

CHILD SEXUAL ABUSE

(RESEARCH METHODOLOGY)

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CHAPTER 1

Introduction

Child sexual abuse and exploitation is not new, the extent of the problem is children are sold, rented out, and sexually abused by adults everywhere. While it is almost impossible to obtain accurate figures, it is a fact that millions of girls and boys worldwide are being used in prostitution, pornography, trafficking and other forms of sexual abuse and exploitation. There has been number of definitions of the phrase 'child sexual abuse'.

Child sexual abuse (CSA) has been defined as any kind of physical or mental violation of a child with sexual intent usually by a person who is in position of trust or power vis-à-vis the child. CSA is also defined as sexual behaviour directed at a person under sixteen, without informed consent.

The children's act of Great Britain defines 'sexual abuse' as the involvement of dependent, developmentally immature children and adolescents in sexual activities they do not normally comprehend, to which they are unable to give informed consent, or that which violate the social taboos of family roles. This definition introduced the concepts of 'informed consent' and 'dependent'. It is the independent nature of child and young people that make child sexual abuse a particular problem.

In 1988, a national seminar on child abuse¹ in India recognized the need for defining afresh the term 'child abuse' in the Indian context. The committee concerned evolved the following definition.

'child abuse and neglect is the international, non-accidental injury, maltreatment of children by parents, caretakers, employers or others including those individuals representing government/non-government bodies which may lead to temporary or

¹ National institute of public cooperation and child development, New Delhi, 2-24 June 1988

permanent impairment of their physical, mental, psycho-social development, disability or death.

The problem of child abuse is, for feminists, the problem of masculine sexuality. Saakshi² defines child abuse as any behavior directed at a person under sixteen, without that person's informed consent³. According to Saakhi child sexual abuse is the physical or mental violation of a child with sexual intent, usually by an older person, who is in some position of power and/or trust vis-à-vis the child. Sexual abuse of a child can take place in the family, in the neighborhood, in the school, in institutions, and on the street.

The United Nations has defined child abuse as contacts or interaction between a child and older or more knowledgeable child or adult (a stranger, sibling, or person in apposition of authority, such as a parent or caretaker), when the child is being used as an object of gratification for the older child's or adult's sexual needs. These contacts or interactions are carried out against the child, using force, trickery, bribes, threats, or pressure⁴.

² A Non-governmental organization, New delhi

³ See Child sexual Abuse- A draft manuel, Saakshi, Unpublished.

⁴ UNICEF, 2001

CHAPTER 2

SOME BASIC CONCEPTS OF RESEARCH METHODOLOGY

MEANING OF RESEARCH

The word 'Research' is composed of two syllables, re and search. The dictionary defines the former as a prefix meaning again, anew or over again and the latter as a verb meaning, to examine, closely and carefully, to test and to try or to probe.

Together they form a noun describing a careful, systematic, patient study and investigation in some field of knowledge to undertake to establish facts or principles or one can also define research as a scientific and systematic search for pertinent information on a specific topic.

Burns defines research as a systematic investigation to find answers to a problem.

Redman and Mory define research as a 'systematized effort to gain new knowledge.'⁵

According to John W. Best, research is a powerful tool which pushes back the areas of ignorance by discovery new truths which in turn, lead to betterment of life.

W.S Monroe has defined research as method of studying problems whose solutions are to be deprived partly or wholly from facts. The purpose of legal research is to ascertain principles and develop procedures for use in the field of law. It therefore, follows that mere collection and tabulation of facts or information is not research, though it may be preliminary to it.⁶

Research is considered to be a formal, systematic and intensive process of problems formulation, observation, analysis and drawing a conclusion. Thus, it is a systematic

⁵ Shipra Agarwal legal Research Methodology P.1,2

⁶ Dr. Vinay N. Paranjape, legal Education Research methodology P.69

activity that is directed towards discovery and development of an organised body of knowledge.⁷

Research, according to C. Francis Rummel, is an endeavour to discover, develop and verify knowledge. Any research must contribute to new knowledge in a particular field.

MEANING OF LEGAL RESEARCH

Legal research means research in that branch of knowledge which deals with the principles of law and legal institutions. The contents of various sources of law (legislation, precedent, customs, juristic writings etc.) change with the changing requirements of the society and if these changes are not taken into account in interpreting the law, the existing law is bound to be doomed. Therefore, the aim of the law is to regulate the human behaviour in the present day society and hence, legal research must be directed to the study of the relationship between the world of the law and the world that the law purports to govern.

OBJECTIVES OF LEGAL RESEARCH

1. There are phethora of laws, some of them are made centuries before and still applicable, some are of today. Yet with the fast growing, rapidly contracting world and of course changing social, moral, economical and political perceptions, law has to be dynamic and moving if it has to remain alive and active and it will remain active and alive, if it is aware of its lacunae and take step to overcome it with passage of time. The object of legal research, therefore, is to find out the

⁷ H.N. Tiwari: Legal Research Methodology (2006) P.142

area, where there is need of law, yet no law, for example, Patent and Copy Right Act and Cyber law,

2. Where there is law, but there are lacunae's or deficiencies in the existing laws, in those areas legal researcher can help in finding suitable measures to eliminate them.
3. One important purpose of research is utilitarian in nature. For example, study about the causes of increasing dowry death in spite of legal provisions. A close study may reveal its causes to be deeper rooted e.g. psychological frustration, temptations towards evil. Legal research tries to explore these fundamental traits of human nature so as to make the world aware of it and ultimately to destroy these evils.⁸

TYPES OF LEGAL RESEARCH

DOCTRINAL AND NON-DOCTRINAL RESEARCH

Doctrinal research, which is sometimes also referred to as 'armchair research' is essentially a library-based study as the material needed by the researcher may be available in libraries, archives and other data-bases. The aim of such research is to discover, explain, and analyse the working of certain laws or legal institutions in a systematic manner and develop new facts, theories, principles, concepts etc from such study.

The most essential feature of doctrinal research is that the researcher organises his study around some legal propositions and data for such research is collected from reports of higher courts and conventional legal material accessible in law library. The non-doctrinal research, on the other hand. Involves a study or some aspect of the legal process or the

⁸ Shipra Agarwal legal Research Methodology P13

people or institutions which regulated by the law. The data for non-doctrinal research is generally not available in conventional legal sources; instead it has to be collected through field work. Legal researcher on impact of law on economic development, growth of knowledge, technological changes or tracing the impact or consequences of a legal decision on society are generally categorised as non-doctrinal legal researches.

Doctrinal research starts from one legal proposition. For example, when a promise acts on the basis of promise made by the promisor, the court would generally enforce such promise. To cite yet another illustration, a topic of research entitled 'Educational Right of a Child' would mostly involve doctrinal research so far constitutional provisions part of the problem is concerned and the survey as to how far this has progressed would require empirical data collection and therefore, this part would be non-doctrinal in nature.⁹

SOURCES OF DATA

The sources of data collection are of two types- Primary or internal or field sources and secondary sources.

(a) Primary or field source or internal source of data- It is original information collected for the first time. It is also called as internal source of data as the data is collected directly from the subjects. They are obtained from the living persons directly related to the problem or through observation. This primary source can again be sub-divided into (a) Direct Primary (b) Indirect Primary.

(1) Direct primary sources:- the researcher personally goes and observes events, things, behaviour, activities and so. He has to display great skill and objectivity.

Observation can be of three sub-types: (1) participant observation, (2) non-

⁹ Dr. Vinay N. Paranjape, legal Education Research methodology p27

participant observation and (3) quasi-participation observation. Direct observation is the best, but difficult. In some cases, it may be either legally inadmissible or physical impossible.

