Chapter-7

INSTITUTIONALISED CHILD ABUSE:
PROSTITUTION, INCEST AND SOCIAL
OPPRESSION
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The Scenario: A Tale of Tears

Child sexual abuse today constitutes an alarming social phenomenon, the instances of which, reported daily, appear to be increasingly widespread.¹ Research of historical sources, however, reveals the existence of the problem from antiquity and that the endeavors of the state to combat it were always intense and systematic. In particular, our research into the original texts of Byzantine historians and chronicles indicates that child sexual abuse flourished even in a religious mediaeval society such as that of Byzantium, a state which comprised the rational continuation of the Roman empire and which was the most important state in the known world for 11 centuries (324-1453 AD). The state with its strict legislation and the church with the spiritual pressure at its disposal both made every effort to restrict this social phenomenon, which in Byzantium took the forms of rape under cover of premature marriages, child prostitution, pederasty, and incest.²

Child prostitution was the result of parents’ decision, in their abject poverty, to sell their daughters for 5 gold coins or to hire them out, as the chronicler Malalas narrates³. The deflowering of the girls was a matter of public auction. Frequently under aged prostitutes satisfied their clients in the brothels with anomalous sexual acts.

Even in today’s modern world sexual exploitation and trafficking in children is an alarming global problem. Tens of millions of children are

² John Lascartos, “Child Sexual Abuse: Historical Cases in the Byzantine Empire (324-1453 AD), Child Abuse and Neglect, Vol. 24, No. 8, 2000, P1085
³ Id, p 1087
already in the commercial sex market, and of these, there are as many as two million girls between the ages of five and fifteen.

According to the report on the State of World Population, 1997, commercial sex is increasing in third world countries of Africa, Asia and Latin America and in Eastern Europe because of high unemployment, poverty, growing inequalities in wealth and increased demand from the ‘haves’. Undoubtedly the use of children in the commercial sex market reflects the distorted nations of sexuality of the adult population of a country. What pleasure adult male derives by inflicting pain upon and terrorizing children needs to be probed. This can be followed by identifying the possible roots of this pathology and taking appropriate measures for its eradication.

Encyclopaedia Britannica, 1987 defines prostitution as “The practice of engaging in relatively indiscriminate sexual activity in general with individuals other than a spouse or friend, in exchange of immediate payment in money or other valuables”. The definition of prostitution is based on culturally determined values that differ in various societies and circumstances. Prostitutes may be of either sex and may hire their bodies for heterosexual and homosexual activities. Through the ages prostitutes have been shunned and reviled upon by the society. They have also been punished and their punishment included stoning, whipping, branding, imprisonment and death. Their clients on the other hand have rarely been touched by the law. Some societies considered male clients, to be a sign of virility.

Paul Johnson in his book Child Abuse pointed out that a number of researchers have claimed a link between sexual abuse on a child subsequently followed by prostitution. Many adult female who have had a history of sexual abuse turned into prostitution. Runaway children can easily become targets for ruthless people who turn them to a life of crime, drugs and prostitution.

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End. Child Prostitution is Asian Tourism (ECPAT), estimates prostitution to be a $5 billion industry. UNICEF estimates that one million children enter the trade each year, mostly in Asia.

The world congress against commercial sexual exploitation of children was held in Stockholm on August 27-31, 1996. The congress was organized by ECPAT. In this congress most governments acknowledged the existence of commercial sexual exploitation of children in their own countries, and such exploitation of foreign children by some of their citizens who travel abroad. Governments adopted wide range agenda for action, which calls for international cooperation in gathering and sharing data and law enforcement.6

Although it varies from country to country in nature, scope and local practice, the commercial sexual exploitation of children is a global problem requiring international cooperation. This illegal industry includes pornography, sex tourism and trafficking in children. It is certainly a multi billion dollar business, linking the most remote village with world capitals and wealthy suburbs. Commercial sexual exploitation of children is now a common problem.

The globalization of child prostitution is a result of large economic globalization fostered in the last decade. The world’s mafia, the corner prime. the brothel madam, the distribution of pornography and the sex tourist, they are at the top of the volcano. Under it lies the corruption of traditional societies by materialism born of economic globalization. Materialism and free market economy have been elevated to an ethical plane from which humans are increasingly viewed as expendable machinery, be it to produce goods or to be brought, sold and rented as sexual toys.

Those who would sell their own children are confused by newly adopted material and moral values. Alienated, abandoned and impressionable young people sell themselves because they have no other options, because

6 Human Rights Watch, Asia Report, 1995
they have been educated by media and by adult role models to equals self worth with the possessions of goods. They think that sex and money will buy them love, control and peer acceptance.

Human Rights Watch, Asia, estimates that there are 20,000 Nepalese girls in Mumbai’s brothels. It adds that the average age of the thousands of Nepalese girls recruited every year for prostitution has reportedly dropped from 14 to 16 years in 1980’s to 10 to 14 years in 1991 despite new laws.

The term childhood generally signifies easy living, easy nutrition, love, warmth, support and an overall affectionate environment. But 15% of India’s two million prostitutes, believed to be children, have a different story to tell. Trafficking and prostitution among children assumes alarming proportions. Nearly 200 girls and women in India are either inducted into or enter the trade everyday. No nation can afford to leave its supreme asset, its children, at the mercy and caprice of sex predators.

A 1990 study conducted by the Central Social Welfare Board in six metropolitan cities reported that 40% of the population of commercial sex workers entering the trade are below eighteen years of age. At least 4,00,000 are estimated to be minors of which 20,000 are annually brought to India from Nepal.

The National Crime Records Bureau in its report of 1994 states that there has been a 100% in increase in kidnapping and abductions in 1994 over 1990, at least 60% of which is for the purpose of forcibly getting the child married. Marriages like these are a well known ruse to induct the girls into child prostitution. Figures of rape in the minus ten age group show an increase of 84% in 1994 over the same in figure of 1990. The corresponding increase in the age group of between two and fifteen years in 55 per cent.

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7 Sara Ann Friedman, First Call for Children, p. 13, December, 1996
8 supra note 5, p.2
10 ibid
What makes children more vulnerable to this exploitation is their economic, social and sexual status. Poverty is an overriding cause. The girl child, already accorded a secondary status in society, is more often than not treated as an expendable commodity to be used for wealth. In communities that practice traditional prostitution, the girl child is set apart for the role. Religion, rituals, cultural factors and traditions in such societies, for example the Devadasi cult, the Bedia and Nat tribes, increase pressure on the girl child to enter the profession.

Deeply concerned by the growing incidence of Child Prostitution, a core group constituted by the National Human Rights Commission has called for urgent measures to make a frontal attack against the problem. The core group stressed the need of convening a meeting of officials of the administration and judiciary of the districts where the problem of child prostitution is acute. Among the measures suggested by the core group were strict enforcement by the Police, setting up of a statutory board for prevention of trafficking, free and compulsory education for children and a sustained media campaign.11

Child sex is a rapidly growing business in India, where nearly five hundred thousand children are prostituted even during their tender age of their first 15 years. Now the scare of the killer HIV has translated into a rise in demand from prostitute from education users for supposedly ‘uninfected’ children.

Children do not come flocking to brothels, they are brought through illegal but highly systematic, organized trafficking networks run by experienced individuals who buy, transport and sell children into prostitution.

National Crime Records Bureau (NCRB) has reported 206 cases of procuration of minor girls in 1994, 34 cases of selling of girls for prostitution, 4 cases of buying of girls for prostitution.\(^\text{12}\)

There are some terms used by pimps, clients and passive pleasure seekers in local parlance for the children in flesh trade: Piece, maal, eveningsexy, sundariyan, fresh child and their acts as ‘Power shot’. ‘dhanda’, ‘ganda kaam’ and ‘kothe me kaam’.\(^\text{13}\)

They describe a child or a human being as a ‘piece’ is to convert in into a mere thing devoid of life, consciousness, feelings and emotions. This term therefore refers to children as commodities or maal in local parlance, to be used in trade dhanda. Maal and dhanda describe certain specific features of a market. The former refers to a cheap commodity. The latter describes as illegal and immoral market where there are no rules and regulations. Power shot is used to describe a situation where a man can ‘consume’ more than one child to satisfy his sexual appetite. A person who can consume three has more power shot than the one who has consumed one. This dimension goes into describing children as evening sexy.\(^\text{14}\)

These victimized young girls are also described as sundaris giving expression to a deep-seated repressed sexual disposition: Beauty is a sign of loose character. To appear beautiful can have a meaning other than to seduce men and solicit them for sexual pleasure.

The girls are continuously raped in order to develop their sexual urges. They are subjected to utmost savagery; sometimes red chillies and even burning cigarette butts are applied to their private parts. Also many times the weight valve of a pressure cooker is removed, a pipe is inserted and hot steam is injected into the minor girls’s vagina, as a means of enlarging it. It is found

\(^{13}\) *Supra* note 5, p.2.
\(^{14}\) *Ibid*
that cylindrically cut 'pith' or thermocol was inserted inside the vagina regularly to expend the passage for big built men. These girls are forcibly made to eat snake meat, which is supposed to be an aphrodisiac. Once in the professional the girls contract various skin diseases. STDs, tuberculosis, and are burdened with unwanted pregnancies.\footnote{Supra note 9, p. 16.}

In developing countries like India there is a large scale population influx from the countryside into cities in search of sustainable means of livelihood. This is an ever increasing force of migrant labour. Disjointed from their families they are inclined to visit red light areas. It is reported that they prefer girl children from the satisfaction of their sexual desires and appetite because they are subservient and docile, and they perform whatever they are asked to do.

State sponsored 'destructive' development projects like big dams, mines, industries and power projects are creating havoc in the daily lives of tribes and especially their women folk. These people are deprived of their resource base- land, forest, river etc. Displacement pushes them to the cities where children are forced to become bonded labour. Migrant tribal child labour have been treated as commodities which can be bought and sold at a very low price. The lives of girls children and women are miserable, they become labour as prostitutes. At the altar of progress the self-dignity and identity of tribal girl children are being sacrificed for the development of the nation. Children are forced to shoulder the burden of subsistence. In some cases their parents push them to the flesh trade.

‘Motivations’ Behind Child Prostitution

Girls do not choose to enter prostitution on their own free will. Compelling reasons force them into this profession. An approximate 75,000
girls and women enter the trade every year, 80% of them do it out of situational compulsion.

Contrary to popular belief, poverty is but not the root cause of prostitution. It gets coupled with the prevailing socio-religious status of girls, attitude of the general public and, most importantly, the caste structure.

Prostitution is no longer a localized activity. Rapid industrialization, flourishing tourism and migration of population from state to state has resulted in an unprecedented increase in the trafficking of children. In the fitness of this we may have a look upon some special factors which make the exploitation of children easy. These factors are as given below:

**Poverty**

Often parents/guardians are compelled to sell their daughters in order to provide for basic sustenance. According to figures available with the UNDP, around 5,00,000 girls children in India are victims of immoral trafficking. Poverty and exploitation combine to make girls and women a cheap commodity. Low yielding agricultural land, lack of skills, small or no land holdings, no alternate sources of employment; all result in helpless impoverishment. Economic hardships provide the ideal environment for germs of exploitation to flourish.

A narrow dingy street in Gokak, Belgaum District in Karnataka. A small voice said:

"Ma, I wanted a velvet blouse. My mother scolded me. Father, he was always in a drunken stupor. There was hardly any food to eat. So I ran away from my house. I met this uncle at the bus stop. He promised to buy me a velvet blouse. Then I don't know what happened until I found myself in a dark room in Gokak village."¹⁶

¹⁶ *Supra* note 9, p. 1.
This little fourteen year old child is forced to serve about twenty clients a day. She earns about ten rupees for a single day’s work. Hers is the story of most of the children in prostitution. She wants to get out but is trapped. Her questions are “where to go? How to go? How to support myself? What about Madam’s loan?” These questions remain unanswered.

