CHAPTER-III
CHILD RIGHTS: VIOLATIONS

All adults stand accused. The Society responsible for the welfare of children has been put on trial. There is something apocalyptic about this startling accusation; it is mysterious and terrible like the voice of the last judgment: "What have you done to the children that I entrusted to you?"

Maria Montessori
(The Secret of Childhood)

India’s population is a pyramid of young person with children constituting a large chunk. However, thousands of them die almost every day from causes as wide and varied as malnutrition, disease and neglect. It is quite disheartening to note that almost 50 percent of the total deaths in the country occur among children below five years. India had signed the Convention on the Rights of the Child on 11th December 1992 and ratified the Convention on January 1993. Some of the provisions1 of the Constitution of India along with some decided cases2 deal with the rights of Child. But still there are certain issues relating to children which need an immediate action. Some of the major violations of Child Rights present in our society have been discussed below:

3.1 CHILD LABOUR

Child labour has been defined as that "segment of child population which participates in work either paid or unpaid."3 It generally concentrates on two concepts i.e. child in terms of chronological age and labour in terms of its nature, quantum and income generation capacity.4 Child labour is also explained as employment of children in gainful occupations or a material contribution to

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4 Ibid.
income of the family. The term has been defined by U.S. Department of Labour as "the employment of boys and girls when they are too young to work for hire or when they are employed for jobs unsuitable or unsafe for children of their ages and under conditions injurious to their welfare."

According to International Labour Organization (ILO), Child Labour is estimated at about 250 million worldwide. These children ranges between the age of 5 and 14 with around half of them working full time, of this figure, 140 million are boys and 110 million are girls. Sixty-one percent of them are located in Asia, 32 percent in Africa, and 7 percent in Latin America. The problem of child labour exists all over the world in one form or another. But in this era of globalization, India is the major country of the world to employ child labour. For the year 2000, the ILO projects that there will be 13, 157, 000 economically active children, 5, 992, 000 girls and 7, 165, 000 boys between the age of 10-14, representing 12.07% of this age group. But according to US Department of Labour there is an estimated 111 million child labourers. According to the report, submitted to ILO in 95th Session 2006 suggest, that there were about 317 million economically active children aged 3 to 17 all over the world in 2004, of whom 218 could be regarded as child labour. 126 million were engaged in hazardous work. The corresponding figures for the narrower age group of 5 to 14 year old are 191 million economically active children, 166 million child labourers and 74 million children in hazardous work. The below mentioned table shows the state wise distribution of working children in 1971, 1981, 1991 and 2001 Census.

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10 Ibid.
### State-wise Distribution of Working Children according to 1971, 1981, 1991 and 2001 Census in the age group 5-14 years

<table>
<thead>
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**Note:**
* 1971 Census figures of Assam includes figures of Mizoram.
** Census could not be conducted.
*** Census figures 1971 in respect of Mizoram included under Assam.
**** includes marginal workers also.

**Total** 10753985 13640870 11285349 12666377
3.1.1. Forms of Child Labour

The evil of Child Labour in India has been in existence from the time immemorial. Though there was, little evidence of employment of children for wages, but if child slavery was accepted the existence of child labour in ancient India, cannot be denied. Slaves of tender ages, often less than eight years of age, were owned for doing low and ignorable work. Children of slaves were born as slaves, lived as slaves and died also as slaves unless the master was pleased to monument them. It has been noticed that almost all the law given with the solitary exception of Kautilya were silent on this point and did little to abolish this inhuman practice of keeping child slaves. India in its medieval period was no exception. Increasing pressure on land led to fragmentation of holdings. Growing families had to look beyond personal cultivation for subsistence. A class of landless labourers came into existence, often bonded to the large land owners.

In brief, child labour in medieval India remained in existence on a large scale and even the rulers encouraged it with an intention to make only traffic in child slaves. The child labour was found in the form of child slavery and rulers did not endeavour to weed out this practice and hence, the result was that child was always exploited for this selfish ends. With the industrialization, the exploitation of children got increased. They had to work from morning till night for a pitiful earning. Near the middle of 19th century, the employers were free to bargain with labour with the result that children were employed in cotton, jute mills and coal mines etc. and were made to work mercilessly despite their tender age and were virtually converted into slaves. The Indian context is not confined to human rights alone, but incorporates dimensions that go beyond this realm, even transcend it. These include the following.

- The Historical Dimension: Child Labour goes long back, it has a distinct and enduring rationale.

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13 See Supra note 5, p.48.
• The Cultural Dimensions: Child Labour is entwined in India’s caste system and the acceptance of inequality associated with this form of social and economic stratification.

• The Developmental Dimensions: Child Labour relates to the structure of India’s economy.

The major forms of child labour are listed below:\(^{16}\)

• The first such kind is that of **domestic work**\(^{17}\) e.g. cleaning, cooking, child care and other chores in the households in almost all type of societies.

• Another major form of child activities is in subsistence activities which are **non-domestic but non-monetary**. In agrarian economies, children are engaged in farms fuel and water collection.

• Another activity is **bonded labour**. This is the most exploitative form of child labour.

• Then comes **wage employment** where children are in employment either as part of a family group or individually in agricultural work sites, domestic services, manufacturing services.

• Child labour is also involved in **marginal work** e.g. work of short term or irregular nature like selling news papers, shoe shining, looking after cars, garbage collection and sorting out objects out of garbage.

• Another category comprises those children which lack access to school or are dropouts from the school. Such children having no employment wander into idleness and sometimes engage in anti-social activities. These are the children who engaged themselves in theft, prostitution and other socially undesirable activities. Practically, there is no industry in which children do not work directly or indirectly.


\(^{17}\) Recently the Labour Ministry has issued a notification for imposing a ban on employment of children as domestic help or servants at road side kiosks which will come into effect from October 10, 2006.
There are widely varying perceptions about the definition and concept of child labour and are three divided schools of thought, which are summed up as below:\textsuperscript{18}

1. The first school of thought treats education as the fundamental human right of every child in 5-14 age group and holds that any child in this age group who is out of school should be treated as a working child. According to this school, it is the responsibility of the State to create the infrastructure for facilitating free, compulsory and universal access to both primary and elementary education. They believe that there can be no excuse for over 100 million children in the 5-14 age group being outside the school system, whether formal and non-formal. They are firstly of the view that access to educational opportunity for all children in the 5-14 age group is the barest minimum obligation of the State and that the State cannot absolve itself from the obligation either on the ground of poverty and other economic compulsions or due to lack of infrastructure, logistical support and resource. They are also firmly of the view that it is child labour that induces poverty rather than poverty induces child labour. According to them, a child below 15 years of age is not physically and emotionally matures and fit to enter the world of work. If children in the 5-14 age group are being forced to work rather than being sent to school on account of social, economic and cultural compulsions such a process is bound to result in retardation and impoverishment of their evolution and growth to such an extent that when they cross the threshold of childhood, they will be too bereft of physical strength and energy to be productive and responsive adult members of society.\textsuperscript{19}

According to them, all children of school-going age who are out of school should be presumed to be doing some form of work or the other. It is immaterial whether or not the job is hazardous as the concept of childhood does not fit into the world of work. They are, therefore, of the opinion that the distinction between


\textsuperscript{19} Ibid.
hazardous and non-hazardous is at best artificial, and we cannot put up with a situation in which million of children are out of school spending their days at home or doing some work at home without wages or outside home for wages.20

2. For the second school of thought, the magnitude of the problem is so enormous that the State will find it extremely difficult to create environment and provide the infrastructure, logistical support and resources to send the additional 100 million plus children to school. This school of thought, therefore, advocates a gradual, sequential and selective approach to the entire issue of out of school children viz-a-viz working children. Its supporters hold the view that we should first concentrate on those employed in hazardous occupation/process release and rehabilitate them through education, nutrition and skills training, and subsequently focus on those children who are working in non-hazardous occupation/industries/processes. They believe that the elimination of child labour should be viewed as a long term goal to be achieved progressively rather than at a stroke. Since the total elimination of child labour by law is not possible therefore, they advocate a dual approach of prohibition and regulation, which is in sharp contrast with the view point of first school of thought supporting total prohibition.21

3. There is third school of thought that maintains that both civil society and the State as the agent of the society has abjectly failed in (a) making education a fundamental human right (b) creating the appropriate infrastructure and environment and providing incentives to ensure access to educational opportunities to all, and (c) creating a positive and conducive environment that will enable universal retention and participation of children who have enrolled themselves in school and also make it possible for them to achieve at least the minimum levels of learning. They, therefore, recommend a point of view that militates against that of both the other schools of thought, in holding that it should

20 Ibid.
21 Ibid.
be left to the children themselves to decide whether or not they want to go to school. If they want free universal elementary education, the necessary infrastructure, logistical support and environment for this should be created by the State on behalf of civil society. If, however, the children find that the educational system is dull, demotivating and irrelevant and would prefer to work, the state on behalf of the civil society should create opportunities for all forms of work that is in consonance with their physical and mental capacities. 

Each of the three schools of thought has its merits and demerits. The fact however, remains that every child is also a human being and human beings are the first products of creation. Childhood as a stage in the evolution and growth in human life is most tender, formative and impressionable.

3.1.2. Causes and Consequences of Child Labour

The phenomenon of working children is invariably associated with poverty and is usually considered to be a by-product of under-development. The highest incidence of child labour is said to be in the poorest countries of the world, and in the poorest regions of those countries. Globalization, indebtedness, and the widening income gap between the rich and poor countries may also exacerbate the problem. Several studies have pointed out that globalization does have a negative influence in the short term. Structural policies of adjustments have resulted in many developing countries spending less on basic services such as education. However, a crucial distinction has to be made between child labour and child work. Child work should be used as the generic term and should refer to any type of work in any mode of employment relationship. The concept of work, which is a description of a physical, mental involvement in a job, may be an activity, which, rather than being harmful, is beneficial to the child in its formative socialization. The concept of labour, on the other hand, should be restricted to

\[22\] Ibid.

\[21\] Ibid.
the production and services which interfere with the normal development of children as defined by the CRC.23

There is a perception that quite a lot of what has been subsumed under child labour, is actually work performed during a standard process of socialization and not associated with labour exploitation or interfering with the quality of development which the child in the given circumstances could except.24 The cases that lead to child labour are:25

- Poverty.
- Parental illiteracy and ignorance.
- Traditions of making children learn the family skills.
- Absence of universal compulsory primary education.
- Non-availability of and non-accessibility to schools.
- Irrelevant and non-attractive school curriculum.
- Social and cultural environment.
- Informalization of production.
- Employer’s preference of children for their cheap labour and inability to organize against exploitation.
- Family work.
- Level of technology.
- Apathy of Trade Unions.
- Ineffective enforcement of the legal provisions pertaining to child labour.

Child labour often creates a vicious circle of poverty, as a child coming from an impoverished family surviving harsh conditions become an unskilled, debilitated adult who is not employed even in the industry that exploited him/her

earlier. Furthermore, child labour receives a low, negligible income and often no wages at all. They have no rights as workers and may not join trade union. Child labour also depresses adult labour and keeps adults unemployed. Although a major cause, poverty alone does not cause child labour. As ILO rightly warns:

"Poverty is not the only reason for the existence of child labour. The picture varies across households and across regions and countries. Countries which are equally poor may yet have relatively high or relatively low levels of non-school-going children or of working children. Underlying child labour obviously also is the full factor, the desire to maximize profits and to command an utmost docile and flexible labour force. The absence of a strong (adult) labour movement and a strong civic society in general, in combination with the interalia of government institutions will allow these tendencies a free hand." Thus, child labour is essentially associated with inequality in society.

In India, the co-relation between child labour and regional poverty is inconclusive. Some of the richer States also have a higher child labour count. Literacy rate is another important variable which explain the differences in the ratios of child employment. Kerala furnishes a strong co-relation between literacy and the decline of child labour. It is not merely economic development but the overall social development including basic education which plays a major role in the decline of incidence of child labour. This is the reason why Kerala has a lower incidence of child labour than Punjab, Haryana and several other States which have lower poverty ratios. An important fact that has been established by many surveys is that access to education is a general wish among parents and children, but this remains unfulfilled due to the lack of proper functioning government schools.

**Consequences of Child Labour**

Sending children to work may seems to a genuine approach to poverty stricken families but the employment has profound repercussions. ILO research shows that child labour is universally recognized as being undesirable, harmful

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28 See Supra note 24.
for the children themselves. Mendelievich, in his book, has classified repercussions of child labour into three forms:29

a) Social and Labour Repercussions:

When a child joins the work force at a young age, he is deprived of the opportunity to educate himself and acquiring qualifications which will help in getting a better job in future. It is, therefore, quite apparent that a child who has been at work from an early age will spend his whole life at the bottom of the social ladder. Thus, child labour has become a mode of perpetuating an unjust social system and of ensuring the continued availability of subservient unskilled, illiterate labourers who does not have the bargaining power to question the system that marginalizes them and deprives them of their right to lead a decent life.30

b) Physical Repercussions:

Many of the jobs that children do are harmful for their physical development. The physical susceptibility of working children also has a lot to do with the fact that they are different capacities and needs from adults and this fact is very rarely taken into account by employers. The manner, nature and conditions of their employment lead to serve health and safety hazards. In agriculture also there are certain hazards which have particularly increased due to the introduction of advanced farming practices, new techniques and chemicals. However, these problems are aggravated in industries where work is heavy and involve the use of sharp and dangerous objects and toxic substances. The risks of occupational diseases or accidents are higher among child workers because their growing bodies are not as strong as adult workers. The table below mentioned gives a overview of occupational hazards faced by working children.31

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30 Ibid.
31 See supra note 8, p.234.
<table>
<thead>
<tr>
<th>Occupation</th>
<th>Related Diseases/Disabilities</th>
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<tbody>
<tr>
<td>Tile Industry</td>
<td>Tuberculosis, skin discolouration and allergic eruptions.</td>
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<tr>
<td>Slate Industry</td>
<td>Tuberculosis, silicosis, respiratory diseases.</td>
</tr>
<tr>
<td>Match Industry/Fireworks</td>
<td>Tuberculosis, respiratory diseases, skin diseases such as dermatitis, severe eye-strain, night blindness and premature blindness.</td>
</tr>
<tr>
<td>Powerloom Industry</td>
<td>Byssinosis, fibrosis, bronchitis and tuberculosis.</td>
</tr>
<tr>
<td>Glass Industry</td>
<td>Pneumoconiosis, tuberculosis, burns, life span reduced by a third due to intense heat and dust, and night blindness.</td>
</tr>
<tr>
<td>Pottery Industry</td>
<td>Asthamic bronchitis, tuberculosis, silicosis.</td>
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<tr>
<td>Brass Industry</td>
<td>Acid burns, tuberculosis and other respiratory tract problems.</td>
</tr>
<tr>
<td>Bidi Industry</td>
<td>Chronic bronchitis and tuberculosis.</td>
</tr>
<tr>
<td>Diamond Industry</td>
<td>Severe eye-strain, tuberculosis, and other lung diseases.</td>
</tr>
<tr>
<td>Carpet Weaving Industry</td>
<td>Tuberculosis and other lung diseases, eye-strain, night blindness.</td>
</tr>
<tr>
<td>Lock Industry</td>
<td>Tuberculosis and other respiratory tract diseases, asthma and acute headaches.</td>
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<tr>
<td>Balloon Industry</td>
<td>Pneumonia, broncho-pneumonia, cough, breathlessness and even heart failure.</td>
</tr>
<tr>
<td>Zari Industry</td>
<td>Eye diseases, spondylitis and lead poisoning.</td>
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</table>
Agarbatti Industry | Rheumatism of wrist elbows, breathing problems, skin and eye diseases.

Thus many jobs done by the children are the cause of physical deformities and illness such as deformities of spine, stunted growth, infections, burns, sores etc or else they may aggravate defects or maladies. Child labour involves both short-term and long-term health risks. Some of the hazards may not be immediately apparent but may take some years to manifest.

c) Mental Repercussions:

Child labour has mental repercussions also since the age at which child usually starts to work coincides more or less with a period of profound mental change in the child. Clearly, if to the working child’s unfavourable intellectual status is added an ill-directed mental development there will be undesirable mental consequences and behavioral problems caused by the child’s in adequate comprehension of the adult world and by his imitating, distorting and exaggerating what he wrongly believes to be essence of that world. The mental consequences of child labour are not just the result of the work situation but the violent change to which the child is exposed. Moreover, since a large number of children work for long hours, their social interactions are limited and this affects their emotional development. Lack of leisure time activities and repression of childhood desires have harmful impact on the harmonious development of a child personality.32

Keeping in account, all the adverse effect of child labour, India has all along followed a pro-active policy with respect to the problem of child labour. Six ILO Conventions relating to child labour have been ratified, three of these as early as the first quarter of the 20th century.33 The framers of Indian Constitution

32 See Supra note 29.
33 For details see infra Chapter-IV. India has signed following ILO Convention:
Convention No.5 of 1919 – provides that children under the age of 14 years should not be employed in industrial undertaking. Ratified by India on September 9, 1955.
consciously incorporated relevant provisions in the Constitution for the protection of children both in Fundamental Rights and Directive Principles of State Policy.34

The Constitutional, legislative, policy framework in India to this regard is discussed in order to highlight the points that despite good laws and policy framework, the problem of child labour still persist. A resume of history of legislation relating to child labour in brief are presented below: 35

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<thead>
<tr>
<th>Name of the Act</th>
<th>Protective provisions for children</th>
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<tr>
<td>The Children (Pledging of Labour) Act, 1933.</td>
<td>Any agreement to pledge the labour of children is void.</td>
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<tr>
<td>The Factories Act, 1948.</td>
<td>Employment of children under 14 years of age is prohibited under these various laws.</td>
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<tr>
<td>The Mines Act, 1952.</td>
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<tr>
<td>The Child Labour (Prohibition and Regulation) Act, 1986.</td>
<td>Employment of children under 14 years of age is prohibited except in the process of family-based work or recognized school – based activities</td>
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</table>

Convention No.6 of 1919- provides that employment of children under 18 years of age during night hours in public or private industrial undertaking. Ratified by India on August 7, 1921;
Convention No.15 of 1921 – provides that young person under the age of 18 years are not to be employed on vessels as trimmers or stokers. Ratified by India on November 20, 1922;
Convention No.16 of 1921 – provides for compulsory medical examination of children and young persons employed at sea. Ratified by India on November 20, 1922.
Convention No.90 of 1948 – partly revises Convention No.6 of 1919. Ratified by India on February 27, 1950.
Convention No.123 of 1965 – provides that the minimum number of young persons to work in an underground mine, should be fixed in consultation with the employers and workers, organizations and that the age should not be less than 16 years. Ratified by India on March 20, 1975.