- (2) Indirect primary sources: As the researcher cannot observe things which occurred long back, he needs to contact those persons who have made observation relevant to his research. This can be done through interview, questionnaires or schedules.
- (b) Secondary or internal source of data- this information is obtained from outside, either a published source or from someone else who has already worked on the subject. They save a researcher the labour of collecting data again and prevent unnecessary expenditure. They can be broadly divided into two types (a) Personal documents and (b) Published documents. Personal documents consists of life histories, diaries, letters memories. It is very difficult to obtain them or put them to proper use. Public documents come from public bodies Government and private organisations. Apart from books, available in libraries, this category includes records, published statistics, reports of newspapers and journals and special reports, films or T.V programmes, tapes and so on. Unpublished documents are not easily available. Documentary sources are very important because past events can be known only through them. They may reveal certain secrets. They can help to save time, money and energy. But a researcher should verify the contents with the help of other sources.¹⁰

¹⁰ Shipra Agarwal legal Research Methodology P139

HYPOTHESIS

The term hypothesis consists of two words, namely, 'hypo' and 'thesis'. 'Hypo' means tentative or subject to verification and thesis means statement about solution of a problem. Thus, literal meaning of the term 'hypothesis' is, a tentative statement about solution of a problem that is to be verified empirically based on some rationale.¹¹

'Hypothesis' defined

Webeister has defined hypothesis as the guesses made by the researcher which either solve the problem or guide him for further investigation.

According to Coffey " hypothesis is an attempt at explanation, a provitional supposition made in order to explain scientifically.

Bruse W. Turkman has observed that a hypothesis is an expectation about events based on generalisation of the assumed relationship between variables. Thus, it is a testable proposition formally subjected to empirical or experimental verification.

Hypothesis provides tentative answers to the researcher. In other words, hypothesis is a tentative generalisation, the validity of which has got to be tested. At its initial stage, it may be an imagined idea or a mere guess based on accumulated previous knowledge.

Hypothesis is necessary for finding out the correct explanation of a phenomenon through investigation. It is on the basis of hypothesis that facts are observed and relevant data collected. It leads to discovery of laws and explains facts in relation to law with the object of verifying knowledge. A hypothesis has got to be either confirmed or refuted on the basis of investigation of facts; otherwise it will remain a mere supposition.

¹¹ Dr. Vinay N. Paranjape, legal Education Research methodology p88

A research study may have one or more than one hypothesis. However, when they are more than one, the simpler among them should be preferred, which can explain the consequences in a better way¹².

E.g. HYPOTHESIS.

Non implementation of provision is the cause for increase in crime against children.

OBJECTIVE OF STUDY

To bring forward the issue what child sexual abuse exactly is and what is the situation in Goa.

To understand the role played by the law which is enacted to protect the children.

To study the provisions of Goa children's act which are applicable while dealing the cases of sexually abused children.

To find out how far Goa Children act has been successful.

To find out whether the authorities under the act are functioning as per the act.

To find out the causes leading to child sexual abuse in Goa

To suggest some ways to improve the law related to children and to get better effect of it.

¹² Dr. Vinay N. Paranjape, legal Education Research methodology p89

SAMPLING METHOD

Most research studies are based on samples. When a small group is selected as representative of the whole, it is known as sample method. The method of selecting for study a portion of the universe with a view to draw conclusions about the universe in toto is known as 'Sampling'.

Goode and Hatt defined sample as 'a smaller representation of large whole'. Nan Lin defines it as "a subject of cases from the population chosen to represent it". Thus, the whole group from which the sample has been drawn is known as 'universe or population' and the group selected for study is known as 'sample'.¹³

DATA COLLECTION – The Researcher will collect the data by using interview method.

e.g.:- The Researcher will interview the following Respondents.

Judges, Advocates, Police, NGO's.

The Researcher may ask the following questions

1. Who do you think are the victims in majority boys or girls?
2. What according to you are the causes which lead to child sexual abuse?
3. What are the steps taken to reduce child sexual abuse?
4. How far is technology responsible for the growing crimes against children?

¹³ Shipra Agarwal legal Research Methodology P 106

INTERVIEW METHOD

Interview has been defined differently by different social scientists. In the words of Good and Hatt, “Interview is fundamentally a process of social interaction.”¹⁴

In the words of Fred N. Kerlinger “An Interview is face to face inter-personal situation which one person, the interviewer asks a person being interviewed, the respondent, questions designed to obtain answers pertinent to research problem.”

Shooter Oxford English Dictionary has defined interview as “meaning of a person’s face-to-face, especially for the purpose of formal conference on some point.”

P.V.Young says about personal interview, “it may be seen as an effective, informal, verbal, non-verbal conversation, initiated for specific purposes and focussed on certain planned content areas.”

From the various definitions given above it becomes clear that interview situation is normally a situation in which parties are face-to-face with each other and there is social reaction. Interview is thus a system in which both the investigator as well as the informants discuss the problem under research, the former usually taking the initiative with the object of extracting information from the latter.

¹⁴ Jai Narain Sharma, Research methodology the discipline and its dimensions P154

OBSERVATION METHOD

Observation denotes seeing things with a purpose. It consists in collecting the facts or information which is in direct knowledge of the researcher. It is the process of acquiring knowledge through the use of senses organs.

Broadly speaking, observation has three components, namely, sensation, attention and perception. Sensation is derived from sense organs. Attention relates to ability to concentrate on the subject matter of the study and perception enables the mind to recognize the facts by identifying sensations and drawing upon experience and introspection.¹⁵

The reliability of observation as a tool for data collection depends on three main factors (1) the technique used, (2) observed situation, and (3) ability of the observer. i.e. researcher.

According to Robert K. Merton, observation consists of systematic viewing of phenomenon related to the field of inquiry. It is a primary and most important source of information collection. The observation of customs, traditions, habits etc. of group under investigation helps considerably in a socio-legal research.¹⁶

QUESTIONNAIRE METHOD

Questionnaire method is one of the most suitable methods for the investigation of socio-legal problems. We use different tools of questionnaire for collecting data from large, diverse, varied and scattered persons from different places. Questionnaire is a list of

¹⁵ Robert K.Merton, Social Theory & Social Structure, P 39

¹⁶ Dr. Vinay N. Paranjape,Legal Education Research methodology.P 119

questions to be answered by a group of people, especially to get facts or information about their views. It is used to obtain knowledge about facts known to the informant.

The Dictionary of statistical Terms defines the questionnaire as a “group of or sequence of questions designed to elicit information upon a subject or sequence of subjects from an information”

Lundberg defines a questionnaire as “a set of stimuli to which literal people are exposed in order to observe their verbal behaviour under these stimuli”

Wilson Gee describes a questionnaire as “a convenient method of obtaining a limited amount of information from a large number of persons or from a small group which is widely scattered.”

According to Goode and Hatt, “questionnaire” is a “device for securing answers to questions by using a form which the respondent fills in himself.”¹⁷

CASE-STUDY METHOD:

Case-study method is considered to be a very useful technique for collecting. Research information about an institution, family, group of persons or an individual. It is a method of exploring and analysing the life of a social unit, be it is an institution, class or group of persons or an individual such as bonded labour, child labour, unorganised labour, customs of a particular tribe, consumers, etc. Case-study method is a way or organising socio-legal data so as to present the unitary character of the subject under study.

¹⁷ Dr. S.R. Myneni, Legal Research Methodology P 220

Biesanz has defined case-study as a ‘form of qualitative analysis involving a very careful and complete observation of social unit such as a person or persons, a situation or an institution.’¹⁸

According to P.V Young, “case study is a method of exploring and analysing of life of a social unit, be that a person, a family, an institution, cultural group or even entire community.”¹⁹

SURVEY METHOD

The word survey has been derived from two words “sur” or “sor” and “veior” which mean ‘over’ and ‘see’ respectively. The literal meaning of survey is to see over something from a high place. The term is used for technique of investigation by direct observation of a phenomenon or collection of information.

Mark Abrams says, “A social survey is a process by which quantitative facts are collected about the social aspect of a community’s composition and activities.

Herman N. Morse says, “the survey is in briefly a method of analysis in scientific and orderly form for defined purpose of given social situation or problems or population.”²⁰

ANALYSIS OF DATA.

Once the requisite material is collected, the researcher undertakes to analyse them.

According to John Galtung, ‘Analysis of data involves a number of closely related

¹⁸ Dr. Vinay N. Paranjape, Legal Education Research methodology. P 141

¹⁹ Dr. S.R. Myneni, Legal Research Methodology, P 238

²⁰ Dr. S.R. Myneni, Legal Research Methodology, P 232

operations that are performed with the purpose of summarizing the data obtained, and organizing them in such a manner that they will yield answers to the research questions’.

