CHAPTER II

SOCIAL RESPONSE TO CHILD ABUSE – A DEVELOPMENT PERSPECTIVE

"So long as little children are allowed to suffer, there is no true love in the world"

- Isadora Duncan

Ever since child abuse was recognised, the society has gradually responded to address the issues through various measures. Though the phenomenon of child abuse has been in existence, the identification of the issue was done by the western world. In the last 30 years much of the research on Child sexual abuse has emanated from the United States, and to a lesser extent from Europe and Australia (Finkelhor, 1994). According to Aries (1962) the idea of childhood did not exist in the medieval society, children mingled with adults as soon as that was physically possible. Focusing on 1500-1800 period, Stone (1977) argues that affection and love between spouses and for their children were impossible before the eighteenth century because of the material conditions of pre industrial life. Adults did not invest emotionally in children because it was not considered to be worthwhile.

There had been four categories of children causing concern to the state up to the end of the 1860s; children of the street (vagabonds, beggars, street traders), young offenders, children at work and children looked after by the poor law authorities. The main pattern of response had been, the issues initially taken up by philanthropic societies of different religious persuasions, acting as pressure groups, followed by government intervention and ended with state legislation. In the late 1860s and early 1870s a new form of state intervention into family affairs began
tentatively, with its focus on the issue of baby farming (Gupta, 2001). This term was
used to describe the ten common practice of paying for babies to be nursed and
reared by substitute parents. The trade was created by unwanted pregnancies.
While many of the women who undertook this work may have been honest and
trustworthy, there were several infamous cases of babies being murdered by the
carer, which created widespread public concern. In 1870 the Infant Life Protection
Society was established with a view to controlling the practice of baby farming by
means of a system of registration and inspection. By 1872, this pressure group had
succeeded in pushing through the Infant Life Protection Act which required any adult
who fostered more than one child under the age of one year to register with the local
authority and meet certain required standards.

In 1874 Mary Ellen was a victim of child abuse and neglect, beaten regularly,
and severely malnourished. A New York City church group reported the situation to
the police but no action was taken. The group appealed to the Society for Prevention
of Cruelty to Animals. As a direct result, the following year the Society for the
Prevention of Cruelty to Children was organized, which was a significant step
towards the adoption of laws against child abuse and neglect. This was the first
reported and documented case of child abuse in the history (Darshan, 2001).

But Pollock (1983) demonstrated that public concern about cruelty to children
in Britain existed well before the time it was generally thought to have been
discovered. The manner in which the cases were reported by the newspaper
provides an indication of the attitudes of the time to cruelty to children. The fact that
the majority of the cases were also found guilty meant that law and society
condemned child abuse long before the specific Prevention of Cruelty to Children Act
in 1889.
RESPONSE OF THE CIVIL SOCIETY

In 1880s there emerged the Liverpool Society for the Prevention of Cruelty to Children (SPCC), and then the London SPCC later came into being to form the core of the National Society for the Prevention of Cruelty to Children. While other philanthropic societies such as Dr. Barnado’s had been rescuing children living outside their families, the NSPCC’s concern was to rescue children living in their own families (Gupta, 2001). The first expression of international concern about the situation of children came in 1923, when the council of the newly established non governmental organization “Save the Children International Union” adopted a five point declaration of the rights of the child known as the Declaration of Geneva, which was endorsed the following year by the fifth Assembly of the League of Nations. In 1948 the General Assembly of the United Nations approved a slightly expanded version of that text, and went on to adopt the new Declaration, containing ten basic principles of child welfare and protection, in 1959. The 1959 Declaration has not been superceded but only supplemented, by the 1989 convention. Therefore the 1959 Declaration served as a springboard for the initiative to draft the UN Convention on the rights of the child (Cantwell, 1997).

THE UNITED NATIONS RESPONSE TO CHILD ABUSE

The issues of children have been the concern of the United Nations right from its inception, which has resulted in the UN Convention on the rights of the child. This is an historic convention, which was ratified by almost all the member states (193 countries ratified). The international instruments have a special focus on children starting from the United Nations Declaration of Human Rights. The following historic documents reflect the United Nations response to protection of children.

The UNIVERSAL DECLARATION OF HUMAN RIGHTS, which was evolved on 10th December 1948, protects the rights of the child in article 4 [no slavery],
which says that no one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5 [no torture] says that No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 25 [standard of living] says that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

The INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966) in Article 10 (3) provides for the [protection of family, mothers and children] in which it states that The States Parties to the present covenant recognize that: Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of percentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punished by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

The INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (1966) in Article 24 [rights of children] says that Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State. Every child shall be
registered immediately after birth and shall have a name. Every child has the right to acquire a nationality.

