

Laws Protecting Child from Sexual Abuse and Exploitation in India

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Abstract – Procedural innovations, such as the exceptions to the rule of hearsay, use of expert testimony, mandatory reporting laws, delayed discovery statute, expeditious hearings, and appointment of guardian ad litem need to be introduced. Recommendations of the 172 Law Commission Report of the Ministry of law, justice, and company affairs should be accepted and the Indian Penal Code, 1860, Indian Evidence Act, 1972, and the Criminal Procedure Code, 1973 should be accordingly amended to ensure successful prosecution in cases of Child Sexual Abuse and to protect the best interest of the child. Advocacy and lobbying should continue for further amendments and recommendations as child prostitution has to be a priority concern. Rehabilitation is very important to children rescued from the trade. A more critical area is the formulation of a well-thought-out policy that would clearly focus on prevention of child prostitution. The problem of child prostitution has to be addressed not merely through rehabilitation but with greater emphasis on prevention. There are backward villages and districts that are the source areas for traffickers. The brothels in the cities are a symptom of that problem. NGOs working towards rural development should target such poor families that are forced to send their children to earn. The poverty alleviation and development programs should target such families that are at risk.[1] It is necessary that integration be established between various agencies, NGOs at the grass roots and state/city-level NGO networks to ensure a substantial impact on the problems of children in prostitution.

Keywords – Child Sexual Abuse, Indian Penal Code, 1860, Indian Evidence Act, 1972 and the Criminal Procedure Code, 1973, Immoral Traffic (Prevention) Act 1956, Child Marriage Restraint Act 1929, United Nations Convention on the Rights of the Child, Child Witness Code, Child Welfare, NGO, UNICEF, UNO and POCSO Act

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INTRODUCTION

The UNICEF observed that the violence against children can be “physical and mental abuse and injury, neglect or negligent treatment, exploitation and sexual abuse. Violence may take place in homes, schools, orphanages, residential care facilities, on the streets, in the workplace, in prisons and places of detention.” Such violence can affect the normal development of a child impairing their mental, physical and social being. In extreme cases abuse of a child can result in death. As the world is developing rapidly, sexual offences against humans is increasing too. The scope of sexual offences in current world, is not only restricted to adults irrespective of their age or gender but it has extended to minors who are below the age of 18 years. A child holds the key to open the door of a country's development. If a child is nurtured rightly he can do wonders but in today's modern world these young minds are being tortured and abused. They are being indulged in unhealthy practices of pornography. There is sword of Damocles on a child

in the form of child abuse and sexual harassment. Neurological researches show that early years are the most crucial years in the child's life and hence optimizing these years of a child's life is the best investment we can make as a society for developing their future. Hence it's the need of the hour to protect these young minds in order to preserve the future of the country. The POCSO Act 2012 showed a ray of hope to achieve the same motive but recent increase shown in these crimes shows the futility of this Act. A study carried out by government of India shows that every second child/adolescent is faced some kind of sexual abuse and nearly it is equally prevalent in both the sexes. So what would be an ideal act to protect the child's right? How it should be implemented? Where we are going wrong in implementing this act? Is this the fault of legislation, judiciary or executive power? Where is this POCSO Act standing when the question of sexual abuse comes in terms of male children? This paper will be dealing with all these questions moreover the author will be critically analyzing the rights of

children with special reference to POCSO Act further the author will be dealing with various trends across the globe regarding child protection rights and suggesting some key points for improvisation of the act. Child sexual abuse has been defined as **“the involvement of dependent and immature children in sexual activities they do not fully comprehend, to which they are unable to give informed consent.”** Children are innocent beings. They are the future of this world. We being the responsible adults are supposed to make the world a better and safer place for them to live in but unfortunately this is not happening, rather these innocent souls are becoming the easy victims of crime in today's era. Even after 70 years of independence of this country, children are prone to become the victims of heinous sexual offences committed every day. Though this problem of emotional, physical, mental and sexual abuse on children in India is increasing at an alarming rate, this has failed miserably to capture the attention required from the government and the people of the country. The Child abuse has many forms: like physical, emotional, Sexual, neglect, and exploitation. Any of these that are potentially or actually harmful to a child's health, survival, dignity and development are abuse. This definition is derived from the W.H.O. and acceptance by many regarding abuse and its forms like as given below:

1. **Physical abuse** is when a child has been physically harmed due to some interaction or lack of interaction by another person, which could have been prevented by any person in a position of responsibility, trust or power.
2. **Emotional abuse** can be seen as a failure to provide a supportive environment and primary attachment figure for a child so that they may develop a full and healthy range of emotional abilities. Emotional abuse is also the act of causing harm to a child's development, when they could have been within reasonable control of a person responsible for the child. Examples of these acts are restricting movement, threatening, scaring, discriminating, ridiculing, belittling, etc. In India a rising concern is the pressure children feel to perform well in school and college examinations, which can be seen as a form of emotional stress and abuse.
3. **Sexual abuse** is engaging a child in any sexual activity that he/she does not understand or cannot give informed consent for or is not physically, mentally or emotionally prepared for. Abuse can be conducted by an adult or another child who is developmentally superior to the victim. This includes using a child for pornography, sexual materials, prostitution and unlawful sexual practices.
4. **Neglect or negligent treatment** is purposeful omission of some or all

developmental needs of the child by a caregiver with the intention of harming the child. This includes the failure of protecting the child from a harmful situation or environment when feasible.

