CHAPTER 4

STATUTORY PROVISION IN INDIA FOR CHILD RIGHTS PROTECTION

4.1 General

In the preceding Chapter of this research we have adequately demonstrated the meaning, nature, scope and extent of child rights violation, child abuse, child neglect and exploitation of children by various sections of the society. However, all the aforesaid types of child rights violation does not always take place because of the paucity of laws or our legislators were unaware of the need of child welfare, but it occurs due to unawareness in the society to protect the interest of the child. Due to tender age, weak physique and lack of developed mind and understanding, child has been subjected to special laws and legal protection at national and international level.

This chapter basically highlights various existing Legislations deals with the child rights protection. Most of these laws have provisions to deal with the rehabilitation and protection of the socially and economically abused and neglected children. Although the term child has not been defined under the Indian Constitution of India, but the Constitution makers were aware about that the children require special care, treatment as because of their physical and mental immaturity which reflected under various Articles of the Constitution of India, such as Article 15(3) empowers the State to make special provisions for children and Article 24 prohibits the employment of children below fourteen years of age in factories and hazardous employment. This certainly shows the concern towards the health and safety of the children of India.

The children are the future, assets of the nation that is why Article 39(e) of Constitution deals with that “the State shall direct that health and strength of workers, men and women and tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age and strength”. Further Article 39(f) deals with that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against various exploitation and moral
and material abandonment. Article 45 provides that the State shall endeavour to provide within a period of ten years from the commencement of the Constitution, free and compulsory education for all children until they attain the age of fourteen years. By 86th Amendment in Constitution of India, Article 21A has been added for providing free and compulsory education to all children between six to fourteen years of age.

In every civilized society, the welfare of the child is considered to be paramount and the state can never overlook the most valuable asset of the nation—the child. Every necessary step is to be taken by the state for the proper growth and overall development of children. Accordingly, Constitution of India and other legislation in accordance with the international norms and regulations provide some specific provisions for the protection, welfare and overall development of the children so that they can avail their minimum basic human rights and be protected from exploitation and abuse.

### 4.2 Protection under Indian Constitution

A constitution of a country is expected to represent the aspirations and to solve the problems of the people of that country. The Fundamental Rights and Directive Principles of State Policy together constitute the conscience of the Constitution and represent the basic rights of human being in our country. As explained in Preamble they are equally relevant to promote the aims and objectives of the Constitution. Being the law of the land and supreme legislation, it therefore contains some specific provisions for the welfare and protection of children also.

Fundamental Rights represent the basic values cherished by the people of this country and are aimed at protect the dignity of the individual and creating conditions in which every human being can develop his personality to the fullest extent.

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196 By 86th Constitutional Amendment, 2002.
197 See the Constitution of India, parts III and IV. The fundamental rights are embodied in part III of the constitution and the directive principles are in part IV of the constitution.
a) **Article 14** provides, “the State shall not deny to any person equality before the law or equal protection of laws within the territory of India.” Thus, nobody including the children should be denied any equality of status and opportunity as all are equal before the eye of law.

b) **Article 15(1)** speaks that, “State shall not discriminate against any citizen on ground only of religion, race, sex, place of birth or any of them.”

c) **Article 15 (3)** enables “the State to make special provisions for women and children which indicates that it seeks to protect the interest of women and children and nothing else.” According to

d) **Article 19 (1) (a)**, all citizens shall have the right to freedom of speech and expression and it is also applicable to children too. The most important Article i.e 'Right to life, under

e) **Article 21**, as interpreted by the Supreme Court, says that "right to life means something more than just physical survival, not merely the right to the continuance of a person’s animal existence.” 198 It would include the right to live with human dignity. 199 It would also include the right of a person not to be subjected to 'bonded labour, 200 or any other unfair Conditions of labour. 201 So, the State is under obligation to see that there should not be any violation of fundamental rights of any person-adult or child.

f) **Article 21A** 202 says that education from 6 to 14 years of age a fundamental right within the meaning of Part III of Constitution. This Article deals with “the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may by law determine.” Article 21A may be read with new substituted Article 45 and new clause (k) inserted in Article 51A by 86th Amendment in the constitution. 203 Further, the 'Right against Exploitation' as provided under

g) **Article 23 and 24** has much importance which aims at recognition of restoration of the dignity of a person and crystallizes the philosophy of child

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199 Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others, AIR 1981 SC 746.
200 Bandhua Muki Morcha v. Union of India, AIR 7994 SC 802.
201 People’s Union for Democratic Right v. Union of India, AIR 1982 SC 1473.
202 Added by the constitution (86th Amendment) Act, 2002
203 86th Amendment Act, 2002
welfare. Particularly, **Article 24** provides the most relevant provisions which are directly connected with Child labour. It prohibits the employment of children below the age of fourteen years, in any factory, mine or any other hazardous employment which involves danger or risk to the physical or mental health of children.

h) **Article 39(e)** directs the State to adopt protective measures so that the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

i) **Article 39 (f)** urges upon the State to see that "children are given opportunities and proper facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth, are protected against exploitation and against moral and material abandonment."

j) **Article 41** requires that, “the state shall within the limits of its economic capacity and development, make effective provision for securing the right to education”

k) **Article 42** indirectly aims at the healthy and favourable atmosphere for securing just and humane condition of work as Article 24 does not prohibit their employment totally.

l) **Article 43** seeks that the State shall endeavour to secure by suitable legislations etc. to all workers (which also includes the Child labourers), not only to work, but living wages, conditions of work ensuring a decent standard life and full enjoyment at leisure and social as well as cultural opportunities.

m) **Article 45**, the State is obliged to provide compulsory early childhood care and education to the children. The main aim of this Article is to provide compulsory education along with eradication of illiteracy.

n) **Article 46** directs the state to promote with special care the educational and economic interest of the weaker sections of the people, and in particular, of the scheduled castes and scheduled tribes and to protect them from social injustice and all forms of exploitation. So this provision, therefore automatically applicable to the children of such class.
o) **Article 47** says children has a right to nutrition, it is the prime responsibility of the state and the society to see that he is not deprived of that right, because the future of a nation depends on the proper physical and mental growth of its children.

p) **Article 51A (k)** imposes a fundamental duty on parent or guardian, “to provide opportunities for education to his child or, as the case may be, ward, between the age of 6 to 14 years.”

