



## **Sexual Offences against Children in India: An Analysis** **Harmandeep Kaur\***

### **Abstract**

Child Sexual offences are defined as a sexual activity in which a child is involved. The consent of the child does not matter. The study examines child sexual abuse, the factors responsible for the same, the types of this offence, the effects of sexual activity on children, and the laws dealing with this problem at national and international levels. A large amount of social and economic cost is involved in such offences. There is a need to start a campaign to alert parents and society to take measures for the protection of their children inside as well as outside the house.

**Keywords:** Child, Sexual Abuse, Trafficking, Rehabilitation, Exploitation

### **1. Introduction**

A child is considered as the future of a nation, and his proper growth and development is the prior duty of the State, but at present, a child has become one of the most vulnerable sections of society. Child is being abused in various ways, such as child prostitution, child marriages, child trafficking, child rape, child sex tourism, pornography, kidnapping and abduction, and procuring of minor girls for unnatural offences etc. Child abuse has become an issue of global concern. India comes in second position regarding child population after China. Despite various steps taken in India to curb this menace, child abuse cases are increasing day by day. Violence is committed against the child at his familiar places such as at home, school, child care centres, orphanage and community. As a result, the child suffers physical and psychological consequences. The heinous incidents, such as acts of sexual abuse of a child, especially a girl child, leave a permanent impression on her mind, which goes with him throughout her life. To control child abuse, child rights have been recognised at national as well as at

---

\* Assistant Professor, Chandigarh Law College, Mohali, Punjab, India.  
email: j1883@cgc.ac.in

international level. This only purpose has been to protect the best interest of the child. States have entered into various national as well as international instruments. Recently, child abuse cases have come forward due to mass media support and public support in the form of campaigns against such abuse.<sup>1</sup>

## 2. Definition of 'Child'

The age of the 'child' varies from case to case. Under various legislations, different age limits have been provided depending upon the nature of the Act. Some of the enactments prescribing age limit have been discussed here. Under the Factories Act, 1948, the 'child' has been defined as 'a person who has not completed the age of fourteen years'.<sup>2</sup> The Plantation Labour Act, 1951, further prescribes the age limit of a person being a child 'until he has completed fifteen years of age'.<sup>3</sup> The Mines Act, 1952 considers a 'child' as 'a person who has not crossed the age of eighteen years'.<sup>4</sup> Under the Hindu Marriage Act, 1955, a male person becomes a major when he completes the age of twenty-one years, and a female becomes a major upon attaining the age of eighteen years.<sup>5</sup> A person below sixteen years of age is considered as a 'child' under the Immoral Traffic (Prevention) Act, 1956.<sup>6</sup> The Hindu Adoption and Maintenance Act, 1956 prescribes the age limit of 'child' the one 'who is below eighteen years of age'.<sup>7</sup> The age of capacity of a person to enter into marriage has been fixed for the male when he completes age of twenty-one and a female when she completes age of eighteen years.<sup>8</sup> Until then a person remains a minor and cannot enter into a valid marriage.

---

<sup>1</sup> Rights of Children in Our Society, *available at*: <http://www.vikaspedia.in> (visited on August 15, 2021).

<sup>2</sup>The Factories Act, 1948, S. 2(s).

<sup>3</sup> The Plantation Labour Act, 1951, S.2(c).

<sup>4</sup>The Mines Act, 1952, S. 2(b).

<sup>5</sup>The Hindu Marriage Act, 1955, S. 5(3).

<sup>6</sup>The Immoral Traffic Prevention Act, S. 2(a).

<sup>7</sup>The Hindu Adoption and Maintenance Act, 1956, S. 3(c).

<sup>8</sup>The Prohibition of Child Marriage Act, 2006, S. 2(a).

Under the Protection of Children from Sexual Offences Act, 2012 (POCSO Act, 2012), the enactment, dealing particularly with child sexual offences, the age of child has been prescribed as below eighteen years.<sup>9</sup>

### **3. NCRB Report on Child Abuse**

The National Crime Record Bureau (NCRB) in its annual report on 'Crime in India' published in September 2021, provided comprehensive statistics on crimes committed in India in 2020. According to data of the last three years, 418,385 crimes against children were recorded. The child sexual abuse offences under the Protection of Children Against Sexual Offences Act, 2012, (hereinafter referred to as POCSO) alone accounted for 134,383, roughly one-third of the recorded incidents.<sup>10</sup>

### **4. Child Sexual Abuse**

There are large numbers of cases reported and unreported as to child sexual exploitation. The maximum number of incidents are found in India. A child is being raped every 155 minutes in India. The cases are not reported because of shame or humiliation before society. Not only the strangers but even the child's family members and relatives commit such offences. Most of the time, the accused is the person known to the child or the person with whom the child has a relation of trust. A child is sexually exploited even by their own father, brother, cousins, uncle and other blood relations. A child can not feel protected even within his own family. The act of sexual exploitation is not limited to the act of rape alone but includes various other acts such as showing pornographic material to child, clicking his indecent pictures, the act of teasing and so on. The child starts blaming himself for the same and leads his life under fear, guilt and loneliness.<sup>11</sup>

---

<sup>9</sup>The Protection of Children from Sexual Offences Act, 2012, S. 2(d).

