CHAPTER-III
VARIOUS FORMS OF ABUSE OF CHILDREN

"There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected that their welfare is protected, that their lives are free from fear and want and that they grow up in peace" 1

3.1 Introduction

The National Policy for Children, 1974 declared that, “Children are supremely important national asset” and the same was approved in a celebrated case Sheela Barse v. Union of India. 2 The future well being of the nation depends on how its children grow and develop. It is the duty of the State to look after every child with a view to assuring full development of its personality.

Protection of children from all forms of abuse and exploitation across the world is the need of the hour. Children face three fold exploitation - of age, economic status and caste. 3 The future of Indian nation and prosperity of the people depend on the health and happiness of children and the care they receive from the family and society to grow up as good human beings and citizens. Their up bringing in a proper

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1 Foreword by Kofi A.Annan Secretary-General of United Nations- "In the State of World's Children-2000"
2 AIR 1986 SC 1873.
environment promoting their health, education and mental development is an important commitment.\textsuperscript{4}

The Constitution of India mandates the state under Article 39 to ensure that “Children are not abused and that childhood and youth are protected against exploitation and against moral and material abandonment”. Children are youngest, innocent and tender and hence they deserve the eldest care and concern.

Unfortunately, the children in India are subjected to various forms of abuse. The word ‘abuse’ is defined in \textit{Black's Law Dictionary} as, everything which is contrary to a good order established by usage, departure from reasonable use, improper use, physical or mental treatment, deception. Thus the term “Child abuse” encompasses a broad and wide range of acts and maltreatment of Children. Various attempts to define child abuse have not achieved a consensus. There is also no consensus about its various forms, which can include child battering, extreme punishment, hard labour, emotional abuse, sexual abuse, including incest and exploitation, and abandonment.\textsuperscript{5}

3.2 Magnitude of the Problem

There are few abuses which are universally condemned for violation of human rights. But in reality it is commonly practiced as child abuse. Centuries of experiences indicate that children have been subjected to physical, sexual and emotional abuse as well as neglect. The forms and dynamics of child abuse have

\textsuperscript{4} National Plan of Action for Children, 2005.
\textsuperscript{5} Convention on the Rights, Country Report-India Feb.,1997, Department of Women and Child Development, Ministry of HRD Govt. of India, p.77.
undergone major change in recent years. The problem of child abuse is a clear replica of human rights violation and is a matter of worst forms of "child exploitation and abuse". Child abuse today does not only refer simply to physical, emotional, economic, substance abuse, sexual abuse and trafficking but also many other dimensions of violation of basic rights and non-fulfillment of the needs of the child.

India records 19% of the world children and 1/3rd of the country's population i.e. 440 million children are below 18 years and nearly 40% of the children are in need of care and protection.\(^6\)

It clearly shows the magnitudes of the problem. Children are considered as most disadvantaged and vulnerable section of the society. National Study on child abuse a study conducted by Prayas, indicates that it has covered 13 States of India with a sample size of 12447 children, 2324 young adults in both rural and urban areas and 2449 stakeholders.\(^7\) National Study on Child Abuse recorded its findings very exhaustively on various forms of abuse of children. They are:\(^8\)

(f) Child labour

With regard to child labour it includes children prematurely leading an adult like life. They receive low wages and work for long hours under conditions that are likely to damage their health as well as physical and mental development. Frequently

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\(^7\) Study on Child Abuse: INDIA 2007 Ministry of Women and Child Development, Govt. of India.

\(^8\) "National Study on Child Abuse": conducted by Prayas in collaboration with the Ministry of Women and Child Development, GOI, supported by UNICEF and Save the Children Fund, UK-Executive Summary Report-2005.
they are deprived of meaningful educational and training opportunities besides remaining separated from their families. Out of 12,447 children covered under the study, almost 1/5th (19.7%) comprised children who were employed. Almost 1/10th (9.8%) of the working children, work seven days for a week, with a somewhat lesser proposition (7.1%) reportedly working six days a week. Thus, only about 3 percent of the children were found to be working for five days a week or lesser still. This clearly reflects child labour being largely underpaid, over worked and exploited. As far as the nature of duties is concerned, nearly one fourth (23.3%) of the working children, were found to be working as domestic help. A little more than one tenth (11.2%) of the employed children were found to be working in road-side tea-shops, eateries, etc. These are largely invisible domestic and other forms of child labour who have on 10th October 2006 been brought under the purview of the Child Labour (Prohibition and Regulation) Act, 1986.

About one-fifth (17%) of the working children were paid for the services they rendered, out of these, about one-tenth (9.3%) receive payment on monthly basis. Only 4.7% received their wages on a weekly basis and while a still lesser proportion (3.8%) received payment on daily basis. Only a small proportion (11.7%) of the working children reportedly like the jobs they were doing. According to the data, the highest percentage of children in domestic work was found in Bihar.

The percentage of children working in the agricultural sector and in other occupations like vending, shoe-shining. Lifting luggage on railway platforms etc., were quite high in the States of Madhya Pradesh, Gujarat & Assam.
Regarding place of work of children, Study found that one third of the children (34.9%) worked at home. Their work patterns in case of these children include helping parents in household chores, assisting in farming and related jobs, working and hired labour through agents for factory owners, etc. Almost one-fourth of the children 23.5% worked in road-side shops: dabas, tea shops, cycle/scooter repair shops, etc. About one-fifth of the children (17.6%) were also found to be working in organised workshops. Further it was found that in the States of Bihar and Maharastra a large proportion of children worked in homes. In contrast, the States of Andhra Pradesh, Rajasthan, Uttar Pradesh and West Bengal, the number of children were highest in terms of employment in road-side establishments while in the States of Goa, West Bengal, Mizoram and Assam the percentage of children was highest vis-a-vis working in built up shops.

Thus, the major findings of the National Study on Abuse of Children relating to child labour were: (a) of 12,447 children covered by the study, 19.7% are found to be at work. (b) only 17% of working children are paid for their work. (c) among working children, 23.2% work as domestic help.

(ii) Physical Abuse

(a) 18.2% children reportedly suffered physical injuries by family members due to beating;

(b) 42.8% school going children reported facing corporal punishment; and

(c) 15.6% children suffered physical abuse by other than family members.
(iii) Emotional Abuse

(a) One out of five children suffers from high emotional abuse. (b) 44.1% children reported that they were shouted at and humiliated by their own family members. (c) The level of emotional abuse is seen to be the highest amongst young children (44.3%) (d) Delhi, Assam and Madhya Pradesh are the States where emotional abuse is higher.

(iv) Substance Abuse

(a) 32.1% children report to have tasted any one of the substances like, alcohol, bhang, ganja, charas, heroin, smack, brown sugar etc. (b) the prevalence of substance abuse is distinctly lower among females (19.4%) than among males (43.9%).

(v) Girl child neglect

(a) Out of those girls with brothers (N=4138), 48.4% cases reported parents taking side of the brothers; (b) one-third of the girls (32%) who had brothers, reported that their parents gave more love and attention to their brothers; and (c) 44.8% of the girl respondents felt it was an advantage being a girl, though almost half of the total girl child respondents (N=5981) still wished they were a boy.