In Kalahandi Orissa, a man recently sold his daughter for 30 kg. rice. Meghna, Rehana and Poonam all 12 years old who were also sold by their parents are now struck in a red light area. Poverty, unemployment, illiteracy are driving young girls from villages into the brothels of cities. Men from cities are going to remote areas, marrying poor girls and them selling them to brothels. Other after assuring employment to girls of villages are bringing them to the red light areas.

**Cultural Traditions**

The traditional cultural practice of dedication of girls to gods and goddesses in temples has been in existence for ages. As there norms gained social sanction of feudal societies, prostitution as a system became institutionalised. Various rituals and ceremonies marked these dedications, and the person who paid for these festivities purchased the rights to the girls’ virginity. Once initiated into the profession, the girl became the property of wealthy men and a wage earner for her family.

Patriarchy has given religious sanction to child prostitution in certain communities. In the past children were “dedicated” under the garb of religious practice to local prostitution. The practice continues today but the children end up in urban brothels.

Devadasis, little girls of just 12 or 13 from 80 percent of the brothel population in Maharashtra and Karnataka. Interestingly, the ‘signs’ used to identify the “chosen” child (who is then dedicated to the goddess Yellamma)

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17 *The Times of India*, July 7, 1996.
are those of ill health—white patches of eczema, leprosy even mental retardation. Could it be assumed that prostitution was one (Lucrative) way of making use of otherwise “worthless” children. This is a debatable question.

Tribes who, in the past, lived on the earning of their prostituted women are now part of a systematic lucrative urban traffic in child prostitution. The best organized are Bedias of Central India who send their daughters, traditionally famous for their erotic singing and dancing, to most large Indian cities.

How these historically oppressed groups have enforced their own “traditions” is revealing. The Dommara tribe of Telengana, first “marries” at puberty, the eldest girl of every family to the village deity. Then, she is raped for a week by elders and priests within the temple. Her family and the villagers feast outside. Scores of such children die of injuries and shock. Those who survive become venkatasanis, prostitutes for the village males. their income is the family’s main livelihood. Once they are twenty they are ostracized by the villagers. Entire villages of venkatasanis live together in the Warangal and Nizamabad districts of Andhra Pradesh.

Even though many states have banned this practice, various reports indicate that this dedication still continues on a diminished scale, such as the Jogini, Devdasi and Basvi system in Orissa, Andhra Pradesh, Maharashtra, and Karnataka. In some other communities the practice of prostitution has been accepted as tradition and given the name of Parivarik dhanda. The reasons are again economic among the tribes like Bedias, Rajnats, Kanjars, Kolta, Banchra, Mahr, Matang and Sansi.

**Industrialisation and Migration**

During the last decade several companies have set up units in different parts of the country. This has led to increased demand for labour and

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improved transportation facilities. Population explosion, low literacy levels, low skill building opportunities, denial of access to resources, diminishing common property and vulnerability to natural calamities have resulted in the rural poor migrating to the cities. The continued migration of men seeking employment in big cities like Delhi and Bombay has greatly expanded the flesh trade. 80% of child prostitutes are found in five major metropolitan centers- Mumbai, Delhi, Kolkata, Madras and Bangalore. When the rural poor migrate to cities, traffickers take full advantage of their absolute poverty and lure their children into this profession with promises of money and jobs. Often families are left behind in villages while men folk who migrate to industrial centers, satisfy their sexual girls prostitutes.

Tourism and Trafficking

With the advent of tourism in late 19th century, the trafficking in human beings became an international phenomenon. Since the process of tourism is primarily economic in nature it provides developing countries the perfect opportunity to deal with balance of payments. Inducements are abundant for promoting prostitution. Net effect of sex imbalances, therefore, created by migration of labour, travelling businessmen and tourists lead to an increase in the demand for women and children. This in turn drives the age of victims lower and along with girls it pulls into the net male children as well.

The flesh market remains so sustained. Constant supply is maintained by pimps, procurers and brothel owners. They willingly pander to the fancies of the market gods through unscrupulous act of alluring, abducting, pornography and trafficking in human beings. Apart from sex tourism, tourism has an indirect effect upon promotion of prostitution. The mimicry effect of rich tourists is seen on locals as well. Rich tourists, demonstrating lavish life-styles, influence young people to go after easy money, a fact which further aggravates the problem. If on goes by the experience of countries like
Thailand, Philippines and Sri Lanka, India appears to be on the brink of a massive free-fall into organized tourist flesh trade.

**Threat of AIDS**

One of the main causes for increase in demand for young girls is the myth that intercourse with a virgin can cure a man of sexually transmitted disease and can rejuvenate him. It is also a widely prevalent belief that sex with a girl child does not expose the man to STD and HIV. This however, is a misconception as children are more prone to cuts, lacerations and wounds. Child sex workers often suffer from skin diseases, vaginal discharge, menstrual problem, genital wants etc. As the threat of AIDS mounts and it becomes the largest killer disease, child prostitutes as a community, become the largest carriers of the deadly virus.

**Relevant Legislation : A General Account**

There are several special and local laws related to the prevention of sexual abuse of children. Articles 23, 35 and 39 of the Constitution of India provide them protection. The criminal Justice system of the country provides several laws to prevent the sexual abuse and trafficking of children. These are referred to here one by one.

**The Immoral Traffic Prevention Act, Amended in 2006**

This act seeks to protect all children upto the age of sixteen and all children between sixteen and eighteen years from sexual exploitation.

**Indian Penal Code 1860**

Under this code, rape\(^{19}\), extortion\(^{20}\), causing grievous hurt\(^{21}\), kindnapping\(^{22}\), procuration of minor girl\(^{23}\), importation of girl from foreign

\(^{19}\) Section 375, *Indian Penal Code*

\(^{20}\) Section 383.

\(^{21}\) Section 322

\(^{22}\) Section 366

\(^{23}\) Section 366 (A)
country\textsuperscript{24}, wrongful confinement\textsuperscript{25}, buying and disposing people as slaves\textsuperscript{26}. are criminal offences.

\textbf{The Juvenile Justice (Care and Protection of Children) Act, 2000}

Cruelty to Juveniles under this Act is punishable with upto three years imprisonment and fines.

\textbf{Children (Pledging of Labour) Act 1933}

Calls for penalties to be levied against any parent, middleman or employer involved in making or executing a pledge of child’s labour.

Moreover there are a number of international human rights conventions against the sexual abuse of the child. These are:

4. International Covenant on Civil and Political rights, 1966.\textsuperscript{27}
5. International Covenant on Economic Social and Cultural Rights, 1966.\textsuperscript{28}

Section 5 of the Prevention of Immoral Traffic Act, 1956 (Amended in 2006) lays down that any person who procures a child for prostitution or induces a child to go from any place with the intention that she may become a prostitute or arranges to take a child with a view to enable her to bring her up to carry on prostitution or causes or induces a child for prostitution shall be punishable on conviction with imprisonment for more than seven years or extending upto life. This offence is treated as a cognizable offence.

The Act also provides that where a minor child is found in a brothel and on medical examination it is found that the child has been sexually

\textsuperscript{24} Section 366 (B)
\textsuperscript{25} Section 368
\textsuperscript{26} Section 370
\textsuperscript{27} Articles 8 and 24.
\textsuperscript{28} Articles 7 and 10
abused it will be presumed (unless the contrary is proved) that the child has been detained for prostitution or has been sexually exploited for prostitution.

Legislation has been brought to combat child prostitution but child prostitution is on the rise. Instead of implementing the law, the police seem to be hand in glove with the brothel keepers, pimps and ‘madams’. The law can be easily bypassed by arresting child prostitutes as vagrants and missing children under the Juvenile Justice Act, 2000. Therefore even though child prostitution is on the rise, in many states, very few cases have been registered under the Immoral Traffic (prevention) Act. Even where cases are registered, the prosecution fails because of lack of evidence.

According to a report, during a raid, children in brothels are passed off as relatives of prostitutes. And if some child prostitutes are rescued the courts release them when the brothel keepers produce fake certificates.29

Courts seem to be insensitive to their plights. But two significant Supreme Court judgements have shown some concern towards the welfare of these unfortunate ‘lesser’ children.

In the case of Vishal Jeet v Union of India30 a petition was filed under Article 32 of the Constitution at the instance of an Advocate by way of a Public Interest Litigation. Seeking that certain directions must be issued to the Central Bureau of Investigation, the petition urged the court:

(a) To institute an enquiry those police officers under whose jurisdiction red-light areas as well as ‘Devadasi’ and ‘Jogan’ traditions are flourishing and to take necessary action against such erring police officers and law breakers.

(b) To bring the children of the prostitutes and other children found begging in streets and also the child prostitutes to protective homes and to rehabilitate them. The writ petition said that many unfortunate teenaged female children are being sold in various parts of the country for paltry sums even by their own parents who find themselves unable to maintain

29 Dr. Mamta Lakhmanna, Rights of the Child, pp. 117-118, NLSUI
30 Vishaljeet v Union of India AIR 1990 S.C. 1412
their children on account of acute poverty and unbearable miseries. They sell their children hoping that their children would be engaged in household duties or manual labour. But they are actually selling them to the broker in the flesh trade. Once those unfortunate victims are taken to the dens of prostitution and sold to brothel keepers, they experience a shock and are brutally treated and confined till they surrender.

The petition had cited certain lurid tales of sex alleged to have been confessed by some children and girls who had escaped or were rescued. The petitioner also stated that the 'Devadasi' system and the 'Jogan' tradition are still prevailing in some parts of the country and should be put an end to. It is a well known fact that this prevalent in several parts of the country including Saundatti in Karnataka where thousands of people still gather at the local Yellamma temple to dedicate a large number of very young girls as Devadasis of the temple.

The petitioner also filed nine affidavits said to have been sworn by nine girls who were pleading to be rescued and a list of nine girls, were also attached, who swore the affidavits.

The Supreme Court held that this matter required a humanistic rather than a purely legalistic approach from different angles. The court also deplored the fact that many poverty stricken children and girls in the prime of their youth are taken to flesh market and forcibly, pushed into the 'flesh trade' which is being carried on it utter violation of all canons of morality, decency and dignity of human kind.

The court went on to say that this malignity cannot be eradicated either by banishing, branding, scourging or inflicting, severe punishment on these hopeless and helpless victims, most of whom are unwilling participants and involuntary victims of compelling circumstances and who are finding no way to escape and who are weeping or wailing throughout. The court gave certain directions to the State Governments and Governments of the Union Territories to set up advisory Committees which will make suggestions of measures to eradicate child prostitution.
The second case of *Gaurav Jain B. v Union of India*\(^{31}\) was also under Article 32 of the Constitution and by way of public interest litigations for providing separate schools for children of prostitutes. The court held that segregating prostitutes’ children would not be in the interest of such children. But the children of prostitutes should, however, not be permitted to live in undesirable surrounding of prostitutes home. This was particularly so for young girls whose mind and body are likely to be abused with growing age for being admitted into the profession of their mothers. The court constituted a committee to examine their problem taking into consideration the different laws relevant to the matter and place its reports before the court within eight weeks.

