

# Protecting India's Children: Vulnerabilities and Challenges

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## I. Introduction

India is a land of paradoxes. There is no other country in the world that embraces such an extraordinary profusion of ethnic groups, mutually incomprehensible languages, topography and climate, religions and cultural practices, and levels of economic development.<sup>1</sup> This largest democracy in the world is also home to the largest number of children in the world. Children constitute more than 400 million of the one billion plus population of India.<sup>2</sup> The country has twenty percent of the 0–4-year-old child population of the world.

India's economy is growing at a very high rate: around seven percent GDP growth per year. It is now a trillion dollar economy (2007–08). In terms of Purchasing Power Parity, it is the fourth largest economy in the world (after the United States, China, and Japan). Sadly, the impressive economic growth of the past decade has not made much impact on underprivileged children. This is compounded by the persistence of social inequalities in the country, whereby the Scheduled Castes and Tribes, together comprising a quarter of the country's population, have the worst income/poverty and human development indicators in the entire population.<sup>3</sup> Disparities can be identified across several vectors: geography (between and within states, districts, and sub-district levels), social identity, and gender being the most notable. National data establishes that approximately 100 million children are in the poorest wealth quintile.<sup>4</sup> One-half of all the poor children belong to the Scheduled Castes and Tribes groups and they continue to be at a significant disadvantage.<sup>5</sup>

It is clear that children have not benefited equitably from the economic growth and development in India. The lives of underprivileged children in contemporary India are struggles for survival revolving around hunger, ill health, lack of education, protection, shelter, and so on. Children continue to be malnourished; exploited while at work (instead of being in school); trafficked far away from their home, kith, and kin to unknown lands; and subject to abuse, violence, and discrimination concerning gender, caste, community, and class. This is true in spite of schemes and programs designed for their benefit; laws, policies, and charters formulated to provide them access to food, education, and many other entitlements; and their rights being guaranteed by law.

Some of the harsh facts relating to children in India:

- Every second child under five-years old is malnourished;
- 1 in 4 adolescent girls between 15–19 years old is married;
- 30 of 100 girls who enter school do not complete primary-level education.<sup>6</sup>

## II. The Child and Law in India

The Constitution of India is the basic law of the country, which includes the fundamental rights<sup>7</sup> and directive principles<sup>8</sup> for every citizen. The Constitution encompasses most rights included in the United Nations Convention on the Rights of the Child (CRC) as fundamental rights and

directive principles of state policy. It is significant to note that the Constitution mandates special protection of children by adopting “positive” discrimination, such as making special provisions for them.<sup>9</sup> The fundamental rights in the Constitution impose on the state the primary responsibility for ensuring that all the needs of children are met and that their basic human rights are fully protected.<sup>10</sup> In addition, the rights to equality, protection of life and personal liberty, and the right against exploitation, enshrined in Articles 14,<sup>11</sup> 15,<sup>12</sup> 16,<sup>13</sup> 17,<sup>14</sup> 21,<sup>15</sup> and 21A<sup>16</sup> of the Constitution of India, are fundamental rights applicable to all citizens including children.

Constitutional remedies by the Supreme Court and the High Courts can be resorted to in case of any violation of fundamental rights.<sup>17</sup> Judicial activism has been displayed in several court decisions, for example in public interest litigations by civil society groups relating to children in institutions, adoption, child labor, child marriage, child prostitution, and the educational and health rights of children.

In 1974, India adopted a National Policy for Children, declaring children to be the nation’s most precious asset. Among the other policy initiatives that were undertaken was the formulation of the National Charter for Children (2003) and the National Plan of Action for Children (2005). The National Policy on Child Labor was announced in 1987, which emphasized the need for strict enforcement measures in areas of high child labor concentration. From the Fourth Five-Year Plan (1969–74) onward, children have found mention in national development plans, but there has been insufficient attention in terms of investment. The current Eleventh Five-Year Plan (2007–12) emphatically states that the development of the child is at the centre of the plan. While continuing with the rights-based approach to child development, the plan recognizes the importance of a holistic approach as well, focusing on outcomes and indicators of child development as well as macro-perspective trends and governance issues.

In the wake of the 1990 World Summit for Children, the Government of India adopted a National Plan of Action for Children in 1992, with goals for the decade. In the same year, it also ratified the United Nations Convention on the Rights of the Child. The Hague Convention on the Protection of Children and International Cooperation in Inter-country Adoption (1993) was ratified on June 6, 2003, with a view to strengthening international cooperation and protection of Indian children placed in inter-country adoption. India has also ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography as well as the Optional Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime. India has a full-fledged Ministry of Women and Child Development. A Child Budgeting<sup>18</sup> category has also been initiated by the Ministry.

The twenty-first century has heralded a number of important policy and legislative initiatives<sup>19</sup> as well as significant court interventions, and there are important legislative bills<sup>20</sup> pending before the Indian Parliament to ensure child protection.

### **III. The Dilemma of the Legal Age of the Child**

The problem begins with the very definition of a child under the law. There are several grey areas in the law here.<sup>21</sup> Who is a child? When does childhood cease? These simple questions have complex answers. Age limits differ from activity to activity and from country to country and, in India, from legislation to legislation. The word “child” in Indian laws has been used in various legislation as a term denoting relationship, a term indicating capacity, or as a term of

special protection. Underlying these alternative specifications are very different concepts about the child.

For purposes of criminal responsibility, the age limit is between seven and twelve years under the Indian Penal Code (1860). For purposes of protection against kidnapping, abduction, and related offences, the age is fixed at sixteen in the case of boys and eighteen in the case of girls. However, the Indian Penal Code, while defining rape (Section 375), exempts a person from the charge of rape if he has forcible sexual intercourse with his wife who is above 15 years of age. Under the Immoral Traffic (Prevention) Act (1986), a child means a person who has not completed 16 years of age and a minor means a person who has completed 16 years of life, but not completed 18 years.<sup>22</sup>

Under the Child Labour Prohibition and Regulation Act (1986), “child” means a person who has not completed his fourteenth year of age, but below fourteen he or she can work in non-hazardous industries. An area of concern is that no minimum age for child labour has been specified. For purposes of special treatment under the Juvenile Justice (Care and Protection of Children) Act (JJA) of 2000, the age of majority is 18 for both boys and girls. The Protection of Women from Domestic Violence Act (2005) defines a child as any person below the age of 18 years and includes any adopted step- or foster child. Under the Plantation Labour Act (1951), “child” means a person who has not completed his fourteenth year of age. “Adolescent” means a person who has completed his fourteenth year of age, but has not completed his eighteenth year of age.<sup>23</sup>

Under the Age of Majority Act (1875), every person domiciled in India shall attain the age of majority on completing the age of 18 years and not before. The Indian Age of Majority Act was enacted in order to bring about uniformity in the applicability of laws to persons of different religions. Unless a particular personal law specifies otherwise, every person domiciled in India is deemed to have attained the age of majority upon completion of 18 years of age. However, in the case of a minor for whose person or property (or both) a guardian has been appointed or declared by any court of justice before the age of 18 years, and in the case of every minor the superintendence of whose property has been assumed by the Court of Wards before the minor has attained that age, then the age of majority will be 21 years and not 18. The Hindu Minority and Guardianship Act (HMGA) of 1956, in Sec. 4(a), defines a minor as a person who has not completed the age of 18 years. According to the Dissolution of Muslim Marriages Act (1939), for the purpose of the appointment of guardians of the person and property of minors, the age of majority is also completion of 18 years.<sup>24</sup>

An anomaly is prevalent as far as a child’s consent to sexual intercourse is concerned. The law considers a person aged less than 18 years to be a child/minor and not competent to make major decisions affecting herself or others, for the purposes of the Indian Majority Act, the Contract Act, the Juvenile Justice Act, the Child Marriage Act, and the Representation of Peoples Act. However, under Section 375 of the Indian Penal Code, the girl is given the right to consent to sexual intercourse. Yet, she cannot marry at that age even with the consent of her parents. She cannot be taken out of the keeping of her lawful guardian even with her consent for lesser purposes. But strangely, she can give consent to sexual intercourse so long as she does not go out of the keeping of her lawful guardian.