(vi) Sexual Abuse

(a) 27.9% children reported about adults trying to rub their private parts against children in crowded places; (b) 30.2% children were shown dirty pictures and 4.5% have been photographed in nude; (c) Every sixteenth child reported to having experienced intercourse (amounting to assault); (d) Three out of every ten young
adults admit that sexual abuse has been inflicted on them by close relatives; and (e) Boys (52.9%) are as much sexually abused as girls (47.1%).

3.3 Profile of Child Abuse: Socio-Economic circumstances leading to Child Abuse

Child abuse is a complex issue and a great threat and is a matter of serious concern. In majority of child abuse cases, “abuser” is either related to, known person or stranger or otherwise. It is very difficult to detect that culprit-Abuser for reasons best known either to the victim child or to their parents. None have guts to report that matter to anybody due to family prestige and reputation. In orthodox and conservative family the state of affairs is still worst and continued due to the family/social disgrace. Child abuse-victim family prefer to resolve the matter privately rather reporting to Police, as they mean it as private matter and not a criminal one. According to the World Health Organisation “Child abuse or maltreatment constitutes, all forms of physical and / or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child’s health, survival, development or dignity in the context of relationship of responsibility, trust or power”. Parents/family poverty, single parent / no parent etc. will force the child to be a child labour prohibited under the law\(^9\) or to become child in conflict with law\(^10\) and thereby become victim of abuse.

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\(^9\) Child Labour (Prohibition and Regulation) Act, 1986.
The problem of child abuse revolves around the complexities of conceptualisation and reporting of the problem since the abuser is someone close to the victim. To quote from the Indian Penal Code (Amendment) Bill, 1992.

"That our heads bow in shame when it is learnt that a girl (child) has been raped (sexually abused) by a close relative of her own. She becomes the victim of her own trust on the relative (Saviour)".

The problems inherent in bringing child abusers to justice are, firstly, reporting of cases of child sexual abuse, secondly, problems in trial and proof and thirdly, the competence and credibility of child witness.¹¹

In *Sudesh Jakhu v. K.C.J.*¹² Justice Jaspal Singh laid down certain guiding principles and norms for conducting trial and taking evidence in child sexual abuse cases:

"The Magistrate should record the victim’s statement in the same language as spoken by it, every effort should be made by the trial judge to lessen the ordeal of the victim when it is in the witness box by keeping a check on the prosecutor who might undervalue the child’s feelings, handle the proceedings or ambiguous. The proceeding should be held in camera and the feasibility of giving breaks during questioning should be kept in mind, though such breaks need not be long, if the prosecution establishes to the satisfaction of the court that to obtain a full and candid account from

¹² 1998 *Cri.L.J.* 2428 (Del).
the child witness, the use of a screen is necessary, the court may be inclined favourably to provide such a screen, etc”.

The National Crime Record Bureau (NCRB) reported 14975 cases of crimes against children in 2005. Most subtle forms of violence against children such as child marriage, child labour - economic exploitation, practices like “Devadasi”, tradition of dedicating young girls to God and Goddesses, genital mutilation in some parts of the country are often rationalised on grounds of tradition and culture.13 Children from poor backgrounds are the key target groups, Ethnic Minorities, SCs, OBCs indigenous people, hill tribes, refugees and illegal migrants are the easy victims. Poverty, deprivation, natural disasters, inadequate educational and employment opportunities, economic disparities, erosion of traditional family systems, war of human rights are, inter alia, some of the factors responsible for the growth of this malaise in society.14

3.4 Abuse of Children—Various forms and Categories

The child abuse include physical abuse, sexual abuse, substance abuse, emotional abuse, child labour, bonded child labour, child marriage, Juvenile Justice, child rag pickers, children in armed conflict etc. and there are some categories of children who are abused and exploited namely, in a family environment, children in schools, children at work, children on the street and children in institutions.

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14 Supra note 11, p.463.
3.4.1 Physical Abuse

"Physically abused child" means a child under 18 years of age, whose parents or other’s concerned inflict upon the child physical injury or bodily harm, which includes beating, hitting, kicking, burning, or otherwise harming a child physically. According to a report about 18.2% children suffered physical injuries by family members due to beating and 15.6% children suffered physical abuse by other than family members. The UNICEF, Save the children and Government of India jointly conducted a survey in 2007 and found that 65% of school children in India are subjected to corporal punishment and virtually the schools and teachers still continue to follow the old saying, "spare the rod and spoil the child" which was a traditional wisdom.\(^{15}\) Corporal punishment has been abolished through legislation or executive order in at least 17 States and Union Territories in India. It is due to tardy implementation that presents the major challenge. The Right of Children to Free and Compulsory Education Act, 2009\(^{16}\) was enacted and under section 17, it bans all forms of corporal punishment and envisages disciplinary action against the guilty. The National Commission for Protection of Child Rights (NCPCR) held a public hearing in February 2008 at Chennai on all forms of torture of children in School and Hostels in Tamil Nadu. The Commission was shocked to record its findings that at least 10 school children had committed suicide after being subjected to various forms of corporal punishment and 8 had been raped.

\(^{15}\) *Deccan Herald*, 14th August, 2009.

\(^{16}\) Received the Assent of the President on 26th August 2009; Act came in to force on 1.4.2010.
3.4.2 Emotional Abuse

It is a humiliation of children, it is also known as verbal abuse, mental abuse and psychological maltreatment. It includes acts or failure to act by parents, caretakers, peers, friends, relatives and others that have caused or could cause serious behavioural, cognitive, emotional, or mental distress/trauma. The emotional abuse can have more long lasting negative psychological effects than any other forms of abuse. Family members seldom realize the long term implications of their humiliating behavior on children's psyche and life. Emotional abuse is humiliation of children and one study indicates that 44% children reported that they were shouted at and humiliated by their own family members including their mothers. Comparison amongst children is another kind of emotional abuse. The saddest part of making such comparisons is that it can lead to the development of unwarranted inferiority/superiority complexes which can further lead to the creation of warped personalities. Children were also found to have received considerably harsh treatment from their family members which is another kind of abuse of children.17

3.4.3 Sexual Abuse

The child sexual abuse is an exploitation and violation of human rights. It is a demoralization of the fiber of entire society. Children on street, children at work and children in Institutional care reported the highest incidents of sexual assault and most children did not report the matter to any one. Sexual abuse is an inappropriate sexual behavior with the child. It includes fondling a child’s genitals, oral genital contact,

17 Supra note 8, pp.12-13.
forced vaginal or anal intercourse and making child fondle on adults genitals, sexual
assault (intercourse, incest, rape and sodomy), exhibitionism and pornography.\textsuperscript{18}

Sexual abuse of child is defined as any sexual relation between an adult and a
child. Its legal definition includes child molestation, incest and rape. Child Sexual
abuse is defined as the involvement of dependent child or adolescent in sexual
activities with an adult in which the child is used as a sexual object for gratification of
the older person's needs or desire, and to which the child is unable to give consent
due to the unequal power in the relationship.\textsuperscript{19}

