BLE-003: LAWS AND VULNERABLE GROUPS

PART A

Q.2. Define Bonded Labour. Discuss the Supreme Court Judgements on the prohibition of Bonded Labour.

Ans.

* Bonded Labour:

Bonded labour is the system by which a person is compelled, by economic circumstances, to contract the labour of himself/herself and/or the members of his/her family to the creditor for a specified or unspecified period. S/he pays off loans with labour, instead of money or goods. The debtor and even his/her dependants have to work for the creditor, without reasonable wages, or no wages, in order to extinguish the debt. Exorbitant rates of interest are charged by the creditor, as a result of which the amount of the debt keeps increasing. The rate of interest is compounded, and very often, the interest due, exceeds the principal amount within a year. Invariably, the debtor is unable to pay off the sum in his/ her lifetime and future generations have to work for the creditor to repay the loan. In most cases, the creditor pays the bonded labourer a paltry sum of money, which is below the market rate or the specified minimum wages. The bonded labourer does not have the freedom to work for anybody else and does not have the freedom of movement. The practice of bonded labour is highly exploitative and violates the human rights and dignity of the workers.

* ROLE OF THE SUPREME COURT:

The judiciary has played a significant role in interpreting the provisions of The Bonded Labour System (Abolition) Act, 1976. Judicial decisions have a vital impact on the formulation and implementation of national policies. The Supreme Court has given an impetus to the implementation of the Bonded Labour System (Abolition) Act in the following ways:

* Public Interest Litigation –

The Supreme Court encouraged public interest litigation in the 1980s. It relaxed the rule of locus standi, whereby institution of cases was not restricted only to the aggrieved parties but could also be done by socially concerned individuals or groups. In Bandhua Mukti Morcha, Justice Bhagwati held that a letter to any judge of the Supreme Court could be treated as a writ petition under Article 32. The process of approaching the court was thus simplified.

* Appointment of Commissions by the Court –

In the Bandhua Mukti Morcha case, the court appointed investigative commissions to gather relevant information for the enforcement of fundamental rights of disadvantaged persons. The appointment of fact finding bodies enables the court to get proof of the exact facts and conditions instead of relying only on the evidence and arguments led by lawyers.

* Relief and rehabilitation of freed bonded labourers –

In the case of Neeraja Chaudhary v State of Madhya Pradesh, where a group of bonded quarry workers filed a writ before the Supreme Court, the court held that Articles 23 and 24 required that the bonded labourers be identified, released and suitably rehabilitated. Any failure on the part of the State Government to implement the provisions of the BLSA would violate Articles 21 and 23 of the Constitution.

* Issuing and Monitoring of directions –

The Supreme Court periodically monitors the implementation of the directions issued by it in order to ensure compliance. It has entrusted the monitoring function to vigilance bodies which often comprise social action groups. In the Bandhua Mukti Morcha case, the Court issued a set of 21 directions for the effective implementation of the social and labour welfare legislations applicable to stone quarries.

* Recognition of voluntary organisations –

The Supreme Court has recognized the importance of the role of voluntary organisations in the process of identification and release of bonded labourers. It voiced its disappointment with the official machinery and emphasised on the need to involve voluntary and activist groups for the identification and rehabilitation of bonded labourers. It ordered the States to create a conducive environment for such organisations.

Q.4. What is Right to Education? How it has been guaranteed under the Right of Children to Free and Compulsory Education Act, 2009?

Ans. Right to Education is a Fundamental Right:

The 86th Constitutional Amendment in 2002 which sought to make the right to education a fundamental right was passed by both Houses of Parliament and received presidential assent on 26th August, 2009. This is now called the Right of Children to Free and Compulsory Education Act, 2009 (RTE Act). Article 21-A and the RTE Act came into effect on 1 April 2010.

The 86th Constitutional Amendment introduced Article 21 A which states that “the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.” Further, Article 45 was amended to provide that “the State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.” Article 51A (k) was also introduced to make it a fundamental duty on the part of a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the ages of six and fourteen.