### 4.3 Protection under The Code of Civil Procedure, 1908

The code of civil procedure, 1908, to some extent, intends to protect the children. Accordingly order 32 has been provided to protect the interest of the minors and ensure that they are to be represented in suits or proceedings by persons who are qualified to act as such. Anything prejudicial to the interest of a minor is not permitted under law and any decree parsed against a minor without appointment of a guardian is a nullity and is void. In this regard, the code has prescribed sixteen rules.

### 4.4 Protection under the Code of Criminal Procedure, 1973

The code of criminal procedure, 1973 has also some relevant provisions for the children. These are jurisdiction in the case of Juveniles 204, restoration of abducted females (including a female child below 18 years of age) 205, maintenance of children 206, release on probation of good conduct 207, and special reasons to be recorded in certain cases 208 etc.

### 4.5 Protection under Indian Penal Code, 1860

#### 4.5.1 Kidnapping from Lawful Guardianship

Section 361 of the Penal Code provides that "whoever takes or entices any minor under ‘sixteen’ years of age life male, or under ‘eighteen’ years of age, if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such
guardian, is said to kidnap such minor or person from lawful guardianship." However, any person-who takes in good faith, believes himself to be the father of an illegitimate child, or who in good faith believes himself to be entitled to lawful custody of such child, but not for an immoral or unlawful purpose, is not kidnapping.\textsuperscript{211} Regarding punishment for kidnapping, it is provided that, “whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. The offence is cognizable, bailable, non-compoundable and triable by a Magistrate of First Class.

4.5.2 Kidnapping, Abducting or Inducing woman to compel her Marriage etc.

"Whoever kidnaps or abducts any Woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or Seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.” and Whoever by means of criminal intimidation or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.\textsuperscript{212}

4.5.3 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.”\textsuperscript{213}

\textsuperscript{211} Exception to Section 361, IPC.
\textsuperscript{212} Section 366, IPC
\textsuperscript{213} Section 366A, inserted by Act No. 20 of 1923, Section 3
4.5.4 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."215

4.5.5 Selling or Buying Minor for Purpose of Prostitution etc.

Whoever sells, lets to hire, or otherwise disposes; or buys, hires or otherwise obtains possession; of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose or knowing it to be likely that such person will at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years/ and shall also be liable to fine.216 Section 373 of the Indian Penal Code is a counterpart of Section 372. These two sections deal with trafficking in minor girls under the age of eighteen years. The offence under Section 372 consists in the intentional or conscious exposure of a minor to the danger of degradation. The offence is cognizable, bailable, and triable by the Court of Sessions.

4.5.6 Child Labour

The relevant provisions under which a case can be registered against a person committing crime against child:

a) Buying or disposing of any person as a slave (S. 370)
b) Habitual dealing in slaves (S.371)
c) Unlawful compulsory labour (S.374)

The Indian Penal Code in these provisions deals with the combating of child labour. It provides whoever import, removes, buys, sells or dispose of any person as a slave or him/her against his will shall be punished with 7 years imprisonment.

214 Inserted by Act No. 3 of 1951, Section 3 and Schedule.
215 Section 366-B, inserted by Act No. 20 of 1923, Section 3.
216 Section 372 and 373 of Indian Penal Code, 1860.
(Section 370). And if all these are done by a person of habitual nature then a term of 10 years is provided in the penal code (Section 371). And if any one unlawfully compels any person to labour against the will of that person, shall be punished with one year imprisonment. (Section 374).

4.5.7 Child Abuse

The Indian Penal Code does not recognize Child Sexual Abuse as an offence. It is through the application of certain other provisions in the Indian Penal Code that a child sexual offender is criminalised. These are:-

a) Rape (Sec. 375): Sec. 375 of IPC defines the offence of rape as “sexual intercourse committed by a man on a woman against her will or without her consent. The section goes on to provide certain other circumstances where the standard of will or consent does not apply. Among these, intercourse with a girl under 16 years of age, even with her consent, is rape. The section provides an explanation that “penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape”. Thus only Child Sexual Abuse (CSA) of girl-children where peno-vaginal penetration has taken place falls within the ambit of this section. Most often CSA does not take this form. Penetration of the vagina with any other object, even if life-threatening, does not amount to rape.

b) Assault or Criminal force to woman with intent to outrage his modesty (Sec. 354): In cases of CSA concerning girl-children, where penetration of the vagina has not taken place, section 354 comes into operation. This section punishes the offence of assault or use of criminal force to outrage the modesty of a woman. And ‘modesty’ of a woman remains ambiguous. Especially in the case of CSA, it becomes even more confusing because the ‘victim’ is a child and whether as a child she can be said to possess modestly is a point of argument in court.

c) Unnatural Offences (Sec. 377): The last provision of I.P.C., Section 377, is purportedly meant to be applied in cases of CSA, where penetration is not peno-vaginal in nature - defined as ‘unnatural offence’ by the law. The

217 It may range from exhibitions, touching, to all forms of penetration (including penile - anal, penile-oral, object-vaginal, and finger-vaginal), http://www.tulircphcsa.org
unnatural offence consists in a carnal intercourse against the order of nature by a man with a man or in the same unnatural manner with woman or with beast. This section is gender-neutral. While it addresses the sexual abuse of boys, when the abuse does not include penetration it escapes the ambit of the section. This means that there is no provision in the IPC to criminalise molestation of boys.