The definition of sexual abuse of children is best understood when the
problem is related to pedophilia. The term Pedophilia refers to any adult who
habitually seeks the company of a child/children for the gratification of his/her sexual
needs. The word pedophilia is derived from two Greek words "pedo" means "child";
and "philia" means "love for". The United Nations has also defined child sexual abuse
as contacts or interaction between a child and an older or more knowledgeable child
or adult (a stranger, sibling, or person in a position of authority, such as a parent or a
caretaker) when the child is being used as an object of gratification for the older
child's or adult sexual needs. These contacts or interactions are carried out against the
child, using force, trickery, bribes, threats or pressure.\textsuperscript{20}

\textsuperscript{18} Vol.1, Mar (2008), Mysore University Law Journal.
\textsuperscript{19} Sadhana Gupta and Pankaj Kumar, “Child Sexual Abuse: A Socio-Legal Problem”, Vol.20, No.6,
Child sexual abuse, according to P.D. Mathew, includes employing, using, inducing or coercing, any child to engage in illicit and contact, and it also includes the use of children assisting with other persons to engage in explicit sex.\textsuperscript{21}

There are four types of Sexual Abuse namely exposure which is viewing of sexual acts and exhibition, molestation, sexual intercourse on a chronic basis and rape in which there is acute assault intercourse. Rape can be of two kinds-first one is intra familiar and extra familiar \textit{i.e.} rape by known person or person in authority and rape by a stranger. Child rape is a great social stigma, which shows complete degeneration of moral values in society. In some cases the victims of rape are not even accepted at home. The victim is either too traumatized by the experience or the parents, out of concern for their child’s future, hush up the matter. The rapist knows that there is a high chance of his outrage against the minor not being discovered. This acts as a major motivating factor. Many victims do not go to the police out of fear of adverse publicity and unnecessary harassment. Apart from the delay or even absence of justice, the victims have to face similar incidence every now and then. When the victims do not find any safe place in society and do not see any future prospects, they enter into the den of prostitution.\textsuperscript{22}

Thus, child sexual abuse is a dark reality. It has become a common phenomenon and majority of cases go unnoticed and unreported due to innocence of the victims, stigma attached to the act, tardy and insensitivity of the investigating and

\textsuperscript{21} Supra note 11, and also see “Sexual Abuses of the Children and the Law”, New Delhi: Legal News and Views, 1996.

\textsuperscript{22} Supra note 19, p.16.
law enforcement agencies. An adult who engages in sexual activity with a child is performing a criminal and immoral act which can never be considered normal or socially acceptable behavior. Article 34 and 35 of Convention on the Rights of the Child provides right to protect the child from all forms of sexual exploitation and sexual abuse.

The Indian laws dealing with sexual offences do not address child sexual abuse and Indian Penal Code does not recognise child sexual abuse as an offence. A child sexual offender is booked under various other sections of the Indian Penal Code - Offences of rape (Sec. 375), outraging the modesty of woman (Sec.354) and unnatural offences (Sec.377). An act of child rape is a gruesome, and abhorring act, it leaves a permanent scar on the personality of the child, inhibiting growth and development. It instills fear, insecurity. Rape defined under Indian Penal Code is very specific, providing remedy only to the women and there is a penal provision. It does not include abuse on boys and the intercourse usually interpreted to mean with an adult. Due to the absence of clear provision to deal with child rape cases, there are 4,076 cases of rape of children reported in 2005. Juvenile Justice (Care and Protection of Children) Act, 2000 does not address sexual abuse on children of both “Child in need of care and protection” and “Juvenile in conflict with law” under Section 23. More so, Section 5 of the Immoral Traffic Prevention Act, 1969 prescribes punishment of

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24 Sec. 376 of Indian Penal Code.
25 Supra note 13.
26 Sec.23 of Juvenile Justice (Care and Protection of Children) Act, 2000.
not less than 7 year for inducing the child into prostitution. Indian Penal Code Section 354\textsuperscript{27} covers outraging the modesty of women and not the girl child. This is a serious lacunae in the Criminal Law.

3.4.4 Child Prostitution

Child Prostitution is one of the worst forms of child labour. It means the use of child in sexual activities for remuneration or any other form of consideration. So this is another kind of abuse and exploitation of child for remuneration in cash or in kind usually but not always organised by an intermediary. However, child prostitution is inadmissible, it tantamount to exploitation and victimization of the child precisely, because it undermines the child's development. It is detrimental to the child both physically and emotionally and it violates the child rights.\textsuperscript{28} The child prostitutes get infected with disease like Sexual Transmitted Diseases (STD) and even the HIV infection (AIDS). The United Nations Convention on the Right of the Child, 1989 defines child prostitution as sexual exploitation of a child below the age of 18 years for remuneration in cash or kind. It is also important to note that child prostitution, in present days, is very closely related to child pornography. The First World Congress held in Stockholm in 1996 against commercial sexual exploitation of children described child pornography as any visual or audio material which uses children in a sexual context. It consists of "the visual depiction of a child engaged in explicit sexual

\textsuperscript{27} Sec. 354 Indian Penal Code.
conducted, real or stimulated, or the lewd exhibition of the genitals intended for sexual gratification of the user” 29

Besides, in 1999, the ILO adopted the Convention concerning Prohibition and in media Action for Elimination of Worst Forms of Child Labour which addresses among other issues, sale and trafficking of children, child prostitution and child pornography. 30

Sexual trafficking and forced prostitution of children which is going on in certain areas shall be prevented and those unfortunate children should be properly rehabilitated. Most of the victims are girls between the age of 10 to 14 years. The operations of these notorious activities are quite complex. About 25% to 30% of prostitutes are estimated to be children. It is prevalent in around tourist centers and in large cities as well as the areas where family based prostitution traditionally practiced by some caste and communities. The potential areas are those where Devadasi/Jogin system is in existence. Enforcement of laws by Police in strict sense is very essential. Social action for creating awareness programme in the areas where Devadasi system is in existence is also required. Providing Education, rehabilitation and economic support will go a long way in tackling and eradicating this worst form.

3.4.5 Child Trafficking and Abuse of Child

Most children who are sold into sex trade by their parents either knowingly or unknowingly, mainly due to poverty. These children were kept in bondage by sex

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29 Supra note 11, p.463.
30 Ibid.
mafia. It is difficult for these children to escape, once they were trapped into this. Very often they were physically abused, beaten, burnt, tortured, and deprived of food, movement etc... Children were trafficked from across the border and also from violence infested places. Sex tourism is on the increase.\textsuperscript{31}

3.4.6 Substance Abuse

Drug abuse and drug trafficking has become a global phenomena. Various studies reveal that teenage children are falling prey to drug abuse knowingly or unknowingly. Substance abuse includes forcing or allowing the child to take or sell drugs or substances get involved in their smuggling or peddling or take alcohol or any other addictive drug or substances that retards and that may adversely affect the child's physical and mental well being and growth.\textsuperscript{32} There is a separate law dealing with substance abuse called the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985. Article 33 of Convention on the Rights of the Child mandates to protect children from the illicit use of narcotic drugs and psychotropic substances and to prevent the use of children in the illicit production of and trafficking of such substances.