The purpose of analysis of data is to summarize the collected data and organise these in such a manner that they will yield answers to the research problems.²¹

²¹ Shipra Agarwal legal Research Methodology ,P 215

CHAPTER 3

THE LEGAL DEFINATION OF CHILD UNDER VARIOUS LAWS.

All cultures share the view that the younger the children, the more vulnerable they are physically and psychologically and the less they are able to fend for themselves. Age limits are a formal reflection of society's judgment about the evolution of children's capacities and responsibilities. Almost everywhere age limits formally regulate children's activities, when they can leave school, when they can marry, when they can vote, when they can be treated as adults by the criminal justice system and when they can work. But age limits differ from activity to activity and from country to country.

In India, the census of India defines persons below the age of fourteen as children. While making use of standard demographic data, social scientist includes females in the age group of fifteen to nineteen years under the category of the girl child. Most of the government programmes on children are targeted for the age group below fourteen years.

According to Article 1 of the united nations convention on the rights of the child 1989, 'a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier'.

Every Indian law has its own definition of the term 'child'. Under Goa children's Act 2003²², child means any person who has not completed 18 years unless any other law in force specifies otherwise or unless otherwise indicated in the specific provisions in this act.

The definition further changes saying if the victim is an offence of rape is concerned, 'child' shall mean any person who has not completed 16 years of age.

²² Goa children act 2003

Under the Child Labour (Prohibition and Regulation) Act 1986²³, child means a person who has not completed his fourteen years of age.

For the purpose of special treatment under the Juvenile Justice Act 1986²⁴, the age prescribed was sixteen years for boys and eighteen years for girls.

Under the juvenile justice (care and Protection of children) Act 2000²⁵, the age is eighteen for boys and girls.

For purposes of criminal responsibility, age limit is seven (sec. 82) and twelve (sec.83) under the Indian Penal Code 1860 (IPC)²⁶. For purposes of protection against kidnapping, abduction and related offences, age is fixed at sixteen in the case of boys and eighteen in the case of girls.

Under the Immoral Traffic (prevention) Act 1986²⁷, a child means a person who has not completed the age of 16 years and a minor means a person who has completed the age of 18 years.

Under child Marriage restraint act 1926²⁸, child means a person who, if a male, has not completed twenty-one years of age and, if a female, has not completed eighteen years of age.

The mines (amendment) Act 1952²⁹, defines children as those below eighteen years of age to work in mine or any part thereof.

²³ Child labour(prohibition and regulation) act 1986

²⁴ Juvenile justice act, 1986

²⁵ Juvenile justice (care and protection of children) act 2000

²⁶ Indian penal code 1860

²⁷ Immoral traffic (prevention) act 1986

²⁸ Child marriage restraint act 1926

²⁹ Mines (amendment) act 1952

Under Indian contract act 1870³⁰ a person below the age of eighteen years has no capacity to contract.

Under the Constitution of India³¹ Article 21 (a) of the constitution states that 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 45 of the constitution states that the state shall Endeavour to provide early childhood care and education for all children until they completed the age of six years.

Article 51(k) lays down a duty that the parents or guardians should provide opportunities for education to his child/ward between the age of six and fourteen years.

³⁰ Indian contract act 1870

³¹ Constitution of India

CHAPTER 4

PROVISIONS THAT DEAL WITH RIGHTS OF CHILDREN

CONSTITUTION OF INDIA

The constitution of India contains provisions for the protection of children. Under the constitution, it is the duty of the state to secure that children of tender age are not abused and forced by economic necessity to enter vocations unsuited to their age and strength (Article 39(e)) and to ensure that children are given opportunities and facilities to develop in a healthy manner and in condition of freedom and dignity (Article 39(f)). According to Article 23 of the constitution, trafficking in women for immoral purposes is prohibited. The constitution directs the state to enact special legislation and policies for protecting children and youth against exploitation of moral and material abandonment.

THE JUVINILE JUSTICE ACT, 1986 (JJ ACT 1986)

JJ act 1986 was enacted to provide for the care, protection, treatment, development, and rehabilitation of neglected or delinquent children. The Act did not directly deal with child abuse but the definition of a neglected juvenile included a juvenile who lived in a brothel or with a prostitution or frequently went to any place used for the purpose of prostitution or was found to associate with any prostitute or who was being or was likely to be abused or exploited for immoral or illegal purposes. Such neglected children were produced before a juvenile welfare Board who would, after an inquiry, send the child to a juvenile home for care Protection, and rehabilitation.

Under the Juvenile Justice act 1986, a prostitute's child was automatically a neglected child. The magistrate had power to segregate the prostitute from her child and place the child in a corrective institution. Besides, under the Act, while males above eighteen years

were considered adults, the age was reduced to sixteen years for females. The Juvenile welfare boards generally were not equipped to deal with cases of child sexual abuse. The observation homes could not provide special care and treatment for such victimized children.

JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT 2000

Since the Juvenile Justice Act 1986 has been replaced by the Juvenile Justice (care and protection of Children) act 2000, such children are now being produced before the child welfare committees which have replaced the Juvenile Welfare Boards. In practice, at present, it appears that there has been a change only in the nomenclature. The actual functioning of the earlier Boards and the present committees remain almost the same.

THE INDIAN PENAL CODE

The Indian Penal Code deals with sexual abuse of children in the form of rape. Section 375 defines rape. Section 376 of the Indian Penal code provides for the punishment of rape which shall not be less than seven years but which may be for a term that may extend to ten years, unless the woman raped is his own wife and is not under twelve years of age, in which case, he shall be punished with imprisonment for a term which may extend to two years or with fine or both.

The other provisions of IPC that are invoked are related to unnatural practices like Section 377. This is generally invoked when boy children are sexually abused. Section 366(A) and 366(B) relate to export and import of girls for prostitution. Under Section 366-A and 366-B, the girl should be below eighteen years and she should be intentionally induced by the accused to go from any place or to any act that is likely to force her into prostitution.

THE PREVENTION OF IMMORAL TRAFFIC ACT 1986 (PITA)

Under Section 8, children, both girls and boys, are given protection from sexual abuse.

There are also provisions against brothel keepers and keeping minor girls. Discretionary powers have been given to magistrates for interim placement of children who are housed in institutions.

INFORMATION TECHNOLOGY ACT, 2000

Section 61 deals with publishing of information which is obscene in electronic form

Section 61 states that whoever publishes or transmits or causes to be published in electronic form, any material which is lascivious, or appeals to the prurient interest, or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to 5 years and with fine which may extend to one lakh rupees, and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to 10 years and also with fine which may extend to two lakh rupees.

CHAPTER 5

VARIOUS FORMS OF SEXUAL ABUSE OF CHILDREN

CHILD MARRIAGE AS A FORM OF SEXUAL ABUSE OF CHILDREN

Ameena, a child bride married to sixty-year-old man, was rescued by an alert flight attendant who noticed her sobbing during a flight between Hyderabad and New Delhi³². The bridegroom was arrested and sent to prison for marrying a minor without consent and later released on bail.

In Rajasthan on Akshay Tritiya day 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 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. In rural India, the girls are married off at 12-14 years even before they are physically, psychologically and emotionally mature.

Early marriage is a form of sexual abuse of the girl child as they have to become mothers. Early marriage denies the girl an opportunity for development and increases the risk of higher numbers of low-birth-weight babies, child deaths and disabilities. Early marriage also deprives the girls of the opportunities of schooling, they are made to assume domestic and child care responsibilities early, which hampers their intellectual and personality development.

³² Later the battles for Ameena's custody were fought as much in news reports, opinion columns and letters to the editor of newspapers as in courts. Questions were raised especially about Ameena's age, the validity of her marriage, and the applicability of secular laws to minority communities

In 1929, the pressure exerted by social reformers had forced the British government to pass laws relating to child marriages. Taking into consideration the popular traditions and practises, the British government enacted the child marriage restraint act 1929, popularly known as the Sharda Act. The child marriage restraint act 1929 was an Act to restraint the solemnization of child marriages. It was applicable to all Indians, i.e. Hindus, Muslims and Christians. It prescribed the minimum age for marriage for boys and girls. In 1929, the minimum age of marriage for girls was fifteen and boys it was eighteen. This position was maintained by the Hindu marriage act 1955 which prescribed the same minimum age of marriage. This act prohibited the Solemnization of child marriage but it did not declare these marriages either void or illegal. The punishment under the Act was very mild. This was a weak legislation and could not achieve the desired results. Child marriages were deeply entrenched in the society as a custom and the Sharda act failed to make any dent in this practice.