The age of criminal responsibility in India is seven years old.<sup>25</sup> Hence a child under seven cannot be considered a child in conflict with the law. Nothing is viewed as an offence if done by children between seven and twelve years of age who have not attained sufficient maturity of

understanding to judge the nature and consequences of their conduct on that occasion and therefore did not know that what they were doing was wrong.<sup>26</sup>

The Courts have held that a child witness, if found competent and reliable to depose to the facts, may provide such evidence as could be the basis of a conviction. In other words, even in the absence of an oath, the evidence of a child witness can be considered (under Section 118 of the Evidence Act) provided that such witness is able to understand the answers. Therefore, the evidence of a child witness and its credibility would depend upon the circumstances of each case. The only precautions that the Court should bear in mind while assessing a child's evidence is that the witness must be reliable, his/her demeanor must be like any other competent witness, and there is no likelihood of the child being tutored.

The absence of a comprehensive and common definition of the child creates confusion and dilemma. Though one may like to have a uniform age limit legally prescribed for the status of childhood, it may not be possible. Nevertheless, some rationalization is possible and certain norms must be laid down because some of the age limits in the laws appear to be arbitrary or based only on socio-cultural perceptions. If the "best interest of the child" interpretation were to be adopted, one could perhaps err on the side of a higher age limit for protective care and a lower age limit in respect to civil and cultural matters.

#### **IV. Children in the Juvenile Justice System**

Children come in contact with the juvenile justice system as "offenders" or as victims. The Juvenile Justice (Care and Protection of Children) Act (2000 and amended in 2006) deals with two categories of children: "the juvenile in conflict with law" and "the child in need of care and protection." The JJA is a piece of legislation that conforms to the Convention on the Rights of the Child and the United Nations Minimum Standards for Administration of Justice to Children (Beijing Rules).<sup>27</sup> As the JJA was specifically drafted to implement India's obligations under the CRC and other international instruments, in this Act juvenile or child means a person who has not completed the eighteenth year of age. Both boys and girls below the age of 18 enjoy the protection of this juvenile legislation. A total of 33,642 juveniles were apprehended during 2009, out of which 31,550 were boys and 2,092 were girls.<sup>28</sup>

Age determination of children in conflict with the law is a very complex issue. The largest number of cases that have come before the High Courts and the Supreme Court under this legislation and its predecessors is for determination of age. In the absence of a birth certificate, a child may easily be excluded from the operations of the JJA and denied its care and protection.<sup>29</sup> In the case of Ramdeo Chauhan,<sup>30</sup> the Supreme Court refused to determine the age of the accused on the basis of entries in the school register or medical evidence, both of which indicated him to be a child on the date of the offence. The Court confirmed the death penalty for the offence of murder even though one judge expressed doubt as to whether the boy was a child of legal age on the date of the commission of the offence. The governor later commuted his sentence to life imprisonment on the recommendation of the National Human Rights Commission.<sup>31</sup>

There have been some recent judgments on this issue. The Supreme Court has held that on the point of proof of age, a school leaving certificate is the best evidence. So far as the medical certificate is concerned, the same is based on an estimate and the possibility of error cannot be ruled out. However, the date of birth recorded in the Secondary School Certificate is not to be taken to be correct unless corroborated by parents who got the same entries made.

The children in need of care and protection include vulnerable children like street children; orphaned, abandoned, abused, and destitute children; child laborers; trafficked children; mentally ill children; HIV/Aids affected and infected children; and children who are victims of conflict and disaster situations.

An area of concern that recently came up is the vulnerability of mentally deficient children in institutions. Children with mental and other developmental disabilities in institutions are perfect targets for neglect, sexual abuse, and assault. A sexual assault is a severe, heinous breach of trust and faith for the mentally deficient victim children by persons who are their caretakers. It is a collective failure of the structures and system.

The particular case came to light when on August 23, 2010, the *Mumbai Mirror* reported that five children had died of malnourishment in an orphanage in Thane, a suburb of Mumbai. Some were sexually abused and more would have died if they had not been relocated because of the report. The report disclosed the unsanitary conditions in which the children had been housed and the lack of basic facilities. The children saw the institution as a place of refuge. They put complete faith and trust in their caretakers, but it resulted in abuse, starvation, and deaths.

The High Court of Mumbai took *suo motu* cognizance of this article and public interest litigation was initiated. The Court stated that:

[T]he case highlights the plight of children desperately in need of care and protection. Their needs have been ignored in years of neglect. Their right to life under the Constitution has been brazenly infringed. The solemn covenants of the Convention on the Rights of the Child have remained an unachieved illusion. The Court has had to act *suo motu* because the mentally challenged are unable to secure the protection of their human rights or access to justice. The Court is constrained to intervene to ensure that those who are under a public duty act in accordance with law. Development without freedom is meaningless. A society which bears her children to die of starvation has unanswered questions which cannot be answered. Neither constitutional freedom nor growth in a global society can be achieved when the young die without a morsel of food and clean water. We write in great anguish over the deprivations faced by our young and the disabled but in the determined hope that judicial review can activate a democratic deficit of governance.<sup>32</sup>

The matter is now before the Bombay High Court and important directions are being given relating to evidence through video conferencing, whether a support person is permitted to be with the child, whether a psychiatrist is to remain present while recording statements, the need for individual care plans for each child, and 24-hour victim/witness protection.<sup>33</sup>

## **V. Rights Relating to Offences Against Children**

Child abuse and exploitation can be physical, sexual, and emotional. An estimated 600,000–700,000 children are sexually abused annually in India.<sup>34</sup> Child sexual abuse occurs when a child is used for sexual gratification by an adolescent or adult. Regarding physical abuse, incidents of brutal corporal punishment in schools are on the rise. There is no national prohibition in law of such corporal punishment. The government has issued instructions to states to stop its use in schools and the National Policy on Education (1986, modified 1992) states in Section 5.6 that,

“corporal punishment will be firmly excluded from the educational systems.” Some states have prohibited corporal punishment in schools. The Indian Penal Code sections relating to hurt and grievous hurt deal with offences relating to corporal punishment.<sup>35</sup> There is a need for a national law on corporal punishment. At present there are only the National Commission for Protection of Child Rights’ guidelines.