3.4.7 Child Marriage

Child Marriage is a social evil and its practice is not only abuse of child and exploitation but also a legal abuse. It stunts growth and development, particularly of the girl who is more vulnerable to domestic violence and sexual abuse. it also


\textsuperscript{32} Supra note 8, p.16.
deprives the girl of her right to education and live with freedom and dignity. A comprehensive legislation known as The Child Marriage Restraint Act, 1929 was enacted during British India Government. This was also called as Sharada Act after the name of its architect. Way back in the year 1978, The Child Marriage Restraint (Amendment) Act, 1978 raised the minimum age of marriage from 18 to 21 years for boys and 15 to 18 years for girls although this Act is applicable to the whole country, it is inoperative in respect of communities, which have their own personal laws. Another drawback of this Act, is that it simply imposes restrictions on the solemnization of the marriage of the minors, but does not invalidate such marriages.\textsuperscript{33} The new legislation, The Prohibition of Child Marriage Act, 2006,\textsuperscript{34} is a secular legislation, which applies to all citizens of India, both within and beyond India. The legal age of consent for marriage is 18 years for female persons and 21 years for male persons. The violations of this legislation and offences under this Act has been made cognizable and non-bailable and empowered the courts to issue injunctions prohibiting solemnization of marriages in contravention of the provisions of this Act and any child marriage solemnized in contravention of an injunction order issued under this Act, whether \textit{interim} or final shall be \textit{void ab initio}. In relation to the age of the child in marriage and consensual sexual intercourse, the law is not certain.


\textsuperscript{34} Received the Assent of the President on January 10,2007 and Published in the Gazette of India, Extra, Part II, S.1 dated 11\textsuperscript{th} January 2007.
As per the doctrine of “doli incapax” and under Sec.82 of Indian Penal Code, the child under 7 years of age is incapable for committing an offence and Sec.83 of Indian Penal Code recognises that, a child above 7 years of age but below 12 years is capable of committing a crime if he/she has attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion.

Children above the age of 12 years are treated on par with adults in their ability to commit an offence. Therefore a 13 year old can be held responsible for committing a murder and even rape, but is incapable of giving a consent for sex with another person of the same age.

The Law Commission has examined in detail the scientific and medical issues relating to child marriages in all respects, i.e. physiological and emotional and affects not only the parents to such marriage but also the household in which they stay. The Law Commission Panel said that “the age of marriage for both boys and girls should be 18 years as there is no scientific reason why this should be different”. It also suggested mandatory registration of marriages within a stipulated period for all communities - Hindus, Muslims, Christians among others. In 2006, the Centre had notified a new Child Marriage (Prohibition) Law. But, a study by Centre for Social Research and National Institute for Public Co-operation and Child Development (NIPCCD) has found that 77 percent of marriages in Madhya Pradesh are, in fact, child marriages. In Rajasthan it was found to be 40 percent and in Uttar Pradesh, it was just over 37 percent. The survey conducted in the three states last year found that the practice of child marriage was deep rooted in the cultural heritage of the
communities. "Most of the child marriages are reported from families where the broader community to which the family belongs indulges in practice", the Report released recently said. Communities like Meenas, Jats, Gurjars, Rajputs and Berwas among others were found to be following the practice of child marriage. In Rajasthan and Madhya Pradesh, it was found that even after marriage the girl lives with her parents till she attains puberty. It sent to marital homes on the day of the marriage.35

Further, The Law Commission candidly states that:

"Child Marriage is thus child abuse and a violation of human rights of the child. It has an extremely deleterious effect on the health and well being of the child. It is a denial of childhood adolescence: it is a curtailment of personal freedom and opportunity to develop to a full sense of selfhood as well as a denial of psycho-social and emotional well being and it is a denial of re-productive health and educational opportunities. The girl child is most affected and suffers irreparable damage to her physical, mental, psychological and emotional development.36

3.4.8 Child Labour: Abuse of Child

The practice of child labour is a hard reality. It is a cause and consequence of abuse and exploitation of children. The children are being exploited and forced into labour. Two main approaches defining child labour which consequently affects on the whole some personality of child are:

36 Chapter 4 of 205th Law Commission Report.
(i) Any labour force activity by children below a stipulated minimum age.

(ii) Any work, economic or not, that is injurious to the health, safety and development of children.

Hommerfolks, chairman of United Nations Child Labour Committee has defined child labour as, “any work by children that interferes with their full physical development, their opportunities for a desirable level of education and of their need of recreation.

Thus child labour is any work undertaken by children below 14 years in such works which are injurious to their health and harmful to their proper development. The function of work in childhood is primarily developmental and not economic. Children’s work, then as a social good, is the direct anti thesis of child labour as a social evil.\(^{37}\) Child labour is a abuse and exploitation of children and children prematurely leading an adult-like life. They receive low wages and work for long hours under conditions that are likely to damage their health as well as physical and mental development. According to a study on child abuse, out of 12447 children, 19.7% are found to be at work. Only 17% of working children are paid for their work. Thus child labour is being largely underpaid, over worked and exploited.\(^{38}\)

Children engaging in hazardous and non-hazardous labour have certainly continued to be exploited and abused. Large scale exploitation and abuse of children employed in domestic work and hotels are indicators of child labour and its abuse. On

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\(^{38}\) Supra note 8, p.7
October 10, 2006 the notification issued by the Ministry of Labour, Government of India banned children from being employed as domestic servants, workers in Dhabas, Restaurants, Hotels, Tea-Shops, Resorts, Spas or other recreation centers.

Child labour and its exploitation has become a biggest challenge. On the problem of child exploitation High Court of Kerala in *Satyavan Kottarakkara v. State*, held that, “exploitation of children in any form which has the tendency to exploit them either, physically, mentally or otherwise is objectionable. Any attempt in this direction should be put an end to achieve the goals enshrined by the Indian Constitution Makers, which are reflected in various provisions of the Constitution, namely Article 21, 39, 41, 45 and 46...”.

Practice of Child Labour causes health hazards. More so, working children suffer from the incidence of malnutrition and under nourishment. They are prone to become victims to the anti-social activities like black marketing, smuggling, theft, drug addiction, drug peddling, and prostitution even terrorist activities. Thus practice of child labour is cause and consequence for children to become “juvenile in conflict with law” and vice versa.

The consequences of child labour are many-fold. A fundamental fact that has to be remembered here is that since children differ from adults in their physical and psychological attributes, a job that may not be hazardous to an adult may be highly hazardous for a child. A working child may be exposed to various things in the course of work including organic dusts, toxic chemicals, high temperatures that could have

39 AIR 1997, Ker 133.
disastrous long term consequences. Moreover the term ‘hazardous’ should not be confined to physical hazard alone because they suffer more devastating psychological damage than adults from working and living in an environment in which they are oppressed or demigrated. In the context of Convention on the Rights of the Child, child labour is a violation of child’s right to health, right to rest, leisure and play, right to optimal development, right to adequate standard of living protection from all forms of injury and abuse etc. Besides, it is surely not in the best interest of the child which is one of the fundamental principles to be adhered to in all activities concerning children.

