Chapter Two

Crimes Against Juveniles: An Overview
In the silent gloom of the temple children come out to play.

God watches from above and forgets the priest.

- Ravindra Nath Tagore
CHAPTER TWO

2.0 GENERAL INTRODUCTION

The future custodians of all the present philosophies, including sovereignty, rule of law, justice, liberty, fraternity and international peace and security, are the children. They are potential embodiment of our ideals, aspirations, ambitions and future expectations.\(^1\) They are the only messengers of our ideologies, philosophies, knowledge and cultural heritage.\(^2\) They are, indeed, future shoulders in the form of great scientists, rulers, administrators, philosophers, legislators, teachers, judges, engineers, technologists, industrialist, planners, workers and politicians on whom the nation rests. It is a matter of pleasure that the growing emphasis on human development has focused the world’s attention on the child as the significant future human resource and primary education as the fundamental part of education which in turn is the component of developmental process.\(^3\) Hence, both the child and primary education have been given prominence in several international documents.

Children are an important asset not only for their country but for the whole of mankind. They are not merely future adults. They are tiny apostles of peace and above all very much human beings though weak and immature. They have enormous potential to grow and develop into adults of future obviously, they are not a commodity and hence cannot be subjected to family monopoly. Welfare and development of a society largely depends upon them.\(^4\)

We must also realize that the efforts for advancement in the human conditions must start as early as possible and begin with the child and the mother, well before the child is born. Protecting the health and education of today’s children is the first and foremost right of these children, but it is also the most basic and wisest of all investments and, thus for social and economic development of society.\(^5\)

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Since ages, children have been victimized by one abuse or the other. It is not wrong to say that they are a neglected lot. For children there has never been a golden age. Throughout the history of our society, children have been bought sold, enslaved, exploited and killed. They have been abandoned, severely beaten and physically abused. In fact, the more we go in history we find that the lot of children had been houses, and crueler. Poverty and man situation have especially led to killings of children.

Ironically, the children have hardly ever enjoyed complete protection from the adults in society. There has been a widespread evidence of child ill-treatment seen everywhere. If we go deep into the pages of history, we would find a catalogue of abuses from which children have suffered in the past. Truly speaking, the victimization starts from the birth of a child itself. For instance, the practice of infanticide or the willful killings of new born babies was widely accepted among ancient and prehistoric people as a legitimate means of dealing with unwanted children. The same has taken the shape of foeticide with the advent latest scientific and technological instruments.6

Abandonment was another ill treatment, noted out to children. Poor parents used to leave their newly born babies at deserted place, in order to get rid of them. It has been the practice in Europe, Africa and in India. The unmarried mothers also threw their illegitimate infants in dustbins.

Sexual exploitation is another abuse, which children have faced over the centuries. Out of last adults would modest them to their appeasement. Poverty and illiteracy has played great role in facing children to be exploited in order to earn their meals, a day. Children have been used as slaves and bonded labourers in all societies. In India, the children, coming from the lower strata or society served the mighty and wealthy. They served and died.

Although times have changed and the miseries of children have been reduced with the help of passage and implementation of certain laws yet their lot as a whole has not improved much. Even today, the children are forced to work against their will, as labourers, only meet to bounded over, if not slaves. Fortunately, the infanticide is not in practice, scale-though stray cases cannot be ruled out-but, there are instances, where unmarried mothers still abandon their unwanted babies, in fields, large dustbins are pits and tanks etc. Children- both girls and boys are exploited sexually, even now. The

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newspapers are full of news about rapes of minor girls and the inhuman attitude of adults towards young boys. This is the true picture of the harsh relations.

However, there are signs of hope. Now, the society is far becoming more aware about the state and status of the children. The governments have framed lower to stop in victimization of these. There are a number of social workers activities all over the world, who are committed to the welfare to children.

In India, too state of affairs, regarding the lot of the children has begun changed for batter. Apart from the Government, a number of a non-governmental organizations (NGO's) are engaged in their pursuit of child welfare through various social, health and educational activities.7

India is a home land of more than one billion people, of whom one-third are children under 18 years of age. The world's tenth largest economy unfortunately ranks 127 on the Human Development Index (HDI). If all child rights indicators were to become a critical measure for HDI, India would fare even worse, especially because of its poor performance on child protection.8

India, with 1.21 billion people is the second most populous country in the world, while China is on the top with over 1.35 billion people. The figures show that India represents almost 17.31% of the world's population, which means one out of six people on this planet live in India. Every year, an estimated 26 millions of children are born in India which is nearly 4 million more than the population of Australia. It is significant that while an absolute increase of 181 million in the country's population has been recorded during the decade 2001-2011, there is a reduction of 5.05 millions in the population of Children aged 0-6 years during this period. The decline in male children is 2.06 million and in female children is 2.99 millions. The share of Children (0-6 years) in the total population has showed a decline of 2.8 points in 2011, compared to Census 2001. In 2011, the total number of children in the age-group 0-6 years is reported as 158.79 million which is down by 3.1% compared to the child population in 2001 of the order of 163.84 million. The share of children (0-6 years) to the total population is 13.1% in 2011 whereas the corresponding figures for male children and female children are 13.3% and 12.9%.9

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7 Ibid, p. 10.
9 Census, India, Office of Registrar, General of India, 2013.
India's commitment to the child as contained in its Constitution and several other national and international legal instruments that are binding on the nation, falls short of realization despite, various programmes and policies being in place. The implementation of these programmes and policies pose a serious challenge in the face of growing numbers of children in difficult circumstances and absence of adequate financial commitment to child protection.\textsuperscript{10}

Over the years, the understanding of children in difficult circumstances has come to include the following categories of children:

- Homeless children (Pavement dwellers, displaced/evicted etc.)
- Refugee and migrant children
- Children deprived of parental care i.e. orphaned, abandoned and destitute children
- Children whose parents cannot or are not able to take care of them
- Street and working children
- Child beggars
- Child marriage victim
- Trafficked children
- Child victims of commercial sexual exploitation
- Children of commercial sex workers
- Children in prison
- Children affected by conflict/civil strife
- Children affected by disasters, both natural and man made
- Children affected by substance abuse
- Children affected by HIV/AIDS and other terminal diseases
- Children in Institutional Care
- Disabled children
- The girl child
- Children belonging to ethnic and religious minorities and other marginalized groups
- Children in conflict with law

While exact and precise data on all these categories of children is not known, a situational analysis based on whatever information is available is imperative for

planning for children in difficult circumstances. Even after 65 years of independence and
government functioning, little attempt has been made to respond to the needs of children
in need of care and protection. The minimal government structure that exists is rigid and
a lot of time and energy goes in maintaining the structure itself rather than concentrating
on programmatic outcomes.  

