



## Child Rights and Law

: a guidebook for legal interventions



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## FOREWARD

CHILDLINE often encounters calls that require legal intervention while addressing the emergency needs of children and protecting their rights. Many a times, it is fear of the judicial system, lack of knowledge about procedures, lack of support systems or simply getting stuck at what would seem as the simplest of procedures; the fact however is that legal interventions have never been easy.

The idea of this manual germinated from some such difficulties faced in handling calls. In some calls, hospitals refused admissions to medically ill children, police refused to act on sexual abuse charges, authorities dealt ineffectively with institutional abuse or the labour department turned a blind eye at child labour. This manual serves as an insight into the legal responsibilities of varied allied systems that come in contact with a child, besides outlining intervention guidelines for calls that require legal inputs and procedures.

This manual is a result of the various discussions held at different CHILDLINE partnership meets and forums, where the team shared their experiences, problems and concerns with respect to the legal system. The concept was also shared at the CHILDLINE Coordinators' meet and this manual is a result of these discussions. We are grateful to Ms. Maharukh Adenwalla, a lawyer and child rights activist, for authoring this publication and meeting with the CHILDLINE teams in order to understand the legal problems faced by them.



This manual would definitely be of help, to intervene in legal cases. However, the reader must remember that these guidelines are only ideal legal steps. At times, due to social pressures, a legal intervention step has to be combined with social work skills keeping in mind the best interest of the child and respecting the wishes of the child. It is equally important to explain the legal process involved, to the child. Therefore it is recommended that the team members discuss the nature and implications of legal interventions within the team and with the child before going ahead with legal action.

This manual is divided into two parts. The first part illustrates different types of calls at CHILDLINE that require legal intervention. These calls overlap in different categories so the reader may find one case study classified into 2 or more categories, depending on the situation of the child in need of care and protection. This classification is also listed in Annexure-I. The second part of the manual deals with various laws related to children.

We hope this manual is of use to not only our CHILDLINE teams but to other child rights activists as well, who work towards protecting children in need of care and protection.

CHILDLINE India Foundation Team



## PREFACE

A child has rights, but due to age constraints is unable to claim her/his rights. The rights of a child are exercised by proxy through the family, society and State. Unfortunately, these very agencies are responsible for violating children's rights. Non-governmental organisations, therefore, play a vital role in protecting and promoting the rights of children.

CHILDLINE constantly intervenes to ensure children their rights. CHILDLINE has been given special mention under the Juvenile Justice (Care and Protection of Children) Act 2000. Under this Act, CHILDLINE is empowered to produce a child in need of care and protection before the Child Welfare Committee. Other voluntary organisations or agencies are also empowered to perform such function, but require to be so recognised by the State government. Voluntary organisations or agencies not so recognised can approach CHILDLINE to safeguard the interests of children requiring care and protection.

Most of the calls received by CHILDLINE are concerned with deprivation or violation of rights, and their responses are based in law. It is essential for activists to identify violation of legal rights and offer legal remedies. No longer is it enough to merely provide a place of safety to the child, the violator has to be punished and told that such conduct will not be tolerated.





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## PART I

This Part of the book contains queries, some hypothetical and others frequently asked, to be handled by a CHILDLINE volunteer. Only necessary legal intervention in handling queries is dealt with in this book. It is essential for a CHILDLINE volunteer to have some basic knowledge of the law as many queries require a prompt legal response; initial action taken can make or break a case. Improper handling at the initial stage could cause irreparable damage to the child.

It is also very important for CHILDLINE activists to identify advocates in their region who will provide legal support in complex cases. This book is a mere guide to help the CHILDLINE volunteer in providing immediate basic assistance to the caller.

### Case No.1

Thirteen year old Gita is constantly harassed by her mother and step-father. Gita and her younger sister do domestic work in nearby households. Gita wants to go to school, but each time she suggests the same she is beaten by her mother and/or step-father.

1. The mother and step-father of Gita have committed an offence under the Indian Penal Code and the Juvenile Justice [Care and Protection of Children] Act.
  - a) Causing hurt to any person is an offence under the Indian Penal Code, and is punishable with imprisonment which may extend to one year, or with fine which may extend to Rs. 1,000/-, or with both.
  - b) Assaulting of a child by a person who is in charge of or control of that child is an offence under the Juvenile Justice [Care and Protection of Children] Act. The offender is liable to be punished with imprisonment which may extend to six months, or with fine, or with both.



2. CHILDLINE must bring this ill-treatment to the notice of the Child Welfare Committee established under the Juvenile Justice [Care and Protection of Children] Act, and ensure that an inquiry is initiated by the Committee. The mother and step-father of Gita will be called before the Committee along with their children. The aid of Special Juvenile Police Unit may be taken for production before the Committee. The Committee will speak with the children, and the mother/step-father.
  - i) If it appears to the Committee that the children have been harassed or beaten by their mother/step-father, the children will be temporarily removed to the Children's Home or a place of safety. CHILDLINE or any other organisation may apply for temporary custody of the children pending inquiry by the Committee. If the Committee is satisfied that CHILDLINE or any other organisation has the appropriate facilities, the children will be given in the temporary care of CHILDLINE or the other organisation.
  - (ii) If on completion of inquiry it is evident that the mother / step-father have been ill-treating Gita and her sister, the Committee may punish the mother / step-father with imprisonment / fine / both.
  - (iii) If it appears to the Committee that the mother / step-father are willing to care for the children, the children may be kept with the mother / step-father. The mother / step-father will be required to execute a bond with or without surety, and will be responsible for the well-being of the children. The bond should contain a condition that the children will not be ill-treated or forced to do domestic work and will be sent to school. The Committee has the powers to put the children under



supervision of a Probation Officer. If the mother / step-father continue with the ill-treatment, the children will be removed from their care and put into a Children's Home or in the care of an appropriate organisation willing to care for the children.

- (iv) If it appears to the Committee that the mother / step-father are unfit to care for Gita and her sister, the children may be put in the care of a Children's Home, or in the care of CHILDLINE or any other organisation, if CHILDLINE or the other organisation are able to satisfy the Committee that they have the requisite facilities for the care, education and healthy development of children.
3. If Gita and her sister have been severely beaten by the mother / step-father, it is necessary that a complaint be filed at the nearest police station. It is also necessary to ensure that the children are medically examined at a Public Hospital. The complaint may be filed by CHILDLINE or any person. In such case both the Child Welfare Committee and the police will conduct an investigation. The proceedings before the Committee will be with regards to the care and future of the children, whereas the criminal proceedings will focus on punishment to the offending mother / step-father.
  4. It is necessary that a CHILDLINE representative be present during the proceedings before the Child Welfare Committee to protect the interest of Geeta and her sister.

#### Case No.2

Eleven year old Shabnam is physically abused by her employer. Shabnam has been working as a full-time domestic worker since the last year, but her employer has not paid Shabnam her wages. CHILDLINE has received this information through an anonymous caller.



1. The CHILDLINE representative answering the telephone call must take down the address of Shabnam's employer.
2. CHILDLINE must file a complaint with the police station nearest to the residence of Shabnam's employer, and must in detail narrate the anonymous caller's message.
3. A police officer is bound to take action if there is reasonable suspicion that an offence has been committed. A CHILDLINE representative must go along with the police to rescue Shabnam. Shabnam must be removed from the employer's residence, and the employer must be arrested.
4. The police must record Shabnam's statement. Shabnam should not be kept at the police station; she may be admitted to the Children's Home or allowed to remain with CHILDLINE.
5. Shabnam must be produced before the Child Welfare Committee within 24 hours of her rescue. CHILDLINE or any other suitable organisation may make an application before the Committee for temporary custody of Shabnam pending inquiry.
6. Attempts must be made to contact Shabnam's parents. The Child Welfare Committee may hand over Shabnam to her parents if (a) Shabnam is willing to go with them, and (b) the parents are willing to care for Shabnam. The Committee may require the parents to execute a bond for the well-being of Shabnam. The travelling expenses of the parent, i.e. the lowest railway fare, is to be borne by the Superintendent of the Children's Home if the parents are unable to bear the travelling expense. The expense of the child's journey home is also to be borne by the Superintendent.
7. If Shabnam cannot be reunited with her parents, CHILDLINE or any other suitable organisation should make an application before the Child Welfare Committee for the care and custody of Shabnam. The Committee may supervise the placement through a Probation Officer.



8. The employer has committed an offence of causing hurt, and withholding Shabnam's salary.
- (i) The first is an offence under the Indian Penal Code and is punishable with imprisonment which may extend to one year, or with fine which may extend to Rs. 1,000-, or with both.
  - (ii) Exploitation of a child by an employer and withholding a child's earning is an offence under Section 26 of the Juvenile Justice [Care and Protection of Children] Act, and is punishable with imprisonment which may extend to three years and fine.
  - (iii) The employer is in charge of and has control over the juvenile, therefore the employer will also be liable for 'cruelty to juvenile' under Section 23 of the Juvenile Justice [Care and Protection of Children] Act.

### Case No.3

Shalini is working as a full-time domestic worker in Delhi. Shalini hails from a village in Madhya Pradesh. Shalini's employers have not paid her any salary, and they beat her if she asks for payment of her salary. Shalini's employers do not allow her to leave the house nor do they allow her to write to her family. Thirteen year old Shalini wants to return home to her family.