The laws dealing with sexual offences do not specifically address child sexual abuse. In other words, there is no specific or comprehensive law on child sexual abuse. The Indian Penal Code does not recognize child abuse. Only rape and sodomy can lead to criminal conviction. Anything less than rape, as defined by the law, amounts to “outraging the modesty.” The word “rape” is too specific; it does not even include abuse of boys.<sup>36</sup> For a girl child, Section 375 (rape) and Section 354 (outraging the modesty) are generally used. They are highly inadequate, as they do not cover the forms of sexual abuse borne by children. For lack of any section for boy children, Section 377 (unnatural offences) is presently being used for male child sexual abuse cases. This is an area of great concern.

Child marriage is also a form of sexual abuse of children. In Rajasthan on *Kashia Tritiya Day*, which is popularly known as the *Akha Teej*,<sup>37</sup> hundreds of child marriages are openly performed. *Akha Teej* is regarded as the most auspicious day for celebrating marriages. Even infants who have just been born or are only a few years old—and cannot even sit or walk—are married on this day. Under the Prohibition of Child Marriage Act (2006), the following are some of the shortcomings:

- Marriage voided only in cases of compulsion and trafficking;
- Onus of declaring void only if child or guardians file legal proceedings; parents may never take such a step;
- Implicitly acknowledging traditional marriages;
- No punishment of officials; and
- No incentives for traditional communities.

The Supreme Court of India, on February 14, 2006, made it mandatory for all marriages to be registered. It directed authorities across the country to amend their rules so that its order could be implemented within three months. This judgment could have a significant effect on child marriages.

## **VI. Child Trafficking and Child Prostitution**

Under the Juvenile Justice (Care and Protection of Children) Act, child victims of trafficking are treated as children in need of care and protection. In the Indian Penal Code, there are also provisions for dealing with children who are trafficked. Girl children are often trafficked into prostitution. Boy children are trafficked into forced labour and sodomisation. Young women are also abducted and trafficked as domestic workers, unorganized labourers, or sex workers. They are victims of pornography and a vast array of cases involving “outraging modesty.” Sexual trafficking involves business in brothels, massage parlours, and bars, and includes pornography and pedophilia. Commercial trafficking and exploitation involves industrial and domestic labour and extends to organ removal for transplants, illegal adoptions, beggary, and camel racing.

In 1986, the Immoral Traffic (Prevention) Act (ITPA) was enacted. As per the existing law, prostitution *per se* is not illegal. Prostitution becomes an offence when there is commercial

exploitation of a person. If a woman or child is sexually exploited and any person gains out of the same, it amounts to commercial sexual exploitation (CSE). Trafficking is the process of recruiting, contracting, procuring, or hiring a person for CSE. The offences envisaged under the ITPA are specific to the context of CSE, which include brothel keeping, living off the earnings of a prostitute, soliciting seducing for the purposes of prostitution, and seduction of a person in custody. Offences involving children are dealt with increased strictness by enhancing the period of imprisonment. (Yet the ITPA has to be broadened to cover the trafficking of children to beaches, hotels, and guesthouses, and their subsequent sexual abuse.)

Other significant provisions in ITPA are:

- Offences under the Act are cognizable;<sup>38</sup>
- Search without warrant;
- Rescue of victims;
- Intermediate custody of persons removed or rescued;
- Power to establish Special Courts; and
- Power of Court to try cases summarily.

First of all, the Act does not define trafficking. In addition, it has been found that through concerted efforts, traffickers and brothel owners, etc., make sure that the age of the rescued minor is entered as 18 years or above, thereby making her an adult in the records. When the youth are sent to jail, the traffickers and brothel owners bail them out and the victims are once again returned to their effective confinement. There is also a need to ensure the accountability of the doctors who carry out age verification and of the police officers that record the age immediately after rescue.

Poverty alleviation by population control is the key to prevention. Identification of vulnerable children as well as suspected traffickers at the source and transport locations by vigilant border squads results in prevention up to a point. Maintenance of a database of crimes and criminals as well as missing persons, the use of forensic science for obtaining fingerprints, DNA reports, and even stringent visa requirements are modes of restricting the crime of trafficking in persons, including the offence of pedophilia.<sup>39</sup>

While dealing with cases of sexual offences against children, courtroom conduct should require evidence to be recorded not only “*in camera*”<sup>40</sup> but also “in chambers,” with a specific place delineated to all present. Also imperative is the maintenance of the victim’s confidentiality; the recording of evidence in a friendly, gentle atmosphere, albeit to elicit the truth; and the provision of rest time and intervals to especially traumatized victims.<sup>41</sup> The entire exercise involves two essential aspects for victim protection: victim support and victim representation.<sup>42</sup> Victim support allows the victim to have the emotional support of a friend or relative. It may include a guardian *ad litem* appointed by the court, who may be a social worker or NGO. Victim representation involves allowing the victim to be legally represented.<sup>43</sup>

## **VII. Important Judicial Responses to Child Sexual Abuse and Exploitation**

Regarding child prostitution in the light of *devadasi* and *jogins*<sup>44</sup> practices, the Supreme Court asked governments to set up advisory committees to make suggestions for the eradication of child prostitution and to evolve schemes for the rehabilitation of victimized children.<sup>45</sup> The Delhi High Court initiated several proactive steps by summoning NGOs and government officers to

ensure effective rescue, rehabilitation, and reintegration. Emphasis was laid on accountability of officers, empowerment of the survivors, and preventing prospects of their re-trafficking.<sup>46</sup> The Bombay High Court held that these requirements be met by the following practices:

- Medical examination of rescued girls to determine their age and to check if they are suffering from any medical ailment;
- Counseling and aftercare;
- Children rescued from brothels to be treated as “children in need of care and protection” under the Juvenile Justice (Care and Protection of Children) Act; and
- The lawyer representing the accused should not represent the victims.<sup>47</sup>

It has now been well established that all judicial proceedings relating to victims of sexual abuse must be conducted in an *in camera* trial.<sup>48</sup> The Delhi High Court allowed the evidence of victims of trafficking who had been rehabilitated in their home states to be recorded through video conferencing, in consonance with the judgment of the Supreme Court in the *State of Maharashtra v. Dr. Praful Desai*.<sup>49</sup> This is the first instance of a court allowing evidence to be recorded through video conferencing in a case of trafficking.

In the leading case of *Sakshi v. Union of India*, the court gave the following directions:

In holding a trial in the case of child sex abuse or rape:

- (i) A screen or some such arrangements may be made wherein the victim or witnesses (who may be as equally vulnerable as the victim) do not see the body or face of the accused;
- (ii) The questions put in cross-examination on behalf of the accused, in so far as they relate directly to the incident, should be given in writing to the Presiding Officer of the Court who may put them to the victim or witnesses in a language which is clear and is not embarrassing;
- (iii) The victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.<sup>50</sup>

As previously discussed, the current laws dealing with sexual offences are outdated and do not specifically address child sexual abuse. It is strange but true that the Indian Penal Code does not recognize child sexual abuse. Only rape and sodomy can lead to criminal conviction. Anything less than rape amounts to outraging the modesty. The laws focus more on technicalities than the best interest of the child. The medical reports by some insensitive doctors are vague and inadequate. The absence of a proper medical report in the case of a sexual assault goes against the assaulted child. The insensitive interviewing of children by untrained police causes further trauma. A child has to give his/her evidence several times and relive the experience. The laws do not take into consideration the trauma of the child.