The Ministry of Women and Child Development deals with child protection
schemes including a Programme for Juvenile Justice, an Integrated Programme for Street
Children, Childline Service, Shishu Greha Scheme, Scheme for Working Children in
Need of Care and Protection, Rajiv Gandhi National Crèche Scheme for Children of
Working Mothers and Pilot Project to Combat Trafficking of Women and Children for
Commercial Sexual Exploitation. An examination of these schemes has revealed major
shortcomings and gaps in the infrastructure, set-up and outreach services for children.

Some of the general gaps in the juvenile protection services may be summarized as
follows:

- Inadequate implementation of laws and legislations. Mechanisms and structures
  prescribed by legislations are not in place to enable effective implementation;
- No mapping has been done of the children in need of care and protection or of
  the services available for them at the district/city/state level;
- A large percentage of children in need of care and protection are outside the
  safety net and have no support and access to services;
- Existing Schemes are inadequate in outreach and funding, resulting in marginal
  coverage of destitute children and children in difficult circumstances;
- Allotment of negligible resources to child protection and uneven geographical
  spread in utilization of allotted resources;
- Overbearing focus on institutional services with non-institutional services being
  negligent;
- Lack of coordination and convergence of programmes/services;
- Inter-state and Intra-state transfer of children especially for restoration to their
  families have not been provided for in the existing schemes;
- Lack of professionally trained manpower for providing child protection services
  in the country, especially counseling services;

Lack of lateral linkages with essential services for children for example education, health, police, judiciary, services for the disabled, etc.

This situation analysis presents available data on certain child protection issues and categories of children in difficult circumstances, factors responsible for the vulnerable situations in which children find themselves and key areas of concern. The analysis also reveals the large gaps in data, both in quantitative data but more significantly, also on qualitative data and the range and nature of protection issues like abuse, violence, conflict, displacement, to name a few.

As with all measures for child rights, protection must be customized to age specific entitlements and needs.

The 1974 National Policy for Children pledges caring and protective attention to the child both before and after birth. Today this policy provision needs to be fulfilled.\(^\text{12}\)

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<thead>
<tr>
<th>Age</th>
<th>Risk/Protection violation</th>
<th>Discrimination/other vulnerabilities</th>
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<tr>
<td>&quot;Pre&quot;</td>
<td>Non-enforcement of PCPNDT Act</td>
<td>Being unwanted, risk of prenatal detection</td>
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<td>Conception</td>
<td>Necticide</td>
<td>Discrimination in breast feeding and infant food</td>
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<td>1 Yr.</td>
<td>Infanticide</td>
<td>Neglect of health (immunization)</td>
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<td>Neglect/Denial of care</td>
<td>Birth sequence/order of birth</td>
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<td>Abandonment</td>
<td>Access constraints due to identity</td>
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<td>Rape</td>
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<td>Sale/organ sale</td>
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<tr>
<td>2 – 5</td>
<td>Abuse, violence</td>
<td>Access constraints due to identity</td>
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<td></td>
<td>Rape/incest</td>
<td>Caste/class/community bars</td>
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<td></td>
<td>Neglect/Denial of care</td>
<td>Vulnerability of status: migrant, beggar,</td>
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<td>Early marriage</td>
<td>Refugee, child of sex worker, child of prisoner,</td>
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<td></td>
<td>Abandonment</td>
<td>HIV/AIDS affected, leprosy affected, Disabled</td>
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<td></td>
<td>Sale/organ sale</td>
<td>Discrimination in access to food</td>
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<td>Poorer health attention and poorer access to health care; high risk of nutritional anaemia (74% in 0-3 age group, both sexes)</td>
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<td>Discrimination in overall treatment, parental care; expression of value and worth</td>
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<td>Early definition and imposition of 'suitable' roles; limits on permitted learning and play activities</td>
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<th>Age Range</th>
<th>Issues</th>
<th>Additional Factors</th>
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**Recommendations for the 12th Five year plan (2012-2017):** The vision of the Twelfth Plan is that “More Inclusive Growth begins with Children” and that children cannot be merely “put” on the growth agenda because they are integrate to it – integral to faster, more inclusive and sustainable economic growth. The Twelfth Plan represents a new “Child Rights Paradigm” that mandates the fulfillment children’s rights to survival, development, protection and participation as the foundation of human development and as the driver of faster, more inclusive and sustainable growth. This transforms and takes forward the vision of the Eleventh Plan – which positioned the development of children at the centre of the Plan.
The vision of the plan is envisaged as follows:

- Ensuring survival, holistic (physical, psychosocial, cognitive and emotional) development, protection and participation of children belonging to all castes, religions, language groups, communities, socio-economic status and geographical locations, in a life cycle approach.

- Fulfiling children’s development potential, in nurturing, protective, child friendly and gender sensitive family, community, programme and policy environments.\(^{13}\)

For the 12\(^{th}\) Five year plan the recommendations strongly emphasized for allocation of adequate resources, ensuring their appropriate implementation and the urgent requirement of community mobilisation and involvement in all initiatives for child rights and development, with monitoring of child related outcomes. The fulfillment of child rights should constitute a sensitive lead indicator of national development, at national, state, district and local levels in the Twelfth Plan, and be reflected in the Monitorable Targets for the Twelfth Plan.

