

# ● A SOCIO-LEGAL PERSPECTIVES ON CRIMES AGAINST CHILDREN IN INDIA



**Vinod Kumar\***

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## **Abstract**

*Children are the foundation of human society. The shape of future human society shall be determined by their mental and physical well-being. Just as the personality of an adult is built in his or her primitive years, the development of a nation is determined by the priority given to his child. The children are the supreme assets of the nation; hence in national policy child's care should occupy the most prominent place. Specific care needs to be taken that children grow up to become agile citizens, physically fit, mentally sound and alert and socially and morally healthy. But unfortunately, in spite of there being a number of resolutions and laws both at national and global level, the condition of children is far from satisfactory. History is the witness that this innocent and helpless creature has been subject to variety of exploitation. There is no separate classification of crimes against children. Generally, the offences committed against children or the crimes in which children are the victims are considered as crimes against children. Such offences are construed as crimes against children. The Indian Penal Code and the various protective and preventive 'Special and Local Laws' specifically mention the offences wherein children are victims. Crimes against children should be taken as crimes against humanity and protection of children from crimes is collective responsibility of the state, family and society. It requires a concerted effort on the part of every member of society and it should start from family which is the basic unit of the society and has the primary responsibility to provide care and protection of children. So, let us make a peaceful world for a child that is free from fear, hate, neglect, violence, abuse and crime. As rightly said by the great Tamil Saint Thiruvalluvar: "The touch of children is the delight of the body; the delight of the ear is the hearing of their speech."*

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## **Key words**

*Children, Protection, Law, Crime and Society.*

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## **INTRODUCTION**

Children are the foundation of human society. The shape of future human society shall be determined by their mental and physical well-being. Just as the personality of an adult is built in his or her primitive years, the development of a nation is determined by the priority given to his child. The children are the supreme assets of the nation; hence in national policy child's care should occupy the most prominent place. Specific care needs to be taken that children grow up to become agile citizens, physically fit, mentally sound and alert and socially and morally healthy. But unfortunately, in spite of there being a number of resolutions and laws both at

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\*Assistant Professor Law, Law College Dehradun, Uttarakhand University, Dehradun (India). Author may be contacted at vinodvkfzr@gmail.com

national and global level, the condition of children is far from satisfactory. History is the witness that this innocent and helpless creature has been subject to variety of exploitation.<sup>1</sup>

## CRIMINAL ISSUES RELATED WITH CHILDREN

There is no separate classification of crimes against children. Generally, the offences committed against children or the crimes in which children are the victims are considered as crimes against children. Such offences are construed as crimes against children. The Indian Penal Code and the various protective and preventive 'Special and Local Laws' specifically mention the offences wherein children are victims. The issues in which children are victimized and abused can be categorized as follows:

### a) Child Soldiers

According to Human Rights Watch thousands of children are serving as soldiers in armed conflicts around the world. These include boys and girls serving in government forces and in armed opposition groups. These child soldiers may fight on the front lines, participate in suicide missions and act as spies, messengers, or lookouts. Girls may be forced into sexual slavery. Many child soldiers are abducted or recruited by use of force while others join out of desperation in belief that armed groups would offer them best chance for survival. As an estimate thousands of children below the age of 18 are currently fighting in wars in at least 14 countries worldwide such as Afghanistan, Burma, Central African Republic, Chad, Colombia, Democratic Republic of Congo, Iraq, Somalia, Philippines, South Sudan, Sudan, Thailand, Yemen, including India where Maoist "Naxalite" rebels in the Chhattisgarh region use children as soldiers. They induct children as young as 6 into children's associations and use children as young as 12 in the armed squads where they receive weapons training and participate in the armed encounters with government's security forces.<sup>2</sup>

Children are more vulnerable to military recruitment due to their emotional and physical immaturity. They can be easily manipulated and drawn into violence because they are too young to resist or understand the nature and consequences of their acts. Further, technological advances in weaponry and the proliferation of small arms have contributed to the increased use of child soldiers because lightweight automatic weapons are simple to operate, easily accessible and can be used by children as easily as adults. Sometimes children join armed groups out of economic or social pressure, or because they believe that the group will offer food or security. Both girls and boys are used as child soldiers. In some conflicts, girls may be raped or given to military commanders as "wives." In some countries, former child soldiers are getting assistance from the States to locate their families, getting back into school, receiving vocational training and are entering into civilian life. Sometimes children are forced to commit atrocities against their own family members or neighbours. Such practices stigmatized the children and it becomes impossible for them to return to his home or community.<sup>3</sup>

