

DEVELOPMENT OF LEGAL FRAMEWORK FOR PROTECTION OF CHILDREN IN INDIA

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*"Safety and security don't just happen, they are the result of collective and public investment. We owe our children, the most vulnerable citizens in our society, a life free of violence and fear."*¹

Introduction

Homo sapiens, which biologically fall between the stages of birth to the age of puberty are known as child. Even some times fetus is also considered as a child. The term "age of puberty" varies from community to community some considered it to be 18 while others considered to be 15². Puberty in some culture comes quietly with biological changes while in some it has been celebrated and declared ritually. To remove the confusions law has defined the age when any person will be considered as major³ and it is up to the age of legal puberty person is considered to be a child and need special care and protection notwithstanding anything contained in personal laws.

The concept of rights of the child is not much older. In middle age, children were not considered to be separate individuals and they merely have to copy adults in their daily lives. Special needs of the child were not recognised. In the 19th century after the industrial revolution the large work force was needed and the child emerges as the easy

¹ Available at: <http://www.nelsonmandelachildrensfund.com/nelson-mandela-quotes-about-children/> (visited on April 4, 2016).

² For purposes of marriage, dower and divorce, the age of majority under Muslim law is not eighteen years but it is age of puberty. Age of puberty in Muslim Law is twelve years for boy and nine years for girls. To remove the difficulty age of puberty in Muslim Law is considered to be 15 years. See *Atika Begum v. Mohd. Ibrahim*, AIR 1925 PC

³ The Protection of Children from Sexual Offence Act, 2012 (Act 32 of 2012). Section 2(d) defines "child" mean any person below the age of 18 years.

solution to the requirement⁴. It was also cost effective. Gradually this leads to deteriorating working environment for them. Their rights were not defined and they do work according to whims of their employer only. Employers were interested only in profit making. All this lead to child exploitation and bonded child labour. Continues exploitation of children made many scholars to raise voices against child atrocities. France taking lead in the middle of the 19th century gave special protections to the child, for the development of child rights. This was the very first attempt to recognise the rights of the child⁵.

Starting from France, child protection starts spreading across Europe. Beginning of the 20th century marks the recognition of child protection at large, including medical, social and judicial field⁶. After the creation of a League of Nation international community start giving some kind of importance to the concept of child protection. League of Nation adopted Declaration of Rights of Child on 16, September, 1924⁷. It was the first international treaty concerning about the rights of the child.

⁴ Dr.Pratab S.Malik, A Complete Guide to POCSO 4 (Universal Law Publication, Haryana, 1st edn. 2016).

⁵ Available at: <http://www.humanium.org/en/childrens-rights-history/> (visited on April 4, 2016).

⁶ Available at : <http://www.humanium.org/en/childrens-rights-history/> (visited on April 4, 2016).

⁷ Geneva Declaration of the Rights of the Child, Adopted 26 September, 1924, League of Nations
By the present Declaration of the Rights of the Child, commonly known as "Declaration of Geneva," men and women of all nations, recognizing that mankind owes to the Child the best that it has to give, declare and accept it as their duty that, beyond and above all considerations of race, nationality or creed:

- The child must be given the means requisite for its normal development, both materially and spiritually;
- The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succoured;
- The child must be the first to receive relief in times of distress;
- The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation;
- The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men.

Available at: <http://www.un-documents.net/gdrc1924.htm>(visited on April 4, 2016)

After World War II a systematic approach towards the rights of children started. United Nations Charter (UN hereafter) in its preamble⁸ very well explained its intentions to save the rights of all individuals including children. In the line of its aim, The UN Fund for Urgency for the Children is created in 1947, which became United Nations Children's Emergency Fund (UNICEF hereafter) and was granted the status of a permanent international organization in 1953. UNICEF primarily focuses on the helping child victims of World War II, but after 1953 it starts focusing on the whole world and started many programs for the betterment and protection of children. The Universal Declaration of Human Rights (UDHR) on December 10, 1948 recognized that motherhood and childhood need special care and protection⁹. In 1959 the General Assembly of United

⁸ WE THE PEOPLES OF THE UNITED NATIONS DETERMINED

- to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and
- to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and
- to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and
- to promote social progress and better standards of life in larger freedom,

AND FOR THESE ENDS

- to practice tolerance and live together in peace with one another as good neighbours, and
- to unite our strength to maintain international peace and security, and
- to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and
- to employ international machinery for the promotion of the economic and social advancement of all peoples,

HAVE RESOLVED TO COMBINE OUR EFFORTS TO ACCOMPLISH THESE AIMS

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations, *Available at:* <http://www.un.org/en/sections/un-charter/preamble>, (visited on April 4, 2016).