In particular, Child Sex Ratio (in children under 6 years of age) will be used as a proxy indicator that epitomises an intergenerational cycle of multiple deprivations and gender based discrimination and violence faced by girls and women. The challenge in the 12th Plan is to significantly improve the child sex ratio, work towards the goal of enabling the girl child to be born, educated be empowered, and fulfill her rights in nurturing, enabling and protective environments. The girl child needs to be valued as an individual, and as an equal participant in development processes and a productive member of society.

In the 12\(^{th}\) Five Year Plan, the MWCD will continue to play a pivotal role, and expand the mandate for children by influencing other departments to focus on child specific and child related programmes and schemes. MWCD along with Planning Commission can consider national level child outcome assessments, supported by participatory community based methodologies at field level. They can ensure the analysis of standardised, disaggregated data(by gender, caste, community groups, spatial location etc) relating to reaching out to the most vulnerable and deprived children and communities at national, state, district and local levels- to catalyse action at different levels.\(^{14}\)

A society and community influenced by 'son preference,' Social /community support

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for early disposal; Unplanned negative impact of family planning messages for small family / 2 child norms; Persistence of child marriage; Emerging sale/ 'export', and traffickers' use of cover of pseudo marriages; Social silence about domestic violence, household abuse, "sex exploitation;" Vulnerability relating to the caste/community/cultural identity of the girl child; Lack of enabling education and socialization of girls.

A serious and pervasive barrier to protecting girl children is their negative socialization to subservience, and their training not to question their status, condition or treatment. There is need for a new programming investment, to offer girls openings to alternative socialization. School education can offer the girl child information and ideas, protecting them against such indoctrination and the blockages of custom and attitude. The social education of boy children towards a better understanding of parity and justice is equally important. Children can learn to defend themselves, and also to protect one another, but genuine social self-defense cannot happen in an adverse or indifferent climate.

There is need to consider what happens to girl children rescued or recovered from exploitation or abuse. The proper mechanism for recovery as well as rehabilitation need to be developed. Social protection theory speaks of a caring community or a protective environment. Existing schemes tend to emphasize restoration to the family setting. In the case of a very young girl child, rescued from early marriage, abduction, sale or the sex trade, or a young victim of domestic trauma, or rape, or a child recovered from a hostility/conflict zone: the family of origin may not be the best option available for relocation. Effective and proper mechanisms are essential for ongoing contact, shelter, counseling (including family counseling), and possibility of foster or alternate placement, re-entry into local life and activities, re-entry into schooling or development programmes and for any prosecution of offenders that should officially be undertaken.¹⁵

Child protection services on the ground, with integrated coordination being planned at district level will have to exercise special vigilance on the situation of girl children in every community. They will need to devise special needed approaches to serve girl children at all stages of childhood. A potential preventive lies in the provision of meaningful development opportunity to girls and importantly in the adoption of a programming approach and initiatives that would generate and sustain ongoing contact with young girls in the community. Lateral linkages between protection and

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development programming are key inputs to needed change. It is in the community and development settings that an alerting mechanism must emerge and operate.

The newly created Ministry of Women and Child Development has taken charge of child protection programs transferred from the Ministry of Social Justice and Empowerment. In addition to its nodal function on all policy issues related to children and the implementation and monitoring of CRC, the Ministry now has the primary responsibility for planning, implementation and coordination of child protection services. However, child protection is not the exclusive responsibility of the Ministry of Women and Child Development; other sectors have a vital role to play. The Ministry is therefore looking at child protection holistically and examining how to rationalize programmes and approaches for creating a strong protective environment for children, diversify and provide essential services for children, mobilize inter-sectoral response for strengthening child protection and set standards for care and services.

The Constitution of India recognizes the vulnerable position of children and their right to protection. Therefore, following the doctrine of protective discrimination, it guarantees special attention to children through necessary and special laws and policies that safeguard their rights. “The right to equality, protection of life and personal liberty and the right against exploitation enshrined in Articles 14, 15, 16, 17, 21, 23 and 24 further reiterate India’s commitment to the protection, safety, security and well-being of all its people, including children”.

The Chapter on Directive Principles of State Policy in the Constitution of India enjoins that the State shall, in particular, direct its policy towards securing:

▶ That the health and strength of workers, men and women, and the tender age of children are not abused and the citizens are not forced by economic necessity to enter a occupation unsuited to their age or strength.

▶ Those children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and childhood and youth are protected against exploitation and against moral and material abandonment.

▶ That the State shall Endeavour to provide early childhood care and education to all children until they complete the age of six ages.

India’s National Policy for Children 1974 provides a framework for policy and planning for children. In 1992 India acceded to the United Nations Convention of the

16 Article 15 Constitution of India.
Rights of the Child (UNCRC), committing to take measures to ensure the survival, protection, participation and development of its children. At the World Summit for Children in 1990 India adopted the World Declaration for Survival, Protection and Development of Children. Additionally, India ratified the Optional Protocols on the Use of Children in Armed Conflict and the Sale of Children, Child Prostitution, and Child Pornography in 2005. It also reaffirmed its commitment to children by adopting the Millennium Development Goals and a World Fit for Children. Moving towards its commitments, the Government of India introduced the National Charter for Children 2003, which stipulates the duties for the State and community, followed by a National Plan of Action for children in 2005, which ensures collective commitment and action towards the survival, development, protection and participation of children by all sectors and levels of government and civil society. India has also signed the SAARC Convention on Combating Trafficking and Commercial Sexual Exploitation of Women and Children, 2002, the SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, 2002 and is signatory to the SAARC decade on the Rights of the Child 2001 – 2010, decided in Rawalpindi Resolution on Children in South Asia in 1996.