<sup>1</sup> M.B. Jameel, "Menace of Child Labour", paper published in *Souvenir of National Seminar on Child Rights in the Background of the U.N. Convention on the Rights of Child, 1989*, organised by the Department of Law, Dr. Ambedkar College, Nagpur on 15<sup>th</sup> & 16<sup>th</sup> February, 2004, at 73

<sup>2</sup> Available at: <http://www.hrw.org/topic/childrens-rights/child-soldiers> [visited on 29<sup>th</sup> August, 2014]

<sup>3</sup> Available at: [http://www.hrw.org/sites/default/files/Resource%20Pack%202012\\_updated\\_0.pdf](http://www.hrw.org/sites/default/files/Resource%20Pack%202012_updated_0.pdf) [visited on 29<sup>th</sup> August, 2014]



## b) Child Pornography

Internet has proved to be one of the greatest technological inventions of the 20th century. Unfortunately the same advances in computer and telecommunication technology that allow our children to reach out to new sources of knowledge and cultural experiences are also leaving them vulnerable to exploitation and harm by computer-sex offenders. While on-line computer exploration opens a world of possibilities for children, expanding their horizons and exposing them to different cultures and ways of life, they can be exposed to dangers as they hit the road exploring the information highway.<sup>4</sup> Statistics reveal that 'Paedophiles'<sup>5</sup> have easy access to children through the means of Internet. Child molesters are using the electronic superhighway to look for victims. The Internet is the paedophiles playground, because it affords them anonymity, and they can use newsgroups, chat rooms, and e-mail to exchange information about child pornography and interact with children. There are computer bulletin boards set up specifically for the seduction of children. They lure kids in with games and establish relationships with them on-line. Then they arrange to meet face-to-face. Chat rooms and instant/private messages are two main tools which paedophiles use to contact children on-line. Paedophiles use the Internet to share "trade secrets," i.e. how to change identities, forge passports, and smuggle children. Paedophiles use the Internet for "virtual validation" of their activities within their circles of fellow paedophiles, so they feel accepted and consider their sexual interest in children normal. There are individuals who attempt to sexually exploit children through the use of on-line services and the Internet.<sup>6</sup>

One of the most common forms of cyber crimes against children is "child cyber pornography." Child cyber pornography has become the most controversial topic arising from the use of Internet in recent years. It is a form of commercial sexual exploitation of children by the use of Internet and is in great demand. Sexually explicit material exists on the Internet. Child pornography has developed into a multi-billion dollar industry, which can be run from within the exploiter's home. Every photograph or videotape of child pornography is evidence of that child's abuse.<sup>7</sup> In child pornography, the service provider misrepresents his identity and dispatches a mail to a child user of computer for sending photographs for a carrier of fashion or modelling, with an offer incentive or money and sometimes they assure their victims that such pictures are for personal or confidential use. When they receive such pictures they interpolate the same through graphic programme and convert them to pornographic pictures such as putting their face of the victim on the nude body of the person or convert them into intimate postures and releases through Modem by users without the knowledge of the victim.<sup>8</sup>

## c) Child Beggars

Beggary is an accepted way of life for a large section of orphan, destitute and

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<sup>4</sup> Available at: <http://www.fbi.gov/cgi-bin/outside.cgi?http://www.missingkids.com> [visited on 30<sup>th</sup> September, 2014].

<sup>5</sup> *Adults engaged in Sexual Crimes against Children.*

<sup>6</sup> Available at: <http://www.fbi.gov/filelink.html?file=/publications/pguide/parentsguide.pdf> [visited on 24<sup>th</sup> August, 2014]

<sup>7</sup> Asha Bajpai, *Child Rights in India: Law, Policy and Practice*, Oxford University Press, New Delhi, 2004, pp. 251-252

<sup>8</sup> Raghunath Patnaik, "Vulnerability of Children through Cyber Crimes", XXX(2&3) *Indian Bar Review*, 2003, pp.406-407

neglected children in our society. In urban areas we often come across children operating alone or in groups, soliciting money or food for privately run orphanages or homes. Apart from these a large number of children fend for their survival alone or in informal groups of two or three. These children can be seen making appeals for private charity in various ways in the railway stations, bus stands, religious places, busy markets and picnic spots. Such children are usually from poor families where the parents are unable to provide care, support or guidance for them. Sometimes child beggars may adopt the way of life of their parents. Such children often become part of organized gangs of beggars and are often the victims of the beggary evil. In India child beggars are handled in different manner and treated as a neglected child in terms of the children Act. Some children leave home and resort to begging due to disorganization in the family or death of parents, or loss of mother or father, maltreatment or neglect by parents. Sometimes even beggars kidnap children and mutilate them in order to use them as their pawns in beggary.<sup>9</sup>