⁹ Universal Declaration of Human right, 1948

Article 25,

(1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

(2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Available at: <http://www.un.org/en/universal-declaration-human-rights> (visited on April 4, 2016).

Nation adopted The Declaration of the Rights of Child which contains ten principles¹⁰ of children's rights. It was not signed by all the countries, but it saw the seed for a Universal Declaration of Children Rights (UDHR hereafter).

In fact, after UDHR the world community starts thinking to protect the rights of those, whose right were not protected under the traditional approach of development, out of them women and children were the main recipients. The real change in the spirit of the international community to protect the child was seen when United Nations, declared the year 1979 as the International Year of Child. In the same year Poland makes the proposal to draft a charter for protection of children along with the Human Right Commission which was accepted by United Nation.

It was 20 November 1989, when the United Nation General Assembly unanimously adopted the Convention on the Rights of the Child, 1989 (hereafter termed as CRC). It is a charter of 54 articles containing social, economic, political, and cultural rights of children. This charter became international treaty and being adopted and ratified by 20 nations on 2 September 1990¹¹.India ratified the said treaty on 11 December 1992.

The independence of India marks the new era of child right protection in nation .The Constitution of India which came into force on January 1950 contains special provisions

¹⁰ The Declaration of the Rights of the Child, 1959, Ten principles:

1. The right to equality, without distinction on account of race, religion or national origin.
2. The right to special protection for the child's physical, mental and social development.
3. The right to a name and a nationality.
4. The right to adequate nutrition, housing and medical services.
5. The right to special education and treatment when a child is physically or mentally handicapped.
6. The right to understanding and love by parents and society.
7. The right to recreational activities and free education.
8. The right to be among the first to receive relief in all circumstances.
9. The right to protection against all forms of neglect, cruelty and exploitation.
10. The right to be brought up in a spirit of understanding, tolerance, friendship among peoples, and universal brotherhood.

¹¹ Available at: <http://www.humanium.org/en/childrens-rights-history/> (visited on 5 April 2016).

for security and protection of children. These are incorporated into Part III¹² and Part IV¹³ of the Constitution in form of Fundamental Rights and Directive Principles respectively.

¹² Article 14, Constitution of India:

Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

- Article 15, Constitution of India:

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

(3) Nothing in this article shall prevent the State from making any special provision for women and children

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

- Article 17, Constitution of India:

Untouchability is abolished and its practice in any form is forbidden The enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law.

- Article 21A, Constitution of India:

The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.

- Article 24, Constitution of India:

No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

¹³ Article 39, Constitution of India:

(e) the tender age of children are not abused... and not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood... protected against exploitation and against moral and material abandonment.

- Article 45, Constitution of India:

The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

- Article 46, Constitution of India:

The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation

- Article 47, Constitution of India:

The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health

India in its first five year plan (1951-1956) pays immense attention to the needs of children and women. Health, nutrition and education were recognised as area of concerned. The Central Social Welfare Board (here in after termed as CSWB) was constituted in 1953 with the object of welfare of children, women and handicapped persons. In 1954, Welfare Extension Projects were started to reach children and women in rural areas through the creation of *balwadis and Mahila mandalas*.

In addition, the Government of India passed the Protection of Civil Rights Act, 1955 and ratified the International Labour Organization (here in after termed as ILO) Convention No. 5 of 1919 at a minimum age of work in industry¹⁴. Government of India in 1950 ratified the United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution and enacted Suppression of Immoral Traffic in Women and Girls Act (here in after termed as SITA) in 1956. In 1964 the Department of Social Security was established especially for the protection of children and to take care of their needs. This department was given a status of an independent Ministry in year 1979 which was later named as Social Justice and Empowerment Ministry at present.

Integrated Child Development Services (here in after termed as ICDS) scheme was launched On 2 October 1975. This scheme is considered to be one of the largest outreach programmes for children in the world. On 15 August 1994 a programme to Eliminate Child Labour in Hazardous Employment by 2000 was announced. This was the time when India was facing twofold problems one was a decrease in sex ratio and increase in girl abortion, therefore ninth five year plan to take special care of it and it was the time where girls child right along with mothers right got prominent attention. Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994, were enacted.

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- Article 51, Constitution of India:

(c) Foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and encourage settlement of international disputes by arbitration Part IVA Fundamental Duties.

