

Punishment for Kidnapping :- (section 363) – Whoever Kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to 7 years and shall also be liable to fine.

Kidnapping or maiming a minor for purposes of begging (section 363A):--

Whoever kidnaps any minor or, not being the lawful guardian of a minor, obtains the custody of the minor with the intention of employing or using him for the purpose of begging shall be punishable with imprisonment of either description for a term which may extend to 10 years and shall also be liable for fine.

Whoever maims any minor in order that such minor may be employed or used for the purpose of begging shall be punishable with imprisonment for life, and shall also be liable to fine.

- In this section “**begging**” means—soliciting or receiving alms in a public place, whether under the pretence of singing, fortune-telling, performing tricks or selling articles or otherwise, or
- entering on any private premises for the purpose of soliciting or receiving alms,
- exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or of an animal,
- Using a minor as an exhibit for the purpose of soliciting or receiving alms.
- Minor means—a male less than 16 years of age and in the case of female- below 18 years of age.

Kidnapping or abduction in order to murder (section 364):-

- Whoever kidnaps or abducts any person in order that such person may be murdered or so disposed of as to be put in danger of being murdered,
- Shall be punished with life imprisonment for life or rigorous imprisonment for a term which may extend to 10 years, with fine.

Example: - A kidnaps Z from India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

Kidnapping for ransom (section 364A) :-

- Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt such person, or
- By his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or caused death or hurt to such person in order to compel Government or any foreign state or international inter- governmental organization or any other person to do or abstain from doing any act or to pay a ransom,
- Shall be punishable with death or imprisonment for life, and shall also be liable to fine.
- This particular section (364A) was introduced in the penal code by way of an amendment (42 of 1993).
- It was introduced with an objective to provide for deterrent punishment to persons committing such acts and to make consequential amendments to the Cr.pc.

Kidnapping or abducting child under ten years of age with intends to steal from its person:-

- Whoever kidnaps or abducts any child under the age of 10 years with the **intention of taking dishonestly any movable property from the person of such child,**
- Shall be punishable with imprisonment of either description for a term which may extend to 7 years, and shall also be with fine.

Abetment of suicide of child

1. Prevailing conditions which are responsible for committing suicide by child.
2. Measures for prevention of suicides.
3. Relevant provisions of I.P.C., 1860.

Suicide is defined as the intentional taking one's life. In some European languages, the word for suicide translates into English as "self murder". In legal terminology used the Latin phrase *felo-de-se*, which means "a crime agained the self.

Much of the social stigma that is still associated with suicide derives from its former connection with legal judgment, as well as with religious condemnation.

The reason behind a teen's suicide or attempted suicide can be complex. Although suicide is relatively rare among children but rate of suicide or attempts to suicide have been seen increasing among adolescence. Suicide is the third-leading cause of death for 15 to 24 year olds.

It has been observed that the teens between childhood and adulthood are under great confusion and anxiety. Because at such juncture of age they undergo tremendous pressure to fit in society, to perform academically, and to act responsibly. Despite these factors there is the awakening of sexual feelings, a growing self-identity, and a need for autonomy that often conflicts with the rules and expectations set by others.

A teen with an adequate support network of family, friends, religious affiliations, peer groups, or extracurricular activities may have an outlet to deal with every day frustrations. But many teens do not believe they have that and feel disconnected and isolated from family and friends. These teens are at increased risk for suicide.

Factors that increase the risk of suicide among teens include:-

- A psychological disorder, spatially depression, bipolar disorder, alcohol and drug use.
- Feeling of distress, irritability, or agitation
- Feeling of hopelessness and worthlessness that often accompany depression (repeated failures at school)
- A previous suicide attempt
- A family history of depression or suicide (genetic component)
- Physical or sexual abuse
- Lack of a support network, poor relationship with parents or peers, and feelings of social isolation
- Dealing with homosexuality in an unsupportive family or community or hostile school environment

Child suicide in India

It is seen that childhood today is no longer a joyful experience; instead lives of children and young adults are full of stress, tension, and apprehension. It is all because of current education system, extra tuition, coaching classes, competitive exams, reservations policies, admission processes, quota systems, parental attitude, modernization etc- the fact of the matter is that student suicide in India is an alarming problem.