3.4.9 Bonded Child Labour and Abuse of Child

Bonded Child Labour is inhumane and often dangerous and would certainly seem to qualify as a ‘worst’ form of child labour and is included as such in the 1999 Convention. Parents of the child who are extremely poor consent to give their children in lieu of their debt taken from the land lord and their children are given as security.

Article 23 of the Constitution of India, prohibits the practice of debt bondage and other forms of slavery both modern and ancient as held in Peoples Union for Democratic Rights v. Union of India. The issue of bonded labour was raised in the Supreme Court in the form of Public Interest Litigations.

41 Convention concerning prohibition and immediate action for the elimination of ‘worst’ forms of Child Labour (ILO No. 182), adopted 17th June 1999 (Hereinafter ILO 1999 Convention).
42 Asiad workers case AIR 1982 SC 1473.
In the *Bandhua Mukti Morcha v. Union of India and others*, the Supreme Court held that whenever it is shown that a labourer is made to provide forced labour, the Court would raise the rebuttable presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is, therefore, bonded labour. In *Neeraj Choudhary v. State of M.P.*, Supreme Court held that the bonded labourers must be identified and released and on release they must be suitably rehabilitated. Any failure on the part of the State Government in implementing the provisions of the *Bonded Labour System (Abolition) Act, 1976* would be violative of Articles 21 and 23 of the Constitution of India.

In a Bonded Labour System under which the debtor or his descendents have to work for the creditor and without reasonable wages or with no wages in order to discharge a debt. This system originated from the uneven social structure characterized by feudal and semi-feudal conditions. It is an outcome of certain categories of indebtedness, like customary obligations, forced labour, begar or indebtedness which have been prevailing for a long time involving certain economically exploited, helpless and weaker sections of society. They agree to render service to the creditor in lieu of debt. At times, several generations work under bondage for the repayment of a paltry sum, which had been taken by some remote ancestor, often at high rates of interest. The system is an infringement of basic human rights and a disgrace to the dignity of labour.

43 1984 2 SCR.
44 1984 3 SCC 243,
The factors that trigger off bonded labour are: crisis and death in the family, natural calamity/accident, sudden loss of employment, cheating and loan design by money lender, non-sustainable expenses on wedding and other social functions, alcoholism, migration and trafficking.

Along with the Child Labour (Prohibition and Regulation) Act, 1986 and other labour laws, the following laws provide legal protection to bonded child labourers. 

**Salient features of the Bonded Labour System (Abolition) Act, 1976.**

The Act provides for the abolition of the system of any custom, agreements or instruments requiring any person to render any service as bonded labour void. The liability to repay bonded debt is deemed to have been extinguished from the date of commencement of the Act and the property of the bonded labour freed from mortgage. Civil prisoners stood freed as a consequence of the Act.

The law provides that (a) no suit or other proceedings shall be instituted in any Civil Court for the recovery of any bonded debt; (b) every attachment made before the commencement of the Act for the recovery of any bonded debt shall stand vacated; and (c) such movable property shall be restored to the bonded labourer.

The role of the District Magistrate is extremely important in view of the special sensitivity of the issue relating to bonded labour as under the Act, powers of a Judicial Magistrate are vested in the District Magistrate.

The definition of Bonded Labour System explained under Section 2 of the Bonded Labour System (Abolition) Act, 1976, is the system of forced labour under which a debtor enters or has or is presumed to have entered into an agreement with
Thus, the bonded labour system is defined in section 2(g) as the system of forced, or partly labour, which a creditor extracts from a debtor by virtue of an agreement between the two. The Bonded Labour System (Abolition) Act purports to abolish all debt agreements and obligations. It is the legislative fulfillment of the Indian Constitution's mandate against begar and forced labour. It frees all bonded labourers, cancels any outstanding debts against them, prohibits the creation of new bondage agreements and orders the economic rehabilitation of freed bonded labour. The Act provides for imprisonment upto 3 years and fine upto Rs. 2000/- to whoever advances any bonded debt. An offence under the Act may be tried in a summary manner. Every offence under the Act is cognizable and bailable.

Article 23 of the Constitution provides traffic in human beings and 'begar' and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Article 39(a) provides that the citizens, men and women equally, have the right to an adequate means of livelihood; Article 39 (d) provides that there is equal pay for equal work for both men and women and Article 39 (e) provides that the health and strength of workers, men and women, and the tender age of children are not abused and that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Section 374 of Indian Penal Code deals with unlawful compulsory labour
which says that whoever unlawfully compels any person to labour against the will of
that person, shall be punishable with imprisonment of either description for a term
which may extend to one year, or with fine, or with both.

Thus, the Bonded Labour System (Abolition) Act, 1976 has been enacted
pursuant to the Directive Principles of the State Policy with a view to ensure basic
human dignity to the bonded labourers and any failure of action on the part of the
legislation would be the clearest violation of Article 21 apart from Article 23 of the
Constitution.

3.4.10 Child Rag Pickers and Child Abuse

Child rag pickers are highly vulnerable to all kinds of child abuses and
neglect, especially physical abuse, sexual abuse, and police abuse and so on. Growth
of urbanisation has increased the number of dumping grounds to clean them. Here the
role of child rag pickers becomes indispensable. Migrant groups are involved in this
rag picking and they are subjected to all forms of exploitation. Due to significant
family size, low earnings of the parents or below subsistence level, they force their
children undertake ragpicking.

The people belonging to various social categories are involved in rag picking.
But Scheduled caste households are the highest as compared to other social groups.
So, rag picking is a kind of self employment. Rag picking pays more than any other
form of child labour in India, where every third child worker, an expert picker, can
earn to Rs.15 per day. In rag picking mostly boys between the age group of 8-14 years
are employed. Some of the rag pickers are self employed persons who pickup rag
from the streets and bifurcate them and sell to the dealers who deal with such goods. Some of the rag pickers are employed by show owners who deals with plastic goods, tin products etc. Thus, it is a most dangerous and hazardous occupation.45

Children who are involved in the process of rag picking collect mirror, glass, plastic, garbage and other waste including hospital wastes like; blood stained bandages, syringes, saline bottles, surgical wastes and lab wastes which endanger their health. This consequently, causes health and other hazards like injuries, Cough, Tuberculosis, stomach infections, skin diseases etc... The sharp glasses lying in the garbage dump may injure their bare foot and injury may develop into festering wounds. Many of the garbage children die of curable diseases that go uncured.46

3.4.11 Juvenile Justice Administration and Child Abuse

Juvenile Justice Act is a comprehensive piece of legislation47 to deal “Juvenile in conflict with law”48 and “Children in need of care and protection”49 for