The ILO Convention 138 concerning THE MINIMUM AGE FOR ADMISSION TO EMPLOYMENT adopted in 1973 by the International labour Conference. The minimum age was set at the age of completion of compulsory school and in any case cannot be less than 15 years with provisional exceptions for the countries whose economies, educational facilities and administrative facilities are insufficiently developed.

THE UNITED NATIONS STANDARD MINIMUM RULES for the Administration of Juvenile Justice (Beijing Rules) adopted in 29 November 1985 by the United Nations provide guidance to states for the protection of children’s rights and respect for their needs in the development of separate and specialized systems of juvenile justice. The Beijing rules were the first international legal instrument to comprehensively detail norms for the administration of Juvenile Justice with child rights and development oriented approach.

The United Nations CONVENTION ON THE RIGHTS OF THE CHILD (1989) is a unique piece of instrument that protects the rights of the World’s children which was evolved in 1989. India ratified it in the year 1992. Article 19 [protection from abuse or neglect] states that States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Article 34 [no sexual exploitation] states that State Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, State Parties shall in particular take all appropriate national, bilateral and
multilateral measures to prevent; the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of children in prostitution or other unlawful sexual practices; the exploitative use of children in pornographic, performances and materials.

The eighth United Nations Congress on the prevention of crime and treatment of offenders, Havana (1990), gave birth to two important resolutions related to the phenomenon of Juvenile Delinquency, (i) THE UN GUIDELINES FOR THE PREVENTION OF JUVENILE DELINQUENCY (1990) and (ii) THE UNITED NATIONS RULES FOR THE PROTECTION OF JUVENILES DEPRIVED OF THEIR LIBERTY (14th December 1990), which not only applied to juvenile justice institutions but importantly applied to deprivations of liberty on the basis of the children’s welfare and health.

The DECLARATION OF VIENNA (1993) - adopted by the WORLD CONFERENCE ON HUMAN RIGHTS, held in Vienna from 14th June till 25th June 1993 states under article 21 [rights of the child], that in all action concerning children, non discrimination and the best interest of the child should be the primary considerations and the views of the child must be given due weight. National and international mechanisms and programs should be strengthened for the defense and protection of children, in particular, the girl-child, abandoned children, street children, economically and sexually-exploited children, (including those exploited through child pornography, child prostitution or sale of organs), children victims of diseases including AIDS, refugee/displaced children, children in detention, children in armed conflict, and children victims of famine/drought or other emergencies.

The World Conference also stresses that the child for the full and harmonious development of his or her personality should grow up in a family environment, which accordingly merits broader protection.
THE HAGUE CONVENTION ON THE PROTECTION OF CHILDREN AND COOPERATION IN RESPECT OF INTER COUNTRY ADOPTION was adopted on 10 May 1993. This was inspired by the following two instruments, namely, (i) The United Nations Declaration on Social and legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally (of 3 December 1986) and (ii) The UN Convention on the Rights of the Child (20th November 1989).

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY 2000, seriously concerned itself at the significant and increasing international traffic of children for the purpose of the sale of children, child prostitution and child pornography. It was also concerned about the growing availability of child pornography on the internet and other evolving technologies and recalled the International Conference on Combating Child Pornography on the Internet (Vienna, 1999). Particularly its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography. It also stressed the importance of closer cooperation and partnership between Governments and the Internet industry. Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action of the 1996 Stockholm Congress against the Commercial Sexual Exploitation of Children and the other relevant decisions and recommendations of pertinent international bodies, the United Nations General Assembly adopted the Optional Protocol to the Convention on the Rights of the Child on The Sale of Children, Child Prostitution and Child Pornography in the year 2000. Article 1 states that State Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by this
Protocol. Article 3 (1) says each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether these offences are committed domestically or transnationally or on an individual or on organized basis.