**Effectiveness of the Legislation**

Prostitution is not prohibited under the amended Prevention of Immoral Trafficking Act, 1986/2006. Despite the amendments the legislation falls short of its objective and has not proved to be an effective measure check commercialised flesh trade. It acts more as a supplement to the provision of the Indian Penal Code concerning kidnapping, sale, abduction, seduction or wrongful restraint of women and children, emphasizing only the punitive aspects of the problem.

In *The Suppressions of Immoral Traffic (Prevention) Act, 1956* prostitution was defined as “the act of a female who offers her body for promiscuous sexual intercourse for hire, whether in money or in kind.\(^{32}\) Under the amended definition, prostitution means the sexual exploitation or abuse of person for commercial purpose. In the new definition the emphasis shifted from a mere act which goes against societal norms to a more serious criminal offence of sexual exploitation and sexual abuse.

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\(^{31}\) *Gaurav Jain B. v Union of India* AIR 1990 S.C. 1412

\(^{32}\) Section 2(f).
A commercial sex worker as long as she is above 18 and solicits peacefully and voluntarily and keeps her activity outside the vicinity of public places, notified areas, is not punishable under the law. However, running or abetting a brothel, living on the earnings of prostitution, procuring or inducing a talking persons for prostitution, prostitution in the vicinity of public places and seducing or soliciting for the purpose of prostitution are punishable.

A brothel has been defined as “any house, room, convenience or place or any portion of any house, room of place which is used for the purpose of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes.”

The provisions of the Act are deficient – while on the one hand these do not prohibit prostitution, it penalizes commercial sex workers who are caught soliciting customers, ‘whether by words of gesture of willful exposure of a person’ and this can be punished with imprisonment up to six months and or fined up to Rs. 500. Also, persons soliciting on behalf of the commercial sex worker in a public place can be similarly punished. Thus, pimps and procurers can also be punished. It is ironic that a sex worker can practice her profession inside a house but cannot solicit clients on the streets.

However, despite the punitive provision, the law has several loopholes and inadequacies. It does not punish the client and it does not make any provision for the rehabilitation of women and children who are rescued from the brothel. There is no single body which can oversee the implementation of this Act. The definition of prostitution is vague and is seeks to punish women and minor girls, who are the victims.

What is aimed at under this Act is not abolition of prostitutes and Prostitution as such and make it per se a criminal offence or punish a woman because she prostitutes herself. The purpose of the enactment is to inhibit or

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33 Section 2(a), The Suppression of Immoral Traffic in Women and Girls Act, 1956 as amended in 2006
abolish commercialized vice namely the traffic in women and girls for
purpose of prostitution as an organised means of living. Various provisions
tend to strengthen such a view. But there has been some exceptions, and that
is found in sections 7 and 8 of the Act, Section 7 makes punishable
the practice of prostitution in or in the vicinity of certain public places such as
places of religious worship, educational institutions, hospitals etc.34

The Police Game

Police are directly responsible for the perpetuation of child
prostitution. They extort money from traffickers, brothel owners or they are
themselves involved in trafficking.

_Bhartiya Patita Udhar Sabha_ (BPUS), a voluntary organization based
in Delhi, in a letter to the Home Minister has mentioned that “Police are
involved in staged process called registering the victims. After a minor girl is
brought to a brothel the _Kotha malkeens_ calls on the Division Officer and the
Beat Officer requests them to make a new entry of a newly purchased minor
girl, pay Rs. 10,000 to the Police. Reliable sources also reveal that minor girls
have to first satisfy the sexual urges of these SIs, ASIs, Havaldars or
Constable.35 Then a trumped-up case is registered against these minor girls
showing that they were trying soliciting clients in a public place. These minor
girls are arrested and kept in the lock-up and then police prepares a challan
where the minor girl’s age is written as 21 years to transform overnight the
minor girl into an adult. After this these minor girls are produced before a
magistrate and released on bail. Police throws all norms of civil society and
violates all the rules and regulation with impunity to help the perpetuation of
such heinous designs adopted by _kotha malkeens_”.

The _Sabha_ further says that the _kotha malkeens_ get an agreement
signed by the newly purchased girls on old stamp paper (back dated) worth

34 _Shanta v State of Gujarat_ AIR 1967 Gujarat 211
35 _Supra_ note 5, p. 8
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Rs. 2 to Rs. 15 that this girl will work as her domestic servant willingly. Simultaneously by other promissory note that the girl has taken a loan of Rs. 40,000 from the malkeen. In this process the minor girl turn captive and remains in the condition of servitude. Originally most of the minor girls are brought for Rs. 10,000. The Police takes a bribe of Rs. 10,000 to frame the charges while Rs. 20,000 is spent for getting a bail. Expenses incurred in the process is Rs. 40,000 which is borne by the kotha malkeens. However, this amount remains as a debt on the minor girl.

BPUS also says that the Police has designed a slab structure of protection money to be collected from kotha malkeens if they purchase a new kotha. The structure is as follows:

(a) Rs. 50,000 for a brothel consisting of 10 minor girls.
(b) Rs. 1 lack for a brothel of 20 minor girls.
(c) Rs. 3 lack for brothel having upto 50 minor girls.

The BPUS further charged that out of Rs. 55 paid by a customer Rs. 10 went to the Police. The Police receive cuts according to ranks on daily basis. A Constable could expect Rs. 25, Head Constable Rs. 40, Assistant Sub-Inspector Rs. 80, Sub-Inspector Rs. 100 and SHO Rs. 500. The district branch Police which addresses special categories of crimes, collected monthly payments of about Rs. 300 per kotha or ten girls and Rs. 500 for larger kothas having 100 girls. This is why hardly any minor girl is caught during special raids. Most of these raids are made to fulfill Police quotas or to carry out vendettas against those girls who did not pay their routine bribes.

Modus operandi is planned in such a manner that they deliberately catch the adults without nabbing the minors. The vicious circle is such that those caught are sent to the juvenile remand home from where they are released on bail as they are adults. At the end these adult girls land up again in the brothels. For instance, in October, 1996 out of five girls hounded by the Police under special raid only one was found to be a minor. In 1994 two
special raids out of the forty four girls arrested only two were minors. In June 1997 out of seven girls nabbed only one seemed to be a minor.

**Lacunae and Loopholes in the Law**

A Major lacuna in the existing legislation is that the age of the child in all these Acts varies. The Juvenile Act 2000 defines children as being below 18 years of age, but The Indian Penal Code, in two different schemes, outlaws seeking a wife below 15 and 12 years. The Traffic Prevention Act 2006 says a female child should not exceed 16 years of age, while a minor is defined as being up to 18 years old. All these laws need to be amended to be brought in conformity with the International Convention of the Rights of the child to which India is a signatory and which defines a child as not exceeding 18 years of age.

In addition, the documentation regarding the buying and selling of girls is very poor because it is often done with the connivance of parents and guardians and law-enforcing agencies. Although there is a law against rape, there is no special law against child sexual abuse. Police conduct during raids is often violative of human rights. Children are subjected to secondary victimization by investigative agencies which ask them to recall minute details of sexual acts and experiences.

As regards their failure to prevent trafficking Police claim that social crimes against women and children come very low on their priority list after law and order, VIP duties, property offences and serious bodily harm. They are also reluctant to get involved because of absurd fears of contacting AIDS. The law enforcement agencies have been weak and inept in handling trafficking and also do not see the clients as the accused.

The actual incidence of sexual abuse of girl children is not known in India. The statistics of its prevalence is hard to find. Many of these do go unreported because most of the victims and their family members do not want
to talk openly about their trauma and also because they have no faith in law. As rightly stated by the eminent sociologist Prof. M.N. Srinivas that the sexual abuse of children is rampant, yet it has escaped the researcher as the fear of stigma is a major hurdle, especially among the middle and upper class families.\textsuperscript{36}

This was corroborated by the findings of a study conducted by BBC in which “one out of every ten women reported some kind of sexual abuse during childhood by known persons ranging from father, uncles to doctors and counsellors.”\textsuperscript{37}

As reported in India Today for every reported case at least 100 would go unreported, more so if the assailant is father, brother, brother-in-law, cousin, servant or close relative.\textsuperscript{38}

It is a matter of deep concern that despite all the efforts of legal and other functionaries connected with it, the sex crimes against girls are increasing. The figure is appalling when the fact is taken into account that most of these sex offences go unreported for fear of harassment, shame and social disapproval.\textsuperscript{39} This trend appears to be true to both rural and urban societies.

**Incest Abuse**

Liz Kelly defines incest on the basis of the interviews that she carried out of 60 women during her research on sexual violence. These women who explained their experience of sexual abuse as incest described a range of experiences right from fondling and masturbation to eventual rape. It was found that “most of the abusers were biological or social father, but other abusers included a grandfather, a cousin who was treated as a brother and, in

\textsuperscript{38} \textit{Supra} note 1.
In one woman's case, a number of cousin and uncles who live in the household. Kelley further observes that in incestuous abuse the abuser lives in and is considered as a member of the household or family, which presents him chance for continual and easier sexual accessibility to the girl child as well as other forms of control over her. What is most disturbing and disillusioning is the fact that the family members or the relatives themselves sexually abuse the girl child in the home itself.

The newspaper reports of India testify the fact that girl children in the age group of 6 to 12 years have been victims of sexual abuse by the family members. Not only this, these reports also uncover the fact that small girl infants of even 2 to 5 years of age become victims of sexual violence—rape by their own father, uncle or a step-father. While researching on abortion, Meenakshi Apte discovered that cases of teen-age pregnancies were incest victims.

Here it must be made clear that sexual assault is a crime even if it has been committed by the victim's father, brother or any other member of the family and that offender is likely to repeat his behavior if steps are not taken to stop him. It is encouraging to note, that now there is an increasing trend among the victim and family members to speak about incest and even seeking professional and legal help.

In an incident a sixteen year old girl belonging to Loni Village in Ghaziabad District was allegedly raped by her father over a period of one year and made pregnant by him. She was abandoned by her family and other relatives after she lodged a complaint against her father. The girl filed the report despite pressure from her mother and senior village folk not to do so.

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42 Supra note 40.
43 The Times of India, June 2, 1997.
The girl’s father was arrested after his daughter filed a complaint with the police under section 376 of the Indian Penal Code.

The Complaint says, “My father raped me at knife point about one year ago when the rest of the family was away.” The girl’s report goes on to say that her father kept abusing her sexually. Finally she became pregnant by him. “And, three months ago my mother took me to Delhi and got my two month old foetus aborted.” In her compliant to the police, the teenager alleges that after abortion her father attempted to rape her again. And when she resisted he allegedly beat her and then threw her out of the house. It was then that she filed a complaint. Of her family and relatives, only her paternal grandfather is willing to accept her. But the girl says, “He is like others in the family who beat me for seeking justice.”

Earlier, an under-secretary in the Central Government, a resident of NOIDA, Jhaku, used to molest his own daughter along with some of his colleagues while watching some pornographic film. It started when the girl was merely 4 years old. Now she is 8 year old. That means she had to suffer such ‘pleasure trips’ of her father for the past four years. Too young to understand the word ‘rape’ or ‘molestation’ but able enough to be traumatized by such incidents, she narrated her harrowing tale to her mother, who in turn reported the matter to the police.

After the Home Ministry’s permission police nabbed the accused and launched legal proceedings against him. Of late it has been learnt that the charge of sexual assault and molestation has been dropped because ‘vaginal penetration was not complete! He will be prosecuted for less graver charges, like obscene gestures towards a child and so on. Is this justice? Who will compensate for the mental agony, endless shame and pain the child had to go through? Where is she to seek justice? Is the charge of obscene gestures

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44 Ibid
adequate enough to punish the offender? Who has benefitted from the dilution of the charges? Does our patriarchal society have any answer to these questions?