5. **Exploitation** can be commercial or otherwise, where by the child is used for some form of labor, or other activity that is beneficial for others. For Example: child labor or child prostitution.

In India as well as in other developing Nations the protection of Children from sexual abuse is the a catastrophic problem and to address the issue of trafficking, the Immoral Traffic (Prevention) Act 1956 needs to be examined in order to curb child prostitution and strengthen law enforcement mechanism as well, as to increase rehabilitation and reintegration schemes. There is a need for development of bilateral and interstate control and reintegration and advocacy programs to prevent the exploitation of children in forced prostitution and trafficking. Immediate steps should be taken to enforce extraterritorial laws and initiate appropriate action to ensure that no offending foreign tourist escapes punishment by leaving the country. Appropriate legislation be immediately initiated to make sexual abuse and commercial sexual exploitation of children a very serious crime and to impose very severe and deterrent punishment on the offenders, both Indian and foreign. The laws should be gender-neutral and ensure that procedures are simplified and child-friendly, responses are appropriate, timely, and sensitive to victims. There should be victim support services to protect the victims from discrimination and reprisals and also to protect those who expose violations and vigorously pursue enforcement. A mechanism to monitor implementation and enforcement should be laid down. In case of sex tourism, extradition and other arrangements must be promoted to ensure that a person who exploits a child for sexual purposes in another country (the destination country) is prosecuted either in the country of origin or in the destination country. There should be a provision for confiscation or seizure of assets and profits and other sanctions against those who commit sexual crimes against children in destination countries. Relevant sharing of data should be there among different countries. In 2007, the Ministry of Women and Child Development (MWCD) released a study report on child abuse. The report discusses incidence of child abuse nationwide. It is estimated that 150 million girls and 73 million boys under 18 have been subjected to forced sexual intercourse or other forms of sexual violence. In 2002 there were 53,000 reported cases of child homicide. A Global School-Based Student Health Survey found that 20% and 65% of school going children reported having been verbally and physically bullied in the last 30 days. ILO (International Labor Organization) estimates show there were 218 million child laborers in 2004, out of

which in sub-Saharan Africa, Egypt and Sudan are subjected to female genital mutilation every year. The W.H.O estimates that 150 million girls and 73 million boys under 18 have been subjected to forced sexual intercourse or other forms of sexual violence. In 2002 there were 53,000 reported cases of child homicide. A Global School-Based Student Health Survey found that 20% and 65% of School going children reported having been verbally and physically bullied in the last 30 days. ILO estimates show there were 218 million child laborers in 2004, out of which 126 million were engaged in hazardous work. UNICEF estimated 3 million girls and women in sub-Saharan Africa, Egypt and Sudan are subjected to female genital mutilation every year. In 2007, the Ministry of Women and Child Development (MWCD) released a study report on child abuse. The report discusses incidence of child abuse nationwide. The study of the MWCD found a wide spread incidence of child abuse. Children between the ages of 5-12 are at the highest risk for abuse and exploitation. The study found that 69% of children reported to have been physically abused. Out of these 54.68% were boys. 52.91% of boys and 47.09% of girls reported having been abused in their family environment. Of the children who were abused in family situations 88.6% were abused by their parents. Every two out of three school children reported facing corporal punishment. In juvenile justice institutions 70.21 % of children in conflict with law and 52.86% of children in need of care and protection reported having been physically abused. With regard to child laborers work in domestic households, while 84% of the boy child laborers worked in tea stalls or kiosks. 65.99% of boys and 67.92% of girls living on the street reported being physically abused by their family members and other people. Child Abuse is something that's not talked about. It is the dirty little secret, there is the immediate damage but there is also the damage it does down the road. It's the baggage you carry for lifetime. Child as defined by divorce act The 1989 United Nations Convention on the Rights of the Child defines a child as an individual who has not attained the age of 18 years. Child Abuse refers to an action of another person (adult or child) that causes significant harm to a child. The harm could be physical, emotional or sexual it could also arise due to lack of love, care and attention. As Herbert Ward rightly pointed "child abuse casts a shadow the length of a lifetime" most children suffer greater emotional than the physical damage. The child tend to become depressed, gets aloof from the society, think of suicide or may even become violent. During this stage, children are most likely to get attracted to drugs or alcohol, abusing others and building social connections with inadequate people. One of the landmark judgments on child abuse is of The Anchorage Case (2011) which talks about Restoration of the conviction and sentence of six-year rigorous imprisonment imposed on two British nationals who were acquitted by the Bombay High Court in a pedophilia case. The judges, while passing the judgment, rightly said, "A deterrent