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46 Helen R. Sekar, Child Labour : Situation and Strategies for Elimination, Noida: V.V. Giri, National Labour Institute, 2007, pp.44-46
47 Juvenile Justice (Care and Protection of Children) Act, 2000 received the Assent of the President on 30.12.2000 and Published in the Gazette of India, ext., Pt. II S. 1 dt. 30.12.2000, see also Juvenile Justice ( Care and Protection of Children) Amendment Act, 2006, received the Assent of the President on 22.08.2006 and Published on the Gazette of India ext., Pt.II S.1 dt. 23.08.2006.
48 Sec, 2(l) define “Juvenile in Conflict with Law” means a Juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence.
49 Sec. 2(d) define “child in need of care and protection” means a child:
(i) Who is found without any home or settled place or abode and without any ostensible means of subsistence,
(ii) Who is found begging, or who is either a street child or a working child.
(iii) Who is resides with a person ( whether a guardian of the child or not ) and such person has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or
protection of such children and to secure speedy justice to child / juvenile and it is designed for reformative, rehabilitative and social re-integration of child. The Juvenile Justice Act is based on two philosophical objectives—parents patriae and individualised treatment. The parents' patriae doctrine allows the court to conduct the proceedings principally to determine what should be done in the best interests of the child and not as trials to determine Criminal guilt and give sentence. The individualised treatment doctrine views the disposition decision in view to inherently rehabilitate. It seeks to prescribe a treatment programme fitting the needs, personality, psychological development and social circumstances of a youth.\(^{50}\) In *Bandela Aillaiah v. State*,\(^{51}\) it was observed that: “The Juvenile Justice Law appears to be so emphatic and mandatory that no juvenile delinquent shall be tried for any offence charged against him or must be convicted or sentenced for such an offence. On the other hand, a special treatment should be given to him for his care and protection by way of correctional measures”. But children often suffer neglect, abuse and violence in the

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\(^{51}\) 1995 Cril L.J. 1083.
administration of juvenile Justice. The very institution which is expected to protect
the children is violating their rights. When the children in conflict with law were
picked by the police, these children are frequently abused, tortured or ill-treated and
their human rights are often dis-regarded. More often they are kept in degrading
conditions at observation home without providing basic needs like food, dress,
medical health care facilities etc...and even custodial violence's are continued to
inflict sufferings upon the juvenile offenders. In some Juvenile Justice Boards,
juvenile cases are pending over 10 to 12 years and some juveniles have become adult,
mixed and even got children. This shows inordinate delay in doing justice to the
juveniles. Police cannot file charge-sheet of Juvenile offenders on time and in some
cases they use to take 2 to 3 years to file charge-sheet, this in turn cause delay in
disposal of the cases. The chairpersons of Juvenile Justice Board are over burdened
with their regular court work and hardly, they have time to spend in Juvenile Justice
Board. They conduct the proceedings without change of their mindset as usual and
very passively rather actively. It is nothing but a mockery of justice and exploitation
of Juvenile Offenders. This kind of conducting proceedings will not provide any
opportunity to the Juvenile Justice Board to interact/discuss with the Juvenile
Offenders parents for their rehabilitation. No co-operation, co-ordination,
convergence between, Juvenile Justice Board concerned department i.e. Women and
Child Development, Police and Judiciary. There is wide gap between law in book and
its practice in reality. There are nearly 4,992 Juvenile Offenders cases pending at
Detention of Children in Jail/Prison would also lead to violation of Human Rights. The Supreme Court in *Sheela Barse v. Union of India*, condemned and discouraged the detention of children below 16 years in jail, in a milestone decision. The Court observed:

"It is a matter of regret that despite statutory provisions and frequent exhortations by social scientists, there are still a large number of children in different jails in the country...it is the atmosphere of the jail which has a highly injurious effect on the mind of the child estranging him from society and breeding in him aversion bordering on hatred against a system which kept him in jail. On no account should the children be kept in jail and if a State Government has not got sufficient accommodation in its remand homes, the children should be released on bail instead of being subjected to incarceration in jail".

The National Commission for Protection of Child Rights (NCPCR) held an inquiry on 19th September 2009 and found that children living like 'animals' in Delhi boys home. No regular meals, dirty bed sheets, and rotten mattresses to sleep on contaminated water to drink, dingy toilets and filthy leaking rooms are provided to the children. Children cannot protest if they fall ill. If they do they are tortured. These children are treated like slaves; they cook for themselves in a dark, dirty kitchen; they clean their rooms and toilets and double up as waiters when visitors come to meet officials. The rooms they were living in were stinking and tube lights, fans and...
coolers in most of rooms were not functional. This clearly shows the miserable state of children and their exploitation in all levels.\textsuperscript{54}

3.4.12 Children in armed conflict

The protection of children in armed conflict is a great challenge to the global world and is also a matter debatable under International Humanitarian Law. Children in armed conflicts will be forced to live in oppression and injustice and will be placed in fear of violence. The child affected by armed conflict is a matter of peace and security. The issue of children in armed conflict has been the political agenda according to Security Council Resolution.\textsuperscript{55}

The concept of children in armed conflict is also an issue resolved under International Humanitarian Law which is applicable to them. Successive and sustained efforts have been made to put an end to the use of children as soldiers in violation of International Law-ILO Convention 182.

In the armed conflict of recent years, children have been the special targets and tragically also perpetrators of violence. The number of children who have been directly affected by armed conflict is enormous and unprecedented. During these conflicts, children have been maimed, killed or uprooted from their homes and communities. Children have been made orphans and have been subjected to


\textsuperscript{55} Supra note 33, p.93, see the Security Council, recalling the statements of its President on 29\textsuperscript{th} June 1998.
exploitation and sexual abuse.\textsuperscript{56} Children have been abducted and recruited as soldiers. War’s impact on girls is particularly damaging to future generations.

The use of children as soldiers has become common. There is a growing evidence that some industries are responsible for fuelling wars that have resulted in horrific violations of children’s rights.

Mal nutrition increases because of low food production and displacement, resources for social services are diverted into war effort; as health services deteriorate, infant and child mortality rates rise, the destruction of schools reduces access to education; and displacement separates families and deprives children of a secure environment. So to ensure the well-being of all children they deserve special attention and action.

\textbf{3.4.13 Street children and their abuse}

Children on streets are more vulnerable, exploitable and more prone to abuse. There is no one to safeguard their interests; they become easy prey to pedophiles. Street children live alone and therefore become an easy target for unscrupulous elements and even many street children are sexually abused.

The UN has estimated that about 100 million children around the world are forced to live wholly or partially in the streets, although reliable figures are practically impossible to calculate. Many such children are among the 300 million who are subjected to exploitation, violence and abuse around the world, according to the same

\textsuperscript{56} Kofi A. Annan, Secretary General, U.N. "We the Children - Meeting the Promises of the World Summit for Children", p.83.
source. Most street children are to be found in poor countries in Africa, Asia, Latin America and the Middle East, although the problem is also acute in parts of Eastern Europe and the former Soviet Union. In its 2008 report on The State of the World’s Children, the United Nations Children’s Fund (UNICEF) lists a total of 60 priority countries for action on child survival and safety, of which almost two-thirds (38) are in sub-Saharan Africa. Although the actual numbers of street children in each region are unknown, an idea of the scale of the problem can be gained from social indicators such as primary school enrolment and the prevalence of child labour.  