<sup>10</sup> Crime in India, *available at*: <http://www.ncrb.gov.in> (February 10, 2022)

<sup>11</sup>Child Sexual Abuse, *available at*: <http://www.vikaspedia.in> (visited on September 5, 2021).

Sexual abuse of a child can be in various forms such as rape, prostitution, sodomy, sexual exploitation for commercial purposes, child trafficking, pornography and so on. However, there is a difference between sexual abuse and sexual exploitation. Sexual abuse can be physical, emotional and verbal, while sexual exploitation is to manipulate a child into sexual activities for purpose of unlawful gains in the form of money or other benefits.<sup>12</sup>

## 5. Acts of Sexual Exploitation or Sexual Abuse

### 5.1 Child Prostitution

On one side, at an international level, a specific day has been earmarked as the International Day for Elimination of Violence against Women, i.e., November 25. On the other hand, the girl child is being exploited sexually, physically as well as mentally. According to an estimate, 40 out of 100 girls sexually exploited are aged below 15. In our country, around 1.2 million women are earning their income as sex workers who have not completed even their age of 18. In India, the tribe in Bharatpur, named 'Bedia', has adopted and continued the profession of prostitution as their source of income, and they consider this as the pride of their family. In earlier times, prostitution was in practice as a source of entertainment. Later on, when they adopted it as their family business, the girl's brothers started acting as her agent. To name some other such tribes, there are *Kanjars*, *Sanshis*, *Nuts* who practice prostitution as their profession. The government of India has taken the initiative to stop such practices/child trafficking under the 'Bachpan Bachao Andolan' campaign.<sup>13</sup>

---

<sup>12</sup>Council of Europe Convention on the Protection of Children against Sexual Abuse and Sexual Exploitation, 2007, available at: <http://www.llrm.coe.int> (visited on September 1, 2021).

<sup>13</sup>Child-prostitution-in-India-awareness, available at: <https://www.indiatoday.in/education-today/news/story/> (visited on September 1, 2021).

## 5.2 Child Marriage

Marriage in India is considered as one of the significant social institutions. This institution alone is credited with the perpetuity of human race. It has a far reaching social implications. It establishes a family relation and created new relations. It is not just a union of a girl and a boy but it is a union of two families and their relations. Its solemnisation varies from religion to religion, caste to caste and region to region. It has many forms of rituals and ceremonies. Child marriage is a marriage which is solemnised to which either of the contracting parties is a child. The child, for the purposes of marriage, is defined as per the gender of the person. If it is a male child, it is 21 years of age, and if it is a female child, it is 18 years of age.<sup>14</sup> If any party to the marriage is below this age limit, the marriage is considered as a child marriage. UN has urged the countries to control and abolish human rights violations by the end of the year 2030. Girls are more affected by early-age marriage. Through such practice, the childhood of the child is destroyed and various health problems arise. The girl child suffers domestic violence in most of the cases rather than going to school for education. In case the girl becomes pregnant in early age, lots of responsibilities arise besides health problems.<sup>15</sup> The Child Marriage Restraint Act was passed in India in the year 1929. This enactment has set the minimum age of marriage for females to be fourteen years and for males the age limit is of eighteen years. As against this, Muslim law permits *nikh*<sup>16</sup> at puberty which is considered as the age of child procreation. According to Hedaya, girls attain puberty at nine years of age, and boys attain it at 12 years, but the presumption is that one attains this age at 15 years.<sup>17</sup> After

---

<sup>14</sup> The Prohibition of Child Marriage Act, 2006, S. 2(a).

<sup>15</sup> Child marriage, *available at*: <http://www.legalservicesindia.com> (visited on July 3, 2021).

<sup>16</sup> Marriage in Muslim law is known as Nikah. It is an Arabic word which means “*union of two people*”. A person is capable of entering into a nikah only when he attains the age of puberty.

