



**FACULTY OF JURIDICAL SCIENCES**

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# Lecture- 40



## LECTURE 40:

Child Protection - Legal Perspective Children have the right to be protected from all exploitative and vulnerable situations that have been discussed. But that is possible only if you make yourself aware of the real problems and risks that children face and of the remedies that are available in law and policy to change the situation in the best interest of children. A child may need legal help and protection. Resisting legal action when a child needs it the most is a common mistake all of us often tend to make. What is important? Ask yourself – Should fear of disapproval or reprimand by family/community/society/the powerful lobby become more important than social justice? In 2003, five girls from a village in District Karnal managed to stop sale of two minors into marriage. Once they had made up their mind to stop the marriage and the implicit sale their school teacher helped them take necessary steps for legal action. There was immense resistance from the families of the prospective bride and the groom, from the village elders, the entire community. The girls also received threats and their own families tried to stop them from taking such a step. Initially the police too did not come forward to help and book the erring persons. When everything else failed, the school teacher sought help from the local media to write about it. Finally the police was forced to stop the marriage and book the culprits. These five girls received the National Bravery Award for their exemplary courage and fight against all odds. The role of the school teacher was very critical in this case as without his help it would not have been possible for the girls to take the community to task. In fact, the teacher had risked not only his career but also his life in the process. But the quest for justice and commitment to child protection guided his action. You can perhaps facilitate the process of legal action by taking some of the following steps: Inform the police or the child line. • Ensure that the child line provides counselling and legal services to the child. • Mobilise community support. • Report to the Press only as your last resort. • Know your law. • It is important to know the basic law and understand the rights they protect. Only if you understand rights and legal protection available will you be able to convince a child or her/his parent(s)/guardian(s) or the community for legal action. Sometimes the police/administration can also turn out to be difficult. Knowing your law can empower you to deal with them better.

**Sex – Selective abortion, Female foeticide and infanticide**  
The main law for prosecuting persons who are engaging in sex selective abortion is the Preconception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. The offences under the Act include the following. Conducting or associating or helping in the conduct of PND techniques/tests in an unregistered unit • Sex selection on a woman or a man or both or on any tissue, embryo, conceptus fluid or • gametes derived from either or both of them Taking the services of an un-qualified person, whether on honorary or payment basis. • Conducting a PND test for any purpose other than those mentioned as permissible in the Act. • Sale, distribution, supply, renting, allowance or authorization of use of any ultrasound • machine or any other equipment capable of detecting sex of a foetus to non-registered units. Advertisement or communication in any form in print, electronic media or internet by units, • medical professionals or companies on the availability of sex determination and sex selection in the form of services, medicines, or any kind of techniques, methods or ayurvedic medicines. Apart from this law, the following sections from the Indian Penal Code, 1860 are also important. When death is caused by a person (Section 299 and Section 300). • Voluntarily cause a pregnant woman to miscarry the unborn baby (Section 312). • Act done with intent to prevent a child being born alive or to cause it to die after birth • (Section 315). Causing death of an unborn child (Section 316). • Exposing and abandoning of a child below 12 years (Section 317). • Concealing the birth of a child by secretly disposing her/his body (Section 318). • The punishment for these offences extends from two years up to life imprisonment, or fine or both.

**Child Marriage** Prohibition of Child Marriage Act, 2006 envisages preventing child marriages with enhanced • punishments of rigorous imprisonment for two years and/or fine of INR 1 lakh. It defines a child to mean a male below 21 years and female below 18 years. A minor is • defined as a person who has not attained the age of majority as per the Majority Act. There are provisions for