The RTE Act provides for the:

* Right of children to free and compulsory education till completion of elementary education in a neighbourhood school.
* It clarifies that ‘compulsory education’ means obligation of the appropriate government to provide free elementary education and ensure compulsory admission, attendance and completion of elementary education to every child in the 6 to 14 age group. ‘Free’ means that no child shall be liable to pay any kind of fee or charges or expenses which may prevent him or her from pursuing and completing elementary education.
* It makes provisions for a non-admitted child to be admitted to an age appropriate class.
* It specifies the duties and responsibilities of appropriate Governments, local authority and parents in providing free and compulsory education, and sharing of financial and other responsibilities between the Central and State Governments.
* It lays down the norms and standards relating inter alia to Pupil Teacher Ratios (PTRs), buildings and infrastructure, school-working days, teacher-working hours.
* It provides for rational deployment of teachers by ensuring that the specified pupil teacher ratio is maintained for each school, rather than just as an average for the State or District or Block, thus ensuring that there is no urban-rural imbalance in teacher postings. It also provides for prohibition of deployment of teachers for non-educational work, other than decennial census, elections to local authority, state legislatures and parliament, and disaster relief.
* It provides for appointment of appropriately trained teachers, i.e. teachers with the requisite entry and academic qualifications.
* It prohibits (a) physical punishment and mental harassment; (b) screening procedures for admission of children; (c) capitation fee; (d) private tuition by teachers and (e) running of schools without recognition,
* It provides for development of curriculum in consonance with the values enshrined in the Constitution, and which would ensure the all-round development of the child, building on the child’s knowledge, potentiality and talent and making the child free of fear, trauma and anxiety through a system of child friendly and child centered learning.
* The Act mandates that each government school will be managed by a School Management Committee (SMC) that will draw three fourths of its members from amongst the parents of children in the school, with special emphasis on those belonging to weaker and deprived sections. The SMC shall monitor, plan and manage the school in collaboration with the local authority. Curriculum design institutions should adhere to principles that promote constitutional values, use pedagogic approaches based on discovery, exploration and activities, free the child from fear and trauma and promote the use of the mother tongue.

Conclusion:

The argument in favour of incorporating the right to education as a fundamental right guaranteed by the Constitution is that it is not merely to ensure justiciability, but it would also indicate a ‘political will’ in favour of mass education. A Parliament that amends the Constitution by a two-thirds majority to make it a fundamental right will also be bound to allocate funds and the means to ensure that such a right is translated into achievement.

PART B

Q.7. Discuss the Supreme Court guidelines on Sexual Harassment at work place.

Ans. The Vishaka guidelines issued by the Hon’ble Supreme Court of India are to prevent sexual harassment of women at workplaces and ensure that the people who indulge in the act of sexual harassment are given a justifiable punishment.

* Features of the Vishaka guidelines:
* Definition of Sexual Harassment:

The guidelines issued by the Supreme Court widens the meaning and scope of sexual harassment. It defines sexual harassment as an unwanted sexual determination which is directly or impliedly intended to cause the following:

1. Physical contact or advances.
2. A demand or request for sexual favours.
3. Sexually coloured remarks.
4. Showing pornography.
5. Any other unwelcome conduct whether it is physical, verbal or non-verbal.

* Provide a safer working environment:

It is the duty of each employer to provide a safe working environment for each and every employee. Appropriate disciplinary action must be taken by the employer if any case regarding sexual harassment or ill-treatment of a woman employee is found.

* Duty of the employer to file a complaint:

The guidelines also lay down the obligation of the employer to file a complaint if the conduct towards an employee amounts to a criminal offence which is punishable under the [Indian Penal Code](https://indiacode.nic.in/handle/123456789/2263?locale=en). The employer needs to initiate an action and ensure that the witnesses are not further victimised.

* Complaint redressal committee:

It is mandatory for all organisations to set up a complaint redressal committee in order to ensure that the complaints of the employees are dealt with properly and suitable action is taken in response to such a complaint.