Despite such clear commitments to child protection enshrined in the Constitution of India and the UN Convention on the Rights of the Child ratified by India in 1992, and the two Optional Protocols ratified in 2005, and the various national and international commitments made, children continue to remain vulnerable with the number of those needing care and protection is ever increasing.

Five decades of planned development indeed failed to address the critical issue of ‘Child Protection’. And in these recent years a lot has changed in the lives of people, particularly children that calls for a re-examination of the understanding of ‘Child Protection’ itself.

‘Child Protection’ needs to be understood in terms of who are the children who need to be protected, from what/whom and how? Every child has a right to protection. This not only includes children who are in difficult circumstances and those who have suffered violence, abuse and exploitation but also massive, under-recognized and under-reported barriers to child survival and development. Children subjected to violence, exploitation, abuse and neglect are at risk of shortened lives, poor physical and mental health, educational problems (including dropping out of school), poor parenting skills later in life, homelessness, vagrancy and displacement. Conversely, successful protection
increases a child’s chances to grow up physically and mentally healthy, confident and self-respecting, and less likely to abuse or exploit others, including his or her own children.

The Government’s approach to child protection so far has addressed largely those children who have already missed the protective net and fallen into difficult circumstances. Unfortunately the current coverage falls short of reaching the most vulnerable because the interventions through the existing schemes do not cover all the categories of children in difficult circumstances. Even where the interventions exist, for instance, institutional care for children in difficult circumstances, there is much room for improving the infrastructure and expanding the outreach. The quality of services need up-gradation and regional imbalances need to be addressed.

For building on a comprehensive understanding of children’s right to protection, it important to adopt both a preventive and a protective approach to child protection.

The preventive approach-in all these years, application of the preventive approach has been limited to programmes like awareness generation, media advocacy, training and capacity building of various stakeholders, legal literacy, sex education in schools etc. The need of the hour calls for a wider outlook that must go beyond the conventional prevention strategies and also take into account the link between child protection and other micro and macro development issues. Such a holistic understanding of prevention alone can help keep children within the protective net. Such a protective approach includes mapping of areas to identify potentially vulnerable families and families with risky behavior, where children are more vulnerable or likely to come into vulnerable situations. Strengthening the families and family environment must follow. Lateral linkages with different sectors viz. Education, Health, Rural Development Labour, Urban Affairs, Legal Affairs, Home Affairs etc. and different Departments and Ministries of Central and State Governments, including Local Self-Government, PRISs etc. need to be strengthened. A rights-based approach calls for addressing the root causes of any social problem. It is also important that partnership with civil society is strengthened for all stages of planning, implementation and monitoring child protection initiatives. Therefore, a proactive preventive approach as discussed above homes inevitable.

The protective approach is to deal with situations post-harm and must include immediate as well as long-term protection strategies for all children who need it,
including programmes for their physical and psychological recovery, rehabilitation and reintegration, legal aid and access to justice through child-friendly laws and procedures, and clear standards for protection of every individual/family/institution dealing with children.

It is critical to invest in child protection as protection failures are not only human rights violations, but are also major, under-recognized, under-reported and under-acted upon barriers to child survival and development. In addition, the links between protection and other development targets accepted by the country need to be explicitly stated and understood in order to address appropriately the concerns for achieving these and to invest in accordance with the need and magnitude of the problem.

2.0.1 The Legal Definition of a Child or Juvenile:

Age determination is a very complex issue. There have been some recent judgments on this issue. The supreme court has held that on the point of proof of age, school leaving certificate is the best evidence and so far as the medical certificate is concerned, the same is based on estimate, and possibility of error cannot be ruled out.\(^{17}\) However, regarding date of birth, the secondary school certificate is not to be taken to be correct unless corroborated by parents who got the same entries made.\(^{18}\)

According to Sec. 2(k) of Juvenile Justice (care and protection of children) Act, 2000 "Juvenile" or "child" means a person who has not completed 18 years of age\(^{19}\). In India the national policy for children declares that the nation’s children are super important asset. This national asset has to be well preserved against all odds and at all cost if we want our future to be safe. But the future of modern societies seems to be in dark because every society is plagued and afflicted by the delinquent and anti-social behaviour of the children which has penetrated deep and has taken firm roots in almost all the segments of the modern societies\(^{20}\).

In India, childhood has been defined in the context of legal and constitutional provisioning, mainly for aberrations of childhood. It is thus a variable concept to suit the purpose and rationale of childhood in differing circumstances. Essentially they differ in defining the upper age-limit of childhood. Biologically, childhood is the span of life from

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birth to adolescence. According to Article 1 of United Nations Convention on the Rights of the Child (UNCRC), “A child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier.” The definition of the child as given by the United Nations Convention on the Rights of the Child (UNCRC) has definite bearing not only on child development programmes and on budgetary provisions for them, but also on production of statistics as applicable to different cross-sections of children in terms of reference ages.

A child domiciled in India attains majority at the age of 18 years. However, various legal provisions address children with differing definitions. The age-groups of 0-14 years, 15-59 years and 60 and above years form a commonly accepted standard in reporting demographic indicators. The child related legal and constitutional provisions are kept in view while statistics are generated for different cross-sections of children that align with specific age-groups standing for specific target groups of children such as, child labourers, children in school education, children in crimes, etc.

United Nations Convention on the Rights of the Child (UNCRC), adopted by the United Nations General Assembly in 1990, is the widely accepted UN instrument ratified by most of the developed as well as developing countries, including India. The convention provides standards to be adhered to by all State Parties in securing the best interest of the child and outlines the fundamental rights of children.

The legal conception of a child has thus tended to vary depending upon the purpose. According to Article 1 of the United Nations Convention on the Rights of the Child 1989, ‘a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier’\textsuperscript{21}. The Article thus grants the discretion to individual countries to determine by law whether childhood should cease at 12, 14, 16 or whatever age they find appropriate. In India, the age at which a person ceases to be a child varies in different laws.