On 25th May 2000, acting without a vote, the United Nations General Assembly adopted THE OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON INVOLVEMENT OF CHILDREN IN ARMED CONFLICT 2000 prohibiting the use of children under 18 years in combat. The Optional Protocol requires State Parties to 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, and that such persons are not compulsorily recruited. States parties shall raise the minimum age of voluntary recruitment from that set out in Article 38 of the Convention. Article 4 states that armed groups that are 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. State Parties must take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANISED CRIME 2000, declared that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights. The UN concerned about persons who are vulnerable to trafficking in the absence of sufficient protection and also to supplement the United Nations Convention against

In order to respond to an expressed need by the international community to enhance the protection of child victims and witnesses of crime, the International Bureau for Children’s Rights, as part of its ongoing project on Justice for Child Victims and Witnesses of Crime, undertook together with a Steering/Drafting Committee of independent international experts, the elaboration of a set of GUIDELINES ON JUSTICE FOR CHILD VICTIMS AND WITNESSES OF CRIME (Jan 2003). The guidelines aim to, (i) guide professionals working with child victims and witnesses of crime in their day-to-day practice; (ii) assist in the review of laws, procedures and practices so that these ensure full respect for the rights of child victims and witnesses of crime, (iii) assist governments, international organizations, public agencies, non-governmental and community-based organizations and other interested parties in designing and implementing legislation, policy, programs and practices, and; (iv) support those caring for children in dealing sensitively with this particularly vulnerable group of children.

WORLD MEDICAL ASSOCIATION ON CHILD ABUSE AND NEGLECT

One of the most destructive manifestations of family violence and upheaval is child abuse and neglect. Prevention, early identification and comprehensive treatment of child abuse victims remain a challenge for the world medical community.

The World Medical Association (1995) recognizes that child maltreatment is a world health problem and recommends that national medical associations adopt the guidelines for physicians (discussed below) adopted by the 36th World medical Assembly, Singapore October 1984. This was subsequently amended by the 41st

Physicians have both a unique and special role in identifying and helping abused children and their troubled families. Physicians should obtain specialized training in identifying child abuse. Such training is available from many continuing education programme in the field. Linkage to an experienced multidisciplinary team is strongly recommended for the physician. A team is likely to include such professionals as physicians, social workers, child and adult psychiatrists, developmental specialists, psychologists and attorneys. When participation on a team is not possible or available, the individual physician must consult with other medical, social, law enforcement and mental health personnel.

Primary care physicians (family practitioners, internists, pediatricians) emergency medicine specialists, surgeons, psychiatrists and other specialists who treat children must acquire knowledge and skills in the physical assessment of child abuse and neglect; the assessment of child development and parenting skills; the utilization of community resources; and the physician’s legal responsibilities.

The medical evaluation of children who have been physically abused should consist of -

- Obtaining a history of injury,
- A physical examination of the patient,
- A trauma x-ray survey,
- A bleeding disorders screen,
- Colour photographs,
Physical examination of siblings,

An official written medical report,

A behavioural screening,

A developmental screening of infant and preschool age children.

Medical assessment and management of sexually abused children should consist of -

The treatment of physical and psychological trauma,

The collection and processing of evidence,

The treatment and / or prevention of pregnancy and venereal diseases.

In detecting a child with suspected abuse, the immediate actions to be taken by the physicians should include:-

Reporting all suspected cases to child protective services,

Hospitalizing any abused child needing protection during the initial evaluation period,

Informing the parents of the diagnosis and report of the child’s injuries to protective services.

The child is the physician’s patient and therefore the physician’s primary concern. Thus it is the physician’s responsibility to do all he or she can to protect the child from further harm. Laws usually mandate contacting the appropriate agency that handles child protection matters. In some cases, admitting the child to a hospital is also necessary.
Physicians should support legal procedures that allow the abused child to bring legal action against the alleged child abuser for a reasonable period of time after the child reaches the age of legal majority. Physicians should also support fair and objective legal procedures that seek to reasonably prevent unsupported allegations of child abuse and that require objective evidence to initiate any type of legal action against an alleged child abuser.

RESPONSE OF THE MEDIA

Media had played a vital role in sensitizing the issue of child abuse throughout the world. In 1874, the New York Times extensively covered the case of Mary Ellen Wilson. In a nation wide survey by Gil (1973) newspapers were cited as the main source of information on physical abuse by 72 percent of the respondents while 56.2 percent cited television, and 22.7 percent said magazines. Downs (1972) suggests that the interest in and influence of media regarding an issue assumes a five step cycle; 1. Pre-problem stage, 2. “Alarmed discovery and euphoric enthusiasm”, 3. Disillusionment based on reality, 4. Loss of interest, 5. Post problem stage.