<sup>17</sup> This was held in the case of *Atika Begum v. Muhammad Ibrahim* (1912).

attaining the age of majority or puberty, the parties are capable of giving their own consent regarding the marriage. The Muslim Personal Law (Shariat) Application Act of 1937 prescribed no minimum age limit and allowed parental or guardian consent in case of Muslim marriages. In the Year 1949, by amending the Child Marriage Restraint Act, 1929, the minimum age for girls for marriage was increased to fifteen years and in the year 1978 by an Amendment to the Child marriage Restraint Act, 1929, the minimum age was increased for female to eighteen years and for male to twenty-one years. The present Act, the Prohibition of Child Marriage Act, 2006 defines the term 'child marriage' as a marriage to which either of the contracting parties is a child.<sup>18</sup> Under the Act of 2006, child marriage has been declared to be voidable, and the party can get the marriage nullified by filing a petition in the District Court.<sup>19</sup>

Child marriage has attracted global attention. It is now firmly on the global development agenda that is evinced by its inclusion in the Sustainable Development Goal (SDG), which aims to eliminate the practice of child marriage by 2030. Child marriage in India accounts for one in three of the world's child brides. Over half of the total girls and women in India who married in childhood live in five states: Uttar Pradesh, West Bengal, Maharashtra, Bihar and Madhya Pradesh. Uttar Pradesh is home to the largest number of the couple who were married in their childhood days. Nearly one in four young women in India, accounting for about 23 per cent, were married before their 18th birthday. India is a country of 1.40 billion population. The prevalence of child marriage cannot be uniform, but it varies across states and union territories. There are some disappointing figures in some states regarding child marriages but encouraging in others. For instance, at least 40 per cent of young women in West Bengal, Bihar and Tripura were married before turning 18 years old, compared to one per cent in Lakshadweep. Child marriage is attributed to many factors. It may

---

<sup>18</sup> The Prohibition of Child Marriage Act, 2006 S. 2(b).

<sup>19</sup> *Id.*, S. 3.

be due to poverty, insecurity, lack of education, family, region, religious and customary tradition. The majority of young women who married in childhood gave birth as adolescents. The school-going child brides face enormous challenges in continuing their education. It has been found that only 2 out of 10 married school-going girls continue their education in schools.<sup>20</sup>

### 5.3 Child Trafficking

The child is trafficked initially involves the common *modus operandi*, a child is taken away where he or she is and is deprived of the company of their family and environment and made to enter into a new world either by force or deception. Even where a child willingly leaves his or her family or guardian, there may be either some compelling reason or some kind allurements or deception. This new world in which these children are put in is invariably beyond their imagination. It is full of exploitation without even the least consideration for physical or emotional well-being. Indian Labour Organization (ILO) has put an estimate of around 1,225,000 children in 2005 who were harassed under forced labour and all these children were trafficked for this purpose.<sup>21</sup> ILO adopted a Convention on Worst Forms of Child Labour in the year 1999, which aimed at eliminating Child Labour and Child Trafficking.<sup>22</sup> The children work under inhuman conditions and worst environment which also goes against their human rights protection. The health and development of child is put under danger. There is a need for involvement of government, non-governmental organisations, employers' organisations and that cooperative action can be taken against child abuse so that

---

<sup>20</sup> Ending child marriage, a profile progress in India, 2023 update, UNICEF, available at: <http://www.data.unicef.org>

<sup>21</sup> Combating trafficking in children, available at: <http://www.ilo.org>

<sup>22</sup> ILO Convention No. 182, the Worst Forms of Child Labour (WFCL), 1999 classifies trafficking among "forms of slavery or practices similar to slavery" and thereby a worst form of child labour to be eliminated as a matter of urgency, irrespective of the country's level of development.

the child victim may get protection, trafficking may be prevented and other assistance to child victim may be provided.<sup>23</sup>

#### 5.4 Child Pornography

Child pornography includes sexually explicit material in which child is involved in some sexual act. Such obscene material is published for immoral and illegal purposes in electronic form. This is one of the most gruesome offences which give rise to further criminal acts such as child sexual abuse. India, through the Department of Telecom, took initiative to prohibit child pornography by blocking or restricting access to approximately 857 obscene websites which published child pornographic material. In India, the POCSO Act, 2012 has been enacted.<sup>24</sup>

The POCSO Act, 2012 was passed with a view to provide a legal framework that would safeguard the interest of children against the offences of sexual assault, sexual harassment and pornography and to protect the interest of the child at every stage of the judicial process. The framing of the Act aims to put children at ease, including child-friendly mechanisms, reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts. The POCSO Act defines 'child' which means "any person below the age of eighteen years".<sup>25</sup> The use of children for purpose of pornography has been prohibited.<sup>26</sup> The person found guilty 'shall be punished and the punishment extends to an imprisonment for a term which shall not be less than five years. The guilty shall also be liable to fine and in the event of second or subsequent conviction there shall be enhanced punishment of imprisonment for a term which shall not be less than seven years and also be liable to fine'.<sup>27</sup> The Information

---

<sup>23</sup> Trafficking of children, *available at*: <https://www.ilo.org/ipecc/areas/> (visited on August 7, 2021).