¹⁴ Available at: <http://nhrc.nic.in/Documents/Publications/ChildrenRights.pdf> (visited on 6 April 2016).

To combat trafficking and commercial sexual exploitation of children government of India tighten its belt in 1998 and start taking strong regulatory and administrative measures. Juvenile Justice Act, 1986 was amended as Juvenile Justice (Care and Protection of Children) Act, 2000 in order to make children feel more safe and secure. Later on many more acts were also enacted in order to protect children from all types of atrocities.

The existing laws and regulations in India for the protection of children can be summed up as follows: The Juvenile Justice (Care and Protection of Children) Act, 2015; Protection of Children From Sexual Offences Act, 2012; Bonded Labour System (Abolition) Act, 1976; Children (Pledging of Labour) Act, 1933; Child Labour (Prohibition and Regulation) Rules, 1988; Child Labour (Prohibition and Regulation) Act, 1986; Commission For Protection of Child Rights Rules, 2006; Commission For Protection of Child Rights, Rules 2006; Commissions for Protection of Child Rights (Amendment) Act 2006; Commissions for Protection of Child Rights Act, 2005; Factories Act, 1948; Guardians and Wards Act 1890; Hindu Minority and Guardians Act 1956; Immoral Traffic (Prevention) Act, 1956; Infant Milk Substitutes Feeding Bottles and Infant (Regulation of Production, Supply and Distribution) Amendment Act 2003; Infant Milk Substitutes Feeding Bottles and Infant (Regulation of Production, Supply and Distribution) Rules 1993; Infant Milk Substitutes Feeding Bottles and Infant (Regulation of Production, Supply and Distribution) Act, 1992; Juvenile Justice (Care and Protection of Children) Amendment Act, 2011; Juvenile Justice (Care and Protection of Children) Rules, 2007; Juvenile Justice (Care and Protection of Children) Amendment Act, 2006; Juvenile Justice (Care and Protection of Children) Act, 2000; Medical Termination of Pregnancy Act, 1971; Mines Act, 1952; National Food Security Act, 2013; Protection of Children From Sexual Offences Rules, 2012; Prohibition of Child Marriage Act 2006; Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994; Right of Children to Free and Compulsory Education Rules, 2010; Right of Children to Free and Compulsory Education Act 2009; Young Persons (Harmful Publication) Act,

Constitution of India

The first step towards the protection of children's rights is found in the constitution of India. There are various rights and needs of children are envisaged in Fundamental Rights, Directive Principles, and Fundamental Duties in Indian constitution. Fundamental Rights are enforceable while Directive Principles and Fundamental Duties are not enforceable.

Fundamental Rights

- Article 14- The State shall not deny to any person equality before the law or the equal protection of laws with in the territory of India.
- Article 15- The State shall not discriminate against any citizen... Nothing in this Article shall prevent the State from making any special provisions for women and children.
- Article 21-No person shall be deprived of his life or personal liberty except according to procedure established by law.
- Article 21 A-The State shall provide free and compulsory education to all children of the age of 6-14 years in such manner as the State may, by law, determine.
- Article 23-Traffic in human beings and beggary and other forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with the law.
- Article 24-No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

Directive Principles of State Policy

- Article 39(e) and (f) provides that the State shall, in particular, direct its policy towards securing to "ensure that the health and strength of workers, men and women and the tender age of children are not abused" and "that the citizens are

not forced by economic necessity to enter avocations unsuited to their age or strength" and that "the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity" and that the childhood and youth are protected against exploitation and against moral and material abandonment.

- Article 45- The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.
- Article 47- The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties
- Article 243G read with Schedule 11 - provide for institutionalization of child care by seeking to entrust programmes of Women and Child Development to Panchayat (Item 25 of Schedule 11), apart from education (item 17), family welfare (item 25), health and sanitation (item 23) and other items with a bearing on the welfare of children.

Indian Penal Code, 1860

IPC recognised child as a special category and any offence committed by child below the age of 7 will not made him liable for any offence¹⁵ and child between 7 to 12 years of age will only be made liable on the basis of mental understanding of child in relation to that offence.¹⁶ Apart from this IPC have list of offences against children some of them are as follows:

- Section 302 whosoever commits murder shall be punished with death, imprisonment for life, and shall also be liable to fine.

¹⁵ Indian Penal Code, 1860 (Act 45 of 1860), section 82 Act of a child under seven years of age. – Nothing is an offence which is done by a child under seven years of age.