At the World's First International consultative conference on journalism and child rights held in Recife, Brazil, on May 2nd 1998, the journalists organizations from 70 countries (International Federation of Journalists, 1998) accepted and adopted that, Media organisations should regard violation of the rights of children and issues related to children's safety, privacy, security, their education, health and social welfare and all forms of exploitation as important questions for investigations and public debate. Children have an absolute right to privacy, the only exceptions being those explicitly set out in these guidelines.

Journalistic activity, which touches on the lives and welfare of children, should always be carried out with appreciation of the vulnerable situation of children.
Journalists and media organisations shall strive to maintain the highest standards of ethical conduct in reporting children’s affairs and, in particular, they shall

- Strive for standards of excellence in terms of accuracy and sensitivity when reporting on issues involving children;

- Avoid programming and publication of images which intrude upon the media space of children with information which is damaging to them;

- Avoid the use of stereotypes and sensational presentation to promote journalistic material involving children;

- Consider carefully the consequences of publication of any material concerning children and shall minimise harm to children;

- Guard against visually or otherwise identifying children unless it is demonstrably in the public interest;

- Give children, where possible, the right of access to media to express their own opinions without inducement of any kind;

- Ensure independent verification of information provided by children and take special care to ensure that verification takes place without putting child informants at risk;

- Avoid the use of sexualised images of children;

- Use fair, open and straightforward methods for obtaining pictures and, where possible, obtain them with the knowledge and consent of children or a responsible adult, guardian or carer;

- Verify the credentials of any organisation purporting to speak for or to represent the interests of children;
Not make payment to children for material involving the welfare of children or to parents or guardians of children unless it is demonstrably in the interest of the child.

RESPONSE IN INDIA

The susceptibility of children to abuse and neglect has been in the Indian political consciousness since the early part of the nineteenth century (Segal, 1995). The enactment of the Apprentice Act, 1850 that gave power to the court to bound over the children of poor and destitute as apprentice in newly established factories indirectly gave to the state the power to control the lives of the vast sections of the poorer children. It was followed by Reformatory Schools Act 1887. The Indian Jail Committee 1919-1920 recommendations prompted the enactment of the Madras Children’s Act 1920. The second United Nations Congress on the Prevention of Crime and Treatment of Offenders held in London discussed on children’s issue and some therapeutic recommendations were adopted, consequently the Central Children’s Act 1960 was enacted in India (Priyamvadha, 2003).

As a social response to the problems of child abuse, the child was defined (in the statues) through various approaches to address the particular need and situation of the social setting, which is evident from the definitions of the child under the different Indian statutes. The Indian Majority Act, 1875, defines that a person is deemed to have attained majority on completion of 18 years. According to the Child Marriage Restraint Act 1929, “Child” means a person who, if a male has not completed twenty-one years of age, and if a female, has not completed eighteen years of age. The Children (Pledging of Labour) Act 1933 defines “Child” means a person who is under 15 years. The Factories Act, 1948 says No child who has not completed his fourteenth year shall be required or allowed to work in any factory. The Apprentices Act, 1961 mentions that a person shall not be qualified to be
engaged as an apprentice unless he is above fourteen years of age. Under the Women's and Children's Institution (Licensing) Act, 1956 a "Child" means a boy or girl who has not completed the age of 18 years. The Mines (Amendment) Act, 1983 says that no person below eighteen years of age shall be allowed to work in any mine or part thereof. The Child Labour (Prohibition and Regulation) Act, 1986 defines "Child" as a person who has not completed his fourteenth years of age. The Immoral Traffic (Prevention) Act, 1986 defines Child as a person who has not completed the age of 16 years. Minor means a person who has completed the age of 16 years but has not completed the age of 18 years. The Juvenile Justice Act 2000 defines "Juvenile" as any child who has not completed the age of eighteen years. The Convention on the Rights of the Child states that a child is every human being below 18 years (Billimoria and Pinto 2000). This definition has come to a final consensus and accepted by the member States keeping in mind the vulnerability of children and their needs, but the next important step is to bring all the above statutes and legislations into uniformity in defining a child as a person below 18 years of age.

Governmental and Non-governmental organizations have, only focused on fulfilling the basic needs of survival of the children. There has been little attention focused on the abuse of children in the family. The awareness regarding the extent and severity of abuse among children in India is also minimal. Furthermore, children being viewed as parental property with the traditional themes of the sanctity of the family, prerogatives of parents have only protected abusive families from inspection and intervention by society.