There is a need to amend both the substantive and procedural laws to ensure successful prosecution and protect the best interest of the child. The physical and psychological well-being of young sexual abuse victims and witnesses are sufficiently important to outweigh the technicalities of the law. In child sexual abuse cases, the child victim is the main witness. The



language of the child has to be understood by the interviewers. Children need legal protection right from the time of the incident, while filing the First Information Report, and during trial and post trial. Video recorded testimony (done only once) of child victims of sexual abuse must be admissible as evidence in courts. Protection orders must be issued by courts. Various professionals working together are essential. Area-wide Joint Investigation Committees must be formed. The team can have a trained police officer, mental health expert, social worker, child rights lawyer, teacher, government official, and a sensitive medical doctor. Such teams must be recognized by law and immediately swing into action as soon as a child sexual abuse case comes to light. There must be a list of responsible persons, like teachers and doctors, who have a duty to report. The state has a duty to protect minor victims from sexual abuse by foreigners and by pedophiles who run institutions in the name of charity. Many a time they escape even the minimal government inspections because they do not use funds from the state.

There is a Protection of Children Against Sexual Offences bill (2011) pending in the Parliament. Some significant provisions of the proposed bill are:

- The definition of sexual assault is widened to include all forms of sexual assault on children;
- Aggravated sexual assault is also defined in the bill. It occurs if sexual assault of a child is committed and then the child is killed, physically incapacitated or becomes insane or mentally unfit to perform regular tasks; commits the sexual assault with more than one person (gang sexual assault); or is related by blood or adoption, legitimately or illegitimately or as per the personal laws, is within the prohibited degrees of consanguinity or affinity (incest) and makes the child pregnant as a consequence of the sexual assault; inflicts the child with HIV/AIDS or any other life threatening disease or infection; commits the sexual assault on a person less than twelve years of age;
- Provisions for Child Trauma and Counseling Center for medical care and attention, and Formation of Emergency Response Team;
- Provisions for procedural safeguards for the child. All judicial proceedings must be conducted in an *in camera* trial. The identity of the victim child must be protected at all times during the judicial proceedings. The presiding Judge shall be a female in cases of a single bench or in cases of a larger bench, at least one of the presiding Judges shall be a female. Such cases shall be taken up as a priority and hearings shall be held on a day-to-day basis, as far as possible. The entire proceeding shall be concluded within four months. The presiding Judges shall ensure that no more than three adjournments shall be allowed in the entire proceedings to avoid unnecessary delay. Adjournments shall be allowed only in the most unavoidable situations.

The above bill has several lapses, which could be amended later but there is an urgent need for a comprehensive law on child sexual abuse. India today appears to be a haven for child sexual abusers and pedophiles.

### **VIII. Child Sex Ratio and the Right to Life**

In the Indian context there is a strong preference for sons. The girl child's very existence is threatened. Female children are vulnerable to feticide and infanticide. The Indian Penal Code deals with these offences,<sup>51</sup> but there is hardly any prosecution or conviction under the IPC. The

Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act (1994) now stands renamed as The Pre-Conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act (PCPNDT) (2003). The PCPNDT Act provides for the prohibition of sex selection before or after conception and regulates the use of prenatal diagnostic techniques for the purpose of detecting genetic abnormalities or other sex-linked disorders in the fetus. The PCPNDT Act specifies that no person shall conduct or cause to be conducted any prenatal diagnostic techniques, including ultrasonography, for the purpose of determining the sex of a fetus. Several offences and penalties have been included in the PCPNDT Act. Every offence under this Act is cognizable, non-bailable<sup>52</sup> and non-compoundable.<sup>53</sup>

In order to implement the provisions of the PCPNDT Act more rigorously, the Supreme Court, in a landmark judgment, has issued a number of guidelines for the Central Government, the Central Supervisory Board, and the state governments.<sup>54</sup> The first conviction came in the case of *State through District Appropriate Authority-cum-Civil Surgeon, Faridabad v. Dr. Anil Sabhani, Kartar Singh and M/s Dr. Anil Ultrasound, Faridabad*.<sup>55</sup> In this case, the District Appropriate Authority-cum-Civil Surgeon, Faridabad, filed a complaint against the accused on the grounds that M/s Dr. Anil Ultrasound Centre, Faridabad, a registered genetic clinic, was engaged in illegal sex determination in violation of the Act.

A doctor and a decoy patient visited the clinic with marked currency notes. The doctor accompanying the decoy patient as her attendant carried a hidden tape recorder while other members of the team waited outside for the signal. While performing the ultrasound on the patient, the doctor prompted that he could disclose the sex of the fetus for an additional payment. On payment of the required amount, the doctor performed ultrasonography on her without any written consent and orally conveyed that it was a female fetus. No receipt for payment or any written report of sex determination was issued by the accused, except for a routine ultrasound report. After getting the signal, the entire team entered the clinic and took into their custody all files and records. The accused admitted to disclosing the sex of the fetus, which was video-recorded. On the basis of the above circumstantial and corroborative evidence, the accused was held guilty and convicted. There have been more convictions after this one.

Recently an area of concern emerged relating to the Right to Life of an unborn child in the case of Nikita Mehta, who moved the Bombay High Court seeking abortion of her 25-week-old fetus diagnosed with a congenital heart block. Mehta's plea to carry out the medical termination of pregnancy was rejected by the court, which upheld a law that bans termination of late-term pregnancies. India's Medical Termination of Pregnancy Act is not unlike abortion law in most European countries as it sets a gestation limit (in India's case, 20 weeks), before which abortions may be performed without being considered criminal, and then provides for exceptions in which abortions may be performed after the limit. In India as well as the United Kingdom, two registered medical practitioners must certify that an abortion is called for, with the exception that one medical practitioner may unilaterally decide to perform an abortion if he/she decides that the termination is immediately necessary to save the life or to prevent grave permanent injury to the physical or mental health of the pregnant woman.

## **IX. Rights against Economic Exploitation of Children: Child Labour**

Another vulnerable group of children subjected to abuse and exploitation is child labourers. In almost all societies, children work in some way, although the types of work they do and the forms of their involvement vary. But many millions of children work under abusive and

exploitative conditions that are clearly dangerous to them. The census survey of 1991 indicates that there are around sixty million child labourers working in various sectors, which does not even count a large number of children employed in the unorganized sector and agriculture.

A new form of child labour seems to be emerging. Some visibly tired-looking children in daily soap operas are seen as the serial progresses. It is stressful for adults performing in daily soaps and there are reports of some of them fainting on sets. It is said that some children bring their homework to the sets. These tender minds are balancing both work and school and the stress associated with them, thus their tender age is abused and they cannot develop in a healthy manner. Though “hazardous” is not defined under the Act, any labour can be regarded as hazardous that hinders the education of the child.