In India, hundreds of thousands of children are being forced to beg. Many of the children are trafficked into gangs, some are kidnapped, others may have been handed over by their family out of desperation or because they have been duped. As per an estimate every year some 44,000 children fall into the clutches of these gangs. Children are trained to approach certain kinds of people and use certain mannerisms to extract even more money. The earnings of the children are handed over to the gang masters and if a child does not make their target that day they are beaten and tortured by them. Many child beggars are addicted to solvents, alcohol and *charas*.<sup>10</sup> This helps the children to forget where they are, but it also helps the gang masters to keep them under control. Often children are maimed by the criminal gangs because disabled children get more money as compared to healthy ones and it increases the profit of criminal gangs. Often these maimed child beggars are terrified of speaking out and they say their limbs just disappeared or were damaged in an accident.<sup>11</sup>

#### d) Child Sex Tourism

Child Sex Tourism (CST) is the sexual exploitation of children by a person or persons who travel from their home district, region or country in order to have sexual contact with children. Child sex tourists can be domestic travellers or they can be international tourists. Child sex tourism often involves the use of accommodation, transportation and other tourism-related services which facilitate the contact with children and enable the perpetrator to remain fairly inconspicuous in the surrounding population and environment.<sup>12</sup> Commercial Sexual Exploitation of Children (CSEC) is a term that describes the sexual abuse of children in exchange for cash or compensation, given either directly to the child or to a third party. There are various forms of commercial sexual exploitation of children and one of the forms of commercial sexual exploitation of children is child sex tourism which is related to the travel and tourism industry. The term 'child sex tourism' refers to acts perpetrated by travellers or by those

<sup>9</sup> Rubina Iqbal, "Begging: A Growing Menace in India," 2(8) *IJARMSS*, 2013, at 3, available at: [http://www.academia.edu/5450637/BEGGING\\_A\\_GROWING\\_MENACE\\_IN\\_INDIA](http://www.academia.edu/5450637/BEGGING_A_GROWING_MENACE_IN_INDIA) [visited on 28<sup>th</sup> August, 2014]

<sup>10</sup> Powerful Afghan hashish often laced with opium.

<sup>11</sup> Available at: <http://www.dfn.org.uk/info/slavery/42-information/slavery/93-beggary> [visited on 29<sup>th</sup> August, 2014]

<sup>12</sup> Available at: [http://www.ecpat.net/sites/default/files/cst\\_fa\\_q\\_eng.pdf](http://www.ecpat.net/sites/default/files/cst_fa_q_eng.pdf) [visited on 5<sup>th</sup> October, 2014]



who use their status as a tourist in order to sexually exploit children. Child sex tourism can be said to be a sub-type of child prostitution having links with tourism industry where child victims are treated as sexual and commercial objects to facilitate the generation of profit.<sup>13</sup>

There is one popular belief that poverty is the main cause of commercial sexual exploitation of children but this is not so. One factor which is responsible for sexual crimes against children is the demand for sexual contact with children. Opportunistic individuals and organized criminals take advantage of the demand for child sex by generating a constant supply of vulnerable children. They identify potential victims and bring the supply to the demand, creating a veritable child sex market. As a result, vulnerable and victimized children become a means of massive profit generation for these opportunists. Child sex tourists basically are of three types i.e. 'paedophiles,' 'preferential child sex tourist' and 'situational child sex tourists.' One misconception about child sex tourism is that all child sex tourists are paedophiles but in reality the majority of child sex tourists are "situational child sex tourists" who abuse children as a means of experimentation. On the other hand the preferential child sex tourist displays an active sexual preference for children and he will generally search for pubescent or adolescent children.<sup>14</sup>