* Employer to assist the employee if she is sexually harassed:

The guidelines provide that the employers are required to assist the employees in terms of both preventive actions and support to these victims of sexual harassment.

* Duty of employer to spread awareness:

It is also the duty of the employer to spread awareness in his organisation with regard to the matters pertaining to sexual harassment and the safety of women by conducting workshops, etc. to make the female employees aware of their rights.

* Duty of government to widen the scope of these guidelines:

The guidelines also urge the centre and the state government to pass the necessary legislation so as to ensure that the private sector is also bound by these guidelines.

Conclusion:

Vishaka guidelines have now been superseded by the Sexual Harassment of women at the workplace (prevention, prohibition and redressal) Act, 2013, which broadens the definition of aggrieved women to involve women of all ages, in order to suit the modern-day conditions. It also broadens the scope of the term workplace which was earlier limited only to the traditional office set-up. However, the Vishaka guidelines are the most significant set of guidelines which are believed to have helped in the development of the Act of 2013.

Q.8. Discuss the offences under the SC and ST Prevention of Atrocities Act, 1989.

Ans. Offences under the SC and ST Prevention of Atrocities Act, 1989:

For an offence to be committed under POAA, the offence should be committed by a person who is not a member of the Scheduled Castes or Scheduled Tribes, against a member of the SC or ST community.

* Classification of Offences: (Section 3)

1) Atrocities against person –

a) Forcing to drink or eat inedible or obnoxious substances.

b) Forcibly removing the clothes of a person or parading him/her naked with a painted face and body or committing any similar act which is derogatory to human dignity.

c) The offences that affect reputation involve intentionally insulting or intimidating with the intention to humiliate, in any place within public view. The words of abuse should refer to the caste of the complainant.

2) Atrocities committed on women – The POAA punishes acts that outrage the modesty of women.

3) Social disabilities –

i) Denial of access to places of ‘public resort’ (places to which the public are admitted such as parks, recreation grounds and hospitals) and use of customary passages.

ii) Denial of use to of water of any spring, reservoir, or any other source, if they have been using water from such spring, reservoir or source. Any person who corrupts or fouls water is liable for punishment.

4) Atrocities affecting properties –

a) Dumping excreta, waste matter, carcasses, obnoxious substances in the premises or neighbourhood with the intent to cause injury, insult or annoyance.

b) Wrongful occupation of land belonging to members of the SC/ST community.

c) Wrongful dispossession from land or premises or water or interference with their rights over land, premises or water body.

d) Forcing or causing to leave his/her house, village or other place of residence.

e) Atrocities that damage properties by fire or explosive substances.

5) Atrocities by litigation –

6) Atrocities by giving false information to public servants and courts.

a) If false information is given to public servants to make them use their lawful power to the injury and annoyance of SC/ ST communities, such an act constitutes an offence under the POAA.

b) When false evidence is given in courts with the intention of getting a SC/ST member convicted of an offence with capital punishment, such offence is punishable with imprisonment for life and a fine.

c) When a person who is not a member of a SC/ST destroys evidence in relation to offences under the POAA with the object of protecting the offenders from punishment.

7) Atrocities infringing political rights – If members of SC/ST communities are:

a) forcibly prevented from voting;

b) intimidated or threatened with harmful consequences if they vote;

c) forced to vote for a particular candidate;

d) compelled to vote in an unlawful manner;

8) Atrocities causing economic exploitation – compelled or enticed to beg or to do begar or forced or bonded labour.

9) Atrocities by public servants

However, the courts cannot take cognizance of any offence by public servants without the prior sanction of the central or State Governments.

Q.9. What is Manual Scavenging? How it has been prohibited by the Indian Legislation?

Ans. Manual Scavenging:

Manual scavenging is the manual removal of human and animal excreta (‘night soil’) from dry toilets which do not have flushing mechanisms. The excreta are removed using brooms, small tin plates and baskets that are carried on the head. The manual scavengers carry the excreta to the place of disposal which is usually alongside their settlements in the outskirts of the villages, towns and cities.