In another case the newspaper reported that the victim had repeatedly been raped by her unemployed father since the last six years. And the ‘act’ used to start as soon as her mother ventured out of their slum for earning a living as domestic help. The six hours she happened to be at her school were her only recess.\(^{46}\)

_Sakshi_ a Delhi based NGO made a survey of 357 school going girl children and what they documented is: 63 percent of the girls had been exposed to serious sexual assault or rape; 22 percent had to experience the ugly face of lust; 29 percent had undergone forced oral sex, squeezing of breast, genitals etc. Most frightening, at least in 30 percent of the cases the perpetrator was a trusted person of the family, including uncles, fathers, and even grandfather.\(^{47}\)

Another NGO _Prerna_ works among adolescent girl children and young women in and around the border districts or Delhi. Their experience is saddening. In most of the cases, the molested girl child feels that it was sheer bad luck which brought her such distress.\(^{48}\) And she out of fear and helplessness cannot open her mouth and thus suffers repeated assaults for days, months and years. If the family elders come to know about such cases, the unfortunate girl is hurriedly married off so that family honour is saved! No one asks any question whether the girl’s life is thus being saved! She suffers from seriously low self esteem, and loses faith in humanity altogether. That affects her later conjugal life badly. With the added burden of maternity, coping with a new family and its norms, the girl is forced to go through a personal hell.

\(^{46}\) _The Pioneer_, November 7, 1996.
\(^{47}\) _Supra_ note 45.
\(^{48}\) _Ibid_
In a case\(^{49}\), (reported with pseudo names), the man was alone at home with Mary, the four year old daughter of his girl friend, Tania. He said:

“I told Mary to take her clothes off and lie on the couch. She started crying when I told her to lie down. She had all her clothes off except her blouse. I have a daughter of the same age as Mary. I was hoping someone would come so I would not do it. Something in my mind told me to go ahead and do it. I did not take off my Pants. I just unbuttoned my Zipper and put the head of my private part in her. Then I just snapped out of it and I quit. I did not know what to do. I didn’t know what I’d done. I picked her up and said, ‘It’s all over’.

I had her in my arms and seen all the blood. I made to sit her on the toilet in the bathroom. I got the sheet from the couch and put it in cold water. I washed up all the blood on the floor of the living room where I was holding her. I cleaned the blood off her. She was bleeding pretty fast then. I put a lot of toilet paper between her legs. I put it there to stop the bleeding. Then I laid her on the bed and covered her up. I asked her for a kiss. I told her I was sorry. She looked at me and said “O.K”.

Then her mother came home and we started watching television. I went into Mary’s room and moved her outer side of the bed so she could watch the television. When I lifted up the blanket, saw a big old splatter of blood. I knew I had to tell Tania something. I told her I hit Mary with a rolling pin. I told Tania to go and look at her. At first she did not want to go. Then she went in the bathroom and locked the door. Then she came out. I could see that Mary had thrown up. Tania told me to call the ambulance.

I asked Tania what she was going to tell them. She then told me to leave and I went down the street. I did not know what to think. I was thinking of committing suicide. I did not think I would ever be able to live it down.”

\(^{49}\) John M. MacDonal, *Rape-Offenders and their Victims*, p. 21, Charles C. Thomas Publisher, USA.
Assault by Outsiders

‘Blood is said to be thicker than water’. When one is not safe in the hands of one’s near ones, how can we expect safety in the hands of the non-relatives? The suffering of the girl child at the hands of the merciless outsiders can be symbolically represented here by few such cause recently reported by the media.

A frail 10 years old Dalit girl from the nearby Sultanpur Kunali village was raped by a 24 years old youth who is a son of an influential person belonging to the same village. The incident occurred in the afternoon when the girl was going to collect fodder accompanied by her mother and three other village women. The accused accosted them, dragged the girl to the nearby sugarcane field and was brought to her residence after four hours by the terrorised family members.\(^50\)

In another case a 13 years old girl was beaten up, gang raped and then strangulated by four youths at her residence in Mahrouli. According to eyewitnesses, the incident occurred when the daughter of an agricultural labourer was about to go to bed. She was alone at her house as her parents had gone to a nearby village for some work. Four persons allegedly made a forced entry into her residence, beat her up mercilessly when she refused to surrender to their advances and then gang raped her. They then strangulated her.\(^51\)

In a recent case a baby girl aged 1½ years was sexually assaulted by a boy in the neighbourhood while her mother was busy with household work. The neighbour had bolted the room from inside and subsequently assaulted the child by inserting the penis in her rectum. As a result of this assault, the anal region of the child was injured and she started bleeding. Hearing the shrieks of the baby the mother came running and knocked at the door, but without

\(^{50}\) *The Times of India*, July 27, 1997,

\(^{51}\) *The Times of India*, August 10, 1997.
any response. As the baby continued crying the door was broken open and the accused was caught red-handed.

In another case received from Lawrence Road Police Station, New Delhi, a five year old girl was enticed by a boy in the neighbourhood. He sexually fondled the girl, caressing her private parts taking care that she was not hurt and avoided penetration in the vagina. After a few minutes he ejaculated and the drops of semen fell on his as well as the girl’s clothes. He feared that the girl would disclose the act to her parents, so he conveniently strangulated her to death. Semen stains were identified on the clothes of the girl as well as the boy on examination in the laboratory. However, no blood stains were detected. The laboratory examination corroborated the story.

In another incident a ten year old girl of village Satbari Police Station Mehrauli was raped by a boy in a wheat field and murdered subsequently by strangulation. The accused then buried her in the same field. The incident had terrorised the villagers. Blood and semen stains were found on the clothes of the girl and the boy. The group of semen detected on the vaginal swab was also identified. The forensic scientist who was summoned in the court of Additional District and Session Judge, New Delhi was put through a very detailed cross examination but the defence could not save the accused who was sentenced to life imprisonment.

**Evidential Value of Blood and Semen Stains**

Stains of victims’ blood are especially helpful in reconstructing the crime. The victim’s blood on a suspect’s clothing is important evidence. Similarly the victim’s menstrual blood may be found on the clothing of the suspect in a rape case. The presence of semen stains on the clothes of a woman furnishes stronger evidence of attempted intercourse than their discovery on a man. The presence of semen in the vagina is a proof of intercourse. The blood/semen evidence may be extremely important in establishing the possibility of guilt or innocence of a person held in
connection with a crime. Serological examination of stains in certain cases may be used to exclude some suspects who are being held or investigated.  

In the sensation Chopra children murder case in Delhi, extensive and meticulous serological examination of the blood stains detected on the crime-car, clothes of the victim and the accused persons, provided very useful information linking the car and the accused with the crime. The information obtained by advanced testing methods proved extremely useful especially in the absence of specimen finger impression of the deceased children. Both the person were convicted and sentenced to death.

Often a question is asked as to how long sperms in the vagina survive after sexual intercourse. The sperms are cleared from vagina rather fairly rapidly and may not often be found in the post coital washing of swab. Loss of semen from the vagina is primarily due to drainage. The effect of drainage is enhanced by menstruation and sometimes by bathing. In such cases, evidence to substantiate the allegation may be found in the material obtained from the skin and hairs. Sperms may survive in vagina from 30 minutes to about two weeks after the intercourse. Seminal Acid Phosphate may be detected upto three days after the intercourse. Seminal blood group antigens may be detected within 48 hours of intercourse. It is, therefore, necessary that the medico legal examination of the victim is carried for laboratory examination collection and sent to the laboratory immediately thereafter. This explains the absence of semen in the vagina of the victim girl in most of the cases.

Assault in Schools

Cases of girl student victimization by teachers have started coming up in the news. One such news came from Kinnour district of Himachal Pradesh. The man taught class six students. He allegedly molested some students even

as he told the other students to put their heads down and not to look around till he told them to do so.\textsuperscript{53}

The incident took place in the tribal district. Incidentally the day coincident with the tribal belt celebrating the Phagli fair, an occasion when the local people drink and make merry.

Six girls and a couple of boys were allegedly molested. The classroom was bolted from inside to prevent anyone from coming in. One of the girls escaped through a window and raised an alarm bringing a large number of people to the school. The incident would perhaps have gone unreported because people were against filing any report on the plea that the names of the girls would be divulged and this would bring disrepute and shame to their families. The Superintendent of Police of the district Pradeep Kumar, however, took cognizance of the matter and ordered an inquiry on his own. On the basis of this, a case was registered under section 345 of I.P.C. against the teacher.

In a latest case the National Human Rights Commission (NHRC) has recommended the dismissal of a physical training instructor in Rajasthan for allegedly raping at least nine minor school girls. He was also directed to pay an interim compensation of Rs. one lakh to a victim who becomes pregnant.

It has been reported that the accused was living in the games room in the school where girl students were called for rehearsal for Independence Day celebrations. It is alleged that he used to hold back one girl every day after rehearsal and rape her. The accused raped nine minor girls aged 14 to 16.\textsuperscript{54}

Assault upon Insane Girls

A girl child with mental disabilities can normally have very few friends. So they welcome whatever little attention they get. That makes them soft and mute targets for sexual assault.

\textsuperscript{53} The Times of India. April 10, 1997.
\textsuperscript{54} The Hindustan Times, October 6, 1997.
According to the report of a newspaper five years ago Saroj, who has a severe mental handicap, was sexually assaulted. The case was dropped because the police refused to record her statement at home.55

Another girl Preeti, a mentally handicapped teenager, was raped her brother’s friend. Her parents blamed their fate and her, and so no complaint was filed.56

These are not rare incidents. Nearly all girls who are mentally handicapped go through sexual abuse at some point or the other before they are 13 or 14, but few cases come to light. Saroj’s mother living in Delhi, fought many battles for justice but the war was lost before it had begun. Her first battle was with her husband, who did not want to talk about the “shameful” incident. Then it was the area Police, who were reluctant to register a case. An Inspector of Police came but when he saw Saroj, he changed his mind. Police Inspector said his colleagues would laugh at him if he registered a case on the statement of a mentally handicapped girl. Finally, after speaking to senior Police officers, she managed to get the case registered.

The Police were not ready to call the culprits to home so that Saroj could identify them. The mother of the victim pleaded that she would not be able to do it in a Police Station, which is an unfamiliar place for her. But they refused saying that rules do not allow it.

Problems of this kind crop up because it is all by rule of thumb. If a Police Officer wants to make an exception, he may do it. If he goes by the rule book, there is no special provision. It seems, with no express legal provision to deal with cases of mental handicap, few cases involving sexual abuse of such people can stand trial.

There is no express provision in law relating to people with mental handicap. Section 118 of Indian Evidence Act 1872 says: A lunatic is not incompetent to testify unless he or she is incapable of understanding the issue. Though testimony of a mentally handicapped person is not out rightly excluded, the section excludes statements of people with unsound mind.

The law does not appreciate the distinction between mental illness and handicap. In the context of criminal liability, or the capacity to stand trial as provided under section 328 and 329 of Criminal Procedure Code, there is not distinction between mental handicap and illness. So, a trial involving a mentally ill persons can be postponed till the persons is cured, which is not possible with a mentally handicapped person.

**Causes of Assault**

As per the National Institute for Mental Health and Neurological Sciences (NIMHANS) of Bangalore, Paedophilia (urge for having sex with minor children) is a disease which has become a menace though society has no courage to admit this. Children are the softest targets because they cannot understand what is happening, cannot protect themselves, cannot express it either to anyone.\(^57\)

The ages of sexual assaults victims range widely from 1 ½ years to 70 years and thus no age is safe. Women and children of all age groups who can be easily seduced or enticed are prone to rape and sexual assaults. The sexual assault cases include rape, sodomy, fellatio cunnilingus or oral sex. There is greater likelihood of the offenders involved in these cases suffering them venereal infections.