According to the UN High Commissioner for Human Rights, India has the largest population of street children in the world - around 18 million, of whom nearly 2,50,000 live on the streets of Mumbai. Most of these children get by working as porters at bus or railway terminals. As mechanics in auto-repair shops, as vendors, as street tailors or as ragpickers. Most children take to streets due to problems at home like poverty, an alcoholic father or an abusive mother, or due to the death of their parents”. Street children find ways to earn and start living like adults. Those children have a distorted vision of freedom. Life of street children (boys) is very miserable. The railway platform is their permanent home. They start with begging and selling knick-knacks, and when they get no money, they turned to cry”. In many cases these children are picked by criminals to run errands. Seven out of 10 street children are

59 Ibid, p.234
abused, what is even more worrying is that none of these children come out in the open about their suffering. According to a nation-wide study undertaken by the Ministry of Women and Child Development in 2007, 53.2 percent children had faced one or more forms of sexual abuse. The study revealed that in 50 percent of the cases the abusers were persons known to the child or in a position of trust and responsibility and most children did not report the matter to anyone. The findings of the study point to a harsh reality: Despite their best efforts, parents are no longer able to protect their children from sexual predators, who in most cases have easy access to their homes.60

Further the women and child development ministry has no database of street children, the target group of Integrated Scheme for Street Children (ICPS) Programme, a parliamentary committee has said, terming the findings as “surprising”. The parliamentary standing committee on human resource development in its report said: “The committee is surprised to know that the ministry does not have any database on the street children in the country, the target group of the ICPS while analysing the scheme”. The ICPS aims at providing shelter, nutrition, health care, education and recreation facilities to street children and seeks to protect them against abuse and exploitation. The panel in its report suggested that the ministry start preparing a database detailing the number of children on the streets and those benefiting from this scheme.61

60 Ibid, p.233.
A study on Street Children and Drug Abuse, done two years ago by R.Thilagaraj of the Madras University Criminology Department and Paul Sunder Singh of Karunalaya, an NGO, confirms these disturbing trends and 63.9 percent of street children interviewed in Chennai and Madurai said they had started sniffing solvents in order to "pass time". Over 22 percent confessed that they did to "keep themselves happy".62


Children and young people, with disabilities continue to be one of the most disadvantaged groups in all our societies. In fact, disability and its conceptualization are cultural and social constructs. Cross cultural literature on disability suggest that a broader view of society is needed to understand the cultural underpinnings and value system that dominate. It is now generally accepted that societal barriers place impediments in the way of persons with disabilities, preventing them from achieving their optimal levels. Disabled, thus, as a category are socially excluded and continue to be marginalized in our societies.

This exclusion is not a new phenomenon. Ever since the dawn of civilization, human society has been faced with the problem of disability. Children with defects were not cared for in pre-historic societies. Defects and mental illness in the good old days were considered the results of some kind of sin. The treatment meted out to them varied from age to age, civilization to civilization and culture to culture. The Spartans

destroyed them by throwing them down, tumbling the mountain precipices; The Egyptian Pharaohs hanged their blind slaves from the branches of trees. The physicians and the scholars in ancient Greek and Roman Societies, made some efforts to treat and preserve the lives of the physically challenged and provided asylums. The renaissance brought a small change in earlier attitude. This was the state of affairs until the late eighteenth century and early nineteenth century.\(^\text{63}\)

The situation in India was no better. The ancient India, however during the golden rule of Ashoka, the disabled received humane treatment. The first attempt at educating the disabled children were made in the last two decades of the 19th century with the establishment of - First School for hearing impaired in Mumbai in 1885, followed by the first school for the visually impaired in Amritsar in 1887. At present, there are more than 243 schools for visually impaired, 478 for hearing impaired and 604 for mentally retarded children. Vocational Rehabilitation centre (VCR) has been set up. National Institutes have started functioning. A three percent job reservation has been brought in and a special employment exchange has been set up. National Awards, tax concessions, self employment schemes and sheltered workshops are available for the disabled. Establishment of District Rehabilitation Centre (DRC), Community Based Rehabilitation (CBR), Regional Research Training

Centre (RRTC), National Information Centre for Disabled and rehabilitation (NICDR) are among the other efforts made by the Govt. for the welfare of the disabled.\textsuperscript{64}

In spite of all these efforts, societal attitude towards these children have not undergone any radical change. Ignorance about disability is widespread resulting in deep seated prejudice and about disability. Negative attitude dominate, and disability is thought of as a taboo and a stigma. Disabled children are often a terrible shock to their parents whose pride and self esteem have a rude shock and they begin feeling inferior and built Walls around them before they come to terms with the reality. Some curse the stars operative at the time of birth of the child, others attribute it to their ‘sins’ or bad ‘karmas’ in previous life. This is primarily due to the social construction of disability in our society. As such, these children because of their lower worth are denied the rights existing for the ‘normal’. They remain enshrined in the ideologies of segregation, labeled and categorized according to the medical definition of their disability. Use of labels such as ‘Mentally Retarded’, ‘Physically Handicapped’ etc. put these children at disadvantage for no faults of theirs. Such a labeling has negative, stigmatizing effects which further accentuate their weaknesses. This labeling is thus disabling. Labeling human beings dehumanizes them. Their self worth gets devalued and it reduces them to objects of pity, sympathy or even of patronage.\textsuperscript{65}

The problem of these children lies not only in the limitations that they have but also in their feeling a ‘sense of inadequacy’ and ‘insecurity’ due to the attitude of

\textsuperscript{64} \textit{Ibid.}, p.190.  
\textsuperscript{65} \textit{Ibid.}
rejection, isolation, and even ridicule by others around them. As a consequence, they feel unhappy and suffer from emotional disorders. They also, at times, show negative and aggressive behavior because of certain bodily disorders in them, such as anemia, blood sugar, hormone imbalance or neurological disorders, which contribute to their emotional, upsetting. Due to this, they find it difficult to adjust with their environment and develop certain personality disorders like lack of confidence, inferiority complex and often show tantrums to attract the attention of others.

Of late, the subject of segregation V. integration has generated many debates resulting in certain positive changes. The growing importance of the ‘rights issue’ was strongly stressed by disabled activists. Global initiatives on equalization of opportunity and education for all reinforced this. Rectifying the language used to describe the disabled in this regard has played paramount role. In an effort to dispel the stigma associated with the negative labels of the past the old language which labeled disabled people as ‘lame’, ‘defective’ ‘crippled’, ‘less fortunate’, ‘mentally retarded’, ‘epileptic’, ‘spastic’, ‘deaf and mute’, all of which focused on their imperfections, was abandoned and replaced by the new language whereby children with disabilities were described in broader, more general terms such as children with special educational needs. The old language applied a mistaken model seeing difficulties within the individual child and disregarding the numerous facets in the external environment which disabled the child. This approach was regarded as a medical approach and known as the medical model. Today the approach is a social one looking, instead, at all the barriers within the environment that can disable a
Our society is submerged in concerns of class, caste, gender and religion, which is highly detrimental to social change. Programs of poverty alleviation, caste and gender issues, and rural enlistment take a high priority, putting those disabled last on the list of development activity. The disabled are very much a part of these areas, but, mainly due to political weakness, they remain a neglected segment, kept out of the political and social framework of social policy and their social integration remains a dream to be realized. But there is a ray of hope and it calls for a revolution in the attitude of society. Civil society built on the dogmas of social justice and equal opportunity recognizes the weak, the needy and the helpless. This conforms to the spirit of the Constitution. We need to change ourselves into a society where people value each other despite differences and lest we forget that people with disabilities have a fundamental right to live and participate fully in the settings and programs—in school, at home, in the workplace and in the community.