Thus, it can easily be said that the best evidence for determination age is the birth certificate or the school certificate and in case it is available, that would be considered the best evidence, and so far as the medical evidence is concerned, since it has margin of error, it would be taken into consideration only when primary evidence which is found in the birth certificate or school certificate is not available.\textsuperscript{22}

\textsuperscript{22} Rajan and Ors. v. State of Rajasthan 2002 Cri.LJ 3152.
If it is not clear as under what provision of law, the school register is maintained, the entries made in such a register cannot be taken as a proof of age of the person concerned for any purpose.\textsuperscript{23} In a Supreme Court Judgement, it has been held that entries in birth register made by the official concerned in discharge of his official duties are admissible evidence under Section 35 of the Indian Evidence Act.

The following are some points that have been decided in cases under the Juvenile Justice (Care and Protection of Children) Act 2000.

1. When the school leaving certificate shows the age of the child as below 18 years, but arrest memo shows it as 18 years, the court should first enquire about the current age of the child. The order of rejecting the bail without such inquiry in respect of the age in Narcotic Drugs and Psychotropic substances Act is improper.\textsuperscript{24}

2. If the age of the accused during the recording of the statement under Section 313 of the Criminal Procedure Code is 22 years, but was ‘juvenile’ at the time of commission of the offence, he must be treated as ‘juvenile’ for sentencing purposes.\textsuperscript{25}

3. When there are various dates in various documents of the accused, viz., two sets of school certificates, ration card, voters list and medical report, the concurrent finding of the fact by both the courts (that the accused is above 16 years is in the instant case, arisen on the Juvenile Justice Act 1986) based on the material on record cannot be disturbed.\textsuperscript{26}

4. If any proceeding is pending on the date of enforcement of the new Act, that proceeding shall be concluded under the provisions of the old Act. However, Section 20 of the new Act provides that in case the court finds that the accused was juvenile and he committed the offence, the court shall record its finding, but shall not pass any sentence and send the juvenile to the Board for appropriate orders. The sending of juvenile before the Board would arise after the conclusion of the trial and finding that the accused had committed the offence. But it is clear that except the said procedure, the provisions of the new Act would not be except

\textsuperscript{23} Ramdeo Chauhan v. State of Assam AIR 2001 SC 2231.
\textsuperscript{24} Manoharlal v. State of Rajasthan 2002 CriLJ 394.
\textsuperscript{26} Mehmood Khan v. State 2002 CriLJ 2123.
the said procedure, the provisions of the new Act would not be applicable to the
above proceeding.27

5. The Additional Chief Judicial Magistrate in the state of Bihar is competent to
hold an enquiry under Section 4 of the new Act for the purpose of determining
the age of the juvenile.28

6. The new Act is not applicable to pending cases, only if trial is pending on the
date of enforcement of the Act, which is 1 April 2001. Even though persons
between the ages of 16 and 18 have been brought within the definition of
'juvenile' under the new act, a person who has not been held to be juvenile under
the old Act being above 16 years, cannot be treated as a juvenile under the new
Act even if he is below 18 years.29 Bail cannot be refused to the juvenile merely
because he has been charged with having committed a heinous offence triable
exclusively by a court of sessions.30

7. Court should not guess about the existence of ground for refusal of bail. Those
grounds should be substantiated by some evidence on record.31

8. Plea of juvenility can be taken anytime even before the appellate court.32

9. Conduct of trial of 'juvenile' by the sessions court without first enquiring his age
in order to ascertain as to whether he is 'juvenile' or not is not proper and
Rajasthan High Court directed the sessions judge first to conduct an enquiry
about the age of the accused and if he is found juvenile, then to forward the
relevant record to the competent court, and if found otherwise, to decide sessions
case as per the law.33

10. The provisions of the Act would be applicable even to those cases initiated and
pending for offences committed under the Act of 1986 provided the offender has
not completed 18 years of age as on 1 April 2001.34

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31 Sanjay State of U.P. 2003 CriLJ (NOC) 252; 2003 AllLJ 2378 (reasons are necessary for refusing the
bail).
34 Pratap Singh v. State of Jharkhand and Anr. 2005 CriLJ 3091; see also Bijender Singh v. State of
Haryana 2003 CriLJ 2135.
11. The reckoning date for determination of age of juvenile offender is the date of offence and not the date when he is produced before the court competent authority.\textsuperscript{35} 

12. Considering the difficulty of transportation of juveniles from far-off places for trial and considering the fact that only 5 Juvenile Justice Boards were constituted to deal with the entire state of Karnataka, the high court directed the State government to consider the necessity of establishing one Board for each district.\textsuperscript{36} 

13. The Board has exclusive power to deal with trial of juveniles in conflict with law. To that extent, jurisdiction of any court including that of session's court or fast track court is barred. 

14. A juvenile was not presented before the court on various dates. The copy of order of the court declaring the petitioner to be juvenile and directing to shift him to observation board was misplaced by the jail authorities. So, the juvenile had to remain in an adult jail for 25 months. The juvenile was granted compensation of rupees one lakh.\textsuperscript{37} In the same case, the Bombay High Court had directed the sessions court and magistrates courts to get compliance report of their orders in 6 weeks in all cases where bail is granted to avoid such incidents. 