The child marriage restraint (Amendment) Act 1978 was passed to provide more teeth to the act and to rise the minimum age of marriage. This amendment Act 1978 raised the minimum age of marriage by three years. It is now eighteen years for girls and twenty-one for boys³³. Child marriage means a marriage to which either of the contracting parties, i.e. parties whose marriage is or is about to be solemnized (CMRA 1929, 2 Section (b) is a child³⁴.

³³ CMRA 1929, Section 2(a) defines a child as a person who, if male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.

³⁴ CMRA 1929, Section 2(b) child marriage means a marriage in which either of the contracting parties is a child.

CHILD SEXUAL ABUSE IN INSTITUTIONS

There has been a significant increase in the number of cases of child sexual abuse in Institutions. The sexual assault case of a deaf and mute girl in the Observation Home, Umerkhadi, Mumbai (OHU), referred to as 'Bill No. 31' in all available documents pertaining to her case, is an example of lapses that occur in dealing with such cases under the present system.

The medical examination for investigation of sexual assault ordered by the superintendent on 22 September 1977 conducted by the doctor on duty at OHU was inclusive because it was incomplete. No attempt was made to collect any forensic evidence other than from the clothes she was wearing. The doctor appeared to be unaware of the procedures to be followed while investigating a case of sexual assault. There was no facility to help the victim to cope with the physical and emotional trauma. There was a lapse of twenty days between the date of assault and the report to the police. There was no efficient and timely communication mechanism. There was in fact suppression of evidence. Many such cases have come to light. There is no procedure laid down to deal with such cases of abuse within the institutions.

From the police point of view, child rape and indecent assault are peripheral crimes. The police also have practically no training in dealing with cases of child sexual abuse. Besides, investigation of such cases requires a different kind of expertise which is lacking. There is a wide communication gap between the child's statement and the recordings of the police and the language of the courts. There is a stereotype pattern of investigation which is followed without any sensitivity.

COMMERCIAL SEXUAL EXPLOITATION OF CHILDREN AND TRAFFICKING OF CHILDREN

Child sexual Abuse becomes exploitation when a third party Benefits through a Profit.

Sexual exploitation of children involves the use of children for sexual activities for material gains to the children themselves and others. Child prostitution is a term in popular usage but is inaccurate because it implies consent. And a child does not consent. Sexual exploitation of a child occurs at an age when consent has no meaning. He/She is rather victimised into sexual slavery for profit. Child sexual exploitation involves power relations and social structures.

Children in general are at risk but the high-risk groups of children can be identified as

1. Children living in brothels
2. Children living in communities where religious and cultural norms force them into prostitution, such as devadasi, jogins etc.
3. Street children, slum children and children without shelter
4. Children of alcoholic parents and drug traffickers
5. Children who have been sexually abused, raped, molested and stigmatized
6. Child widows and those deserted by husbands
7. Children employed as domestic help
8. Children born to AIDS victims\children detained in custodial and educational institutions away from families
9. Children affected by terrorism and natural calamities
10. Children of broken and disturbed families
11. Migrant children

The vulnerable areas are

1. State and national highways
2. Beauty parlours, massage homes, health clubs, and casinos
3. Coastal belts, especially tourist resorts where children become victims of paedophiles
4. Quarry and construction sites
5. Industries involving child labour
6. Areas prone to natural disaster such as floods and drought
7. Residential schools, children institutions and jails where children are illegally detained.

The propelling factor which actualizes commercial sex exploitation of children is the role played by traffickers. Trafficking as a phenomenon has defined by the UN General Assembly in 1994 as the illicit and clandestine movement of persons across national and international borders, largely from developing countries, with the goal of forcing women and girl children into economically oppressive and exploitative situations for the profit of recruiters, traffickers and crime syndicates as well as other illegal activities such as forced domestic labour, false marriage, clandestine employment and forced adoption.

CHILD PORNOGRAPHY

Child pornography which is the audio-visual material using children in a sexual context is another form of commercial sexual exploitation of children and is in great demand. India and other south Asian countries are slowly replacing South East Asia as the venue of choice for foreigners as there are fewer laws against child sexual abuse and south Asian children can be brought more cheaply. Sex offenders commit crimes in other countries

and return to their own, confident that the law enforcement agencies of the third world countries will not be able to catch up with them.

Sexually explicit material exists on the internet. Such material includes text, pictures and charts and includes bulletin boards, newsgroups and other forms of internet communication and extends from modestly titillating to the hardest core. The two main ways in which children may be potentially be harmed by child pornography are being exposed to pornography and being filmed or photographed or made the subjects themselves in some other way. Another risk is the possibility that, while online, the child may provide information or arrange an encounter that could risk his or her safety or the safety of other family members. In a few cases paedophiles have used online services and bulletin boards to gain a child's confidence and then arrange a face to face interview. 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 abuse.

In India there are provisions in Section 61 of the information Technology Act, 2000, which deals with publishing of information which is obscene in electronic form.

SEX TOURISM

the rapid growth of tourism during the 1970s and 1980s has coincided, in several countries, with the emergence or expansion of the child sex industry. The world tourist organization has defined sex tourism as trips organized with the primary purpose of affecting a commercial sexual relationship by the tourist with the residents at the destination. Some tourist is attaining global dimensions through the internet. The advent

of sex tourism has rung the death knell for the thousands of children who are being forced into sexual slavery.

Goa which was liberated from 451 years of Portuguese rule in 1961 became the 25th state of the Indian union when it was conferred statehood on the 30th of May 1987. A tiny state in India on the western coastline, Goa has an area of 3702sq.kms.

Goa has been a favourite spot for tourists for these kinds of activities. Cases were increasing in such alarming number that the court had to introduce Goa child act 2003 to protect the children and their interests. Every year tourist across the world come down to Goa for few months that correspond with the winter seasons of their country. The targets of the Paedophiles visiting Goa are children between 7-16 age groups.

When India's first paedophilia case surfaced in Goa in 1990s with the arrest and conviction of Indo-German Freddy Peat³⁵, child rights activists hoped that it would ring alarm bell in the government quarters to make them sit up and save the children from falling in this flesh trap.

But along with Goa, in Kerala and Tamil Nadu also, there has been rise and the incidence of sex tourism, especially child sex tourism. This was pointed out by a survey conducted by an NGO, Equitable tourism Options (Equations). Presently, over one million kids across the country was being sexually exploited in various forms while authorities have turned a blind eyes towards their plight, claim NGOs. Most of these kids either belong to the families which have migrated from the neighbouring states such as Karnataka, Orissa, Andhra Pradesh or have runaway form their hometown due to various reasons, poverty being one of them.

³⁵ Session case no.24/1992, Criminal Appeal No. 4/1996

CHAPTER 6

GOA CHILDREN'S ACT, 2003

The Goa children's act, 2003 has been passed by the legislative assembly of Goa on 30-4-03 and asserted to by the Governor of Goa on 8-7-2003. It is an Act to protect, promote and preserve the best interests of children and to create a society that is proud to be a child friendly. The Goa Children Court is set up on 4-12-2004, and it is functioning at Sharma Shakti Bhavan, Patto, Panaji.

Section of child abuse under Goa Children's Act.

Following are the sections made available under the Goa Children's Act which helps in handling of the cases on Child Sexual Abuse.

8. Child Abuse ³⁶[**and trafficking**]. — (1) All children should be assured of a safe environment. A safe environment is an environment in which he/she will not be abused in any way and his/her development will be nurtured.