The Child Labour (Prohibition and Regulation) Act (CLPRA) (1986) uniformly laid down the 14th year as the watershed for the definition of a child. A landmark judgment delivered in the case of *M. C. Mehta v. State of Tamil Nadu* (and others) held that:

- Offending employer must be asked to pay compensation of a sum of Rs. 20,000 for every child employed in contravention of the provisions of the CLPRA;
- Inspectors appointed under Section 17 of the CLPRA should be made responsible to see that for each child employed in violation of the provisions of the Act, the concerned employer pays Rs. 20,000, which is to be deposited in the Child Labour Rehabilitation-cum-Welfare Fund. The income of the fund so generated shall be used only for the concerned child;
- The State should see that an adult member of the family whose child is in employment in a factory or a mine or in other hazardous work gets a job anywhere, *in lieu of the child*;
- In those cases where alternate employment is not made available, the parent/guardian will be paid the income, which would be earned on the “*corpus*,” which would be a sum of Rs. 5,000 for each child per month;
- The employment given or payment made would cease to be operative if the child would not be sent to school for education by the parent or guardian;
- Creation of a separate cell in the labour department to deal with issues of child labour;
- The scheme will be monitored by the Secretary of the Department and by the Ministry of Labour of the Government of India; and
- Regarding nonhazardous jobs, the Inspector shall have to see that working hours of the child are not more than four to six hours a day and the child receives education for at least two hours each day at the cost of the employer.<sup>56</sup>

The implementation of this judgment, along with the right to education, will go a long way in reducing child labour. There are several factors contributing to poor enforcement, such as no witnesses, corruption, age determination questions, certain lacunae in the law, and the insensitivity of the civil society. The CLPRA does not cover the majority of child laborers, who are to be found in the unorganized sector. Children working in the agricultural sector and in home-based industries have been left out. The laws cover only the child labour force that is working in plantations or in the formal, industrial sector in occupations identified as “hazardous” under the law.

The word “hazardous” is not clearly defined in this Act. Several hazardous industries have been excluded. The notion of *hazardous* needs to be clarified. In addition, the physical and psychological implications for the child also have to be taken into consideration. The 1986 Act is

silent on the educational needs of the child, which is a key strategy for the elimination of child labour. It should integrate rehabilitation into its purview. The CLPRA also needs to work in coordination with other related legislation.

It is time we, as a society, take a stand against child labour.<sup>57</sup> Poverty can no longer be the excuse for child labour. We must put in place a legal framework with a child rights perspective that includes a time-bound complete abolition of child labour in all forms of employment, and which sends all children who are working to full-time formal school and ensures that their families are economically strengthened by providing employment to adults. The model law needs to define child labour as any child out of school and working, and hazardous work must be understood as work that interferes with a child's schooling and his or her physical, mental, psychological, and emotional well-being.

## **X. Child Rights and Personal Laws**

Matters such as custody and guardianship are governed by Personal Laws in India. These are the statutes formulated on the basis of religion.<sup>58</sup> Religion has played a very dominant role and is the basis of various personal laws, including adoption, custody, and guardianship. The matrimonial courts/family courts are usually called upon to decide the question of child custody. All personal laws and matrimonial statutes make provisions for dealing with the issue of child custody. Their basic principle is that the welfare of the child must be of paramount consideration and that the views of the child must be taken into account (if he/she is capable of expressing such views). In practice, the child's views may be manipulated or he/she may be under duress.

Adoption of children also forms a part of the Personal Laws or Family Laws in India. The fact is that today a Hindu child is governed by the Hindu Adoptions and Maintenance Act (1956) and has the opportunity to be adopted under the Act only because he/she is a Hindu by religion. The children of other religions have to be taken as wards under the Guardians and Wards Act (1890). Since the JJA provides secular adoption only to certain limited categories of children, there is an urgent need to enact a special enabling law for adoption, which can be availed upon by any person irrespective of his/her religion for adopting children of any religion or sex.

Section 41 of the JJA provides for adoption and the procedure for adoption is laid down in the JJA Rules (2007). Rule 33(g) allows for the child's voice to be heard in adoption matters.<sup>59</sup> It has to be borne in mind that the law recognizes children as capable of expressing their opinion only after they attain a certain age. According to Rule 33(g), children older than seven years who can understand and express their opinion shall not be declared free for adoption without their consent. Though the law guarantees child participation in the adoption process, one needs to speculate about the possibility of manipulation. Often abandoned children, orphans, etc., who are identified for adoption are shown rosy pictures and given fancy ideas of being able to live a hassle-free life with parents who would provide them all the comforts of life. Children should be informed about the true implications of adoption.<sup>60</sup>

The issue of adoption must move beyond narrow political, religious, and patriarchal concerns. This legislation must ensure justice to the child and provide all the rights and privileges to the adopted child as those available to a child born in legal wedlock. In the case of Manuel Theodore D'souza and Mrs. Lourdes D'souza, the Bombay High Court held that the abandoned, orphaned, destitute, or similarly situated child has a right to be adopted as part of his/her fundamental right to life embodied in Article 21 of the Constitution. The right to life of these children includes the right to be adopted by a willing parent and to have a name and nationality. The right to be

adopted, therefore, is an enforceable civil right, which is justiciable in a civil court.<sup>61</sup> Consequently, the case for a secular, uniform law on adoption arises as part of the fundamental right to equality and life under Articles 14 and 21 of the Indian Constitution and also as per the numerous international instruments to which India is a signatory, like the CRC<sup>62</sup> and The Hague Convention, which recognize the right of every child to a family and to be adopted.

## **XI. Institutional Structures Relating to Protection of Children**

Institutions and structures under the various laws have been provided to protect the rights of the child. The institutions and structures under the Juvenile Justice Act are: Observation Homes, Special Homes, Children's Homes, Shelter Homes, Juvenile Justice Boards, Child Welfare Committees, Special Juvenile Police Units, Child Protection Units, and After Care organizations. In addition, there are Family Courts established under the Family Courts Act (1984) and the National Commission for Protection of Child Rights (NCPCR) established under the National Commission for Protection of Children Act (2005).

Though the Juvenile Justice Act has rightly increased the age of childhood to eighteen years, keeping in conformity with the Convention on the Rights of the Child, the infrastructure as well as human resources under the Act were not upgraded and are grossly inadequate. The education, training, and recreational needs of children have not been provided for. In addition to basic school education, the higher education and training of these children have to be considered. Also, the educational and vocational facilities in the institutions need modernization. Age-old nonmarketable vocations, like making solely shirts or brooms, should be replaced with current marketable courses like computer education, certified courses on dress designing, and so on. The Open School and Open University educational systems should be made accessible to these children. Trained Duty Counsels have to be appointed by the State Legal Services Authority to represent the children in the courts. Some states, such as Maharashtra, have appointed Duty Counsels in the Juvenile Justice Boards. The institutional staff and the law enforcers, including the police and judiciary, need training so that the spirit of the Act can be followed. The Child Welfare Committees consist of part-time members and many of them are too busy to spare the time required to deal with the vast majority of cases. The law enforcers have to be made aware that children have a right to legal aid and other constitutional rights, like the right to counsel, the right to a speedy trial and disposal of cases, and the right to child-friendly proceedings.