3.4.15 Missing Children and their abuse

The term ‘missing children’ encompasses runaway kids, children who are abducted and those who get lost or separated from their families. But the single largest component contributing to these large numbers is runaway children between the age group of 10 and 18. While some leave home for trivial reasons like not wanting to study, others are forced to escape from what they say is a miserable

\[66 \text{ Ibid.}\]
existence. Many leave their homes to make a living or to escape abuse, while a large number fall prey to trafficking.\textsuperscript{67}

The children may wander off, be lured away by traffickers or kidnapped. If they are captured by traffickers, they may be used as forced labour, exploited sexually, sent to the Gulf countries as camel jockeys or child brides, pushed into begging rackets and drug peddling or become victims of the organ trade.\textsuperscript{68} Not all children who are separated from their families are lost. Some times sick children are abandoned by their parents. Unable to afford the treatment, they leave their kids at temples hoping that God will look after them. A study conducted by Child Line Delhi, a helpline for kids shows that 33\% of the total calls received between 2000-08 were about “missing children”.\textsuperscript{69} NGOs in the field categorize missing children in two ways. In the first category are those kids who are found to be without adult supervision and who cannot get home on their own. The second group is made up of kids whose parents have reported their disappearance. Between 2000-08 child line got 6,330 calls from people who had located a “lost child” and 8,172 calls from parents looking for a missing kid\textsuperscript{70}.

A Committee on Missing Children was established by the National Human Rights Commission on February 12, 2007, to look into the issue. The Committee’s Report noted that “despite the best efforts of the government, “countless children go

\textsuperscript{67} Humaira Ansari & Surekha S. “Missing” DNA, Mumbai, 19 July, 2008, cited in ibid, p.60
\textsuperscript{68} Shreya Roy Chowdhory, “When will these Children Return Home?” The Times of India, New Delhi, 14\textsuperscript{th} Nov, 2008, cited in ibid, p.63
\textsuperscript{69} Ibid.
\textsuperscript{70} Ibid.
‘missing’ every year”. It also “observed that the juvenile justice system too has failed to provide due care and protection to children”\textsuperscript{71}.

According to the National Human Rights Commission (NHRC), the New Delhi capital city has earned the dubious distinction of having the second highest number of missing children in the country. And it’s due to the handicapped-policing system of the city. The report by the National Human Rights Commission (NHRC) emphasises that on an average 44,000 children are reported missing each year, out of which, as many as 11,000 remain untraced\textsuperscript{72}.

According to the Report, there are a number of problems, including abductions and kidnappings by family members, children who run away on their own or are forced to take that step due to compelling circumstances in their families. The list of missing children also includes those who face unfriendly and hostile environment and are asked to leave home or who are abandoned. Few children who are trafficked, smuggled or exploited for various purposes are among the missing lot. Delhi reported the highest percentage of such cases among children upto 15 years.

It was further reported that almost all girls under 10 years of age had been traced and there was no criminal activity linked to their disappearance. According to the report, ever since the introduction of computerisation of missing people’s data in 2006, there has been a significant breakthrough in tracing missing people. The report highlights that before computerisations of missing person’s data, the tracing out

\textsuperscript{71} Ibid.
percentage of missing persons was about 25 percent, which has increased to 73.77 percent in 2006. As per the report 80 percent missing children were traced. However, some disagree. A major problem lies in recording complaints. The police department does not have the right infrastructure to trace the missing children or even keep a record of them. The module that lodges the complaint of missing kids on the web is a long procedure. By the time it appears in the newspapers, the kid is either dead or back on his own. The report highlights that majority of these missing children are illiterate and had left their homes on their own for various reasons. Bajaj explains, “A majority of missing children belong to poor families from UP. These people come here in search of work and make their kids work for them. And when these kids go missing, none of the family members files a complaint, as they are not familiar with norms of this city. There is a serious lack of awareness and education in Delhi.” While the fate of the children of Delhi stands questionable, the city must wake up to the pleas of these kids who are the assets of the country.

If we go by the latest records, around 44,475 children go missing every year in India, out of which Mumbai alone witnesses an average of 4,182 missing children. And the numbers are rising. Startling though this figure is, the general populace, however, fails to notice the posters at railway stations and bus stops.

There are a number of NGOs who help trace missing children. One such organisation is Balprafulta, whose project-Talaash-was set up exclusively for this purpose.
purpose. Snehal Rane, the project coordinator at Balprafulta, says, “We believe that every child on the street is a missing child, and we try our level best to convince the child and the family to come together”.

Project Talaash, which was initiated in the year 2002, already claims to have helped 1,744 children either by reuniting them with their families or by providing them with shelter. Then there are NGOs like Saathi and Pratham, which operate at railway stations that serve as hubs for runaway children. Volunteers are friend the child and try to extract as much information as possible about his family and home. The child is either produced before the Child Welfare Committee (CWC) or placed in shelter homes affiliated with the NGOs. A child produced before the CWC is usually sheltered in the government-run children’s home till the parents are traced.\(^{76}\)

Statistics show that between September of 2007 and 2008, 76,579 children went missing in India. Of them, 11,825 children have gone missing from Delhi alone.\(^{77}\) Experts say that with numerous slums and a steady influx of migrants the poorer sections of the city are fertile hunting grounds for traffickers. Many kidnapped children are smuggled abroad to be married or work as domestic labour.\(^{78}\) The NHRC committee report says that “complaints of missing children, by and large, are treated as any other non-cognizable offence and only an entry is made in the General Station Diary (GSD) that is followed by an enquiry”.\(^{79}\)

\(^{76}\) Ibid, p.61.
\(^{77}\) Supra note 73.
\(^{78}\) Ibid, p.64.
\(^{79}\) Ibid.
The term ‘missing children’ is not appropriate, explains Satyarthi, as its legal connotation does not comprehend the crimes that are generally involved. The National Human Rights Commission reported that 50,000 children went missing in 2005-2006. Statistics naturally appear like the tip of iceberg, considering that a majority of poor families shy away from reporting cases involving their missing children. This for the fear of law, which holds them liable for pushing their children into labour.\textsuperscript{80} As things stand, the two years of enforcement of amended Child Labour Protection Act, 2006 do not seem to have yielded much. Unconfirmed reports suggest millions of children are working under hazardous circumstances, missing from homes and untraceable.\textsuperscript{81}

\textbf{3.5 Conclusion}

India is a developing country; socio-economic conditions prevailing in the society are strongly responsible for abuse of child in different forms. The problem of child abuse is deeply rooted in the socio-culture spectrums. High literacy and low literacy rate, both equally contribute to the problem of child abuse. This is a challenge to the civil society, which can be tackled by bringing attitudinal and behavioural change. Mindset of the people can be changed by imparting value based education and culture. Capacity building in children especially during abusive situations and school age children need to be sensitized to different forms of child abuse. Perceptions and attitudes of parents and people towards children be modified to understand the problem of child abuse.

\textsuperscript{81} \textit{Ibid}.  

\textit{Ibid}.