1. Replicate what has been mentioned in Case No.2.
2. In this case the employer has also committed the offence of wrongfully confining Shalini. Wrongful confinement means prevention from proceeding beyond certain limits. Wrongful confinement is punishable under the Indian Penal Code with imprisonment for a term which may extend to one year or fine which may extend to Rs. 1,000/- or both. If the confinement is for three or more days the imprisonment may extend to two years.



#### Case No.4

Rita who is 14 years of age has been physically assaulted by her employers. Rita escaped from her employer's residence and is now with her mother. Rita's mother attempted to file a complaint with the concerned police station, but the police officer refused to record the complaint.

In case of a police officer refusing to record the complaint,

1. Reduce the complaint in writing, and address it to the Senior Police Inspector of the concerned police station. Mention in the complaint the name of the police personnel who refused to record the complaint. Take the acknowledgement of receipt on your copy of the complaint.
2. If the police personnel refuses to take the written complaint, send the written complaint to the concerned Assistant Commissioner of Police, with a copy to the Deputy Commissioner of Police and the Commissioner of Police, or the concerned Superintendent of Police. The complaint may be sent by registered post or by hand delivery. In case of hand delivery take acknowledgement of receipt on your copy of the complaint.
3. Advise Rita's mother to get Rita medically examined at a Public Hospital, i.e. a government or corporation hospital, and to get the injury marks photographed by a professional photographer.

#### Case No.5

Shyam's employer has misplaced Rs. 200/-, and suspects Shyam of having stolen the money. The employer informs the police of his suspicion. The police pick-up Shyam for interrogation. The police torture him at the police station in order to force him to confess to having committed the offence. Shyam repeatedly





stated that he has not stolen the money. Shyam is later released by the police. Shyam is 15 years old.

1. The police officers who have tortured Shyam are guilty of having committed an offence under Section 330 of the Indian Penal Code. This section deals with causing hurt to extort confession, or to compel restoration of property, and is punishable with imprisonment which may extend to seven years and fine.
2. CHILDLINE or any other organisation must file a complaint with the police station, and a copy of the complaint must be sent to the Commissioner of Police, Deputy Commissioner of Police and Assistant Commissioner of Police for information and necessary action.
3. CHILDLINE or any other organisation or individual should file a Writ Petition before the High Court for an order directing the offending police personnel to pay compensation for the physical injury and mental trauma caused to Shyam due to the illegal action of the police. [Refer to III (1995) CCR 470 (DB) : Rekha M. Kholkar vs. State of Goa]

#### Case No.6

Six year old Santosh died at the residence of Mr. A with whom he was working as a full-time domestic worker since the last one year. Mr. A told the neighbours that Santosh was ill and had died of natural causes. Anand, a friend of Santosh who works for Mr. A's neighbours told his employer that Santosh was made to work eighteen hours a day, and was given left-overs as food.

1. Anand or Anand's employer must be persuaded to immediately report to the concerned police station the manner in which Santosh's employer used to treat Santosh.
2. Santosh's employer must be arrested for murder under Section 300 of the Indian Penal Code as he was definitely aware that starving Santosh was dangerous and in all probability would result in his



death. Murder is a non-bailable offence, and is punishable with death, or life imprisonment and fine.

3. If the body of Santosh has not been disposed of, the Post Mortem must be conducted. The Post Mortem Report will indicate the cause of death.
4. Murder is a cognizable offence, therefore the case will be prosecuted by the State through the Public Prosecutor. It is necessary that CHILDLINE or some other organisation takes the responsibility of coordinating with the Public Prosecutor to know what is happening in Court.
5. If the employer files a bail application, CHILDLINE or some other organisation should ensure that the Public Prosecutor opposes the bail application, or an advocate may be appointed on the parents' behalf to oppose the bail application. If the parents cannot be traced, CHILDLINE or any other organisation should appoint a watching advocate to make submissions before the Court to ensure that the employer is punished.
6. Successful prosecution will send a message to the public that child abuse is severely dealt with by the Courts and law enforcers, this will act as a deterrent to potential abusers.

#### Case No.7

Boys between the age of 9 to 12 years are working in a bidi-making unit in Jalgaon district. An organisation has made repeated representations to the Collector but no action has been taken.

1. Under Article 24 of the Constitution, no child below the age of 14 years shall be made to work in any hazardous employment.
2. "Bidi-making" has been designated as a hazardous process at item No. (1) in Part B of the Schedule annexed to the Child Labour (Prohibition and Regulation) Act 1986.



3. CHILDLINE may undertake any of the following actions to stop this unlawful employment:-
  - a) File a complaint with the Inspector appointed under the Child Labour (Prohibition and Regulation) Act, and accompany him on his visit to the bidi-making unit. If children are found to be working at the unit, ensure that the Inspector files a complaint with the police or Magistrate of the First Class.
  - b) CHILDLINE may file a complaint with the police. Accompany the police to the bidi-making unit. Panchnamas should be made. The police should file a complaint before the Magistrate of the First Class.
  - c) CHILDLINE may directly file a complaint before the Magistrate of the First Class.
  - d) CHILDLINE may bring this employment in contravention of the Child Labour (Prohibition and Regulation) Act to the notice of the High Court by filing a Public Interest Litigation.
4. Age of the child is of paramount importance. In the absence of proof of age, the child should be examined by a medical officer attached to a Public Hospital. Such medical officer will issue a certificate in respect of age of the child.
5. The employer should be made to deposit a sum of Rs. 20,000/- in the Child Labour Rehabilitation-cum-Welfare Fund in case of each child employed in contravention of the Child Labour (Prohibition and Regulation) Act. This Fund is to be established for each district. The State Government must also provide a job to an adult member of the family, and if the same is not possible, the State Government is required to deposit a sum of Rs. 5,000/- with the Fund.
6. In case of bonded labour, State Vigilance Committees have been established to monitor the implementation of the Bonded Labour



System (Abolition) Act 1976. The State Vigilance Committee includes as members, non-political social groups working at grass root levels. CHILDLINE should also keep the State Vigilance Committee informed, and ask them to intervene to stop child labour.

#### Case No. 8

The caller witnessed ten year old Ramu being beaten by the Railway Police. Ramu was beaten as he was sleeping at the railway station. Ramu told the caller that this was a daily occurrence, and often the boys paid money to the Railway Police to be allowed to sleep at the station.

1. Efforts must be made to identify those Railway Police who are beating and harassing the boys. The name and designation of such Railway Police should be obtained.
2. A complaint with regards to the offending Railway Police must be filed with his Superior Officer. This complaint should mention the behaviour of the offending Railway Police in detail. The complaint should be made by the boys, including Ramu, or by CHILDLINE or any other organisation.
3. The Railway Protection Forces Act 1957 provides for appointment of Railway Police Force to protect and safeguard railway property. Any Railway Police Force may be dismissed or suspended or reduced in rank due to improper or negligent discharge of duty. Such order for dismissal, suspension or reduction in rank may be passed by any Superior Officer.
4. A complaint may simultaneously be filed by the boys, including Ramu, or CHILDLINE or any other organisation against the offending Railway Police before the concerned police station as the Railway Police have acted in an illegal manner and are liable for criminal prosecution.



Case No. 9

Twelve year old Shaikh was injured in a railway accident, and has lost a leg. Shaikh is a street child and due to the accident is not in a position to earn a living.

1. CHILDLINE should assist Shaikh to file a claim before the Railways Claims Tribunal within one year of the accident. If the period of one year has elapsed, an application may be made to the Tribunal for condonation of delay. The application for condonation of delay must give reasons as to why the claim was not filed earlier. The Tribunal has been established under the Railways Act 1989, and is required to assess damages to be paid in case of railway accidents to the injured or family of the injured.
2. The application for claim must be submitted to the Registrar of the Railways Claims Tribunal in 4 sets alongwith relevant documents, such as railway tickets. If the railway ticket is lost or misplaced, an application for claim can still be filed but the burden of proof will rest on the applicant. The applicant will be required to prove that a railway ticket is purchased and subsequently lost.
3. If a railway accident has resulted in death or grievous hurt, i.e. loss of limb, sight, hearing, permanent disfiguration of head or face, or fracture or dislocation of a bone or tooth, the same should be reported to the Station Master or railway servant. The accident should also be reported to the District Magistrate and Assistant Commissioner of Police / Superintendent of Police. An enquiry into the accident is to be conducted by the railway administration. Shaikh has lost a leg due to the accident, therefore the accident must be reported to the abovementioned authorities.



#### Case No. 10

Ravi has been caught eve-teasing at a railway station in Mumbai. Ravi is 19 years old, and has not acted in such manner in the past.

1. Ravi will be produced before the Metropolitan Magistrate within 24 hours of arrest. An advocate may be appointed to file a bail application on behalf of Ravi. CHILDLINE must make arrangements for surety; the surety must bring his/her ration card, voters identity card, or some other proof of identification.
2. This offence is a bailable offence. The police are empowered to release Ravi on personal bond or on bail, with or without surety.
3. If Ravi pleads guilty or is held guilty of having committed the offence, Ravi may be punished with imprisonment and fine. Ravi has been convicted for a first offence, therefore the Court has the discretion to levy a reduced fine without imprisonment. On payment of the fine Ravi will be immediately released.
4. Under the Railways Act 1989 if any person commits any nuisance or act of indecency or uses abusive or obscene language, he may be removed by any railway servant from the station, and may be punished with imprisonment and fine. A railway servant is any person in service of the railway.