#### e) Child Marriage

Child marriage is a marriage of individuals before they attain the age of adulthood. The Indian law recognises 18 years for girls and 21 years for boys as the age of adulthood for the purpose of marriage. Child marriage is a violation of the rights of the child as child marriage below a certain age is blatant child abuse. Any marriage before this minimum age is termed as child marriage. Here, adults take the decision and children are forced into marriage without proper understanding or knowledge. Once married she is expected to carry out different obligations arising out of marriage, including responsibilities towards the spouse, the family and society.<sup>15</sup> In Rajasthan on *Akshay Tritiya* which is popularly known as *Akha Teej* hundreds of child marriages are openly performed. *Akha Teej* is regarded as the most auspicious day for celebrating marriages. On this day even infants, who have just been born or are only a few years old and cannot even sit or walk, are married. The child brides or the bridegroom do not understand the solemnity of these ceremonies, but for elders it is the safest and most tested way of keeping property and money within the family and of preserving the chastity of their daughters. These types of marriages are greatly prevalent in Rajasthan, but in other States also there are several incidents of child marriages.<sup>16</sup> There is no single cause of child marriage. The reasons behind this continuing practice are manifold. Child marriages are deeply entrenched in the socio-economic context of backwardness, poverty, illiteracy, patriarchy and feudalism, falling sex-ratio, backward status of women in general characterised by social malpractices like dowry, female feticide and infanticide and also certain traditional/religious/cultural practices in each region. Researcher is of the view that apart from these causes political patronage

<sup>13</sup> Available at: <http://www.thecode.org/csec/background> [visited on 14<sup>th</sup> October, 2014]

<sup>14</sup> *Ibid.*

<sup>15</sup> Aparna Bhatt, Aatreyee Sen & Uma Pradhan (eds.), *Child Marriages and the Law in India*, Human Rights Law Network, New Delhi, 2005, at 11

<sup>16</sup> Asha Bajpai, *Child Rights in India: Law, Policy and Practice*, Oxford University Press, New Delhi, 2004, pp.212-214

and poor implementation of laws are also major factors of child marriages in India.

Child marriage leaves an impact on the health and general well being of the children. It takes a toll on further development of the child with physical, intellectual, psychological and emotional detriments. Young brides also run the risk of catching diseases from their respective spouses, as older husbands often engage in sexual relations with other women outside the marriage. Young married girls do not have bargaining power in the marriage and therefore cannot negotiate safe sex and are deemed vulnerable.<sup>17</sup> Child marriage is thus child abuse and a violation of the human rights of the child. It has an extremely deleterious effect on the health and well being of the child. It is a denial of childhood and adolescence; it is a curtailment of personal freedom and opportunity to develop to a full sense of selfhood as well as a denial of psycho-social and emotional well being and it is a denial of reproductive health and educational opportunities. The girl child is the most affected and suffers irreparable damage to her physical, mental, psychological and emotional development.<sup>18</sup>

#### f) Child Foeticide

Crimes against children are not committed only after he/she comes in this world but it can be even before he/she takes birth in this world of crimes. Female foeticide or the selective abortion of a female fetus is becoming increasingly common nowadays. Female infanticide has a long history in India and chillingly each region has had its own established, traditional way of killing infant girls, methods that include drowning the baby in a bucket of milk, or feeding her salt, or burying her alive in an earthen pot. Female foeticide is the selective abortion/elimination of the girl child in the womb itself, done deliberately after the detection of the child's gender through medical means. This is usually done under family pressure from the husband or the in-laws or even the woman's parents. However, female foeticide is a far more heinous sin than the age old practice of killing an unwanted child. The root cause for female foeticide lies within the cultural norms as well as the socio-economic policies of the country where this practice prevails. Preference for the male child; age old custom of dowry system; deteriorated status of women in society; legalization of abortion in India; illegal sex determination are reasons for this heinous practice. Further, industrialization of the health sector has further strengthened the selective sex abortion because with the advent of CVS, amniocentesis and Ultrasound, sex determination of the fetus has become much easier than it was earlier. Results of female foeticide are steep decline in sex ratio, increase in female trafficking, rape and sexual assault on women/girls and population decline.<sup>19</sup> The sex-selective abortion has become another technique to murder girls by use of pre-natal sex determination. Pre-natal diagnostic techniques involve two main technologies, *i.e.* amniocentesis and ultra-sonography. In India, pre-natal sex determination test relies mostly on the ultra-sonography which is easier and

<sup>17</sup> Heman Barua, Pradeep Kumar Apte, "Care and Support of Unmarried Adolescent Girls in Rajasthan," XLII(44) *Economic and Political Weekly*, November 3-9, 2007, at 26

<sup>18</sup> Jyotsna Chatterji, "Child Marriage," paper presented at India Social Forum, November 2006, New Delhi, quoted in Law Commission of India, 205<sup>th</sup> Report on the *Proposal to Amend the Prohibition of Child Marriage Act, 2006 and other Allied Laws*, February, 2008, at 24

<sup>19</sup> Female Foeticide: Causes, Effects and Solutions, available at: <http://silverstararrow.hubpages.com/hub/Female-Foeticide-Causes-Effects-and-Solutions> [visited on 2<sup>nd</sup> October, 2014]



cheaper to conduct than amniocentesis. Most physicians are largely conscious of the ethical implications of this technology and are opposed to sex selection. However, a small number of unscrupulous practitioners have become rich by performing illegal sex diagnoses or sex-selective abortions.