maintenance of the girl child. The husband is liable to pay the maintenance in case he is a major. In case the husband is a minor, his parents would be liable to pay the maintenance. The legal status of a child marriage is voidable at the option of the parties. However, if the consent is obtained by fraud, deceit or if the child is enticed away from his lawful guardians and if the sole purpose is to use the child for trafficking or other immoral purposes, the marriage would be void. The Act also provides for the appointment of a Child Marriage Prohibition officer whose duties are to prevent child marriages and spread awareness regarding the same. Child Labour Children (Pledging of Labour) Act, 1933 declares any agreement by a parent or guardian to pledge the labour of a child below 15 years of age for payment or benefit other than reasonable wages, illegal and void. It also provides punishment for such parent or guardian as well as those who employ a child whose labour is pledged. Article 24 enshrined in the Fundamental Rights and the Directive Principles of State Policy, lays down that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment. The Bonded Labour System (Abolition) Act, 1976 prohibits forcing a person into bonded labour for debt repayment. The act extinguishes all debt agreements and obligations. It prohibits creation of any new bondage agreement and discharges bonded labourers from all debts for which they were bonded. Compelling a person to render bonded labour is punishable under the law. This includes punishment for parents who pledge their child or other family members to work as a bonded labourer. The Child Labour (Prohibition & Regulation) Act (CLPR Act) 1986 prohibits employment of a child in 18 occupations and 65 processes and regulates the conditions of working of children in other occupations/ processes. As per this Act a child means any person who has not completed 14 years of age. The Act provides punishment for the offence of employing or permitting employment of any child in contravention of the provisions of this Act. List of other labour laws that prohibit child labour and/or regulate working conditions for child labourers and can be used to book the employers is as follows:

- The Factories Act, 1948.
- The Plantation Labour Act, 1951.
- The Mines Act, 1952.
- The Merchant Shipping Act, 1958.
- The Apprentices Act, 1961.
- The Motor Transport Workers Act, 1961.
- The Beedi and Cigar Workers (Conditions of Employment) Act, 1966.
- The W.B. Shops & Establishment Act, 1963.

Child Trafficking The legal framework available for dealing with a case against child trafficking is as follows: The Indian Penal Code 1860 - The IPC punishes cheating, fraud, kidnapping, wrongful confinement, criminal intimidation, procuring minors, buying and selling of minors for immoral purposes. Special and Local Laws that can be used to book particular forms and purposes of trafficking include: Andhra Pradesh Devadasi's (Prohibition of Dedication) Act, 1988 or Karnataka Devadasi (Prohibition of Dedication) Act, 1982 Bombay Prevention of Begging Act, 1959.

- Bonded Labour System (Abolition) Act, 1976.
- Child Labour Prohibition & Regulation Act, 1986.
- Child Marriage Restraint Act, 1929.
- Guardianship and Wards Act, 1890.
- Hindu Adoption and Maintenance Act, 1956.
- Immoral Traffic (Prevention) Act, 1986.
- Information Technology Act, 2000.
- Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.
- Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989.
- Transplantation of Human Organ Act, 1994.

HIV/AIDS While a specific law to protect the rights of HIV positive people is in the process of being formulated, there are certain basic rights that the Constitution of India guarantees to all citizens and stand applicable even if a person is HIV positive. These are:

Right to Informed Consent - Consent has to be free. It should not be obtained by coercion, mistake, fraud, undue influence or misrepresentation. Consent also needs to be informed. This is particularly important in a doctor-patient relationship. The doctor knows more and is trusted by the patient. Before any medical procedure, a doctor is supposed to inform the patient of the risks involved and the alternatives available so the person can make an informed decision to undertake the procedure or not. The implications of HIV are very different from most other illnesses. That's why testing for HIV requires specific and informed consent from the person being tested. Consent to another diagnostic test cannot be taken as implied consent for an HIV test. If informed consent is not taken, the concerned person's rights may have been violated and he/she can seek a remedy in court.