³⁷[(1A) Child Trafficking shall be an offence punishable under this Act. Any person who commits or aids or abets in the child trafficking shall be punishable with imprisonment for a term which may extend to seven years and a fine which may extend to Rs.1,00,000/-;]

(2) Whosoever commits any ³⁸[child abuse or sexual assault] as defined under this Act, shall be punished with imprisonment of either description for a term that may extend to three years and shall also be liable to fine of Rs. 1,00,000/-. Whoever commits any Grave Sexual Assault shall be punished with imprisonment of either description for a

³⁶ Inserted by Goa children's amendment act 2005

³⁷ Inserted by Goa children's amendment act 2005

³⁸ Substituted by Goa children's amendment act 2005

term that shall not be less than ³⁹[ten years] but which may extend to ⁴⁰[life imprisonment]⁴¹ and shall also be liable to a fine of Rs. 2,00,000. Whoever commits incest shall be punished with imprisonment of either description for a term that shall not be less than ten years but which may extend to life imprisonment and also a fine which may extend to Rs.2,00,000/- [Statement of the child victim shall be treated on par with the statement of a child rape victim] under Section 375 of the IPC, as laid down by the Supreme Court of India.

(3) ⁴²[In cases of sexual assault on a child, the investigating authorities shall ascertain the need to medically examine the child victim in consultation with the medical authority. In cases of child abuse or grave sexual assault on a child, such medical examination of the victim child shall be compulsorily done.]

(4) ⁴³[No person shall reside with or keep with him, either wholly or partly, one or more children who are not related to him by blood, unless prior permission has been obtained by him from the Director after furnishing due information to the Director in the prescribed form. It shall be the responsibility of such person, desirous to reside with or keep child or children not related to him by blood, to inform the Director and to obtain prior written permission from the Director for doing so.]

(5) Provided that a period of 3 months from the commencement of this Act will be allowed to inform the Director.

³⁹ Substituted by Goa children's amendment act 2005

⁴⁰ Substituted by Goa children's amendment act 2005

⁴¹ Substituted by Goa children's amendment act 2005

⁴² Substituted by Goa children's amendment act 2005

⁴³ Substituted by Goa children's amendment act 2005

(6) ⁴⁴[The Competent Authority, the Director and the Special Officers shall have the powers to authorize the Officer-in-charge of the nearest police station or District Inspection Team to inspect and check] the child/children in each case under sub-section (4) and to submit a report with recommendations, if he considers it necessary.

(7) ⁴⁵[The Competent Authority or the Director or the Special Officer, as the case may be, shall, after considering the report of the police or the District Inspection Team and having been satisfied of the necessity to do so, issue an order to remove the child and place him in a registered Children's Home or a State run Institution.].

(8) Provided further that nothing in this section shall apply to cases where reasonability exists such as when the child/children are staying with their friends or visiting them on holidays for short period, or students are in a group, or the child is legally adopted etc.

(9) ⁴⁶[Whoever resides with or keeps with himself one or more children not related to him by blood without the prior written permission of the Director or whoever prevents officers from discharging their duties under sub-section (6) shall be punishable with imprisonment for a term which may extend to three years and to a fine which may extend to Rs. 1,00,000/-.]

(10) Onus on Establishment:— (a) All Hotels, and other establishments which provide boarding or lodging or any similar facility shall ensure that children are safe and not at

⁴⁴ Substituted by Goa children's amendment act 2005

⁴⁵ Substituted by Goa children's amendment act 2005

⁴⁶ Substituted by Goa children's amendment act 2005

risk of child abuse within their premises including all adjoining beaches, parks etc. if they have access from such establishment.

(b) No child shall be allowed to enter any room of any hotel or establishment which provides boarding or lodging or any similar facility unless the child is registered as staying in that room with family, relatives or person related by blood:

Provided that nothing in this sub-section will be deemed to apply to reasonable areas such as group of school children accompanied by a teacher(s), children who may be staying with their friends and their families, etc.

(c) All Hotels and other establishments which provide boarding or lodging or any similar facility shall ensure that no child has access to any internet facilities which are not fitted with filters and to any objectionable material including through film or videos, disc-players, cable or any other medium provided by that establishment.

(d) The Owner and the Manager of the hotel or establishment shall be held solely responsible for any ⁴⁷[contravention] of this section.

[⁴⁸(e) Whoever fails to comply with or contravenes the provisions of this sub-section shall be liable for punishment with imprisonment for a term which may extend to three years and a fine which may extend to Rs. 1,00,000/-.]

(11)⁴⁹[omitted]

⁴⁷ Substituted by Goa children's amendment act 2005

⁴⁸ New clause inserted substituted by Goa children's (Amendment) Act, 2005

⁴⁹ Omitted by Goa children's Amendment act, 2005

(12) Any form of soliciting or publicizing or making children available to any adult or even other children for purposes of commercial exploitation is prohibited. This includes hosting websites, taking suggestive or obscene photographs, providing materials, soliciting customers, guiding tourists and other clients, appointing touts, using agents, or any other form which may lead to abuse of a child.

(13) Whosoever commits the offence of sale of children or aids or abets the sale of a child or the body part/organ of a child, or where there is sufficient reason to believe is keeping a child for the purpose of using or selling any body part of the child including its blood, shall be punished by [imprisonment of either description for a period of not less than three years and extendable to seven years and a fine which may extend to Rs. 1,00,000/-.]

(14) It shall be mandatory for a developer of photographs or films, if he finds that the photos/films developed by him contain sexual/obscene depictions of children, ⁵⁰[to report this to the Officer-in-Charge of the nearest police station], Failure to report the discovery of such photos/films shall attract a penalty of an imprisonment of either description which shall not be less than one year but which may extend to three years and/or a minimum penalty of Rs. 50,000/-.

(15) ⁵¹ [The District police, airport authorities, border police, railway police and traffic police shall report any suspected case of (a) child abuse or (b) an adult travelling with or keeping a child under suspicious circumstances or (c) sale of children or (d) sexual

⁵⁰ Substituted by Goa children's amendment act 2005

⁵¹ Substituted by Goa children's amendment act 2005

offence with a child or (e) child trafficking, to the Officer in-charge of the nearest police station who shall immediately take cognizance of such case and proceed with investigation. He shall also report the case to a Special Officer or to the Director for action under sections 14 and 15, if so required.]

(16) Sale of children ⁵²[] shall be prohibited. For the purposes of this Act, sale of children takes place,—

(a) when there is trading, i.e. selling children;

(b) when a pregnant mother executes an affidavit of consent for adoption for a consideration;

(c) when a person, agency, establishment or child-caring institution recruits women or couples to bear children for the purposes of child trafficking;

(e) when a doctor, hospital or clinic official or employee, nurse, midwife, local civil registrar or any other person creates birth records for the purpose of child trafficking;
or

(f) when a person engages in the act of finding children among low-income families, hospitals, clinics, nurseries, day-care centres, or other child-caring institutions, who can be offered for the purposes of child trafficking;

⁵² The words “under the grab of adoption or otherwise” omitted by Goa children’s Amendment act, 2005

(17) ⁵³ [omitted]

(18) In all matters, the consent or willingness or otherwise of the child to be party to ⁵⁴[any offence under this Act] will not be a consideration.

(19) The State shall provide for the setting up of one or more Victim Assistance Units which shall facilitate the child to deal with the trauma of abuse and assist the child in processes involved with appearing as a witness before any Court or authority handling a case of abuse of a child.

(20) The State shall carry out child sensitisation programmes for police officers at all levels which shall include an orientation on child rights laws. Child rights laws and methods of handling child abuse related cases shall also be specifically included in the Police Training School curriculum.

(21) The State shall undertake child sensitization training for those involved in healing and rehabilitation and other assistance programmes for children who are victims and promote programmes of information support and training for such children.

(22) The Tourism Department of the Government shall collaborate with the Travel and Tourism Trade of Goa to evolve a Child Friendly Tourism Code for Goa;

(23) The Government shall have the power to appoint persons to go undercover and pose as prospective clients for child prostitutes, as employers of child labour etc. and

⁵³ Sub-section 17 omitted by Goa Children's Amendment act, 2005

⁵⁴ In place of words "sexual abuse" substituted by Goa children's Amendment Act, 2005

nothing done in the course of such operations shall be construed as a ⁵⁵[contravention] of the provisions of this Act.