### **g) Child Labour**

The term 'Child Labour' is used as a synonym for 'employed child' or 'working child'. However, child labour can be defined as that segment of the child population which participate in work either paid or unpaid.<sup>20</sup> Today the incidence of child exploitation has posted a serious threat to the world and particularly India. It has been a perennial social evil of our country and no suitable remedy has been traced out so far to curb the menace. No doubt the child exploitation is legally prohibited but in reality it is rare to see an occupation where children are not exploited.<sup>21</sup>

The economic practice of child labour in India dated back to industrial revolution in the country. Since then, the demand of industry for cheap labour grew up so rapidly and the poverty of the masses became so acute that the tendency to exploit child labour among the employer increased in unprecedented manner and consequently children begun to be employed in organised factories and other establishments in large numbers.<sup>22</sup> Poverty makes the parents send their children to seek employment at an early age, as their earnings are essential for the survival of the family. Parents do not have the means to support and educate them; they want them to start earning as soon as possible. Similarly, low wages have a direct bearing on the prevalence of child labour in India.<sup>23</sup> The lower socio-economic groups of population are illiterate. They only think about the present time, which is their sole concern and worry. They never think of future. They are fully satisfied with what they gain by the earnings of children. It is ignore by them that their children may participate even in educational opportunities.<sup>24</sup> Child labour is preferred not only due to low wages but also because children are obedient, submissive, trouble free and are prepared to do all types of work without demanding over time, medical benefits and holidays etc. they are more needy and more active; they have less developed egos and status consciousness. Moreover, children can be easily punished for minor mistakes. Socio-cultural disparities may also contribute to child labour. Many societies display historical injustices and traditional taboos. The phenomenon has racial and social origin, interwoven issues of class and caste and the remnants of slavery. It is obvious that children used for labour exploitation are lured from particular racial or social groups, rather than from the well-endowed group in power.<sup>25</sup> Another direct cause of child employment is the situation at home. There may be tension and uncertainty, provoked or increased by poverty; the father may have left home; the mother may be alone; the father or mother, or

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<sup>20</sup> Suresh Chander, *Child Labour in Informal Sector: A Sociological Study*, Sun Rise Publications, New Delhi, 2004, at 63

<sup>21</sup> Paras Diwan, *Child and Law*, Panjab University Publication, Chandigarh, 1985, at 441

<sup>22</sup> T.N. Bhagoliwal, *Economics and Labour and Social Welfare*, Agra, Sahitya Bhawan, 1976, at 651

<sup>23</sup> Arbind N. Pandey, "Child Labour" *Competition Refresher*, May 2003, at 33

<sup>24</sup> Narendra Prasad, *Population Growth and Child Labour: The Indian Dilemma*, New Delhi, Kanishka Publishers, 2001 at, 122

<sup>25</sup> Dolly Singh (ed.), *Child Rights and Social Wrongs: An Analysis of Contemporary Realities*, Kanishka Publishers, 2001, at 187

both, may fall ill, or become physically unfit or die.<sup>26</sup> Migration is another cause of child labour, when family had to move from one area to another due to agricultural cycle; his wife and young children either move with him or stay back to look after the family in his absence. In the urban areas, when the whole family moves from their village to the cities, they face problem of lack of shelter, hunger, joblessness etc., and it forces the children to join the revolution is becoming a stabilized reality and wages of agricultural labourers has substantially gone up, labour families have pressed into service their child population, tempted by relatively good earnings.