34 Article 24 of the Constitution of India – No Child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
Article 39 of the Constitution of India - The State shall in particular, direct its policy towards securing, that the health and strength of workers men and women and the tender age are not abused and the citizens are not forced by economic activity to enter a vocation unsuited to their age or strength.
That children are given opportunities 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.
which includes processes mentioned under part-B of the schedule. Regulates the conditions of work where children are not prohibited to work. Occupier of the establishment employing children is required to give notice to local inspector and maintain prescribed registers.

| The Plantation Labour Act, 1951. | Children/adolescents are allowed to work 27 hours a week. |

Besides these legislations along with Article 23 of the Constitution of India\(^{36}\) there is a special legislation to prohibits the practice of debt bondage. The Act is known as *Bonded Labour System (Abolition) Act, 1976*. The Act purports to abolish all debt agreements and obligations. The Act defines Bonded Labour System as the system of forced or partly forced labour which a creditor extracts from a debtor by virtue of an agreement between the two.\(^{37}\) The Act also frees all bonded labourers, cancels any outstanding debt against them, prohibits the creation of new bondage agreements and orders the economic rehabilitation of freed bonded labour. It further lays down a penalty of upto three years imprisonment and rupees two thousand in fine for any violation.\(^{38}\)

3.1.3. Enforcement of Legislations

In spite of the laws, child labour continues to exist in prohibited industries and areas of employment and is subject to very little regulations and control in non-prohibited industries and areas of employment. The table below mentioned shows that the position regarding the number of prosecutions and convictions

\(^{36}\) *Article 23 (1)* of the Constitution of India provides “Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention to this provision shall be an offence punishable in accordance with law”

\(^{37}\) Section 2(g) The Bonded Labour System (Abolition) Act, 1976.

\(^{38}\) Section 4, 5, 6 and 14, The Bonded Labour System (Abolition) Act, 1976.
under the Child Labour (Prohibition and Regulation) Act, 1986 from 1992 to 1999.\textsuperscript{39}


<table>
<thead>
<tr>
<th>Year</th>
<th>Number of Inspections</th>
<th>Number of Violations</th>
<th>Number of Prosecutions</th>
<th>Number of Convictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992-93</td>
<td>28,183</td>
<td>1,890</td>
<td>1,890</td>
<td>163</td>
</tr>
<tr>
<td>1993-94</td>
<td>16,904</td>
<td>1,308</td>
<td>1,826</td>
<td>265</td>
</tr>
<tr>
<td>1994-95</td>
<td>63,728</td>
<td>4,961</td>
<td>2,496</td>
<td>1532</td>
</tr>
<tr>
<td>1995-96</td>
<td>23,349</td>
<td>543</td>
<td>3,146</td>
<td>18</td>
</tr>
<tr>
<td>1996-97</td>
<td>35,886</td>
<td>458</td>
<td>1,868</td>
<td>18</td>
</tr>
<tr>
<td>1997-98</td>
<td>8,42,497</td>
<td>1,749</td>
<td>2,329</td>
<td>743</td>
</tr>
<tr>
<td>1998-99 (Part)</td>
<td>30,455</td>
<td>1,235</td>
<td>789</td>
<td>761</td>
</tr>
</tbody>
</table>


Studies in Child Labour reveal that enforcement of Child Labour Legislation faces a number of problems. Broadly, the difficulties fall into the following categories.\textsuperscript{40}

**Enforcement of Social Legislation:** Social Legislation are often difficult to enforce, as the law enforcers do not understand the spirit of the law. Neither the employers of child labour, nor the parents, nor the law enforcers perceive child labour as an undesirable thing.

**Informalization of Child Labour:** Due to 'informalization of child labour', viz., work involving child labour moving out of the factories and large establishments into small cottage and home-based units from out of the organized sector, it has


\textsuperscript{40} Ibid.
become difficult to enforce the Act. This requires a large increase in the labour enforcement machinery. Other labour laws are applicable only to the organized sector. Besides, no records are maintained of the child workers.

**No Successful Conviction:** Where an inspector manages to find children working in an establishment, in violation of the law, the prosecution does not lead to successful conviction. The reasons for the acquittal in many cases are:

- Delay in filing the case.
- Failure of prosecution is due to lack of evidence relating to the age of child.
- Court end to pass lighter sentence in child labour matter. In the table mentioned before hand shows that the numbers of convictions are comparatively less in certain years.

3.1.4. Judicial Intervention

Judiciary in our country has shown a keen interest in the conditions of working children. In the well known *Asiad Project* the Apex Court held that **Article 24** of the Constitution, which even if not followed up by appropriate legislation, must operate *proprio vigore* and construction work is included in the hazardous occupations. Therefore, there can be no doubt that even if the construction industry in not mentioned as hazardous activity in the schedule to the Employment of Children Act, 1938, no child below fourteen years can be employed in the construction work. Further, in another case the Hon'ble Supreme Court observed that it not enough merely to identify and release bonded labourers but it is equally perhaps more, important that after identification and release, they must be rehabilitated, because without rehabilitation, they would be driven by poverty, helplessness and despair into serfdom once again.

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41. *Peoples Union Democratic Rights v. Union of India*, AIR 1982, SC 1473, wherein it was contended that the Employment of Children Act, 1938 was not applicable in case of Projects in Delhi since construction industry was not a process specified in the schedule of Children Act, 1938.

42. *Bandhua Mukti Morcha v. Union of India & others*, AIR 1984, SC 802, Bandhua Mukti Morcha is an organization working for the release of bonded labourers. In this case also the Apex Court considered the scope and ambit of Article 23 in detail.
labourers working on Salal Hydro Project v. State of Jammu and Kashmir and others\(^4\) the Hon'ble Apex Court directed that whenever the Central Government undertakes a construction project which is likely to last for a considerable period of time, it should ensure that children of construction workers who are living at or near the project site are given facilities for schooling. The Court also specified that this may be done either by the Central Government itself, or if the Central Government entrusts the project work or any part thereof to a contractor, necessary provision to this effect may be made in the contract with the contractor. In Rajangam, Secretary, District Beedi Workers Union v. State of Tamil Nadu and others\(^4\) The Supreme Court observed that tobacco manufacturing was indeed hazardous occupation to the health of children. Child labour in this trade should therefore, be prohibited as far as possible and employment of child labour should be stopped immediately or in a phased manner that is to be decided by the State Government but it should be a period not exceeding three years.

In M.C. Mehta v. State of Tamil Nadu & others\(^4\) case M.C. Mehta, a noted environmentalist and social activist, whose contribution in the area of protection and conservation of the environment has been internationally acclaimed, filed a public interest litigation in 1986 against the harrowing practices of employing children in the match, fireworks and explosive factories of Sivakasi in Kamraj district of Tamil Nadu. A three Judge Bench of the Supreme Court comprising Justice Kuldip Singh, Justice B.L. Hansaria and Justice S.B. Majumdar delivered a landmark judgment on 10 December, 1996. The Court gave certain directions regarding the payment of compensation and thought that an advocate committee should visit the area and made a comprehensive report relating to the various aspects of the matter, as mentioned in order of August 14,

\(^4\) AIR 1994 SC 177, Also see this case infra Chapter 5.1.
\(^4\) (1992) 1 SCC 221.
\(^4\) AIR 1997 SC 699 In M.C. Mehta v. State of Tamil Nadu and others AIR 1991 SC 283. In this case Supreme Court allowed the children to be employed in the process of packing of fire works but packing should be done in an area away from the place of manufacture to avoid exposure to accident.
The Committee was to consist of (i) Sh. R.K. Jain, a Senior Advocate; (ii) Ms. Indira Jaisingh, another Senior Advocate; and (iii) Sh. K.C. Dua, Advocate. The Committee has done a commendable job. It submitted its report on 11.11.1991 containing many recommendations. The Court gave the following principal directions:

1. In fulfillment of the legislative intention behind the enactment of the Child Labour (Prohibition and Regulation) Act, 1986, every offending employer must be asked to pay compensation amounting to Rs.20,000/- for every child employed in contravention of the provisions of the Act.\(^46\)

2. The inspectors appointed under Section 17 of the Act should see that the compensation is paid, and deposited in a fund to be called 'Child Labour Rehabilitation-cum-Welfare Fund'. The liability of the employer will not cease even if she/he desires to disengage the child presently employed.\(^47\)

3. It would be appropriate to have such a fund district wise or area-wise. The Fund so generated shall form a corpus whose income shall be used only for the concerned child. The quantum could be the income earned on the corpus deposited qua the child. To maximize the income, the amount can be deposited in a high yielding scheme of any nationalized bank or other public body.\(^48\)

4. As this income will be insufficient to dissuade the parent/guardian from seeking employment for the child, the State should discharge its obligation to cover the short fall. As such, one adult member of the family whose child is employed in a factory or a mine or in any other hazardous work should get a job anywhere in lieu of that of the child. As a large number of working children are engaged in such occupations, asking the respective State government to assure alternative employment to an adult would strain the resources of the states. As

\(^{46}\) Ibid, para 27.
\(^{47}\) Ibid.
\(^{48}\) Ibid.
such, where it is not possible to provide a job to an adult member of the family, the government concerned should, as its contribution/grant of Rs.5000/- per child in the child labour Rehabilitation-cum-Welfare Fund.\textsuperscript{49}

5. A survey should be conducted of the type of child labour under issue which should be completed within six months starting 10 December, 1996. To begin with, the survey could be taken up in relation to Article 24, which might be regarded as the basis for determining which hazardous aspect of employment should be treated as the criterion, the most hazardous form of employment being ranked the highest priority, and others similarly prioritized in terms of hazardous entailed.\textsuperscript{50}

6. The employment provided to an able bodied adult could be in the industry where the child is employed or a public undertaking, and would be manual in nature in as much as the child in question must have been engaged in doing manual work. The undertaking chosen for employment shall be one that is nearest to the place where the family lives.\textsuperscript{51}

7. In case where alternative employment cannot be made available the parent/guardian of the concerned child should be paid the income earned as interest on the corpus of Rs.25,000/- for each child every month. The employment given or payment made would cease to be operative if the child is not sent to school by the parent/guardian.\textsuperscript{52}

8. On discontinuation of the employment of the child, free education should be assured in a suitable institution with a view to making him a better citizen. Article 45 of the Constitution mandates compulsory education for all citizen until

\begin{itemize}
\item \textsuperscript{49} Id, para 28, 29 and 30.
\item \textsuperscript{50} Id, para 31(1) and 31(2).
\item \textsuperscript{51} Id, para 31(3) and 31(4).
\item \textsuperscript{52} Id, para 31(5).
\end{itemize}
they complete the age of fourteen. It would be the duty of the inspectors to ensure that this direction of the Constitution is complied with.\footnote{Id, para 31(6).}

9. A district would be the unit of the collection with its executive head keeping a watchful eye on the work of the inspectors. Also in view of the magnitude of the task a separate cell in the labour department of the appropriate government should be created. The operation of the scheme would need to be monitored, and this could perhaps be undertaken by the secretary of the department, and overall monitoring by the Ministry of Labour would be beneficial and worthwhile.\footnote{Id, para 31(7).}

10. The Secretary to the Ministry of Labour should apprise the Supreme Court within one year, starting from 10 December, 1996 regarding compliance with the directions.\footnote{Id, para 31(8).}

Detailed guidelines were forwarded to the State governments on 26th December, 1996 indicating the manner in which the directions of the Supreme Court could be given effect to. The first phase of survey was completed by all the State governments/UTs except in Nagaland. The Ministry of Labour had sanctioned a sum of Rs.8 Crore for the purpose. The State governments, where employment of child labour in hazardous occupations was found, had already initiated steps for the constitution of the Child Labour Rehabilitation-cum-Welfare Funds at the district level. The amount of compensation received statewise from the offending employers was is given below.\footnote{O__o__________J See Supra note 18, p.230.}

<table>
<thead>
<tr>
<th>State</th>
<th>Rupees</th>
</tr>
</thead>
<tbody>
<tr>
<td>i) Andhra Pardesh</td>
<td>40,000</td>
</tr>
<tr>
<td>ii) Haryana</td>
<td>80,000</td>
</tr>
</tbody>
</table>

\footnote{Id, para 31(6).}
iii) Karnataka 60,000
iv) Madhya Pradesh 20,000
v) Maharashtra 2,00,000
vi) Orissa 1,00,000
vii) Punjab 1,20,000
viii) West Bengal 80,000

State governments/UT administration of Andhra Pradesh, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Goa, Haryana, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Mizoram, Orissa, Pondicherry, Punjab, Tamil Nadu, Uttar Pradesh and West Bengal have reported that separate labour cells have been constituted to ensure the enforcement of various provision of the Child Labour (Prohibition and Regulation ) Act, 1986.

In another significant judgment given by the Apex Court on the basis of PIL a number of directions on the identification release and rehabilitation of child labour has also been given. The Court, interalia, directed the Government of India to convene a meeting with the State Government to evolve principles/policies for progressive elimination of employment of children below 14 years in all employments consistent with the scheme laid down in Civil Writ Petition No.465/86. These directions were given by the Court in the context of employment of children in the Carpet Industries in the State of Uttar Pradesh. In this case the Court issued the following directions to the Government of Uttar Pradesh:

1. Investigate the conditions of employment of children.
2. Issue such welfare directions as are appropriate for total prohibition of employment below 14 years of age.
3. Provides facilities for education, health, sanitation, nutritious food etc.

The implementation of the directions of the Supreme Court is being mentioned by the Ministry of Labour and compliance thereof was reported to the Court on the basis of information received from the State/UT Government.\(^{58}\)

Besides this, various programmes have been initiated by the government from time to time to eliminate the problem of child labour. These are explained below-

### 3.1.5. Programmes Initiated

**National Child Labour Projects (NCLP)** - Under this project 12 National Child Labour Projects (NCLP) were started in Andhra Pradesh (Jaggampet and Markapur), Bihar (Garwah), Madhya Pradesh (Mandsaur), Maharashtra (Thane) Orissa (Sambalpur), Rajasthan (Jaipur), Tamil Nadu (Sivakasi) and Uttar Pradesh (Varanasi-Mirzapur-Bhadohi, Moradabad, Aligarh and Ferozabad). A majority activity undertaken under NCLP is the establishment of special schools to provide non-formal education, vocational training, supplementary nutrition, stipend, health, care etc. to the children withdrawn from employment.

**International Programme on Elimination of Child Labour (IPEC)** – The International Programme on elimination of child labour is a global programme launched by ILO in 1991. India was the first country to join it in 1992. The long term objective of the IPEC is to contribute to the effective abolition of child labour. Important highlights of the programme in India are given below.\(^{59}\)

- National Consultation with trade unions.
- Survey of child labour in sports goods industry.
- Workshop on policy changes for the elimination of child labour in rural areas.
- State based approach against child labour in Andhra Pradesh.


• Consultation meeting with States on child labour.
• Adoption of UN System in India: Position paper on child labour.
• UN System support of community based education.
• Development of training packages on child labour for NCLP project directions.
• Project for providing pre-vocational training skills and basic education/literacy to child labourers released from bondage.
• Combating Child Labour in stone quarries and brick kilns.
• Development of training package on child labour for trade unions at State/district level.
• Consolidation of work done on the training of labour and factory inspectors on child labour.
• Training module for elected representative of Panchayati Raj Institutions.
• Training module for judicial officers.
• Setting up a child labour cell in State Labour Institute, Orissa.
• Conducting a multi-centric action research study on Child Labour in home based industry.
• Sensitizing office bearers and members of INTUC and its affiliates against child labour.
• Composite approach against child labour: sensitizing and education.
• Sensitizing trade unions activists on the worst forms of child labour and counseling child labourers in distress.
• Integrated area-specific approach against hazardous and exploitative forms of child labour in ferozabad.
• Four integrated area-specific projects to be implemented by NCLPs in Mirzapur (Uttar Pradesh), Jaipur (Rajasthan), Tripur (Tamil Nadu) and Virudhunagar (Tamil Nadu).
National Authority for the Elimination of Child Labour (NAECL) - NACEL was constituted on September 26, 1994 under the Chairmanship of the Labour Minister. Its functions are:

a) To lay down policies for elimination of child labour, particularly in hazardous employment.

b) To monitor the progress of implementation of projects and schemes for elimination of child labour.

c) To co-ordinate implementation of child labour related projects of various GOI Ministries to ensure convergence of services for the benefits of the families of child labour.


National Resource Centre on Child Labour (NRCCCL) - NRCCCL was set up in V.V. Giri National Labour Institute, Noida, Uttar Pradesh in March, 1993. The centre has been constructed with task of documentation, publication and creation of data-bank on child labour, research and training, media management and technical support services etc. The main objective of the centre is to consist the national and State Governments, NGOs, policy makers and other social groups in the field of child labour through a variety of supports and to develop capabilities of various target groups towards progressive elimination of child labour. During the period under review, training programmes were organized for various targets groups involved with different aspects of child labour. A labour legislation and enforcement officials in child labour legislation and enforcement material for factory and labour inspectors on child labour has been prepared. Orientation training on child labour for coordinators of NSS and NYK (Nehru

60 See Supra note 58, p.162.
Yuva Kendra) trade unions, voluntary organizations and NGOs on child labour at Manipur was conducted by the centre. NRCCL has also taken up a number of research studies. To access the fall out of child labour legislation a major project of child labour in home based industries was undertaken in mine areas. Other ongoing research projects include child labour in beedi rolling industry in Orissa, plastic bead making industry of Bhiwandi, Maharashtra; textile of Surat, Gujarat, stud on child labour as domestic servants, child labour as an indicator of backwardness etc.61

On the basis of above study it becomes necessary to evaluate various laws and programme in order to find out the draw backs which are causing hindrance in the process of handling of child labour.

3.1.6. Evaluation of Laws and Programmes

- The Child Labour (Prohibition and Regulation) Act, 1986 covers only a small margin of total working children because it fails to cover the unorganized sector i.e. agricultural sector, which constitutes more than 75 percent of working children.
- Section 3 of the Child labour (Prohibition and Regulation) Act, 198662 keep the occupation work or process that is carried on by the occupier with the aid of his family out of the purview of the Act. This proviso is abused by the employees to pose a family members of the children working.
- The word hazardous is not clearly defined in the Child Labour (Prohibition and Regulation) Act, 1986 and it is left to the Child Labour Technical Advisory Committee. The word at present is defined in very narrow sense which include physical harm to the children. The emotional and psychological aspect have not yet taken into consideration. Infact there should be complete ban on employment of children because if the child is

62 Section 3 proviso: Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by or receiving assistance or recognition from Government.
denied primary elementary education because of the need to work, it is a hazard.\(^63\)

- While efforts to address the structural roots of poverty, end exploitation, meet the basic needs of all and adopt development models which are non-displacing and providing labour-intensive, low-cost, sustainable livelihoods to all should continue, these should be combined with immediate practical action to prevent, remove and rehabilitate child labour by targeting individual child labourers and their families for assistance so that it becomes unnecessary for these families to rely on children’s contribution.\(^64\)

- A broad social alliance including all sections of society, government, elected representatives, trade unions, employers, legal and judicial fraternity, NGOs academician and media should be formed to voice a strong society outcry against child labour and to implement the agenda for action. Alliance to get effective though social mobilization of all societal groups.\(^65\)

- Prevention of child labour through enforcement of free and compulsory education and eradication of poverty should take precedence over rehabilitation.