¹⁶ Indian Penal Code, 1860 (Act 45 of 1860), section 83, Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

- Section 315 Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.
- Section 316 – Whoever does any act under such circumstances, that if he thereby caused death, he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
- Section 317 Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

All degrees of hurt or abuse that is hurt¹⁷, Grievous hurt, Voluntarily causing hurt¹⁸, Voluntarily causing grievous hurt¹⁹, Voluntarily causing hurt by dangerous

¹⁷ Indian Penal Code, 1860 (Act 45 of 1860), Section 319, Hurt: Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.

¹⁸ Indian Penal Code, 1860 (Act 45 of 1860), Section 320 : Grievous hurt Section 321, Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said “voluntarily to cause hurt”.

¹⁹ Indian Penal Code, 1860 (Act 45 of 1860), Section 322 Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said “voluntarily to cause grievous hurt.” Explanation. – A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing him-self to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

weapons or means, Wrongful restraint²⁰, Wrongful confinement²¹. All types of Kidnapping and Abduction²² like Kidnapping for exporting, Kidnapping for lawful guardianship, Kidnapping for ransom, Kidnapping for begging, Kidnapping to compel for marriage, Kidnapping for slavery, Kidnapping child for stealing from its person" child under 10 years of age only, Procreation of minor girls, Importation of girls, Selling of girls for prostitution, Buying of girls for prostitution, Rape²³, Unnatural offences²⁴.

Guardian and Wards Act 1890

The Guardians and Wards Act came into force on 1st July 1890²⁵ and supersede all personal and other laws in regards to guardianship India. Extending whole of India except Jammu and Kashmir this non- religious universal law outline all personal law of Muslims, Christians, Parsis and Jews are concerned guardianship²⁶. It applies to all children, regardless their sex, creed, caste and religion. Any person who has not completed the age of 18 years will be minor or the purpose of this act²⁷. Court or any authority appointed by court may on the application made by any relative, friend or any person desirous to be guardian may appoint him/her the guardian of minor or his property²⁸. Application should contain detailed information about the minor any reason for such guardian ship²⁹. While deciding such application interest of child will be paramount consideration for the court. Working in interest of child court must take in consideration sex, age, religion, and character of the person seeking to the guardianship³⁰.

²⁰ Indian Penal Code, 1860 (Act 45 of 1860), Section 339: Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

²¹ *Ibid*, Section 340.

²² *Ibid*, Section 360 to 373.

²³ *Ibid*, Section 376.

²⁴ *Ibid*, Section 377.

²⁵ Guardian and Wards Act, 1890 (Act No 8 of Year 1890) Section 1.

²⁶ *Ibid*.

²⁷ *Ibid*, section 4.

²⁸ *Ibid*, section 7.

²⁹ *Ibid*, section 10.

³⁰ *Ibid*, section 17.

According to the Act, if there is no person eligible to be the guardian of the minor than collector will be the de-facto guardian of the child. A minor cannot be appointed as guardian to other minor. Guardian is only the care taker of the ward's property they cannot Sale, Mortgage, or lease the property of ward without the prior permission of the court. If he does so these transactions are void ab-intio.

Immoral Traffic Prevention Act, 1986.

In 1950 the Government of India ratified the International Convention for the Suppression of Immoral Traffic in Persons and the Exploitation of the Prostitution of others. In 1956 India passed the Suppression of Immoral Traffic in Women and Girls Act, 1956 (SITA). The act was further amended and changed in 1986, resulting in the Immoral Traffic Prevention Act also known as PITA³¹. PITA is a special legislation dealing with trafficking of minor child for the purpose of prostitution and it is silent about all other trafficking like domestic work, child labour, organ harvesting etc. This extends to whole of India including Jammu and Kashmir³².

For the purpose of this Act any person who has not completed the age of 18 years is a child. Defining prostitution act says it is a sexual abuse or exploitation for commercial purposes or for consideration of money or for any other purposes³³. Act also defines brothel, includes any house, room, conveyance or place, or any portion of any house, room, conveyance or place, which is used for purposes of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitute³⁴. Who so ever runs brothel or procures prostitution is subject to offence made punishable according to

³¹ Available at: <http://www.childlineindia.org.in/Immoral-Traffic-Prevention-Act-1986.htm> (visited on 29 April 2016).

³² The Immoral Traffic (Prevention) Act, 1986(44 act of 1986), section 1.

³³ *Ibid*, section 2(f).