<sup>24</sup> Child Pornography: A Comparative Analysis, *available at*: <http://www.legalserviceindia.com> (visited on August 3, 2021).

<sup>25</sup> The Protection of Children from Sexual Offences Act, 2012, S. 2(d).

<sup>26</sup> *Id.*, S.13.

<sup>27</sup> *Id.*, S. 14.

Technology Act<sup>28</sup>, 2000 has been amended in the year, 2008 and a new comprehensive provision has been added in the Act by way of section 67-B that prescribes punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form.

## **6. Effects of Sexual Abuse on Child**

Child sexual exploitation is the matter of common issue which has various bad effects on the life of the child victim. The child victim starts feeling low, self-hatred as well as depression. The child, after the incident, takes a long time to recover and he blames himself

---

<sup>28</sup> 67B. Punishment for publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form.—Whoever,— (a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or (b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or (c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or (d) facilitates abusing children online, or (e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees: Provided that provisions of section 67, section 67A and this section does not extend to any book, pamphlet, paper, writing, drawing, painting representation or figure in electronic form— (i) the publication of which is proved to be justified as being for the public good on the ground that such book, pamphlet, paper, writing, drawing, painting representation or figure is the interest of science, literature, art or learning or other objects of general concern; or (ii) which is kept or used for bona fide heritage or religious purposes. Explanation—For the purposes of this section, —children|| means a person who has not completed the age of 18 years. [ Added by the Chief Editor]

for the happening. He may face sleeping disorder and may go into trauma. The victim does not trust any more on others especially when he has been exploited by his own family, teachers or other near ones. The circumstances become harsh when the child is exploited again and again. He may not even share his trauma with his loved ones. The incident leaves permanent impression on his mind and he spends the rest of his life under apprehension of same abuse again as the scene of abuse comes to his mind repeatedly. Most of the times, the victim suffers from loneliness.<sup>29</sup>

## **7. Laws Regulating Child Rights**

### **7.1 International Protection**

International Police (INTERPOL) has examined the cases of child abuse and has prepared a database at world level and have come to the conclusion that in the year 2018, younger persons were victimised most. 84 percent of the pornographic videos and images found, contained child pornographic material, including infants. More ratio was that of girls. Even the boys were found severally abused in that content.<sup>30</sup>

Another international body active in this field is the International Society for Prevention of Child Abuse and Neglect (ISPCAN), which works towards protecting children from sexual exploitation and neglect. The Society was established in 1977. The objective of this institution is to protect child from any kind of cruelty, child abuse, child prostitution or child labour. It also works towards bringing awareness in the public in respect of child issues.<sup>31</sup>

#### **(a) UN Declarations**

There are various Conventions, Declarations, Covenants and Protocols which provide for child rights protection. The very first

---

<sup>29</sup> Immediate & Lasting Effects of Child Sexual Abuse, *available at*: <http://www.raace.org> (visited on September 2, 2021).

<sup>30</sup>International Child Sexual Exploitation database, *available at*: <http://www.interpol.int> (visited on September 10, 2021).

<sup>31</sup>The International Society for Prevention of Child Abuse and Neglect (ISPCAN))

instrument in this respect was the Declaration on Rights of Child.<sup>32</sup> This Declaration was adopted by an organisation, named 'Save the Children International Union.' The Universal Declaration of Human Rights, 1948,<sup>33</sup> talks about special care and attention to protect the childhood. Another Declaration on Rights of Child was adopted in 1959 prohibits any act of cruelty, exploitation or neglect against a child. Further, child trafficking is prohibited under the Declaration.<sup>34</sup> Social protection was provided to child rights under the Declaration on Social Development, 1969. The Declaration prohibits any act of discrimination or other act of child exploitation which goes against the principles laid down under the UN Charter.<sup>35</sup> Child victim shall have access to justice, as provided at national, international and regional level. The child shall be fairly treated and shall have right to claim compensation, restitution and other assistance in case of violation of his rights. Special protection has been provided to a girl child. This Declaration on Social Development, 1969 is first gender specific international instrument. The Declaration prohibits physical and psychological exploitation of girl child in any form, which may include female genital mutilation, her sexual abuse at home, by any family member, victimisation for dowry, marital rape and various other offensive acts against her for being a woman.<sup>36</sup>

### **(b) UN Conventions**

The Convention for Suppression of Traffic in Children, 1921 prohibits commission of act of trafficking and sexual exploitation of a child. The Geneva Convention on the Prohibition of Traffic in Women and Children, 1933 goes against the act of kidnapping of a child or woman with an object to indulge such child or woman in

---

<sup>32</sup>The League of Nations adopted the Declaration on September 26, 1924 and titled it the Geneva Declaration, 1924.