The Ministry of Labour has recently issued a notification to ban the employment of children as domestic help at the roadside kiosks under the Child Labour (Prohibition and Regulation) Act, 1986 and will be effective from October 10, 2006.\(^66\) This is indeed a positive step taken by the Government to curb the increasing problem of hiring children as domestic servants. According to the data collected by an NGO such Bachpan Bachao Andolan the figure is as high as one

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\(^{63}\) Ossie Fernandes, *Towards Amendments/Restricting of the Child Labour Prohibition and Regulation Act, 1986* a draft note on behalf of the legal working Group, Campaign against Child Labour (CACL).


\(^{65}\) Ibid.

crore in household and an equal number of children in restaurant and dhabas. Efforts and initiatives of many States for the elimination of child labour have culminated into action plans. At a time when human resource development is gaining a centre stage a pre-condition of human development, child labour cannot be peripheral issue. It is now being realized to complete this tasks there is a need of multisectoral and multi-dimensional approach. For example, the vision 2020 document of Andhra Pradesh clearly outlines. "A major element of the strategy to achieve vision 2020 will be to work towards removing all the environmental and structural constraints that inhibit the fullest development of the children of Andhra Pradesh."

3.2. CHILD PROSTITUTION

"Child Prostitution is the ultimate denial of the rights of the child" said Dr. Jon Rhode, UNICEF representative in India. It is kind of violation which existed since ancient times where the children living in some communities, are forced into prostitution in the name of jogins, devdasis, basavis, bedias, bandcharas, dammareas etc as part of religious and cultural norms. The gruesome story of the Devdasi System is nothing but a blatant violation of human rights of the girl child to survive and have a normal and healthy, childhood. The Kudithini village of Ballary district is a glaring example of how girl children are being intimated into the process of becoming devdassi (sex workers) even before they attain puberty. Economic compulsions and traditional beliefs are the two main reasons for such practise especially, when the areas suffers in famines, drought and epidemics, to appease god and goddess. In these cases a ceremony is conducted at the temple of the local Goddess ‘Huligamma’ where the girl goes through the process of getting married to the diety. After that it is an abusive cycle that continues for the rest of her life and a bond that forbids her to marry anyone else. Thus, in these communities, the girl children are assets and the responsibility of

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the family rests on the eldest daughter who is dedicated to goddess. As early as in 1936, in the then undivided Madras Presidency, it was the persistence effort of a dynamic social activist that had brought in Devdasi Abolition Act in the upper house of the then Madras legislature. But contrarily, in the other states it is still prevalent even today as a profession, which has the sanction of religion and culture, seldom considering it as a violation of a human right.70

Now this system has been accepted by the women almost as a way of life, and they do not feel hesitant to talk about it. It is a distressing reality that the families of Devdasis lead a hand to mouth existence and live under the conditions of extreme poverty and squalor. Most of the children are underfed and malnourished. Devdasi is banned by the Prohibition of Dedication Act, 1982. Parents or guardians dedicating their girls are liable to five years in jail and Rs.5000/- fine. Children are general at a risk of commercial exploitation but children belonging to high caste has also been identified as:71

- Children living in brothels;
- Children living in communities where religious and cultural norms force them into prostitution;
- Street children, slum children and children without shelter;
- Children who have been sexually abused, raped, molested and stigmatized;
- Child widows and those deserted by husbands;
- Children detained in custodial and reformatory institutions away from families;
- Children affected by terrorism and natural calamities;
- Children of families affected by displacement and sickness in industries;

70 See Supra note 8, p.8.
• Children affected by transitory poverty in families;
• Children in refugee camps;
• Children of low-skilled or unemployed labour;
• Children of broken and disturbed families;

3.2.1. Causes of Child Prostitution

According to the study done by the Joint Women’s programme the problem of trafficking cannot be viewed in isolation. It stems from gender inequalities, low literacy and poverty, cultural practices and traditions. It is also found to be rampant in poor, drought affected and backward districts. Some of the major causes of child prostitution are:

• Globalization and liberalization polices of the government, which have served to widen the gap between the rich and the poor.
• Rising consumerism and aspirations of families to a better standard of living has become an important factor in pushing girls out of villages.
• Increased migration from rural to urban areas owing to failure of development projects.
• Families are displaced due to industrialization, construction of dams and environmental degradation.
• AIDS scare drives customers to children.
• The growing sex tourism industry has added another destination to the trafficker’s lift.
• Male attitudes and perceptions of women’s law and unequal socio-economic status are also responsible.

The trafficking of women and children is a matter of a global concern as it involves the violation of fundamental human rights. Although numerous separate abuses are committed during the course of trafficking, which themselves contravene both national and international laws. It is the combination of displacement from the community and commercialized exploitation that makes
trafficking a distinct from its component parts. There is a large body of existing international and national instruments in form of declaration, conventions and resolution prohibiting trafficking. A brief overview of selected international conventions regulating trafficking in human beings which includes women and girl children is present below.

3.2.2. International Framework

- **International Agreement for Suppression of White Slave Traffic, 1904**
The agreement was formulated with the intention of securing to women of full age who have suffered abuse or compulsion, as also under-age girls, effective protection against criminal traffic known as the “White Slave Traffic”.

- **International Convention for Suppression of White Slave Traffic, 1910**
This convention criminalised procurement, enticement or leading away of a woman or girl under the age of 21, even with her consent for immoral purposes irrespective of the fact that the various acts constituting the offence may have been committed in different countries.

- **International Convention for the Suppression of the Traffic of the Women and Children, 1921**
The treaty prohibits the enticing or leading away of a woman or girl for immoral purposes, to be carried out in another country.

- **Slavery Convention, 1926**
States Parties are enjoined to discourage all forms of forced labour. Slavery means control over another person, without full informed consent, for the purpose of exploitation.

- **Universal Declaration of Human Rights, 1948**
Article 4 of the Declaration prohibits all forms of slavery and the slave trade. Article 13 recognizes the right of persons to freedom of movement and residence and Article 15 recognizes the right to nationality.

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73 Ibid.
• Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949
This convention is a compilation of four previous international conventions (Conventions of 1904, 1910, 1921 and 1933). This convention made procurement, enticement, etc. for purposes of prostitution punishable irrespective of the age of the person involved and his/her consent to the same (Article 1). Brothel keeping was also denounced to be illegal and punishable (Article 2). The convention provided for repatriation (Article 19) and rehabilitation (Article 20) measures. However, the 1949 Convention is limited to trafficking for prostitution and related activities.

• Tourism Bill of Rights and the Tourist Code 1985
Adopted by the WTO, the Code enjoins that the State should preclude any possibility of the use of tourism to exploit others for the purposes of prostitution.

• Convention on the Rights of the Child, 1989
Article 11 requires States Parties to take measures to combat the illicit transfer and nonreturn of children abroad. Under Article 34 and 35, States Parties must take appropriate national, bilateral and multilateral steps to protect the child from all forms of sexual exploitation and sexual abuse as also to prevent the abduction, sale of or traffic in children.

• The ILO Convention 182 on the Worst Forms of Child Labour (1999)
Article 3 of this Convention defines the worst forms of child labour comprising all manifestations of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and servitude and forced or compulsory labour, etc.

• Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women, 1999
The Protocol enables individuals or groups who have exhausted national remedies to directly approach the Committee under the Protocol.
UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000

The UN Trafficking Protocol seeks to create a global language to define trafficking in persons, especially women and children, assist victims of trafficking, and prevent trafficking in persons. It supplements the United Nations Convention Against Transnational Organised Crime, 2000. Article 3(a) of the Protocol defines ‘trafficking in persons’ as “the recruitment, transportation, transfer, harbouring or receipt of persons, 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 the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”. This victim-friendly protocol provides for preventive measures (Art. 9), victim compensation and privacy protection (Article 6), repatriation (Article 8) and strengthened border control measures (Articles 11 & 12). However, the Protocol does not provide protection from prosecution for the acts victims are forced to perform. Therefore, victims could be prosecuted for a crime they were coerced into committing – such as prostitution, working without a permit, or having false identification documents – and be summarily deported for these violations. Also, most of the positive measures, especially victim assistance, are discretionary. Thus, victims who remain in a country in order to serve as witnesses for the prosecution could be detained for months without critical services or employment. This could create unwillingness in victims to offer testimony, which would be detrimental to the case and undermine the law enforcement objectives of this Protocol. Also, these victims are still at risk of physical harm from the traffickers. There is no mention of ‘reintegration’ or providing services upon repatriation to ensure that a victim is able to re-enter mainstream society. The Protocol refers only to cooperation between States Parties to ensure safe repatriation of victims to their countries of origin. The victims are, in effect, likely to be delivered back into the same conditions from which they were trafficked and are at risk of re-victimization.

This process seeks to raise standards for the protection of children from all forms of sexual exploitation and abuse.

3.2.3. National Framework of Laws

The Constitution of India, under Article 23 (1), prohibits trafficking in human beings and forced labour. This right is enforceable against the State and private citizens.

The Indian Penal Code, 1860. Relevant provisions under the Indian Penal Code are Sections 293, 294, 317, and 366, 370, 371, 372, 373, 375, 376, 496, 506, 509, 511. Of significance are Sections 366A, which makes procuration of a minor girl (below the age of 18 years) from one part of India to another punishable and Section 366 B, which makes importation of a girl below the age of twenty-one years punishable. Section 374 provides punishment for compelling any person to labour against the will of that person.

Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA) It was in pursuance of the Trafficking Convention, which India signed on 9 May 1950. The Act aimed to rescue exploited women and girls, to prevent deterioration of public morals and to stamp out the evil of prostitution, which was rampant in various parts of the country. In 1978, SITA was amended by the Amendment Act 46 of 1978, which took effect from 2 October 1979. This was owing to the realization that the social evil needed to be curbed and that existing provisions

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74 ibid
75 Section 293 Sale, etc of obscene objects to young persons, Section 294 – obscene advertisement and songs, Section 317-Exposure and abandonment of child under twelve years by parents or person having care of it. Section 366 - Kidnapping to compel marriage, Section 370 & 371 – deals with slavery, Section 372 and 373 – selling or buying for prostitution, Section 375 and 376 – deals with sexual offence and punishment, Section 509 – Insulting the modesty of women. for details See Rattan Lal and Dhiraj Lal. The Indian Penal Code, (Wadhia and Company Law Publishers, Agra/Nagpur/New Delhi 29th ed. Reprint 2003).
failed to do so. In 1986, SITA was drastically amended and renamed the Immoral Traffic (Prevention) Act, 1956.

The Immoral Traffic (Prevention) Act, 1956 is a special legislation that deals exclusively with trafficking. The Act defines the terms ‘brothel’, ‘child’, ‘corrective institutions’, ‘prostitution’, ‘protective home’, ‘public place’, ‘special police officer’ and ‘trafficking officer’. The purpose of the enactment was to inhibit or to abolish commercialised vice, namely the traffic in women and girls for the purpose of prostitution, as an organised means of living. Offences under the Act are:

i) punishment for keeping a brothel or allowing premises to be used as a brothel (S. 3)
ii) punishment for living on the earnings of prostitution (S. 4)
iii) procuring, inducing or taking persons for the sake of prostitution (S. 5)
iv) detaining a person in premises where prostitution is carried on (S. 6)
v) prostitution in or the vicinity of public places (S. 7)
vi) seducing or soliciting for the purpose of prostitution (S. 8)
vii) seduction of a person in custody (S. 9).

The law confers wide powers on the concerned authorities in matters of rescue and rehabilitation of victims and survivors and provides for stringent action against exploiters including the eviction of brothels, surveillance, externment, as well as aggravated punishment when the offences are committed on children.

The Indian Evidence Act, 1872 in which Sections 114 A and 151 are relevant in this context. 76

Criminal Procedure Code, 1973 with Section 51(2), 53(2), 98, 160, 327(2) and 357 having relevance in this context. 77

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76 Section 114 A – presumption as to absence of consent in certain prosecution for rape, Section 115 – deals with estoppel.
77 Section 51(2) – provision relating to Search of Women, Section 53(2) – Medical Examination of Woman, Section 98- Power to compel restoration of abducted females, Section 160 – Police officers power to require attendance of witnesses, Section 327(2) – Procedure to conduct in camera proceedings Section 357-order to pay compensation.
3.2.4. Intervention by Supreme Court

In a well known case *Vishaljeet’s Case*\(^78\) a public interest litigation was filed by an advocate seeking certain directions for the Central Bureau of Investigation:-

1. To institute an enquiry against those police officers under whose jurisdiction Red Light areas as well as Devdasi and Jogin Traditions are flourishing and to take necessary action against such arising erring police officers and law breakers.

2. To bring all inmates of the red light areas and also those who are engaged in ‘flesh trade’ to protective homes of the respective states and to provide them with proper medical aid, shelter, education and training in various disciplines of life so as to enable them to choose a dignified way of life.

3. To bring the children of those prostitutes and other children found begging in streets and also the girls pushed into ‘flesh trade’ to protective homes and then to rehabilitate them.

The Apex Court, after understanding the plight of victims of the prostitution, especially children who are forced into, passed various directions to the Governments (State and Central) to implement the law, to set up advisory committees to make suggestions for measure to be taken to eradicate prostitution and social welfare programmes. The Court also directed that steps should be taken to appoint trained personnel in the rehabilitatory homes. The Central Government was directed to look into the inadequacies of the law, system, institutions and make appropriate amendments.

\(^78\) Vishal Jeet v. Union of India & other States and Union Territories, 1990(3), SCC 318.
Unfortunately, despite these directions the situation worsened when in 1997 the apex Court heard Gaurav Jain’s case. The Court directed to constitute a committee to make an in depth study of the problems of prostitution, child prostitution and children of prostitutes and to evolve suitable schemes for their rescue and rehabilitation.

In the Public at Large v. State of Maharastra and others judicial intervention brought about rescue, repatriation and rehabilitation of 487 minor girls. The High Court led to the prompt care of and attention to the rescued persons, setting up of an Advisory Committee and networking of various departments of the government and the repatriation of persons trafficked from various States in India as well as neighbouring countries. In Prerana v. State of Maharastra and others, the Mumbai High Court looked into the issue of violation of rights of trafficked children by various authorities who are supposed to implement the law. The Court took serious objection to the judicial authority treating the trafficked minor girls as ‘confirmed prostitutes’. The court issued several directions for the proper implementation of Juvenile Justice (Care and Protection of Children) Act, 2000 and Immoral Traffic (Prevention) Act, 1956, keeping in view the human rights of the trafficked persons. The court also addressed several issues concerning Child Rights viz., the role of advocates and NGOs in the Juvenile Justice Act, child friendly procedures in dealing with rescued person etc.

80 1997(4) Bom CP 171.
81 In Public at Large v. State of Maharastra and others, Writ Petition No.112 of 1996, the High Court of Mumbai gave several directions to the government agencies to ensure the interests of the rescued girls. The Court directed that all rescued girls should be subjected to medical examination for assessing their age and to check whether they are suffering from any disease. The methodology of counseling and after care was also dealt in detail.
82 Writ Petition No.788 of 2002.
Earlier, in Writ Petition by an NGO *Savera and others v. State of Goa and others* 83 The Bombay High Court While delivering the Judgment, took into the consideration the various views in the replies filed by the petitioners, respondents, etc as well as report of the Kamat Committee. The High Court directions included the following:

1. The State Government to ensure necessary action as per Kamat Committee Report.
2. Ensure effective implementation of the judgment of apex Court in *Gaurav Jain's case*.
3. Ordered that the District Collector to take steps under Immoral Trafficking (Prohibition) Act and other relevant laws to “close down the cubicles. If the said 250 cubicles constructions are illegal, and are on government land or land belonging to local authorities, then to take steps to evict the illegal occupants and then demolish them by following due process of law.”
4. State Government to take adequate steps to prevent the CSW's (Commercial Sex Workers) being brought into the State of Goa on contract basis, as noted by the Justice Kamat Committee.
5. Since the CSWs are being brought from outside Goa, the Government of Goa is not bound to rehabilitate them except to the extent mentioned by specific directions in the judgments of the apex Court. The rescued CSWs deported to the State where they came from. The Goa State Commission for Women along with the National Commission for Women to take steps, so that the said women are rehabilitated in the State from where they hail with assistance of the respective State Governments.

83 Writ Petition No.365 of 1997, judgment delivered on 21 July, 2003. The object of the petition was primarily to seek the direction of the High Court to the concerned agencies in the 'readjustment and rehabilitation' of the persons in the 'Red-Light areas of Baina'.
6. The National Commission for Women to report in nine months the action taken on the implementation of the Kamat Committee Report.

In the case of *High Court on its own motion v. Union of India & others*, the court initiated several proactive steps. The Court summoned various officials and NGOs working in field, heard them and, therefore, gave them specific directions with respect to rescue and rehabilitation and re-integration of the victims. Senior officials of different States like Rajasthan, Uttar Pradesh etc., from where the girls had been trafficked, were also summoned by the Court to ensure that the rehabilitation package was implemented properly and the concerned officials were made accountable for their activities to ensure that the victims were not re-trafficked and were at the same time economically and socially empowered.

Judicial activism has made remarkable changes in the entire scenario. It is important to note here that due to the intervention by the High Court of Delhi, especially during the period of 2001-2003, the law enforcement scenario in Delhi witnessed a radical change in ensuring justice delivery. One of the highlights has been that during this period, 28 trafficker/exploiters were convicted as against the preceding years when the conviction of traffickers and exploiters was rare and almost nil. Moreover, the High Court, intervention facilitated in promoting the interest of women and children, within a human rights paradigm. The limited scope and vision that was commonly prevalent in the existing ‘crime-perspective’ and ‘welfare-perspective’ were substituted with a longer mandate of ‘human-right perspective’.

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64 Crl. M.No.832/01.
65 *Ibid.* A petition was filed in the Delhi High Court by Honest Organization, Delhi through its honorary Chairman Shri Shyam Sunder Lal Gupta to seek the intervention of High Court for directing the concerned officials to ensure appropriate enforcement of the provision of Immoral Trafficking (Prohibition) Act, 1956.
Another order of the High Court of Delhi which has made a notable improvement is delivered in a petition filed by a NGO Prajwala of Hyderabad. In this case for High Court approved the new technology for recording the evidence of the victims i.e. through video conferencing. The Court also directed, that the State of Andhra Pradesh make appropriate arrangements for the same and, that the trial Court ensure adequate safeguards enumerated in the decision of Supreme Court in *State of Maharashtra v. Dr. Praful B., Desai*. These cases suggest that the Indian courts have underscored the cardinal principle of human rights in justice delivery. These judgments are only illustrative and to understand the judicial perspective with respect to justice delivery, to know the response of the police, prosecution correctional officers etc., these do provide a lot of insight.