In the case of adult females’ consent, seduction, monetary gains, matrimonial alliance are involved, but some of these questions have no

\(^{57}\) Supra note 45.
meaning in the case of child victims. However, children can be more easily enticed than adults. In some cases small children are sexually assaulted and murdered after the rape. It has also been observed that incidence of cases of sexual assaults on minor children has increased during the recent years. Several possible causes can be attributed to this antisocial malady and acts of perversion.  

The possible causes of sexual assaults can be summed up as following:

1. The tender age of the child victims is one of the main causes of sexual assaults.

2. A possible cause for assault on minor children could be attributed to the fact that younger children can be easily enticed by small presents like toffees, balloons, sweets, toys etc. Expenditure on the purchase of these presents is also very nominal and the rapist could easily afford to part with such an insignificant amount.

3. The younger children are not able to explain properly as to what had happened to them even after the commission of criminal assault especially when their ages are very small i.e. 1 year on 2 years.

4. The victims generally belong to poor families. They are generally devoid of normal parental love because of the large size of the family and fall an easy prey to anyone who treats them affectionately.

5. In some cases where both the responses are working the children are left alone in the house without proper care. They fall prey to criminals having perverted sexual habits.

6. Sometimes, people develop too much trust in neighbours and they do not hesitate leaving their small children under their care. A mother busy in doing the house hold affairs may leave her children to the care of her male neighbour but it may not be safe.

7. Persons suffering from venereal diseases such as Syphilis and Gonorrhea have blind faith that if they have sexual intercourse with a minor girl they would be cured of the disease. Cheap literature also refers to such a belief and this is also supported from the history of the criminals. But this faith does not have any scientific basis. In fact, there is neither any logic in such a faith nor any scientific support.

8. The feeling to assault minor children arises when a person is not confident of his sexual capability with an adult female. He perhaps feels

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58 Supra note 52
59 Ibid
ashamed of the fact that the size of his private part is small. Because of this reason even if he has easy access to a prostitute or call girl, he prefers smaller children.

9. Vasectomy is a very popular method adopted by most of the people, both rich and poor alike, for the purpose of family planning. After the operation of vasectomy such persons’ semen becomes devoid of sperms but sexual activity remains normal. If such a person commits rape, the case would go undetected. These aspermic citizens are a constant danger to society. If they commit rape the laboratory examination using microscope will not reveal the presence of spermatozoa. It would, however, be worthwhile to point out that these criminals will not go undetected because of the recent advancement that have taken place in the field of forensic science.

**Forensic Examination**

The main function of the forensic laboratory is to attempt to answer the following questions.\(^{60}\)

(a) Is there a contact trace which connects the suspect with the crime?

(b) Are there blood stains on suspects clothings which could have originated from the victim and could not have originated from the suspect or the other way round?

(c) What is the probability that the blood stains did originate from the victim?

Keeping in view the above points a series of laboratory tests are carried out which are given below-

(i) Identification of species of origin of blood.

(ii) Grouping of blood stains in various systems.

(iii) Frequency of human blood groups which have been identified in the blood stains.

(iv) Identification of semen. Whether it is from spermic or aspermic male.

(v) Grouping of semen stains.

(vi) Seminal and vaginal stains can be typed in ABO and PGM systems. In both cases the results of these stains can be compared if the correlated blood group is AB but would be of little use if she is of group ‘O’ in which there is hardly any probability of getting any useful information.

\(^{60}\) Ibid
The following material for forensic examination must be collected by investigating officer and sent as early as possible:

(i) Seminal fluid obtained from within the body of the victim and victim’s clothing.
(ii) Blood on victim’s body or clothing.
(iii) Blood of the victim on assailant’s body and clothing.
(iv) Blood or semen stains from the place of occurrence.
(v) Pubic hairs of victim and the accused persons.
(vi) Vaginal Swab.
(vii) Penile Swab.
(viii) Finger nails scrappings.
(ix) Freshly drawn fluid samples of blood and saliva of both victim and the accused person for grouping for comparison.
(x) Any other material which the Investigation Officer might like to get examined.

In case of delay the laboratory must be contacted for proper collection and preservation of the samples, otherwise the proper results are not likely to be obtained.

Eye witnesses may not always be available in cases of assault. However, where the witnesses are available, they may change their version. But the scientific evidence is extremely important in shaping the possibility of guilt or innocence of persons held in connection with crime. Serological examinations of blood or semen stains may be used to exclude some suspected persons who are held for investigation.

Perversion and venereal infections are some of the possible causes of assault on minor children. It would, therefore be necessary to have this confirmed by serological examination for evidence of Syphilis or Gonorrhoea. These diseases are world wide in distribution and can be contacted by sexual intercourse.

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61 *Ibid*
It would also be necessary to obtain the history of the suspect with respect to vasectomy operation as a measure of smegma on the penis of the suspect can also help the police in the investigation. Similarly, the presence or absence of blood on the public hairs is also important evidence.

The co-ordination between the investigating officer and the Forensic Scientist in this respect would lead to satisfactory results. This in turn will offer greater assistance to the investigating officer in finalization of the investigation. The medico legal examination of the victim should be carried out as early as possible after the assault. In this context, it will not be out of place to mention that a little care in the beginning pays a much higher dividend in the end.

Inadequate Legal Remedies

Nine out of every 10 cases of child sexual abuse go unreported because the children are either willing victims or are so terrified to report the incident. Even if they report, many activists feel the existing laws lack teeth -

(1) Section 354(A) of I.P.C. deals with indecent assault on a minor, but the law is ambiguous about what constitutes ‘indecent’ behavior. The punishment of three year prison sentence or a ‘suitable’ fine imposed by the court is not enough in accordance with the gravity of crime.

(2) Section 375 and 376 of I.P.C. deal with rape of women and minors. The punishment provided is 10 years of rigorous imprisonment. However, sexual penetration is essential to constitute an offence. And the carnal act must be *Per Vaginam*.

(3) Sec. 377, deals with “Sexual Offences”, including, Sodomy. But while the legislation still holds consenting homosexual as criminals, it does not even mention Pederasty.

(4) The Prevention of Immoral Traffic Act 2006, insists on proof of an organised racket of prostitution but isolated cases of pederasty are not admitted.

There can be nothing more painful than a girl child being a victim in the hands of its own custodians- the father, brother and other relatives. One, therefore, can never expect the safety of the girl child in the hands of
strangers. She is also abused in school. The merciless men assault her even when she is mentally unsound. Whatever the causes may be, she is none-the-less a victim of gang rapes. It is times for the sensible ones to start thinking of some measures to control the abuse of the girl child. Unfortunately the present law is inadequate to fulfill its purpose. We, therefore, make some suggestions in this respect:

(a) Expert committees be appointed with social workers, medical experts, police officers as their members.
(b) The present laws must be amended to make them effective.
(c) Every incidence of Pederasty must be taken very seriously.
(d) There should be camera trials in all cases of child sexual abuse.

Section 375 of I.P.C. should be amended and every form of child sexual abuse should be treated as rape under this section.

Countries such as Norway, Sweden, France and Germany besides enacting stringent laws against child abusers, have legal provision to try citizens guilty of child abuse abroad.

Alice Jacob, the then member of the Indian Law Commission, recommended a minimum sentence of 10 years for offenders and less rigid court procedures. She believes that if there is enough material or circumstantial evidence suggesting abuse, the child should not be asked to give an oral testimony. At present however, this would require an amendment in the Indian Evidence Act of 1872.

Children’s traumatic cross-examination is only one of the humiliations they face rather we can call it “secondary victimization”. Police interrogation follows in which the child has to furnish the most intimate details of his abuse to complete strangers.

Under law a minor below 12 years should be interrogated by the Police in his or her own home. In addition, the interrogation should be conducted by a female Police officer or an authorized welfare organisation trained to
recognize children's psychological needs. However, violation of these guidelines is not punishable.

Section 327 also provides for in camera trials, especially in cases involving women and children. But again the choice to hold the trial in camera is left to the Judge's discretion.

The interrogation could involve professionals from a range of disciplines- Psychologists, social workers and Pediatricians who are trained to deal with the Psychophysical make-up of children. Sensitizing the Police and medical staff will also help.

Social Oppression

The abuse of the girl child has been a common phenomenon in Indian society. Family is the first institution where most of the girls first experience physical assault, violence and hatred. The parents and other members of the society assault girl children because they know that chances of being prosecuted are nil. She is persecuted as a child labour, a child bride and as a child widow.

As Member of Society

She is 'damned' before the word go. She is a burden, a curse, and a liability. She is used, abused, misused, married and murdered. Sure, we do have laws but she is guilty of a 'crime' – a crime undefined in the Indian Penal Code – the crime of being born as a girl in India.  

Gender bias and deep rooted prejudice and discrimination against the girl child and preference for male children have led to female foeticide and female infanticide.

Even if a girl child is allowed to be born, discrimination and gender bias are evident from day one. She is denied adequate nourishment and health

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62 A. Bajpai; "Rights of the Girl Child", Rights of the Child, Published by NLSIU, Bangalore, p.118
care as given to male siblings. In India females receive only 88 percent of the required nutrition intake compared to boys.\(^{63}\) Therefore, the percentage of undernourished girls and female mortality's much higher than that of boys. The higher mortality rate in respect of female children as compared to male children is attributed not only to the lack of nutritious food and inadequate medical care but also to the premature withdrawal of medical attention. A girl is also given less amount of breast-feeding and sometimes even denied non-vegetarian food. As a result girls grow up into adulthood weak and undernourished. After marriage, they give birth to underweight babies and most of them being denied post natal care remain weak and frail throughout their lives, prone to diseases and early death. There are cases of mothers who dare not ensure the survival of their girl children given the fact that the family will eventually have to pay if the girl grows up and marries, apart from the fact the society very rarely cares for its women folk. Therefore, the death of a girl is an event; the loss of a son is a disaster. Similarly there is gender bias against a girl's education. There is a huge gap between the participation rates of boys and girls in elementary education. Gender disparity, particularly in rural areas, reflect the discriminatory social attitude with respect to the girl child. Statistic show that nearly one third of girls who enroll for formal education in class I, drop out before reaching class II. In non-formal education centres, girls form only one third of the total enrollment. This is because girls are burdened with domestic responsibilities from an early age and the parents also feel that as pending money on a girl's education is a wasteful expenditure when she cannot bring monetary benefit in return, as eventually she will have to be married off.

Even if women get access to higher education they are denied significant professional positions. Posts of teachers, lecturers, telephone operators, receptionists, beauticians are earmarked for women. Those few who make it to the Civil Services are denied field jobs or high profile positions but relegated to soft sectors like health, family welfare education,

\(^{63}\) *The Hindustan Times*, July, 23, 1997
etc. One hardly finds among women high level scientists, engines, heart surgeons or chief executives of multinational companies.\textsuperscript{64}

Even in the universities, the gender bias is as prevalent as in other fields. Out of about 600 Vice-Chancellors, there are only few women.\textsuperscript{65} Similar under representation is evident among the head of departments, governing bodies, the registrars of universities, etc. Hence, though women form 48.3 percent of India’s population, only a little over a million can be included among top jobs. Though the Equal Remuneration Act has been recommended in the organized sector, there are many gaps in the Minimum Wages Act and Maternity Benefit Act. Further, women are under represented in certain areas of employment like the police, the judiciary and the law due to the mistaken belief that men are more equipped for these jobs and woman’s place is primarily in the kitchen. The factors which inhibit prospective employers from recruiting women are that they think that women are unreliable, and married women, particularly mothers with children, would be frequently absent from work, that they are less mobile. Women are also marginalized and face tacit discrimination during job training. Employer’s do not follow an equal opportunity policy and discriminate on grounds of sex and marriage. There is definite discrimination against women regarding training, promotion, and transfers.