4.5.8 Female Foeticide and Infanticide

Abortion was first penalized under the Indian Penal Code 1860, which makes the causing of a miscarriage (if it is not done in good faith to save the life of a woman) an offence punishable with imprisonment upto seven years. The code makes both the women who undergo the abortion (voluntarily) as well as the abortionist liable to punishment. In case, it is carried out without the consent of the women then punishment of 10 years is prescribed in the Act and if it is carried out without the consent of the women the person carrying out such an abortion is punishable for life imprisonment and if death of women is caused by the act then the offence will be punishable with imprisonment upto 10 years and with fine too.

The most important provision regarding foeticide is the recognition of the foetus as ‘quick’ if a foetus is killed after it becomes “quick”, it is punishable with 10 years imprisonment.

Further, doing of any act with intent to prevent the child from being born alive is punishable with 10 years imprisonment. Section 316 of Indian Penal Code deals with the cases in which by doing any act death of a woman is caused thereby causing the death of a ‘quick’ unborn child will be punishable with 10 years imprisonment.

218 Indian Penal Code, Sec. 312.
219 Id; Sec. 313.
220 For the purpose, a women under misconception, a women of unsound mind, a women in an intoxicated state, and a girl below 12 years of age cannot give consent.
221 Section 314, IPC
222 Quickening is the name applied to the peculiar sensation experienced by a woman about the fourth or fifth month of pregnancy. The symptoms are popularly ascribed to the first perception of the movement of the foetus.
223 Section 315, IPC.
Furthermore, exposing and abandoning the child below 12 years of age, is punishable with seven years of imprisonment. And concealing the birth of a child by secretly disposing her/his body is punishable with 2 years imprisonment under section 318 of I.P.C.

4.5.9 Child Pornography

Section 292 & 293 of Indian Penal Code (IPC) deals with this crime, according to section 292 deals with sale, etc of obscene books and the punishment prescribed in this section for the offence on first conviction with imprisonment of either description for a term which may extend to two years, and with fine which may extend to two thousand rupees, and for subsequent conviction, with imprisonment of either description for a term which may extend to five years and also with fine which may extend to five thousand rupees.

Section 293 specifies in clear term, the law against sale, etc. of obscene objects to minors. The section prescribes punishment of imprisonment upto 3 years and with fine of two thousand rupees on first conviction or a subsequent conviction, imprisonment which may extend to seven years with fine of 5,000 rupees.

4.6 Protection under Labour Legislation in India

There are various central and state statutes concerning children enacted with an intention to protect and help children and achieve the goal of child labour welfare enshrined in our National Charter. The Constitution makers were conscious of the need for special care for children and, therefore, provisions to the welfare of children dealing specially with the protection of child labour have been envisaged in our National Charter. Accordingly, our National Policy resolution for children, 1974, lays special stress on the responsibility of the nation for physical, mental, moral and special development of children, all these calls for great deal of legislative activity. Thus laws directly pertain to the children are mostly found under labour legislations.

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225 Article 15(3), 14, 39 (e), (f) and 21(A) of the Constitution
Though some legislative measures in India were enacted during the pre-independence era, but they were found limited in their scope and British had a great apathy towards the welfare of the people including children. After independence the State took its responsibility in the matter of welfare of the children as the future well-being of the nation depends as to how they should grow and develop. This responsibility of the State is reflected in some of the Constitutional provisions, central laws and in number of enactments dealing with labour legislations passed with object of securing well-being of the children. The labour legislation has been divided into pre-independence and post-independence.

A. Pre-Independence Labour Legislation
a) The Apprentices Act, 1850
b) The Reformatory School Act, 1986
c) The Factories Act, 1881
d) The Madras Children Act, 1920
e) The Bengal Children's Act, 1922
f) The Bombay Children's Act, 1924
g) The Child Marriage Restraint Act, 1929
h) The Children (Pledging of Labour) Act, 1933
i) The Employment of Children Act, 1938

B. Post-Independence Labour Legislation
a) The Factory Act, 1948
b) The Minimum Wages Act, 1948
c) The Plantation Labour Act, 1951
d) The Mines Act, 1952
e) The Merchant Shipping Act, 1958
f) The Motor Transport Workers Act, 1961
g) The Apprentices Act, 1961
h) The Atomic Energy Act, 1962
i) The Beedi & Cigar Works (Conditions of Employment) Act, 1966
j) The Contract Labour Act, 1970
For the welfare of the children, to protect them from the present exploitative set up, to eradicate child labour from the society, in India numbers of legislative enactments are there besides the constitutional safeguards. The first protective legislation for child labour in India was enacted in 1881 in the form of Indian factory Act which had the provisions prohibiting employment of children below the age of 7 years, limiting the working hours for children to 9 hours a day and providing holidays in a month and rest hours. This was actually made by the ruling British Government to decrease the production in Indian Industries through some legal restrictions. These are some Legislation on Child Labour in India.