<sup>33</sup>The Universal Declaration of Human Rights, Article 25(2).

<sup>34</sup>The Declaration on Rights of Child, 1959, Article 9.

<sup>35</sup>The Declaration on Social Progress and Development, 1969, Article 12(b).

<sup>36</sup>*Id.*, Article 3.

prostitution. The consent of the woman or girl child, who is under twenty-one years of age, does not matter.<sup>37</sup> Other Conventions providing protection to rights of children are the Convention on Elimination of all form of Discrimination Against Women, 1979, the Covenant on Civil and Political Rights, 1966 and the Covenant on Economic, Social and Cultural Rights, 1966. The Convention on Rights of Child, 1986 was the first international Convention to deal exclusively with child rights which recognised the right to dignity provided under UN Charter, protection of childhood under Universal Declaration of Human Rights, 1948. The inherent right to life of the child needs to be protected. The birth of the child should be registered; he has right to nationality, care and protection of his parents. It is the duty of the State Parties to fulfill these objectives through their national laws.<sup>38</sup>

### **(c) Role of United Nations Children’s Fund (UNICEF)**

United Nations Children’s Fund (UNICEF) is an institution which works towards child protection at international level so that children may not get abused in their tender age and that the victims may be rehabilitated. The State Parties are required to provide health services as well as psychological treatment to the victim. It acts towards bringing together the agencies involved in child protection and to create coordination among these bodies. the actions include reuniting lost children with their families, to keep children away from armed conflict, to prohibit gender-based violence, to control child marriage practices and various other heinous acts such as female genital mutilation. The need to establish child friendly justice system has been stressed upon. Governments are required to legislate national laws to comply with these objectives.<sup>39</sup>

---

<sup>37</sup>The Convention on the Prohibition of Traffic in Women and Children, 1933, Article 3.

<sup>38</sup> The Convention on Rights of Child, Article 8.

<sup>39</sup> UNICEF, *available at*: <http://www.unicef.org> (visited on September 20, 2021).

## 7.2 National Laws Regulating Child Sexual Abuse

### (a) POCSO Act, 2012

The issue of child sexual exploitation has been raised through various incidents. The need for special law on this topic was felt. Thus, in the year 2012, POCSO Act, 2012 was enacted which has criminalised the various acts of child exploitation such as child rape, child prostitution, child pornography and so on. The Act emphasised for establishment of special courts to deal with such cases and for speedy disposal. According to the Act, child is a person who has not completed the age of 18.<sup>40</sup> Earlier to this enactment, child sexual exploitation was limited to offence of rape only and the offender was punished under the Indian Penal Code, 1860 for the offence of rape.<sup>41</sup> However, no special protection was given to children from sexual exploitation as children are immature persons and need special care and protection. Now, even child pornography has been made punishable. The purpose of the POCSO Act, 2012 is also to implement the principles laid down under the UN Convention on Rights of Child, 1989 as well as the special protection provided to children under Article 15(3) of the Constitution of India. The Act has been enacted to protect the privacy of the child, to protect his social, physical well-being and to create confidence in his mind that he is to be respected by all.<sup>42</sup> The acts of sexual assault of a child include touching of private body parts of the child or to make him do so with some other person or any other physical touch with sexual intention.<sup>43</sup> The punishment has been prescribed for such acts is imprisonment which shall be minimum three years and maximum five years imprisonment. The offender shall also be liable to pay fine for purpose of rehabilitation of the victim.<sup>44</sup> When such offence is committed by the person in authority such as a police officer

---

<sup>40</sup> The Protection of Children from Sexual Offences Act, 2012, S. 2(d).

<sup>41</sup> The Indian Penal Code, 1860, S.376.

<sup>42</sup> *Supra* note 28, preamble.

<sup>43</sup> *Id.*, S. 7.

<sup>44</sup> *Id.*, S. 8.

within the premises of police station or elsewhere or while on duty, by member of armed forces or other security personnel, on the place where he is deployed, by a public servant whose duty is to prevent such offences, by jail authorities, hospital authorities, staff or management of educational institutions, or religious institutions. In all these cases, the offender is liable for aggravate form of sexual assault. Sometimes, the child is brutally exploited sexually by use of deadly weapons, corrosive substances, causing injury to the sexual organs of the child. Due to such acts, the child may become physically or mentally disabled or may suffer from life threatening disease or infection.<sup>45</sup> In all these cases, the offender is liable to imprisonment which shall be minimum five years and maximum seven years and shall be accompanied with fine.<sup>46</sup> The acts of sexual harassment include utterance of words, making sound, gesture, showing of any pornographic object to child or to entice a child or gratification for purpose of involving such child in pornography.<sup>47</sup> The offender is liable to imprisonment which shall be for maximum three years term and shall be accompanied with fine.<sup>48</sup> Whoever uses the child for sexual activities/pornography, shall be punished for imprisonment upto five years which shall extend to seven years on second time.<sup>49</sup> The act of storing pornographic material for commercial purpose in which child is involved has been made punishable with imprisonment upto three years.<sup>50</sup> The attempt to commit any offence or abetment of the same under the Act is also made punishable under the Act. For abetment, the offender is liable to the same punishment as for actual commission of the offence and for the attempt; half of the maximum punishment provided for offence will be awarded by the court.<sup>51</sup> As to occurrence of the offence, the information is to be