³⁴ *ibid* section 2(a).

this act with rigorous imprisonment³⁵. According to this act who so ever is involved in the recruiting, transporting, transferring, harbouring, or receiving of persons for the purpose of prostitution if guilty of trafficking and is punishable with rigorous imprisonment. In addition any person attempting to commit trafficking or found in the brothel or visiting the brothel is also punishable under this law³⁶.

Prohibition of Child Marriage Act, 2006.

Child marriage is very complex problem of Indian society due to different cultures and diversity. Child marriage brings lot of problems like child widowhood, dowry, malnutrition, and poor health to child mother and many more. In order to deal with the evil Indian Parliament in its fifty seventh years of republic on 10th January 2007 enacted prohibition of Child marriage Act, 2006³⁷. Any male who is not completed the age of 21

³⁵ *Ibid*, section 3,

(1) Any person who keeps or manages, or acts or assists in the keeping or management of, a brothel shall be punishable on first conviction with rigorous imprisonment for a term of not less than two years and which may extend to three years and also with fine which may extend to ten thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which shall not be less than three years and which may extend to seven years and shall also be liable to fine which may extend to two lakh rupees.

(2) Any person a) being the tenant, lessee, occupier or person in charge of any premises, uses, or knowingly allows any other person to use, such premises or any part thereof as a brothel, or

(b) being the owner, lessor or landlord of any premises or the agent of such owner, lessor or landlord, lets the same or any part thereof with the knowledge that the same or any part thereof is intended to be used as a brothel, or is willfully a party to the use of such premises or any part thereof as a brothel, shall be punishable on first conviction with imprisonment for a term which may extend to two years and with fine which fine which may extend to two thousand rupees and in the event of a second or subsequent conviction, with rigorous imprisonment for a term which may extend to five years and also with fine.

(2-A) For the purposes of sub-section (2), it shall be presumed, until the contrary is proved, that any person referred to in clause (a) or clause (b) of that sub-section, is knowingly allowing the premises or any part thereof to be used as a brothel or, as the case may be, has knowledge that the premises or any part thereof are being used as a brothel, if, – (a) a report is published in a newspaper having circulation in the area in which such person resides to the effect that the premises or any part thereof have been found to be used for prostitution as a result of a search made under this Act; or (b) a copy of the list of all things found during the search referred to in clause (a) is given to such person.

(3) Notwithstanding anything contained in any other law for the time being in force, on conviction of any person referred to in clause (a) or clause (d) of sub-section (2) of any offence under that sub-section in respect of any premises or any part thereof, any lease or agreement under which such premises have been leased out or held or occupied at the time of the commission of the offence, shall become void and inoperative with effect from the date of the said conviction.

³⁶ *Ibid*, section 5 to 7.

³⁷ The Prohibition of Child Marriage Act, 2006 (Act No 6 of 2007).

years and female who has not completed the age of 18 is child for the purpose of this act³⁸. Child marriage is a marriage to which either of the contracting party is child at the time of the marriage³⁹. According to this act child marriage before or after this act may be made void on the application of any of the parties to the marriage. Such application has to be made within two year from the date of majority of such parties. This is called option of puberty⁴⁰. Any male above the age of eighteen year, contracting child marriage or any person who abets, directs, or conform child marriage is punishable with rigorous imprisonment which may extend to two year and shall also be liable for fine which may extend to one lakh⁴¹.

Child Labour (Prohibition and Regulation) Act 1986.

For the purpose of this act any person who has not completed the age of 14 years is child. This act is always been subject of debate as the name suggest it was aimed to prohibit child labour but in reality it provide guidelines for the area where child can do labour. It provides in schedules A and B which specified the areas where child are allowed to do labour.

The Juvenile Justice (Care and Protection of Children) Act, 2015.

The Juvenile Justice (Care and Protection of Children), 2015 got the assent of president on 31 December 2015. It repealed Juvenile Justice Act 2000. In this act juvenile is defined as person who has not completed the age of 18 years. In order to make more effective and responsive legislative frame work for children in need of care and protection and children in conflict with law the Ministry of Women and Child Development had introduced the Juvenile Justice (Care and Protection of Children) Bill 2014 in the Lok

³⁸ *Ibid*, Section 2(a).

³⁹ *Ibid*, Section 2(b).

⁴⁰ *Ibid* Section 3.

⁴¹ *Ibid* Section 9-10.

Sabha on 12th August 2014. It was the outcome great need to an effective and strengthened system of administration for juvenile justice, care and protection.