Parents and teachers play the pivotal role in caring, consoling, counseling and most importantly 'being there' for these kids.

Parents should bring up their children in an atmosphere of freedom and happiness, where they share a comfort level with the parents. Apart from this parents need to spend 'quality time' with their kids where they can understand the inner feelings of their wards.

Parents must avoid creating unnecessary pressure on the kids as far as studying is concerned and do not compare your child with other children.

Similarly, teachers need to pay attention to all the kids and avoid favoritism against some. They must make the study joy and not the pressure.

All these things when incorporated at the childhood level go a long way in avoiding any kind of suicidal tendencies in kids.

Many warning signs and symptoms of teen suicide feelings are similar to those of depression. Parents when observe such signs in their kids they must talk to them and seek professional help.

These signs includes:-

- Change in sleeping and eating habits.
- Withdrawal from friends, family and regular activities.
- Violent behavior or running away.
- Drug and alcohol abuse.
- Unusual neglect of personal appearance.
- Radical personality change.
- Persistent boredom, difficulty in concentrating or decline in school work.
- Frequent complaints about physical symptoms often related to emotions, such as stomach ache or headache, fatigue.
- Loss of interest in pleasurable activities.
- Not tolerating praise or rewards.

With the support of the family, friends and professional treatment the tendency of suicide can be prevented and one can lead his life to a healthier path.

Relevant provisions of Indian penal code, 1860 concerning suicide are as follows:-

1. Section 305- Abetment of suicide of child or insane person-

If any person under the age of 18 years, any insane person, any idiot or any person in state of intoxication, commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding 10 years and shall also be liable to fine.

2. Section 306 abetment of suicide-

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine.

Protection of child and juveniles

Various Articles of constitution which are directly or indirectly for the protection (safeguarding) the interest of the children are as follows:-

- **Article 14 Equality before law**--- The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

- **Article 15 Prohibition of discrimination on grounds of religion, caste, race, sex or place of birth**—Nothing in this article shall prevent the state from making any special provision for women and children.
- **Article 21 Prohibition of life and personal liberty**- Except according to procedure established by law.
- **Article 21A Right to education**—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.
- **Article 24 Prohibition of traffic in human beings and forced labour.**
- **Article 39 Certain principles of policy to be followed by the state**—The state shall, in particular, direct its policy towards securing—that the health and strength of workers, men & women and the tender child are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
- That children's are given opportunity and facilities to develop in a healthy manner and in condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
- **Article 41 Right to work, to education and to public assistance in certain cases**—The state shall, within its economic capacity and development, make provisions for securing the all these rights in cases of unemployment, old age, sickness and disablement, and in cases of undeserved want.
- **Article 45 Provisions for early childhood care and education to childrens below the age of six years**—The state shall endeavor to provide early education and childhood care for all children until they complete the age of six years.
- **Article 51A Fundamental duties**—it shall be the duty of every citizen of India, who is a parent or guardian to provide opportunities for education to his child between the age of six and fourteen years.

By these provisions of the constitution one can say that the children's has been protected by both the Governments, that is central as well as all the state Governments by making suitable provisions in the law.

Children's are the most valuable assets of our society. In a civilized society welfare of the children is well recognized because the welfare of the whole nation, growth and development depends upon the growth of the children.

As great poet Milton has said: "child shows the man as the morning shows the day"

Protection of child and juveniles

SALE OF OBSCENE OBJECTS TO YOUNG

Introduction:-

- At the tender age child mental capability is not fully developed or grown, they are not in a position to differentiate between good and bad, whatever they will see or read will put those things into act or action because of their innocence.
- Home is said to be the first school of a child and the culture, ethics, education etc. which parents can provide nobody else can provide. So a good environment is very much responsible for physical, mental and moral growth of a child.
- Pictorial and other publications containing stories of the glorification of crime, violence and vice, known as “horror comics” are being circulated in India in large quantities. The dissemination of such stories is likely to encourage anti-social tendencies among children and exert harmful influence on young persons.