#### Case No. 11

The aunt of Anu called to inform that Anu's mother has fixed Anu's marriage with a 40 year old widower. Anu is 14 years of age.

1. The marriage of a male above 21 years of age with a girl under 18 years of age amounts to 'child marriage'. Child marriage is an offence under the Child Marriage Restraint Act 1929.



2. The aunt of Anu should be advised to inform the mother of Anu that what she is attempting to do is an offence, and not in the interest of Anu.
3. The Court has the powers to restrain by an injunction a proposed child marriage from taking place. If Anu's mother neglects to heed the aunt, the aunt should file such a case and prevent the marriage from being solemnised. CHILDLINE may itself file a case in the District Court and obtain an order restraining such marriage from taking place. It is an offence to go ahead with a child marriage that has been prevented by an order of the Court; the person disobeying the order is punishable with imprisonment or fine or both.
4. If the marriage takes place prior to the aunt obtaining a restraining order, the aunt may file a complaint before the Metropolitan Magistrate or a Judicial Magistrate of the First Class. The husband of Anu is punishable with imprisonment which may extend to three months and fine. The priest who performs the marriage is also liable for punishment, the priest is supposed to verify the age of the parties before solemnising the marriage.
5. The object of the the Child Marriage Restraint Act is to prevent child marriage; it does not render a child marriage illegal or invalid.
6. Under the Child Marriage Restraint Act, a woman who permits a child marriage to be solemnised is not punishable with imprisonment. Therefore, Anu's mother is not liable for imprisonment though a child marriage has taken place with her knowledge and consent.

#### Case No.12

Meena is studying in standard IX. Meena was slapped by her teacher and hit on her head with four heavy registers. Meena due to this treatment has lost her hearing in the left ear.

1. The parents or guardians should be persuaded to file a complaint



against the teacher with the police station, preferably the police station nearest to the school. Meena should in detail tell the police what occurred. The police should record statements of witnesses, including other students and teachers who witnessed this treatment of Meena.

2. Insist that the police get Meena medically examined in a Public Hospital; ensure that the medical examination makes a special mention of Meena having lost her hearing in the left ear.
3. Make sure that the FIR records the offence under Section 322 of the Indian Penal Code, i.e. voluntarily causing grievous hurt as Meena has lost her hearing in one ear. The punishment for such offence is imprisonment for a term which may extend to three years and fine.
4. A written representation should be made by the parents to the Principal and the Management of the school, with a request that disciplinary action be taken against the teacher. The teacher must be suspended pending the inquiry. The Parent Teacher Association must also be informed in writing of this incident.

#### Case No.13

Eight year old Mohan has been repeatedly physically abused by his father. A neighbour has complained to the police, but Mohan and the mother who are frightened of the father / husband tell the police that the bruises are the result of a fall.

1. The mother should be informed of the legal options she can avail of to protect her son from repeated abuse. Often an abusive father is also an abusive husband, but the mother fears retaliation at the hands of her husband.
2. The mother should be provided with legal and social support to file a police complaint. The police will arrest the father, but he will soon be released on bail as causing hurt is a bailable offence. A CHILDLINE





representative should remain with Mohan and his mother at home. This is necessary if the father is released on bail and attempts to return home.

3. Persuade the police to keep Mohan's father in the lock-up for a day. This will give sufficient time for the mother to move the Court for an injunction restraining the abusive father from entering the home. This case can be filed in the Family Court or a District Court, if a Family Court has not been constituted in that particular area.
4. If the mother cannot be persuaded to take action against the husband, report the matter to the Child Welfare Committee with a request that Mohan be temporarily removed from the custody and influence of his parents. Such removal may result in ascertaining the true picture and protecting Mohan from further abuse. The future action that is decided by the Committee must depend on what is best for Mohan, and in consultation with Mohan.

#### Case No.14

The father of Leena is a procurer. Leena has six sisters. Leena is 13 years old. The father regularly sexually abuses Leena and her two elder sisters. Leena has no mother.

1. The action to be taken in this case is twofold, viz. care of the children, and criminal prosecution of the father.
2. CHILDLINE's priority is to remove the children from the control of the father. CHILDLINE must file a complaint with the police station. The police should immediately arrest the father of Leena as he has committed offences under the Indian Penal Code and the Immoral Traffic (Prevention) Act 1956.
3. An assessment has to be made as to whether the children should be kept in the care of their relatives or taken to the Children's Home. The children should be consulted before taking any decision affecting the future of the children.



4. If the children require to be shifted to the Children's Home, they should be produced before the Child Welfare Committee. Appropriate directions for their placement should be obtained from the Committee. It should be ensured that Leena and her sisters are placed in an institution where they will receive proper counselling to enable them to deal with the trauma of sexual abuse.
5. The children should undergo medical examination in a Public Hospital. Their age should also be determined; a Birth Certificate is the best proof of age, otherwise a medical examination should be conducted to ascertain the age.
6. The father of Leena has committed the offence of rape under Section 375 of the Indian Penal Code. As he is known to procure girls for prostitution, he is also liable for punishment under Section 366-A of the Indian Penal Code which deals with procurement of minor girls, and Section 372 which deals with selling minor for purpose of prostitution. These offences are non-bailable.
7. The father of Leena has also committed an offence under Section 5 of the Immoral Traffic (Prevention) Act which deals with procuring or attempting to procure a person, with or without consent, for the purpose of prostitution. This offence is punishable with imprisonment and fine. If the victim is a minor, the imprisonment may extend to 14 years. If the victim is a child, the imprisonment may extend to life.
8. CHILDLINE must ensure that the father is booked under the above provisions of law and that the children are taken care of by relatives. The placement of children with relatives may also be done through the Child Welfare Committee, the Committee will be in a position to supervise the placement and ensure the well-being of the children.



#### Case No.15

Thirteen year old Monisha has been abducted from her village, and has been forced into prostitution. Monisha has been forced to give a share of her earnings to the procurer. Monisha was rescued during a brothel raid.

1. Monisha should be produced before the Child Welfare Committee, and be put in the care of a Protective Home or Children's Home. A Protective Home is established under the Immoral Traffic (Prevention) Act for persons in need of care and protection. A Protective Home is to have facilities to enable the child / adult to be reintegrated into society.
2. CHILDLINE should ensure that steps are taken to contact Monisha's parents at the earliest. Monisha must be reunited with her parents. The parents may be called upon to execute a bond for the well-being of Monisha.
3. Ensure that the police take appropriate action against the procurer. The procurer is liable for punishment under the Indian Penal Code and the Immoral Traffic (Prevention) Act. As the accused has abducted and procured Monisha with the intent that she will be forced into sexual intercourse, he will be liable under Section 366 and 366-A of the Indian Penal Code.
4. The procurer will be liable under Section 5 of the Immoral Traffic (Prevention) Act for procuring a person. Under this Act it is an offence to live of the earnings of prostitution of another person.

#### Case No.16

Six year old Sheila's mother is a woman in prostitution. Sheila is a bright girl who is studying in day school. Sheila sleeps outside her mother's room in the night. Sheila wants to study



in a boarding school, but her mother wants Sheila to remain with her.

This problem cannot be resolved through legal intervention. CHILDLINE should speak with Sheila's mother and convince her that admitting Sheila to a boarding school is in the interest of Sheila. A boarding school in the vicinity should be identified so that Sheila is able to meet with her mother regularly.

Sheila's mother too should be offered an option that will enable her to leave prostitution and acquire a skill to ensure self-sufficiency. There are organisations which keep both mother and child together, such organisation should be identified so that Sheila is not separated from her mother.

#### Case No.17

Mauliq has identified Mr. A as taking young boys to his home and making them perform anal and oral sex. Mr. A also photographs boys in the nude or performing sexual acts. The boys are also used for sexual gratification by the acquaintances of Mr. A for money.

1. CHILDLINE should support Mauliq's parents to file a complaint with the concerned police station. If Mauliq has no parents / guardians, Maulik should be supported to file the complaint. If Mauliq or his parents / guardians are frightened to report the matter to the police station, CHILDLINE should file the complaint.
2. The police should immediately enter upon the residence of Mr. A, and conduct a search of the residence. All incriminating evidence should be seized by the police. Mr. A should be arrested.
3. Mr. A has committed offences under the Indian Penal Code, and the Immoral Traffic (Prevention) Act.



a. Indian Penal Code :

- (i) Section 377, i.e. sexual intercourse against the order of nature; sodomy and oral sex falls under this section, and is punishable with imprisonment which may extend to ten years and fine. This offence is non-bailable.
- (ii) Section 292, i.e. making, producing or having in possession any obscene book, drawing or representation, and is punishable with imprisonment which may extend to two years and fine.

b. The Immoral Traffic (Prevention) Act :

This Act punishes a brothel keeper, a pimp and a procurer. Mr. A has committed offences under Sections 4, 5, 6 and 9 of the Act.

- (i) Section 4, i.e. living of the earnings of a prostitute. If earnings relate to the prostitution of a child or minor, the person shall be punishable with imprisonment between 7 to 10 years, and fine.
- (ii) Section 5, i.e. for procuring a person.
- (iii) Section 6, i.e. detaining a person in premises where prostitution is carried on. This offence is punishable with imprisonment for not less than 7 years but which may extend to life or for a term which may extend to 10 years, and fine.
- (iv) Section 9, i.e. aiding or abetting the seduction of a person by a person who has control over the victim. This offence is punishable with imprisonment for not less than 7 years but which may extend to life or for a term which may extend to 10 years, and fine.