Decisions in Family Courts cannot simply be decided on the basis of facts that are "proved" or "not proved." They touch upon sensitive and emotional issues. Such decisions necessarily involve lengthy investigations of the family, their personalities and their motivations. In Family Courts the principles of law, the conscience of the community, and the social sciences—particularly those dealing with human behavior and personal relationships—all work together. It is clear that successful innovations depend upon particular individuals being in the right place at the right time. Children's rights in Family Courts need to be protected. There is a need to provide quality intervention services to the Family Courts, like counseling, trauma treatment, a child access center, etc., so that justice is provided to women and children who are the victims of domestic violence, broken homes and marriages, and matrimonial disputes. Above all, the families must be made aware and avail themselves of these services.

Clearly, the “best interest” standard gives judges tremendous discretion. The background of the judges and their understanding of what constitutes the best interest of the child play an important role. There also appears to be tension between the apparent meaning of the best interest standard and its construction in legislative and court decisions. There are also risks to the child due to delays and adjournments that are a regular feature of the legal system.

Since the child is unrepresented in the Family Courts, it is up to the judge to ensure that the child’s interests are not harmed or negated. The judges are not trained or sensitized to be friendly. Besides, even in those cases in which the courts have managed to determine the best interest of the child, the social, administrative, and enforcement machineries are neither sensitive nor trained well enough to implement them. The counselors play a very important role in Family Courts but in the absence of proper infrastructure and uniform rules with regard to remuneration of the counselors, etc., skilled counselors are either not available or are engaged on very small fees. Consequently, many of them feel demoralized and have little interest in giving quality time or attention to the cases.<sup>63</sup>

Legal institutions are important mechanisms for social change. They must be made child friendly. Proceedings in courts and other legal and administrative structures must be inclusive of child participation. Participation of children in court processes involves creating space in a system. In these spaces, they can understand, ask questions, share their views and observations about their own lived experiences, and have these views listened to in a respectful way and considered in decisions that affect them.<sup>64</sup> As of now, there is no legislation that specifically mentions the right of the child to express her/his views freely. The Constitution of India does, however, in Article 19 (1) (a), provide for the freedom of expression as a fundamental right to every person in India, and nowhere is it mentioned that children are to be excluded. Yet the exclusion does take place because of the patriarchal norms governing societal attitudes, which in turn also define the general attitude of the society, including parents, teachers, the judiciary, and government functionaries. Children, therefore, require varying degrees of protection, participation, and opportunity for autonomous decision-making in different contexts. In India most of the work has been focused on either inclusion of children’s views in the democratic process of the country by constituting *Bal Panchayats*, *Bal Sansads*<sup>65</sup> or promoting children’s representation through group actions, by encouraging youth clubs, child labour unions, etc. It is not very often that initiatives are taken to ensure child participation in the legal and administrative institutions and structures (i.e., where children have the right to participate by virtue of being children<sup>66</sup>). There have also been some important developments in the last few years to provide for children to be heard in court.<sup>67</sup> These developments must be included in the laws themselves.

Another statutory institution is the National Commission for Protection of Child Rights. This is a statutory body of the Government of India, set up in March 2007 to protect, promote, and defend child rights in the country.<sup>68</sup> India ratified the United Nations Child Rights Convention in the year 1992, and The Commissions for Protection of Child Rights Act (2005) is an important milestone in translating these commitments into action. The Act provides Children’s Courts for the speedy trial of offences against children or of the violation of child rights. The Act empowers the state governments to designate a court in the state or a Court of Sessions in each district as a Children’s Court, with concurrence of the Chief Justice of the concerned High Court. For every Children’s Court, the state government is required to appoint a Public Prosecutor or an advocate who has been in practice for not less than seven years as the Special Public Prosecutor. The state Children’s Commissions have yet to be constituted. Some significant tasks done by the National

Commission are to issue guidelines for corporal punishment in schools, investigate complaints of corporal punishment and child labour, and review laws relating to juvenile justice and child labour. The Commission has raised a lot of hopes among activists for protecting the rights of the child, and it must now act. There is also a need to enhance the powers and resources of the NCPCR so that it can work effectively. This Commission must be given independence from political pressures to work and act to protect children.

Today India is registering 8–10 percent growth and claiming that it will be a world economic power by 2020. According to Macalester College Sociology Professor Eric Larson:

[I]f India devotes fruits of this economic growth to change social organizations and institutions bound to childhood, it could result in the types of cultural changes that encourage people to view children as priceless. Second, the contemporary global construction of childhood focuses on developing human potential. The culturally legitimate treatment of children has shifted from understanding children as a resource for families and nations to understanding duties that we must fulfill to enable future aspirations. How we culturally organize and locate the institution of childhood projects a vision of the future. We seem to more readily celebrate and liberate those elements of childhood that help develop consumers and households as sites of consumption (albeit not as unequal as the patriarchal households of the past). At the same time, efforts based on presumed vulnerabilities of children to succumb to nefarious bad actors and criminal-law-based responses may draw our attention away from the broader social arrangements of childhood. Instead of collectively engaging in wider reform, a focus on eradicating bad actors may lead to laws that are misguided and counterproductive and continued hollow political platitudes about the sanctity and value of children. Realizing the promise of children's rights requires changes to the institutions on which such rights are contingent. Such change is not impossible—far from it, as the historical evidence indicates. Rather, true change requires that we invest the time and resources in well-focused efforts to alter culture, social organization and practices to make rights into realities.<sup>69</sup>

### **XIII. Law Reform in the Interest of Children**

This decade has seen a spurt of legislative initiatives on the issue of child rights. Still, a lot needs to be done. The 1974 policy is outdated. It needs to be reviewed with a child rights perspective. The law on child sexual abuse and pedophiles is the need of the hour. India has become a haven for pedophiles because of its lax laws. Child labour is assuming new forms, like child artists and migrant child labour, and the law must be equipped to deal with them. Enacting child-friendly legislation to ensure a convergence of laws on education and child labour should also guarantee education of equitable quality to every child in India. There is also a need for national legislation on corporal punishment.

There are links between missing children, forced labour, and trafficking. There is no national database or uniform tracking procedure existing in India today that deals with missing children across the country. It is an issue of serious concern post-Nithari wherein out of the 38 missing children, many of them were later found to be killed.<sup>70</sup> The missing children issue can no longer be dealt with through knee-jerk reactions as in the recent Nithari killings. On average, more than 40,000 children in India are reported missing every year.<sup>71</sup>

Each year, thousands of women agree to carry the child of another woman for a fee. There is already an active international trade in the components of baby production—wombs, sperm, and eggs. There are rapidly advancing technologies that are certain to expand both the demand for surrogacy services and the supply of surrogate mothers. The presence of globalization and the development of Assisted Reproductive Technology (ART) have contributed to the emergence of a new reproductive concept, reproductive tourism, which is when couples travel outside of their country for fertility treatment. India is becoming the best option for fertility treatment for many reasons: inexpensive cost, many donors, and lenient legislation. Reproductive tourism has emerged as a popular means for infertile couples to overcome their fertility problems. Legal restrictions on fertility treatment in their home countries encourage infertile couples to go abroad. India must create surrogacy laws domestically. Citizens need to know the laws on infertility services in their country as well as the implications of seeking services abroad. India has at present only Indian Council for Medical Research (ICMR) guidelines regulating surrogacy arrangements. The failure to create legislation will further complicate the issues that the states and their citizens have to face. The rights of the child must also be taken into consideration while creating laws for national and transnational surrogacy arrangements.