So far as the import into India of pictorial publications is concerned the G.o.I has imposed a ban under sea Customs act.1878.

“The young person’s Harmful Publication Act, 1956 have been enacted to prohibit the production in India of such literature or of any variant and its circulation within India.

The legislation has been framed in India to stop the sale of obscene objects to young.

- **“Harmful publication” means** -any book, magazine pamphlet leaflet, newspaper or other like publication which consists of stories told with the aid of picture or without the aid of pictures or wholly in pictures being stories portraying wholly or mainly -
 - i. The commission of offences; or
 - ii. Acts of violence or cruelty; or
 - iii. Incidents of a repulsive or horrible nature’ in such a way that the publication as a whole would tend to corrupt a young person into whose hands it might fall. Whether by inciting or encouraging him to commit offence or acts of violence or cruelty or in any other manner whatsoever. **{section 2(a)}**
- **Power of Government to declare harmful publications forfeited -Section 4** (The state Govt. may if it is of the opinion, after consultation with the principal law officer of the state (Advocate General) that any publication is a harmful publication declare, by order notified in the official Gazette and forfeit such publication from further dissemination.)
- **Appeal to High Court against order of forfeiture-Section 5-** Any person aggrieved by an order of forfeiture under section 4 may, within 60 days of the date of such order, apply to High court for setting aside the order so passed and the H.C. may pass such order as it deems fit.
- **Power to seize and destroy harmful publications-section 6-** Any Magistrate of the first class may by warrant authorize any police officer(not below the rank of Sub-Inspector) to enter and search any place where any stock of harmful publication is kept and he is authorized to seize and shall be produced before such magistrate as soon as possible.
- **On production of such material before magistrate-** If in the opinion of the court such material or publication is a harmful publication, such court may order to destroy but if not found harmful the court shall dispose of it in the manner prescribed in law (section 523,524 and 525 of the criminal procedure code, 1973)

- **Offences under this Act to be cognizable-section 7--**
- **I.P.C. Section 292. Sale, etc., of obscene books, etc.** (Whoever offers or attempt to do any act which is an offence under this section **shall be punished on first conviction with imprisonment of either description for a term which may extent to two years, and with fine which may extent to 2000 thousand rupees**, and in the event of **second or subsequent conviction, five years imprisonment and fine up to 5000 rupees.**
- **Exceptions:-** This section does not extend to any book, paper, drawing, painting, representation etc.- which is proved to be justified as being for the public good on the ground that such publication or material is in the interest of science, literature, art or learning or other object of general concern,
- **Which is kept or used bona fide for the religious purposes?**
- **I.P.C Section 293. Sale, etc., of obscene objects to young person-** Punishable on first conviction – imprisonment of three years and with fine of rupees 2000, and in the event of the second and subsequent conviction-7 years imprisonment and fine up to rupees 5000.
- **I.P.C. Section 294. Obscene acts and songs-** whoever, to the annoyance of others- does any obscene act in any public place, or
- Sings, recites or utters any obscene song, words, in or near public place,
- Shall be punished with imprisonment of either description for a term which may extend to 3 years or with fine of both.

Renaissance Law College

UNIT III

**SOCIAL RELATIONS
& CHILD**

Introduction:-

The legal position today is that only an adult can marry. Child marriage is an offence under the Child marriage Restraint Act, 1929 and the Hindu marriage Act, 1955 also.

Before the Child marriage Restraint (Amendment) Act 1978 came into force **section 6 of the H.M. Act 1955 dealt with guardianship in marriage and enumerated the guardians of a minor bride.**

Under the amendment the bride should have completed the age of 18 years at the time of marriage and therefore the questions of consent of her guardian will not arise as being major can marry. As a result of this amendment, sec. 6 of the H.M. Act, 1955 is deleted.

The legislative measures have been adopted to curb this social evil customs of Child Marriage.