punishment is being imposed in order to help wipe out the name of India from the map of sex tourism. Let pedophiles all over the world know that India should not be their destination in the future. Children are the greatest gift to humanity. The sexual abuse of children is one of the most heinous crimes." These victims are vulnerable, lack support and scared in such period of time the judgment given by the Supreme Court gave some hope to those NGO's that justice still prevailed in the country. The child sexual abuse is an under-reported offence in India, which has reached epidemic proportion. A recent study on prevalence of sexual abuse among adolescents in Kerala, reported that 36 per cent of boys and 35 per cent of girls had experienced sexual abuse at some point of time. A similar study conducted by the Government of India in 17,220 children and adolescents to estimate the burden of sexual abuse revealed shocking results and showed that every second child in the country was sexually abused; among them, 52.94 per cent were boys and 47.06 per cent were girls. Highest sexual abuse was reported in Assam (57.27%) followed by Delhi (41%), Andhra Pradesh (33.87%) and Bihar (33.27%). Sexual abuse and sex trafficking remain highly prevalent and are among the serious problems in India. In the last two decades, an increase in the prevalence of sexually transmitted diseases has been shown in children. Children who are victims of sexual abuse often know the perpetrator in some way. Hence, the problem of child sexual abuse needs to be addressed through less ambiguous and more stringent punishment. The Protection of Children from Sexual Offences (POCSO) Act, 2012 was formulated to effectively address the heinous crimes of sexual abuse and sexual exploitation of children. Legal provisions were made through implementation of the Criminal Law (amendment) Act, 2013 which amended the Indian Penal Code, the Code of Criminal Procedure, 1973, The Indian Evidence Act, 1972, and the Protection of Children from Sexual Offences Act, 2012. This Criminal Law (Amendment) Act 2013, also dictates punishment on stalking, voyeurism, disrobing, trafficking and acid attack.

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT, 2012

The Act came into effect from 14th of November 2012 in order to effectively deal with the growing crime rate against children especially sexual exploitation and sexual abuse through less equivocal and more stringent provisions, the ministry of Women and Child Development championed the introduction of the Protection of Children from Sexual Offences (POCSO) Act, 2012. The act defines a child as any person below the age of eighteen years of age, and regards the best interests and well-being of the child as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual

development of the child. It defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography, and deems a sexual assault to be “aggravated” under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-a-vis the child, like a family member, police officer, teacher, or doctor. People who traffic children for sexual purposes are also punishable under the provisions relating to abetment in the Act. The Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine. Section 44 of the Protection of Children from Sexual Offences Act, 2012 empowers the NCPCR and State Commission for Protection of Child Rights for monitoring the implementation of the provisions of this Act in such manner as may be prescribed. In discharge of its duties NCPCR has been taking up the matter with regard to implementation of the POCSO Act in respect of following aspects:-

- Designation of Special Courts;
- Appointment of Special Public Prosecutors;
- Formulation of Guidelines u/s 39 of POCSO Act for various stakeholders;
- Designation and implementation of modules for training of various stakeholders;
- Steps taken for spreading the awareness on the provisions of the POCSO Act;
- Setting up of child Welfare Committees (CWCs), District Child Protection Units (DCPUs) and Special Juvenile Police Units (SJPU)s;
- The number of FIRs filed under the Act, cases in which charge-sheet filed, compensation awarded to the victims, number of cases in which accused convicted/acquitted, number of cases in which witness turned hostile, cases in which appeal has been filed etc.
- Number of trial of sexual abuse cases which have been pending with Special/Session Court for more than a period of one year;
- Number of applications for compensation received by District Legal Services Authority, number of cases compensation awarded by the Special Court, number of cases pending for receiving the amount of compensation for more than 30 days etc.

EVOLUTION OF POCSO ACT

In 2007 a survey was conducted by Ministry of Women and Child Abuse on what percentage of children had faced child abuse shockingly 53% of the total child population had been victims of child abuse. At the end of the survey people were asked if there should be a law against this crime 99.6% of the people said “yes”. This was one of the indications of increasing public pressure of law, which was passed by both houses of parliament on 22 May, 2012 and came into effect from children’s day i.e 14 November 2012. Concerned about increasing offences against children the government enacted POCSO Act, 2012 to protect children from these offences while also keeping in mind to safeguard the interest of child at every stage of judicial process, by making child friendly mechanism for reporting, recording of evidence, investigation and speedy trial of such offences through designation of special Court.