* MAIN FEATURES OF THE ACT:
* The Preamble of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, States that the Act provides for the prohibition of the employment of manual scavengers as well as the construction or continuation of dry latrines, and for the regulation of construction and maintenance of water-seal latrines.
* Section 2 (j) of the Act defines a ‘manual scavenger’ as a person who is engaged in or employed for manually carrying human excreta.
* Section 2 (i) defines a ‘latrine’ as a place that is set apart for defecation together with the structure comprising such place, the receptacle for collecting human excreta and any connected fittings and apparatus.
* Employing manual scavengers or constructing dry latrines is punishable with imprisonment for up to one year and/or a fine of Rs. 2,000 (Section 14). Offenders are also liable to prosecution under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
* The Act provides for registration of manual scavengers and their rehabilitation through opportunities such as alternative employment and financing by the Housing and Urban Development Corporation Limited for the construction of water-seal latrines.
* Section 6 of the Act empowers the State Governments to make schemes for the rehabilitation of manual scavengers, for the construction and maintenance of water-seal latrines and for the conversion of dry latrines into water-seal latrines.
* Jurisdiction of Courts
* Only courts of a Metropolitan Magistrate or a Judicial Magistrate of the first class or higher in hierarchy can try offences under the Act.
* Prosecution for offences under the Act can be initiated only by the Executive Authority or with the prior sanction of the Executive Authority.
* Hence the court cannot take cognizance of any offence under the Act unless the complaint has been made by a person who has been authorised to do so by the Executive Authority (Section 17).
* Section 16 of the Act makes all offences under this Act cognizable.
* Section 18 imposes a limitation on the time period during which a complaint can be filed. The complaint has to be made within 3 months from the date on which the alleged commission of the offence came to the knowledge of the complainant.

Q.10. Discuss the main features of the Equal Remuneration Act, 1976.

Ans. The Equal Remuneration Act, 1976 provides for payment of equal remuneration to men and women and help prevent gender discrimination. Article 39 of the Indian Constitution envisages that the States will have a policy for securing equal pay for equal work for both men and women. To give effect to this constitutional provision, the Equal Remuneration Act, 1976 was introduced.

The purpose of the act is to make sure that employers do not discriminate on the basis of gender, in matters of wage fixing, transfers, training and promotion. It provides for payment of equal remuneration to men and women workers, for same work or work of similar nature and for the prevention of discrimination against women in the matters of employment.

#### The salient features of the Equal Remuneration Act, 1976:

* The Act is a Central Legislation and applies to the whole of India.
* The objective of the Act is to provide for protection against discrimination of women workers on the ground of sex, about the payment of equal remuneration in the matter of employment.
* Restricting the employer to create terms and conditions in a contract of service or work of labor contrary to equal pay for equal work doctrine and the provisions of Equal Remuneration Act.
* The Act doesn’t make a distinction like employment or the period of employment and applies to all workers even if engaged only for a day or few days.
* No overriding effect is given to any agreement, settlement or contract to the provisions of the Equal Remuneration Act.
* Any settlement or any agreement with the employee that is detrimental to the employee isn’t allowed.
* The Ministry of Labour and The Central Advisory Committee are responsible for enforcing this Act.
* Meaning of equality of work: The equality of work is not based solely on the designation or the nature of work but also on factors like qualifications, responsibilities, reliabilities, experience, confidentiality, functional need and requirements commensurate with the position in the hierarchy are equally relevant.
* When the employer doesn’t comply with the provisions of the act, he will be liable to pay fine, imprisonment, or both.

Conclusion:

An Act to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.

Q.11. Discuss the key features of the Protection of Women from Domestic Violence Act, 2005.

Ans. PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

Several initiatives with grassroots groups and with lawyers and activists led to the passing of the Protection of Women from Domestic Violence Act, 2005 (PWDV Act), which came into force in October 2006. Important civil remedies like the right to residence, protection orders, right to temporary custody of children, appointment of Protection Officers, and interim maintenance are part of this Act.