Hindu marriage Act, 1955

Conditions for a Hindu Marriage (Section 9)

A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:-

- I. Neither party has a spouse living at the time of Marriage,
- II. At the time of the marriage, neither party –
 - (a) Is incapable of giving a valid consent to it in consequences of unsoundness of mind; or
 - (b) Though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or
 - (c) Has been subject to recurrent attacks of insanity or epilepsy.
- III. The bridegroom has completed the age of twenty-one years and the bride the age of eighteen years at the time of the marriage,
- IV. The parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;
- V. The parties are not sapindas each other, unless the custom or usage governing each of them permits of a marriage between the two.
 - **Muslim Law:** - Under Muslim Law the condition is that the parties to the marriage must have attained the age of puberty. For girl it is 12 or 13 and for a boy it is 15 years.
 - **The Paris Marriage and Divorce Act, 1935**

This Act prescribed the age of completion of 21 years in respect of the bridegroom and 18 in respect of the bride.

- **The Indian Christian Marriage Act. 1982-** 21 years in R/O bridegroom and 18 years in R/O bride.
- **The special Marriage Act, 1954-** 21 years in R/O bridegroom and 18 years in R/O bride.

Relevant provisions of the Child Marriage Restraint Act, 1929

- Punishment for male adult below twenty-one years of age marrying a child (Section 3) punishable with 15 days simple imprisonment or fine of rupees 1000 or both.
- Punishment for male adult above twenty-one years of age marrying a child (section 4) 3 months imprisonment (SI) and with fine.
- Punishment for solemnizing a child marriage (Section 5) whoever, performs, conducts or directs any child marriage- 3 months imprisonment (SI) and with fine.
- Punishment for parent or guardian concerned in a child marriage) where a minor contracts a child marriage, any person having charge of the minor, whether as a parent or guardian, who permit or promote to be solemnized, shall be punishable with-3 months imprisonment(SI) and with fine.
- Offences to be cognizable for certain purposes (section 7)- The code of criminal procedure, 1973 shall apply to offences under this act as if they were cognizable offences.
- For the purpose of investigation of such offences, and
- For the purposes of matters other than-matters referred to in section 42 of the code, and arrest of a person without a warrant or without an order of a Magistrate.

Jurisdiction under this act (Section 8)-Metropolitan Magistrate or a Judicial Magistrate of the first class shall take cognizance of or try any offence under this act.

The provisions of the Prohibition of Child Marriage Act, 2006.

Introduction:-

The child marriage Restraint act, 1929 was enacted with a view to restraint solemnization of child marriages. Subsequently it was amended in 1949 and 1978 in order to raise the age limit of the male and female persons for the purpose of marriage. In this particular act there was no provision for declaration of marriage as void or invalid.

As required by the society and to protect the child marriages more deterrent solutions were required to be provided in the Act to prevent and to eradicate the evil practice of solemnization of child marriages.

The present act, {The provision of child marriage Act, 2006 came into force on 1st November, 2007.}

- **Child marriages to be voidable at the option of contracting party being a child (Section 3)** – (A petition for annulling a child marriage by a decree of nullity may be filed in the District court only by a contracting party to the marriage who was a child at the time of marriage.)