4. Mauliq and the other boys must give evidence at the trial. Inform the boys or their parents / guardians that if they fail to give evidence the case against Mr. A will fail. CHILDLINE must maintain contact with Mauliq and the other boys. Ensure that the statement of Mauliq and the other boys is properly recorded by the police. If Mauliq and the other boys are under 15 years of age, the police should record their statements at their respective homes and not call them to the police station for recording of statements.

#### Case No.18

Sexual abuse of 14 year old orphaned Meena in a Children's Home established under the Juvenile Justice [Care and Protection of Children] Act. The Superintendent of the Children's Home has sexually abused Meena. The Child Welfare Committee functions from the said Children's Home.

1. The sexual abuse of Meena should be brought to the notice of the Child Welfare Committee. The Committee should be informed of the sexual abuse in writing and they should be asked to take immediate action.
2. If the Child Welfare Committee fails to take immediate action and does not report the matter to the concerned police station, CHILDLINE or any other organisation should file a complaint with the concerned police station.
3. Meena's statement should be recorded by the police, and she should be made to undergo medical examination at a Public Hospital. Ensure that Meena and the Superintendent's clothes are seized by the police in the presence of panchas. Meena's clothes should not be washed as they may contain forensic evidence to prove rape.
4. The Superintendent must immediately be arrested under Section 375 of the Indian Penal Code, i.e. rape. The punishment in this case will



be stricter as rape was committed by the staff of an Children's Home on an inmate by taking advantage of his official position. This is a non-bailable offence.

5. Meena is 14 years of age, therefore the Superintendent cannot defend himself by stating that Meena had consented to sexual intercourse. If the girl victim is under 16 years of age, the question of her consenting does not arise.
6. Say 'no' to an offer by the Child Welfare Committee to conduct an in-house inquiry. This is a criminal matter of a serious nature, and mere dismissal or suspension of the Superintendent is not enough.
7. If the police and the Child Welfare Committee refuse to take appropriate action, CHILDLINE or any other organisation should file a Public Interest Litigation before the High Court seeking investigation by the police and other directions in the interest of Meena and other children in the institution.
8. It is important to keep an eye on Meena, there have been instances of an abused child "disappearing" from the institution to hush-up the matter. Meena should be transferred to a place of safety. A place of safety would include putting Meena in the care of CHILDLINE or any other organisation having requisite facilities.

#### Case No.19

Death of 3 year old Satish in a Children's Home established under the Juvenile Justice [Care and Protection of Children] Act. An anonymous caller states that Satish died due to beating at the hands of a care-taker. The body of Satish has not been disposed of.

1. The death of Satish should be brought to the notice of the concerned police station by CHILDLINE. CHILDLINE should also inform the police about the anonymous caller.



2. The police should immediately take charge of Satish's body, and a post mortem examination must be held.
3. The police should immediately initiate the investigation. The Superintendent and management should also be informed about the anonymous call, and CHILDLINE should demand that the care-taker be suspended pending inquiry. This is very essential for a fair investigation, the other inmates may be afraid to speak freely if the care-taker is on the premises.
4. The parents / guardian of Satish must be contacted, and the Superintendent must wait for 24 hours before disposing of the body. The body must be disposed in accordance with the religion professed by the child.
5. In case of death of a child in an institution the following procedure must be followed :-
  - (i) **Natural death** : the Superintendent must obtain a report from the medical officer denoting the cause of death, and a written intimation about the death must be given to the concerned police station, the Civil Surgeon and the District Magistrate. If a child dies within 24 hours of admission, a post mortem examination must be held.
  - (ii) **Sudden or violent death, or death due to accident** : the Superintendent and medical officer must be informed, and the body of the child should be left in the position in which it was found. The concerned police station should be informed of the death, and a post mortem examination must be held.

If the institution does not follow the above procedure, their inaction should be viewed suspiciously, and the matter should be investigated.





## Case No. 20

Ten year old Rani was raped by three of her neighbours. Rani's parents have called CHILDLINE for help.

1. The parents must be referred to an advocate. This is important because any wrong step at this initial stage could destroy material evidence.
2. The parents must report the matter to the concerned police station at the earliest. An advocate and child psychologist will be of assistance at the time of recording of complaint. The child psychologist will be of great support to Rani who has undergone tremendous trauma, and the presence of an advocate usually ensures that the statement is properly recorded by the police. A copy of the First Information Report must be furnished to the parents.
3. The three neighbours must immediately be arrested, and their clothes should be seized by the police in the presence of panchas. Seizure of clothes is very important as forensic examination may indicate semen marks.
4. Rape is a non-bailable offence. Punishment for rape committed on a girl below 12 years of age and gang rape is dealt with more severely under the Indian Penal Code. The punishment is imprisonment for a term not less than 10 years but which may be for life, and fine.
5. The police should get Rani medically examined by the Police Surgeon or at a Public Hospital. If the police fail to get Rani medically examined, the parents or CHILDLINE should ensure that she is medically examined at a Public Hospital at the earliest. The parents must obtain a copy of the report of the medical examination.
6. The clothes of Rani must also be seized by the police in the presence of panchas. Advise the parents not to wash the clothes worn by Rani at the time when the rape was committed.



7. Ensure that a 'spot panchnama' is conducted. This panchnama will indicate the site of the offence.
8. The matter will be prosecuted by the State and conducted by the Public Prosecutor. CHILDLINE and the parents must develop a rapport with the Public Prosecutor. The parents may appoint an advocate to oppose bail application, or at the trial stage. The parent's advocate may assist the Public Prosecutor, or may tender written submissions to the Court.
9. It is necessary for a team of experts to prepare Rani to give evidence before the Court. Under the Indian legal system, Rani is compelled to give evidence in the presence of the accused and will be cross-examined by the advocate for each of the accused at great length. If Rani is unable to find the right words to express herself, it will be looked upon as a deficiency on her part.

#### Case No.21

Six year old Jack was caught stealing fruit from a fruit vendor, and has been arrested by the police.

1. CHILDLINE, preferably along with an advocate should visit the concerned police station to ensure that Jack is immediately released.
2. Under Section 82 of the Indian Penal Code, nothing is an offence that is done by a child under 7 years of age. Therefore, 6-year-old Jack cannot be penalised for his action.
3. The above immunity is also applicable in respect of offences under other laws. Therefore, Jack should not be treated as a juvenile in conflict with law under the Juvenile Justice [Care and Protection of Children] Act.
4. The custody of Jack should be handed over to his parents / guardian.



5. If Jack has no parents / guardian or if his parents / guardian are not willing to care for him, Jack will be required to be produced before the Child Welfare Committee as a 'child in need of care and protection'. CHILDLINE or any other suitable organisation may make an application before the Committee for custody of Jack. The Committee may supervise the placement of Jack through a Probation Officer.

#### Case No.22

Ten year old Rahul has been caught chain-snatching, and has been arrested by the police at 6.00 p.m.

1. CHILDLINE, preferably with an advocate should visit the concerned police station. A child, i.e. a boy or girl below 18 years of age cannot be detained in a police station or jail under the Juvenile Justice [Care and Protection of Children] Act. Therefore, Rahul must be shifted for the night to an Children's Home, or given into the custody of CHILDLINE or any other suitable organisation, on such organisation undertaking that Rahul will be brought to the police station the next day for production before the Juvenile Justice Board.
2. The parents / guardian of Rahul must immediately be informed of his arrest. It is the duty of the concerned police station to inform Rahul's parents and ask them to remain present before the Juvenile Justice Board on the next day.
3. Under Section 83 of the Indian Penal Code, nothing is an offence which is done by a child above 7 years of age and below 12 years, who has not attained sufficient maturity of understanding to judge the nature of his act. It is for the Juvenile Justice Board to decide whether Rahul was aware of the nature and consequences of his act; if the Juvenile Justice Board decides this issue in the negative, Rahul will immediately be discharged.



4. Even if Rahul is found to have attained sufficient maturity to judge the nature and consequences of his act, he will be released on bail by the Juvenile Justice Board. Rahul will have to attend the inquiry before the Juvenile Justice Board.
5. The Juvenile Justice Board must complete the inquiry within 4 months. On completion of the enquiry the Board can only pass the following orders;
  - (i) advise or admonish Rahul;
  - (ii) Rahul may be released on probation of good conduct and placed under the care of parents / guardian / fit person, on such parents / guardian / fit person executing a bond for the good behaviour and well-being of the child for a period not exceeding 3 years;
  - (iii) Rahul may be released on probation of good conduct and placed under the care of a fit institution for the good behaviour and well-being of the child for a period not exceeding 3 years;
  - (iv) Rahul may be sent to a Special Home for a period until he/she ceases to be a juvenile, or in the case of a juvenile over 17 years of age and below 18 years for a period not exceeding 2 years.

A juvenile can never be punished with death, life imprisonment or imprisonment.

6. Under the Probation of Offenders Act 1958 and section 360 of Cr.P.C., the Courts have been given the powers to release offenders under 21 years of age after due admonition or on probation if found guilty of an offence punishable with imprisonment, not being life imprisonment. This Act provides young offenders with an opportunity to reform themselves especially if there is no criminal history.