DISSENSION ON THE AGE OF CONSENT

If the ‘victim’ is under the age of 18 years then all the sexual acts with him/her under POCSO Act will be without any exception, will be considered as criminal offence. This is regardless of the age of the perpetrator or issue of consent. When there is consensual sex between two minors, the concept of perpetrator and victim becomes interchangeable because the law inflexibly criminalizes the sexual behavior for minors i.e., under-18 years old. Moreover, this act doesn’t have any provision regarding the sexual autonomy to children who then may become responsible for the commission of sexual acts under the law. Further, POCSO invariably criminalize a juvenile committing child sexual abuse to be dealt under the Juvenile Justice (care and protection of children) Act, 2000 [Section 34(i)]

However, a Special Court Judge in 2013 in a case rejected the notion that the Human body of a person under 18 years of age is the property of state. In this case of 2013, a 15 year old girl willingly eloped with a 22 year old man and got married with him. Further, the court held in this case that penalizing or criminalizing such behavior will not be serving the very purpose of the enactment of the act. Hence, there is a tension between the letter of law and its implementation in real scenes i.e., the spirit of law with which it was made. The determining factor for the allegation for an underage sex was forced or consensual will greatly depend on an individual’s interpretations of the circumstances. The law is either very restrictive of children’s autonomy or very permissive of child sexual abuse. At Last the Research has the study examined emotional abuse and girl child neglect. The study examined two forms of emotional abuse: humiliation and comparison. Half the children reported facing emotional abuse with 83% of that abuse begin conducted by parents. Girl child

neglect was assessed girls comparing themselves to their brothers on factors like attention, food, recreation time, household work, taking care of siblings, etc. 70.57% of girls reported having been neglected by family members. 48.4% of girls wished they were boys. 27.33% of girls reported getting less food than their brothers. Of the young adults (ages 18-24) interviewed, almost half of them reported having been physically or sexually abused as children.

Though the Sexual abuse of the Child is of prime concern but there are certain other issues which are responsible for the exploitation of the Child and these issues of concern can be resolved only with the combined efforts of all will be made with same aim and object in future.

CUSTODY AND GUARDIANSHIP

In custody battles between parents the trauma of the child has to be taken into consideration. It is absolutely necessary that experienced and able judges preside over custody and guardianship disputes. They should be trained in handling such sensitive matters and be child-friendly. Besides the judges, the other staff and personnel of the courts should also be sensitized to be child-friendly.

EDUCATION LAW REFORM

This fundamental human right has to be addressed as this would give children hope for the future and skills to ensure that they have options in life besides living on streets, laboring under exploitative, hazardous, or abusive conditions, or a life of crime. Education is an enabling right that contributes to opening the space for the fulfillment of all other rights – to health, nutrition, leisure, and participation. Many human rights can only be accessed through education which operates as a multiplier enhancing the enjoyment of all individual rights and freedoms.[2] Education has to be made accessible, flexible, and innovative. High priority must be given to the quality and relevance of curricula and teaching styles of primary education. Secondly, it is the families who decide whether or not to send their children to school and the education system should be supported by national programs that provide resources for incentives, income generation and other means that enable families to value, demand and benefit from education for their children. Women's educational level is one of the most significant variables affecting maternal mortality rates. Mother's education is an important predictor of children's educational attainment. This is especially so for the girl children's educational opportunities. A mother with even a few years of formal education is considerably more likely to send her children to school. Research in many countries indicates that each additional year of formal education completed by a mother translates into her children remaining in

school for an additional one-third to one-half year.[3] Nearly 56 per cent women are unlettered in India. Only 43.6 per cent girl children are taking admission in primary schools. The dropout rate has been higher for girls. It was 42.3 per cent for Classes I-V and 58 per cent for Classes I-VIII in 1999-00.[4] Macro-policies aimed at increasing access and enrolment in general, including universal primary education policies, compulsory education, and the encouragement of private religious bodies and NGOs in educational provision, all clearly contribute to increasing school enrolment including those of girls. However, experience shows that more gender-specific policies often need to be promoted at the national level, including those which support in initiatives such as open admissions, automatic promotions, and flexible school scheduling and examination systems. There is an urgent need to introduce health education.

The ninety-third Constitutional amendment has been passed to make education a fundamental right. The mere passing of the amendment does not by itself ensure that millions of children would get education automatically. Every State will now have to enact a comprehensive law to implement the provision in the amendment. There is now a need for a strong political will and commitment to ensure provision of free, equitable, and quality education for all children. All resources that are necessary to achieve this right to education should be allocated from the Consolidated Fund of the Union and the states. Accountability should be assigned to designated officers to enforce this right.

AMENDMENT TO THE CHILD MARRIAGE RESTRAINT ACT 1929

The Act should be amended and made more stringent. Registration of marriages should be made compulsory. The enforcement of this law should be taken up on a priority scale. Medical and community facilities are to be provided to help children and their families. Emphasis should be placed on family-based and community-based rehabilitation rather than state institutionalization. Such marriages are prejudicial to the developmental needs of very young parents and their children. A change in the legal value system on the age of marriage must also be reflected in the age for expression of sexual consent in the laws regulating rape and other sexual offences.[5] This will require reform in the penal codes as well.

CHILDREN AFFECTED AND INFECTED BY HIV/AIDS

HIV/AIDS should be included in Reproductive Child Health Programs. Rehabilitation opinions should be worked out through child-centered policies, special support programs, and placement of affected

children in adoptive homes and acceptance by children's homes. HIV/AIDS should be viewed in the context of total quality of health, education, care, and support services. Knowledge is power over AIDS. AIDS awareness programs must be undertaken on a massive scale.