As far as women’s legal rights are concerned, the Constitution of India not only granted equality to men and women under Article 14 but also empowered the state to adopt measures of positive discrimination in favour of women to assist them to overcome the cumulative socio-economic, political and educational oppression faced by them for centuries. Article 15 forbids discrimination on grounds of caste, religion, sex, race and place of birth whereas Article 16 ensures equal opportunities of employment. Besides,

\textsuperscript{64} Ibid
\textsuperscript{65} Ibid
important social legislations like the Hindu Marriage Act, Hindu succession Act, Maintenance Act, Child Marriage Restraint Act, Equal Remuneration Act, Indecent Representation Act, Immoral Traffic act, Dowry Act, Indecent Representation Act, Immoral Traffic Act, Dowry Act, Termination of Pregnancy Act, Maternity Benefit Act, etc, have been enacted from time to time to remove gender discrimination and protect women’s interest. If the plethora of laws were a parameter to measure gender equality in India; India would be one of the most progressive countries of the world committed to equality and social justice. But in reality, most of these laws have legal loopholes and are heavily stacked against women.

The girl child does a thousand chore, be it working at home or in the field. Yet her world remains small with little opportunities and facilities. In spite of the fact that the girl child is an “immense” economic asset, her education and health are only secondary to those of her male counterparts, both in rural and urban areas.

In urban middle class families, the girl is viewed as a “transitional member” to be disposed off with a hefty dowry. Most of the parents think that the cost of nurturing a girl child is more in comparison to a boy.

The financial contribution from children in urban and rural middle class families does not flow early and the economic investment on the min terms of food, education and maintenance is very high. This has a direct implication on the children, particularly the girl child.66

Even in low-income group when there are more number of children in the family, the female child is the first victim in terms of education and health. When the question of taking care of younger siblings comes, the elder girl is the first one to be pulled out of education for this.

66 Ibid
In Tamil Nadu, a girl child is called Chelavu (expense) while a male child is called Varavu (income) The perception of the girl child in urban India is not different from this.\footnote{Supra note 62}

In Delhi, 99 percent in-laws want grandsons and only one percent preferred a girl for they never had a female child in the family. A study on seasonal migration by Vidya Shah, a social activist in tribal Panchmal district of Gujarat, shows that the girl child is an asset. All the men in the district go out for work, leaving agriculture and household to women. And it is the small girls, around 10-12 years of ages, on whom the entire burden falls.\footnote{Supra note 63}

Ordinarily a girl child between the age of 6 to 11 spends 29 percent of the total time on collection of fuel and wood, 20 percent on fetching water and 30 percent on sharing the household’s burden. Despite this, their work and contribution to family in terms of money and social support is invisible. If we compute money value for each items to the present price index, their economic value is significant.

It is interesting to note that mothers perceive the girl child in different light as for them every child is equal. They are more concerned about how the girl child is going to be treated. If we compute the economic value in terms of money, certainly their economic contribution to the family till marriage is very high in comparison to boys.\footnote{Ibid}

As Family Member

Urbanisation technology and development process are affecting the social structure particularly the family in India. Even in rural India joint families are breaking up giving place to small nuclear families as for getting subsidies, loans and house pattas. It is more advantageous to live in smaller families. In a nuclear family usually the status of women is better as she...
enjoys more autonomy in decision making. But paradoxically the girl child is not benefitting in the process. In a study\textsuperscript{70} conducted in Rayalaseema in Andhra Pradesh, it was found that with an increase in the number of nuclear families, the number of children in a family has come down to 3 or 4. Since both the parents go to work they have to leave the children with an older child or some elderly lady. If the older child is a daughter, she takes care of pre school siblings. However, if the older child is a son, he goes to school and the younger ones are left with some elderly lady. To the credit of the girl child it was found that where she took care of the younger sibling the nutritional status of there school child was better when compared to those who were left with elderly people.

In spite of International Women’s Decade and 15 years after the Status Report on Women in India, the girl child and her role still remain invisible even in the Development Plans. A child between 0-6 years is covered by Integrated Child Development Scheme, and after 15 years, at least she is entitled for MCI I services, but between 6 and 14 the most crucial years for growth, she is nobody’s child but everybody has a claim on her services.\textsuperscript{71} Tasks performed by her at home are seen as an extension of her mother role. Money earned by her is the property of her family as they have to spend on her upkeep. While a boy has to earn his living and is therefore given tasks performed with skill. Such tasks are not expected from girls. Parents do not train them for any skilled jobs. With limited resources boys are given preference in education as they are considered assets for the family and therefore an investment. But any expense on the girl child as far as quality food and education, Medicare, even games and leisure time is considered to be a waste. Gender classification of tasks, behaviour, dress, food, toys, games, space and time utilization start quite early in life.

\textsuperscript{70} Dr. Mamta Lakshamanna: "Changing Social Structure", Rights of the Child, Published by NLSIU, Bangalore, p.118
\textsuperscript{71} Ibid
The root cause for the gender discrimination is basically due to religious beliefs and outmoded socio-cultural values and practices. The technological advancement and developmental programmers instead of bridging the gap have accentuated it. Sex determination tests have shown a way of eliminating girls even before their births. This particularly suits the modern value of having a small family which must have sons. Girls are married early to protect their virginity and also to ensure “compliance with parents’ wishes in respect of choice of spouse”. Educational opportunities are denied or limited for girls restricting them to unskilled, low paid and traditional occupations. Therefore, the access to technology and modern jobs are also denied.

Girl children in India have many other problems. They have some common needs like love, affection, opportunities for growth and development. While the girl child from a poor family starts performing adult roles of looking after younger children, performing household tasks and also earning wages, girls from middle and upper class families have access to education (may not be of the same type as sons) but are equally suppressed so far as autonomy is concerned.

As Labourer

She was survived of female foeticide and female infanticide but she is now considered a burden, a liability, a handicap and hence exploited. Though she may be physically busy the whole day, her work remains unrecognized, unpaid and she is considered an economic liability a little nobody.

A study by the Indian Institute of Science reveals that a girl child shares 30% of the burden of household activities and 20% of the agricultural work. The reality was recently presented by Arun Bhattacharjee in the following words:

“The social belief that a female child is an economic liability can be countered by the argument that a girl works more than

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72 Ibid
73 Ibid
nine hours a day and at an average of 315 days in a year providing the family an annual labour which at minimum wages would have cost Rs 22000 to hire. By the time she ceases to be child she has provided economic help to the family worth Rs. 39,600.\textsuperscript{74}

Genially the contribution of the girl child to the family economy is more than that of others. But her type of labour is not provided for in monetary economies. At home she is generally put to look after younger children, cook, clean, fetch fuel and fodder and carry water.

The industries and occupations in which the girl child is predominantly seen working include:\textsuperscript{75}

(i) Match Industry  
(ii) Coir Industry  
(iii) Incense Making  
(iv) Papad Preparation  
(v) Bedi Industry  
(vi) Carpet Industry  
(vii) Lock Industry  
(viii) Brassware Industry  
(ix) Zari Embroidery Industry  
(x) Gem polishing  
(xi) Making of Paper bags and Garments  
(xii) Block Making  
(xiii) Sub-assembling in the Electronic Industry  
(xiv) Construction Sites  
(xv) Domestic servants  
(xvi) Farm Laborers  
(xvii) Rag Picking

Let us see how the Child Labour (Prohibition and Regulation) Act 1986 meets the challenge of child labour. It prohibits the engagement of

\textsuperscript{74} Supra note 62  
\textsuperscript{75} Ibid
children who are below 14 years in certain other employments and regulates the conditions of work in certain employments in which children below fourteen are allowed to work.

These occupations and processes are listed in the schedule under the Act. There is a proviso which says that these prohibitions do not apply to family workshops or government schools so the occupations and processes which are listed as hazardous under the Act strangely are no longer hazardous if they are children belonging to family enterprises or family labour. This proviso explicitly denies protection to children working part of family labour. So the bulk of female children who are agriculture workers are out of the purview of this Act.

Second even those occupations and processes which are listed in the schedules, the girl child worker goes unprotected and unregulated as it provides only for those children who go out and work. The girl child worker generally 'helps' her mother in home-based industries and does not go out to work. So two tiny invisible hands continue 'helping' in the above-listed occupations and processes. Besides, these schedules do not cover many of the occupations and processes in which the girl child works. The girl child helps her parents in sowing, transplanting, weeding and harvesting but the Act is silent regarding the child workers in the agricultural sector. Some of the regulatory provisions under the Child Labour (Prohibition and Regulation) Act, 1986 are as follows:

1. A child may work for a maximum of six hours per day which includes rest period and any time spent waiting for work.
2. The period of continuous work should not be more than three hours.
3. No child may work between 7 p.m. and 8 p.m.

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76 Section 3, The Child Labour (Prohibition and Regulation) Act, 1986
77 Section 7 (3)
78 Section (2)
79 Section (4)
4. A child should not work overtime and should have one specified day as holiday per week.

5. A child should not work in two places on the same day. In the case of a girl child it has been observed that the mother registers her name in two or three places and asks her daughter to go in place of her. The daughter goes and works in these places for her. But none of the provisions apply to her as she is not ‘officially working’.

Admittedly the Act prohibits and regulates child labour but the girl child cannot get the benefit under the above Act because she is not a ‘worker’ within the meaning of the Act. She has no identity. She is only ‘helping’ her mother to increase her production and she generally works in home based, piece rate industries.

The report of National Commission on Self-employed Women has stressed the fact that employers pay women low wages because they know that they will be helped by their daughters.

In India various studies have shown that there is gender typing of work. The Act has to be suitably amended to include the peculiar characteristics of these ‘invisible’ workers because there are differences between male and female child workers and the Act as it stands today generally caters to the male child worker. The peculiar characteristic of the girl child worker, their areas of work, their type of work, their method of working should be taken into considerations bring the estimated 100 lakhs girl child workers under the Act.

Isn’t it an irony that the girl child worker who slogs for nearly nine hours a day is not a ‘worker’ within the meaning of the Act?

As Bride

The red bindi on her forehead, the mangalsutra around the neck, the Sari Pallau over the head is the ultimate purpose for which the girl child is

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80 Section (5)
81 Section (8)
82 Section 8 (6)
83 Supra note 1
supposed to have come on to this earth. So this girl child ‘without a childhood’ is now pushed into matrimony. In some parts of India even ritual marriages are still going on today, like the marriage of a mute girl to a tree. India has one of the lowest female mean ages for marriages.

We are in twenty first century and the Child Marriage Restraint Act. 1929 was enacted in the beginning of the twenties century, but thousands of child marriages are openly being performed with great pomp and show. A recent report in a newspaper said that a deaf mute, 11 year old Suvarna, was married to a fifty year old man.

The Act aims to restrain the solemnization of child marriages. Under this Act ‘girl child’ means a person who has not completed the age of 18 years and child marriage means a marriage in which either of the contract in parties is a child.