### Case No.23

Two year old Seema was found crying on the streets. Seema is not able to give her address nor is she able to give her parent's names. Seema wants to be reunited with her parents.

1. Immediately produce Seema before the nearest police station, and file a Missing Person Report. The police station has means to find out whether any complaint has been filed by Seema's parents in that particular city or elsewhere in the country.
2. A complaint should also be filed with the Missing Persons Bureau. The office of the Missing Persons Bureau is generally situated at Police Headquarters.
3. Seema should also be produced before the Child Welfare Committee. CHILDLINE or any other suitable organisation may be given temporary custody of Seema.
4. Seema should be medically examined in a Public Hospital. The medical report will indicate Seema's health status when she was taken into custody by CHILDLINE or any other organisation.
5. Seema's description, along with her photograph, and the place where she was found should be published in the newspaper and shown on television on the 'missing persons' programme. The Child Welfare Committee will direct the aforesaid publication and telecast, but CHILDLINE should ensure that the same is accordingly published / telecast.
6. To be effective, the details of missing children should be published in widely circulated newspapers and telecast at prime time to ensure wide publicity.
7. A child psychologist could play an important role in getting information from the child. This information could be of assistance to the police and the Child Welfare Committee in tracing the child's parents.



#### Case No.24

A mother frantically has called for advice as her 7 year old son Mohit has not returned home from play.

1. A complaint should be filed with the nearest police station. A detailed description of Mohit should be given to the police. The police should also be told where Mohit was last seen, and the suspects, if any. The complaint should be filed with the police station within whose jurisdiction the child was last seen or the child resides.
2. A complaint should also be filed with the Missing Persons Bureau. The office of the Missing Persons Bureau is generally situated at Police Headquarters.
3. Missing Persons Bureau gets a daily report from all police stations with regards to complaints filed in search of missing and lost persons who are unable to find their bearings. It works like a "lost and found" bureau. Missing Persons Bureau also receives information from Public Hospitals with regards to injured persons or dead bodies in their establishment.
4. Missing Persons Bureau also telecasts on Doordarshan the photograph of the missing child. They require a 10"X12" photograph of the child for telecast, and two passport size photographs for their record.

#### Case No.25

Fourteen year old Sam has run away from his home in Delhi as he did badly in his exams. Sam got into a train and has arrived in Calcutta. Sam wants to return home but is frightened of his parent's reaction.

1. Get in touch with Sam's parents in Delhi, and ask them to come and fetch Sam.



2. CHILDLINE or a suitable organisation may keep Sam with them until the parents arrive to fetch him. There is no need to contact the police or the Child Welfare Committee.
3. A counsellor should speak to Sam, and his parents to ensure that such an incident does not repeat itself.

#### Case No.26

Six year old Mohsin is found on the pavement with very high temperature. Mohsin was medically examined and found to be HIV positive.

1. Mohsin must be admitted to a hospital to treat and bring in control the high temperature.
2. Mohsin also requires counselling with regards to his HIV status.
3. On discharge from hospital, Mohsin must be kept in the care and custody of an organisation having residential facilities as Mohsin requires special care. Mohsin should not remain on the streets where he could easily catch an infection. Such placement could be done directly or through the Child Welfare Committee

#### Case No.27

A residential institution suspects 15 year old Ashok to be HIV positive and wants to test him for such infection.

1. Mandatory compulsory testing for HIV is prohibited under the policy framed by National AIDS Control Organisation (NACO). HIV testing must be done voluntarily and with informed consent. This policy also stresses pre-test and post-test counselling.
2. HIV testing of Ashok should be conducted in accordance with the NACO policy, especially as Ashok is old enough to give informed consent to the tests being conducted.



3. In case of a very young child unable to understand the consequences, the parent / guardian should give consent for the testing or the organisation having care of the child should ensure that the testing is conducted in accordance with the NACO policy.

#### Case No.28

Six year old Arjun is lying outside a Public Hospital in a semi-conscious state. Arjun was admitted to the Public Hospital by the police as he was found very sick on the roadside. Arjun was discharged from the Public Hospital as he tested positive to AIDS.

1. A Public Hospital is bound to treat a patient, and cannot refuse treatment on any ground.
2. Under Article 14 of the Constitution all persons have an equal right to receive treatment in a Public Hospital, i.e. a government or corporation hospital. Further, right to health is guaranteed under Article 21 of the Constitution.
3. In Pt. Parmanand Katara vs. Union of India & Ors. [AIR 1989 S.C. 2039], the Supreme Court held that every doctor whether at a Public Hospital or otherwise has the professional obligation to provide medical services with due expertise for protecting life.
4. A written representation should be immediately made to the Dean of the hospital and the Directorate of Health Services; the name of the person refusing to admit Arjun should be mentioned along with other details, such as date, time, etc.
5. A writ petition can also be filed before the High Courts on the ground that an individual has a right to avail of public services and a government agency has arbitrarily refused to perform its duty.





#### Case No.29

Nine year old Wasim is a street child and is very sick. Wasim's friends have tried to admit Wasim to a Public Hospital for treatment, but the hospital refuses to admit or treat Wasim.

1. A Public Hospital is legally bound to admit and treat Wasim for his ailment.
2. A written representation should be immediately made to the Dean of the hospital; the name of the person refusing to admit Wasim should be mentioned along with other details, such as date, time, etc.
3. Under Article 14 of the Constitution all persons have an equal right to make use of public services. Further, right to health is guaranteed under Article 21 of the Constitution.
4. Reference should also be made to the judgment passed by the Supreme Court in Pt. Parmanand Katara vs. Union of India & Ors. [AIR 1989 S.C. 2039].

#### Case No.30

Fifteen year old Rohan is severely injured in a fight. The hospital refuses to admit or treat him until a complaint is lodged with the police.

1. A hospital's duty is to first provide medical-aid. The primary function of doctors / hospitals is to save a life. This duty is cast upon both public and private hospitals.
2. Legal procedures should follow medical treatment, and should not interfere with the saving of a life. This has been held by the Supreme Court in Pt. Parmanand Katara vs. Union of India & Ors. [AIR 1989 S.C. 2039].



3. The cause of injury should be of no concern to the hospital. Hospitals must provide the best treatment at their disposal to save a life. It does not matter whether the life is that of a rich man or poor man, a priest or a murderer.

#### Case No.31

A dead body of a boy child is found on the roadside.

1. Inform the nearest police station about the dead body lying on the roadside. The police should be informed of the address / location where the body is lying, or
2. The Police Control Room should be contacted at telephone No. 100, and informed about the body lying on the roadside along with other relevant details.

#### Case No.32

Twelve year old Imran was hit by a speeding car. The motorist drove away, but a member of the public has noted the registration number of the car. Imran lost a leg due to the accident, and he was in hospital for over a month. Imran lives on the streets with his friends.

1. A police complaint must immediately be lodged with the nearest police station as soon as the accident occurs. The registration number of the car should be mentioned in the complaint. If for whatever reason a police complaint has not been immediately lodged, a complaint should be lodged at the earliest, preferably with the police station within whose jurisdiction the accident occurred.
2. An advocate should be contacted at the earliest for filing a case before the Motor Accident Claims Tribunal. The case before the Tribunal has to be filed by the injured person or his advocate. As Imran is a minor, the case may be filed by a representative of CHILDLINE or any other



suitable adult, or an advocate appointed by CHILDLINE or the suitable adult. The Tribunal awards compensation to the victim of the accident; the amount of compensation depends upon the nature of injury and the disablement caused due to the injury.

3. The Motor Accident Claims Tribunal has the power to provide for 'no fault liability'. No fault liability is a fixed amount which the accident victim or his/her dependants are entitled to without proving the fault of the driver. In case of death, the no fault liability is Rs. 15,000/-, and in case of permanent injury it is Rs. 7,5000/- . Imran is entitled to no fault liability of Rs. 7,500/- . The remaining compensation will be granted to Imran only if the fault of the driver is proved.
4. Where the offending vehicle is not traceable, Rs. 5,000/- will be paid to the dependants of the deceased and Rs. 1,000/- to the accident victim who has suffered grievous injury.

#### Case No.33

Fourteen year old Preeti's father recently died in Mumbai. Preeti's mother died three years ago. The father's employer is asking Preeti to produce a guardianship certificate for payment of the legal dues of her father.

1. Preeti is entitled to the legal dues of her father. Preeti is the legal heir of her deceased father in accordance with the Hindu Succession Act 1956. If Preeti has any brothers or sisters, all the children will be entitled to an equal share in the legal dues of the deceased.
2. A relative or friend of Preeti must file a Guardianship Petition before the Bombay High Court under the Guardian and Wards Act 1890 for being appointed as guardian of the person and property of Preeti. The Court while appointing the guardian will direct the employer to deposit the legal dues of Preeti's father with the Accounts Officer, High Court, and the Accounts Officer will be directed to invest the



amount so deposited in a Fixed Deposit with any nationalised bank. The interest accrued on the Fixed Deposit may be withdrawn by the guardian for maintenance and education of Preeti. The principal amount will be handed over to Preeti on her attaining 21 years of age.

3. In the event of a natural calamity rendering a large number of children orphans, the ex-gratia payment / shelter provided by the government requires safeguarding till the children attain majority. The Collector is generally appointed by Government Resolution to ensure that the ex-gratia payment / shelter is not misappropriated by relatives. The ex-gratia payment / shelter will stand in the joint names of the child and the Collector, and will be handed over to the child on the child attaining majority.

