UNIT 3  STATE LEGISLATIONS / RULES
AND PROCEDURES

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3.1  INTRODUCTION

Undeniably, there is a legal responsibility on the Indian States to institute measures to combat trafficking and ensure their implementation. Accordingly, the State governments have taken some steps towards curbing human trafficking, but they do not seem to be adequate so far. However, a review of laws provides an impression of the growing awareness and recognition of the issues relating to trafficking.

In pre-independence era Devadasi System was very much prevalent in India. Devadasi system means the practice of dedicating girls for the ultimate purpose of engaging them in prostitution. Mysore was the first state in pre-independence India to take steps against this practice. In 1924, the Indian Penal Code was amended and accordingly sections 372 and 373 were declared as illegal, which were relating to this system. Some States in India also made specific laws to combat this evil practice. For instance;

1. The Karnataka Devadasi (Prohibition of Dedication) Act, 1982 declares unlawful, the very act of dedication, whether the dedication is done with or without the consent of the dedicated woman.
2. Under the Andhra Pradesh Devadasi (Prohibiting Dedication) Act, 1989, whosoever performs, promotes, abets or takes part in a dedication ceremony is liable to punishment.

Please answer the following Self Assessment Question.

Self Assessment Question
1)  What do you mean by Devadasi system? Name the States in India which made specific laws to combat Devadasi system.

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3.2 OBJECTIVES

After going through this unit, you should be able to:
1. describe the steps taken at State level to combat human trafficking;
2. explain the meaning of Devadasi System;
3. identify the Indian States which made specific laws to combat the evil practice of Devadasi system;
4. define ‘Child Trafficking’ under Goa Children’s Act, 2003 as well as the salient features of this Act; and
5. explain Model rule as well as various State Rules framed by different States in exercise of the powers conferred by Section 68 of the Juvenile Justice (Care and Protection of Children) Act, 2000.

3.3 GOA CHILDREN’S ACT, 2003

It is interesting to note that ‘trafficking’ has not been defined under the Indian laws except in the Goa Children’s Act, 2003, which is specific to the state of Goa. This is the only Act in India which defines “Child Trafficking”. Section 2(z) of the Goa Children’s Act, 2003 provides:

‘Child Trafficking’ means the procurement, recruitment, transportation, transfer, harbouring or receipt of persons, legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise.

The Goa Children’s Act, 2003 is an Act aimed to protect, promote and preserve the best interests of Children in Goa and to create a society that is proud to be child friendly. This Act came in the wake of criticism about the growing child abuse in tourist areas. Recently, extensive amendments were made to the Goa Children’s Act, 2003, to deal more stringently with various forms of child abuse. The amended Act, among other things, has expanded the scope of various abuses under ‘commercial sexual exploitation of children’ to include all forms of sexual exploitation of a child including visual depiction of a child engaged in explicit sexual conduct, real or stimulated, or the lewd exhibition of genitals intended for sexual gratification of the user, done with a commercial purpose, whether for money or kind. It includes implying, allowing, using, inducing or coercing any child to engage in sexual conduct. It also includes the use of the child in assisting with other persons to engage in explicit sex. The definition of ‘grave sexual assault’ has also been expanded to include acts like making children pose for pornographic photos and films, forcing minors to have sex with each other, deliberately causing injury to sexual organs of children, etc. In the amended Act the state’s role has also been expanded to ensure that children are protected from abuse, sexual offences, trafficking, prostitution and violation of rights. The Act now provides for counselling facilities by trained personnel to children in all schools. Under the new legislation, the owner and manager of a hotel or other establishment will be held solely responsible for the safety of the child on the premises as well as all the adjoining beaches and parks. The owner and manager are also held accountable if any child is allowed to enter a room without registration. It provides for strong action against making children available for commercial exploitation including posing obscenely, selling or abetting sale of children.
even under the garb of adoption or dedication of a girl child as a Devadasi. Some of the salient features of the Act are:

1. Trafficking has been given a legal definition, for the first time in Indian jurisprudence.
2. The definition of sexual assault has been expanded to incorporate every type of sexual exploitation.
3. Responsibility of ensuring safety of children in hotel premises has been assigned to the owner and manager of the establishment.
4. Photo studios are required to periodically report to the police that they have not shot any obscene photographs of children.
5. Stringent control measures have been introduced to regulate access of children to pornographic materials.

Please answer the following Self Assessment Question.

**Self Assessment Question**

2) Define ‘Child Trafficking’?

3.4 **STATE RULES**

The Juvenile Justice (Care and Protection of Children) Act 2000 and Juvenile Justice (Care and Protection of Children) Amendment Act 2006 provides a protective umbrella for the children who comes within its purview. The Act segregates ‘children in difficult circumstances’ as a whole into two categories namely Child in Conflict with Law and Child in Need of Care and Protection. The Juvenile (Justice Care & Protection) Act, 2000 has been enacted to consolidate and amend the law relating to delinquent juveniles and neglected children by providing care, protection, treatment, development and rehabilitation. This is to be done by adopting a child-friendly approach in the adjudication and disposal of the matters relating to juveniles in the best interest of the children for their ultimate rehabilitation through various institutes established under this enactment. The Juvenile Justice (Care and Protection of Children) Act, 2000, which has replaced the earlier Juvenile Justice Act, 1986, has been enforced in the entire country except the State of Jammu & Kashmir with effect from 1st April 2001. Section 68 of this Act provides power to make rules to the State Governments. Accordingly, the State Governments may, by notification in the Official Gazette, make rules to carry out the purposes of this Act. In order to ensure speedy implementation of the new law on
Juvenile Justice, the Ministry framed Model Rules under the Act for the guidelines of State Governments/Union Territory administrations. These Rules were published in the Gazette of India (Extra Ordinary) dated 22nd June, 2001 and were also circulated to all the state Governments/Union Territory Administrations with the request to either adopt these Model Rules or frame their own Rules on the basis of these Model Rules. In exercise of the powers conferred by Section 68 of the Juvenile Justice (Care and Protection of Children) Act, 2000, the following State Governments framed their own Rules:

1. The Andhra Pradesh Juvenile Justice (Care and Protection of Children) Rules, 2009
2. The Bihar Juvenile Justice (Care and Protection of Children) Rules, 2003
3. The Delhi Juvenile Justice (Care and Protection of Children) Rules, 2002
5. The Jharkhand Juvenile Justice (Care and Protection of Children) Rules, 2003
6. The Karnataka Juvenile Justice (Care and Protection of Children) Rules, 2002
7. The Maharashtra Juvenile Justice (Care and Protection of Children) Rules, 2002
8. The Rajasthan Juvenile Justice (Care and Protection of Children) Rules, 2002
9. The Tamil Nadu Juvenile Justice (Care and Protection of Children) Rules, 2001
10. The Uttar Pradesh Juvenile Justice (Care and Protection of Children) Rules, 2004
11. The West Bengal Juvenile Justice (Care and Protection of Children) Rules, 2009

Therefore, the Juvenile Justice Act has been time and again amended to provide better facilities to juveniles. The amendments in this Act along with the reason why it has been amended is following:

The Juvenile Justice Act, 1986 was repealed and new law was formulated in 2000, which is called the Juvenile Justice (Care and Protection of Children) Act, 2000. This law marked the beginning of a shift away from custodial care or institutional care to alternative non-institutional care such as adoption, quality care and rehabilitation through a child-centered juvenile justice system and specific protection from persons in whose care or charge they are.

**Reasons for change in the 1986 law**

1. The 1986 law was based on the welfare model, had focus on custodial measures and institutionalization of children.
2. It was unable to fulfill its objective of protecting and promoting the rights of children on many counts.
3. Legal anomalies in the 1986 law have been ignored for too long.
4. Administration of juvenile justice too required streamlining and strengthening.
5. India ratified the UNCRC 1989 on December 11, 1992. This demanded that child-related laws be brought in conformity with the UNCRC. It also demanded a child-friendly system of justice delivery, with a clear focus on alternative measures of care and rehabilitation rather than detention.

In 2006, there was an amendment to the 2000 law to remove some ambiguities and incorporate various judgment of the Supreme Court on critical issues.

Important elements of the amendment law include -

1. Determination of juvenility on the basis of the date on which the offence was allegedly committed,
Since juvenile justice is a State subject also, the States have always been required to frame their own rules, based on set of Model Rules framed by the Centre. Subsequent to the 2006 amended in the law, the Centre Model Rules on Juvenile Justice dated 2001 were repealed and replaced by the Juvenile Justice (Care and Protection of Children) Rules, 2007.

Children covered under the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006

The juvenile justice system that exists in various countries of the world, deals only with a child who is alleged to have committed an offence. Juvenile Justice (Care and Protection of Children) Act, 2000 and its amendment in 2006 deals with two categories of children -

1) Children in Need of Care and Protection
2) Children in Conflict with Laws (also referred to as Juvenile)

3.5 SUMMARY

1) Undeniably, there is a legal responsibility on the Indian States to institute measures to combat trafficking and ensure their implementation.

2) Devadasi system means the practice of dedicating girls for the ultimate purpose of engaging them in prostitution. Mysore was the first state in pre-independence India to take steps against this practice.

3) The Goa Children's Act, 2003, which is specific to the state of Goa, is the only Act in India which defines "Child Trafficking". The Goa Children's Act, 2003 is an Act aimed to protect, promote and preserve the best interests of Children in Goa and to create a society that is proud to be child friendly.

4) The Juvenile Justice (Care and Protection of Children) Act, 2000, which has replaced the earlier Juvenile Justice Act, 1986, has been enforced in the entire country except the State of Jammu & Kashmir. Section 68 of this Act provides power to make rules to the State Governments.

5) In exercise of the powers conferred by Section 68 of the Juvenile Justice (Care and Protection of Children) Act, 2000, many State Governments framed their own Rules:

3.6 TERMINAL QUESTIONS

1) What are the salient features of Goa Children's Act, 2005?

2) What is the purpose behind framing Model Rules under the Juvenile Justice (Care and Protection of Children) Act, 2000?

3) Mention the names of State Governments in India which have framed their own Rules in exercise of the powers conferred by Section 68 of the Juvenile Justice (Care and Protection of Children) Act, 2000?
3.7 ANSWERS AND HINTS

Self Assessment Questions
1) Devadasi system means the practice of dedicating girls for the ultimate purpose of engaging them in prostitution. Mysore was the first state in pre-independence India to take steps against this practice. Some States in India also made specific laws to combat this evil practice. For instance;
1. The Karnataka Devadasi (Prohibition of Dedication) Act, 1982
2. The Andhra Pradesh Devadasi (Prohibiting Dedication) Act, 1989
2) Section 2(z) of the Goa Children’s Act, 2003 defines the term child trafficking as; ‘Child Trafficking’ means the procurement, recruitment, transportation, transfer, harbouring or receipt of persons, legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise.

Terminal Questions
1) Refer to Section 3.3
2) Refer to Section 3.4
3) Refer to Section 3.4

3.8 REFERENCES AND SUGGESTED READINGS
2) Convention on the Rights of the Child Available at: <http://www.unicef.org/crc/>
3) Advisory on Preventing and Combating Human Trafficking in India <http://mha.nic.in/pdfs/Advisory-on-HTrafficking-150909.pdf>