CHILDREN WITH DISABILITIES

More institutions should be set up or the capacity increased in the existing institutions for the education and rehabilitation of children with disabilities and to improve access to services for those children living in homes and rural areas. Awareness campaigns, which focus on prevention, inclusive of education, family care, and promotion of the rights of children with disabilities, need to be undertaken. The careers who have to look after disabled children should be given special assistance in terms of financial support and their right to employment.

IMPROVING THE STATUS OF THE GIRL CHILD

A holistic approach is required in improving the girl child's overall status. Extending the reach of the health and education infrastructure – both quantitatively and qualitatively – and deploying the media wisely are essential if we are to create a climate in which girls can develop to their full potential. The ICDS network is clearly one effective response to the problem of early neglect of the girl child. Though its immunization, nutritional supplementation, and pre-school education components, it can offset the discrimination girl faces at home and can lay the foundation for healthy physical and mental development. It is also necessary to enlarge the scope of the ICDS to address the needs of the 6-14 years children. This is an important period in a girls' life when major biological, psychological, and social changes take place and the girl child is seriously affected by the absence of suitable legislative protection. The girl child has hardly any time to play or to be a child. She requires freedom from domestic drudgery and in many cases freedom from the tyranny of her family. She requires both physical and mental solace to grow. Laws must be enacted to ensure provision of crèches and balwadis in the countryside where women work on land. Medical services and welfare services must be expanded. As with the right to be born, their right to remain alive can only be enforced if parents, family, and society at large value their daughters.

RIGHT TO PARTICIPATION

Participation of children has been described as the present-day 'buzzword'.^[6] Human Rights instruments on Children's rights stress 'participation' as a core value along with survival, protection, and development. The concept of participation rights involves a value system on the child's personal

autonomy that has to be worked out within the important relationship with the child, the parents, and the state. Participation rights require the recognition of many civil rights already incorporated into national Constitutions. Since participation rights give a new priority to constitutionally guaranteed civil rights, the Convention can help to strengthen the enforcement of these rights and foster perception that children must have these rights. These rights reflect a growing awareness of the need to listen to children's views, and to facilitate their participation in decisions which affect them. In recent years there have been significant developments in national and international policies in relation to children and young people. National laws in Norway and the United Kingdom, which also had their roots in a strong concept of parental rights, have already articulated this change in new legal concepts. Children are no longer seen merely as recipients of adult care and protection, but are recognized as actors in their own lives, as individuals whose views and options should be exposed and seriously listened to. Article 12[7] of the United Nations Convention on the Rights of the Child 1989 clearly establishes that the children have a right to be involved in decisions which affect them.

This right extends from decisions affecting them as individuals to decisions which affect them as a body. Yet making a reality of children's participation presents an enormous challenge to society. Participation rights may be the most difficult to recognize because they can be perceived as a challenge to parental and state authority. There is now recognition that children's participation creates a new challenge for social development (Save the Children Alliance 1995).

Children who participate effectively will be aware of societal processes, their rights and responsibilities, will be sensitive towards rights violations of others in the society, will develop capacity to think, question, and judge and will accordingly be prepared to take action for bringing about change in the society. This will facilitate a process of empowerment of the child's mind. There should be programs aiming at empowering children through creating awareness about children's right and responsibilities in relation to their environment. Meljol is a program in Mumbai on child participation. Meljol believes that child participation will lead to a child-friendly society. To address this issue, Meljol has come out with a series of interactive and child-friendly programs like Aflatoon value education books which emphasize the concept of learning through doing. These programs aim at empowering children through creating awareness about children's rights and responsibilities in relation to their environment. In Meljol Aflatoon clubs children themselves take up various issues-imparting these programs with the help of teachers, making teaching-learning process more interactive through these programs, and trying to integrate these programs into the regular

education system for the benefit of all. The Aflatoon Programs in twelve municipal schools that reaches out to 14,000 children across Mumbai are an example of children's participation. These children belong to the lowest socio-economic strata of Mumbai, residing mostly in slums and low-cost housing colonies. These children work against addictions like gutkha, alcohol, etc., and other social evils.[8] Bal Sansad, (Children's Parliament), Bal Melas (Children's fair), Panchayat Toofan,[9] Shishu Panchayat,[10] and Bal Mazdoor Unions (Child Workers' Unions) are all examples of children's participation. The Committee on the Rights of the Child recommended that India should develop skills-training program in community settings for teachers, social workers, and for local officials in assisting children to make and express their informed decisions and to have these views taken into consideration.

CHILD WITNESS CODE

Testimony from children is often essential to prove that abuse occurred, to identify the perpetrator of abuse, and to prove other crimes. Thus children often have to testify in legal proceedings. The courtrooms in India are not designed with children in mind and the formal nature of proceedings that occur there cause fear and anxiety that interferes with some children's ability to provide full and accurate testimony. Testifying in courts also is very stressful for many children. A child witness code is required to ascertain the truth, reduce trauma to children, create conditions that will allow children to provide reliable and complete evidence, increase the number of children who are able to testify in legal proceedings and also to protect the rights of persons accused of crimes.