#### Case No.34

Ten year old Pramod is blind, and is living on the streets. Pramod wants to study, but does not have the money to pay his school fees.

1. Blindness is a disability under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995.
2. Under this Act, the State Government and the local authority is to ensure that every child with disability has access to free education till the age of 18 years. It is mandatory for the State Government or the local authority to establish special schools in government and private sectors, or take measures to integrate children with disabilities in normal schools.
3. Schemes are to be formulated for providing transport facilities, supply of books, etc. to the disabled, and provide employment opportunities for persons with disabilities.



4. CHILDLINE should identify an appropriate school for Pramod's education. If no appropriate school can be identified, a representation must be made to the State Government and the local authority, i.e. the municipal corporation, for identifying an appropriate school for Pramod.
5. A representation should also be made to the Commissioner appointed by the State Government under the Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act. The Commissioner is to ensure implementation of the Act; any complaint with regards to deprivation of rights of persons with disabilities, etc. is to be made before the Commissioner.
6. CHILDLINE or any other organisation or individual may file a Public Interest Litigation in the High Court if there are no appropriate schools and facilities for children with disability. The High Court will direct the State Government or the local authority to establish schools for children with disability. NGOs must monitor and ensure that the government is performing its duties towards children. If the government is failing in its duties, NGOs and individuals must take effective legal and other steps to protect and promote the rights of children. A single Public Interest Litigation could improve the lives of thousands of children all over the country.

#### Case No.35

Three year old Shweta is residing with her mother. The mother is mentally disabled and not in a position to care for her daughter.

1. Make all attempts to contact the relatives of Shweta so that Shweta can remain with them whilst her mother is being treated for her mental disability.



2. If no relative can be traced, Shweta should be produced before the Child Welfare Committee as "a child in need of care and protection" and admitted to a Children's Home being managed by the State Government or a voluntary organisation.
3. The mother of Shweta should be admitted for treatment to a psychiatric hospital or nursing home in accordance with Section 19 of the Mental Health Act 1987. Ensure that the mother of Shweta is discharged on completion of treatment and reunited with her daughter.

#### Case No.36

A 6 year old boy has been found on the streets. The boy seems mentally disabled and unable to care for himself.

1. Steps should be taken to trace the parents / guardians of the boy. The boy could be lost and therefore roaming the streets. If the boy child is restored to his parents / guardians, ensure that he undergoes appropriate tests and receives treatment for his mental disability.
2. If the parents or guardians cannot be traced, get the boy child medically examined by a medical officer attached to the Psychiatry Department of a Public Hospital. Future action will depend upon the results of the medical test.
3. On being diagnosed with mental disability, produce the boy child before the Child Welfare Committee and ensure that he is admitted to an institution with appropriate treatment and rehabilitation facilities. CHILDLINE should visit the boy child at the treatment facility to monitor his well-being.

#### Case No.37

The mother of 10 year old Trupti is seeking a divorce on the ground of cruelty. Trupti's mother works as a part-time domestic worker, and her father is employed as a sweeper with the



Municipal Corporation. Trupti is concerned about her and her 4 year old brother's future. They do not want to reside with their father who is a drunkard and beats them.

1. Custody and maintenance of children is governed by the personal law, i.e. it depends on the religion professed by the parties. In the above case the parties are Hindus, therefore the provisions of the Hindu Marriage Act 1955 will apply.
2. Section 26 of the Hindu Marriage Act deals with "custody of children", and provides for maintenance and education of children. At the time of passing of the order, the Court is to take into account the wishes of the children, the income and conduct of the parties.
3. Trupti's mother will be given custody of the children on her proving that her husband is unfit to care for the children. The Court may ascertain the preference of the child, and consider such preference before passing any order with regards to custody.
4. Further, the Court will direct the father to pay an amount towards maintenance of the children and wife. The wife is not in a position to maintain herself and her children from the salary she earns as a domestic worker. If the father fails to pay the maintenance, the Court will order the employer to deduct the maintenance amount from the salary of the father and pay the maintenance amount directly to the mother.
5. A Hindu father is also bound to maintain his children under the Hindu Adoptions and Maintenance Act 1956.

Case No.38

Fifteen year old Bahadur requires a Domicile Certificate.

1. A domicile certificate is granted to a person who has been residing in that particular State for at least 10 years.



2. A domicile certificate is granted to an adult or to the father of a child. In the absence of a father, a domicile certificate will be granted to the mother of a child.
3. An application for a domicile certificate is to be made before a Metropolitan Magistrate or an Additional Magistrate or a Magistrate of the First Class. Requisite court-fees have to be affixed on the application. The application is to be accompanied with proof of residence, viz. ration card, school leaving certificate, birth certificate, electoral roll.
4. A domicile certificate is ordinarily issued within a month of having applied for it.

#### Case No.39

A Hindu parent wants to adopt a child, and has inquired about the procedure with regards to adoption.

1. All adoptions are to be done through a Recognised Adoption Agency [RAA]. Adoption through doctors and nursing homes is prohibited.
2. The parent should get in touch with a RAA in his/her city. Information of RAA in a particular city is available on [www.adoptionindia.nic.in](http://www.adoptionindia.nic.in).
3. RAA will screen the adoptive parents and prepare them for taking a child in adoption. The parent must be told about the implications of adoption, and the different issues involved. A home study of the adoptive parents is also conducted.
4. RAA maintains contacts with adoptive family for 2 years after the adoption is completed.
5. Priority is given by RAA to Indian adoptive parents.
6. Legal procedure in case of in-country adoption;
  - (a) the adoptive parent must apply for adoption to RAA,





- (b) a Scrutiny Agency [SA] which is an independent authority constituted by the State Government is to screen the documents for adoption,
- (c) the documents for adoption include, birth certificate, marriage certificate, health certificate, photographs, recommendation letters, employment certificate, bank reference, property statement, child-care arrangements, and undertaking from family members or friends that they will temporarily care for children in case of death of adoptive parents,
- (d) a petition is to be filed before the District Court, and on the report of SA an order of adoption may be granted,
- (e) post-placement follow-up is done by RAA.

#### Case No. 40

An organisation is in custody of an abandoned child and wishes to give such child for adoption.

1. A child is legally free for adoption if the child has been abandoned, orphaned or is destitute. In many cases, unwed mothers surrender their child for adoption. In such case, a "document of surrender" must be prepared. The mother is counseled and given a 2 month period to re-think her decision.
2. The organisation should approach a RAA in its city to carry out the adoption procedure.
3. In-country adoption is preferred to inter-country adoption.
4. Legal procedure in case of inter-country adoption;
  - (a) RAA must make all efforts to find an Indian adoptive parent. If unable to find such parent, the case should be referred to Voluntary Coordinating Agency [VCA],



- (b) VCAs are to be constituted by respective State Governments. VCA must give clearance for inter-country adoption, i.e. should categorically state that no adoptive parent could be found for a particular child despite considerable efforts,
- (c) a "no objection certificate" is to be obtained from the Central Adoption Resource agency [CARA],
- (d) an adoption agency recognised by Government of India is to be approached to identify foreign adoptive parents for such child,
- (e) once adoptive parents are identified, the SA is to screen the documents for adoption,
- (f) a petition is to be filed before the High Court, and on the report of the foreign adoption agency and SA an order for adoption may be passed,
- (g) post-placement follow-up is done by CARA.

#### Case No.41

Ms. Emily D'Souza, an Indian Christian wants to take a child in adoption.

1. Ms. D'Souza must apply to RAA for a child.
2. On identification of a child, Ms. D'Souza must file a Guardianship Petition under the Guardian and Wards Act before the High Court or District Court.
3. The District Court or High Court will pass an order appointing Ms. D'Souza as guardian of the child.
4. Ms. D'Souza may file a miscellaneous application in the Guardianship Petition for adoption of the child after 2 years from date of guardianship order.



5. The adopted child will have the same rights of a natural born child.
6. This procedure is applicable to adoptive parents professing the Christian, Muslim, Parsi and Jew faith, and wishing to take a child in adoption and residing within the jurisdiction of the Bombay High Court, viz. Mumbai, Goa, and Dadra & Nagar Haveli.

#### Case No.42

Five years old Mirza was abducted from a village in Andhra Pradesh and brought to Mumbai for the purpose of begging. For the last two years Mirza alongwith other boys has been engaged in begging, the collection at the end of the day is handed over to “dada”. Mirza wants to be freed from this begging racket.

1. Use of a child for begging is an offence under Section 24 of the Juvenile Justice (Care and Protection of Children) Act. A complaint may be filed before the Child Welfare Committee who on being satisfied that such offence has been committed, shall punish the offender with imprisonment for a term which may extend to 3 years and with fine.
2. Kidnapping a minor for purpose of begging is also an offence under Section 363 A of the Indian Penal Code and is punishable for a term which may extend to 10 years and with fine.
3. CHILDLINE must assist Mirza in filing a complaint with the Police Station within whose jurisdiction “dada” operates.
4. This offence is cognizable and non-bailable. The Police on filing of the complaint must register F.I.R. and arrest “dada”.



## PART II

This Part of the book summarises certain laws and judgments related to children in order to enable the CHILDLINE volunteer to deal with the queries in a comprehensive manner.