---

<sup>45</sup> *Id.*, S. Section 9

<sup>46</sup> *Id.*, S. 10.

<sup>47</sup> *Id.*, S. 11

<sup>48</sup> *Id.*, S. 12.

<sup>49</sup> *Id.*, S. 14.

<sup>50</sup> *Id.*, s. 15.

<sup>51</sup> *Id.*, Chapter IV.

given to the Special Juvenile Police Unit or to the local police. The police is prohibited from disclosing the identity of the child victim.<sup>52</sup> The Special Courts are to be established by the State government for the purposes of the Act and the provision of the Code of Criminal Procedure, 1973 shall apply in respect of proceedings before the court.<sup>53</sup> In camera proceedings are to be conducted. Assistance shall also be taken from interpreters and experts. The overall purpose is to protect the best interest of the child.

### **(b) National Plan of Action for Children, 2016**

The National Plan of Action for Children, 2016 was released on January 24, 2017. It is yet another significant policy document aiming to protect the interest of children. The needs of children are diverse, inter-dependant which call for concerted that is conceived in this plan of action. The plan aims at purposeful cooperation and strong coordination among different stakeholders and stages of governance. There shall be an active engagement and partnership with all the concerned. Setting up of a comprehensive and reliable knowledge base, provision of adequate resources, sensitisation and capacity development of all stakeholders working with children have been also conceived.

A forward looking step has been taken by identifying emerging and new areas of concern relating to up-bringing and protection of children. The stakeholders are expected to formulate policies and float programmes to address these emerging challenges and weaknesses. The Plan has also figured out district-wise vulnerabilities faced by children. The data so collected will be used to formulate policies and programmes that would be put to action for protection a interest of the children.<sup>54</sup>

---

<sup>52</sup> *Id.*, S. 24.

<sup>53</sup> *Id.*, Chapter 7.

<sup>54</sup> Government of India: Report: *Annual Report 2020-2021* (Ministry of Women and Child Development).

## 8. Protection under the Constitution of India

Special protection has been given to women and children under Article 15(3) of the Constitution of India. A law can be made specifically for protection of women and children and the law so made shall not be violative of Article 14 of the Constitution, i.e., right to equality. The intention of the legislature is to provide upliftment to the most vulnerable section of the society. This provision is not violative of Article 15(1),<sup>55</sup> on ground of discrimination on basis of sex because the classification is reasonable and has sufficient nexus with the object to be achieved.<sup>56</sup> Article 23 provides for prohibition of Child trafficking and makes such act punishable. Under the act of trafficking, various other acts are involved such as kidnapping, abduction, selling, buying and so on. The unlawful and illegal purposes are involved in such acts.<sup>57</sup> The protection from child labour has been provided under the Constitution of India.<sup>58</sup> However, the dark side of this provision is that a child can be employed in non-hazardous work and this is not an offence. But in those cases, also, protection has been provided under various legislations as the Factories Act, 1948, the Mines Act, 1952, the Child Labour (Prohibition & Regulation) Amendment Act, 2016 and the Child Labour (Prohibition and Regulation) Amendment Rules, 2017.<sup>59</sup> The tender age of the child has been given protection under the Constitution and that any person is not to be forced on economic basis to perform any work which is not suitable for his age and physical strength.<sup>60</sup> State has duty to devote special care for child development. This vulnerable section of the society is to be given

---

<sup>55</sup> The Constitution of India, Article 15(1).

<sup>56</sup> Indian Constitutional Law and Philosophy, Article 15(3), available at: <http://www.indconlawphil.worldpress.com> (visited on September 8, 2021).

<sup>57</sup> The Constitution of India, Article 23(1).

<sup>58</sup> *Id.*, Article 24.