There are no absolutes regarding optimal care or what constitutes child abuse, therefore child abuse may best be understood when viewed in light of three interrelated conditions - the behavior of the perpetrator, the effects on the child, and the perception of the observer. Beginning with the belief that if abusive behavior is not perceived to be so by society, the phenomenon becomes a non-issue. Corporal
punishment has so long been intrinsic to child rearing in India, professionals who might be in a position to intervene, but who are themselves a product of the society, may not perceive such practices as destructive. Clearly, however, although corporal punishment may be considered appropriate in the discipline of children in India, it is not necessarily acceptable to the children who experience it, and one such consequence is that they run away from home (Segal, 1994; 1995).

LEGISLATIONS FOR THE PROTECTION OF CHILDREN IN INDIA

There are numerous legislations for the protection of children in India apart from the safe guards for their welfare and protection from abuse built into the Constitution.

Under The Constitution of India - Directive Principles of State Policy, Article 39 provides for the protection of children from abuse. According to article 39, the State shall, in particular, direct its policy towards securing; (e) That the health and strength of workers, men and women, and the tender age of children are not abused and the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; (f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and childhood and youth are protected against exploitation and against moral and material abandonment.

The Indian Penal Code, 1860 considers the following acts as offences and provides for punishment.

Physical Abuse

Physical abuse exposure and abandonment of the child under 12 years by parents or by person taking care of the child is dealt under Sec.317. According to S. 319, Hurt – Whoever causes bodily pain, disease or infirmity to any person is said to
cause hurt. Under S. 320, Grievous hurt - The following kinds of hurt only are designated as "grievous"- emasculation, permanent privation of the sight of either eye, permanent privation of the hearing of either ear, privation of any member or joint, destruction or permanent impairing of the powers of any member or joint, permanent disfiguration of the head or face, fracture or dislocation of a bone or tooth, any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or does not enable to follow his ordinary pursuits. The punishments for the above offences are given under the following sections of the act, S. 323. provides the punishment for voluntarily causing hurt, an imprisonment of either description, which may extend to one year, or with fine, which may extend to one thousand rupees, or both. S. 325 deals with punishment for voluntarily causing grievous hurt, accordingly the offender may be granted imprisonment of either description for a term, which may extend to seven years, and shall also be liable to fine. Punishment for voluntarily causing hurt by dangerous weapons, or by means of fire or any heated substance, or by means of any poison or corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment (u/s 324) of either description for a term which may extend to three years, or with fine or with both. Under section 342 punishment for wrongful confinement is imprisonment of either description for a term, which may extend to one year, or with fine, which may extend to one thousand rupees or with both. S. 352 deals with punishment for assault or criminal force otherwise than on grave provocation, which may be imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees or with both.
KIDNAPPING, ABDUCTION, SLAVERY AND FORCED LABOUR

S. 361 deals with kidnapping or enticing a minor under 16 years of age if a male, or 18 years of age if a female, from lawful guardianship. And punishment for it is provided under section 363, Imprisonment of either description for a term, which may extent to seven years, and shall also be liable to fine. Under section 363A, kidnapping or maiming a minor for begging is punishable with imprisonment of either description for a term, which may extend to ten years, and shall also be liable to fine. Section 366A deals with procuration of a minor girl under the age of 18 years; and S. 366B deals with importation of a girl under the age of 21 years from a foreign country - with an intent to force or seduce her or with a knowledge that she may be forced or seduced to have illicit intercourse with another person. Section 367 deals with kidnapping or abducting in order to subject a person to grievous hurt, or slavery, or to the unnatural lust of my person, the punishment is imprisonment, which may extend to 10 years, and shall also be liable to fine. S. 369 deals with kidnapping or abducting child under ten years with intent to steal from its person. S. 370 recommends the punishment for buying or disposing of any person as a slave, punishment may be imprisonment of either description which may extend to 7 years, and shall also be liable to fine. While section 371 refers to habitually imports, exports, removed, buys, sells, traffics or deals in slaves, S. 372 deals with selling and S. 373 deals with buying of minor persons (under 18 yrs.) for the purpose of prostitution, or illicit intercourse with any person, or for any unlawful and immoral purpose. Punishment may be imprisonment of either description for a term, which may extend to ten years, and shall also be liable to fine. S. 374 deals with unlawful compulsory labour and recommends punishment of imprisonment of either description for a term, which may extend to one year, or with fine, or with both.
Child Rape

At present, the victim of child rape suffers four times - at the time when the
offence is committed, when the incident is narrated, during medical examination and
finally, when the child has to face the courts. The legislations related to rape under
the Indian Penal Code are outlined below.