### Constitution of India

The Constitution contains provisions in respect of children under Part III of the Constitution, i.e. Fundamental Rights, and Part IV of the Constitution, i.e. Directive Principles.

Article 14 : Equality before law, i.e. equal treatment and protection under law.

All children in similar circumstances are required to be treated in a similar manner, and if not so treated, such treatment can be challenged on the ground of discrimination and arbitrariness.

Article 15(3) : Permits the State to make special provisions for women and children.

Special enactments made for the benefit of children cannot be struck down on the ground of discrimination.

Article 19(1) : Guarantees citizens of India the right to freedom of speech and expression, to form associations or unions, to move freely throughout the territory of India, etc. Under Indian law, child labour is prohibited only in factories, mines or other hazardous employment, therefore there is no blanket ban on employment of children. Though children form part of the labour force they are not permitted to unionise and fight for their rights as workers.



- Article 21 : This article guarantees the right to life to all persons. The Supreme Court has interpreted "right to life" to include right to food, clothing, adequate shelter, and other basic necessities of life.
- Article 22 : Provides for safeguards upon arrest, and states that a person should be produced before the nearest Magistrate within 24 hours of arrest. A juvenile in conflict with law or a child in need of care and protection should be produced before the Competent Authority established under the Juvenile Justice [Care and Protection of Children] Act 2000 within 24 hours of having been picked-up by the police.
- Article 23 : Prohibits trafficking in human beings and forced labour. Any contravention of this provision is punishable under law.
- Article 24 : Prohibits the employment of a child below 14 years in any factory or mine or any other hazardous employment.
- Article 39(e) & (f) : The State is required to ensure protection of children of tender age from abuse, and from entering vocations unsuited to their age and strength. Children are also to be provided with equal opportunities and facilities to develop in a healthy manner. The State is to further ensure that childhood and youth are protected against exploitation and abandonment.
- Article 41 : The State is required to take steps to secure educational opportunities and facilities.



- Article 44 : The State is to endeavour to secure for all citizens a uniform civil code. A uniform civil code implies a uniform legal framework for adoption of a child applicable to all religions.
- Article 45 : The State is to take measures to ensure free and compulsory education for all children till they attain 14 years of age.
- Article 47 : The improvement of public health and the raising of the level of nutrition is a primary duty of the State.
- Article 51(c) : The State is to respect international law and treaty obligations. The Government of India and the State Governments are obligated to the commitments contained under the Convention on the Rights of the Child.

#### Public Interest Litigation [PIL]

PIL may be resorted to in order to ensure that the State performs its duty towards children. PIL has resulted in improving the conditions prevailing in child-care institutions, enforcing the implementation of the Child Labour [Prohibition and Regulation] Act, strengthening inadequate laws, setting-aside discriminatory laws, etc. Generally, an aggrieved person files a petition before the Courts to redress his/her grievances. The concept of PIL recognises that certain persons are unable to access this conventional mode of justice due to poverty, age or vulnerability, and it is therefore imperative that some other person or organisation is enabled to move the Courts to protect the rights of such persons.

Children are unable by themselves to access the legal system and claim their rights. A public-spirited individual or a non-governmental organisation may file a PIL to ensure that a particular child or children are protected and ensured their legal rights.



A PIL is to be filed before the writ jurisdiction of the Supreme Court or the High Courts, and the opposite party is the Central or State Government, or any of its agencies. The Constitution enables the filing of PIL under the following articles;

Article 32 : this article empowers the Supreme Court to intervene to enforce rights guaranteed by the Constitution.

Article 226 : this article empowers the High Courts to intervene to enforce rights guaranteed by the Constitution.

### Right to Health

Article 21 of the Constitution which deals with right to life has been interpreted by the Courts to include "right to health".

Article 47 of the Constitution of India states that the improvement of public health is one of the primary duties of the government.

Under the Bombay Municipal Corporation Act 1888 it is the duty of the corporation to establish and maintain hospitals.

Pt. Parmanand Katara vs. Union of India & Ors. [AIR 1989 S.C. 2039]

This case was filed for a direction that every injured citizen brought for medical treatment should instantaneously be given medical aid to preserve life, and only thereafter should the procedural criminal law be set into motion in order to prevent deaths that can be avoided by prompt medical treatment. The Supreme Court held that every doctor whether at a Public Hospital or otherwise has the professional obligation to provide medical services with due expertise for protecting life. Legal procedures should follow medical treatment, and should not interfere with the saving of a life. Medical professionals who give treatment should not be harassed with legal procedures; these procedures often deter a medical professional from performing his duty.



## Right to Education

Article 45 of the Constitution of India provides for free and compulsory education for children until they complete 14 years of age.

Article 41 of the Constitution of India provides for the government to take effective steps for securing the right to education.

Article 39 of the Constitution of India states that the government must direct its policy towards giving children opportunities and facilities to develop in a healthy manner.

Article 38 of the Constitution of India states that the government must attempt to eliminate inequalities in facilities and opportunities.

Unni Krishnan, J.P. vs. State of Andhra Pradesh [AIR 1993 S.C. 2178]

This judgment emphasises the importance of education, and included the right to education as a fundamental right under Article 21 of the Constitution, i.e. right to life. The Supreme Court observed that 'education is a preparation for a living and for life'. This judgment concluded that, the right to free education upto the age of 14 years is a fundamental right.

'We hold that every citizen has a "right to education" under the Constitution. The State is under an obligation to establish educational institutions to enable the citizens to enjoy the said right.'

## The Juvenile Justice (Care and Protection of Children) Act 2000

1. The Juvenile Justice [Care and Protection of Children] Act 2000 was enacted to consolidate and amend the law relating to juveniles in conflict with law and children in need of care and protection, by providing for proper care, protection and treatment by catering to their development needs, and by adopting a child-friendly approach





in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.

2. This Act has been enacted to bring the juvenile justice system in conformity with the Convention on the Rights of the Child. This Act repeals the Juvenile Justice Act 1986, but any action taken under the former Act prior to its repeal stands and will be deemed to have been taken under corresponding provisions of this Act.
3. "Juvenile" or "child" means a person who has not completed eighteenth year of age.

"Juvenile in conflict with law" means a juvenile who is alleged to have committed an offence.

"Child in need of care and protection" means a child -

- (i) who is found without any home or settled place of abode and without any ostensible means of subsistence,
- (ii) who resides with a person [whether a guardian of the child or not] and such person -
  - (a) has threatened to kill or injure the child and there is reasonable likelihood of the threat being carried out, or
  - (b) has killed, abused or neglected some other child or children and there is reasonable likelihood of the child in question being killed, abused or neglected by that person,
- (iii) who is mentally or physically challenged, or ill children, or children suffering from terminal diseases or incurable diseases having no one to support or look after,
- (iv) who has a parent or guardian and such parent or guardian is unfit or incapacitated to exercise control over the child,



- (v) who does not have parents and no one is willing to take care of or whose parents have abandoned him or who is missing and runaway child and whose parents cannot be found after reasonable inquiry,
- (vi) who is being or is likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts,
- (vii) who is found vulnerable and is likely to be inducted into drug abuse or trafficking,
- (viii) who is being or is likely to be abused for unconscionable gains,
- (ix) who is victim of any armed conflict, civil commotion or natural calamity.

"Fit institution" means a governmental or a registered non-governmental organisation prepared to take responsibility of a child, and found fit by the Competent Authority to take responsibility of the child.

"Fit person" means a person, being a social worker or any other person, who is prepared to take responsibility of a child, and found fit by the Competent Authority to take responsibility of the child.

"Place of safety" means any place or institution, not being a police station or jail, which in the opinion of the Competent Authority is a place of safety for the child

4. Under this Act, Juvenile Justice Boards are to be constituted to deal with matters relating to juveniles in conflict with law. The JJB is to consist of a Metropolitan Magistrate or a Judicial Magistrate of the First Class, and two social workers, of whom at least one is to be a woman. Pending an inquiry before JJB, the juvenile in conflict with law is to be kept in an Observation Home; Observation Homes are to be established and maintained by the government or by voluntary organisations. On completion of inquiry, the juvenile in conflict with



law may be kept in a Special Home; Special Homes are to be established and maintained by the government or by voluntary organisations.

5. Child Welfare Committees are to be constituted to deal with matters relating to a child in need of care and protection. The CWC is to consist of a Chairperson and four other members, of whom at least one is to be a woman and another, an expert on matters concerning children. Any child in need of care and protection may be produced before CWC by police / Special Juvenile Police Unit, any public servant, CHILDLINE or any other voluntary organisation, any social worker or public spirited citizen so authorised by the State Government, or by the child himself/herself. Pending an inquiry before CWC, the child in need of care and protection is to be kept in a Children's Home; Children's Homes are to be established and maintained by the government or by voluntary organisations. On completion of inquiry, the child in need of care and protection is to be kept in a Children's Home, if the child has no family or ostensible support. The government is required to assist reputable organisations to establish Shelter Homes, i.e. drop-in centres for children in need of urgent support.
6. CHILDLINE has been authorised under this Act to produce a child before CWC. Other voluntary organisations may acquire recognition from respective State Governments to produce a child before CWC.
7. Observation Homes, Special Homes and Children's Homes are to provide facilities of care, treatment, education, training, development and rehabilitation. These Homes are to be established and managed by State Governments or by recognised voluntary organisations. The main functions of these Homes is to protect the child and ultimately restore him/her to a family environment. "Restoration of a child" means restoration to a parent, or restoration to family environment through adoption or foster-care.