3.2.5. **Government Initiatives**

In pursuance of the direction of the Supreme Court in *Gaurav Jain's case*, the Committee on prostitution, Child prostitutes and children of prostitutes was constituted. This committee, was headed by the Secretary, Department of Women and Child Development made an in depth study of the commercial sexual exploitation and trafficking women and children by widely touring across the country and meeting law enforcement officers, officers in charge of the Boards of Departments of Women and Child Development, Social

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86 Crl. M 1467/04 in Crl. W.532/1992. The Court rescued the girls from the brothels of Delhi were repatriated and rehabilitated in their hometowns in several parts of India including Andhra Pradesh. The rehabilitation work was carried out by Government of Andhra Pradesh with the involvement and participation of the NGO Prajwala. Since these girls were repatriated after spending considerable time in the rescue home in Delhi, ideally speaking, their statements should have been recorded by the trial Court during that period. However, due to delay in the trial this was not done and, therefore, these girls were called to Delhi. These girls were reluctant and unwilling to go to Delhi mainly because they did not want to revive the trauma and agony which they had undergone. It was decided to move the trial Court for facilitating the recording of evidence of these girls to their home towns. However, the Court did not approve this for want of infrastructure. The matter was taken up with the High Court of Delhi which directed the Government Counsel to look for alternatives. The Government and the NGO took initiative, interacted with Government of Andhra Pradesh and found that videoconferencing facility was available in Andhra Bhawan, New Delhi.

87 2003 (4) SCC 601.

88 See *Supra* note 79.
Defence, Scheduled Castes/Scheduled Tribes Welfare and NGOs. On the basis of this exercise, a plan of action to combat trafficking and commercial sexual exploitation of women and children has been drawn up.89

The Plan of Action guides the actions of all ministries/departments of Central Government, State Governments, NGOs, the Public and private sector and other sections of the Civil Society. The Plan of Action aims to look into various aspects (i) prevention (ii) trafficking (iii) awareness generation (iv) health care (v) education and child care (vi) housing, shelter and civic amenities (vi) economic improvement (vii) legal reform and law enforcement (ix) rescue and rehabilitation and (x) institutional machinery.90

The Central Social Welfare provides financial assistance to NGOs to Development and Care Centres for the children of victims of prostitution. These centres are set up in red light areas and provide facilities of crèche and day-centres, educational support programme supplementary nutrition, health care, counseling, excursions etc. and are mannered by trained social workers and trained teachers. The Ministry of Social Justice & Empowerment also provides financial assistance to NGOs for rehabilitation of children of prostitutes. In some red light areas, projects have been sanctioned by the Government of India for starting centres under the ICDS. However, the response from the NGO in starting these sanctioned centres is not encouraging. A number of voluntary agencies are also independently involved in the care and rehabilitation of women victims, including child victims and advocacy for their problem. Projects for rehabilitation of devdasis, jogins, women victims are also taken up under various Schemes for Training and Employment Programme (STEP), setting up of Training cum Production Unit (NORAD) and by Shramik Vidyapeeth assisted by Central Government. A 40 percent reservation for women has been provided under the

89 Responses to Questions on India's first Report on CEDAW, 22nd Session of CEDAW (New York 24-31 January, 2000), Department of Women and Child Department, Ministry of Human Resources Development, GOI, pp.11-12.
90 Annual Report, 1999-2000, Department of Women and Child Development, Ministry of Human Resources Development, GOI.
integrated rural development programme. The Rashtriya Mahila Kosh (National Women's Saving) has been set up to provide micro-credit to poor women in the informal sector with low transition cost through the mediation of NGOs.91

The Department of Women and Child Development implemented various schemes for the welfare of "devdasis" — girls who are "married off" to the local deity and later on become prostitutes. In 1990, the Government of Maharasthra appointed a study group under the Chairmanship of Prakash Swade for the rehabilitation. On the recommendation of the study group, a number of the schemes are being implemented in Maharasthra.92 Financial assistance of Rs.10,000/- is given for the marriage of unmarried devdasi or for the marriage of the daughter of a devdasi. An amount of Rs.2,000/- is sanctioned for the marriage expenses and an amount of Rs.8,000/- is deposited in the joint bank account of the newly married couple.93 The devdasi system is a kind of superstition. It is necessary to work continuously to eradicate such superstitions from the society, it is not enough to awaken the mind of the devdasi alone.

Publicity campaigns are held in the districts to create awareness among public in relation to social evils. Workshops and Seminars are also conducted to create awareness about the benefit available under various schemes of the department.94

3.3. CHILD PORNOGRAPHY

Pornography is the Greek word derived from 'Prone' (prostitute) and graph in (to write). The word pornography originally referred to any work of art or literature dealing with sex and sexual themes. Societies have long debated because the questions how to distinguish between artistic works and pornography has perplexed governments even since, they began to take

93 Ibid.

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freedom of expression seriously. Child Pornography sometimes referred as Kiddie Porn. The definition differs in various countries. Most of the countries prohibit depictions of sexual activities involving children of a specified age. Some countries also prohibit written works that explicitly describes sexual activities of minors. India and other South Asian countries are slowly replacing South East Asia as the venue of choice or foreigners as there are fewer laws against child sexual abuse and South Asian children can be brought more cheaply.  

Child Pornography is a part of cyber pornography but it is such a grave offence that it is individually also recognized as a cyber crime. The internet is being highly used by its abuses to reach and abuse children sexually worldwide. The internet exposure to the children has made children a victim of cyber crimes. The pedophiles use their false identity to trap children and even contact them in various rooms where they can be friendly with them and gain personal information from the innocent preys. They even start contacting children on their e-mail addresses. These pedophiles drag children to the net for the purpose of sexual assault or so as to use them as a sex object. The two main ways in which children may be potentially harmed by child pornography are by being exposed to pornography and by filmed or photographed or made the subjects themselves in other way. Teenagers are particularly at risk because they often use the computer unsupervised and because they are more likely than younger ones to participate in online discussions regarding companionship, relationship or sexual activity. These risks include exposure to inappropriate material of a sexual or violent nature, or encountering e-mail or bulletin-board messages that are demeaning or belligerent. Another risk is the possibility that, while online, the child may provide information or arrange an encounter that could, risk his or her safety of other family members. In few case pedophiles have used online

95 Child Prostitution – The Ultimate Abuse, Report on the National Consultation on Child Prostitution, 18-20 November, 1995, New Delhi Organised by YMCA, End Child Prostitution ion Asian Tourism (ECPAT) and UNICEF.
96 For details see <http://childpronography.com> accessed on 20th February, 2006.
services and bulletin boards to gain a child's confidence and then arrange a face to face interview.97

Child pornography is a real and pressing problem that exists on local, national and international levels. Regulation of Child Pornography in the computer age presents special challenges that require considerable technical experts. Governments must be willing to allocate funds for such training and the necessary equipment. Finally, the protection of children must become a global priority and nations must commit their resources accordingly. This protection includes a firm commitment to the detection and prevention of sex crimes against children and to the treatment of children who have been sexually exploited. In India, the Information Technology Act, 2000 extends not only throughout India but also has an extra-territorial jurisdiction. Section 67 penalizes the publication or transmission of any material, in electronic form, which is lascivious; or appeals to prurient interests; or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied therein.

3.3.1. Monitoring of Cyber Pornography

A committee was appointed by the Mumbai High Court98 laid down sexual restrictions on Cyber Cafes to provide for an adequate degree of supervision and control so that minors are protected from being exposed to pornography sites on the Internet in the Cyber Cafes. The Committee has given recommendations to make a child-friendly or child-safe 'cyber-zone' where minors could safely access and use the internet for information, education, communication and entertainment. The Committee's recommendations include –

- A suggested definition of cyber cafes to be included in the Rules under Mumbai Police Act.

97 See Supra note 71, pp.251-252.
98 Jayesh Thakker & another v. State of Maharashtra & others and Internet Users Association of India (Interveners), Suo motu, Writ Petition 1611 of 2001, Mumbai High Court.
• Procedures for licensing Cyber Cafes.
• Regulations requiring cyber café operators to demand photo identity cards from all users.
• Requiring that minors be restricted to using machines in the common open space of cyber cafes (i.e. not in cubicles).
• Requiring that these machines be fitted with software filters.
• E-mail and website information to be provided by the internet service providers informing the public about the hazards and possible solutions.
• Setting up a hotline to the cyber crime Investigation Cell.
• Taking steps to increase awareness about cyber crime in general.

Several instances of child sexual abuse and exploitation have come to light in India involving foreigners in recent times. The objective of extra-territorial jurisdiction is to apply the domestic criminal law to crimes committed by nationals in other territories. Jurisdictional lines must not be allowed to come in the way of apprehending and convicting adults who prey upon children. Under the Swedish penal code, a Swedish citizen who has committed an offence outside of Sweden, which is an offence in Sweden and in the country in which it was committed, is liable under the Swedish law and can be tried by the Swedish Court. The crimes (Child Sex Tourism) Amendment Act, 1994 is an Australian law that prohibits and criminalizes sexual acts overseas with children under sixteen years of age. Australian Courts have adopted the procedure of video-link evidence whereby the Court is able to hear evidence directly from witnesses who are in overseas locations.99

3.3.2. Issue of Concern

While considering strategies to end the intolerable practice of child prostitution, the difficulties of rehabilitating children after they have been freed from the trade must be recognized. One of the factors which make the rehabilitation of child prostitutes “almost impossible” in the view of many social

99 Ibid.
workers is the likelihood that they will be ostracized by their own communities. Hence, given the victims culture of intense sub-ordination and limited financial resources, we believe that interventions to address child prostitution should focus on prevention, targeting both the exploiters and the exploited. These include broad policy shifts, improved law enforcement and promotion of awareness and education amongst the community in supply and traffic prone areas. Schemes supporting prevention, enforcement and rehabilitation to be operated through NGOs are under finalization in the Department of Women and Child Development.100

- Vigorous investigation and prosecution is necessary to curtail the operations of the traffickers involved in procuring and trafficking in children. Section 13(4) of the Immoral Trafficking (Prohibition) Act, 1956 empowers the Central Government to appoint special police officers with nation wide jurisdiction for the investigation of cases related to interstate trafficking in women and children for the purposes informing the general public about the facts concerning child prostitution and trafficking. Articles on child trafficking and prostitution, which are now appearing regularly in the popular press in India, are doing much to break the silence on this sensitive subject.101

- In India, there is an urgent need for specific legislation to effectively tackle sex tourism and trafficking of children for commercial sexual exploitation.102 Law relating to pedophile is inadequate. Therefore, the police is generally ineffective when it comes to registering the crime especially when it actually comes to registering the cases against foreign tourists where passport officers and international links are involved. The

102 See Supra note 71, p.265.
judiciary and the police are not aware of the laws and rights of the children.103

• Examination of victim/witnesses should be done in the presence of social workers/women police/parents or others who have the trust or confidence of the child. Examination should also be done in familiar atmosphere and not in police stations. To prevent secondary victimization during interrogation/examination by investigating agency as well as during court procedure, where a child is made to recall minute details of the sexual acts and experience and is grilled in getting proof, a model code of conduct should be evolved.104

• Age and other tests of the rescued victim should also be done in the presence of child supporting individuals and preferably in the homes where the children are lodged after rescue. The homes should, therefore, be provided with these facilities. Questioning should be done mostly by women police officers. The mental health aspects of the children have to be kept in mind. There should not be too much pressure on the child to speak all the details of the traumatic incident. Adopting a multi-disciplinary approach to the crime, it should be attempted by co-opting additional members into the investigating team so as to include doctors, social workers co-opting mental health experts, counselors or anyone who would be useful in the overall rehabilitation of the child.

• Investigation should necessarily be conducted into trafficking angle in all cases of missing persons, procurement of minor girls buying and selling, child marriages and all cases of kidnapping and abduction. Police officers should not be in uniform while examining the child and specially trained child friendly police officers should examine the child. The venue of the trial should be safe place other than usual court building. Special courts

103 ibid.
with a certain time frame should handle all cases. The burden of proof should be shifted to the accused.\textsuperscript{105}

- The prevention of Immoral Traffic Act, 1986, to be more effective, needs the following measures.\textsuperscript{106}
  
  \begin{itemize}
    \item Notification of police place.
    \item Closure of brothels keeping minors.
    \item Setting up special courts for speedy trials.
    \item Rescue operations to be more humanely and sensitively carried out along with a rehabilitation plan protecting the human rights of the prostitutes.
    \item Age verification of the rescued children to be immediately carried out. Infact it should be linked to the rescue operations.
  \end{itemize}

3.4. CHILD SEXUAL ABUSE

Child-rearing practices considered normal and healthy in our society may see abusive to members of another group. The Common American practice of housing a baby in a separate bedroom and letting her cry herself to sleep is viewed as severe emotional abuse by Native Hawaii and who view close contact as critical for infant wellbeing. The Standing Committee on Sexually Abused Children has defined Child Sexual Abuse as: 'Any Child below the age of consent may be deemed to have been sexually abused, when a sexual mature person has by design or by neglect of their usual societal or specific responsibilities, in relation to the child engaged or permitted engagement of that child in activity of a sexual nature, which is intended to lead to the sexual gratification of the sexually mature person'.\textsuperscript{107} The Children’s Act, 1989 of Great Britain defines ‘sexual abuse’ as the involvement of dependent, developmentally immature children and adolescent in sexual activities they do not normally comprehend, to which they

\textsuperscript{105} ibid.
\textsuperscript{106} ibid.
are unable to give informed consent, or that which violate the social taboos of family roles. The definition introduced the concepts of ‘informed consent’ and ‘dependent’. It is the dependent nature of child and young people that makes child sexual abuse a particular problem.\textsuperscript{108}

In 1988, a National Seminar on Child Abuse in India\textsuperscript{109} recognized the need for defining afresh the term ‘Child abuse’ in the Indian Context. The concerned evolved the following definition:

Child Abuse and Neglect (CAN) is the intentional, non-accidental injury, maltreatment of children by parents, caretakers, employers or others including those individuals representing government/non-government bodies which may lead to temporary or permanent impairment of their physical, mental, psycho-social development, disability or death.

Saakshi\textsuperscript{110} defines Child Sexual Abuse as any behaviour directed at a person under sixteen, without that person’s informed consent.\textsuperscript{111} The United Nations has defined Child Sexual Abuse as contacts or interactions between a child and an older or more knowledgeable child or adult (a stranger, sibling a person in a position of authority, such as parent or a caretaker), when the child is being used as an object of gratification for the older child’s or adult’s sexual needs. These contacts or interactions are carried out against the child-using force, trickery, bribes, threats or pressure.\textsuperscript{112} Commercial sexual exploitation of children commonly refers to using a child for sexual proposes in exchange for cash or favours in kind between the client/customer and the intermediary or agent who profits from such trade in children. Those who are profited, may be

\textsuperscript{108} Ibid.
\textsuperscript{109} National Seminar on Child Abuse in India, National Institute of Public Co-operation and Child Development, New Delhi, 2-24 June, 1988.
\textsuperscript{110} A Non-Governmental Organisation, New Delhi.
\textsuperscript{111} See Child Sexual Abuse - A draft manual, Saakshi, Unpublished.
\textsuperscript{112} UNICEF, 2001.
from a wide range of persons, including parents, family members, 
processes/agents, community members-largely men but also women.113

This phrase has been defined differently number of times. Child Sexual 
Abuse has also been defined as any kind of physical or mental violation of a child 
with sexual intent, usually by a person who is in possession of trust or power vis-
a-viz the child. There is no uniformly accepted definition of child sexual. But the 
different definitions of child sexual abuse cover the sexual mistreatment of both 
children and young people. The perpetrator can be anyone who exploits child 
vulnerability to gain sexual gratification. It can also include an activity who does 
not involve direct touching. Sexual exploitation takes different forms such as:114

- Child labourers and young domestic workers are frequently used for the 
  sexual gratification of employers and other adults.
- Children are sexually abused within family. Rape within a family has its 
  own alarming numbers.
- With the advent of HIV/AIDS, there is an increased demand for younger 
  child prostitutes.
- Children are used as attractions in sex tourism children are victims of a 
  globally organized sex trade. In some countries, this helps in bringing 
  much-needed foreign exchange.
- Children are abused within the context of cultural or traditional practices 
  such as child marriage.
- Children in institutions are vulnerable to sexual abuse from those who are 
  supposed to take care of them.
- Children in situations of conflicts, displaced, migrant and refugee children 
  are particularly vulnerable to all forms of sexual exploitation.115

113 ibid.
115 Child Sexual Abuse and the law, paper presented at Regional Workshop on the "Role of 
Electronic Media in promoting the Child's Rights to Protection from Sexual Exploitation and 
Abuse of Children" held at: Nova, Goa, Panaji on 25-27 November, 1999, Asha Bajpai, Faculty 
(Law) TATA Institute of Social Sciences, Mumbai, page.1.
3.4.1. National Framework

There is no comprehensive law on Child Sexual Abuse. At Present the Constitution of India, Juvenile Justice Act (Care and Protection of Children) Act, 2000 and Indian Penal Code provides for the protection of the children in this regard.

The scope of Indian Penal Code with regard to sexual abuse of children is very limited. The sexual abuse of children is covered only in the form of rape. Section 375\(^ {116} \) defines rape and Section 376\(^ {117} \) of IPC provides for the

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\(^{116}\) IPC, Section 375 – Rape: A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

1. Against her will.
2. Without her consent.
3. With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
4. With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
5. With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
6. With or without her consent, when she is under sixteen years of age.

Explanation - Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception - Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

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\(^{117}\) IPC, Section 376 – Punishment for Rape: (1) Whoever, except in the cases provided for by subsection (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,-

(a) being a police officer commits rape-
   (i) within the limits of the police station to which he is appointed; or
   (ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or
   (iii) on a woman in his custody or in the custody of a police officer subordinate to him; or
(b) being, a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or
(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution
punishment of rape which shall not be less than seven years but which may be for a term that may intend to ten years, unless the woman raped is his own wife and is not under the twelve years of age, in which case, he shall be punished with imprisonment for a term which may intend to two years or with fine or both.

The other provisions of IPC, that are invoked are related to unnatural practices like Section 377. Under Section 366A and 366B IPC relate to import an export of girls for prostitution. The girl is below the age of eighteen years and she should be intentionally induced by the accused to go from any place or to any act that likely to force her into prostitution.

takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or
(d) being, on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or
(e) commits rape on a woman knowing her to be pregnant; or
(f) commits rape on a woman when she is under twelve years of age; or
(g) commits gang rape,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1- Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2- "Women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widows' home or by any other name, which is established and maintained for the reception and care of women or children.

Explanation 3- "Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring, medical attention or rehabilitation.

118 IPC, Section 377 – Unnatural offences: Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation- Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

119 IPC Section 366A. Procuration of minor girl: Whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

366B. Importation of girl from foreign country Whoever imports into India from any country outside India or from the State of Jammu and Kashmir any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be, forced or seduced to illicit intercourse with another person, shall be punishable with imprisonment which may extend to ten years and shall also be liable to fine.
In *Delhi Domestic Working Women's Forum v. U.O.I.* the Supreme Court laid down broad parameters in case in assisting rape victims. The Court indicated the present defects of the present system as:

- Complaints are being handled roughly and not given due attention.
- The victims are more often than not, humiliated by the police.
- The experience of furnishing evidence in court has been negative and destructive.