4.6.1 The Children (Pledging of Labour) Act, 1933

It is considered to be the first statute dealing with the problem of child labour in India. This Act prohibits the child labour and says that any agreement made contrary to the provisions of the Act (i.e. any agreement to pledge the labour of a child) shall be void.

The Act also provides that if the parent or guardian knowingly pledges the labour of his Child, shall be punished with a fine which may extend to rupees fifty. On the other hand, if any person who enters into an agreement with the parent or guardian of a child whereby such parent or guardian pledges the labour of the child and if any person, knowing or having reason to believe that an agreement pledging the child has being made, employs the child in furtherance of such agreement shall be liable to be punished with a fine extending up to rupees two hundred.

4.6.2 The Employment of Children Act 1938

This Act was passed to implement the Convention adopted by the twenty-third session of ILO (1937) which inserted a special article on India:

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226 Child Labour, Lok sabha secretariat, Parliament Library and Reference, Research, Documentation and Information Service, Reference No.10/RN/Ref./2013
227 Section 4, The Children (Pledging of Labour) Act, 1933
228 Section 5 and 6, Ibid
“Children under the age of fifteen years shall not be employed or work in the transport of passengers, or goods, or mails, by rail, or in handling of goods at docks, quays, or wharves, but excluding transport by hand. Children under the age of fifteen years shall not be employed or work ... in occupations to which this Article applies which are scheduled as dangerous or unhealthy by the competent authority.”

This Act:-

a) Prohibited employment of children under fifteen years in occupations connected with transportation of goods, passengers, and mails, or in the railways;

b) Raised the minimum age of handling goods on docks from twelve to fourteen years;

c) Provided for the requirement of a certificate of age.

4.6.3 Employment of Children (Amendment) Act 1949

This Act raised the minimum age to fourteen years for employment in establishments governed by the Act.

4.6.4 Employment of Children (Amendment) Act 1951

As a result of the ILO Convention relating to night work of young person’s this act prohibited the employment of children between fifteen and seventeen years at night in the railways and ports and also provided for requirement of maintaining a register for children under seventeen years.

4.6.5 The Factories Act, 1948

This Act prohibits the employment of young children and categorically speaks that, "no child who has not completed his fourteenth year of age shall be required or allowed to work in any factory." Further, Section 71 says that, no child shall be employed or permitted to work in any factory for more than four and a half hours in any day and during night". This Act provides penalty with imprisonment maximum for two months or with fine up to one thousand rupees or with both for using false certificate of fitness granted to him under Section 70.229

229 Section 67, The Factories Act, 1948
230 Section 98, Ibid
Further, a fine, which may extend to one thousand rupees, may also be imposed on parent or guardian for permitting double employment of a child.  

### 4.6.6 Plantations Labour Act, 1951

According to this Act, "no child who has not completed his twelfth year shall be required or allowed to work in any plantation". Further prohibits the employment of children during night hours, except with the permission of the Government. Again "no child and no adolescent shall also be required or allowed to work in any plantation unless a certificate of fitness granted while their reference to him is in the custody of the employer; and such child or adolescent carries with him while he is at work a token giving a reference to such certificate." A person who uses false fitness certificate or who allows such certificate shall be punishable with imprisonment for maximum one month or fine up to fifty rupees.

### 4.6.7 Merchant Shipping Act, 1951

This Act provides that, "no person under fifteen years of age shall be engaged or carried to sea to work in any capacity in any ship, except-

a) in a school ship, or training ship, in accordance with the prescribed conditions; or

b) in a ship in which all persons employed are members of one family; or

c) in a home trade-ship of less than two hundred tons gross; or

d) where such person is to be employed on nominal wages and will be in the charge of his father or other adult near male relative.

And, if any person will contravene the above provision, shall be liable for fine and 'any person' include both the master and the parent or guardian of the young person.

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231 Section 99, Ibid
232 Section 24, Plantations Labour Act, 1951
233 Section 25, Ibid
234 Section 27, Ibid
235 Section 26, Ibid
236 Section 34, Ibid
237 Section 109, Merchant Shipping Act, 1951
238 Section 436, Ibid
4.6.8 Mines Act, 1952

This Act prohibited the employment of children less than fifteen years of age in mines. The Act stipulates two conditions for underground work:

a) Requirement to have completed sixteen years of age; and

b) Requirement to obtain a certificate of physical fitness from a surgeon.

According to Section 45 of this Act,

(i) “No child shall be employed in any mine, nor shall any child be allowed to be present in any part of a mine which is below ground or in any open cast working in which any mining operation is being carried on.

(ii) After such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, no child shall be allowed to be present in any part of a mine above ground where any operation connected with or incidental to any mining operation is being carried on.”

A number of penal provisions are also provided under the Mines Act, 1952, this Act imposes punishment on any person who knowingly allows to use or attempts to use a false fitness certificate granted to him under Section 4, with imprisonment not exceeding one month or with fine not exceeding two hundred rupees, or with both. Further, if a person below eighteen years of age is employed in a mine in contravention of Section 40, the person contravening the provision shall be punishable with fine which may extend to five hundred rupees.239

4.6.9 The Factories (Amendment) Act 1954

This included prohibition of employment of persons less than seventeen years at night. (‘Night’ was defined as a period of twelve consecutive hours which included hours between 10 p.m. and 7 a.m.).

4.6.10 The Merchant Shipping Act 1958

This prohibits children under fifteen to be engaged to work in any capacity in any ship, except in certain specified cases.