- **Provision for maintenance and residence to female contracting party to child marriage (Section 4)-** (While granting decree U/s 3, the district court may also make an interim or final order directing the male or in case of his minority his parents or guardians to pay maintenance to the female contracting party to the marriage until her marriage.)
- **Custody and maintenance of children of child marriages (Section 5)-** An appropriate order by the district court for the custody of such children, keeping in mind the welfare and the best interest of the child.)
- **Legitimacy of children born of child marriage (Section 6)-** According to this section every child begotten or conceived of such marriage before the decree is made, whether born before or after the commencement of this Act, shall be deemed to be a legitimate child for all purposes.)
- **Power of district court to modify orders issued under Section 4 or Section 6 (Section 7)-** (District court to add, to modify or revoke any order made u/s 4 and section 5 , either during the pendency of the case or after the final disposal of the petition.)
- **Court to which petition should be made (Section 8)—(provides for the territorial jurisdiction of the district court.** - For the purpose of grant of reliefs under sections 3, 4, and 5 , the district court having jurisdiction shall include, where the defendant or the child resided, marriage was solemnized, the parties last resides together or where the petitioner resides at the time of foiling the petition.
- **Punishment for male adult marrying a child (Section 9) -** He shall be punished with R.I. which may extends to 2 years or with fine which may extend to one lakh rupees or with both.
- **Punishment for solemnizing a child marriages (Section 10)-** who ever performs, conducts, directs, abets any child marriage shall be punishable with R.I. which may extends to 2 years or with fine which may extend to one lakh rupees, unless proves that the he had no reason to believe that the marriage was not a child marriage.
- **Punishment for promoting or permitting solemnization of child marriage (Section 11)-** punishable with R.I. which may extends to 2 years or with fine which may extend to one lakh rupees. No imprisonment to women only fine.
- **Marriage of a minor child to be void in certain circumstances (Section 12)-** where he is taken out of the keeping of the lawful guardian, or by forced compelled to go from any place and is sold for the purpose of marriage, etc. such marriage shall be null and void.
- **Offence to be cognizable and non-bailable (Section 15)-** As per the section an offence punishable under this Act shall be cognizable and non-bailable.
- **Child Marriage Prohibition Officers (Section 16)-** Provides for the appointment of child marriage prohibition officers by the state government. Their duties are to- to prevent solemnization of child marriage, to collect evidence for the effective prosecution of persons contravening the provisions of the act, to advice or counsel the concerned people, make awareness of the evils of the child marriage in the society and to file such returns as required by the government.
- **Child Marriage Prohibition Officers to be public servants (Section 17)-**section 21 of the I.P.S.
- **Protection of action taken in good faith (Section 18)-** Bt the child marriage protection officer.
- **Repeal and savings (Section 21) -**The child marriage Restraint Act, 1929 is repelled by section 21 of the Prohibition of child Marriage Act, 2006.

Short note on abandonment of child

Abandonment refers a parent's choice to have no role in his/her child's life. This includes failure to support the child financially, as well as failure to communicate with the child or have any type of active role in the child's life. Causes include many social and culture factors as well as mental illness.

Poverty is often a root cause of child abandonment.

Political conditions, such as difficulty in adoption proceedings

The relevant provisions in Indian Penal Code, 1860 are as follows:-

- Section 317. Exposure and abandonment of child under twelve years, by parent or person having care of it
- Section 318 Concealment of birth by secret disposal of dead body

Various provisions regarding the custody of children under different Acts during matrimonial suit

Introduction

Child custody is a term used in family law courts to define legal guardianship of a child under the age of 18. During divorce or marriage annulment proceedings the issue of child custody often becomes a matter for court to determine.

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In most cases, both parents continue to share child custody but one parent gains physical child custody. Family law courts generally take decisions on the best interest of the children.

Both parents continue to share legal child custody until the minor has reached the age of 18 or becomes legally emancipated. In legal custody both can decisions which affect the welfare of the child.

In general court tends to award physical child custody to the parent who demonstrates the most financial security, adequate parenting skills and the least disruption for the child.

In most cases, the non-custodial parent still has visitation right.

Provisions regarding Custody of Children in various Acts.

The Hindu Marriage Act, 1955: Section 26 of the Hindu marriage Act, 1955 provides for custody of children. That section reads as under

- **Section 26. Custody of Children.**- In any proceeding under this act, the court may, from time to time, pass such interim orders and make such provisions in the decree as it deem fit with respect to the custody, maintenance and education of the minor children, consistently with their wishes.
- **Court may also from time to time revoke, suspend or vary any such orders and provisions previously made.**
- **The Hindu Minority and Guardianship Act 1956: Section 13 Welfare of minor to be paramount consideration.**—while appointing or declaration of any person as guardian of a Hindu minor by a court , the welfare of the child concerned shall be the paramount consideration.