The Court suggested the following guiding principles:

- The complaints of sexual assault is to be provided with legal representations; it being important to secure continuity of assistance by ensuring that same person who looked after the complainants interest in the police station represents her upto the end of the case.
- Legal assistance is to be provided at the police station as the victim would be in the state of distress.
- The police should be under the duty to inform the victim of her right to representation before any questions are asked of her and the police report should state so.
- Victims who do not have their own lawyers should be provided with the list of advocates at police station.
- The Court upon the application shall appoint the advocate by the police at the earliest convenient moment.
- In all rape trials anonymity of the victim must be maintained as far as necessary.
- It is necessary to give due regard to the directive principle contained under Article 38(1) of the Constitution that victim are awarded compensation by the Court on conviction of the offender.

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120 [1995(1) SCC 14, 18, 21.](#)

In State of Punjab v. Gurmit Singh\textsuperscript{122} the Supreme Court set aside the acquittal and convicted the accused. It was in this the Supreme Court held that holding of trials in camera in these cases are mandatory. In this case the Supreme Court also held that the Court should not be a silent spectator while the victim of crime is being cross-examined by the defence. It must effectively control the recording of evidence in the Court. The Court must ensure that through cross-examination the victim is not further harassed humiliated and traumatized. The Court also observed:

“If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reasons the Court find it difficult to place implicit reliance on her testimony, it may look for evidence which may level assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of prosecutrix must be appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.”

In Sakshi v. Union of India \& others\textsuperscript{123} the petitioner ‘Sakshi’ an organization interested in the issues concerning women, had approached the Supreme Court of India with the afore mentioned writ petition praying for (a) issuance of a writ in the nature of declaration or any other appropriate writ or direction interalia that ‘sexual intercourse’ as contained in section 375 of the Indian Penal Code shall include all forms of penetration such as penile/vaginal penetration, penile/oral penetration, penile/anal penetration, finger/vaginal and finger/anal penetration and object/vaginal penetration and (b) to issue a consequential writ, order or direction to the respondents in the writ petition and to their servants and agents to register all such cases found to be

\textsuperscript{122} 1996 (2) SCC 384.
\textsuperscript{123} 1999 (6) SCC 591.
true on investigation. On the directions of the Hon'ble Court, the petitioner drew
up a note containing the precise issues involved in the petition. The Commission
was asked by the Hon'ble Court by its order dated 9th August, 1999 to examine
the said issues afresh. The Court observed that the issues needed a thorough
examination. By the said order dated 9th August, 1999, the Hon'ble Court
requested the Law Commission “to examine the issues submitted by the
petitioners and examine the feasibility of making recommendations for
amendment of the Indian Penal Code or deal with the same in any other manner
so as to plug the loopholes”. The Commission accordingly considered those
comments and submitted its further response and recommendations as 172nd
report on review of rape laws dated 14.3.2000. The present report focuses on the
need to review the rape laws in the light of increased incidents of custodial rape
and crime of sexual abuse against youngsters. The crime of sexual assault on a
child causes lasting psychic damage to the child and as such, it is essential to
prevent sexual abuse of children through stringent provisions. The UN
Conventions and various constitutional provisions also underline the need for
protecting the child from all forms of sexual exploitation and sexual abuse. This
Report aims at the attainment of these objectives. The commission
recommended changes in Indian Penal Code, Criminal Procedure Code, Indian
Evidence Act.

Child Marriages also contribute to virtually every social problem that keeps
India behind in women’s rights. The problems include facing birth rates high
malnutrition, illiteracy, infant mortality and low life expectancy especially among
rural women. The problem is most deeply rooted in Rajasthan, Madhya Pradesh,
Uttar Pradesh, Bihar and West Bengal with a combined population of 420 million,
about 40 percent of all Indians.\footnote{Excerpts from a speech delivered by the author, a senior Advocate, on September 24, 1998 as part of the Sri. T.V. Mathur Krishna Iyer Endowment Lecture at Madras University Centenary Building.}
Changes in Hindu Law affecting women's right came quite a long time before. Continuous pressure was enacted by social reformers on this problem. As a result in 1929 the British Government enacted Child Marriage Restraint Act, 1929, also known as Sharada Act. The Act was applicable to all Indians i.e. Hindus, Muslims and Christians. The minimum age prescribed for marriage was fifteen years for girls and eighteen years for boys. The punishment under the Act was very mild. This was a weak legislation and could not achieve the desired results. In 1978 an amendment was passed in the 1929 Act to rise the minimum age of marriage. Now the minimum age of marriage is eighteen years for girls and twenty one for boys. But the child marriages solemnized are neither declared void or illegal under the Act.

Section 12 of the Act provides that the basis of information received by Court through the complaint or otherwise that a child marriage has been arranged or is about to be solemnized, the Civil Courts under their ordinary civil jurisdiction can, after issuing a show cause notice, grant an injunction prohibiting such marriage if such an injunction is disobeyed and the marriage is performed, the Court has the power to punish the offenders with a sentence of simple imprisonment of up to three months or with a fine of up to one thousand rupees or with both.

In Smt. Sushila Gothala v. State of Rajasthan and others, A public interest litigation was filed wherein, sought issuance of direction to the respondents to stop immediately the menace of child marriage in Rajasthan is an effective manner, and further for a direction to punish the officer who is responsible for not prohibiting the child marriage, as per the provisions of the Child Marriage Restraint Act, 1929. On the occasion of Akha Teej festival every year, child marriages are performed in contravention of the Act as it is considered

126 Section 12, Child Marriage Restraint Act, 1929.
127 Section 12(5), ibid.
128 AIR 1995 Rajasthan 90.
as an auspicious day for performing marriages. The writ petition was disposed off with the observations that this social evil can be eradicated only if the people of Rajasthan themselves revolt against this age-old custom, which is primitive in nature and cannot be justified by any civilized society. The Court further hold that as per Section 13 of the Act,\textsuperscript{129} if the child marriage prevention officer has been appointed, the government should consider the feasibility of making the provisions of the Act more stringent and punishment for contravention of the Act should be severe.\textsuperscript{130}

3.4.2. Amendments proposed in Indian Penal Code, 1860

- Substitution of existing section 375 of the IPC recommended. The scope of the offence in section 375 is to be widened to make it gender neutral. Some of the western countries have already done this. It is also necessary to include under this new definition (sexual assault) not only penile penetration but also penetration by any other part of the body (like finger or toe) or by any other object. \textsuperscript{131}

\begin{verbatim}
\textsuperscript{129} Child Marriage Restraint Act, 1929.
\textsuperscript{130} See supra note-71, p.227.
\textsuperscript{131} “375. Sexual Assault: Sexual assault means -
(a) penetrating the vagina (which term shall include the labia majora), the anus or urethra of any person with -
   i) any part of the body of another person or
   ii) an object manipulated by another person except where such penetration is carried out for proper hygienic or medical purposes;
(b) manipulating any part of the body of another person so as to cause penetration of the vagina (which term shall include the labia majora), the anus or the urethra of the offender by any part of the other person's body;
(c) introducing any part of the penis of a person into the mouth of another person;
(d) engaging in cunnilingus or fellatio; or
(e) continuing sexual assault as defined in clauses (a) to (d) above in circumstances falling under any of the six following descriptions:
   First- Against the other person's will.
   Secondly- Without the other person's consent.
   Thirdly- With the other person's consent when such consent has been obtained by putting such other person or any person in whom such other person is interested, in fear of death or hurt.
   Fourthly- Where the other person is a female, with her consent, when the man knows that he is not the husband of such other person and that her consent is given because she believes that the offender is another man to whom she is or believes herself to be lawfully married.
   Fithly- With the consent of the other person, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by the offender personally or through another of any stupefying or unwholesome substance, the other person
\end{verbatim}
• Recasting of section 376 of the IPC: The reasons for these changes are:

1. to visit with a severe penalty the near relations and persons in position of trust and authority who more often than not commit the offence of sexual assault on the members of the family or on unsuspecting and trusting young persons and;
2. to maintain uniformity in the matter of age of wife or any other young person who needs special protection - as sixteen.¹³²

is unable to understand the nature and consequences of that to which such other person gives consent.

Sixthly- With or without the other person's consent, when such other person is under sixteen years of age. Explanation: Penetration to any extent is penetration for the purposes of this section. Exception: Sexual intercourse by a man with his own wife, the wife not being under sixteen years of age, is not sexual assault.¹³²

¹³² 376. Punishment for sexual assault - (1) Whoever, except in the cases provided for by sub-section (2), commits sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the person subjected to sexual assault is his own wife and is not under sixteen years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine.

If the sexual assault is committed by a person in a position of trust or authority towards the person assaulted or by a near relative of the person assaulted, he/she shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to life imprisonment and shall also be liable to fine. Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than minimum punishment prescribed in this sub-section.

(2) Whoever,-
(a) being a police officer commits sexual assault-
(i) within the limits of the police station to which he is appointed; or
(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or
(iii) on a person in his custody or in the custody of a police officer subordinate to him; or
(b) being a public servant, takes advantage of his official position and commits sexual assault on a person in his custody as such public servant or in the custody of a public servant subordinate to him; or
(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his official position and commits sexual assault on any inmate of such jail, remand home, place or institution; or
(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits sexual assault on a person in that hospital; or
(e) commits sexual assault on a woman knowing her to be pregnant; or
(f) commits sexual assault on a person when such person is under sixteen years of age; or
(g) commits gang sexual assault,
shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine:
• Modifications in sections 376A, 376B, 376C and 376D of the IPC recommended.133

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years.

Explanation 1.- Where a person is subjected to sexual assault by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang sexual assault within the meaning of this sub-section.

Explanation 2.- "Women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widows' home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

Explanation 3.- "Hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

133 376A. Sexual assault by the husband upon his wife during separation.- Whoever commits sexual assault upon his wife, who is living separately from him under a decree of separation or under any custom or usage, without her consent, shall be punished with imprisonment of either description for a term which shall not be less than two years and which may extend to seven years and shall also be liable to fine.

376B Sexual intercourse by public servant with person in his custody.- Whoever, being a public servant, takes advantage of his/her official position and induces or seduces any person, who is in his/her custody as such public servant or in the custody of a public servant subordinate to him, to have sexual intercourse with him/her, such sexual intercourse not amounting to the offence of sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than five years and which may extend to ten years and shall also be liable to fine.

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than five years.

Explanation: "Sexual intercourse" in this section and sections 376C and 376D shall mean any of the acts mentioned in clauses (a) to (e) of section 375. Explanation to section 375 shall also be applicable.

376C. Sexual intercourse by superintendent of jail, remand home, etc.- Whoever, being the superintendent or manager of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution takes advantage of his/her official position and induces or seduces any inmate of such jail, remand home, place or institution to have sexual intercourse with him/her, such sexual intercourse not amounting to the offence of sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than five years and which may extend to ten years and shall also be liable to fine.

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than five years.

Explanation 1.- "Superintendent" in relation to a jail, remand home or other place of custody or a women's or children's institution includes a person holding any other office in such jail, remand home, place or institution by virtue of which he/she can exercise any authority or control over its inmates.

Explanation 2.- The expression "women's or children's institution" shall have the same meaning as in Explanation 2 to sub-section (2) of section 376.

376D. Sexual intercourse by any member of the management or staff of a hospital with any woman in that hospital. Whoever, being on the management of a hospital or being on the staff of a hospital takes advantage of his/her position and has sexual intercourse with any person in that hospital, such sexual intercourse not amounting to the offence of sexual assault, shall
• Insertion of new section 376E IPC has been recommended. This section is intended to cover a wide variety of offences including sexual harassment at workplace and sexual perversions of the kind mentioned in the note submitted by Sakshi.\textsuperscript{134}

• In the light of the change effected by us in Section 375, the Law Commission is of the opinion that section 377 deserves to be deleted. As far as section 509 of IPC is concerned, the only change which was suggested is enhancement of punishment.\textsuperscript{135}

• New section 166A of the IPC recommended. The object behind this new section was to punish a public servant who knowingly disobeys any direction of law prohibiting him from requiring the attendance at any place of any person for the purpose of investigation into an offence or other matter or knowingly disobeys any other direction of law regulating

\begin{verbatim}
be punished with imprisonment of either description for a term which shall not be less than five years and which may extend to ten years and shall also be liable to fine. Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than five years.
Explanation.- The expression "hospital" shall have the same meaning as in Explanation 3 to sub-section (2) of section 376.
\end{verbatim}

134 376E. Unlawful sexual contact
(1) Whoever, with sexual intent, touches, directly or indirectly, with a part of the body or with an object, any part of the body of another person, not being the spouse of such person, without the consent of such other person, shall be punished with simple imprisonment for a term which may extend to two years or with fine or with both.

(2) Whoever, with sexual intent, invites, counsels or incites a young person to touch, directly or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who so invites, counsels or incites, or touches, with sexual intent, directly or indirectly, with a part of the body or with an object any part of the body of a young person, shall be punished with imprisonment of either description which may extend to three years and shall also be liable to fine.

(3) Whoever being in a position of trust or authority towards a young person or is a person with whom the young person is in a relationship of dependency, touches, directly or indirectly, with sexual intent, with a part of the body or with an object, any part of the body of such young person, shall be punished with imprisonment of either description which may extend to seven years and shall also be liable to fine.

Explanation: "Young person" in this sub-section and sub-section (2) means a person below the age of sixteen years."

135 Section 509 IPC. Word, gesture or act intended to insult the modesty of a woman:
Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years and shall also be liable to fine.
the manner in which he shall conduct such investigation and which act of his causes prejudice to any person.\[^{136}\]

\[3.4.3.\] **Amendments proposed in Criminal Procedure Code, 1973**

- Insertion of sub-sections (3) & (4) in section 160 of the Code of Criminal Procedure, 1973. The origin of this suggestion in its embryonic form can be traced to the Law Commission’s Reports on “Rape and Allied Offences” and “Women in Custody”.\[^{137}\]
- Substitution of the proviso to sub-section (1) of section 160 recommended.\[^{138}\]
- In many cases, the report of the medical examiner as to the examination of the female victim is also found to be somewhat cursory and does not give adequate information about the material particulars which are necessary for an adjudication as to the various ingredients of section

\[^{136}\] 166A. Whoever, being a public servant-

(a) knowingly disobeys any direction of the law prohibiting him from requiring the attendance at any place of any person for the purpose of investigation into an offence or other matter, or

(b) knowingly disobeys any other direction of the law regulating the manner in which he shall conduct such investigation, to the prejudice of any person, shall be punished with imprisonment for a term which may extend to one year or with fine or with both.

\[^{137}\] Section 160(3) CrPC Where under this chapter, the statement of a female is to be recorded either as first information of an offence or in the course of an investigation into an offence and she is a person against whom an offence under sections 354, 375, 376, 376A, 376B, 376C, 376D, 376E or 509 of the Indian Penal Code is alleged to have been committed or attempted, the statement shall be recorded by a female police officer and in case a female police officer is not available, by a female government servant available in the vicinity and in case a female government servant is also not available, by a female authorised by an organisation interested in the welfare of women.

Section160(4)CrPC Where in any case none of the alternatives mentioned in sub-section (3) can be followed for the reason that no female police officer or female government servant or a female authorised by an organisation interested in the welfare of women and children is available, the officer in charge of the police station shall, after recording the reasons in writing, proceed with the recording of the statement of such female victim in the presence of a relative of the victim.

\[^{138}\] Proviso to subsection (1) of Section 160 CrPC be substituted as follows

Provided that no male person under the age of 16 years or woman shall be required to attend at any place other than the place in which such male person or woman resides. While recording the statement, a relative or a friend or a social worker of the choice of the person whose statement is being recorded shall be allowed to remain present. The relative, friend or social worker so allowed to be present shall not interfere with the recording of statement in any manner.
Further, it is sometimes noticed that the medical examination report is not sent promptly to the investigating officer. As a result, the possibility of tampering with the report remains. Accordingly, Section 164A, CrPC new section has been recommended to be inserted in the Code of Criminal Procedure, 1973.  


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139 Section 164A of CrPC (1) Where, during the stage when an offence of rape or attempt to commit rape is under investigation, it is proposed to get the person of the woman with whom rape is alleged to have been committed or attempted, examined by a medical expert, such examination shall be conducted by a registered medical practitioner, with the consent of the woman or of some person competent to give such consent on her behalf and the woman shall be forwarded to the registered medical practitioner without delay.

(2) The registered medical practitioner to whom such woman is forwarded shall without delay examine her person and prepare a report specifically recording the result of his examination and giving the following details:

(i) the name and address of the woman and of the person by whom she was brought,
(ii) the age of the woman,
(iii) whether the victim was previously used to sexual intercourse,
(iv) marks of injuries, if any, on the person of the woman,
(v) general mental condition of the woman, and
(vi) Other material particulars, in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The report shall specifically record that the consent of the woman or of some person competent to give such consent on her behalf to such examination had been obtained.

(5) The exact time of commencement and completion of the examination shall also be noted in the report, and the registered medical practitioner shall without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.

(6) Nothing in this section shall be construed as rendering lawful any examination without the consent of the victim or of any person competent to give such consent on her behalf.”

140 Section 53A. (1) When a person accused of any of the offences under sections 376, 376A, 376B, 376C, 376D or 376E or of an attempt to commit any of the said offences, is arrested and an examination of his/her person is to be made under this section, he/she shall be sent without delay to the registered medical practitioner by whom he/she is to be examined.

(2) The registered medical practitioner conducting such examination shall without delay examine such person and prepare a report specifically recording the result of his examination and giving the following particulars:

(i) the name and address of the accused and the person by whom he was brought,
(ii) the age of the accused,
(iii) marks of injury, if any, on the person of the accused, and
(iv) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report, and the registered medical practitioner shall, without delay, forward the report to the investigating officer, who shall forward it to the Magistrate referred to in section 173 as part of the documents referred to in clause (a) of sub-section (5) of that section.”
3.4.4. Amendments proposed in Indian Evidence Act, 1872

- An amendment proposed in Section 114A of Indian Evidence Act. It is however necessary to point out that section 114A is confined only to the aggravated forms of rape mentioned under clauses (a) to (e) and (g) of sub-section (2) of section 376. It does not apply to sub-section (1) of section 376 or for that matter to sections 376A to 376D. But the representatives of Sakshi also wanted such a presumption to be raised only in respect of "aggravated sexual assault" and that is exactly what section 114A provides. No amendment is therefore called for in section 114A except some modifications way of adaptation in the light of amendment proposed by us to section 375, IPC.141

- Insertion of clause (3) in Section 146 of Indian Evidence Act has been recommended.142

3.4.5. SUGGESTION Not Accepted by the Law Commission

There are certain recommendations which were made in the petition by Sakshi but were not accepted by 172nd Law Commission Report and which need to be incorporated in the laws relating to Child Sexual Abuse to make the law more effective and Child Friendly. They are as follows:143

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141 Section 114A of Indian Evidence Act, 1872. Presumption as to absence of consent in certain prosecutions for sexual assault.- In a prosecution for sexual assault under (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code (45 of 1860) where sexual intercourse by the accused is proved and the question is whether it was without the consent of the other person alleged to have been sexually assaulted and such other person states in his/her evidence before the court that he/she did not consent, the court shall presume that he/she did not consent. Explanation: "Sexual intercourse" in this section and sections 376C and 376D shall mean any of the acts mentioned in clauses (a) to (e) of section 375. Explanation to section 375 shall also be applicable.