ROLE OF COURTS

Courts can play a very important role in promoting the rights of children. Public interest litigation has been used beneficially to realize the protection rights of children. Courts have ensured the implementation of progressive laws and interpretation of restrictive laws in the best interest of the child. Courts have used innovative methods to ensure justice to the child. In the Bhiwandi remand home case in Mumbai,[11] the courts permitted the inspection of institutions and then formulated an expert committee to visit all the children's institutions in Maharashtra and submit a report. A Committee has been formed to monitor institution. In another matter relating to custody, the judge played an important role in putting the child at ease. A Division Bench of the Mumbai High Court comprising Justice A.P. Shah and Justice J.A. Patil also gave directions for incorporating training program on child rights for judicial officers of the State of Maharashtra. A child-centered approach stimulated by the standards of the Constitution and CRC can help create spaces for providing justice to

the child even within the constraints of the existing laws and to promote the realization of the rights.

REPRESENTATION OF THE CHILD'S INTEREST IN COURTS

The Child's future is at stake but his/her interests are never separately represented in Indian courts. The child's interests are considered to coincide with the parents or as the court think fit relying on the probation or Welfare Officer's Report, or Counselor's Report. There is a need to introduce the concept of guardian ad litem or child's legal counsel or a child's representative, involved throughout the court proceedings in which children are involved. This is especially required as child-friendly court procedures and personnel have yet to be evolved. To protect the children best, independent child advocates must be appointed by the courts. These advocates will not only represent the children but also hear their problems and concerns, work with their families, and prepare them for the court proceeding. Because child's own interests may be conflict with the courts' judgment, specially trained child advocates are required to play the roles of fact finder, legal representative, case monitor, mediator, and information and resource persons.

LEGAL AID AND SERVICES

Under Section 12(c) of the Legal Services Authorities Act 1987, a child who has to file or defend a case shall be entitled to free legal services. Legal aid and legal literacy programs can be used to further children's rights. These programs need to be linked to community awareness programs. Legal counseling could be included in these programs. Clinical legal education programs focusing on children's issues need to be developed in law schools. Law school curriculums should also include child rights and laws. Non-formal dispute resolutions like Lok Adalats could also be used to settle disputes involving children in a manner which is informal and which has a non-adversarial environment. The Panchayati Raj institutions can be involved in these services. These programs could also involve paralegal training programs among adult social workers. There is scope for NGOs to play a role as paralegal professionals in juvenile justice boards, child welfare committees, and to assist specific groups such as street children, child laborers, disable children, etc.

ENFORCEMENT OF INTERNATIONAL LAW

International human rights treaties, conventions, covenants, and declarations are powerful tools to realize the rights of the child. India has ratified the United Nations Convention on the Rights of the Child. Article 73 of the Constitution of India states,

‘Subject to the provisions of the Constitution, the executive power of the Union, shall extend –

- to the matters with respect to which Parliament has power to make laws; and
- to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement....’ This power covers the Conventions ratified by the country or any decision made at any international conference, association or other body.

Therefore, international conventions like the CRC can be enforced in Indian courts without a statute. This was clearly laid down in the case of *Mayanbhai Ishwarlal Patel v Union of India*.^[12] Again in the case of *Vishaka v State of Rajasthan*^[13] the Supreme Court reiterated the principle that in the absence of a domestic law the contents of international conventions and norms are significant for the interpretation of fundamental rights. Any international convention consistent with the fundamental rights and in harmony with its spirit must be read into the provisions of the convention. Therefore, the provisions of the Convention on the Rights of the Child which India has ratified can be enforced without a statute if they are in consonance with the fundamental rights.

ROLE OF MEDIA

The work of the media affects children's lives. It influences decisions made about them and the way in which they are regarded by the rest of the society. The media can inform the public about child rights, draw attention to violations, give children a voice, expose shortcomings in the system, highlighting the achievements of children – their aspirations and the risks they face. The media has a responsibility to ensure that children are not inadvertently exposed while reporting on them. In the context of HIV/AIDS, this right is crucial to prevent children from discrimination. The functions of the media should be to inform, to educate, and to entertain in that order.

COMMUNITY PARTICIPATION

Protecting children is a much a part of community responsibility as that of the system. Community participation could be included in the areas of decision making, priority setting, planning, implementation, services delivery system, evaluation of programs, consolidation of benefits of development, and sharing financial responsibility.