The act also envisages the government's role in making sure that all child prostitutes are removed from their existing place of exploitation and in ensuring that they are rehabilitated and integrated into society⁵⁶. The act further provides that, the state shall provide for the setting-up of one or more Victim Assistance units, which shall facilitate the child to deal with the trauma of abuse and assist the child in processes involved with appearing as a witness before any court or authority handling a case of abuse of a child⁵⁷. The state is also expected to carry out child sensitization programmes for police officers at all levels which shall include an orientation on child rights laws. Child rights laws and methods of handling child abuse related cases shall also be specifically included in the police training school curriculum⁵⁸. The state shall undertake child sensitization training for those involved in healing and rehabilitation and other assistance programmes for children who are victims and promote programmes of information support and training for such children.⁵⁹

According to a recent state legislation, whoever commits any sexual assault⁶⁰ against a child⁶¹ can be punished with imprisonment for a term that may extend to 3 years and shall

⁵⁵ Substituted by Goa children's amendment act 2005

⁵⁶ Goa children's act, 2003, Section 9(2)

⁵⁷ Section 19

⁵⁸ Section 20

⁵⁹ Section 21

⁶⁰ 'sexual assault' covers sexual touching with the use of any body part or object, voyeurism, exhibitionism, showing pornographic pictures or films to minors, making children watch others engaged in sexual activity, issuing of threats to sexually abuse a minor, verbally abusing a minor using vulgar and obscene language.

⁶¹ Child means any person who has not completed eighteen years of age unless any other law in force specifies otherwise or unless otherwise indicated in specific provisions in this act.

also be liable to fine of one lakh rupees, and whoever commits any grave sexual assault⁶² shall be punished with imprisonment for a term that shall not be less than 7 years but which may extend to 10 years, and shall also be liable to fine of two lakh rupees. In such cases, testimony of the child victim shall be treated on par with the testimony of a child rape victim⁶³. Any person who exploits a child for commercial sexual exploitation shall be liable to pay a penalty which may extend to one lakh rupees and simple imprisonment of 1 year.⁶⁴ Any person who abets the performance of any ceremony or any act for dedicating a minor girl child as a devadasi can be, on conviction, punished with imprisonment for a term which may extend to 3 years and with fine which may extend to two thousand rupees⁶⁵. Any person who employs, aids or abets in the trafficking, including by employment of such trafficked children shall be penalized with a fine of fifty thousand rupees and/or imprisonment of either description of not less than 3 months⁶⁶. The act also provides that the state government shall, after consultation with the high court, by notification in the official gazette, constitute a children's court for the state of Goa.⁶⁷

⁶² 'Grave sexual assault' which covers different types of intercourse, vaginal, oral, anal, use of objects, forcing minors to have sex with each other, deliberately causing injury to the sexual organs, making children pose for pornographic photos or films.

⁶³ Indian Penal code 1860

⁶⁴ Goa children Act, 2003 sec 9 (4)

⁶⁵ Section 9 (7)

⁶⁶ Section 7 (9)

⁶⁷ Asha Bajpai, Child rights in india

CHAPTER 7

CHILD SEXUAL ABUSE CAUSES

There is always a cause behind every action. The concept of child sexual abuse carries with it lot of causes which leads to it.

Following are some of the causes the leading causes to child abuse.

POOR FINANCIAL BACKGROUND

Today everything depends on money, without money nothing is impossible. The people who have stable jobs find it difficult to manage their life in whatever salary they get so, one can think what could be the status of people who depend on daily wages. Due to such situation parents send their children to work at the young age where in at that age they are more vulnerable.

It is all due to money parents send their children away from them and abusers make the benefit of those things. Lust or desire to earn more money brings the innocent and needy on in contact with abuser and that spoils their life forever.

BUSY LIFE SCHEDULE OF PARENTS

It's not that the children from the poor family are sexually abused, but there are number of cases wherein the children from high class family are sexually abused, one of the reason being that the busy life schedule of the parents.

LACK OF SEX EDUCATION

Busy life schedule of parents keeps them away from their children and hence they do not talk with them of sex education.

Secondly most of the parents feel ashamed to talk about the sex with their children. As a result when children attain the age their eagerness to know about sex increases and they try to find out through their friends who doesn't have knowledge in that and try to find through other sources which most of the times misguides.

TOURISM

Goa is famous for its scenic beauty and as a famous tourist spot. Shameful to say that it is Goan's who have promoted Goa as land of Sand Sea and Sex. People with abusive mind come to Goa thinking that they will get their prey. It is only after the arrest of Freddy Peats that the people came to know about the abuse of Goan children in the hands of foreigners. One can't say how many innocent might have fallen prey before that and still falling but are hardly been reported.

Tourism no doubt open area for employment but due to this even small children are dragged into the work and more than that they are victim of Child sex.

The children who fall easy prey to tourist hardly disclose the fact of being abused as they are paid money to keep it secret or their needs are fulfilled

There are many instances where tourist has spoiled the lives of our tiny little innocent one and still they go scot free.

EASY MONEY

Yet another reason for Child Sexual Abuse is the easy money what they get. The children who enters this life may be they enter willingly or the circumstances put them into. They

don't want to come back from it only because it is the easy way to earn money. At that point of time they don't feel it as their rights are violated or they are being misused. For this they don't need to work hard.

Parents who had lived their life push their children in the same business. They don't bother about the respect they are going to lose in the society but rather more concerned about the money they are going to get and from which they can buy comfort or rather can live happily.

BROKEN HOMES

The relation within family are disturbed as a result the mindset of the child gets disturbed. He/she wants to stay away from home as a result the abuser takes the advantage of the situation. He first tries to come close by showing affection as if he is going to feel up the gap of what love and care that child is missing.

Also if there is a separation between husband and wife the husband tries to fulfil his sexual lust through his daughter.

ALCOHOLISM

Once the person lets himself to alcohol there is no hope for his actions. It is not only the older people who commit crime due to alcohol consumption but it is also the young people who consume it and lose control over oneself.

If the other side of the alcohol is seen it is used to make children unconscious before abusing. Most of the labour class people what they do is after the days long tiring work they take the alcohol and come back home.

IMPACT OF TELEVISION

Yet another reason for increasing in child sexual abuse is the impact of the television serials and movies. It is proved that the impact of moving clips is more compared to the heard and reading material

Not only the elders but the young ones try to imitate what they have seen on the television leading most of the times to sexual abuse of the children.

CHAPTER 8

PEDOPHILIA-LANDMARK JUDGEMENT

Child sex tourism is a frighteningly well-organized operation and police enforcement in India has been notoriously lax. A decade or so ago, then the Interpol has listed Goa as an organized hub of such activities and other states too have been known to attract such offenders.

On 18 March 2006, the Additional session Judge P.S Paranjpe delivered a verdict convicting two men to a sentence of 6 years of rigorous imprisonment for offences related to unnatural sex and abuse of children. The two men have been fined twenty thousand pounds each, of which five lakh rupees will go towards the rehabilitation of the two boys who were residents of Anchorage and whose testimony in court was crucial to the case. The court also held William Michael D'Souza (manager of the shelter Home) guilty for aiding and abetting the crime and assaulting the children. He has been sentenced to 3 years of imprisonment.

The judgment in the Anchorage shelter case where two foreigners, Duncan Grant and Allen Walters, were sentenced for pedophilia crimes is a strong indictment of their heinous crime, and also an unambiguous signal that India will not become another spot on the world sex tourism map. In fact, the judge in the case said as much when he sentenced the duo.

This was run on money sent in by well-meaning foreign donors. Those exploited often had no one to turn to since they were either orphans or beggars from the harsh streets of Mumbai. Not only was Pedophilia rampant at the shelter-it was also brazen. The place is

a few minutes' walk from the police station. It is only the courage of two boys, who stood by their testimony in spite of threats and bribe offers, which put the duo behind bars.

The judgment is an indication that India is at last walking up to the horrors of pedophilia which is fast spreading its tentacles in some important tourist spots in the region

Judge Paranjpe said that he intended the verdict to send a clear message to pedophiles all over the world that India is not a destination for them. He hoped that the sentence would go a long way in wiping India off the map of international sex tourism⁶⁸.