The mental health treatment of rescued and victimized children is absent in Indian laws and judgments. In legislation concerning children and their rights, mental health considerations must become an inextricable component of law, and therapists must be included in the legal framework for the future benefit of the child, as a long-term remedy. We must move toward therapeutic jurisprudence. Alternate dispute resolution techniques must be developed for dealing with child-related issues. Children should be involved in conciliation and mediation services and in litigated/contested/defended court proceedings concerning their care arrangements or guardianship issues.

Child participation must be authentic and meaningful. It must start with children themselves, on their own terms, within their own realities and in pursuit of their own visions, dreams, hopes and concerns. Most of all, authentic and meaningful child participation requires a radical shift in adult thinking and behaviour—from an exclusionary to an inclusionary approach to children and their capabilities.<sup>72</sup> Legal reform must feature provisions inclusive of child participation in legal and administrative structures and institutions.

The change from a welfare approach to a rights-based approach in laws relating to children is still a distant dream. The United Nations Convention on the Rights of the Child was adopted and ratified by India almost nineteen years ago. India since then has taken measures to reform and amend national laws to include the principles laid down in the CRC. But these have been piecemeal attempts in certain statutes or provisions. What is required is a comprehensive review of ALL legislation relating to children in the context of a rights-based and gender-just perspective. The laws that do not conform to the international standards must be changed or amended or new laws formed.



## XIV. Conclusion

Significantly, law is one of many responses to social change. In certain respects it is the most important since it represents the authority of the state and its sanctioning power. Through legislative or administrative responses to new social conditions and ideas, as well as through judicial reinterpretations of constitutions, statutes, or precedents, the law increasingly not only articulates but sets the course for major social changes. The legal response to a given social or technological problem is therefore in itself a major social action, which may aggravate a given problem or alleviate and help to solve it. Nonetheless, even when law cannot bring about change without social support, it still can create certain preconditions for social change.

Clearly, the prospects for change led by law may be limited because children's status depends on altering the connections between the family, society, and the economy more broadly. In this sense, realizing children's rights remains contingent on other social changes.<sup>73</sup> Both sociology and law are concerned with the nature of legitimate authority, the mechanisms of social control, issues of civil rights, power arrangements, and the relationship between public and private spheres.<sup>74</sup>

The lawmakers must understand the nature of complex social ties on which the cohesion of society depends. Law has come to be seen as an independent agent of social change and social direction. The holistic approach to the solution of the problem would run through the stages of prevention, protection, preparation, prosecution, participation, and finally punishment. No law can work in isolation. The need of the hour is, therefore, a synergy of all the stakeholders: parents, teachers, community (including diverse groups such as artists and inter-religious forums), police, *panchayat*,<sup>75</sup> NGOs, prosecution, government, media, corporations, industrialists, and the youth. This requires significant commitment and engagement from both state governments and civil society. The proposed Integrated Child Protection Scheme (ICPS) of the Government of India brings together multiple vertical schemes under one comprehensive child protection scheme, combining existing child protection schemes of the Ministry and integrating interventions for protecting children and preventing harm. This will be done through service delivery structures at the state and district level. Moreover, to also achieve the Millennium Development Goals, such a comprehensive approach to child protection is required. All budgets for child protection schemes and programmers should be in the plan category and not in the non-plan category.<sup>76</sup>

Awareness of the rights and laws by various stakeholders, including children, is essential. We have to recognize the enormity of the problem and tackle it politically, legally, and socially, with significant commitment from the state and civil society. The negative linkage of globalization and privatization on the rights of children in several countries across the world needs to be examined and addressed.

By their sheer resilience against all odds and their ability to laugh and to bring laughter to us, children never let us give up hope. Across the country, children are growing up facing the vagaries of nature and of humans. And yet they smile and look up to the sky in hope. Their smiles bring us hope, courage, and resolve in these bleak and uncertain times that are filled with violence and economic crisis.<sup>77</sup> It is this hope that fosters the strength to meet the challenges and fulfill our promises and legal obligations.

## Notes

1. Shashi Tharoor, "India as a Soft Power," *IIC Quarterly*, India International Center, New Delhi (2008): 32.
2. "State of the World's Children," Report, UNICEF (2011).
3. Mehrotra Santosh, "Children of India, Rights and Opportunities," Working Paper Series (New Delhi: IHD-UNICEF, 2010).
4. "State of the World's Children," Report, UNICEF (2011).
5. Ibid.
6. Accessed online on 1 December 2011 at [azadindia.org/social-issues/status-of-children.html](http://azadindia.org/social-issues/status-of-children.html).
7. Fundamental rights if violated can be brought before the Courts. A writ petition can be filed in the Supreme Court and High Courts.
8. The Directive Principles lay down the guidelines the governments have to follow. If they are violated, they cannot be taken before the Courts but because of judicial interpretation, many of the Directive Principles relating to children have now become enforceable through legal actions brought before Courts. Articles 39(e) and (f) instruct that the state policies be directed toward securing the tender age or small age of children.
9. Constitution of India, Article 15(3).
10. Article 23 prohibits trafficking of human beings, including children, and Article 24 mandates that no child below age 14 can work in any hazardous occupation or industry.
11. The right to equality.
12. Prohibition of discrimination on grounds only of religion, caste, sex, place of birth or any of them.
13. Promoting equality of opportunity for all citizens in matters of public employment.
14. "Untouchability" is abolished and its practice in any form is forbidden.
15. Right to life and due process of law.
16. Article 21A provides for free and compulsory education for all children of the age 6–14 years.
17. Articles 32 and 226 of the Constitution of India.

18. Child Budgeting is an attempt to examine what resources government is allocating to programmes that benefit children, and whether these programmes adequately reflect the needs and rights of children.
19. These include the Juvenile Justice (Care and Protection of Children) Act (2000); The Pre-Conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act (2003); [The Infant Milk Substitutes, Feeding Bottles and Infant Foods \(Regulation of Production, Supply and Distribution\) Amendment Act \(2003\)](#); [Protection of Women from Domestic Violence Act \(2005\)](#); [The Commissions for Protection of Child Rights Act \(2005\)](#); [The Prohibition of Child Marriage Act \(2006\)](#); and The Right to Free and Compulsory Education Act (2009).
20. These include the Juvenile Justice (Care and Protection of Children) Amendment Bill and The Protection of Children from Sexual Offences Bill (2011).
21. Asha Bajpai, “Who is a Child?,” *Info Change News and Features*, Centre for Communication and Development Studies, 2007.
22. Ibid.
23. Asha Bajpai, “The Legislative and Institutional Framework for Protection of Children in India,” New Delhi: IHD-UNICEF Working Paper Series, Children of India: Rights and Opportunities, 2010.
24. Asha Bajpai, *Child Rights in India—Law, Policy and Practice* (New Delhi: Oxford University Press, Second Impression, 2006).
25. Section 82 of the Indian Penal Code (1860).
26. Section 83 of the Indian Penal Code (1860).
27. Its objective is to provide for proper care, protection, and treatment by catering to their developmental needs and by adopting a child-friendly approach that is in the best interest of children and intended for their ultimate rehabilitation.
28. “Crime in India, 2009,” National Crime Records Bureau, Government of India, New Delhi, 2009.
29. Kumari Ved, *Info Change News and Features* (June 2007).
30. [2001] 5 Supreme Court Cases 714 and 2000 II AD [Criminal] Supreme Court 801.
31. Ved 2007.
32. (PIL 182/2010). The author, Asha Bajpai, is appointed as the *amicus curiae* in this ongoing PIL in the Bombay High Court, India.

