018- After Katha rape case of an eight-year-old girl criminal law amendment ordinance was passed to amend POSCO Act. It provided that the rape of a child below age 16 should be punishable by a minimum of 20 years imprisonment and death penalty for the rape of anyone below age 12. It also provided for the fast track trials of such cases.

Outraging modesty- Section 354 of IPC deals with this offence. It **states that if any** person assaults or uses criminal force against a woman and does any such act with the intention or knowledge that it will outrage her modesty, **such person shall be punished** with imprisonment of up to 2 years, or a fine, or both. According to the courts women possess modesty by virtue of being a woman.

Domestic violence- Protection of Women from Domestic Violence Act (2005) is a comprehensive legislation which was aimed to protect women in India from all forms of domestic violence. It also covers women who have been and still are in an abusive relationship and are subjected to violence of any kind—physical, sexual, mental, verbal or emotional.

⁸ AIR 2004 SC 3566.

⁹ State through *Reference v. Ram Singh and Ors.*, 212 (2014) DLT99.

V: Women Welfare Laws

As a result of patriarchal structure of Indian society the status of women in India has grown very vulnerable this is why in past few decades several efforts have been taken by the Government and legislature to enact some laws that are beneficial to the status of women and can ensure their welfare. Some of such laws are:

a. Pre-conception and pre-natal diagnostic techniques (Prohibition of Sex Selection) Act, 1994

This Act was enacted as a result of growth in female foeticide with an objective to prohibit determination of sex of foetus which leads to female foeticide and to regulate pre-natal diagnostic techniques. Under the Act certain regulatory bodies are constituted which would keep a check on conduct of the registered Genetic Counselling Centres, Laboratories and Clinics so as to ensure proper implementation of the Act. This Act also provides for punishment that any offender will have to suffer in case of any contravention of provisions of the Act.

Even though the Act was enacted according to the need of the hour and aimed at welfare of women but there were certain loopholes because of which it could not have been properly implemented. In *Centre For Enquiry into Health & Allied Themes (CEHAT) and Others Vs. Union Of India And Others*¹⁰ Hon'ble Supreme Court had expressed its anguish on the poor implementation of the Act and had issued certain guidelines for its proper implementation.

In 2002 the Act of 1994 was amended and certain changes were made that were aimed at improving the regulation on technology used in sex selection. But even after the amendment there are many loopholes that the Act suffers which is why even after around 25 years of its enactment the evil of female foeticide still prevails in India and the offenders can easily sneak out from the ambit of the Act.

b. Indecent Representation of Women (Prohibition) Act, 1986

This Act aims at prohibiting any advertisement, publication, painting, figurine etc. that comprises of any indecent representation of woman in such a way that it is indecent or derogatory or denigrating to the image of women, or is likely to deprave, corrupt or injure the public morality related to women¹¹. However, there is an exception under the Act that the Act

¹⁰ AIR 2001 SC 2007

¹¹ <http://www.wcd.nic.in/act/indecent-representation-women>

would not be applicable on any advertisement, painting, figure etc. if it is done for public good or is in interest of science, art or literature.

S. 2 defines some important terms used in the Act. The term “advertisement” has been defined under the Act to include notice, circular, label, wrapper or other document and also includes any visible representation made by means of any light, sound, smoke or gas. In light of change in technology used for communication National Commission for Women has proposed an amendment in this definition to include digital form or electronic form of hoardings, or SMS, MMS etc. There are many other reformatory changes suggested by NCW that are aimed at widening the scope of the Act and to create a new authority to hear and decide grievances arising under the Act but all these amendments are still under discussion.

c. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

The women at present times have grown more independent but, they face problems in every strata of life. Today’s world is accustomed to the term sexual harassment, which can be defined as an unwelcome behaviour of sexual nature. Sexual harassment at workplace is a universal and serious problem, which clearly violates the fundamental rights of a women to equality under Article 14 & 15, right to life under Article 21 and right to practice any profession and carry on any occupation. However, until a Landmark Case “*Vishaka & Ors. vs. State of Rajasthan*”¹² was pronounced in 1997, there were no legislation to govern such issues and women had to take cases of sexual harassment at workplace through lodging complaint U/s 354¹³ & 509¹⁴ of IPC. In this case Supreme Court issued guidelines to prevent sexual harassment cases against women at their workplaces. All the companies were directed to make committees in their offices for the purpose of complaint of employees and were responsible to advice the further course of action to the victim and to make recommendation to management about the actions to be taken against accused. This case further led to the passing of Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013, which formulized sexual harassment at workplace as penal offence punishable with imprisonment and penalty.

d. Domestic Workers Welfare and Social Security Act, 2010

¹² (1997) 6 SCC 241.

