ANNEXURE - VI

Excerpt of the Prevention of Offences Against the Child Bill, 2009 from the documents of National Commission for Protection of Child Rights, New Delhi

Prevention of Offences Against the Child Bill, 2009

Preamble
WHEREAS the Constitution of India places a primary responsibility on the State to ensure that all needs of Children are met and their human rights are fully protected;
AND WHEREAS, the Government of India acceded on 11th December 1992 to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be adhered to by all State parties in securing the best interests of the Child;
AND WHEREAS, ....In the Best Interest of the Child and that protect every child from violations of their rights thereby helping them become responsible citizens;
Be it enacted by the Parliament in the (______) year of the Republic of India as follows:-

Statement of Objects and Reasons
The Bill seeks to achieve the following ends:
1. to consolidate and define the different offences against the child and to provide a legal remedies for violation of the same;
2. to make the applicability of the laws uniform to both boys and girls;
3. to bring the existing laws and procedures in conformity with international, regional and national standards;
4. to set forth good practices, relevant norms and principles for administrating justice to a child;
5. to provide stringent penalties to any person who violates the provisions of this Bill, thus, creating a deterrence;
6. to ensure that criminal justice machinery functions, keeping the best interest of the child, as the focal point at all stages;
7. to ensure the speedy disposal of cases, with a view to avoiding delays, which can result in intimidation, retaliation and secondary victimization of the child.
CHAPTER I
PRELIMINARY

SECTION 1. Short title, extent and commencement
(1) This Bill shall be called 'Prevention of Offences Against the Child Bill, 2009';
(2) It extends to the whole of India, including the State of Jammu and Kashmir;
(3) It shall come into force....

SECTION 2. Definition and Interpretation Clause
(1) In this Bill, unless the context otherwise requires, the words used shall have
the meaning given below:
(a) “Child” Unless a separate age has been provided in this Bill, a child shall
mean any person who has not completed the eighteenth year of age.
(d) “Child Neglect” shall mean the willful omission on the part of the parents,
guardians or care giver and duty bearers of a child to provide for the developmental
needs of a child, in all spheres, which shall include health, education, mental
well being, emotional development, nutrition, shelter, and safe living conditions,
in the context of resources reasonably available to such caretaker and causes or
is likely to cause harm or present danger to the child’s life, health, development,
dignity or esteem;

(f) “Guardian” in relation to a child, means his natural guardian or any other
person having the actual charge or control over the child and recognized by the
competent authority as a guardian in course of proceedings before that authority;

SECTION 3. Jurisdiction and Applicability Clause

CHAPTER II
GUIDING PRINCIPLES

SECTION 4. Guiding Principles
Every stakeholder imposed with a duty of implementation of this Bill shall follow
such procedures and practices as may be prescribed; provided that the procedures
and practices so prescribed shall be Child-friendly and shall be deemed to include
the following:
(1) Principle of Best Interest of a child....
(2) Principle of ‘Protection’ of a Child....
(3) Principle of Equality and non discrimination - “Leave no Child behind”....
(4) Principle of Individuality and Participation....
(5) Principle of Privacy and Confidentiality....
(6) Principle of Non-Stigmatizing language, Decisions and Actions....
(7) Principle of Avoidance of Harm....
(8) Principle of non criminalization of a Child....
CHAPTER III
SEXUAL OFFENCES AGAINST A CHILD

SECTION 5. Sexual Assault of a Child
SECTION 6. Punishment for Sexual Assault of a Child
SECTION 7. Aggravated forms of Sexual Assault of a Child
SECTION 8. Unlawful Sexual Contact
SECTION 9. Non Contact based sexual offences with a Child
SECTION 10. Acts undertaken with intent to sexually assault a child or to undertake any form of unlawful sexual contact