239 Section 65, Mines Act, 1952
4.6.11 Motor Transport Workers Act, 1961

According to provision of this Act says that, "no child shall be required or allowed to work in any Capacity in any motor transport undertaking." Further, the provision of this Act debars the adolescent to work as a motor transport worker in any motor transport undertaking without a certificate of fitness and the said certificate is to remain with the employer or such adolescent has to carry the certificate with him while he is at work. A person who uses false fitness certificate or who allows such certificate shall be punishable with imprisonment not exceeding one month or with fine not exceeding fifty rupees or with both.

4.6.12 The Apprentices Act, 1961

The Apprentices Act, 1961 clearly provides that, "a person shall not be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade, unless he-

a) is not less than fourteen years of age; and
b) satisfies such standards of education and physical fitness as may be prescribed;

Provided that, different standards may be prescribed in relation to apprenticeship training in different designated trades, for different categories of apprentices.

The Act provides punishment, with imprisonment for a term which may extend to Six months or with fine or with both on an employer, if he employs a disqualified person as an apprentice or fails to carry out the terms and conditions of a contract of apprenticeship etc.

4.6.13 Beedi and Cigar Workers (Condition of Employment) Act, 1966

This Act totally prohibits the employment of children which says that, "no child shall be required or allowed to work in any industrial premises." Further

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240 Section 21, Motor Transport Workers Act, 1961
241 Section 22, Ibid
242 Section 30, Ibid
243 Section 3, The Apprentices Act, 1961
244 Section 30(1), Ibid
245 Section 24, Beedi and Cigar Workers (Condition of Employment) Act, 1966
prescribes that, if any offence is charged against a person that he has employed a person less than the prescribed age, burden lies on the accused to prove that such person is not under such age, otherwise the accused is punishable under the provisions of the Act. In such a case, only the declaration in writing of an authorised medical officer is admissible as evidence of the age of that employee.

4.6.14 Employment of Children (Amendment) Act 1978

This Act prohibited employment of a child below fifteen years in occupations in railway premises such as cinder picking or clearing of ash pit or building operations, in catering establishments and in any other work which is carried on in close proximity to or between the railway lines.

4.6.15 Shops and Commercial Establishment Acts

In India, each State has its own Shops and Commercial Establishment Act which mainly applies to shops, commercial establishments, hotels and restaurants and places of amusement area and notified urban areas, to which Factories Act does not apply. Provisions prohibiting the employment of children can also be seen in these Acts. The concerned State Governments are empowered enough to extend the coverage of the Act to any establishment.

4.6.16 The Child Labour (Prohibition and Regulation) Act, 1986

The Employment of Children Act 1938, which was the first enactment on child labour, was repealed by the Child Labour (Prohibition and Regulation) Act 1986 which came into force on 23rd December 1986, is indeed the bold step to prohibit the child labour. This Act is an outcome of various recommendations made by various committees there was a national consensus in favour of comprehensive legislation, to prohibit the engagement of children in certain other employment. Therefore the parliament enacted the aforesaid Act.

This Act main aims is to prohibiting the engagement of children in certain employments and to regulate the working conditions children in certain other

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246 Section 30, Ibid
employments. A child, according to this Act, is a person who has not completed his fourteenth year of age.\(^{248}\)

The Act of 1986 prohibits employment of children in certain occupations and processes,\(^{249}\) and proceeds to provide for setting up of advisory committee by the Central Government to be known as 'Child Labour Technical Advisory Committee\(^{250}\) for the purpose of addition of Occupations and processes to the schedule. Further, the Act clearly provides that, no child should be allowed to work for more than six hours a day\(^{251}\) and he will neither be allowed to work in the night hours i.e. between 7pm to 8am\(^{252}\) nor be permitted to work overtime.\(^{253}\) He will also not be entitled to a holiday of one whole day in each week.\(^{254}\)

Further the Act provides, the occupier of an establishment has to report the inspector particulars, if he employs or permits to work, any child after the commencement of this Act\(^{255}\). Further, every occupier in respect of the children employed or permitted to work in any establishment, should maintain a register which will be available to the Inspectors for inspection showing certain particulars/information\(^{256}\). This Act also provide for the health and safety of children employed or permitted to work in any establishment or class of establishment, the Act also calls upon the Government to make rules.\(^{257}\) According to the provisions of the Act employs any child or permits any child to work will be punishable with imprisonment ranging from three months to one year or with fine ranging from ten thousand rupees to twenty thousand rupees or with both.\(^{258}\)

### 4.6.17. The Child Labour (Prohibition and Regulation) Amendment Act, 2016

Parliament has passed this act in July, 2016. This Act amends the old Child Labour (P&R) Act, 1986 by widening its scope against Child Labour and Provides

\(^{248}\) Section 2 (ii) The Child Labour (Prohibition and Regulation) Act, 1986
\(^{249}\) Section 3. Ibid.
\(^{250}\) Section 5. Ibid.
\(^{251}\) Section 7(3). Ibid.
\(^{252}\) Section 7 (4), Ibid.
\(^{253}\) Section 7 (5), Ibid.
\(^{254}\) Section 8, Ibid.
\(^{255}\) Section 9, Ibid.
\(^{256}\) Section 11, Ibid.
\(^{257}\) Section 13, Ibid.
\(^{258}\) Section 14, Ibid.
Statutory Provision in India for Child Rights Protection

for stricter punishments for violation. The Act has completely banned the employment of children below 14 in all occupations and enterprise, except those run by his or her own family, provided that education of her own family, provided that education does not hampered. The act added the new category of persons called ‘Adolescent’ i.e. children between 14 to years as adolescents and bans their employment in any hazardous occupations. Employing children below 14 years will term a jail between 6 months to 2 years or penalty between 20,000 to 50,000 rupees.