142 Section 146(4) In a prosecution for an offence under section 376, 376A, 376B, 376C, 376D or 376E or for attempt to commit any such offence, where the question of consent is in issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to his/her general immoral character, or as to his/her previous sexual experience with any person for proving such consent or the quality of consent.

143 See supra note-71, p.239.
• Exception to Section 375 not deleted [sexual intercourse by a man with his own wife (above sixteen years) is not sexual assault]. Marital rape has still not been recognized in the Indian Legal System.

• Second proviso to Section 376(1) and the proviso to section 376 (2) are not deleted. The discretion will remains with the Court to award a sentence lesser than the minimum punishment.

• Definition of ‘consent’ has not been considered. In some cases the word is interpreted broadly. In *Mathura’s case*\(^ {144}\), the Court regarded absence of marks of injury as consent. Such interpretations need to be prevented in future.

• No mandatory provision has been laid down for investigation of offenders of rape and other sexual offences by women police officers only.

• While granting bail to a person accused of sexual assault, one of the conditions which should be imposed by the Court shall be that such person shall not be in the proximity of the person. No provision has been made relating to this aspect.

• There is no presumption in respect of the age of the victim. The age of the victim will have to be proved. As mentioned earlier, the age of proof is a very cumbersome one process, at present, as many children do not have documentary evidence and the medical evidence has to be relied on.

• There is no provision for safe environment in which the child can recover.

One of the important functions of the National Commission Women is to review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto. The National Commission for Women with the National Human Rights Commission (NHRC) has taken up this issue with the Government, at length. The following recommendations have been made and the Act is being considered for amendment accordingly.\(^ {145}\)

\(^ {144}\) Tukaram,1978,Cr.L.J 1864 (SC).

• The Government should immediately appoint child marriage prevention officers.
• The punishment provided under Section 23 of the Child Marriage Restraint Act, 1929 should be amended to make it more stringent.
• A new provision should be included in the Act to the effect that any marriage performed in contravention to the order made by the child marriage prevention officers should be void.
• A new provision should be included in the Act for creation a penal obligation on every person present at a child marriage, for objection to, or, advising the person concerned against such marriage or, reporting to the Child Marriage Prevention Officer of the solemnization of the child marriage.
• Section 7 of the Act should be replaced by a provision for making the offence under the Act as cognizable without any qualifying clause.

Above all, it is necessary to make a systematic effort to spread awareness about the evils of child marriage.

3.5. CHILD SOLDIERS

In dozens of countries around the world, children have become direct participants in war. As many as 3,00,000 children under the age of 18 serve in government forces or armed rebel. The participation of child soldiers has been reported in 33 on-going recent armed conflicts in almost every region of the world.146 Children are uniquely vulnerable to military recruitment because of their emotional and physical immaturity. They are easily manipulated and can be drawn into violence that they are too young to resist or understand. Technological advances in weaponry and the proliferation of small arms have

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contributed to the increased use of child soldiers. Light weight automatic weapons are simple to operate, often easily accessible and can be used by children as easily as adults.147 Children are most likely to become child soldiers if they are poor, separated from their families, displaced from their homes living in a combat zone or have limited access to education. Orphans and refugees are particularly vulnerable to recruitment.148 Many children join armed groups because of economic and social Pressure, or because children believe that the group will offer food and security. Others are forcibly recruited “press-ganged” or abducted by armed groups. Child Soldiers are being used in more than thirty countries around the world. Human Rights Watch has interviewed child soldiers from countries including Angola, Colombia, Lebanon, Liberia, Sierra Leone, Sudan and Uganda. In Sierra Leone, thousands of children are abducted, beheaded, amputated and raped because of their reluctance to fight.149 In Colombia, ten of thousands of children have been used as soldiers to the country’s ongoing bloody conflict. Government backed recruit children as young as eight, while guerrilla forces use children to collect intelligence, make and deploy mine and serve as advance troops in ambush attacks. Girls are also used as soldiers in many parts of the world. In addition to combat duties, girls are subject to sexual abuse and may be taken as “wives” by rebel leaders in Angola, Sierra Leone and Uganda. In Northern Uganda, Human Rights Watch interviewed girls who had been impregnated by rebel commander, and then forced to strap their babies on the backs and take up arms against Ugandan security forces.150 Because of their immaturity and lack of experience, child soldiers suffer higher causalities than their adult counter parts. Even after the conflict is over they may be left physically disabled or psychologically traumatized. Frequently denied of an education or opportunity to learn civilian job skills, many find it difficult to rejoin peaceful society. Few treaties recognize the

147 Ibid.
148 Ibid.
150 Ibid.
existence of child soldiers or make provisions for their rehabilitation and reintegration into society.151

3.5.1. International Legal Standards Governing Child Soldiers

There are four kinds of international law in relation to child soldiers; International Human Rights Law, International Humanitarians Law, International Criminal Law and International Labour Law.152

"Recruitment"153 covers any means (formal or de facto) by which a person becomes a member of the armed forces or of an armed group, so it includes conscription (compulsory/obligatory military service), voluntary enlistment, and forced recruitment. The understanding of the meaning of "participation in hostilities" was explained in relation to the provisions in the Rome Statute of the International Criminal Court as:

“The words "using" and "participate" ...... cover both direct participation in combat and also active participation in military activities linked to combat such as scouting, spying, sabotage and the use of children as decoys, couriers or at military checkpoints. It would not cover activities clearly unrelated to the hostilities such as food deliveries to an airbase or the use of domestic staff in an officer’s married accommodation. However, use of children in a direct support function such as acting as bearers to take supplies to the front line, or activities at the front line itself, would be included within the terminology."154


Both use a 15-year minimum age for recruitment and participation in hostilities. Article 38 of the Convention is derived from Article 77(2) of Additional Protocol I of 1977 to the four Geneva Conventions of 1949. It states:

151 ibid.
153 See Junod, in Commentary on the Additional Protocols, Article 4, No. 4557, p 1380
154 UN Document A/CONF.183/2/Add.1
1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of 15 years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of 15 years into their armed forces. In recruiting among those persons who have attained the age of 15 years but who have not attained the age of 18 years, States Parties shall endeavour to give priority to those who are oldest.

Additional Protocol II (applicable in non-international armed conflicts) is similar. Article 4(3)(c) states:

"children who have not attained the age of 15 years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities."

The Convention's Article 38 is an anomaly in using a 15-year age minimum; in all other respects, the Convention's general definition of a child is any person under the age of 18 (unless under the law applicable to the child, majority it attained earlier). (Article 1). The Convention applies to all children in all circumstances, with the exceptions only of the United States and Somalia - the two countries not yet parties to it.

The African Charter on the Rights and Welfare of the Child is the only regional treaty in the world which addresses the issue of child soldiers. It was adopted by the Organization of African Unity (OAU) in 1990 and came into force
in November 1999. It is clear and specific, that a "child" is anyone below 18 years of age without exception\textsuperscript{155} goes on to state:

"States parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child."\textsuperscript{156}

The Rome Statute of the International Criminal Court (1998) gives the court jurisdiction over the war crime of conscription or enlisting children under 15 years into national armed forces or armed groups, or using them to participate actively in hostilities. (Article 8) Although the Statute uses the terminology of "conscription" or "enlistment" of under-15s, this is accepted as meaning the same as "recruitment" in the other treaties.

ILO Worst Forms of Child Labour Convention 182 was adopted on 17 June 1999 and came into force on 19 November 2000. It commits each state which ratifies it to "take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency".\textsuperscript{157} The term "child" applies to all persons under the age of 18 years\textsuperscript{158} and the worst forms of child labour include:

"all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict".\textsuperscript{159}

Recommendation 190 accompanying Convention 182 encourages states to make such recruitment a criminal offence. This was the first time that an 18-year minimum age limit was set in relation to child soldiering in an international treaty.

\textsuperscript{155}Article 2.
\textsuperscript{156}Article 22(2).
\textsuperscript{157}Article 1.
\textsuperscript{158}Article 2.
\textsuperscript{159}Article 3(a).
It was also the first specific, legal recognition of child soldiering as a form of child labour. The ILO Convention also prohibits "work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children" but leaves it to the national authorities to determine, after consultation with associations of workers and employers, what should be included under this prohibition. States could include all participation in hostilities and all military recruitment of under-18s in this category.

The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict was adopted by the UN General Assembly on 25 May 2000. Its main provisions:

**Article 1:** State Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

**Article 2:** State Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

**Article 3:**

1. States Parties shall raise the minimum age in years for the voluntary recruitment of persons into their national armed forces from that set out in Article 38(3) the Convention on the Rights of the Child, taking account of the principles contained in that article and recognize that under the Convention persons under 18 are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to this Protocol which sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards that it has adopted to ensure that such recruitment is not forced or coerced.

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160 Article 3(d).
3. States Parties which permit voluntary recruitment into their national armed forces under the age of 18 shall maintain safeguards to ensure, as a minimum, that:

- such recruitment is genuinely voluntary;

- such recruitment is done with the informed consent of the person's parents or legal guardians;

- such persons are fully informed of the duties involved in such military service, and

- such persons provide reliable proof of age prior to acceptance into national military service.

**Article 4**

1. Armed groups, distinct from the armed forces of a State, should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. State Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article under this Protocol shall not affect the legal status of any party to an armed conflict.

On becoming parties to the Protocol, States have to deposit a binding declaration setting out their minimum voluntary recruitment age and the safeguards they have adopted in compliance with Article 3 (3). These declarations may be strengthened at any time, but not weakened. In other words, a declaration can only be withdrawn in favour of a declaration specifying a higher minimum voluntary recruitment age into the government armed forces, and not a lower one.

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161 Article 3.
In relation to armed groups, it is important to note that in the Optional Protocol there is no requirement that such groups are involved in an armed conflict. This means that questions about whether or not a situation amounts to an armed conflict are irrelevant, and that recruitment prior to the start of a conflict is also covered. Furthermore, there is an obligation on all states parties to the Protocol to take all feasible measures to prevent recruitment and use of under-18s by armed groups - not only the state directly confronting the group - including legal measures to prohibit and to criminalize such practices.

3.5.2. National Scenario in Relation to Recruitment of Children in Armed Forces and Armed Rebel

The Constitution of India says "It shall be the duty of every citizen of India .... to defend the country and render national when called upon to do so." According to the 1972 National Service Act certain people may be called to perform national service but no minimum age is specified. However there is currently no conscription in India. Recruitment into the armed forces is regulated by the Air Force Act, No.45 of 1950, the Army Act No.46 of 1950 and the Navy Act, No.62 of 1957. None of these acts stipulates a minimum voluntary recruitment age but India told the UN Committee on the Rights of the Child in 2003 that "Persons who are recruited at the age of 16 undergo basic military training for up to two and a half years from the date of enrolment and are then inducted into regular service." India had previously reported to the Committee that "Children are not inducted into the armed forces and hence do not take direct part in hostilities." During the 1998 session of the UN working Group negotiating the optional protocol, an Indian government representative stated that [162 51 A (d), the Constitution of India, 1950.  
discussion continued with in the government on the possibility of raising age limit for voluntary recruitment from 16.\textsuperscript{166}

However, there has reportedly been no change to the minimum recruitment age. A number of Military Schools and institutions provide preliminary training for students wishing to join the army. The Rashtriya Indian Military College takes students between the ages of 11½ and 13 years. All students of schools and colleges may join National Cadet Corps on voluntary basis.\textsuperscript{167} Cadets receive intensive practical and theoretical military training at camps throughout the academic year. They are reportedly not liable for active military service.\textsuperscript{168} However, they have been deployed in the past for example when cadets aged between 18 and 22 guarded "non-sensitive polling booths during elections in 1999. In January 2000 the Ministry of defence proposed the use of trained cadets in non-combat roles during national emergencies.\textsuperscript{169}

Armed Conflict continued in the States of Andhra Pradesh, Assam, Jammu & Kashmir and in the north-eastern states of Manipur, Nagaland and Tripura.\textsuperscript{170} Human Rights activists continued to face accusation of 'anti national' activist and were harassed, threatened and held under preventive detention orders, international human rights monitors, including UN independent human rights monitors, including UN independent experts and human rights organization, were in practice denied access to areas of armed conflicts and granted only limited access to the rest of the country.\textsuperscript{171} According to an estimate over a hundred armed groups were reportedly active in the north-eastern region.

\textsuperscript{166}\textit{ibid.}  
\textsuperscript{167}\textit{ibid.}  
\textsuperscript{168} Bharat Rakshak, "Recruitment information Non-Residents Indians" \textless http://www.Bharat-rakshak.com/recruitment\textgreater accessed on 2\textsuperscript{nd} March, 2006.  
\textsuperscript{169} S. Sharma "1700 NCC Cadets to lend colour to polls". \textit{Times of India} 1\textsuperscript{st} September 1999, \textless http://timesofindia.indiatimes.com; Confidential sources, India, July 2002, accessed on 2\textsuperscript{nd} March, 2005.  
\textsuperscript{170} International Institute for strategic studies (IISS), Armed Conflict Database.  
\textsuperscript{171} Amensity International Reports 2003 and 2004.
alone. Information on the recruitment and use of children by the groups was difficult to obtain but local sources suggest that children are frequently recruited between the ages of 13 and 15. Inter-tribal conflicts increase recruitment pressure, and many groups reportedly train under-18s and then send them back to their communities for education. Children who do not want to return to their communities remain with the groups. Male youth aged between 15 and 18 reportedly joined a variety of armed groups in northern states primarily to escape poverty and provide assistance for their families. According to some accounts they received weapons and training although it was unclear whether they engaged in combat.

In the State of Andhra Pradesh there has been a continued recruitment of children by the Maoist-Communist Peoples War Group (PWG). In the December, 2002 a leading PWG was reported as saying that the group would recruit and train 3,000 children by May, 2003. The same sources said that children joined voluntarily as a way out of poverty and, in the case of girls, freedom from exploitation. He stated that they start off as sympathizers turn into informants and way eventually join the ranks PWG recruitment intensified during 2002 and 2003, reportedly targeted children from government run welfare hostels. In early 2003 the police accused the PWG of abducting girls under 18 and forcing them to join their ranks. Families in and around the Tanda and Bagh rivers bordering Gondhia and Balaghat were reportedly sending young girls

174 Ibid
175 Ibid
away from the villages because of pressure from left-wing armed groups to join another Maoist-communist movement, the Jan Chhapamar Sena (PGA).\textsuperscript{179}

The National Democratic Front of Bodoland (NDFB) reportedly issued instructions for female students to join the group and take part in the struggle in 2002.\textsuperscript{180} Women members of the United Liberation Front of Assam (ULFA), who were captured by the armed forces of neighboring Bhutan and handed over to the Indian authorities in December, 2003, reportedly those children had to walk through vast tracts of forest in severe conditions while the top leaders led lives of luxury. They complained of “very poor conditions in the camps” with no woolens or electricity.\textsuperscript{181}

Armed groups continued to be active, some favouring accession to Pakistan, others advocating independence for a re-unified Kashmir. Indian defense sources were quoted as saying that half of the members of armed forces in Kashmir were aged between 14 and 18, although this information was impossible to verify independently.\textsuperscript{182} The police in the region said that around a hundred cases of child abduction by armed groups were reported in 2002 and nearly 400 by mid-2003, and that hundreds of children were trained by Pakistan-based armed groups in the Kashmir Valley.\textsuperscript{183} One group, the Lashkar-e-Toiba, said that recruits needed parental consent to join.\textsuperscript{184} Other sources, however reported that most were forcibly recruited.\textsuperscript{185} After joining the groups, the children reportedly received rudimentary arms training, but were not deployed in active

\textsuperscript{180} The Sentinel “Scared girls join NDFB”, 9 June, 2002.
\textsuperscript{181} S. Bhattacharya, “ULFA Women Cadres Play top leaders’ life style” The Tribune Online 21 December, 2003.
combat. Some are sent to Pakistan for further training, while others may be dispatched to set up safe-houses and infrastructure for the groups.\textsuperscript{186}

Separatist armed groups, namely from the Naga and Kuki Communities, have been fighting with state security forces or each other in Manipur since the beginning of the 1990s in July 2002 a representative of the Revolutionary People’s Front Manipur (RPF-Manipur) said that the groups had a policy of recruitment based on mental and physical immaturity, but that recruits must be at least 6 years of age and must volunteer. The representative said that in practice, the youngest person ever trained was 17 and that RPF-Manipur upholds UN Resolution and Protocols.\textsuperscript{187}

There were no official government programmes to assist the re-integration of former child soldiers or war affected children. Little was available for victims of the conflict in Jammu & Kashmir, although the army provided some financial assistance and in 2003 launched an education for war-affected children.\textsuperscript{188} The children included those who surrendered to or were captured by the armed forces. However, fear of reprisals by armed groups prevented some children from returning to their communities.\textsuperscript{189} In November 2001 the police in Assam launched a UNICEF back programme, Ashwas (Aashwas (Reassurance), to provide some psychological aid and counseling to children who had lost family members in conflict-related violence. However, in 2002 the problem of children traumatized by armed conflict in Assam was reported to be acute because of the lack of awareness of the condition and unavailability of psychoactive counseling.\textsuperscript{190} The UN Committee on the Rights of the Child expressed serious

\textsuperscript{190} Reuters, “Child training hits strife torn Assam”, 6 May, 2002.
concern over the plight of children involved in the armed conflicts in Jammu and Kashmir and the north-east of the country. It urged the government to ensure respect for human rights and humanitarian rehabilitation of children affected by armed conflict. On 9 February, 2004 the government adopted a National Charter for children, which states that, "The State shall in Partnership with the community take up steps to draw up plans for the identification, care, protection, counseling and rehabilitation of child victims and ensure that they are able to recover, physically, socially and psychologically, and re-integrate into society." 191

3.6. REFUGEE CHILDREN

India has been subject to a periodic influx of refugees over the last decades from countries as diverse as Afghanistan, Iran, Iraq, Burma, Bangladesh, Somalia, Sudan, Sri-Lanka and Tibet. Ethnic and religious similarities of some refugee groups with Indians mean that India is in a feasible direction in which to move, not only in terms of geographical proximity but also in terms of cultural affinity. 192 The situation of refugees in India generally depends upon the extent of protection they receive from either the Indian Government or the United Nations High Commission for Refugees (UNHCR). Certain categories of refugees are recognized by the Indian Government whereas certain categories not recognized by the Government are taken care of by UNHCR in Delhi. 193

Although India is not a signatory to the 1951 Convention on the Status of Refugees and its 1967 protocol, India has had one of the best records of treatment of refugees. India has been more liberal than most states in practice, by according special facilities for education, shelter and food for the refugees, thus fulfilling the provisions of the 1951 Convention and 1967 protocol. 194 The most important international instrument drawn up relating to the problems of refugees was the Convention Relating to Status of Refugees of 1951. The

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192 South Asian Human Rights Documentation Website.
193 Ibid.
Convention applies to Para-2 of Article 1 only who those persons who had become refugees before January 1, 1951.\(^{195}\) In order to widen the scope of the Convention a protocol relating to the status of refugees\(^{196}\) was concluded in 1967 which under para-2 of Article 1 omitted the expression “as a result of events occurring before January 1, 1951” and adds the words "as a result of such events". Legal status of refugees has been defined into these two international treaties. Main provisions of the convention are as follows.\(^{197}\)

(1) **Personal Status of Refugees:** The personal status of a refugee shall be governed by the law of the country of his domicile or, if he has no domicile, by the law of the country of his residence.\(^{198}\) Rights acquired by a refugee and his dependent on personal status, more particularly rights attaching to marriage, shall be respected by a Contracting Parties. However, it is subject to compliance, if this be necessary, with the formalities required by the law of that State provided that the right in question is one which would have been recognized by the law of that State had he not become a refugee.