Although extent and nature of child labour vary among countries and regions, child labour remains a widespread phenomenon. The Magnitude of the problem, especially in developing countries, is great and task of attacking it is urgent. What gives cause for concern is work that places too heavy burden on the child; work that endangers his safety, health or welfare; work that takes advantage of defenseless of the child; work that exploits the child as a cheap substitute for adult worker; work that uses the child's effort but does nothing for his development; work that impedes the children's education and training and prejudice his future. Child labour of this kind must be target of national or international action.<sup>27</sup>

#### **h) Child Prostitution**

Child prostitution designates the use of children for sexual activities in exchange for remuneration or another form of retribution such as gifts, food, clothes, etc. This activity is included under the umbrella term of sexual exploitation. These children work on the streets or in establishments such as brothels, clubs, massage parlours, bars, hotels, or restaurants. Both boys as well as girls are driven to prostitution. It is easier to abuse a child than an adult. Sexual exploiters utilise the docility of children because they are less able to defend themselves. This deviant attitude is often caused by the feeling of sexual and economic power, by the desire for new experiences, or by the feeling of impunity related to anonymity. Moreover, in certain cultures, myths and prejudices often justify the search for sexual relations with children. In Asia for example, some men are persuaded that the fact of having sexual relations with very young virgin girls prevents them from contracting HIV/AIDS, as well as curing this illness. Most men believe also that having sexual relations with a virgin increases their virility, as well as bringing longevity and success in business.<sup>28</sup>

Sexual abuse degrades the very soul of the victim particularly children who are vulnerable to sexual abuse and exploitation by unfamiliar persons both for commercial and non-commercial purposes. The commercial sexual exploitation of girls is a global, the multi-million dollar industry and pouring money into the hands of private citizens, government and police. Child prostitution and involvement of large number of children for flesh trade is the most serious manifestation of child abuse. Young innocent girls are kidnapped and sold either to men who are not able to get spouses in life, or to the owner of a brothel who purchases these girls and brings them up till they are grown up, whereupon they are treated as objects in the market of women flesh. There has always been a

<sup>26</sup> Elias Mendelievich (ed.), *Children at Work*, International Labour Office Publication, Geneva, 1980 at 8

<sup>27</sup> Child Labour: *Report of the Director- General to the International Labour Conference*, 69<sup>th</sup> Session, International Labour Office, Geneva, 1985, at 37

<sup>28</sup> Available at: <http://www.humanium.org/en/child-prostitution> [visited on 15<sup>th</sup> September, 2014]





demand of children for sexual purposes. In India, sometimes sexual abuse starts during infancy. Quite often child's own relatives are responsible for such abuse. A majority of girls in prostitution are forced into this practice either by unscrupulous adults or by poor parents and guardians. In India, approximately 20% of the prostitution constitutes 11 to 13 years old girls. Poverty alone is not root cause of child prostitution; it is coupled with the existing socio-religious status of women and prevailing national structure. The victims of this profession age very rapidly, due to lack sleep, malnutrition, having to satisfy abnormally large number of customers, multiple abortions and venereal diseases.<sup>29</sup> One of the forms of child prostitution in India is in the form of devadasi system. In some parts of India a few centuries ago a practice developed under which a few women were made wives of god and named as *Devadasis*, *Jogins*, *Basavis*, *Kalawants*, *Paravatis* or *Mathammas*. These wives of God lived in or around the temples. They performed some duties at the temples and participated in the religious functions. They were an integral part of many large Hindu temples. In addition to their religious duties, the Devadasis were a community of artists. They presented dance and music performances at the temple as well as at private functions. It was customary for the elite to invite devadasis at marriages and family functions.<sup>30</sup>

#### i) Child Trafficking

Trafficking in children is a growing problem in our country. Generally, it is felt that trafficking of children takes place for sexual exploitation but trafficking for forced labour, slavery, servitude, marriages and for the removal of organs is also very common. The trafficked children are most commonly used for labour in brick kilns, factories, construction work, sweatshops, as domestic servants and for the prostitution and pornography. Children become victims of trafficking due to various diverse factors. Poverty is the most identifiable factor driving the children into trafficking. People are forced to leave their natural habitat and are migrated to places where jobs are available. In search of job, male members leave behind their wives and children. These women and children becomes prey to evil intention of traffickers who lure them away with temptation of jobs and push them in prostitution or domestic work. Some other factors which lead to child trafficking include, natural calamities and poor rehabilitation of victims of disaster, Indian tribal (*Nats*, *Kanjar*, *Bedia*) where girl children traditionally earns through prostitution, male unemployment, weak law enforcement in border areas due to insufficient or corrupt policing, clandestine nature of this crime, lack of political will in setting up necessary infrastructure for protection of women and children. Child trafficking is not a new phenomenon. Women and children are bought and sold ever since human civilization came into existence but in the recent past there is an increased reporting of it, making it more visible than ever before. Children are trafficked because there is demand for them. The supply comes easy as children are the most vulnerable section and therefore can be manipulated, coerced, bought and sold.<sup>31</sup>