CHAPTER IV
OFFENCES RELATING TO TRAFFICKING AND COMMERCIAL SEXUAL EXPLOITATION

SECTION 11. Offences relating to Trafficking
SECTION 12. Selling a child for the purposes of Commercial Sexual Exploitation
SECTION 13. Buying a child for purposes of Commercial Sexual Exploitation
SECTION 14. Procuring, inducing or taking a child for the sake of Commercial Sexual Exploitation
SECTION 15. Dedicating a child

CHAPTER V
OFFENCES RELATING TO ECONOMIC EXPLOITATION OF A CHILD AND CHILD LABOUR

SECTION 16. Prohibition of the use of child for any form of employment, processes or labour
No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous occupations or processes as contained in the Part A and B of Schedule of Child Labour(Prohibition & Regulation) Act, 1986 as amended from time to time....

SECTION 17. Employment of child as domestic help
No child below the age of 14 years shall be employed to work as domestic servants or workers, in dhabhas, road side eateries, restaurants, hotels, motels, tea shops resorts, Spas or other creational centers, as indicated in Part A of Schedule of Child Labour(Prohibition & Regulation) Act, 1986 as amended from time to time.

SECTION 18. Employment of a child for begging
Whoever, employs a child for the purpose or causes a child to beg shall be punished with imprisonment for a term which may extend for three years and shall also be liable to fine upto Rupees Ten thousand only....

SECTION 19. Exploitation of a child employee
Whoever ostensibly procures a child for the purpose of any hazardous employment, keeps the child in bondage or withholds the earnings or uses such earnings for his/her own purpose shall be punished with imprisonment of either
description for a term which may extend to three years and shall also be liable to fine upto Rupees Ten thousand only....

CHAPTER VI

OFFENCES RELATING TO THE CHILD’S BODY

SECTION 20. Cruelty to a child

SECTION 21. Corporal Punishment on a Child

SECTION 23. Ragging of a child in an institution

SECTION 24. Punishment for Ragging of a child in an institution

SECTION 25. Acts intended to discriminate and intimidate a child

(1) Whoever discriminates any child on the basis of his/her gender, caste, religion, race, language or status of the child or his family members regarding any vulnerable disease like HIV/AIDS intending to humiliate, demean, overbear, persecute, lower dignity or any other such intention shall be liable for imprisonment which can extend to three years and shall also be liable to fine upto Rupees Ten thousand only....

SECTION 26. Giving a Child intoxicating liquor, narcotic drug or psychotropic substance

SECTION 27. Using a child for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance

SECTION 28. Offences relating to the sale of the child’s organs

SECTION 29: Organized crime against the Child

Whoever found part of organized crime against the child for the crimes mentioned under Section 18, 26, 27 and 28 shall be punished with rigorous imprisonment which can extend upto ten years and shall also be liable for fine upto Rupees five lakhs only or both. The punishment shall be rigorous imprisonment which shall not be less than seven years but can extend upto fourteen years and shall also be liable to fine upto Rupees ten lakhs only or both when the crime result in the death of the child.

SECTION 30: Offences relating to harmful traditional or cultural practices

CHAPTER VII

THE USE OF A CHILD IN ARMED CONFLICTS

SECTION 31. General Obligation of the State

The State shall ensure that members of the armed forces who have not attained the age of 18 years shall not take direct part in the hostilities or are not compulsorily recruited in the armed forces.

SECTION 32. Use of a Child in an armed group distinct from the State

Any armed groups that are distinct from the armed forces of a State, who recruit or use in the hostilities any child shall be liable for rigorous imprisonment which can extend to seven years and shall also be liable to fine upto Rupees One Lakh only.
CHAPTER VIII
OFFENCES RESTRICTING THE FREEDOM OF A CHILD'S MOVEMENT
SECTION 33. Of offences relating to kidnapping and abduction
SECTION 34. Of offences relating to Wrongful Restraint and Wrongful Confinement