* Key features of the Protection of Women from Domestic Violence Act, 2005:

1. A Comprehensive Definition of Domestic Violence:

The definition of cruelty under Section 498-A of the IPC has proved inadequate in emphasising the gravity and seriousness of the kinds of violence that women are subjected to, resulting in downplaying the crime and thereby often denying women justice.

1. Domestic Relationship as opposed to matrimonial relationship:

Recognising that women experienced domestic violence not just as wives and partners, but also as daughters, daughters-in-law, mothers and widows, the term ‘domestic relationship’ was brought into the legislation which includes live-in relationship as well.

1. Shared household as opposed to matrimonial household:

With the understanding that women in a violent domestic relationship can be easily evicted from the home without even the slightest notice, the Act has included the definition of a ‘shared household’ which grants a woman the right to reside in the household even though she may not have a formal title over it.

1. Protection Officers:

Since domestic violence has often been seen to be in the realm of the ‘private’ aspect of women’s lives, the police have often been reluctant to register complaints or to intervene when women approach them. This is why the Act has included Protection Officers who will act as a bridge between the affected woman and the legal system. The role of a Protection Officer includes helping the woman to access the court and other support services such as legal aid, medical facilities, shelter homes and gather evidence in her case.

1. Service Providers:

The Act also provides for NGOs working for the rights of women through the provision of legal aid, medical, financial or other assistance to register themselves as service providers under the Act. A Service Provider is empowered under this Act to record domestic violence reports and forward these to a Magistrate and Protection Officer.

1. Retrospective Application of the Act:

The question that often arises is whether at the time of filing the complaint a woman is required to be living in the shared household. The Act uses the phrase ‘lives or at any stage has lived’, hence, it will suffice if she had lived in the shared household. Hence, a woman who has been abandoned or thrown out of the house even prior to this new law can also use it.

PART C

Q.12. Human Rights Model of Disability.

Ans. The Human Rights Model:

The human rights model positions disability as an important dimension of human culture, and affirms that all human beings, irrespective of their disabilities, have certain rights which are inalienable. By emphasising that the disabled are equally entitled to rights as others, this model builds upon the spirit of the Universal Declaration of Human Rights, 1948, according to which, ‘all human beings are born free and equal in rights and dignity.’

In keeping with the human rights model, the recently concluded Convention on the Rights of Persons with Disabilities (hereinafter referred to as the Convention) recognises that disability is an evolving concept resulting from the interaction between impairment and attitudinal/environmental barriers. The definition of disability is inclusive and does not enumerate specific disabilities such as blindness etc

The human rights model, as the name suggests, is based on basic human rights principles. It recognizes that:

* Disability is a natural part of human diversity that must be respected and supported in all its forms
* People with disability have the same rights as everyone else in society
* Impairment must not be used as an excuse to deny or restrict people’s rights

The human rights model exists because of an important international document: The [United Nations Convention on the Rights of Persons with Disabilities](https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html). This document was finalised in 2006 and is one of nine international human rights instruments that have been developed by the United Nations. It is important because it:

* Was developed by people with disability, with the aim of achieving a greater level of equality for people with disability around the world
* Explains the steps that governments around the world must take to uphold, promote and protect the rights of people with disability.

Q.13. Gender Stereotyping.

Ans. Gender Stereotyping of Roles and Behaviour:

Gender stereotyping means the ascription of certain attributes and roles to men and women. That men should not cry is a gender ascription of behaviour. Therefore, crying men are seen as weak, exhibiting their vulnerability and not living up to their ‘male’ image. As a result, it is expected that men keep up a stoic appearance even in situations of extreme sorrow and loss. This is an ascription by a patriarchal society as being ‘natural’, while the irony is that the most natural thing for any human being – man, woman or child – to do in the face of extreme loss or pain is to cry.