This Act has provision that if any heinous crime is committed by juveniles aged in between 16-18 can be treated as adult. Child while doing crime was adult or juvenile is the task to be decided by Juvenile Justice Board consisting of psychologist and social experts. This act apart from making juvenile accountable for their acts makes provision for their protection also like establishments of Child Welfare Committee (CWC) in every district which will function for the welfare of children. Act also talk about adoption and define the eligibility and manner of adoption. Crime against child has been described in details along with the penalties.

Protection of Children from Sexual Offence Act 2013.

POCSO Act 21012 is a recent development of Indian legislative frame work⁴². It is the special law addressing the issue of sexual abuse against children. Before this act sexual offence against child was covered under different sections of IPC but IPC. this colonial legislation fails to provide safeguard against all type of sexual abuses against children and more importantly it does not distinguish between child and adult victim and hence POCSO Act, 2012 became the first law of land that specially deals with the child sexual offences. Any person below the age of 18 years is considered to be child for the purpose of this act and it provides protection from sexual offences to such children.

The Act provides all types of sexual offences against child and divides them in to sexual assault⁴³, sexual harassment⁴⁴ and penetrative sexual assault⁴⁵. All form of sexual offences is against child is made punishable under this act. Abetments to such offences

⁴² The Protection of Children From sexual offences Act, 2012 (Act no 32 of 2012), come in force in 14 November 2012, *vide* S.O. 2705(E), dated 9th November 2012 , published in gazette of India, Extra., pt. II, sec. 3(ii),No. 2250, dated 9th November, 2012.

⁴³ Protection of Children From sexual offences Act, 2012 (Act no 32 of 2012), section 9.

⁴⁴ *Ibid* section 11.

⁴⁵ *Ibid* section 3.

are also made punishable under the act⁴⁶. It provides detailed procedure to followed in cases of child victims and ask for establishment for special courts for the cases related to child victim⁴⁷. Considering child as special category it provides that friendly environment is to be maintained in courts during the trail of such cases⁴⁸. This act understanding the effect of sexual offence on child and therefore even attempt to commit such offence is also made punishable⁴⁹. Identity disclosure of child victim by media is made punishable and is allowed only after the permission of special courts made under the act⁵⁰. The punishment for breaching this provision by media may be from six months to one year. Trails of such cases are to be completed within one year from the date of first hearing⁵¹.

Apart from protection and prevention of child sexual abuse act also talks about child rehabilitation. It is duty of local police or Special Juvenile Police Units (SJPU hereafter) that they will make immediate arrangements for child care and protection such as admitting them to hospitals or nearest shelter home. To make act of SJPU or local police more accountable and transparent it cast duty on them that they will report to Child Welfare Committee with in 24 hour of recording of complaint and what protection has been provided to the victim. The Act casts a duty on the Central and State Governments to spread awareness through media including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions of this Act. The National Commission for the Protection of Child Rights (NCPCR) and State Commissions for the Protection of Child Rights (SCPCRs) have been made the designated authority to monitor the implementation of the Act.

⁴⁶ Protection of Children From sexual offences Act, 2012 (Act no 32 of 2012), section 16-17 .

⁴⁷ *Ibid* section 28 .

⁴⁸ *Bid*, chapter VI

⁴⁹ *Ibid* section 18.

⁵⁰ *Ibid* section 19- 23.

⁵¹ *Ibid* section 35 .

Other Laws

Apart from the above discussed laws there are so many other laws which also provide protection to children .these are listed as Guardian and Wards Act, 1890 Minimum Wages Act, 1948 Factories Act, 1954 Hindu Adoption and Maintenance Act, 1956 Probation of Offenders Act, 1958, Bombay Prevention of Begging Act, 1959 Orphanages and other Charitable Home (Supervision and Control) Act, 1960 Bonded Labour System (Abolition) Act, 1976 Prevention of illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1987 Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 Persons with Disabilities (Equal Protection of Rights and Full Participation) Act, 2000.

Conclusion

From the above discussion we can conclude that India has shifted its approach towards child protection legislation. The recent development of child specific legislation are the unequivocal evidence of this. But mere drafting legislations are not the solution to the problem, it is high time to sanitize the mechanism in order to implement these legislations effectively. Steps should be taken to make large numbers of people aware about these laws. There is to provide training sessions to investigations authorities in order to make them aware with the manner in which they have to treat these special child victims. By drafting some great legislations we have already win the half battle and rest battle can only be won when these legislation can effectively be brings in to function.