CHAPTER IX
OFFENCES RELATING TO PORNOGRAPHY
SECTION 35. Using a child or children for Pornographic Purposes
SECTION 36. Punishment for using a child or children for pornographic purposes
SECTION 37. Possession of any pornographic material involving a child or children
SECTION: 38: Exposure of Child to Pornography

CHAPTER X
PROVISIONS THAT WILL APPLY TO ALL OFFENCES
SECTION 39. Punishment for committing and attempting to commit offences
SECTION 40. Abettor
SECTION 41. Punishment for abetting an offence
SECTION 42. False Complaints or false information
SECTION 43. Offences committed on disabled children
SECTION 44. Acts done by several persons in furtherance of common intention
SECTION 45: Punishment to disclose the identity of the Child Victim
SECTION 46. Benefits to a child

CHAPTER XI
PROCEDURES RELATING TO CHILDREN
SECTION 47. Prohibition on Assaulting a Child
SECTION 48. Who can report offences against a child
SECTION 49. Medical care and attention to a child
SECTION 50. Functions of the Emergency Response Team
SECTION 51. Production of the Child in need of care and protection before the Child Welfare Committee
SECTION 52. Procedure to be adopted after the inquiry for Children in need of care and protection
SECTION 53. Jurisdiction
SECTION 54: Court Hearings and Proceedings
SECTION- 55. Procedure for Media
SECTION 56. Procedural safeguards for the child
SECTION 57: Procedure for Evidence
SECTION 58. Legal aid for a child or their families

(1) For any offence under this Bill, if the Child and/or their families or guardians are unable to afford the services of a lawyer, the State shall provide such child or their families with free legal aid.
(2) Every High Court shall collect a list of lawyers, who can provide such legal aid to a child or their families. This information shall be available at every Children’s Court or Court of Sessions.

SECTION 59. Presumption and determination of age

SECTION 60: Criminal responsibility

SECTION 61: Compensation

SECTION 62. Power to make Rules

SECTION 63 Application of the Code of Criminal Procedure, 1973

CHAPTER XII

OBLIGATION TO REPORT CASES

SECTION 64. Obligation on media and the personnel of studios or photographic facilities to report cases

SECTION 65. Obligation on stakeholders providing accommodation facilities to report cases

SECTION 66. Obligation on stakeholders providing transportation facilities to report cases

SECTION 67. Punishment for Failure to report cases

CHAPTER XIII

PROTECTIVE AND PREVENTIVE MEASURES

SECTION 68. Obligation of the State to end traditional and cultural practices in certain circumstances

The State shall take measures to end all traditional and cultural practices that violate the full enjoyment of the rights of every child or foster discrimination against a child or create an unhealthy atmosphere for the growth and development of the child.

SECTION 69. Assistance of media and NGOs and other public spirited persons/organizations

SECTION 70. State to create awareness on the provisions of this Bill

SECTION 71. Training and capacity building of duty bearers

SECTION 72. State to create awareness on issues relating to child rights and change attitudes that hamper a Child’s growth or development

SECTION 73: Vigilance Committees

(1) The State shall facilitate the creation Vigilance Committee at the National, State and District Level, with participation of members from the community, to prevent any offence from being committed in this Bill....

SECTION 74. Research and Documentation

(1) The State shall facilitate the Research and Documentation of issues relating to Child Rights and Child Protection and also facilitate the creation of a database on these issues....
SECTION 75. Obligation of Schools and Educational Institutions
(1) All schools and educational institutions shall facilitate a 'Personal Safety Education' to empower a child and make them aware of their rights and what can be done, if their rights are violated;
(2) Every school and educational institution shall at periodical intervals and at Parent Teachers Associations, facilitate discussions with the parents and the teachers on empowering children and undertaking measures to protect their rights.
(3) The Central Board of Secondary Education and State Board of Education shall include the provisions of UN Convention on the Rights of the Child in the course curriculum for schools and educational institutions and also promote awareness .... through the course curriculum for schools and educational institutions.
SECTION 76: Power to remove difficulties.