Similarly, women are taught to be soft in nature, to never to raise voice and that they should listen to men and that they are less capable than men. Moreover, women are naturally expected to be care-givers, nurturers, housemakers although both men and women are equally capable and should be responsible for taking care of cooking, cleaning, other household chores and taking care of children. That only women can give birth and breast feed is determined by biology. However, there is nothing to show that only women need look after the child after it has been weaned. It is because men in India as well as in other societies are socialized into not taking up child care responsibilities and leave it to women and that there are no provisions for paternity leave in India in most institutions. Where there is a provision, very few avail of this facility. Also, the men doing household chores are made fun of and thought to be feminine, weak and are teased with the statements like they’re under wife’s control ; such incidences develop negative views regarding one’s roles in a society which results in gender stereotyping.

Q.14. National Child Labour Policy.

Ans: NATIONAL POLICY ON CHILD LABOUR

The National Policy on Child Labour is a landmark endeavour in the progressive elimination of child labour in India. It seeks to address socio-economic issues having a bearing on child labour and to provide a framework for a concrete programme of action, along with the legal measures already being implemented. The policy encompasses action in the field of education, health, nutrition, integrated child development and employment.

The National Policy on Child Labour is set under the following three heads:

* The Legislative Action Plan

The Plan envisages strict enforcement of the provisions of the Child Labour (Prohibition and Regulation) Act 1986, the Factories Act 1948, the Mines Act 1952, the Plantation Labour Act 1951 and other enactments dealing with the employment of children.

* Targeting child labour while implementing general child-

related programmes Various national level development programmes in the areas of education, health, nutrition, integrated child development and income and employment to be taken up with their focus on encouraging the children to attend school rather than take up employment.

* Project Based Plan of Action in Areas of High Concentration of Child Labour:

This project involves withdrawing children from hazardous employment and ensuring their rehabilitation through education in special schools. The National Child Labour Projects were started in 1988 to withdraw and rehabilitate children working in hazardous trades and industries in various States. The rehabilitation of child labourers included freeing them from their employers and providing them with relevant education. Also free uniforms and incentives to the families of the child labourers were provided to lure them to join schools.

Q.15. Rights of Mentally ill persons under the Mental Health Act, 1987.

Ans. Rights emerging from the Act:

1) Right to be admitted, treated and taken care of in a Psychiatric hospital or such facility established or maintained by the Government or any other person for the treatment and care of mentally ill persons.

2) Minors who are under the age of 16 years, those persons who are addicted to alcohol or other drugs which lead to behavioural changes and mentally ill persons convicted of any offence are entitled to admission, treatment and care in separate psychiatric hospitals or nursing homes established or maintained by the Government.

3) Right to have regulated, directed and co-coordinated mental health services from the Government.

4) Treatment at Government hospitals and nursing homes mentioned above can be had either as in-patients or as out-patients.

5) Right to seek voluntary admission in such hospitals or nursing homes. Minors can seek admission through their guardians. Admission can be sought for by relatives of mentally ill persons on behalf of the latter.

6) The police have an obligation to take into protective custody a wandering or neglected mentally ill person and inform his relative and have to produce such person before the local magistrate for issue of reception orders.

7) Right to be discharged when cured and entitled to leave in accordance with the provisions in the Act.

8) If they own properties including land which they cannot manage themselves, the District Court ‘upon application’ has to protect and secure the management of such properties by entrusting the same to a Court of Wards, by appointing a guardian for such a mentally ill person or a manager for such property.

9) The costs of maintenance of mentally ill persons detained as in-patients in any Government Psychiatric hospital or nursing home shall be borne by the State Government concerned unless such costs have been agreed to be borne by a relative or any other person on behalf of the mentally ill person.

10) Not to be subjected to any indignity (whether physical or mental) or cruelty. They cannot be used for purposes of research except for their diagnosis or treatment or with their consent.

11) Those who are entitled to any pay, pension, gratuity or any allowance from the Government (such as Government servants who become mentally ill during their tenure) are not to be denied such payments.

12) Entitled to the services of a legal practitioner by an order of a Magistrate or Disability and Law-II District Court in respect of proceedings under the Act, if he has no means to engage a legal practitioner or his circumstances so warrant.