Under Sections 375 and 376, sexual intercourse with a woman with or without
her consent when she is under 16 years of age, amounts to rape and the offender is
punishable with imprisonment for a term that shall not be less than 10 years but may
extend to imprisonment for life. The punishment is more stringent if the girl child is
under 12 years or rape is committed by management or staff of a children’s
institution upon an inmate of such institution. Sexual intercourse with wife who is
between 12 years and 15 years is an offence and punishable with imprisonment up
to 2 years or fine or both.

Section 377 covers rape of a boy child and deals with sexual intercourse
against the order of nature and includes sodomy. The code does not recognize
marital rape except if the wife is less than 15 years of age. Punishment for rape of a
wife under 12 years is more stringent than that of a wife between 12 years and 15
years. Rape of a wife under 12 years could result in punishment extending to life
imprisonment.

But rape laws only recognise sexual crimes involving penile penetration, and
are totally dependent on medical evidence. Such evidence is very difficult to get, as
child sexual abuse is usually not one isolated incident but a series of
incidents.(Asha, 2003)
Child Prostitution

The Government of India enacted the Suppression of Immoral Traffic in Women and Girls Act (SITIA) 1956 and it was amended in 1986, to provide enhanced penalties for offences involving children and minors and to cover all persons whether male or female who are exploited sexually for commercial purpose. It continued to prohibit prostitution in its commercialized form without rendering prostitution per se as an offence. The amended Act was titled the Immoral Traffic Prevention Act (ITPA). According to section 6 (1) any person detains any other person with or without consent in any brothel or in or upon any premises with intent that she may have sexual intercourse with any man other than her lawful husband shall be punishable not 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. Under section 6 (2) where any person is found with a child in a brothel, it shall be presumed, unless the contrary is proved, that he has committed an offence under sub section (1)

Along with contemplating specialized machinery for enforcement, the Act envisages a comprehensive scheme for rescue, protection and treatment of prostitutes. The General Law also has several provisions that have a bearing on curbing conditions responsible for prostitution. The Indian Penal Code includes the following as sexual offences: Procuration of minor girl (sec. 36 A). Importation of girl under 21 years from foreign country (sec. 366 B). Selling a minor for purposes of prostitution (Sec. 373). Buying a minor girl for the purpose of prostitution (Sec. 373) and makes the above punishable under law.

Child Trafficking

According to Article 11 of the Convention on the Rights of the Child, State Parties shall take measures to combat the illicit transfer abroad and non-return of children. To this end, State Parties shall promote the conclusion of bilateral or multi-
lateral agreements or accession to existing agreements. No steps have been taken by the Government of India to bring Indian law in conformity with Article 11 but certain other initiative have been made. Immoral Traffic Prevention Act, 1986 (amended) deals with punitive and preventive aspects in Section 5, Any person who procures, induces, or takes or attempts to take a person from one place to another with a view to his carrying on, or being brought up to carry on or causes or induces to carry on prostitution is punishable with rigorous imprisonment for a term of not less than three years and not more than seven years and also with fine which may be extended up to two thousand rupees. Further that if the person in respect of whom an offence committed under this sub section 5 (i) is a child, the punishment provided under this sub-section shall extend to rigorous imprisonment for a term not less than seven years but may extend to life.

The Government has also commenced the implementation of the National Plan of Action for the Girl Child in the SAARC Decade of the Girl Child (1991-2000). A Central Advisory Committee has been constituted with representative of government, NGOs, relevant Ministries and other Departments, National Commissions, Institutes and Councils. The Government has launched Programmes, schemes and projects for the welfare and development of girl children including adolescent girls and street children in particular.

The Juvenile Justice (Care and Protection of Children) Act, 2000

This act came into effect on 16th August 2000 as an improvement of then existing Act of 1986. The aim was to bring the Juvenile Law in conformity with the United Nations Convention on the Rights of the Child and the Act prescribed an uniform age of eighteen years for children of either sex. The juvenile justice board and child welfare committee are the two competent authorities created under the Act to deal with the following categories of minors, i.e., the juveniles in conflict with law,
and the children in need of care and protection. The act is severe to perpetrators by making the offences punishable under sections 23, 24, 25 and 26 as cognizable.