Right to Confidentiality - When a person tells someone in whom she/he places trust something in confidence, it is meant to be confidential. Sharing it with others thus amounts to a breach of confidentiality. A

doctor's primary duty is towards the patient and she/he should maintain the confidentiality of information imparted by the patient. If a person's confidentiality is either likely to be breached or has been breached, the person has the right to go to court and sue for damages. People living with HIV/AIDS (PLWHAs) are often afraid to go to court to vindicate their rights for fear of their HIV status becoming public knowledge. However, they can use the tool of 'Suppression of Identity' whereby a person can litigate under a pseudonym (not the real name.). This beneficent strategy ensures that PLWHAs can seek justice without fear of social ostracism or discrimination.

**Right Against Discrimination** -

- o The right to equal treatment is a fundamental right. The law provides that a person may not be discriminated against on any grounds of sex, religion, caste, creed, descent or place of birth etc. either socially or professionally by a government-run or government controlled institution.
- o The right to public health is also a fundamental right - something which the state is supposed to provide to all persons. HIV positive persons seeking medical treatment or admission to a hospital cannot be rejected. If they are denied treatment, they have remedy in law.
- o Similarly, a person with HIV may not be discriminated against due to her/his positive status in an employment scenario. Termination in such a situation would give that person an opportunity to seek legal redress. Someone who is HIV positive but otherwise fit to continue the job without posing substantial risk to others cannot be terminated from employment. This has been held by the Bombay High Court in May 1997.

**Corporal Punishment** There is no Central legislation in India banning corporal punishment in schools. Different States, however, have enacted laws or made policies to ban it. States in India that have banned or upheld corporal punishment

States	Corporal punishment (banned or upheld)
Tamil Nadu	Banned
Goa	Banned
West Bengal	Banned
Andhra Pradesh	Banned
Delhi	Banned
Chandigarh	Banned

**Law/Policy** Tamil Nadu Banned Corporal punishment was prohibited in Tamil Nadu in June 2003 through amendment of Rule 51 of the Tamil Nadu Education Rules prohibiting the mental and physical pain during "corrective" measures. Goa Banned The Goa Children's Act 2003 bans corporal punishment in Goa. West Bengal Banned In February 2004, the Calcutta High Court ruled that caning in state school Bengal was unlawful. Andhra Pradesh (Hyderabad) Banned Government order (GO Ms No 16) issued on February 18, 2002 imposed corporal punishment in all educational institutions, violations of which shall be under the Penal Code. Delhi Banned Petition filed by Parents Forum For Meaningful Education. The Delhi School Education Act (1973) had provision for corporal punishment that has been by Delhi High Court. In December 2000, the Delhi High Court ruled that for corporal punishment in the Delhi School Education Act (1973) were detrimental to the dignity of children. Chandigarh Banned Corporal punishment was prohibited in Chandigarh in the 1990s.

**Caste Discrimination** The Constitution of India guarantees Equality before the law and equal protection of laws to each and every person in the country (Article 14). Prohibits discrimination on grounds of race, caste, sex, descent, place of birth or residence (Article 15). Prohibits discrimination on grounds of race, caste, sex or place of birth in any public employment (Article 16). Abolishes 'Untouchability' and declares practice of 'untouchability' in any manner whatsoever, a punishable offence (Article 17). The first Indian law that came into force to provide for punishment for the preaching and practice of 'Untouchability' and for any matter connected with it was 'The Protection of Civil Rights Act, 1955'. Even calling a scheduled caste by her/his caste name e.g. calling a 'chamar' a 'chamar' is a punishable offence under this law. In 1989, the Government of India enacted 'The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act', which recognises various kinds of acts of violence and discrimination inflicted upon the Scheduled Castes and the Scheduled Tribes by Non-Scheduled Castes and Non-Scheduled Tribes as punishable offences. It also provides for establishment of Special Courts at district level to try the offences under this Act, appointment of Special Public Prosecutors for the purpose of conducting cases in Special Courts, and imposition of collective fine by the State.