<sup>59</sup> Right against Exploitation (Article 23, 24)- Indian Polity, available at: <http://www.byjus.com> (visited on August 2, 2021)

<sup>60</sup> The Constitution of India, Article 39 (e).

necessary opportunities and freedom. The dignity of the child is to be protected. Moral as well as material abandonment of the child and youth is to be avoided. The purpose of this provision is the growth of the child in healthy manners.<sup>61</sup> The Directive Principles of State Policy further provide for free and compulsory education to a child until he completes his age of fourteen years.<sup>62</sup> State is also required to increase the standard of nutrition, living standard as well as the improvement in public health services.<sup>63</sup>

### 9. Judicial Approach

The significance of rights of a child in the development of the nation has been explained by the Apex Court in the case of *Sheela Barse v. Union of India*<sup>64</sup>. Justice Misra stated that children are an important asset of a nation. This is the responsibility of each person to protect the best interest of the child. Special national policies, schemes should be made to protect children from abuse and exploitation. A physically and mentally fit citizen is the need of the nation. Society is the main contributor in all round development of the child. Thus, any kind of inequality should be eliminated and social justice should be promoted.

In *State of Punjab v. Gurmit Singh*<sup>65</sup>, the Apex Court stated that

“of late, crimes against minors in general and sexual abuse in particular, are on the rise. It is ironic that while we celebrate children’s rights in many areas, we pay little or no attention to their rights. It is a tragic reflection of society’s apathy to the violation of human dignity of sexual assault victims, particularly when the victims are young.”

In the case of *Bachpan Bachao Andolan v. Union of India*,<sup>66</sup> a writ petition was filed before the Apex Court. The issue of child abuse,

---

<sup>61</sup>*Id.*, Article 39(f).

<sup>62</sup>*Id.*, Article 45.

<sup>63</sup>*Id.*, Article 47.

<sup>64</sup> AIR 1986 SC 1883.

<sup>65</sup> AIR 1996 SC 1393.

<sup>66</sup>(2011) 5 SCC 1.

in circus industry, was raised in this case. The Court held in favour of best interest of child and ordered the Government of India to take actions for prohibition of employment and exploitation of children in circus. Under the order of the Court, the children already part of such activity were found out and rescued. The government was further given directions for need to frame policy framework for rehabilitation of children rescued.

In another case of *Vishal Jeet v. Union of India*<sup>67</sup>, the issue of sexual exploitation of the child was raised. It was revealed that the children of tender age were forcefully pushed into flesh market or flesh trade. These incidents have crossed all the boundaries of morality. The root cause of flesh trade is invariably poverty due to which children are pushed to brutal abuse. The apex court came in to rescue of children of prostitutes who were given protection in *Gaurav Jain v. Union of India*.<sup>68</sup> The apex court was very much particular in preventing any kind of stigmatisation on the child which could have devastating effect and potential to ruin entire life of the victim. The Court held that the “equal opportunities of care, rehabilitation and protection of dignity should be provided to such children as the others are enjoying”. The Court also issued slew of measures for creating a committee. The mandate of the committee was to formulate schemes for these hapless children so that child prostitution may be prevented.

A public interest litigation was filed in the case of *Sakshi v. Union of India*,<sup>69</sup> to bring before the court the issue of child sexual abuse. The petition was disposed of by the court but not before making some significant pronouncements. The apex court laid down that in addition to subsection 2 of section 327 of the Criminal Procedure Code, an inquiry or trial of offenses shall also be made under sections 354 and 377 of the Indian penal code. The apex court further said that a trial for child abuse or rape should be held in such a way that some arrangements is worked out where the

---

<sup>67</sup>1990(3) SCC 318.

<sup>68</sup>AIR 1997 SC 3021.

<sup>69</sup>2004 Supp (2) SCR 723.

witnesses or victims do not see the body of the accused because the site of the accused may bring back fear in the mind of the victim. Care has to be taken that the questions to be put in cross-examination should be submitted to the presiding officer of the court in writing, who may put them in a clear language that is not embarrassing. The victims of such cases shall be allowed to take a break/s when required while testimony is recorded. The case of *Lakshmi Kant Pandey v. Union of India*<sup>70</sup>, possess great significance in which the judgment was delivered by Justice Bhagwati to control inter-country adoption for immoral purposes. The Court held that children are adopted for purpose of child trade, prostitution, child labour and various other forms of exploitation which should be controlled. This decision was further emphasised in the case of in *Karnataka State Council for Child Welfare v. Society of Sisters of Charity George Convent*<sup>71</sup>. There are various other cases in which judiciary has stressed upon protection of child rights such as; *Rosy Jacob v. Jacob A. Chakramakkal*<sup>72</sup>, *Sejalben Arpit Shah v. State of Gujarat*<sup>73</sup>, *Centre for Enquiry in to Health and Allied Themes (CEHAT) & Others v. Union of India and Others*<sup>74</sup> and so on.