A court of a Metropolitan Magistrate or a Judicial Magistrate of the first class can take cognizance of or try any offence under this act within one year. If through a complaint or otherwise the court realizes that a child marriage has been arranged or is about to be solemnized, the court has to first give notice to such a person who is above 18 years of age or to any one who performs conducts and directs any child marriage. The gravity of this offence is such that this show cause notice may delay justice.

If it is proved that a child marriage is about to be solemnized, an injunction can be issued. If such an injunction is disobeyed, he will be punished for a term which may extend to three months or fine which may extend to Rs. 1,000.
If a child marriage is performed, the following punishment is prescribed under the Act.

(i) If a male above 18 years and below 21 years contracts a child marriage. Simple imprisonment extending to 15 days or a fine of Rs. 1000 or both.

(ii) If a male above 21 years, contracts a child marriage. Simple imprisonment extending to 3 months and also a fine.

(iii) Whoever performs conducting or directs any child marriage. Simple imprisonment extending three months and fine.

(iv) The parents and guardians of a minor child who is given in marriage. Simple imprisonment upto 3 months and also fine.

The Act needs immediate and drastic overhauling. Under the Act, the guests to the child marriage are not punished. The guest to the marriage is abettors to a crime and a woman who helps in contracting such a marriage should not be spared. The punishment prescribed under the act should be enhanced and there should be compulsory registration of marriages. And persons who supply information to authorities about child marriages should be suitably rewarded.⁹⁰

As Mother

It has been observed that in many rural areas girls become mothers at the ages between 12 and 16 years. Discussing about the sufferings of child-mothers. C.Gopalan points out that they suffer from ignorance, maternal malnutrition, severe anaemia, a shorter gestation period and antenatal hypertension, all of which pose formidable challenges before ‘safe motherhood’.⁹¹ Another writer Pradeep Pant points out that in India 50 per cent of those who become pregnant as adolescent girls suffer from anaemia and malnutrition. Some of the main reasons of high rate of maternal mortality

⁹⁰ Suptra note 23
⁹¹ C. Gopalan,"The sufferings of young mothers", The Times of India, September 11, 1989
are malnutrition, weak health and getting married as a child particularly age 14 or below.\textsuperscript{92}

Child marriage increases many folds the risk of becoming a child mother and child widow with all the resultant ills, agonies, oppression and violence on her.

**As Widow**

As a child-wife if her husband passes away, she becomes a child-widow who undergoes tremendous torture at the hands of the family members.

She is cursed and blamed for the death of her husband and is looked down upon as inauspicious for the family. Discriminations made between restriction imposed on the child widow and widower. Child widower is married off again while child widow is expected to spend all her life in penance and at the mercy and exploitation of the family members and society. In some parts of the country she is compelled to commit ‘Sati’ which can be equated with either forcing her to commit suicide or of ‘murdering her’. Thus a child widow is forced to lead a life facing deep rooted stigma, frustrations and hatred a also to tolerating silently physical, social, economic and emotional hardships and exploitation in the hands of even the family members who commit this kind of oppression and violence on her.\textsuperscript{93}

**As Dowry Victim**

It seems that no marriage can be conceived in India without dowry. And when you talk of dowry, dowry death is lurking nearby. Before, during and after marriage, dowry goes on and on. There is a lot of harassment and torture on account of dower. Dowry is one of the reasons why the birth of a girl child is lamented. Dowry devalues the girl as they will have to purchase

\textsuperscript{92} Pradeep Pant, *Indian Society and Situation of Girl Children and Adolescent Girls*, Central Social Welfare Board, New Delhi, November 4-5, 1992

her groom by paying large sums of cash, furniture, clothing jewellery, gadgets, wedding expenses etc.\textsuperscript{94}

To combat this social evil against the girl child, we have The Dowry Prohibition Act 1961 which is an Act to prohibit the giving and taking of dowry. The Act defines dowry as any property or other valuable security given or agreed to be given in connection with marriage to the bride or bridegroom or any other person.

The reality is that in majority of the cases, it is very difficult to prove that gifts and other items are given in connection with marriage. Dowry dealing are underhand transactions and they go on throughout the marriage period most probably till a dowry death occurs.

The gifts given on the birth of a son, or when the girl goes to her in laws house from her parent’s house, gifts given during the numerous festivals, are all part of dowry. How do you prove that they are given in connection with marriage?

There is a provision in the Act about the list of presents. A list has to be prepared at the time of marriage or as soon as possible after marriage. Generally the question of lists arises only at the time of a dispute. Nobody normally thinks of a list at the time of marriage Therefore to prevent any list being prepared and backdated the Act should have a provision for the list being prepared at the time of marriage and registered by say, the Registrar of Marriages or any such authority. Dowry rates are increasing faster than the rate of inflation. Apart from the basic weakness of the anti-dowry legislation, it should be noted that it is only 5% of the cases that make headlines on account of conviction under the anti-dowry legislation. About 95% cases end in acquittals.\textsuperscript{95}

Apparently a marriage means more burdens to girl and joy to a boy as the girl has no individual identity. Dowry will only cease when girls are viewed as individuals worthy of respect.

\textsuperscript{94} Ibid
\textsuperscript{95} Ibid
Does the girl child after paying dowry and getting married and also escaping dowry death live happily ever after? The answer is ‘No’, she still has to face discriminatory personal laws, unfair inheritance and succession laws, unjust – societal attitude and so on...

Justice P.N. Bhagwati in *Laxmikant Pandey v Union of India*\(^{96}\) said that –

“It is obvious that in a civilized society the importance of child welfare cannot be overemphasized because the welfare of the entire community, its growth and development depend on the health and well being of its children. They are a supremely important national asset and the future well-being of the nation depends on how its children grow and develop.”

In India ‘child’ means a male ‘child’. If you ask a typical Indian woman who has two sons and three daughters, as to how many children you have, she will reply ‘two’ because the daughters are guests and are not to be counted as children. This is sad and deplorable fact but a stark reality. The girl child is the victim of the flawed standards our society uses to assess the worth of a child. We are undoubtedly violating human right ideas.

Article – 4 of the U.N. Convention on Rights of the Child, 1989, states the principle that all rights apply to all children without exception and the state is obliged to protect children from any form of discrimination. We have to endeavour to achieve this.

The girl child in India is different, her circumstances are strange, her problems are unlike those of the male child and therefore, needs special protection. The existing laws have to be amended, the implementation strategies have to be reviewed and the policies and plans have to be structured to help the girl child to achieve her rights as a human being and as a child.

Despite the social forces that prevail, law should give her special protection; help her appreciate her significance, her worth and dignity. It can

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\(^{96}\) *Laxmikant Pandey v. Union of India*, AIR 1984 SC 469
be done and it should be done. As it is said, the longest journey starts with a single step.

**Trafficking and Child Pornography in the US**

At the age of 15, Samantha Walker was lured into prostitution on the streets of Toledo, Ohio, then taken against her will to Atlanta. What makes her story unique is that she testified against one of the men who paid for sex with her, helping to send him to prison. But just weeks after the trial she took an overdose of drugs she was taking for depression and died at the age of 18. More than 300,000 children are being sexually exploited in the US, according to a study by the University of Pennsylvania. Many of them end up in Atlanta, which has become a hub for prostitution in part because its busy airport makes it a destination for men seeking sex.\(^\text{97}\)

Children are recruited by pimps in arcades, malls, entertainment centers, at tourist attractions and concerts. The pimp seduces a new recruit with the lure of wealth and the luxury of designer clothes, fancy cars, and exclusive nightclubs. Pimps move from city to city looking for children who are easy prey: alone, desperate, and alienated. Once he moves a child from her hometown into a strange city, the pimp can easily force her to work as a prostitute. Thousands of children are victimized by this horrible con game every year. Child prostitution is an immense and devastating problem that nobody wants to recognize, nobody wants to talk about, and everyone wants to cover up. Child prostitutes are not only abandoned by their parents, but by the social services system as well.\(^\text{98}\)

Child prostitutes are typically victims of incest at an early age. Without intervention, these children run to the street during adolescence to escape the terrifying sexual exploitation by a trusted caretaker.

\(^{97}\) http://gvnet.com/childprostitution/USA.htm (July 16, 2008)  
\(^{98}\) http://www.childrenofthenight.org/tragedy.html (July 7, 2008)
Sexually abused children respond differently than children abused in other ways. They are defenseless and lack the aggression required for survival on the streets. They are more vulnerable to the manipulations and skillful con games of pimps.

An American organization Children of the night is actively involved in the prosecution of pimps all over America. Each child who testifies is accompanied by a seasoned staff member who has extensive experience protecting the rights of young victims.99

The organization is making a difference in the lives of hundreds of children each year. Organization’s commitment to rescuing these children from the ravages of prostitution is shared with a small but committed group of detectives, FBI agents, and prosecutors in Los Angeles, Hollywood, Santa Ana, Anaheim, San Diego, other areas of California, Las Vegas, Portland, Billings, Montana; Seattle, Washington; Miami, New York, Minneapolis, Atlanta, Phoenix, Hawaii and Washington D.C. — all stops on the child prostitution circuit. And their numbers keep growing as more and more dedicated individuals become concerned about the welfare of these desperate children.

Child prostitutes require specialized care for effective intervention. Most of the children victimized by prostitution were first victimized by a parent or early caregiver. Most have been tortured by treacherous pimps, and many testify in lengthy court proceedings against the pimps who have forced them to work as prostitutes.

In most cases these children do not have appropriate homes to return to, and the only relative who is a suitable guardian may live far away from the child’s hometown. For many the only option is an out of home placement, college dorm, maternity home or mental health program. For those who reach 18 and need additional time to prepare to enter the mainstream society,

99 Ibid
independent living programs are recommended; special education programs are advised for those who need extra help with school and alcohol or drug recovery homes are suggested for those with substance abuse problems.

Children of the Night provides a 24-hour hotline — 7 days a week. It is operated around the clock by trained staff who are knowledgeable about street life and capable of enlisting the support of police throughout the country if a child's life is in danger. The Children of the Night home is open to child prostitutes throughout the United States, and the Children of the Night hotline staff is specially trained to rescue these children directly from pimps anywhere is the country, any time of the day or night. Our hotline staff works closely with law enforcement to rescue children from vile, dominating pimps.

A new educational DVD on the risks of child prostitution has been released. Titled "Bait and Switch: The Terror and Tragedy of Child Prostitution," the DVD targets middle- and high-school students. The video aims to dispel the myth that pimps are "slimy guys in a trench coat," said Anderson. Instead, they are more often slick predators who use persuasive tactics to entice young girls into the trade. According to an undercover sergeant with the Phoenix police vice enforcement unit, seven years ago the average age of a child prostitute was 15. Today, it is 13, the sergeant said.100

The U.S. State Department describes human trafficking as a form of modern-day slavery and estimates about 800,000 victims are taken across international borders each year. Eleanor Gaetan, senior coordinator of the State Department's Human Trafficking Office, said the majority are forced into the commercial sex trade. "We've found that one-third of transnational victims are children trafficked for the purposes of sexual exploitation," Gaetan said.101

100 ARIZONA: DVD Reveals Risk of Child Prostitution, Arizona Republic (Phoenix), December 17, 2007
The United States has no National Plan of Action to combat the commercial sexual exploitation of children (CSEC). The U.S. was represented at the First World Congress Against CSEC in Stockholm and 1996 and signed the Stockholm Agenda for Action. The US also participated in the Second World Congress Against CSEC in 2001 in Yokohama, and signed the commitments emerging from this congress. The US government points to its Federal system of governance as an impediment to developing a national plan of action. The US has not yet ratified the United Nations Convention on the Rights of the Child.