15. The session courts cannot refuse to make enquiry for purpose of determination of the age of alleged juvenile offender on the sole ground that a Board is constituted.\textsuperscript{38} If the accused had admittedly opened an account in a bank, his contention that he was a mirror at the time of the commission of the offence cannot be accepted because he could not have an open account, had it been so.\textsuperscript{39} 

16. While dealing with the question of determination of age of the accused, for the purpose of finding out whether he is a juvenile or not, hyper-technical approach should not be adopted while appertaining the evidence adducted on behalf of the accused in support of the plea that he was a juvenile in borderline cases.\textsuperscript{40} 

17. Proper care is expected from all the agencies, institutions and the government to ensure that necessary effort is made to take appropriate and prompt steps to

\textsuperscript{36} State of Karnataka v. Harshad 2005 CriLJ 2357. 
\textsuperscript{37} Master Salim Ansari and Anr. v. Officer-in-Charge Borivali Police Station Mumbai and Ors 2005 CriLJ 799. 
\textsuperscript{39} Om Prakash alias Raja v. State of Utaranchal 2003 CriLJ 483. 
provide necessary infrastructure and opportunity for reformation of juvenile and not to allow them to become hardened criminals.\(^{41}\)

2.0.2 Constitutional Provisions for Children in India:

Several provisions in the Constitution of India impose on the State the primary Responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected. Children enjoy equal rights as adults as per Article 14 of the Constitution. Article 15(3) empowers the State to make special provisions for children. Article 21A of the Constitution of India directs the State to provide free and compulsory education to all children within the ages of 6 and 14 in such manner as the State may by law determine. Article 23 prohibits trafficking of Human beings and forced labour. Article 24 on prohibition of the employment of children in factories etc, explicitly prevents children below the age of 14 years from being employed to work in any factory, mine or any other hazardous form of employment. Article 39(f) directs the State to ensure that children are given equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against moral and material abandonment. Article 45 of the Constitution specifies that the State shall endeavour to provide early childhood care and education for all children until they complete the age of 6 years. Article 51A clause (k) lays down a duty that parents or guardians provide opportunities for education to their child/ward between the age of 6 and 14 years. Article 243 G read with schedule-11 provides for institutionalizing child care to raise the level of nutrition and the standard of living, as well as to improve public health and monitor the development and well being of children in the Country.\(^{42}\)

2.0.3 Union Laws Guaranteeing Rights and Entitlement to Children:

A fairly comprehensive legal regime exists in India to protect the rights of Children as encompassed in the Country’s Constitution. The age at which a person ceases to be a child varies under different laws in India. Under the Child Labour Prohibition and Regulation Act, 1986, a child is a person who has not completed 14 years of age. For the purposes of criminal responsibility, the age limit is 7 (not punishable) and above 7 years to 12 years punishable on the proof that the child understands the consequences of the act, under the Indian Penal Code. For purposes of protection against kidnapping, abduction and related offences, it’s 16 years for boys and

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\(^{42}\) www.socialjustice.nic.in (Accessed on 03/11/2011)
18 for girls. For special treatment under the Juvenile Justice (Care and Protection of Children) Act 2011, the age is 18 for both boys and girls. And the Protection of Women from Domestic Violence Act 2005 defines a child as any person below the age of 18, and includes an adopted step- or foster child.43

2.0.4 Some of the important Union laws Guaranteeing Rights and Entitlement to Children are as follows:
1. The Guardian and Wards Act, 1890
2. The Reformatory Schools Act, 1897
3. The prohibition of Child Marriage Act, 2006
4. The Apprentices Act, 1961
5. The Children (Pledging of Labour) Act, 1933.
6. The Hindu Minority and Guardianship Act, 1956
7. The Hindu Adoption and Maintenance Act, 1956
8. The Immoral Traffic prevention Act, 1956
9. The Women’s and Children’s Institutions (Licensing) Act, 1956
10. The Young Person’s harmful Publication’s Act, 1956
11. The Probation of Offender’s Act, 1958
12. Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960
13. The Child Labour (Prohibition and Regulation) Act, 1986
17. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995
18. The Factories Act 1948
19. The Commissions For Protection of Child Rights Act, 2005

2.1 Crimes Against Children

There is no separate classification of offences against children. Generally, the offences committed against children or the crimes in which children are the victims are

43. www.education.nic.in (Accessed on 05/03/2013)
considered as Crime against Children. Indian penal code and the various protective and preventive ‘Special and Local Laws’ specifically mention the offences wherein children are victims. The age of child varies as per the definition given in the concerned Acts and Sections but age of child has been defined to be below 18 years as per Juvenile Justice Act, 2000. Such offences are construed as crimes against children for the purpose of analysis in this chapter.

It is also to be borne in mind that the offences that are analysed in this chapter do not form an exclusive block of offences that are reported in the country. They are included in the IPC/SLL cases already discussed in other relevant chapters. The offences mentioned in this chapter have been culled out from various reported crimes in the country wherein the victims of the offences were children.

The data on crimes against children is compiled through the revised annual returns w.e.f. year 2001. Cumulative totals of crime statistics available on monthly basis were used for this analysis till 2000. The revised annual returns have additional heads like ‘murder of children’ and ‘other crimes’, therefore, incidents of crimes against children during 2001 and later years may not be comparable with the figures of year 2000 and before.

The cases in which the children are victimised and abused can be categorised under two broad sections:

1) Crimes committed against Children which are punishable under Indian Penal Code (IPC).
2) Crimes committed against Children which are punishable under Special and Local Laws (SLL).

Specific Sections/Acts under above two categories are as follows:

2.1.1 Crimes against children punishable under the Indian Penal Code (IPC) are:

a) Murder (302 IPC)
b) Feticides (Crime against a foetus) Section 315 & 316 IPC.
c) Infanticides (Crime against newborn child) (0 to 1 year) Section 315 IPC.
d) Abetment to Suicide (abetment by other persons for commitment of suicide by children) Section 305 IPC.
e) Exposure & Abandonment (Crime against children by parents or others to expose or to leave them with the intention of abandonment): Section 317 IPC.
f) Kidnapping & Abduction:
   i) Kidnapping for exporting (Section 360 IPC).
ii) Kidnapping from lawful guardianship (Section 361 IPC).

iii) Kidnapping for ransom (Section 364 A).

iv) Kidnapping for camel racing etc. (Section 363 IPC).

v) Kidnapping for begging (Section 363-A IPC).

vi) Kidnapping to compel for marriage (Section 366 IPC).

vii) Kidnapping for slavery etc. (Section 367 IPC).

viii) Kidnapping child for stealing from its person (under 10 years of age only) (Section 369 IPC).

g) Procuration of minor girls (for inducement to force or seduce to illicit intercourse) (Section 366-A IPC).

h) Selling of girls for prostitution (Section 372 IPC).

i) Buying of girls for prostitution (Section 373 IPC).

j) Rape (Section 376 IPC)

2.1.2 Crime against children punishable under ‘Special and Local Laws’ are:

a) Immoral Traffic Prevention Act, 1956 (where minors are abused in prostitution).