STATE V SHRI FREDDIE PEATS AND OTHERS⁶⁹

The accused Freddie peats, then sixty-six years old, claimed to be a man of God ('Father' Peats), a medical doctor and social worker who ran a 'boarding' and 'orphanage' for boys generally from broken homes and deprived families. Peats used to sexually abuse and assault the boys. On his arrest there were 2305 photographs found in his flat. These photographs recorded different acts of sexual assault, abuse, exploitation, repulsive remarks, and other brute and silent violence against the children and their privacy. These photographs covered a period of about seventeen years and were of boys from the neighbourhood and from schools all over Goa. Some of them were of foreign visitors Apart from photographs; there were negatives, drugs, syringes, torture paraphernalia, several passports and bankbooks. In many photographs, the man in the criminal act of sexual assault on children was Peats himself,

The session court held Freddie peats guilty of offences punishable under Sections 292, 293, 342, 355, 328, 337, 323, and 337 of the Indian Penal code, Section 20 and 43 of the

⁶⁸ www.hindu.com/2006/03/19/stories/2006031904371000.htm.

⁶⁹ Sessions case no. 24/1992, criminal Appeal No.4/1996

Juvenile Justice Act, Section 9 of the Immoral Traffic (prevention) Act 1956, section 27 of the Drugs and Cosmetics Act 1940. Freddie Peats was ordered life imprisonment and fine. He appealed against the order but the appeal was dismissed.

Due to the intervention of child rights activist Sheela Barse, the trial in the Freddie Peats case followed some child friendly procedures like the following

1. Trial was held in camera in the chamber of the session judge. Similarly examination of child victim/witnesses were also conducted in camera so that the witnesses are not 'awed' by the court atmosphere.
2. All persons in the trial were in informal dress.
3. No police officer was present inside the chamber or at the place where the trial was conducted
4. While recording evidence, the child was directed to face the judge so that he will not have occasion to look at the accused and be frightened
5. Similar procedures need to be followed in other CSA trials under the present legal system.

JUGEMENTS ON OTHER NON-COMMERCIAL FORMS OF CHILD SEXUAL ABUSE.

IN GHANASHYAM MISHRA V/S THE STATE⁷⁰

Facts the victim is a young girl of 10 years and the culprit an adult of 39 years. He was her school teacher and he took advantage of his position by indulging her to come inside the school room and committed such an atrocious act, the consequences of which might as well be the complete ruin of the future life of the girl.

The high court in this case has enhanced the sentence as the perpetrator of the offence had advantage of the taken advantage of the teacher student relationship he shared with the victim.

Court said I am unable to find any extenuating circumstance in his favour. I would therefore while maintaining the conviction of the prosecutrix under section 376IPC enhances the sentence to 7 years rigorous imprisonment. The sentence of fine of Rs 200/- and the order of payment of compensation to the father of the girl are both maintainable.

GORAKH DAJI GHADGE V/S THE STATE OF MAHARASTRA⁷¹

In this case the father has raped his 13 year old daughter in their house. The Bombay high court has held that seminal emission is not necessary to establish rape what is necessary is that there must be penetration. The high court has also dealt with the father daughter relationship.

The similar case came up before the children court of Goa

⁷⁰ AIR 1957 ORRISA

⁷¹ 1980 CRLJ 1380

IN STATE V/S BHAU VALVE SP⁷².

Where in the father who was 46 years old raped his 13 year old daughter and as a result the girl delivered the baby girl.

The court awarded him life imprisonment and fine of Rs 100000 in default of which he has to undergo 3 years of imprisonment.

The final nail sealing the guilty of the accused emerges from the fingerprinting evidence which proves 99.999 percent of the accused as the biological father of the baby girl born on 3/10/07. The court also relied on the following cases

RAJENDRA DATTA ZAREKAR V/S STATE OF GOA⁷³

The apex court (2008, crLJ 710) SC has held in para 13

The rape leaves the permanent scare and has a serious psychological impact on the victim and also her family and therefore no one would normally concoct a story of rape just to falsely implicate the accused.

MODAN GOPAL KAKKAD V/S NAVAL DUBLEY⁷⁴

The apex court has held that the court of law has a duty under of sexual to handle the offender of sexual assault with a heavy hand and the judges who bear the sword of justice

⁷² CASE NO 22/07

⁷³ 2008, CRLJ 710

⁷⁴ 1992 (3) JL (SC) 2045

should not hesitate to use that sword with him with most severity if the gravity of the offence so demand.

STATE OF KARNATAKA V/S RAJU⁷⁵

Apex court has held that crime of the violence need to be severally dealt with the socioeconomic status, religion race cast of the accused or the rich are irrelevant considered in sentencing policy.

It was held that the protection of society and deterring the criminal is the avowed object of law which is required to be achieved by imposing an appropriate sentence..

DINESH V/S STATE OF RAJASTHAN⁷⁶

The apex court has held that such cases need to be dealt with sternly and severely and ones the person is convicted of an offence of rape he should be treated with heavy hand and the court must hear the loud cry for justice in cases of heinous crime of rape by imposing adequate sentence.

NARAYANAMMA V STATE OF KARNATAKA⁷⁷

The Supreme Court did not enhance the sentence of three years rigorous imprisonment passed by the trial court. It was held that merely because the prosecutrix was simple

⁷⁵ 2007 (11) SCALE 114

⁷⁶ 20063 3 SCC 711

⁷⁷ 1994 (1) SCC 728

enough to repose confident in the accused persons and stayed with them in a room in a hotel; it cannot be held that she was a consenting party.

DELHI DOMESTIC WORKING WOMENS FORUM V/S UNION OF INDIA & ORS⁷⁸.

By the judgment the state was ordered to set up the criminal injuries compensation board as rape victim frequently incur substantial financial loss. The compensation is to be awarded by the court or the criminal injuries compensation board on the conviction of the offender, whether or not the conviction has taken place. The union of India was directed to formulate a scheme to wipe out the tears of such unfortunate victims.

The judgment also directed that anonymity of rape victims be maintained and they be provided with legal representation. Legal assistance should be provided at the police station to guide and support the victim who will be in a distress state. A list of advocates willing to act should be kept at the police station.

⁷⁸ 1995 (1) SCC 14, 18 TO 21

JUDGEMENTS ON TRAFFICKING

VISHAL JEET V UNION OF INDIA⁷⁹

This was a public interest litigation wherein the Supreme Court issued directions that all State governments must direct their law-enforcing authorities to take appropriate speedy steps against the evil and directed to set up advisory committees with experts from all fields to make suggestions regarding measures for eradicating child prostitution, for care and rehabilitation of rescued girls, for setting up of rehabilitative homes, and for a survey of the devadasi and jogin traditions

DHANANJAYA CHATTERJEE V STATE OF WEST BENGAL⁸⁰

It was a case of rape and murder of a helpless and defenceless, schoolgirl eight years by a security guard. Death sentence imposed by the trial court was subsequently confirmed by the high court. It was held that the offence was not only cold-blooded murder and it was an affront to human dignity.

THE PUBLIC AT LARGE V STATE OF MAHARASTRA AND OTHERS⁸¹

This petition arose due to sou motu notice taken by the court of a newspaper article which indicated that minor girls were illegally confined and forced to be sex workers. The respondents were directed by the court to show acuse as to why action had not been taken under section 336 and 366 if the Indian Penal code, and sections 5 and 6 of the

⁷⁹ AIR 1990 SC 1412

⁸⁰ 1994 (2) SCC 220

⁸¹ 1997 (4) BOM CP 171

Suppression of Immoral Traffic in Women and Girls Act 1956. The court passed directions as under

To frame a proper scheme so that the women including minors who are produced for slavery are released from confinement of their procurers

For implementing this scheme, a proper cell, also involving social workers, be created so that by regular checking, minors and others can be released and rehabilitated in the society.

Considering the spread of the dreaded disease of AIDS, the state of Maharashtra shall frame a proper scheme with the active assistance of Municipal Corporation of greater Mumbai for carrying out HIV tests for the willing sex workers so that the disease may not spread like wildfire in the city. On the basis of the directions, raids were carried and about 473 minor girls and child sex workers were rescued by the police and kept in the custody of juvenile homes.