4.7 The Juvenile Justice


JJ Act 1986 was enacted to provide for the care, protection, treatment, development, and rehabilitation of neglected or delinquent children of India. The Act did not directly deal with child sexual abuse but the definition of a neglected juvenile included a juvenile who lived in a brothel or with a prostitute or frequently went to any place used for the purpose of prostitution or was found to associate with any prostitute or who was being or was likely to be abused or exploited for immoral or illegal purposes. Such neglected children were produced before a Juvenile Welfare Board who would, after an inquiry, send the child to a juvenile home for care, protection, and rehabilitation.

Under the Juvenile Justice act 1986, a prostitute’s child was automatically a neglected child. The magistrate had the power to segregate the prostitute from her child and place the child in a corrective institution. Besides, under the Act, while males above eighteen years were considered adults, the age was reduced to sixteen years for females. The Juvenile Welfare Boards generally were not equipped to deal with cases of child sexual abuse. The observation homes could not provide special care and treatment for such victimized children.

4.7.2 Juvenile Justice (Care and Protection of Children) Act 2000

Since the Juvenile Justice Act 1986 has been replaced by the Juvenile Justice (Care and Protection of Children) Act 2000, such children are now being produced before the Child Welfare Committees which have replaced the Juvenile Welfare
Boards. In practice, at present, it appears that there has been a change only in the nomenclatures. The actual functioning of the earlier Boards and the present Committees remain almost the same. An abused child is regarded as a child in need of care and protection.

This Act is a comprehensive legislation that provides for proper care, protection and treatment of children in conflict with law and children in need of care and protection by catering to their development needs and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under the enactment.

4.7.3 The Juvenile Justice (Care and Protection) of children Act of 2015:

The JJ Act, 2015 replaced the aforementioned JJ Act, 2000 and came into force on 15 January 2016. Children in need of care and protection include those children who have been or are being or are likely to be abused, tortured or exploited for the purpose of sexual abuse or illegal acts. Such children have to be produced before the Child Welfare Committee. The Juvenile Justice (Care and Protection of Children) Act 2015 also has certain provisions for punishment for offenses against children:

a) Cruelty to child
b) Child for begging
c) Going intoxicated liquor or narcotic drug or psychotropic substance to a child.
d) Using a child for vending, peddling, carrying, supplying or smuggling any intoxicating liquor, narcotic drug or psychotropic substance

e) Exploitation of a child employee
f) Sale and procurement of children for any purpose
g) Any person in-charge of or employed in a child care institution, who subjects a child to corporal punishment with the aim of disciplining the child.
h) Use of child by militant groups.
4.8 Protection of Children from Sexual Offence Act, 2012

A child as any person below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography. The Protection of Children from Sexual Offences (POCSO) Act, 2012 was formulated to effectively address the heinous crimes of sexual abuse and sexual exploitation of children. Child sexual abuse is comprehensive and encompass the following:

a) Penetrative sexual assault
b) Aggregated penetrative sexual assault
c) Sexual Assault
d) Aggravated Sexual Assault
e) Sexual Harassment
f) Using child for pornographic purpose, and
g) Trafficking of children for sexual purposes.

Child sexual abuse is a multidimensional problem having legal effects. In the more heinous offences of penetrative sexual assault, aggravated and penetrative sexual assault, sexual assault and aggravated sexual assault, the burden of proof is shifted on the accused.

The POCSO Act, incorporates child friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences, trial in camera and without revealing the identity of the child through designated special courts. It also provides for the Special Court to determine the amount of compensation to be paid to a child who has been sexually abused, so that this money can then be used for the child's medical treatment and rehabilitation.

4.9 The Immoral Traffic (Prevention) Act, 1956\(^{259}\)

The Immoral Traffic Prevention Act, 1956, widens the scope of the law to cover both the sexes exploited sexually for commercial purposes and to provide enhanced penalties for offences involving children and minors.

\(^{259}\) Act No. 104 of 1956, w.e.f. 30\(^{th}\) December 1956. 'The words 'Immoral Traffic (Prevention)' was substituted by Act No. 44 of 1986 for the words the …..
4.10  The Young Persons (Harmful Publications) Act, 1956

In this Act, young person means a person under the age of twenty years. It is an offence to sell, let, hire, distribute, or publicly exhibit harmful publications.

The Young Persons (Harmful Publications) Act, 1956 is intended to prevent the dissemination of certain publications harmful to young persons. "Harmful Publication, according to section 2(a) of the Act means "any book" magazine, pamphlet, leaflet, newspaper, or other like publications which consists of stories told with or without the aid of pictures or wholly in pictures being stories portraying wholly or mainly the commission of offences; or acts of violence or cruelty; or incident of a repulsive or horrible nature in such a way that the publication as a whole wound tend to corrupt a young person in to whose hands it might fall, whether by inciting or encouraging him to commit offences or acts of violence or cruelty or in any other manner whatsoever." The Act also provides for punishment for sale etc. of any harmful publications.

4.11  Information Technology Act, 2008

Section 67B of the Information Technology (Amendment) Act, 2008 provides punishment for publishing of material depicting children in sexually explicit act, etc. in electronic form. Whoever,

a) Publishes or transmits material in any electronic form which depicts children engaged in sexually explicit act or

b) Creates text or digital images, collects, downloads, exchanges or distributes material in any electronic form depicting children in obscene or sexually explicit manner or

c) Cultivates or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource or

d) Facilitates abusing children online or

e) Records in any electronic form own abuse or that of others pertaining to sexually explicit act with children.