(2) **Movable and Immovable Property:** The contracting states shall accord to a refugee treatment as favourable as possible and, in any event, not less favourable than that accorded to aliens generally in the same circumstances, as regards the acquisition of movable and immovable property and other rights pertaining thereto, and to leases and other contracts relating to movable and immovable property.\(^{199}\)

(3) **Civil Rights:** The Convention stated that the Contracting States shall provide minimum rights to refugees, such as right to work, right to education and social security, freedom of religion and access to courts without discrimination on the basis of race, religion or country of origin.

\(^{195}\) Article (1) para2, Convention on the Status of Refugees, 1951.  
\(^{196}\) The protocol come into force on October 4, 1967.  
\(^{198}\) Article 12, Convention on the Status of Refugees, 1951.  
\(^{199}\) Article 13, ibid.
(4) **Treatment of Refugees:** Chapter IV of the Convention comprising from Article 20 and 33 laid down regarding the 'welfare' of the refugees. Refugees are required to be treated by the State Parties as their own nationals on many aspects. For instance, where the rationing system exists for the distribution of products in short supply, refugees shall be accorded the same treatment as nationals. The contracting State shall accord to refugees the same treatment as is accorded to nationals with respect to elementary education, public relief and assistance, labour legislation and social security.

Each Contracting State shall accord to refugees the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances. The Contracting States shall not impose upon refugee's duties, charges or taxes of any description whatsoever, other or higher than those which are or may be levied on their nationals in similar situation.

(5) **Illegal Entry of Refugees:** The Contracting States shall not impose penalties on those refugees who have illegally entered into their territories without authorization from a territory where their life or freedom was threatened provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. Para-2 of Article 31 provides that the Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission in another country. The contracting states shall allow such refugees a reasonable period and all the necessary facilities to obtain permission into another country.

(6) **Expulsion of Refugees:** The Convention under Article 32 provides that the Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order. Para-2 of the above Article lays
down that the expulsion of such a refugee shall be only in pursuance of a
decision reached in accordance with due process of law. The parties shall allow
such a refugee a reasonable period within which to seek legal admission into
another country. The Contracting States reserve the right to apply during that
period such internal measures as they may deem necessary.

(7) **Travel documents:** The Convention under Article 28 laid down that the
Contracting States shall issue to refugee lawfully staying in their territory travel
documents for the purpose of travel outside their territory unless compelling
reasons of national security or public order otherwise require. The Contracting
States may issue such a travel documents to any other refugee in their territory;
they shall in particular give sympathetic consideration to the issue of such a
travel document to refugees in their territory who are unable to obtain a travel
document from the country of their lawful residence.

(8) **General Obligations:** The Convention under Article 2 lays down that
every refugee has duties to the country in which he finds himself, which require in
particular that he conforms to its laws and regulations as well as to measures
taken for the maintenance of public order.

(9) **Prohibition of Expulsion or Return (Refoulement):** The Convention
under Article 33 states that no Contracting State shall expel or return (refouler) a
refugee in any manner whatsoever to the frontiers of territories where his life or
freedom would be threatened on account of this race, religion, nationality,
membership of a particular social group or political opinion. Thus, the principle of
non-refoulement prohibits rejection of a refugee at the frontier and expulsion of
entry. The principle of refoulement is required to be followed by the States in order
to prevent human rights violations.

However, Para-2 of the above Article provides that a refugee cannot claim
this benefit against whom there are reasonable grounds regarding as a danger to
the security of country or who has been convicted for a serious crime and constitutes a danger to the community of that country.

(10) **Access to Courts:** The Convention under Article 16 Para-1 lays down that a refugee shall free access to the Courts of law on the territory of all contracting States. He shall enjoy in the contracting states in which he has his habitual residence the same treatment as a national in matters preplanning to the courts including legal assistance and exemption from Cautio judicatum solvi.

However, these instruments have not been able to solve the problem of refugees.

3.6.1. Constitutional and Legal Framework

The legal framework dealing with the refugee related issues is contained in the relevant provisions of the Indian Constitution, related domestic legislation and regulations dealing with citizenship, naturalization and foreigners. Article 51(c) of the Constitution of India states that:

*The State shall endeavor to foster respect for international law and treaty obligations in the dealings of organized people with one another.*

In addition to this Constitution of India protect aliens, except enemy aliens under Article 14, 20(1), (2) and (3), 21, 22, 25(1), 27 and 28(3). In all these

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200 Article 14 - The State shall not deny to any person equality before the law or equal protection of laws within territory of India.
Article 20(1) - No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater that which might have been inflicted under the law in force at the time of the commission of offence.
Article 20(2) – No person shall be prosecuted and punished for the same offence more than once.
Article 20(3) – No person accused of any offence shall be compelled to be a witness against himself.
provisions, the Constitution extends the guarantee to all persons, including "refugee", a fact that has also been acknowledged by Courts in India. India has ratified the following:

- The International Covenant on Civil and Political Rights (ICCPR) in 1976;
- The International Covenant on Economic, Social and Cultural Rights (ICESR) in 1976;
- The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in 1974 and;

All these Conventions impose legally binding obligations on States Parties regarding the rights of people under their jurisdiction. Provisions which can be specifically applied to refugees include Article 12 para-2 of ICCPR, which states that "everyone shall be free to leave any country, including his own", as well as Article 13, which refers to expulsion of aliens only being permitted after a decision has been reached according to law. Relevant articles from the CRC\textsuperscript{201} include Article 3, 22, 37 and 28. CEDAW\textsuperscript{202} include relevant provisions in Article 1.\textsuperscript{203} Regarding the status of the refugee child in India, the country being party to the 1989 UN Convention of the Rights of the Child, the Article 22 of which clearly provides for a more specific obligation to determine the refugee status of a child, based on international or domestic law. However, India has not formulated legislation to meet this obligation. The refugee child in India, therefore, will be subject to India’s current approach to all refugees in general within its

\begin{itemize}
\item Article 21 – No person shall be deprived of his life or personal liberty except according to procedure established by Law.
\item Article 22 – Deals with safeguards from arbitrary arrest and detention.
\item Article 25(1) – guarantees to every person the freedom of conscience and the right to profess, praise and propagate religion.
\item Article 27- Provides from freedom from payment of taxes for promotion of any particular religion.
\item Article 28 – Prohibits the religious instructions ion State-aided Institution. For details see Dr. Narender Kumar, Constitutional Law of India, (Pioneer Books Delhi, 2005).
\end{itemize}

\textsuperscript{203} <http://www.wcd.nic.in/crcpdf/CRC-8PDF>p.397 accessed on 1st March, 2006.
constitutional framework. The important legislation for the regulation of foreigners is the Foreigners Act, 1946, which deals with the matter of entry of foreigners in India, their presence therein and their departure there from”. Paragraph 3(1) of the foreigner’s order 1948(10) lays down the power to grant or refuge permission to foreigners to enter India, in the following terms:

“No foreigner shall enter India—

a) Otherwise than at such port or another place of entry on the borders of India as a registration officer having jurisdiction at that port or place may appoint in this behalf; either for foreigners generally or any specified class or description of foreigner or;

b) Without leave of the civil authorities having jurisdiction at such port or place.

In India the Refugees are broadly categorized into the following:

Refugees who receive full protection according to standard set by the Government of India. As said earlier, that despite India has not ratified the 1951 United Nations Convention on the Status of Refugees and its 1967 protocol, yet it provides shelter to over 3,00,000 refugees from neighbouring countries. Tamil Refugees from Srilanka and Tibetans refugees fall in this category. Currently, it is estimated that there are about 1,00,000 Srilankan Tamil refugees in India. About 68,929 on these refugees, live in more than 130 plus refugee camps, in Tamil Nadu and about 30,00,000 live outside these camps in cities and towns across Tamil Nadu. Children are entitled to education, medical assistance, but maintenance and basic amenities to have been made available to all refugees. As per available information, at present there are about 93,100 tibetan refugees in India. Of these, 68, 639 refugees have been resettled with Government assistance and self-employment under agriculture and handicraft are at various

204 Ibid.
205 South Asian Human Rights Documentation Centre Website.
207 South Asian Human Rights Documentation Centre Website.
stages of implementation in different states. The rehabilitation is being achieved through schemes of the Government of India and by the relief agencies under the Tibetan Administration in India.\textsuperscript{208} In addition to the refugees under the care of the Government of India, there are about 20,8000 category refugees, including Afghan and Burmese refugees as an January 1, 1996. Their presence in India is acknowledged and protected under the principle of non-refoulement by the United Nations – High Commissioner for Refugees.\textsuperscript{209} There are also refugees who have entered India and have been assimilated into their communities. Their presence is not acknowledged by either the Indian Government or UNHCR. An estimated 157, 000 persons of various ethnicities were displaced in several states in North-East India. Once sparsely populated, the population of this region has swelled in recent decades with the arrival of millions of ethnic Bengali Hindu and Muslims from Bangladesh and neighboring states of West Bengal.\textsuperscript{210} As many as 3,50,000 Kashmir, mostly Hindu Pandits, have been displaced since 1990 as a result of the long-standing conflict in Kashmir. Some 2,50,000 were living in or near the city of Jammu, both in camps for the displaced and in their own homes, an estimated 1,00,000 other displaced Kashmir were living in India, many in the New Delhi area.\textsuperscript{211}

The office UNHCR, New Delhi, in collaboration with the Indian Chater of SAARC LAw, hosted a round-table workshop titled “National legislation on Refugees” on 30 April, 1999 which considered priorities for the future.\textsuperscript{212} Out of approximately 2,00,000 refugees in India today, UNHCR is exercising its mandate over 17, 174 refugees mainly in New Delhi area.\textsuperscript{213} The assistance given by the UNHCR covers the following area.\textsuperscript{214}

\textsuperscript{208} Ibid.
\textsuperscript{209} Ibid.
\textsuperscript{210} Ibid.
\textsuperscript{211} United States Committee for Refugees Website.
\textsuperscript{212} Proceeding of Round Table Workshop titled “National Legislation on Refugees” 30 April, 1999.
\textsuperscript{213} South Asian Human Rights Documentation Centre Website.
\textsuperscript{214} <http://wcd.nic.in/crcpdf/CRC-8.PDF> p.336 accessed on 1\textsuperscript{st} March, 2006.
**Health Care Facilities:** UNHCR provides medical aid and health care services though the outreach community centres set up at Saket, Defense Colony and Vikaspuri in New Delhi, UNHCR, in affiliation with the All India Institute of Medical Sciences (AIIMS), Government-run hospitals and the Public Health Centre (PHC), provides medical aid to the refugees requiring medical assistance. At AIIMS, there exist a special refugee counter, complete with interpreters. Refugee Communities have tried to come up with their own alternative to the services offered by UNHCR. The Burmese refugees run their own PHC, which is financially assisted by the Voluntary Health Association (VHAI) which provides Rs.1000 monthly, and the Burmese Students League, which pays the room-rent of Rs.750.215

**Vocational Training:** UNHCR has been assisted vocationally trained refugees and those refugees possessing shells to find employment for the last eleven years. However, UNHCR concedes that many skilled and trained refugees are unable to obtain employment. UNHCR is of the view that most refugee students find education in India very difficult and prefer vocational training. Refugees can take up vocational training in tailoring, air ticketing, tourism, refrigeration and in the automobile industry as mechanics among other. UNHCR directs refugees to recognized vocational training institutes, where they are permitted (by UNHCR) to take up only one course, within a budget of Rs.2000 during the entire stay in Delhi. However, additional financial assistance is provided in a few exceptional cases. UNHCR offers courses in English Language for the refugees, the duration being six months.216

**Education:** The office of UNHCR in New Delhi, under the Project 2001, provides educational facilities at the primary and secondary levels UNHCR, on granting refugees status to the family, gives them information regarding schools located in their locality under the educational assistance scheme, each child at the primary

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215 Ibid.
216 Ibid.
level is entitled to a monthly allowance of Rs.175 for tuition fees, Rs.1000 annually for the other fees and a yearly allowance of Rs.1000 for scholastic material. Students at the lower secondary level receive a monthly tuition fee of Rs.225, Rs.1000 for admission and Rs.1000 for scholastic material. UNHCR phased out assistance for higher secondary education in 1992 due to lack of credible student. Educational assistance at the primary and secondary level is made available under UNHCR’s general programme. At higher levels, assistance is given through UNHCR’s Refugee Account. UNHCR also cooperates with UNESCO and with other Governmental and Non-Government Organization in several countries to provide education assistance. Language courses are organized and offered free of cost to refugees by UNHCR, as well as by the Government in several countries. However, there are no schemes or grants that encourage young refugees to go in for higher studies.217

Declaration of the current decade as the International Decade for Natural Disaster Reduction (IDNDR) by United Nations has helped substantially in giving more thrust to disaster preparedness and mitigation by the disaster managers in the country.218 During this decade, India has faced many major disasters. These include cyclones in Orissa (1999), Andhra Pradesh (1990 and 1996) and Gujarat (1998), earthquakes in Uttarkashi (1991) later in (1993), Jabalpur (1997), Gujarat (2001), and Tsuanami (2005).

These natural disasters cause untold misery and displacement of population with particular hardship for women and children. State and Central Governments take immediate measures to provide relief to the people through temporary shelter, health care, crèches and emergency food. UN, international and donor agencies and NGOs assist government in relief operations.219

217 Ibid.
219 Ibid.
3.7. STREET CHILDREN

The reality of the street children is the marked and vicious face of poverty, sickness and exploitation. The tragedy is that who bear at all themselves innocent, lovely and frightened young children. Street children are those unfortunate children who basically:220

- Have only intermittent contact with parents for family (Usually mothers and sisters) but live most of the time with other street children in the city streets, or all on the move.
- Have been literally abandoned by their parent’s relatives, found themselves on the street from the beginning because of family problems, or have chosen to leave home due to some kind of constant abuse.
- Those who run away from the home can be further separated in two categories i.e. unpleasant and traumatic home environment.

They experience family problems they are unable to solve i.e. alcoholism, child abuse, ill treatment by step parents, unemployment and poverty. Their tolerance level has been far exceeded, leading to the drastic decision to leave their family.221 Those who have run away from home, who wanted to study/work but are not allowed and came to experience the exciting experiences of city life, glamorized by magazines and movies. India, with a population of more than 1 billion, of which, 40% are under 18. One of the fastest growing developing countries, although it ranks 1155 among 162 countries in the Human Development Index. Rate of urbanization was 28.77% in 2001. Nearly 29% of the population, living in urban areas with the drastic growth of slums and shanty towns. An average of 50% of the population lives in conditions of extreme deprivation compounded by lack of access to basic services and legal housing and poor urban governance.222

221 Ibid.
A significant portion of street children are working in the unorganized or informal services sector in every city, big or small offering cheap labour and catering to various needs of city-dwellers. The majority of the children lives or works on the streets of urban India, labouring as porters at bus or railways terminals; as mechanics in auto-repairs shops; or as vendors of food, tea and hand made articles. They work as street tailors or rag pickers, picking garbage and selling unusable material to local buyers. They are often seen polishing shoes in shopping and commercial centres, working as domestic servants or as vegetable sellers, milk carriers and car cleaners. They carry heavy loads and work in cycle and automobiles repair shops. They are also engaged in several hazardous industries and processes throughout the country. Many of them are also procured as sex workers. The parents many a times use these children for begging around cross-roads and place of worship.  

The large scale presence of street children is a disease that is widespread due to an exploitative social structure, development and iniquitous resource ownership. Other parameters contributing to its presence in India are large-scale unemployment, rapid urbanization, fast population growth, extreme poverty, increasing disparities in wealth, high levels of children abuse by parents/society and break down of traditional family and community structure. Human migrations from rural to urban areas have contributed significantly to a substantial increase in the number of street children. Migrants shift to cities in search of higher income and secure employment. However, they are able to secure jobs mostly in the unorganized or semi-organized low-paid sector. Consequently, children are forced to live on the street and earn livelihoods for themselves and also support their families.

These children suffer from the worst kind of deprivation and denial of basic necessities like education, health, food, shelter, physical protection security and

\[\text{http://www.wcd.nic.in/crcpdf/CRC.8PDF} \text{ accessed on 1\textsuperscript{st} March, 2006.}\]

\[\text{Ibid, p 353.}\]
recreation. Street children are susceptible to drug/alcoholic addiction and inhalants, such as cobblers glue, correction fluid, gold/silver spray paint, nail polish, rubber cement, permanent/dry eraser makers and gasoline, which offer them an escape from reality and hunger. In exchange, they invite a host of physical and psychological problems, including hallucinations, pulmonary edema, kidney failure and irreversible brain damage. In order to secure a regular dose of drugs/alcohol and inhalants, they resort to pick pocketing, petty theft and even more serious crimes. Many of these children eventually train into hardened criminals controlled by organized crime rings for drugs trafficking, prostitution and other unlawful activities, thus placing a heavy burden on the law and order machinery.\textsuperscript{225}

In Calcutta the existing data estimate that the population of street children exceeds 1,00,000 with girls making up to 47\% of this population. A majority of these children were born in Calcutta. Among the rest of the population, while a few have migrated with their families from adjacent townships, there are a number of migrants from across the Bangladesh border. The street girls are an extremely vulnerable group. They are under risk of being lured into sex trade or kidnapped; girls living in slums or in squatter colonies are in constant danger of being rape. Girls in the age group of 10-16 years are prone to sexual abuse by adult men on the streets or even by their fathers/brothers at home.\textsuperscript{226}

The population of street children in Mumbai is very high and poses a significant and intense challenge to various development practitioners. These children can be categorized into three groups.

- Working children who live the streets with their families.
- Children who live and seek shelter, food and a sense of belonging among with each other on the streets. Majorities have no ties with families; the minority still has remote ties.