#### j) Child Delinquents

From the inception of civilization people have appreciated that proper child

<sup>29</sup> Nuzhat Parveen Khan, *Child Rights and the Law*, Universal Law Publishers, New Delhi, 2012, at 152-53

<sup>30</sup> Anil Chawla, "Devadasis-Sinners or Sinned Against," available at: <http://www.samarthbharat.com/files/devadasihistory.pdf> [visited on 30<sup>th</sup> September, 2014]

<sup>31</sup> *Ibid.*

development is the key to its perpetuation. Children are the most vulnerable group in any population and in need of greatest social care and protection. Due to their vulnerability and dependence, there is always a chance of them being exploited, ill treated and directed into undesirable channel by anti-social elements in the community. It is a fact that despite the utmost care and protection, children have from time immemorial indulged in deviant or anti-social behaviour. Such behaviour of children which is otherwise termed as 'juvenile delinquency' has been regarded as problem in every age.<sup>32</sup>

Since a nation's future depends upon young generation, children deserve compassion and bestowal of the best care to protect this burgeoning human resource. A child is born innocent and if nourished with tender care and attention, he or she will blossom with faculties physical, mental, moral and spiritual, into a person of stature and excellence. On the other hand, noxious surroundings, neglect of basic needs, bad company and other abuses and temptations would spoil the child and likely to turn him a delinquent. Our children being an important asset, every effort should be made to provide them equal opportunities for development so that they become robust citizens physically fit, mentally alert and morally healthy endowed with the skills and motivations needed by society.<sup>33</sup>

## CRIMES AGAINST CHILDREN: SUGGESTED SOCIO-LEGAL REMEDIES

**Following are the suggestions forwarded by the author which may be suitable for preventing the crime against children:**

- i. There is no uniform definition of 'child' under the Indian laws. So, author here suggests that there should be uniformity regarding age of children whether we are defining him/her as 'child' or 'minor.' Legal age to define a person as 'child' should be 18 years for all purposes in all legislations including labour legislations.
- ii. Child marriage is also one of the forms of crimes against children and especially in case of girls' children. So, author here suggests that one of the ways to stop child marriages is increasing the age mentioned in the Marital Rape *i.e.* Exception to Sec. 375 of IPC. The age should be enhanced from 15 to 18 years.
- iii. Most of the people are aware of Police Helpline number 100 to contact the police in case of emergency but most of them are ignorant about CHIDLINE 1098 service for protection of child in case of emergency. This is India's first 24-hour toll free, emergency phone service for children in need of aid and assistance run by NGO Childline India in selected cities/districts of India. This emergency helpline number should be displayed at all public places like railway stations, bus stations, airports, public parks, amusements places, banks, shopping malls, hotels and restaurants, police stations/posts, schools and other institutions, all government and private or semi-government buses, autos and other modes of public conveyance used by public at large with a view that general public

<sup>32</sup> S.K. Chatterjee, *Offences against Children and Juvenile Offence*, Central Law Publications, Allahabad, 2013, at 257

<sup>33</sup> Justice V.R. Krishna Iyer, "Jurisprudence of Juvenile Justice: A Preambular Perspective," Souvenir of the International Conference on Shaping the Future of Law, organised by the Indian Law Institute, New Delhi on 21-25 March, 1994



including children should be aware of this helpline number in case any emergency arises.