ROLE OF NGOS

NGOs have significant roles and crucial tasks in the struggle for the realization of the rights of children and in elaboration and further development of the standards and rights affirmed by the national and

international laws, developing more effective implementation by monitoring resource allocation, child development programmes and projects and undertaking evaluation thereof, helping develop participatory, community-level structures for delivering resources and services to meet the basic needs of children. Advocacy and lobbying will also be necessary in support of proposals for law reform and standard setting. NGOs have an important role to ensure effective assertion of rights. The Mathura rape case involving the rape of a girl in custody led to the reform in rape laws. Additional tasks include critiquing national reports prepared by governments and, where appropriate, preparing alternative NGO reports on the subject. NGOs will also have to play important roles to ensure effective assertion of the rights of the child. At the regional level NGOs will also need to explore ways of using regional human rights machinery and instruments to address regional specificities and disparities and developing regional positions and strategies regarding issues relating to children.^[14] At the international level, NGOs' vital role will include identifying specific areas for international cooperation and technical assistance to realize the rights of the child. The challenge for child rights NGOs lies in applying a participatory empowerment approach to the development of the rights of the child.

TRAINING, SENSITIZATION, AND CAPACITY BUILDING

It is an important part of the strategy to protect the rights of the child. Effective child protection and development depend on skills, knowledge, and judgment of all professionals, personnel, and staff working with children. It is important that people in direct contact with children receive training to raise their awareness of the issues and concerns of laws and rights relating to raise their awareness of the issues and concerns of laws and rights relating to children. The various agencies involved in the childcare system need to be trained to protect the interests of the child. The Juvenile Justice Boards and Child Welfare Committee members, the bar, school teachers, government officials from various ministries like the Ministry of Human Resources, Development, Department of Women and Child Development, Ministries of labour, finance, social justice and empowerment, and the Planning Commission. The functionaries of the children's institutions including the superintendents, the probation officers, the caretakers, cooks, teachers, and medical officers, all need to receive training to sensitize and humanize them. Bureaucracy needs to be sensitized. Training of law-enforcing agencies, police, judiciary, lawyers, doctors and paramedics, and NGOs is necessary. The police force needs to be trained to handle the needs of child victims which requires awareness of law, methodologies of handling child victims, administration, and reaching out to NGOs. Border police, registration officials, visa and passport and

immigration authorities should all be provided with detailed guidelines to deal with children. Railway police and authorities should be sensitized, including all senior government servants, and IAS and IPS officers for empathy building and replacing hostile attitudes.

DETERMINATION OF BEST INTEREST OF THE CHILD

This principle applies not only to courts but also in all decisions relating to children including parents, local and administrative authorities, and children themselves. To determine the best interest of the child the least detrimental solution must be found. Considerations must be weighed against each other. The best interest of the child should be a paramount consideration in anything related to the child. Today, the best principle universally applies not only in the context of legal and administrative proceedings or in other narrowly defined contexts of custody and guardianship in family law but in relation to all actions concerning children.

WORKING TOGETHER APPROACH

The 250-plus legislations relating to children have to be harmonized and interlinked. For instance, the Juvenile Justice (Care and Protection of Children) Act 2000 need to be linked to the Probation of Offenders Act 1958, the Orphanages and Other Charitable Homes (Supervision and Control) Act 1960, the Child Labour (Prohibition and Regulation) Act 1986, the Primary Education Acts, the Adoption laws, the Child Marriage Restraint Act 1929, and the Persons with Disabilities (Equal Opportunities, protection of Rights and Full Participation) Act 1995. The different ministries dealing with different issues and concerns of children have to work in coordination. The ministries of labor, social justice and empowerment, finance, and human resources development deal with different legislations. Each of these legislations cannot work in isolation. Multidisciplinary and interdisciplinary teams and partnerships have to work together. A partnership between many actors and stakeholders can work together to realize the rights of the child. The judiciary, different ministries, bureaucrats, medical professionals, agencies and NGOs, legal activists, police, teachers, lawyers, counselors, parents, mental health professionals and all those citizens who are concerned with the rights of the child need to have a coordinated and a partnership approach. Figure 9.1 in previous page depicts a graphic presentation of the Working Together Approach for the protection of child rights.

MONITORING BODIES AND OMBUDSPERSON

Passing of orders by the courts or child-friendly laws is not the end of the matter. These laws and orders

have to be monitored and violators held accountable. Directions of the courts should not remain on paper as far as children are concerned. For compliance of court orders, the Mumbai High Court, in the case of *Krist Pereira v State of Maharashtra and Others*,^[15] constituted a permanent body called the Maharashtra State Monitoring Committee consisting of a retired judge of the High Court, two secretaries including the secretary of women and child development, and three experts in the field out of whom two should be female members. The Committee makes appropriate recommendations to the State government for proper functioning of the juvenile justice system. In *Prerana v State of Maharashtra*,^[16] the court constituted a Monitoring and Guidance Committee under the deputy secretary, women and child development, and whose members consist of representatives of non-governmental organizations specializing in different fields. The Committee has been authorized to supervise the functioning of the rehabilitation home and ensure proper rehabilitation of the rescued girls. This is one of the effective methods of implementing court orders. Besides, there are legislations wherein there are provisions for monitoring bodies, boards of control, and advisory bodies. These bodies should be activated and strengthened.