33. Ibid.
34. Online at [www.chennaionline.com/society/06](http://www.chennaionline.com/society/06).
35. Indian Penal Code (1860), Sections 375, 376, 354, and 377.
36. Indian Penal Code (1860).
37. An Indian festival.
38. Section 2(c) of the Criminal Procedure Code (1973) defines cognizable offence. It is an offence for which the police officer may arrest an accused without a warrant and commence the investigation without an order from the Magistrate.
39. R. Dalvi, "Human Trafficking: The Angle of Victimology: A Commentary," *Law, Social Justice and Global Development Journal* 2 (2010), accessed online at [go.warwick.ac.uk/elj/lgd/2010\\_2/dalvi](http://go.warwick.ac.uk/elj/lgd/2010_2/dalvi).
40. *In camera* ([Latin](#) for "in a chamber") is a [legal](#) term meaning "in private." It is also sometimes termed "in chambers" or "*in curia*." *In camera* describes [court](#) cases (or portions thereof) to which the public and press are not admitted. *In camera* is the opposite of [trial in open court](#) where all the parties and witnesses testify in a public [courtroom](#) and lawyers make their arguments in public.
41. *State of Punjab v. Gurmit Singh*, 1996 2 Supreme Court Case 384; and *Sudesh Jakhu v. K.C.J.*, 1998 *Criminal Law Journal* 2428.
42. *Vijay Valia v. State of Maharashtra*, 1987 *Maharashtra Law Journal* 49 @ 58; *Zahira Habibullah Sheikh and anr. v. State of Gujarat* (2004) (4) Supreme Court Case 158.
43. *Sakshi v. Union of India*, *All India Reporter* 2004 Supreme Court 3566.
44. *Devadasi* literally means God's (*Dev*) female servant (*Dasi*). According to the ancient Indian practice, young pre-pubertal girls are "married off" or "given away" in matrimony to the local/religious deity of the temple. These girls are not allowed to marry, as they are supposedly married to the temple. *Devadasi* "serves" the priests and inmates of the temple, as well as the *Zamindars* (local landlords) and other men of money and power in the town and village. Though the *Devadasi* system has been abolished by law, it is reportedly still prevalent in some parts of India, especially in South India and States like Maharashtra, Andhra Pradesh, Tamil Nadu and Karnataka. In Andhra Pradesh, these *devadasis* are called *jogins*.
45. *Vishal Jeet v. Union of India*, 1990 (3) Supreme Court Case 318.
46. *Court on its own Motion v. UOI* (Criminal Motion No. 862/01) in a PIL: Crl. W. No. 532/92, filed in Delhi High Court for implementation of ITPA.

47. *Public at Large v. State of Maharashtra*, Writ Petition 112/92.
48. *State of Punjab v. Gurmit Singh*, 1996 Supreme Court Case (Criminal) 316.
49. *All India Reporter* 2003, Supreme Court 2053.
50. 6 Supreme Court Case 591 (1999).
51. Indian Penal Code, Sections 312–318.
52. Under the Code of Criminal Procedure, offences have been classified as “bailable” and “non-bailable” offences. In the case of bailable offences, it is binding upon the investigating officer to grant bail. However, in the case of a non-bailable offence, the police do not grant bail. The decision is made by a Judicial Magistrate/Judge only.
53. Non-compoundable offences cannot be withdrawn once filed, nor compromised or settled out of court by the parties to the dispute.
54. Centre for Enquiry into Health and Allied Themes (CEHAT); and *Ors v. Union of India* and *All India Reporter* 2003, Supreme Court 3309.
55. Case No. RBT-298/2 of 2001 decided on March 25, 2006, in the Court of Sub Divisional Judicial Magistrate, Paliwal.
56. *All India Reporter* 1997, Supreme Court 699.
57. Bajpai 2006.
58. Persons belonging to the Hindu, Muslim, Christian, and Parsi religions are governed by their own personal laws or family law.
59. The Juvenile Justice (Care and Protection of Children) Rules (2007), Rule 33 (g) (vii): no child older than seven years of age who can understand and express his opinion shall be declared free for adoption without his/her consent.
60. A. S. Shenoy, “Child Adoption Policies in India,” A review paper presented by A. S. Shenoy, First International Conference on Inter-country Adoption, organized by Child NGO Federation-Nepal at Khattmandu, Nepal, on March 10–12, 2007.
61. (3) *Bombay Court Reporter* (2000), p. 243.
62. Article 9.
63. Bajpai 2006.

64. Suzanne Williams, "Through the Eyes of Young People: Meaningful Child Participation in BC Family Court Processes," International Institute for Child Rights and Development, The Law Foundation of British Columbia, University of Victoria, 2006.
65. *Bal Sansads* or *Bal Panchayats* mean a children's mock parliament, where they raise issues affecting them.
66. Neelam Singh, Ruchika Negi, and Subhashim Goswami, "Experiences in Engaging with Children in Developmental Processes: Process Documentation of Some Organizations and Networks," HAQ: Centre for Child Rights, UNICEF India (November 2006).
67. *State of Punjab v. Gurmit Singh and Others* (Manupatra/Supreme Court/0366/1996); *Freedly Peats and Others* (Sessions case No. 24/1992, Criminal Appeal No. 4/1996); and *Saakshi v. Union of India*, *All India Reporter* 2004, Supreme Court 3566, 2004.
68. The Act received the assent of the President on 20 January 2006.
69. Based on Professor Erik Larson's response to my essay at the Macalester Roundtable.
70. Noida and the surrounding area were for a long time haunted by incidents of kidnapping. Parents approached police officials for help but were always denied any support. The incidents of the kidnapping of little children, mostly girls, continued unchecked. On December 29, 2006, when police were investigating the kidnapping of a teenage girl, electronic surveillance brought them to an unoccupied house owned by Moninder. The electronic surveillance traced the cell phone of the kidnapped girl, who was sexually assaulted and killed in this house. When the police investigation progressed, skeletal remains of many more children were found in sacks in the drain that was situated behind the house. This is when the serial killings came to light. When the skeletal remains and other objects in the sacks were tested, it was found that they belonged to the children who went missing.
71. Haq Report on Child Rights, New Delhi (2005).
72. "The State of the World's Children 2003" (New York: UNICEF, 2002).
73. Response by Associate Professor of Sociology Erik Larson at the Macalester Roundtable.
74. Roger Cotterrell, *The Sociology of Law, An Introduction* (New Delhi: Oxford University Press, 2007).
75. *Panchayat* is the term used for local self-government at the village or small town level in India.
76. Ibid.
77. Enakshi Ganguly Thukral, Bharti Ali, and Emily Bild, *Still Out of Focus—Status of India's Children, 2008* (HAQ: Center for Child Rights, New Delhi, India, 2008).