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260 Young persons (Harmful Publication) Act 1956, Sec 2(C)
Section 67 of the IT Act deals with "publishing obscence information in electronic form". This law has been interpreted to criminalize the posting of pornographic content online. However, accessing "obscene" content privately is not illegal. Section 67B was inserted which criminalized browsing, downloading, creation and publishing child pornography. Child anime porn is also explicitly criminalized. Section 67B of the IT Act also deals with publishing or transmitting or causing to be published or transmitted material in any electronic form that depicts children engaged in sexually explicit act or conduct or creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form.

4.12 Code of Medical Ethics

This code Constituted by the Indian Parliament in the Medical Council Act, 1956, the relevant section of the code of Medical Ethics states: “on no account, sex determination test shall be undertaken with the intent to terminate the life of a female foetus developing in her mother’s womb, unless there are other absolute indicators for termination of pregnancy as specified in the Medical Termination of Pregnancy Act, 1971.

Any act of termination of pregnancy of normal female foetus, amounting to female foeticide, shall be regarded as professional misconduct on the part of the physician leading to penal punishment besides rendering him liable to criminal proceedings as per the provisions of this Act.

4.12.1 Medical Termination of Pregnancy Act, 1971 (MTPA)

Amniocentesis test was first started in India in 1974 as a part of sample survey conducted at the All India Institute of Medical Sciences (AIIMS), New Delhi, to detect foetal abnormalities. These tests were later stopped by the Indian Council of Medical Research (ICMR), but their value had leaked out by then and 1979 saw the first sex determination clinic opening in Amritsar, Punjab. The amniocentesis test was claimed to be used for detection of foetal abnormalities, which were permitted by the MTPA. According to the MTPA, if any abnormality is detected between 12 to 18 weeks of gestational period in the foetus, an abortion can be legally carried out upto 20 weeks of pregnancy.
In the absence of any law, all that the government could do was to issue circulars prior to 1985, banning the misuse of medical technology for sex determination in all government institutions. In 1986, the Forum against Sex Determination and Sex Pre-selection (FASDSP), a social action group in Mumbai, initiated a campaign. Succumbing to public pressure, the Maharashtra government enacted the Maharashtra Regulation of Pre-natal Diagnostic Techniques Act 1988, the first anti sex determination drive in the country. This was followed by a similar Act being introduced in Punjab in May 1994. Both these Acts were however repealed by the enactment of a central legislation, i.e the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

4.12.2 Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (PNDT)

In 1994, the centre passed this Act but it was only in the year of 1996 that it came into operation. Under the Act, pre-natal diagnostic scans are permitted solely to detect genetic abnormalities. The Act forbids sex determination tests. It also prohibits any advertisements relating pre-natal determination of sex and prescribes punishment for its contravention. The person who contravenes the provisions of this Act is punishable with imprisonment upto 5 years and fine upto 50,000/-

4.12.3 Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (PCPNDT) of 2003

The reason of few convictions under the old Act of PNDT, 1994 and the grave misuse of scientific technology by richer like “sperm - washing” compelled for the amendment in the Act. This new Act is designed to strengthen the provisions of the previous Act.

Bringing into the ambit of the Act emerging techniques for pre-conception sex-selection, such as sperm separation and pre-implantation genetic diagnosis, increasing the fine and additional provisions for the suspension and cancellation of the registration of violators, the law targets the medical profession the so-called ‘supply’ side of the practice of sex-selection. Manufacturer of ultrasound
4.13 Child Marriage

4.13.1 Child Marriage Restraint Act, 1929

The child marriage restraint act 1929 was passed. The Act is popularly known as Sharda Act, on the name of the person who was responsible for this reform. It was amended in 1978, which raised the minimum age of marriage to 18 for girls and 21 for boys. This has indeed been very progressive since earlier the minimum age of marriage for girls and boys were 14 and 18 respectively. This was subsequently amended in 1949 to raise the age to 15 for girls while no change was effected in case of boys. Under this Act, Several persons can be punished for allowing, contracting, performing or being involved in a child marriage. They are like:

a) A male who contracts child marriage if he is over 18 years but below 21 years of age shall be punished with simple imprisonment which may extend upto 15 days or with fine which may extend upto Rs. 1000 or both.261

b) A male who contracts child marriage if he is over 21 years of age shall be punished with imprisonment which may extend upto 3 months and with fine.262

c) ‘A person who perform or conducts the child marriage, unless he can prove he had no reason to believe it was a child marriage, shall be punished with imprisonment which may extend upto 3 months and with fine.263

d) The parents of guardian of the child who permits, negligently fails, or does any act to, promotes such child marriage can be punished.264

Although, this Act has been now repealed by the new Prohibition of Child Marriage Act, 2006.

4.13.2 Age of Marriage under Various Personal Laws

The personal laws in India are based on religion. Marriages among the Hindus are regulated by the provisions of the Hindu Marriage Act 1955.265 A valid
marriage between two Hindus can take place where the bridegroom has completed the 21 years of age and the bride has completed eighteen years of age, apart from other conditions like not having a living spouse, not being of unsound mind, etc. Thus, neither party to a marriage amongst Hindus can any longer be of a child’s age, that is, of less than eighteen years of age which is the age of majority. Any marriage made in contravention of the age limits has not been declared to be void or voidable under other provisions of the Act, but such marriages have been made punishable with simple imprisonment up to fifteen days and fine up to one thousand rupees or with both. Both the bride and bridegroom are punishable if they marry before their eligible age. Since marriage can be solemnized only between two major persons, there is no question of obtaining consent of the guardian of the persons for the purpose of marriage under the Act. But if the marriage of a girl has been solemnized before she attained the age of fifteen years, she can repudiate the marriage after attaining fifteen years but before attaining the age of eighteen years whether or not the marriage has been consummated. She can also seek divorce thereafter from her husband through the court.