Another strategy is the appointment of the ombudsperson for children. Such an ombudsperson first appeared in the early 1980s in Sweden and Norway.^[17] In order to be really the voice of children the ombudsperson must be an independent body and be able to express freely his/her opinion on actions undertaken by the public administration, reprimanding – where necessary – the lack of a system. The ombudsperson should be able to promote authoritatively the best interests of children. If children are to be given valuable help, they must be clearly told whom to get in touch with and must be given the appropriate means to do so. The ombudsperson must direct the child to a kind of help tailored to meet his or her needs and then to monitor the specific handling of the case and the quality of the service offered to the child. It is of utmost importance for the ombudsperson to have a direct link with the children and to become for them the ultimate point of reference.

The ombudsperson must imperatively be free from any bond and external influence, in order to keep his/her distance. There are two essential models: a public and a private one. In the first one, the office of the ombudsperson is situated at a governmental or, even better, at a parliamentary level. In Norway and Flanders – the Parliament is accountable for the seriousness of the office: it acknowledges children as a special category of citizens and allows this function to be performed in the most democratic way. This is known as the Scandinavian model. The second model is the non-governmental one, found in the Anglo-Saxon

tradition. In this case, the ombudsperson's office is run by a private initiative, by non-governmental organizations acting generally through 'class actions'.^[18] To begin with, the chosen model of ombudsperson needs to have an official status, in order to be able to express publicly the specific reasons of children and to guarantee the respect of their needs. The 'acknowledgement' is also necessary to guarantee the stable and permanent nature of this office.

CONCLUSION

A wide range of stakeholders and reform agents need to be brought together including relevant actors from outside the legal, judicial, and human rights area, to jointly address issues in a strategic way. Given the diversity and the disparities in the country, perhaps regional networks or strategic alliances on specific issues may be more workable. Initiatives have to be taken by various people's organizations, community leaders, advocacy groups, child rights activists and public interest professionals, civil society, and governments working towards the goal of translating the dream of child rights into reality. Socio-eco-political-legal change cannot be sustained in isolation. Alliances have to be built with other movements for change such as women's rights, environment, labor, housing, health, education rights, and with organizations, individuals, parents, and other civil society organizations involved in child rights issues. Interventions should be made at the level of government programs and policy directives towards establishing an agenda to ensure the rights of the child.

Children can no longer be considered as passive recipients of services. Governments and civil society must accept children as partners and facilitate their participation in matters which affect their lives. The challenge is, therefore, to change the mindset that children can no longer be objects of charity, philanthropy, and welfare. They have rights and the government, civil society, and NGOs are obliged to provide for them. There must be legislative, administrative, and judicial support to implement the policies, plans, and legislations in the interest of the child. The ideals and norms set forth in our Constitution, national laws and case laws, international conventions, regulations, policies, and practices have addressed norms and issues relating to children and have contributed considerably towards the betterment of children. We also need other means like political, psychological, managerial, economic, social, and financial to implement the best interest of the child. Public interest litigation has been beneficially to realize the protection of rights of children. The Supreme Court of India has in recent years used the directive principles so as to expand fundamental rights to include socioeconomic rights. The major significance of the Convention on the Rights of the Child is that it represents a commitment to improving the situation of children in

India. Thus, it can be used by public advocates to force the government to take action on child issues. As the government has already agreed that these standards should be met, advocates need to bring instances of the violation of children's rights to the attention of the government and the public, and demand change. However, the efforts have not been utterly inadequate. Although law in the form of international conventions or national legislation can contribute considerably towards the child rights what matters is how laws are actually implemented, what is done to reach the ideals contained in these laws. Ways must be found, therefore, to enforce the implementation and to ensure that children experience true childhood as there is a dire need for correcting legal perspectives both substantive and procedural, and to foster, adopt, and create child-centered approaches and institutions. Accountability has to be fixed for non-implementation of legislation. Legal education and research should include child rights advocacy. All this requires reallocation of resources for children. It is essential that the children are placed high on the political agenda of development. Bodies like the Planning Commission have to provide adequate financial allocation for children and greater economic aid to villages. It is also imperative that such resource allocation be accompanied by the creation of participatory delivery mechanisms and structures for the effective utilization of these resources. Quality control and a set of indicators need to be developed to assess the implementation of child rights. Besides the parents, teachers and other adult community have to be educated on the rights of the child. And giving children a voice, a forum empowering their opinion may accelerate the progress towards realizing the rights of the child. India should develop resources – intellectual, ideological, and institutional and ecological – for sustained child rights advocacy. Realization of the rights of the child calls for a well-defined, child-friendly, national movement involving individuals and masses, peoples and societies, families and communities, states and nations. We all have an obligation to give a first call on resource for children. And above all create and sustain an environment in which children's rights can be realized. Such a child-friendly movement will include families, schools, media, work-place, homes, communities, neighborhoods, cities, and nations. And finally, good governance has a central role to play to ensure that children are at the center of development agenda that guide policy decisions and budgetary allocations as well as monitor progress. Good governance and the full enjoyment of children's right are mutually reinforcing.^[19]

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