Crime Incidence: A total of 33,098 cases of crimes against Children were reported in the country during 2011 as compares to 26,694 cases during 2010, suggesting an increase of 24.0%. Among IPC crimes, number of cases under Procuration of Minor Girls increased from 679 in 2010 to 862 in 2011, registering an increase of 27.0% over 2010. Cases of Kidnapping & Abduction increased by 34.2% during the year (from 10,670 in 2010 to 15,284 in 2011). Uttar Pradesh (5,500), Madhya Pradesh (4,383), Delhi (4,250), Maharashtra (3,362), Bihar (2,233) and Andhra Pradesh (2,213) have accounted for 16.6%, 13.2%, 12.8%, 6.7% and 6.7% of total crimes respectively against children at the National level.

Crime Rate: The crime rate has marginally increased from 2.3 in 2010 to 2.7 in 2011. The rate was highest in Delhi (25.4) followed by A & N Islands (20.3), Chandigarh & Chhattisgarh (7.0 each), Madhya Pradesh (6.0) and Goa (5.1) as compared to the National average of 2.7.

Crime head-wise Analysis: The State/UT-wise and crime head-wise incidents of crimes are presented in the table given in this chapter.
1. Murder (Including Infanticides)\(^{44}\): A total of 1514 cases of Murder of children (including infanticides) were reported in the country against 1,508 cases in 2010 resulting in an increase of 0.4% in 2011 over 2010. Uttar Pradesh has reported the highest number of such cases (326) accounting for 22.9% of the total cases reported in the country. Arunachal Pradesh, Mizoram, Daman & Diu, Lakshadweep and Pondicherry did not report any case of child murder during the year 2011.

2. Infanticide\(^{45}\): A total of 63 Infanticide cases were reported in the country during the 2011. The incidents deceased in the year 2011 (63 cases) from 100 cases in the year 2010. The decrease amounted to 37.0% over 2010. All 63 cases were reported Uttar Pradesh and Madhya Pradesh accounted for 13 cases each of the 63 cases reported at National level.

3. Rape\(^{46}\): A total of 7,112 cases of child rape were reported in the country during 2011 as compared to 5,484 in 2010 accounting for an increase of 29.7% during the year 2011. Madhya Pradesh has reported the highest number of cases (1,262) followed by Uttar Pradesh (1088) and Maharashtra (818). These three States altogether accounted for 44.5% of the total child rape cases reported in the country.

4. Kidnapping & Abduction\(^{47}\): A total of 15,282 cases of Kidnapping & Abduction of children were reported during the year 2011 as compared to 10,670 cases in the previous year accounting for a significant increase of 43.2%. Uttar Pradesh (3,739) followed by Delhi (23,528) has accounted for 24.5% and 23.1% respectively of the total cases reported in the country. The rate of crime was also highest in Uttar Pradesh (24.5) followed by Delhi (23.1) as compared to the National average of 1.3.

5. Foeticide\(^{48}\): A total of 132 cases of Foeticide were reported in the country during 2011 as compared to 111 cases in the year 2010 indicating a rise of 18.9% in these cases. Punjab, Rajasthan and Uttar Pradesh have reported 38 cases, 21 cases, 15 cases, 13 cases and 12 cases respectively of such crime.

6. Abetment to Suicide\(^{49}\): 61 cases of Abetment to Suicide by children were reported during the year 2011 as compared to 56 cases in the year 2010 denoting an increase of 8.9% during the year 2011.

\(^{44}\) Sec. 302 I.P.C. and 315 I.P.C.
\(^{45}\) Sec. 315 I.P.C.
\(^{46}\) Sec. 376 I.P.C.
\(^{47}\) Sec. 363 to 373 I.P.C.
\(^{48}\) Sec. 315 & 316 I.P.C.
\(^{49}\) Sec. 305 I.P.C.
7. Exposure & Abandonment\textsuperscript{50}: A total of 700 cases were reported during 2011 as compared to 725 cases during 2010 showing a decline of 3.4% during the year 2011. Maharashtra (27.0%) has reported the highest number of such cases (189), followed by Gujarat (15.0%) (105 cases) of the total cases reported in the country.

8. Procuration of Minor Girls\textsuperscript{51}: 862 cases were reported in the year 2011 as compared to 679 such cases in the year 2010, accounting for 27.0% increase over 2010. West Bengal has reported 298 such cases indicating a share of 34.6% at National level followed by Bihar (183), Assam (142) and Andhra Pradesh (106). An increasing trend was observed in these cases during the last three years. Details are given at the table in this chapter.

9. Buying of girls for Prostitution\textsuperscript{52}: 27 cases of ‘buying of girls’ for prostitution was reported in the country during the year 2011 and 78 cases in 2010. Maharashtra (20 cases) has accounted for 74.0% of total 27 cases of ‘buying of girls for Prostitution’ in the year 2011.

10. Selling of girls for Prostitution\textsuperscript{53}: 113 cases of ‘selling of girls’ for prostitution was reported in the country during the year 2011 and 130 cases in 2010. West Bengal has accounted 77% (87 cases out of 113 cases) of the total cases of ‘selling of girls for prostitution’ reported in the country in the year 2011.

11. Other Crimes (including prohibition of Child Marriage Act 2006): 7293 cases of other crimes including prohibition of Child Marriage Act 2006 were reported in the country during the year 2011 and 7523 cases were reported in the year 2010 and there is 1% variation in 2011 over 2010.