In Muslim law, it is essential that parties at the time of marriage should have attained puberty, which is a biological fact to be ascertained by evidence. Puberty is generally taken to come at the age of fifteen years. According to the Hanafi School of Law, the earliest stage of puberty is twelve years for boys and nine years for girls. The marriage of a person below the age of puberty is to be solemnized by a guardian and such marriage is not void. A marriage arranged by the father or parental grandfather binds the minor. The minor cannot annul such marriage on attaining puberty if the guardian had acted in the interest of the minor. If a guardian other than the father or grandfather arranges the marriage, the minor can exercise the ‘option of puberty’ and repudiate the marriage within a reasonable time if it is not consummated.

The Act applies to any person who is a Hindu by religion in any of its forms or developments (including a Virashaiva or a Lingayat or follower of the Brahma, Prarthana, or Arya Samaj), to any person who is Buddhist, Jain, or Sikh by religion and to any person who is not a Muslim, Christian, Parsi, or Jew by religion.
4.13.3 The Christian Marriage Act 1872

A minor has been defined as a person who has not completed the age of twenty-one years and who is not a widower or widow. A minor under the Act can marry with the consent of the father and, if he is dead, with the consent of the guardian, and if there is not guardian, with the consent of the mother.

4.13.4 The Parsi Marriage and Divorce Act 1936:

A valid marriage amongst Parsis can take place between a boy who has completed the age of twenty-one years and a girl who has completed the age of eighteen years. Since only major persons can marry under the Parsi law, there cannot be any child marriage amongst Parsis.

4.13.5 The Special Marriage Act 1954:

The age of marriage under this Act is twenty-one years for males and eighteen years for females. Any marriage solemnized in contravention of the age requirement will be null and void and can be nullified by the court.

4.13.6 The Prohibition of Child Marriage Act (PCMA) 2006

The Child Marriage (Restraint) Act, 1929 with some modification was replaced by this Act. The new Prohibition of Child Marriage Act, 2006 (PCMA) brings about far reaching changes in the law as under:

a) Section 3 of this Act states that “Every child marriage shall be voidable at the option of contracting party who was a child at the time of marriage. It allows for a petition to be filed declaring the marriage void within 2 years of the child attaining majority.

b) The Act also allows for the maintenance and residence for the girl till her remarriage from the male contracting party or his parents.

c) The Act further allows for appropriate orders for custody for any child born from marriage.

d) Enhancement in punishments for male adults marrying a child and persons performing, abetting, promoting, attending etc. a child marriage with imprisonment upto 2 years of with fine upto 1 lakh rupee or both.
e) The same punishment is also prescribed for anyone who solemnizes a child marriage including by promoting such a marriage, permitting it to be solemnized or negligently failing to prevent the marriage. No woman can however be punished with imprisonment. The Act also makes all offences cognizable and non-bailable.

f) Notwithstanding that a child marriage has been annulled, every child of such marriage shall be deemed to be a legitimate child for all purpose.

g) States to appoint child marriage prohibition officers, whose duties include prevention of solemnization of child marriages, collection of evidence for effective prosecution, creating awareness and sensitization of community etc.

4.14 The Right of Children to Free And Compulsory Education Act, 2009

The Right of Children to Free and Compulsory Education Act, 2009 defines ‘Child’ as a male or female child of the age of six to fourteen years. Elementary education means the education from first class to eighth class. ‘Capitation fee’ means any kind of donation or contribution or payment other than the fee notified by the school. According to this law a child belonging to disadvantaged group means a child belonging to the scheduled caste, the scheduled tribe, the socially and educationally backward class or such other group having disadvantage owing to social, cultural, economical, geographical, linguistic, gender or such other factor, as may be specified by the appropriate Government, by notification and child belonging to weaker section means a child belonging to such parent or guardian whose annual income is lower than the minimum limit specified by the appropriate Government, by notification.

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267 Section 2(c), The Right of Children to free and Compulsory Education Act, 2009.
268 Section 2(f), Ibid
269 Section 2(b), Ibid
270 Section 2(d), Ibid
271 Section 2(e), Ibid
4.15 Conclusion

Indian legislative system has various laws for dealing with the problem of Children, but no law is effectively implemented to protect children from exploitation. So the multiplicity of laws is a bane and not a boon. Also as children are not aware of their rights and related laws on their own, it is their elders who can take care for the protection of their Rights and whether these laws are properly implemented or not. The Juvenile Justice (Care and Protection of Children) Act, 2000 is a very specific law based on a preventive approach to Juvenile Justice but the poor implementation of the laws, lack of support structures, low conviction rates and inadequate resources leads to delay of Justice.272

Apart from this, laws alone cannot give the children their due rights unless the mind-set of the society is changed and they understand that the children too are individuals in their own rights. Legislations are just a means and ways towards the betterment but walking on the way to achieve the goal is the implementation of the laws. So government should emphasis on the implementation by improving the implementation procedure.

The need of the hour is the effective implementation of the laws and making the children aware about their rights. For this there can be awareness lectures in the schools and in the institutions such as, observation homes, Juvenile homes etc., where the neglected children and the children in conflict with laws are made to stay. Also giving legal education in the school can be helpful in multifarious ways, e.g., children will come to know about their rights and duties, and also whatever children study in school they usually share it at home making their parents and siblings also aware of the same.