\textsuperscript{225} Ibid, p.354.
\textsuperscript{226} Ibid, p.354.
• Children who have no contact at all with their families including orphans, runaways and refugees.227

In Mumbai, the majority of street children belong to the Muslim Community. Almost 90% of them work as self-employed, rag-pickers and 10% as hawkers, shoe-shine boys etc. Mumbai's street children also turn to pickpocketing and stealing. A number of children often become commercial sex workers. One in every three street children puts in a 10 to 12 hours work daily and one in every ten, 13 hours work daily. These children seek shelter at night anywhere they can at railways stations, near temples, dargahs in market places. The study found that street children live in constant dread of municipal authorities and policemen. Under the Juvenile Justice Act, street children frequently find themselves in remand homes under trial as delinquents. If they are able to state where there parental home is, they may be sent back there.228

It is difficult to get estimates of street children in Delhi. It is estimated the number of street children is approximately 1 Lakh most of them are above 12 years of age.229 UNICEF estimates that there are over 30 million street children in the world and 11 million are in India.230 The majority of street children are boys. Their number is almost twice that of girls on street. Street girls are not often visible though for more vulnerable. 75% to 80% of street children in Delhi live with their families. About 15% have little contact with their families, while small proportions have no contact with their family.231 Migrant and refugee children comprise the majority of street and working children of Delhi. Studies show that street children are mostly malnourished and are exposed to dirt smooth and other environment hazards. They suffer from chronic diseases like asthma, TB and other respiratory or gastro intestinal diseases. They are neither covered

227 Ibid.
228 Ibid
230 CRY in Action, who was on my side?, Vol.4 No.1.
under any health camps or programmes or schemes nor do they have easy access to government or municipal hospitals or health centres. Most of them had no schooling or are dropouts.232

There has been a legislative reform in the light of convention on Child Rights like Juvenile Justice Act (Care & Protection) Act, 2000.233 But still a lot more is required to be done in this regard. The major constraints in this regard are lack of implementation and monitoring mechanisms for programmes and lack of enforcement of legislation, lack of birth registration, uniform adoption law, children's participation and child centred approaches in government, Impact of forced evictions, demolitions and displacement on children. India has largest number of child labourers in the world. Widespread poverty, unemployment, further increases numbers of children on the streets. Street children are subject to malnutrition, hunger, health problems, theft, harassment by the city police and railway authorities, physical and sexual abuse. Inadequacy of budget allocations impacts on sustainability of projects and, in particular the ability of employ qualified and experienced social workers.234 Old fashioned approach of institutionalizing street children in custodial care (often through Juvenile Justice System) is not an appropriate or effective intervention. Community-based models with an emphasis on the contact/outreach programme (trust and relationship building) linked to 'contacts centres' (access to services) in the vicinity of their stay/work are much more effective. As the children live in groups, working with the group is often more appropriate than working on a one-to-one basis. Promotion and protection of street children's right is dependent on sensitization of allied systems such as the police education, health, judicial system, media act; attitudinal changes in society which need to be addressed through public awareness campaign. Government involvement and active support for NGO programme is essential participation of street children themselves in decision

232 ibid
233 For details see infra Chapter V.
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making and formulating intervention strategies is greatly under valued at present.\textsuperscript{235} There is few suggestion to deal with the problem of street children.\textsuperscript{236}

- Launch Railway Children intervention/prevention projects at major railway stations.
- Link street children into urban poverty, reduction programmes.
- Increased emphasis on HIV/AIDS awareness programmes as street children are a high risk group.
- Effective implementation and enforcement of the Juvenile Justice (Care and Protection) Act, 2000.
- Simplification of procedures to obtain grant-in-aid from the government to reduce the burden of paper work.
- Timely release of government grants, allocation of adequate funds on a long-term basis, continued financial support to ensure sustainability of NGO interventions and beneficiary rather than donor-led funding polices.
- Realistic appraisal of the situation of street children to acknowledge the current inadequacy of government and NGO interventions to reach such a vast number of children in major cities in India.\textsuperscript{237}
- More emphasis should be laid down on preventive measures through various developmental services for children like integrated Child Development Services, Compulsory primary education, Supplementary feeding programmes, health and referral services etc.\textsuperscript{238}
- Priority for non-institutions services through re-uniting the street children to their families and to foster families.

3.8 CHILD BEGGARS

The social scenario in the country has been changing fast due to rapid urbanization and industrialization. The unending flow of rural population to the

\hspace{1cm}\textsuperscript{235} Ibid.

\hspace{1cm}\textsuperscript{236} Ibid.

\hspace{1cm}\textsuperscript{237} Ibid.

\hspace{1cm}\textsuperscript{238} Ibid.
already crowded cities and towns in search of employment which has resulted in serious problem like overcrowding, emergence of pavement/slum dwelling, unemployment, poverty, break of the joint family system, street children, beggary etc. Begging is an outcome of abject poverty and not choice. An Action Aid International Study shows that 99 percent of men and 97 percent of women are in beggary due to poverty.239 Religions aspirations, depression or ideological differences were stated to be reason in respect of the rest.

The study conducted by Subrata De in nine cities of four states, suggested that 85 percent of the destitute people were earning far below the poverty line before they got into this practice. Of this, 25 percent took to begging because of poverty along with disability, disease and old age; 15 percent faced family problems due of poverty. Among women family disorganization (21 percent), disability disease and old age (13 percent) were found to be reasons for begging besides poverty.240 The law relating to begging is made by States. There is no central Act for this problem.

The concept of begging defined only in the Bombay Prevention of Begging Act, 1959, which was later on extended to Union Territory of Delhi. Section (1) of the Act, 1959 defines begging as.241

(1) Begging means:-
   a) Soliciting or receiving alms in a public place whether or not under any pretence such as singing, dancing, fortune telling, performing or offering any article for sale.
   b) Entering on any private premises or the purpose of soliciting or receiving alms;

239 The Hindu July 18, 2005.
240 Ibid.
c) Exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound injury, deformity of diseases whether of a human being or animal;

d) Having no visible means of subsistence and wandering, about or remaining in any public place in such condition or manner, as makes it likely that the person doing so exist soliciting or receiving alms;

But does not include soliciting or receiving money or food or given for a purpose authorizes by any law or authorized in the manner prescribed by the Deputy Commissioner or such other officer as be specified in this behalf by the Chief Commissioner. The Shorter Oxford Dictionary of English cites the following uses for beg, beggar, beggarly, beggary and begging.

- To ask as a favour
- To ask humbly, or supplicating treat.
- In beg pardon, excuse, leave etc, often a courteous mode of asking what is expected or even taking as a matter of course.
- To take for granted without warrant.
- One who asks alms, specially habitually.
- One in needy circumstances.
- One who begs a favour, a supplicant.
- Mean or low fellow.
- Mendicants or mendicancy.
- To exhaust the resources of out do.
- In the condition of or befitting a beggar, indigent.
- The action or habit of asking earnestly.

The Bombay Prevention of Begging Act, 1959 mentions the penalty for the beggars on getting caught. The Act\textsuperscript{242} lays down that when a person is convicted

\textsuperscript{242} The Bombay Prevention of Begging Act, 1959.
for the first-time the court can order the detention of three years but the second 
or subsequent time the court shall order the detention of ten years in a certified 
institution and may convert any period of such detention (not exceeding two 
years) into a sentence of imprisonment extending to a like period. 

The offence is to be tried summarily. If the beggars are caught, the 
parents are to be held answerable for the conditions and, if they are totally 
dependent on them then all will be sent to the Homes. The Act impose penalty 
for employing or causing persons to beg or using them for purposes of begging. 
Section 8 of the Act lays down that whoever employs or causes any person to 
solicit or receive alms, or whoever having the custody, charge or care of a child, 
connives at or encourages the employment or the causing or a child solicit, or 
receive alms or whoever uses another person as an exhibit for imprisonment for 
a term which may extend to three years but which shall not be less than one 
year.

To supplement existing anti-beggary laws and give more teeth to 
enforcement modalities on this score, a direction from Traffic Police could has 
been issued that:-

"No motorist shall encourage or indulge in any activity detrimental to traffic 
flows or safety of road users – Specifically at signalized traffic road 
junctions and upto a distance of 100 meters on each approaching aim 
from the centre of the junction. Giving alms to beggars or purchasing/articles/ware/s/goods from roadside vendors at traffic junctions 
is construed as acts obstructive to the quick discharge and smooth traffic 
flows at road intersections, and/or hazardous in nature likely to endanger 
safety of other road users. Delhi Traffic Police thus introduced an 
ordinance announcing that motorists and commutes closing out alms to 
beggars or buying goods from vendors at traffic intersections would be 
fined. According to ordinance "No motorist shall encourage or indulge in 
any activity detrimental to traffic flow or safety of road users-specially at 
signalized traffic road junctions and upto a distance of 100 metes on each 
approaching arm from the centre of the junction". Violation of this 

243 Section 3, the Bombay Prevention of Begging Act, 1959. 
244 Section 5, the Bombay Prevention of Begging Act, 1959. 
245 Ibid.
direction is attracted by Rule 22 (a) of Rules of the Road Regulation, 1989 (framed under Section 118 of the Central Motor Vehicles Act, 1988) permissible under Section of the Motor Vehicles Act, 1988 entailing a fine of Rs.100 for first offence and Rs.300 for second or subsequent offences. This ordinance is in force since September 6, 2002.\textsuperscript{246}

There is a need to take some measures which ought to be implemented to deal with this problem.

- First important step in this direction is rehabilitation of all disabled and lepers of the street. Proper medical care and support is what they need should be provided by the State.
- Secondly the eradication of poverty by implementation of poverty eradication programmes. The crores of rupees which is provided for as funds for these programmes never reach the needful but disappear somewhere in between.
- Another important step, is maintenance of reformatory homes whereby the uneducated, unrolled people who have no employment and, thereby are faced to beg be given employment wherever possible. Observation homes should be introduced whereby the beggars which are actually vying away their money and life is self destructive activities be put under observation rather than being sent up in police lockups.
- Vocational training centres should be set up whereby the beggars of all types should be given training on vocations suitable to their existence and capability.
- Effective implementation of the laws which are present should be insured. Infact, beggary should be made a central subject as their exist no state without the menace of beggary hence a central law should be enacted against it which does not punish the person committing the act but instead provides adequate measures to remove the reason as to what led to committing of the act and the

\textsuperscript{246} <http://www.delhitrafficpolice.nic.in/art19.htm> accessed on 10\textsuperscript{th} March, 2006.
3.9. CHILDREN IN AGRARIAN WORK

Of merely 250 million children engaged in child labour around the world the vast majority to percent or some 170 million are working in agriculture. Child agricultural workers frequently work for long hours in scorching heat, haul heavy loads of produce and are exposed to toxic pesticides. Their work is grueling and harsh, and violates their right to health, education and protection from work that is hazardous or exploitative. According to International Labour Organization’s new report on child labour, the number of children working in agriculture is nearly ten times that of children involved in factory work such as garment manufacturing, carpet weaving, soccer ball stitching. Yet despite their members and the difficult nature of work, children working in agriculture received little attention as compared to child labour in manufacturing for export or children involved in their commercial sexual exploitation. In investigation in Egypt, Ecuador, India and United States, Human Rights Watch has found that the children working in agriculture are endangered and exploited on daily basis. Human Rights Watch has also found that despite the vast differences among these four countries, many of the risks and abuses forced by child agricultural workers are strikingly similar. In Egypt, Human Rights Watch examined the cotton industry, Egypt’s major cash crop where over one million children work each year, to manually remove the pests from cotton plants. In Ecuador, where merely 6,00,000 children work in rural sector, the organization investigated the conditions for children working in banana fields and packing plants. In United States, Human Rights watch examined the conditions for the estimated 3,00,000 children who work as hired labourers in large scale commercial agriculture, planting, weaving and picking apples, cotton, cantaloupe, lettuce, asparagus, watermelons, chillies and other crops. In India, Human Rights watch looked at

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248 Ibid.
bonded child labourers working in agriculture as part of a larger study of bonded child labourer. They are as many as 15 million bonded child labourers in India, most of them are Dalits (Untouchables) or lower caste. More than half of these bonded child labourers work in agriculture, tending crops, herding cattle and performing other tasks from their “masters.”

The child agricultural workers often begin to work at early ages and work usually twelve or more hours a day. One of greatest threats to the health of child agricultural workers is exposure to pesticide. Children working in agricultural sector have reported the symptoms of exposure including headaches, fever, dizziness, nausea, rashes and diarrhea. In severe case, it can lead to convulsions, coma and death. Pesticide risks are particularly acute for children. Because their organs are still developing, they are less able than adults to expel toxins from their body. Their breathing rate is much higher than adults, and they have more skin surface per unit of body weight than adults, allowing them to both breathe in and absorb higher concentrations of toxic chemicals. Children working in agriculture suffer higher rate of injuries. They risk back injuries from hauling heavy loads of produce. The children are further exposed to maltreatment and frequently experience physical abuse also.

A new system of employing female children, as ‘bonded labourers’ has come into practice, on hybrid cotton seed farms in, south India in recent years. The introduction of hybrid cotton seeds in 1970’s has brought significant changes in the quantity and quality of cotton production in India. It has not only contributed to the increase in the productivity and quality of cotton, but has also helped to generate substantial amount of additional employment in the agricultural sector. Despite its positive contribution, hybrid cotton seed production gave rise to new forms of labour exploitation which involves the employment of female children as

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249 Ibid.
250 Ibid.
251 Ibid.
252 Ibid.
bonded labour and large scale of exploitation of them. An important feature of hybrid cotton seed production is that it is highly labour intensive and female children are employed in most of its operations. In Andhra Pradesh alone 2,47,800 children work in cotton seed production and around 4,50,000 in all of India. The cotton seed companies do not employ the children themselves, but they work through agents called seed organizers. The exploitation of child labour in cottonseed farms is linked to larger market forces. Currently they are about 200 seed companies involved in production and marketing of hybrid cotton seeds in India including several multinational companies (MNCs) like Unilever, Monsants, Syngents, Advanta, Bayer and Emergent Genetic. MNCs are operating their cotton seed business activities through their own subsidiary companies in India or joint ventures and collaborations with local India companies. In March, 2002 Hindustan Level Limited (HLL) transferred its seed business to a subsidiary company called “Paras Extra Growth Seeds” and formed a joint venture partnership with Emergent Genetics. HLL sold 74% of its share in Paras Extra Growth Seeds to Emergent Genetics.

Hybrid cotton seed production required assured supply of labour for carrying out various activities, particularly, cross-pollination work. Keeping this in view, the seed producers prefer to have advance agreements with labourers before starting off the seed cultivation. They employ children on long term contract basis by paying advances/loans to their parents. A survey of 320 children working in cottonseed forms in 1999-2000 conducted revealed that about 95% of the children were in debt bondage. The wage rates are fixed for the whole season at the time of agreement itself. The wages paid to these children are quite low compared to adult’s wages. The employment of children in cotton seed work has an adverse impact on literacy and health of children. About 60% of the children working in cottonseed fields are school dropouts. They went to school for a few years and dropped out to work in cottonseed fields. 29% of

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254 Ibid.
255 Ibid.
them never attended the school. Seed Producers intend loans to parents of the children at a very crucial time of summer, when work is not available in the village and there are more financial problems. Working in cotton seed fields also has important health implications for the children involved. The use of pesticides is very high in commercial cotton cultivation. Children working in the cotton seed fields are directly exposed to poisonous pesticides like endosulphar, Mowocrofophos, cypermethrin and Mythomyl for prolonged periods.256

The extraordinary numbers of children working in agriculture, and the several abuses to which they are subjected, demand that governments, employers and trade unions prioritize protections for child agricultural workers as part of their strategies to end child labour.257

- Ratify the ILO 182 Convention on the Worst Forms of Child Labour, to ensure that the national laws are consistent with the Convention and Recommendation 190. National laws should explicitly prohibit all individuals under the age of eighteen from using dangerous tools, from hauling heavy loads, from working long hours, from handling pesticides, and from being exposed to pesticides in the workplace. National laws should also explicitly prohibit sexual harassment in the workplace, establishing separate and more stringent penalties for cases in which the victim is a minor.258
- Take measures to ensure the effective implementation of Convention 182. Such measures should include the allocation of resources to provide for a sufficient number of labour inspectors targeting child labour in agriculture, proactive monitoring and unannounced onsite inspections.259
- Ensure that restricted-entry intervals (RELs)-the time after pesticide application when entry into the treated areas is banned or limited-are

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256 ibid.
258 ibid.
259 ibid.
clearly established in government regulations and vigorously enforced. Special RELs for children should be established taking into consideration the greater risk they face from exposure to toxic chemicals.

- Ensure that all workers, including children, receive full information and training from their employers about occupational illnesses and injuries related to agricultural work, including those associated with exposure to pesticides. Such training should be conducted regularly and be understandable by children. Employers should also provide all workers, including children, with appropriate protective equipment and train them in methods of protecting themselves from workplace hazards.

- Ensure that children and their families are aware of the rights of children.

- Undertake comprehensive surveys to determine the scope and scale of child labour in the agricultural sector, the number and nature of injuries or illnesses suffered by children working in agriculture, and disaggregate the data by sex and age.\(^{260}\)

- Ensure that all children receive free and compulsory primary education. School fees and other associated costs of education, including costs for books and uniforms should be waived, or scholarship programs developed for children whose families are unable to afford them. Special educational or vocational programmes should be developed for child farm workers who have dropped out of school.\(^{261}\)

- Government should consider increasing fines for child labour violations and dedicating a portion of the fine to the rehabilitation of child workers.

- Ensure that child agricultural workers who labour in hazardous conditions in violation of ILO Convention 182 and suffer workplace accidents or illnesses are provided with free health care.

- Establish mechanism to monitor the treatment of children working in agriculture and ensure that effective complaint mechanisms are available to children and their families.

\(^{260}\) Ibid.

\(^{261}\) Ibid.
• Ensure that children's human rights are respected on all directly owned and supplier farms and plantations by adopting effective monitoring systems to verify that labour conditions on these facilities comply with internationally recognized child labour standards and relevant national child labour laws, reporting annually on compliance, and, where the facilities fall short, by providing the economic and technical assistance necessary to bring them into compliance.\(^{262}\)

• Ensure that pesticide potentially harmful to children are neither sanctioned for use nor applied in practice on directly owned or supplier farms and plantations.

• Immediately turn over to the appropriate national authorities, any information regarding violations of national child labour laws or international child labour standard on supplier farms and plantations.\(^{263}\)

• Provide adequate support for underage workers, as defined by the ILO Minimum Age Convention, to attend school or an appropriate academic alternative in lieu of working.\(^{264}\)

These are the basic violations of rights of the children. In relation to some of the violations, plethora of legislation is there but there is lack of commitment, enforcement mechanism, political will above all finances. Children are also not aware of their rights. It is duty which is cast upon the society to provide them with an environment, conducive to their social, physical, emotional, political, and psychological development.

\(^{262}\) Ibid.
\(^{263}\) Ibid.
\(^{264}\) Ibid.