*In Shankar Kishanrao Khade v. State of Maharashtra*<sup>75</sup>, a case of rape and murder of a 3 years old child by a married man of 31 years was involved. The apex court found that the crime was committed in a brutal manner and the pain and agony was inflicted on the minor girl. The Court confirmed the death sentence awarded to the accused by the court below. The Court elaborately discussed the aggravating and mitigating circumstances that must be taken in to account before awarding sentence and laid down the principles that are to be followed, while awarding death sentence. The Court further held that the

---

<sup>70</sup>AIR 1984 SC 469.

<sup>71</sup> AIR 1994 SC 658.

<sup>72</sup> AIR 1973 SC 2090.

<sup>73</sup> R/SCR.A/1022/2019.

<sup>74</sup> AIR 2000 SC 301.

<sup>75</sup> (2013) 5 SCC 546.

purpose of determining whether the extreme sentence of death should be imposed upon the accused or not, the scale of justice only tilts against the accused as there is nothing but aggravating circumstances evident from the record of the Court. In fact, one has to really struggle to find out if there were any mitigating circumstances favouring the accused. Another aspect of the matter is that “the minor child was helpless in the cruel hands of the accused. The accused was holding the child in a relationship of ‘trust-belief’ and ‘confidence’, in which capacity he took the child from the house. In other words, the accused, by his conduct, has belied the human relationship of trust and worthiness.” The court also applied in this case the “balancing test” to award capital punishment.

On October 11, 2017, Supreme Court handed down a historic ruling in the matter of *Independent Thought v. Union of India*<sup>76</sup>, it struck down section 375, Exception 2 of the Indian Penal Code, 1860. A child, whether married or not, will always be a child. The Court has made sexual intercourse with a minor wife between the ages of 15 and 18 illegal.

In *Dr. Sr. Tessy Joe v. State of Kerala*<sup>77</sup>, it was expressed by the Supreme Court that there is a legal responsibility on the person who has information regarding the sexual abuse of child to give that information to the appropriate authorities under the section 19(1) of POCSO Act, 2012. The Court pointed out that the term ‘knowledge’ employed in the provision indicated that such person had received information about the crime being committed but it did not include a requirement to undertake an inquiry in order to collect such information.

## 10. Conclusion and Suggestions

After examining the entire issue of child sexual abuse and exploitation, it can be concluded that the child has become one of the most vulnerable sections of the society who is exploited at

---

<sup>76</sup> (2017) 10 SCC 800.

<sup>77</sup> CRL. No. 3712 of 2018.

every stage; physically, mentally, socially as well as economically. Even the parents of the child are helpless and they let their child get involved in child labour or child prostitution. The major reason is poverty. A child is the person who has not attained his age of majority and is not capable of understanding the nature and consequences of certain acts. He depends on his family, society, school for protection but unfortunately, he is mostly abused by these near ones. Child hesitates to complain against such acts either because of lack of understanding that what happened to him or because of feeling of shame, guilt. Various laws have been adopted at international as well as at national level, such as POCSO Act, 2012, which specifically deals with prevention of child sexual abuse but these laws lack adequate implementation. Thus, there is a need of creating awareness and cooperation at international and national and local level to curb this menace and to provide child an environment where he can develop in a healthy manner and without any fear of abuse.

Laws and regulations that are presently in force have to be supplemented by non-legal measures that included education and training. In India, Government authorities have framed programs to help to prevent child abuse by educating parents, teachers, caregivers, and other stakeholders directly or indirectly confronted the problem. These initiatives tend to focus on pre-emptive measures by training people for identifying signs of abuse and create a safe environment for children. Workshops, seminars, discussion and other interactive events have to be organised to provide an opportunity to the public to learn more about the law, share their experiences and ideas on how best this problem could be addressed. Additionally, these programs have a benefit of people understanding their obligations and responsibilities when it comes to identifying cases of child abuse and taking action against them. These measures should also encourage people to talk about these issues with their children so that everyone knows what acceptable behaviour is and what is not. When it comes to creating a safe environment for children in India, there are several steps

one can take to prevent child abuse and protect children's rights. Firstly, it is important to be aware of the laws related to child abuse in India, familiarising oneself with the legal details is the first step towards making a difference in the community. The organisations or NGO that work to help child survivors of abuse and exploitation have to be encouraged and strengthened. The more people are aware of this problem and its solutions, the better equipped society is to protect kids from abuse and exploitation. Where one suspects that a child is being abused, it's important to take action without wasting time. The first step is to report it to the police. This can be done by calling the local police station or by visiting the local Child Protection Unit in the state. One could also contact the National Commission for Protection of Child Rights (NCPCR) or the State Commission for Protection of Child Rights (SCPCR) for further assistance. A complaint with the Child Welfare Committee can be an additional help to protect the rights of the abused child and provide him/her with legal representation.