**Street and Runaway Children Juvenile Justice (Care and Protection) Act 2015** - The JJ Act, 2015 provides for strengthened provisions for both children in need of care and protection and children in conflict with law. Some of the key provisions include: change in nomenclature from 'juvenile' to 'child' or 'child in conflict with law', across the Act to remove the negative connotation associated with the word "juvenile"; inclusion of several new definitions such as orphaned, abandoned and surrendered children; and petty, serious and heinous offences committed by children; special provisions for heinous offences committed by children

above the age of sixteen year;• separate new chapter on Adoption to streamline adoption of orphan, abandoned and• surrendered children; inclusion of new offences committed against children• Drugs and Substance abuse The Narcotic Drugs and Psychotropic Substances Act, 1985 - This law declares illegal the production, possession, transportation, purchase and sale of any narcotic drug or psychotropic substance and makes the person, addict/trafficker liable for punishment. Use or threat of use of violence or arms by the offender, use of minors for the commission of offence, commission of the offence in an educational institution or social service facility are some of the grounds for higher punishment. The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 - Under this law, people who use children for drug trafficking can be booked as abettors or conspirators to the act. Child Begging Kidnapping or maiming a minor for begging is punishable under Section 363A of IPC. As per Section 2(1) of the Bombay Prevention of Begging Act, 1959, “Begging” means- Soliciting or receiving alms, in a public place whether or not under any pretence such as• singing, dancing, fortune telling, performing or offering any article for sale; entering on any private premises for the purpose of soliciting or receiving alms;• exposing or exhibiting any sore, wound injury, deformity of diseases whether of a human• being or animal, for extorting alms; allowing oneself to be used as an exhibit for the purpose of soliciting or receiving alms;• having no visible means of subsistence and wandering about or remaining in any public place• in such condition or manner, which makes it likely that the person doing so exist for soliciting or receiving alms; Presently, there is no Scheme of the Central Government on Beggary nor there is a central law on the matter. The States are responsible for taking necessary preventive and rehabilitative steps. Around 22 States / Union Territories have enacted their own anti-beggary legislation or adopted legislation enacted by other States/UTs. Existing State Anti Beggary Laws Sl.No. States/Union Territories States Legislation in Force

1. Andhra Pradesh The Andhra Pradesh Prevention of Beggary Act, 1977
2. Assam The Assam Prevention of Begging Act, 1964
3. Bihar The Bihar Prevention of Begging Act, 1951
4. Chhattisgarh Adopted the Madhya Pradesh Bikshavirty Nivaran Adhiniyam, 1973
5. Goa The Goa, Daman & Diu Prevention of Begging Act, 1972
6. Gujarat Adopted the Bombay Prevention of Begging Act, 1959
7. Haryana The Haryana Prevention of Begging Act, 1971
8. Himachal Pradesh The Himachal Pradesh Prevention of Begging Act, 1979
9. Jammu & Kashmir The J&K Prevention of Begging Act, 1960
10. Jharkhand Adopted the Bihar Prevention of Begging Act, 1951
11. Karnataka The Karnataka Prevention of Begging Act, 1975
12. Kerala The Madras Prevention of Begging Act, 1945, the Travancore Prevention of Begging Act, 1120 and the Cochin Vagrancy Act, 1120 are in force in different areas of the State.
13. Madhya Pradesh The Madhya Pradesh Bikshavirty Nivaran Adhiniyam, 1973
14. Maharashtra The Bombay Prevention of Begging Act, 1959
15. Punjab The Punjab Prevention of Begging Act, 1971
16. Sikkim The Sikkim Prohibition of Beggary Act, 2004
17. Tamil Nadu The Madras Prevention of Begging Act, 1945
18. Uttar Pradesh The Uttar Pradesh Prohibition of Begging Act, 1972
19. Uttarakhand Adopted the Uttar Pradesh Prohibition of Begging Act, 1972
20. West Bengal The West Bengal Vagrancy Act, 1943
21. Daman & Diu The Goa, Daman & Diu Prevention of Begging Act, 1972
22. Delhi Adopted the Bombay Prevention of Begging Act, 1959