¹³ Assault or criminal force to woman with intent to outrage her modesty

¹⁴ Word, gesture or act intended to insult the modesty of a woman

The ILO's 189th Convention¹⁵ mandates that domestic workers be given daily and weekly rest hours, payment must meet minimum wages requirement etc. India is also a signatory to this convention but not ratified the convention. Since these provisions are not binding on those countries that have not ratified the convention, thus India is not obliged to enforce these recommendations and thus, in the absence of a national policy domestic workers are freely exploited. Number of stories of domestic workers being beaten, tortured had become a routine. An attempt was made in the form of Domestic Workers Welfare and Social Security Act, 2010, Bill drafted by National Commission. This Act is for the protection & welfare of Domestic Workers but to get benefitted, they need to be registered with the concerned board. The benefits under this Act includes, fixation of minimum wage, working hours, rest intervals, wages for overtime etc. and also penalizes the employers who contravenes with the provisions of this Act.

e. Immoral Traffic (Prevention) Act, 1986

Another menace to fight with is the human trafficking, which is a form of organized crime that extends across borders. It covers various forms of human rights violation i.e., commercial sexual exploitation, forced labour, organ donation etc. Unfortunately, the involvement of children, especially girls had grown and over the years, it had taken on more complex and diverse forms making it necessary to reform the laws and strategies towards its control and eradication and the Immoral Traffic (Prevention) Act, 1986, originally the Suppression of Immoral Traffic in Women and Girls (SITA), 1956 is one of its kind, which is the central legislation dealing with trafficking in India. Though the name immoral trafficking in itself mentions a wider concept yet the Act's scope is limited to commercial sexual exploitation or prostitution. It penalizes those who assist or abet commercial sexual exploitation, including those who live off the earnings of prostitutes. It also provides for welfare measures towards rehabilitation of victims in the form of protective homes to be set up and managed by state governments. Though it is said something is better than nothing but tragically, even as a law dealing with sexual exploitation, it leaves a lot to be desired and there is immense need to modify, amend and redefine the Act, to emerge as a powerful weapon covering much perspective, which helps eradicate and curb such devastating situations.

f. Family Courts Act, 1984

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https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:2551460

Earlier women were facing problems like child marriage, sati pratha, parda system etc., however, gradually these problems disappeared but despite the advent of modernisation & provisions of equal rights and opportunities under Constitution of India, women are prone to face much more complex issues in their matrimonial life including domestic violence, dowry death, maintenance etc. Thus, to protect and preserve the institution of marriage, welfare of women & children, such family disputes were required to be dealt by adopting radically different approach than in ordinary civil proceedings so that reasonable efforts should be made for settlement before the commencement of trials as recommended by both 59th Law Commission Report (1974) & the Committee On The Status of Women (1975)¹⁶. Consequent to these recommendations, Order XXXII-A¹⁷ was incorporated in the Code of Civil Procedure, 1976. The code was amended to provide special procedure to be adopted in suits or proceedings relating to family matters and after a lot of debate, Family Courts act came into force in 1984 to ensure speedy and inexpensive relief with least formalities and technicalities. The Family Courts mainly focuses upon conciliation or settlement of dispute and the proceedings are adjourned till parties to dispute arrive at a settlement, if the Court sees any possibility of settlement.

VI. Conclusion

Many efforts have been taken in India through legislations, judicial pronouncements etc. so that women can be brought back to a status equal to men and so that they can enjoy basic human rights and are no longer treated or believed as a kind inferior to men either physically or mentally. But the loss caused to status of women in medieval times is so grave that even after 71 years of independence the traces of old customs and values that demean the value of women can still be seen in the society. Even though there is a lot of improvement in the status of women in the present times but still in many societies a girl child is not considered equal to a boy child and girl has to suffer the cost of her being born as a female till the time of her death. All the legislations and enactments made for the purpose of welfare and development of women have their own loopholes and have failed to achieve their objectives to a certain extent. There is a need for more stringent laws and above all there is a need of social effort to bring about a change in mind set and moral values of people. Without this courts and legislations can also not help much.

¹⁶ <http://ncw.nic.in/sites/default/files/Working%20of%20Family%20courts%20in%20India.pdf>

¹⁷ Suits relating to matters concerning the family.