Disposal of crimes by Police & Courts: The average charge-sheeting rate for all the crimes against children (IPC & SLL) was 82.5% in 2011, which was the same in 2010 as well. The highest charge-sheet rate was observed in cases under ‘Buying of Girls for Prostitution’ (100%) followed by ‘Rape’ (97.3%) in comparison to the prevailing National level charge-sheeting rate of 78.8% for the IPC crimes and 93.4% for SLL crimes. The lowest charge-sheet rate was found in cases of ‘foeticide’ (26.1%). The conviction rate at the National level for these crimes stood at 34.6%. The conviction rate for ‘Infanticide’ (other than Murder) was highest at 46.9% followed by cases under ‘Murder’ (45.5%).

\textsuperscript{50} Sec. 317 I.P.C.
\textsuperscript{51} Sec. 366A I.P.C.
\textsuperscript{52} Sec. 373/372 I.P.C.
\textsuperscript{53} 373/372 Indian Penal Code..
Disposal of Persons Arrested by Police & Courts: 31,002 (71.5%) persons out of 43,383 persons arrested for these crimes were charge-sheeted by the police and correspondingly, only 6,643 persons were convicted representing 33.6% conviction rate of persons arrested, which is marginally lower than conviction rate (case-wise) for crimes committed against children (34.6%).

Table: Crime against Children in the country and % variation in 2013 over 2012

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<tr>
<th>Sl. No.</th>
<th>Crime Had</th>
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<th>2013</th>
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<td>Total</td>
<td>33,098</td>
<td>38,172</td>
<td>58,224</td>
<td>52.5</td>
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</table>

Source: NCRB data 2013
INCIDENCE OF CRIME AGAINST CHILDREN DURING 2013
(All India 58,224)

Incidence (No. of Cases)

Source: NCRB data 2013
RATE OF CRIME AGAINST CHILDREN DURING 2013
(All India 13.23)

Rate of Crime

- Upto 5.00
- 5.01 - 10.00
- 10.01 - 15.00
- 15.01 - 20.00
- Above 20.00

Note:
Rate of Crime against Children means number of crimes against children per one lakh population of children. Estimated population of Children (upto 18 years) used for calculation of Crime Rate.

Source: NCRB data 2013.
Distribution of child abuse crimes during 2013:

- Kidnapping & Abduction: 48.4%
- Rape: 21.2%
- Other Crimes: 25.9%
- Murder (Other than Infanticide): 2.8%
- Exposure and Abandonment: 1.6%
Crime head wise incidence of crime against children during 2009-2013

Source: NCRB data 2013.
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<td>33098</td>
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2.2 Conclusion

Children are an important asset for their country as well as for the whole of the mankind. They are tiny apostles of peace and above all human beings though weak and immature. They have enormous potentials to grow and develop into adult of the future. Obviously, they are not commodity and hence cannot be subjected to family monopoly, welfare and development of society largely depend upon them. The children are subject to care and protection but in India the situation regarding children is quite pitiable.

Over the years, the understanding of children in difficult circumstances has come to include the following categories which are- Homeless children, Pavement dwellers, displaced/evicted one; Refugee and migrant children; Children deprived of parental care i.e. orphaned, abandoned and destitute children; Children whose parents cannot or, are not able to take care of them; Street and working children; Child beggars; Child marriage victim; Trafficked children; Child victims of commercial sexual exploitation; Children of commercial sex workers; Children in prison; Children affected by conflict/civil strife; Children affected by disasters, both natural and man made; Children affected by substance abuse; Children affected by HIV/AIDS and other terminal diseases; Children in Institutional Care; Disabled children; The girl child; Children belonging to ethnic and religious minorities and other marginalized groups; Children in conflict with law.

Age determination is a very complex issue. According to Sec. 2(k) of Juvenile Justice (care and protection of children) Act, 2000 “Juvenile” or “child” means a person who has not completed 18 years of age.

Several provisions in the Constitution of India has imposed on the State the primary responsibility of ensuring that all the basic needs of children are met meticulously and that their basic human rights are fully protected. Children enjoy equal rights as adults as per Article 14 of the Constitution. Article 15(3) empowers the State to make special provisions for children. Article 21-A, Article 23, Article 24, Article 39(f), Article 45 and Article 51-A (k) also deals with rights and safeguards to the children. A fairly comprehensive legal regime exists in India to protect the rights of Children as encompassed in the Country’s Constitution.

Some of the important Union laws guaranteeing Rights and Entitlement to Children are- The Guardian and Wards Act, 1890; The Reformatory Schools Act, 1897; The prohibition of Child Marriage Act, 2006; The Apprentices Act, 1961; The Children

There is no separate classification of offences against children. Generally, the offences committed against children or the crimes in which children are the victims are considered as Crime against Children. The Indian penal code and the various protective and preventive ‘Special and Local Laws’ specifically mention the offences wherein children are victims. The cases in which the children are victimised and abused can be categorised under two broad sections, Crimes committed against Children which are punishable under Indian Penal Code (IPC), Crimes committed against Children which are punishable under Special and Local Laws (SLL). Crimes against children punishable under the Indian Penal Code (IPC) are- Murder (302 IPC); Foeticides (Crime against a foetus) Section 315 & 316 IPC; Infanticides (Crime against newborn child) (0 to 1 year) Section 315 IPC; Abetment to Suicide (abetment by other persons for commitment of suicide by children) Section 305 IPC; Exposure & Abandonment (Crime against children by parents or others to expose or to leave them with the intention of abandonment): Section 317 IPC; Kidnapping & Abduction; Procuration of minor girls (for inducement to force or seduce to illicit intercourse) (Section 366-A IPC); Selling of girls for prostitution (Section 372 IPC); Buying of girls for prostitution (Section 373 IPC) and Rape (Section 376 IPC).