- iv. Child labour is also one of the forms of crimes against children which is directly associated with poverty. One of the failures of most of the labour legislations dealing with children is lack of its implementation and meager punishments and penalties. There are very few prosecutions in case of child labour and violators go scot-free just by paying the fine. Therefore, author suggests that first of all age limit for children to work should be increased from 14 to 18 years as India is also signatory to Convention on the Rights of Child, 1989<sup>34</sup> which defines that child is a human being below the age of 18 years. Secondly, there should be stricter punishments and heavier penalties in case a person employs child labour which is lacking in almost all labour legislations of India and at the same time there should be proper implementation of the laws by the labour officers and police officials.
- v. Police officials should be given specialised training in matters connected with crimes against children so that they should deal in effective manner in a situation when offences are committed against children. There should be having a separate children cell in police stations in-charge of a woman police officer specially trained in criminal issues related with children to deal exclusively with the crimes committed against children. Further, there is need to have a special task force in the police which should exclusively deal with cases of crimes committed against children.
- vi. All Central and State legislations containing provisions for protection of the children against crimes should be repealed and there should be a separate Children Code in India known as "The Children Code of India (CCI)" to deal exclusively with violation of child rights and crimes committed against children. This Code should contain severe punishments and heavier penalties in case of crimes against children or violation of child rights.
- vii. Proper implementation of the laws relating to protection and welfare of children is possible only when there is proper vigilance by the society over the laws, policies and programmes relating to welfare and protection of children.
- viii. One of the methods to protect children from crimes is to educate them about their rights. Children must be given awareness of their rights. There should be provisions in the school curriculum regarding awareness about child rights and the law relating to any type of child abuse so that children should know that there are laws under which they are given protection from any type of abuse.
- ix. Training about child rights and protection of children from crimes should be essential pre-requisite of the pre-service and in-service training programmes for police officials, executive officers, judicial officers, law officers, public prosecutors, health workers, teachers and institutional heads managing the children institutions.
- x. Children are abused because abuser thinks that due to fear, shame or shyness child will not disclose this to anyone. Children do not disclose because they might think that their parents will take it otherwise or will not trust upon them. Researcher is of the view that this is very complex issue which cannot be sorted by law and therefore suggests that for this family ties should be strengthened. Parents will have to treat their children as friends so that they should be

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<sup>34</sup> India accessed this Convention on 11<sup>th</sup> December, 1992

encouraged to express their views without any fear or shame. Parents have to teach their children that if something inappropriate happens with them in family, school, neighbourhood, or at any other place they must immediately report to them. For parents children should be their first priority than society. They must report to the police or approach before appropriate authorities if something bad happens with their children only then they will be able to justify as parents in front of their children. Last but not the least there should be change in the mindset of the society and this is possible only through education and awareness. Old age prejudices against girl children must be eliminated.

- xi. Though Internet can be used as medium to generate public opinion to raise voice against rising incidences of crimes against children but it can also be used as a means of committing crimes against children. Child pornography and abuse of children by the use of Internet is also one of the complex issues which need to be addressed on urgent basis. Porn websites containing sexually explicit material are also one of the reasons for growing sexual violence against children. Government must evolve some technology to filter these sites with a view to block this. People must come forward and make complaint to the Department of Telecommunication, Government of India, if they come across any porn website containing material of child abuse. Parents must use software which filters these websites when their children access Internet and they should also educate their children about the pros and cons of Internet. Police officials must be given proper training to deal with these cyber crime issues related to children.
- xii. There should be online national data (including their photo graphs and finger prints) of all persons accused/convicted of committing crimes against children so that general public be aware of these persons. Identity of the persons accused or convicted of committing offences against children should be disclosed publically.
- xiii. Last but not least, a strong political will is necessary to combat crimes against children. State must play its positive role towards children and State functions through elected representatives of people and if they are not serious against children then who will come forward for their rescue and protect them from crimes?

## CRIMES AGAINST CHILDREN: AN OVERVIEW

Noble laureate Dr. Rabinder Nath Tagore once said: A nation's children are its supremely important asset and nation's future lies in their proper development. An investment in children is indeed an investment in future. A healthy and educated child of today is the active and intelligent citizen of tomorrow.<sup>35</sup> Crimes against children should be taken as crimes against humanity and protection of children from crimes is collective responsibility of the state, family and society. It requires a concerted effort on the part of every member of society and it should start from family which is the basic unit of the society and has the primary responsibility to provide care and protection of children. Being an important member of civilized society we must fulfill our duty towards children by providing them a conducive environment to develop his/her physical, mental, moral and spiritual personality. It is our duty to give them a world free from hate, neglect, violence and abuse. In India, much work has been done by the government regarding welfare of children and protecting them from

<sup>35</sup> "Juvenile Deviations and Protection in the Context of the Juvenile Justice Act, 1986", 25(1-3) *Indian Journal of Criminology and Criminalistics*, 2004, at 12



crimes, but still lot more has to be done in practice for proper enforcement of the rights of children and effective implementation of laws, policies and programmes relating to protection, survival and welfare of children. So, let us make a peaceful world for a child that is free from fear, hate, neglect, violence, abuse and crime. As rightly said by the great Tamil Saint Thiruvalluvar: "The touch of children is the delight of the body; the delight of the ear is the hearing of their speech."<sup>36</sup>

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<sup>36</sup> Quoted in *D. Rajeswari v. State of Tamil Nadu and Others* 1996 Cr LJ 3795