New York City man who ran a prostitution ring that recruited minor girls to work in Atlantic City and other U.S. cities was sentenced to more than 23 years in federal prison Friday. An associate pimp was sentenced to eight years for his part.

The case is part of "Innocence Lost," a cooperative effort to prevent and prosecute cases involving child prostitution. So far, the initiative — under the FBI, U.S. Department of Justice and the National Center for Missing and Exploited Children — has made 697 arrests and 136 convictions, with 275 open investigations.

In November 2005, a 15-year-old Valley girl was kidnapped, put in a cage and used as a sex slave inside a Glendale apartment. In this year, two men were arrested and jailed for kidnapping young girls and forcing them into child pornography and prostitution.

But, unfortunately, these two instances aren't as rare as you might think. "Child prostitution has become and is growing epidemic in the state of Arizona and the city of Phoenix," said Chief Jack Harris of the Phoenix Police Department. "There have been over 35 child prostitutes. These are girls...

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102 Ibid
104 Mountain Standard Time, October 5, 2006
ranging from the age of 13 to 17 years of age." Police say they are working for as many as 54 different pimps in our community.\textsuperscript{105}

**Child Sexual Exploitation on the Web**

One of the people responsible for protecting children was recently accused of being a predator himself. A spokesperson for the Homeland Security Department was put on unpaid leave after being charged on with "preying on a child" through online sexual conversations with an undercover detective who was posing as a 14-year-old girl.\textsuperscript{106}

Everyone has heard stories about predators lurking online, searching for young children on whom to prey. The sorry truth is that the problem is growing increasingly severe. Fingers are pointing in every direction; no one really knows where to place the blame.

"It's not windows and cellar doors that sexual predators look for. It's your child's computer screen," reads an ad by the Advertising Council, a private nonprofit organization that produces public service announcement campaigns to raise awareness and inspire action.

Realizing the importance of alerting parents, the Ad Council, along with the National Center for Missing and Exploited Children, partnered with MySpace.com to promote online safety by running a series of public service announcements.

The goal of working with MySpace is to help bring awareness to the issue of online enticement and help keep children safer online. The announcements "were designed to educate parents and guardians about measures they can take to better protect their children online, and to educate teens on how to be smart and maintain safe online relationships."\textsuperscript{107}

These reports are regarding child sexual predators and exploitative situations that law enforcement did not previously know about. Companies

\textsuperscript{105} Ibid
\textsuperscript{107} Ibid
are required to provide them in compliance with the Protection of Children from Sexual Predators Act.

In 2005, the CyberTipline received notice of a grand total of 70,737 incidents. The bulk came from 64,221 incidents of child pornography, including possession, manufacture and distribution.

There were also 2,669 reported incidents of online enticement of children for sexual acts, 611 for unsolicited obscene material sent to a child, 841 misleading domain names, 1,640 reports of child sexual molestation by other than family members, 553 of child prostitution and 202 for child sex tourism. This practice involves adults traveling to foreign countries to engage in sexual activity with children. It is estimated to draw more than one million children into the sex trade each year, especially in developing countries.

**American Judicial Response**

Criminal law Sentencing Guidelines Ninth Circuit Holds that trafficking in child pornography does not constitute a pattern of sexual exploitation of minors. The Federal Sentencing Guidelines have never purported to set out particularized punishment for each of the innumerable varieties of criminal activity. Instead, the Guidelines establish a “heartland” a generalized conception of an offense that merits a limited range of punishment— as well as provisions that allow a sentencing court to depart from the range in unique cases. Animating this limited discretionary function is the policy of promoting sentences that are proportional to the offenses they punish. In *United States v. Kemmish*, the ninth Circuit held that trafficking in child pornography on a massive scale fell within the “heartland” for the crime and not within the offense characteristic of engaging in “a pattern of activity involving the sexual abuse or exploitation of a minor.” By dismissing the extraordinary factual background of *Kemmish* and lumping it into the

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108 *United States v. Kemmish*, 120 F 3d 937 (9th Cir, 1997)
Guidelines' generalized understanding of trafficking offense, the court incorrectly applied the offense characteristic and failed to heed the Guidelines' mandate for proportionality in sentencing.

On June 29, 1994, James Leroy Kammish was arrested at the San Diego International Airport for bringing child pornography videotapes and undeclared U.S. currency with him on a flight from Mexico City. Upon inspection of Kammish's luggage, U.S. Customs agents discovered mailing lists, advertisements, and notices for Overseas Male (OSM), a child pornography production company base in Mexico City. One day after the arrest, law enforcement officers searched Kammish's home, where they found over 500 videotapes depicting child pornography including 204 master videotapes. The government later offered evidence to show that Kammish was deeply involved with the operations of OSM.

Kammish pleaded guilty to six counts of various offenses involving trafficking in child pornography. The government and the probation office agreed to a mid-range sentence of 395 months' imprisonment, but the district court departed downward and sentenced Kammish to only 63 months. The government appealed the sentence and contended that Kammish's role as the major distributor for OSM constituted a "pattern of sexual exploitation of a minor" and that the district court erred in choosing not to enhance the sentence by five levels under section 2G2.2(b)(4) of the Guidelines.

The Ninth Circuit affirmed the denial of the enhancement, and states that "extensive" trafficking activities like Kammish's "did not constitute a pattern of sexual exploitation of minors within the meaning of the relevant law. Relying almost exclusively on the Third Circuit's opinion in United States v. Ketcham, Judge Leavy held that traffickers not 'directly involved' in the actual sexual abuse or exploitation of minors were not subject to section 2G2.2(b)(4). The Ketcham court has stated that the enhancement properly applied to "single out for more severe punishment those defendants who are
more dangerous because they have been involved first hand in the exploitation of children. Judge Levy noted that the sentencing Commission had recently for section 2G2.2. Given this interpretation of the Guidelines and “the absence of any showing of a more direct involvement of Kemmish’s part,” Judge Levy concluded that the district court properly withheld the five-level sentencing enhancement.

Dissenting in part, Judge Ferguson argued that the depth of Kemmish’s involvement with OSM and the scale of his distribution network clearly constituted a pattern of activity involving the sexual exploitation of minors. Judge Ferguson agreed with the majority that, according to the new commentary to section 2(G)2, courts will generally decline to apply the sentencing enhancement of trafficker or distributors ‘not physically involved in the production of child pornography. However, because of Kemmish’s involvement with OSM “far exceed (ed) that of any trafficker heretofore considered with regard to section 2(G).2. (b)(4), the district court should have interpreted the Guideline to allow for the enhancement in this “atypical” case.

The irony of Kemmish is that, in its attempt to follow the literal command of the Guidelines, it subverted one of the Guidelines’ major goals: proportionality in sentencing. Despite the substantial body of evidence demonstrating that Kemmish’s participation with OSM went far beyond the activities of the typical trafficker, the court chose to view his offence only in terms of the category under which it fell. The result of this unqualified approach was an artificial leveling of offenders within one group; such an approach improperly absolved the court of any obligation to evaluate the harm inflicted by, and punishment required for, each individual.

The decision in Ketcham, and the recent amended commentary to section 2G2.2. of the Guidelines, have established as a general rule that the five-level enhancement does not apply to trafficking. Within the framework of the Guidelines, however, this rule should only govern the “heartland,” or
average manifestation, of that offense characteristic. In *Koon v. United States*, the Supreme Court emphasized a district court’s discretion to depart from the Guidelines in unusual case, noting that among the “encouraged” departure factors were those that “the Commission has not been able to take into account fully in formulating he guidelines”. Certainly this principal should apply to sentencing decisions for all offense, and not simply to all those except trafficking in child pornography. Indeed, the enormous scale of *Kemmish*’s activities appears congruent with the “aggravating circumstances envisioned by Congress as warranting a heavier sentence.

The court’s willingness to eschew proportionality in sentencing among traffickers may well be motivated by a boarder desire for uniform sentences among a generalized class of offenders. There are strong policy reasons for establishing sentence differentials between sellers of child pornography, and those who lure or coerce children into sexually abusive circumstances in order to produce pornography. But in its desire to maintain this distinction between traffickers and producers, the *Kemmish* court failed to appreciate the potential realized here – for significant difference among various traffickers. In its brief appealing the sentence, the government offered evidence to demonstrate that “*Kemmish* was not a small-time distributor of child pornography like the appellant in *Chapman*, who used his computer to trade four photographs...; *(Kemmish)* sold hundreds of video tapes for hundreds of thousands of dollars in mere six month period. In choosing not to address these fact-specific arguments, the court seemed to suggest that such difference did not matter.

Indeed, the *Kemmish* court clearly assumed that such conduct never amounts to exploitation. The scope of *Kemmish*’s activities and the number of young children injured as a result caused serious doubt upon this assumption. If the purpose of the five-level enhancement is in fact to “single out” the most dangerous participants in child pornography, the court’s holding is difficult to comprehend. By setting down in its commentary that sexual exploitation
"does not include trafficking", the Sentencing Commission encourages courts to take the wording as an absolute rule with no room for permissible derivation. A guideline with this kind of over inclusive effect fails to consider the individual nature of a particular offence and effectively revives a more arbitrary sentencing system.

The most startling part of the Kemmish decision is its seeming indifference to the underlying policy of protecting children, which motivated the creation of the sentencing enhancement in the first place. In choosing not to impose upon Kemmish a sentence commensurate with his offenses, the Ninth Circuit ignored both the individualized consideration required by the Sentencing Commission and the urgent public interest in protecting children from the purveyors of child pornography. Large-scale traffickers like Kemmish are clearly not the norm; our courts should not sentence them as though they were.

**Preventive Measures**

If the State has to be effective in protecting children, child prostitutes in particular, they must recognise that protection does not only depend on reactive intervention, but action must also be taken to tackle to the social and economic realities of poverty, bad housing, boor parenting and that more preventive work must be undertaken with vulnerable children and family.

Following recommendation and suggestions could go in a long way to alleviate the suffering of child prostitutes:

1. There should be an amendment in Prevention of Immoral Traffic Act to treat child prostitution as rape punishable under section 375 and 376 of the Indian Penal Code.
2. There is a need to generate awareness among the families and communities at large to bring attitudinal changes towards gender bias in general and the girls child in particular.
3. In India, there are many practices, which are not only against the womanhood but also derogatory to the dignity of the female need to be immediately stopped.
4. There should be grassroots level voluntary organizations by which we can attain universalisation of education and compulsory registration of each marriage in the area.

5. Regulatory bodies like Police, Judiciary and administration should be sensitised.

6. Voluntary organizations must have a vigil and independent sources of information to learn about the new entries of children brought into the brothels. These organisations should form a core group along with the state bodies for monitoring the raids in the red-light area.

7. Raids should be conducted after every information and rescue and rehabilitation of children from brothels should be done simultaneously.

8. Identity cards should be issued with all relevant information to check new entries and the core committee should be involved in the whole process.

9. Procedure of repatriation for the rescued trafficked children should be hassle free. People manning the immigration counter should be duly trained to handle the situation in a more humane manner.

10. The Media can play a vital role, it should act responsibly for catalyzing attitudinal changes and to make the judiciary accountable. Further it can play the role of a supportive agency to ensure speedy and humane rehabilitation procedures.

11. A special law to be enacted to deal with all forms of sexual abuse to give effect to the Convention on the Rights of the Child and the recommendations made by the World Congress on Commercial Sexual Abuse of the Child. Stringent punishment should be given to traffickers, pimps and madams.

    Government should enter into an agreement with the neighbouring countries, particularly Nepal and Bangladesh in effectively preventing the migration or transport of children for sexual abuse in India.