PUBLIC AT LARGE V STATE OF MAHARASHTRA AND OTHERS⁸²

This petition was relating to the rehabilitation of rescued girls. After hearing the various parties and the representation on behalf of various women's social organization, consensus on the following points was arrived at

All the rescued girls must be subjected to medical examination for finding out their age and also given treatment if they are suffering from any other diseases.

⁸² Writ petition No. 112 of 1996

If the girls are found to be adults and are not covered by the juvenile justice Act, and if they do not desire to remain in the present institutes, they must be allowed to leave the said homes.

The other state government should be contacted and if those state governments were ready and willing to make arrangements for reception of these girls, the chairmen, juvenile justice Board would pass necessary orders. The police should give them necessary escort and the girls must be handed over to the respective states on receipt of the request made by such state.

Parents of four minor girls who have been traced and who have been pleading that the police have wrongly taken them in custody should be released.

Until the girls are sent back to their respective states, the state government will direct adequate number of probation officers to carry out the counselling job. The management in charge will permit the police to record statements of the girls. The police should trace the belongings of the girls and restore the same to them.

SEXUAL ABUSE OF CHILDREN IN JAIL**MUNNA AND OTHERS V/S STATE OF UTTAR PRADESH⁸³**

The petition is in respect of juvenile under-trial in the Kanpur central Jail and allegations of sexual exploitation of these juveniles by adult prisoners. The petition was based on the news report which stated that the young boys of 10 to 14 years were being supplied to convicts for their delectation and the boy named Munna who after the way he was used, he was unable to sit.

The Session judge was appointed to visit the jail and inquiries into the matter. The sessions judge was unable to meet the juvenile detainees mentioned in the petition as they had been released within a few days of publication of news report and filing of the petition.

The court directed that the magistrate must strictly follow the provisions contained in the Uttar Pradesh children's Act 1951 and should be extremely careful to see that no person apparently below the age of 16 years is sent to jail. A Juvenile must be detained in Children's Homes or other place of safety set up by the Government for detention of person under 16 years

⁸³ AIR 1982 SC 802

CHAPTER 9

SUGGESTIONS

The enforcement of law in India has been weak in dealing with abusers, exploiters and traffickers of children. There have been several gaps in implementations. Some of them are

1. Law relating to paedophiles is inadequate. Therefore, the police are generally ineffective when it comes to registering the crimes, against foreign national's tourists where passport officers and international links are involved. The judiciary and the police are not aware of the laws and the rights of the children
2. The Prevent secondary victimization during interrogation/examination by investigating agencies as well as during court procedure, where a child is made to recall minute details of the sexual acts and experiences.
3. Examination of the victim/witnesses should be in the presence of social workers/women police/ parents or others who have the trust or confidence of the child. Examination should also be done in a familiar atmosphere and not in police stations.
4. The mental health aspects of the children have to be kept in mind. There should not be too much pressure on the child to speak all the details of the traumatic incidents
5. Age and other tests of the rescued victims should also be done in the presence of child-supporting individuals and preferably in the homes where the children are lodged after rescue. The homes should therefore, be provided with these facilities.
6. Adopting a multidisciplinary approach to the crime should be attempted by co-opting additional members into the investigating team so as to include doctors,

social workers, co-opting mental health experts, counsellors, or anyone who would be useful in the overall rehabilitation of the child.

7. Taking steps to increase awareness about cyber crime in general
8. Regulations requiring cyber cafe operators to demand photo ID cards from the users.
9. Regular raids should be carried out in the areas where sex workers operate. On numerous occasions, it is reported in newspapers that the persons from social organisations who dare to rescue these girls are manhandled, beaten, or threatened. To prevent such actions, for the time being the government must have a squad of police officers who can take immediate actions
10. To regularly carry out AIDS awareness programmes in the areas where sex workers normally operate.
11. The respondents, the state government, should see that strict vigilance is maintained in the areas where sex workers normally operate and to rescue the child sex workers. Further, adequate steps should be taken to see that those who indulge in trafficking of children should be suitably punished. For this purpose, appropriate directions should be issued to the investigating agencies to take immediate steps. Sometimes, it is noticed that the police officer who detects this type of activity does not take immediate actions on the ground that such duty is assigned to some other officer. In the view of the court, this was not the proper approach because all police officers are bound to take immediate actions in those cases where cognizable offences are committed. They may not investigate those cases but they can certainly report them to the proper officer and during such time take preventive measures. Section 107 of the Indian Penal Code 1860 provides

that the person abets the doing of a thing if he intentionally aids, by any or illegal commission, the doing of that thing.

12. Most NGOs present while recording the victim's statement do not know the importance of their role in the police station. They do not have the expertise in counseling, dont have a legal back ground, nor are they trained to record victim's statement. The statement which is meant to play an important role in conviction is not recorded in child's language and sometimes not in the sequence narrated by the victim.
13. Tourist often do not register presence in Goa in the prescribed form c under the registration of foreigners act. This enables them to move to another area without leaving any tracks the moment they sense that they are being pursued.
14. To provide for rehabilitation of children rescued.

CHAPTER 10

CONCLUSION

Victims of crime have always been a forgotten person in today's society. Somewhere and some how the Goa children's Act 2003 has tried to fight for their protection in this whole complicated system of Criminal justice. This act not only looked into the abuse of children in specific but it has attempted to place responsibilities on different stake holder in Goa. There has been no suo motto initiation of implementation of the Provision of GCA by the Goa Government. It is only after some representation by the stake holders that the government was forced to implement certain provision of the act. Till date various provisions of the act have still not been implemented thereby defeating the sole purpose of the act to protect children.

The year 2012 saw the Goa police registering 11 cases under the Goa Children's Act, in South Goa district, while the number of detentions was 9. The previous year, 4 cases had been recorded under the Act, in the same district, with detention taking place in all of these cases.

Although there has been an increase in the number of cases registered under the Goa Children's Act, during the year 2012, as compared to the year 2011, the Children's Court has dismally failed to handle the cases with the speed proportional to the rise in the crimes against the children.

The absence of a full-time judge and poor infrastructure form the two main reasons for the slow functioning of the Children's Court in the state. This has resulted in high pendency of cases before this court - a total of 211 cases - including the murder cases such as Mandar Surlekar case and Scarlett Keeling case. Presently, 120 cases of

molestation, 80 cases of rape and five cases of murder, besides at least five cases of kidnapping are awaiting their fate before the Children's Court. Most of these cases are four or more years old.

The Children's Court, constituted in the year 2003 under the Goa Children's Act, is the only one of its kind in the country, set up to try criminal offences against children. The situation is scary, especially with majority of the cases before the court constituting sexual assaults against children, including rape offences.

In addition, the location of the Children's Court in North Goa creates lot of logistical inconvenience for people from South Goa, who need to attend the hearings of their cases. The increasing demand for setting up one more Children's Court in South Goa is therefore more than justified.

Incidentally, the Children's Court is held every Monday, and the particular day, on an average, witnesses around 60 cases fixed for hearing, out of which a maximum of three to four hearings take place. And then the cases pertaining to those accused under police or judicial custody are taken up for hearing on preferential basis.

And finally, if some cases are lucky enough to be heard and decided, the conviction rate is not impressive; one of the reasons for the same being a delay in the submission of forensic reports by the police to the court. Therefore, even though the detection rate of Goa police in rape cases is 92 per cent, the conviction rate is between 20 and 52 per cent.

Statistics show that altogether 51 rape cases were reported in Goa in the year 2012, out of which 28 cases were reported in South Goa alone, including the rape and murder of a 4-year-old girl from Kurla, Mumbai, on a vacation in Goa at her grandparents place in Quepem, by a mason from Begusarai, Bihar. The rape of a seven-year-old girl student of

a popular high school in the port town of Vasco by a stranger, at the very beginning of this year reaffirms the rising graph of cases of child abuse in Goa.⁸⁴

⁸⁴ <http://www.goacom.com/goa-news-highlights/5075-poor-infrastructure-responsible-for-dismal-failure-of-children-s-court>

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