The Goa Children’s Act 2003

Goa has the unique distinction of being the only state in India to have a comprehensive law, which attempts to make the United Nations Convention on Rights of the Child enforceable. It is a Gazetted Act as of 14 July 2003. It attempts to look at children in a holistic manner, at home, in educational institutions, by the health care system, and attempts to address the issues of abuse of children, trafficking of children and child labour. It also provides for the setting up of children’s Courts in an attempt to make the process of law and justice child-friendly.

In Section 2 (m) Child Abuse has been referred to maltreatment whether habitual or not, of the child which includes any of the following, (i) psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment; (ii) any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; (iii) unreasonable deprivation of his basic needs for survival such as food and shelter; or failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

Sec 2(y) Sexual offences are classified into ‘grave sexual assault’ ‘sexual assault’ and ‘incest’. (i) Grave sexual assault covers different types of intercourse; such as, vaginal, oral, anal, use of objects, forcing minors to have sex with each other, deliberately causing injury to the sexual organs of a child, making children pose for pornographic photos or films; (ii) Sexual assault covers touching with the use of any body part or object, voyeurism, exhibitionism, showing pornographic pictures or films to minors, making children watch others engaged in sexual activity, issuing of threats to sexually abuse a minor, verbally abusing a minor using, vulgar
and obscene language. And (iii) incest which is the commission of a sexual offence by an adult on a child who is a relative or is related by ties of adoption.

**LACUNAE IN THE EXISTING LEGISLATIONS**

The legislations enacted in the Indian sub-continent were based on the pre-independence Anglo Saxon jurisprudence. Therefore it does not address the latest developments in the world and particularly in India against children. The term Child abuse has not been defined in any of the Central legislations existing in India (except Goa Children’s Act, 2003), which proves difficult for the adjudication of child abuse cases. A specific act is necessary to address the problem of child abuse in a holistic manner.

**THE POLICY FRAMEWORK**

The Government of India has taken various steps to address the issues of children over the period of time. The following are some of the important policy framework our country has initiated for the protection of the rights of the child.

**The National Policy for Children 1974** states, “Children shall be protected against neglect, cruelty and exploitation. To achieve the above aims, the State will provide necessary legislative and administrative support”. But the fact that a review of this old policy was not done so far by the government proves that the issues of children are far behind the agenda of the state.

**The National Policy on Education 1986** recommends “firm exclusion” of corporal punishment in schools. No appropriate steps have been taken by the State government to amend State Education Acts and Rules to ban corporal punishment in schools.
The National Decadal Plan of Action for the Girl Child (1991-2000 A.D.) recognizes the rights of the girl child to protection from exploitation, assault and physical abuse. The Plan aims to sensitize various agencies on the need to protect the girl child from assault, physical abuse and exploitation, and adolescent girls from prostitution and rape through legislation, proper enforcement and speedy legal remedies through family courts (Family Courts Act, 1984) and special courts.

National Commission of Children Bill (2001) in its draft has been widely circulated for debate, which could soon become a reality if passed by the parliament and approved. Chapter III empowers the commission in section 13 (f) to initiate and encourage study, research and documentation about child abuse and offences committed against the child, and make appropriate recommendations, including about legal processes to develop a child-friendly jurisprudence which will respond to the best interests of the child.

The Children’s Code Bill, 2000 has been drafted under the chairmanship of the eminent retired Judge of the Supreme Court of India, Justice V.R. Krishna Iyer. While India has an array of laws relevant to child rights, many of them fall short of the constitutional objectives and the principles of the UN Convention on the Rights of the Child (UNCRC). Therefore efforts have been made to formulate a comprehensive Children’s Code, which incorporates UNCRC principles, and the essence of all articles of the Convention, that is justifiable in the Indian legal context. The code provides for a uniform law to protect children from such offences and denotes standards to be met (Iyer, K et. al, 2000). With the passing of this bill by the parliament of India a ray of hope for children in the Indian subcontinent is expected to commence.
The above extensive discussion about the social response to child abuse reveals that there is an inadequacy in response to the issue of child abuse in India. The non-ratifying of the Optional Protocol to UNCRC and the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children shows the shortcoming in the sensitivity and urgency to address the issues of children in our country. Most importantly the responses have not been specific to the children in the fishing community in our country who have unique characteristics and who are the subject matter of this study.

The response of the social scientists to the issue of child abuse through various research studies are reviewed in the next chapter.