Crimes against women occur every minute in India. Women are not safe, whether it is in their houses, public places or at the workplace. Your safety in your hands sounds like a clichéd adage to repeat. Given the number of crimes that are committed against women, it is pertinent that women are aware about the laws that are in place to protect them. Remember knowledge is power. As a parent, wife, daughter, employee and a woman these are rights set in place to protect you and it is important that you are aware about these. Here are 10 laws that women should know: The Prohibition of Child Marriage Act, 2006 According to the International Research Centre for Women, almost 47 percent of girls are married before the age of 18. Currently, India ranks 13 in the world when it comes to child marriages. Since child marriage has been steeped into the Indian culture and tradition since centuries, it has been tough eliminating it. The Prohibition of Child Marriage Act was made effective in 2007. This act defines child marriage as a marriage where the groom or the bride are underage, that is, the bride is under 18 years of age or the boy is younger than 21 years. Parents trying to marry underage girls are subject to action under this law. Since the law makes these marriages illegal, it acts as a major deterrent. Special Marriage Act, 1954 The objectives

of this act is to provide – a special form of marriage in certain cases, provide for registration of certain marriages and, to provide for divorce. In a country like India and with the diverse religions and cast, when people from different faiths and caste chose to get married they do it under the Special Marriage Act. It is not applicable to the state of Jammu and Kashmir and also extends to intending spouses who are Indian nationals and living abroad. Dowry Prohibition Act, 1961 According to this act, taking or giving of dowry at the time of the marriage to the bride or the bridegroom and their family is to be penalised. Dowry system, giving and taking of dowry, is a norm in India. Dowry is often asked of the bride and her family by the groom and his family. The system has taken strong roots because women after marriage move in with their spouse and in-laws. Also, over the centuries, the lack for economic independence of women and the taboo towards divorce has resulted in bride burning. When demands for dowry even after marriage are not met by the girl's families, many women are tortured, beaten and even burnt. It is one of the major challenges that our society is grappling with. Women openly complaining about it has helped to spread the word and encourage other women to take a stand. Indian Divorce Act, 1969 The Indian Divorce Act allows the dissolution of marriage, mutual consent, nullity of marriage, judicial separation and restitution of conjugal rights. Family Courts are established to file, hear, and dispose of such cases. Maternity Benefit Act, 1961 This act regulates the employment of women and maternity benefits mandated by law. It states that a woman employee who has worked in an organisation for a period of at least 80 days during the 12 months preceding the date of her expected delivery is entitled to receive maternity benefits, which includes maternity leave, nursing breaks, medical allowance, etc. Medical Termination of Pregnancy Act, 1971 The Act came into effect into 1972, was amended in 1975 and 2002. The aim of the Act is to reduce the occurrence of illegal abortion and consequent maternal mortality and morbidity. It clearly states the conditions under which a pregnancy can be ended or aborted and specifies the persons qualified to conduct the same. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 To ensure women's safety at workplace, this Act seeks to protect them from sexual harassment at their place of work. Thirty-six percent of Indian companies and 25 percent among MNC's are not complaint with the Sexual Harassment Act according to a FICCI-EY November 2015 report. Sexual harassment at workplace also includes – the use of language with sexual overtones, invasion of private space with a male colleague hovering too close for comfort, subtle touches and innuendoes. Indecent Representation of Women(Prevention) Act, 1986 This Act prohibits indecent representation of women through advertisement or in publications, writings, paintings, figures or in any other manner. National Commission for Women Act, 1990 The National Commission for Women (NCW) is a statutory body of the Government of India, established in January 1992. Lalitha Kumaramangalam was appointed its Chairperson in 2014. The NCW represents the rights of women in India and provides a voice for their issues and concerns. The National Commission for Women Act aims to improve the status of women and worked for their economic empowerment.