8. This Act envisages "Sponsorship Programmes" for providing support to families to meet medical, nutritional, educational and other needs of children with a view to improving their quality of life.
9. The State Government is to establish or recognise After-care organisations to care for children on discharge from Special Homes or Children's Home, and assist with their reintegration into society.
10. Inquiries by JJB and CWC are to be completed within 4 months. A juvenile in conflict with law is never to be incarcerated in a police station / jail, or charged with / tried for an offence together with a person who is not a juvenile. A juvenile in conflict with law, pending inquiry must be released on bail irrespective of whether the offence is bailable or non-bailable.
11. There are certain special offences in respect of children which are cognizable, and punishable with imprisonment / fine / both. These offences include assaulting / causing unnecessary mental or physical suffering to a child, employment of children for begging, exploitation of child employee.
12. A Special Juvenile Police Unit is to be established in each district to deal with matters under this Act. Every police station to have at least one officer designated as "juvenile or child welfare officer" and receive appropriate child-related training and orientation.
13. Inspection and Social Audits of Children's Homes are provided for by this Act. The State Government is required to appoint Inspection Committees consisting of representatives from State Government, local authority, CWC, voluntary organisations, medical experts and social workers. Persons and institutions are to be appointed as "Social Auditors" to monitor and evaluate the functioning of Children's Homes.
14. Central and State Governments are to constitute Central and State Advisory Boards to advise governments on matters relating to



establishment of homes, providing of facilities for education, training and rehabilitation of children and juveniles. The Advisory Boards are to include eminent social workers, representatives of voluntary organisations, professionals, etc.

15. The State Government has the powers to make Rules, more particularly with regards to the functioning of JJB, minimum standards to be maintained by Homes, various services to be provided by Homes, etc.

Krist Pereira vs. The State of Maharashtra & Ors.  
(Criminal Writ Petition No. 1107 of 1996 - Bombay High Court)

This petition was heard by the Bombay High Court under its criminal writ jurisdiction. The death of a three year old boy child in Bhiwandi Remand Home gave rise to the filing of this petition. The Court constituted an Experts Committee to examine the conditions in different Juvenile Homes, Remand Homes, Children Homes, Special Homes in the State of Maharashtra. The Experts Committee visited 21 Homes and submitted their reports to the Court. The reports contained details with regards to the administration and management of the Remand Homes, Juvenile Homes and other Homes and facilities provided to the inmates of these Homes, and the working of the Juvenile Welfare Boards, Juvenile Courts, the role of the police. The reports 'submitted by the Experts Committee are extremely distressing and they reveal pathetic conditions prevailing in the various Homes in the State.' The Court has observed and directed the following in its judgment,

8. After going through the reports, we are satisfied that the working of the Homes in the State is totally unsatisfactory. We are constrained to observe that the juveniles are housed in the Homes without any sense of improving their lot. The prevailing conditions disclose that the Home only provide some shelter and nothing else. There is hardly



any attempt to educate and rehabilitate juveniles by providing them proper schooling or modern vocational training. We feel that urgent steps are required to be taken to improve the conditions of the various Homes in the State. In the past also this Court noted with anguish pathetic conditions in the Homes and has issued directions from time to time. The experience has shown that those directions are not properly heeded to and have remained on paper only. Having noted the above conditions, we feel that it is absolutely necessary to find out a solution on a long term basis and with that object in view, we hereby constitute a State Committee consisting of a retired Judge of this Court, two Secretaries, including the Secretary of the Women and Child Welfare Department and another Secretary to be nominated by the Government and three experts / social workers in the field, out of whom two shall be the female members. We may hasten to add that we are appointing this Committee with full concurrence of the state government with an express understanding that this Committee shall function on permanent basis.....'

The State Committee is to ensure appropriate appointments, on the Juvenile Welfare Boards, Visitors Board and Advisory Boards, and of social workers and duty counsellors; such appointments are to be made with prior consultation of the State Committee to ensure proper functioning of the juvenile justice system without any political interference.

The Court further directed that,

1. the State Government establish Juvenile Homes in all the districts of the State;
2. the State Government establish additional Special Homes in the State;
3. After-care organisations be established in different areas;
4. district level Rehabilitation Committees to be established in every district for assistance in providing jobs to juveniles; this Committee



to consist of the Collector of the district, Managing Director of MIDC, representative from district Industries Officer, Zilla Mahila Bal Kalyan Officer and Superintendent of After-care organisation, if any;

5. the State Government to fill up all vacancies in the Juvenile Welfare Boards and the Advisory Boards within three months;
6. the State Government to appoint at least one social worker for each Juvenile Court within three months;
7. the State Government to appoint Duty Counsellors within three months to make regular visits to institutions established under the Juvenile Justice Act as provided under the Maharashtra State (Visits to Jails and Homes for Children) Project Rules 1993;
8. the State Government to appoint Visitors to visit the institution at least once every three months and submit a report to the State Committee;
9. the State Government to regularly pay honorarium to the members of the Juvenile Welfare Board and the other Boards, Duty Counsellors and social workers;
10. the State Government to provide the Juvenile Welfare Boards with facilities such as staff, telephone, typewriter, stationery, etc.;
11. posts of sweepers, watchmen, caretakers and clerks to be sanctioned wherever necessary; in case of any problem with regard to creation of permanent staff, staff on casual basis to be made available for these posts and deserted women in the locality to be given the jobs of cooks and sweepers on temporary basis;
12. power to be given to the Superintendent of the institutions to immediately suspend an erring staff member guilty of misbehaviour or misconduct;
13. to immediately initiate a departmental inquiry in case of a staff member found to have committed a serious misconduct, like



misbehaviour in drunken condition or causing physical harm to the inmates of the Homes;

14. the Competent Authority to be given the power to transfer existing staff to other Homes;
15. the State Government to ensure that all the Homes are provided with clean and proper toilets and bathrooms, repairs of toilets and bathrooms to be carried out on priority basis;
16. the kitchens in all the Homes to be provided with cooking gas facility, and adequate and nutritious food to be served to the children;
17. if an institution is unable to provide education and vocational facilities within the institution, the institution to utilise such facilities available outside the institution in that particular region, and the cost of transportation to be included in the budget;
18. the Rotary Clubs to be involved for the purpose of providing teachers to impart educational and modern vocational training, and recreation facilities for the inmates of the Homes. In this behalf the Superintendent of every Home to contact Mr. S.G. Kapadia, 135 Great Western Building, 2nd floor, 23 Meadows Street, Fort, Mumbai-400 023 who has agreed to coordinate with the local Rotary Clubs and has also assured to procure basic requirements like toothbrushes, undergarments, shoes, umbrellas, etc. for the inmates of the Homes;
19. each inmate of the Home to be provided with at least two pairs of uniforms / dresses every year;
20. children in all the Children's Homes to be taken for outings at least once in a month and for that purpose, if necessary, the concerned Rotary Club to be contacted;
21. Annual Cultural meet and Sports meet to be held for institutionalised children;





22. the income generated by the inmate of the Homes through work for gain to be apportioned in accordance with Rule 23 of the Juvenile Justice Rules;
23. the State Government to organise training programmes for the staff members of the various Homes, at least once a year, and the staff members to be permitted to attend such training programmes organised by TISS, Rotary Club, UNICEF;
24. a staff member not to be assigned two posts, e.g. that of Superintendent as well as Probation Officer;
25. the State Government to increase the amount of honorarium paid to the doctors who visit the Homes, and ensure that such services are made available at least thrice a week;
26. initial medical examination of the children to be conducted immediately or at least within 48 hours of admission to ensure segregation of juveniles suffering from any communicable diseases and immediate medical treatment be provided to sick juveniles;
27. facilities be provided for segregation within the institution of children suffering from communicable diseases; in appropriate cases such children to be transferred to Government hospitals;
28. the Superintendent or person in-charge of the Home to strictly follow Rule 26 (3) (g), (h) and (i) of the Juvenile Justice Rules in case of death of an inmate, Rule 26 (3) (a) to (f) in case of unnatural death (the State Committee to be given intimation of natural and unnatural deaths within 48 hours) and Rule 26 (2) in case of escape; in case of non-adherence of any of these rules, disciplinary action to be taken against the concerned erring officers;
29. the Superintendent to inform the State Committee of admission of mentally or physically handicapped children; these children to be admitted in special institutions established for such handicap;



30. the institution to provide for children with special needs;
31. the State Committee to make appropriate recommendations to the State Government and the concerned Homes with regards to children who are admitted to these Homes merely on account of poverty or failure in examination or child being uncontrollable, etc. and for those who have been residing in the Homes for a long time;
32. the Superintendents to ensure that the grant of Rs. 500/- per month per inmate of the Home is utilised only on food, clothing and other requirements of the inmates and not on administrative expenses;
33. the State Committee to look into the problems faced by the Homes in providing escort to the inmates who are required to be repatriated and make appropriate recommendations to the State Government in this behalf;
34. the notifications regarding appointments of the Presiding Officers of Juvenile Courts to be made by designation and not by name;
35. the State Government to establish Juvenile Courts in Bhusawal and Chalisgaon; the State Committee to make appropriate recommendations for establishment of additional Juvenile Courts;
36. the State Government to establish separate agency under the control of Juvenile Welfare Boards and Juvenile Courts for service of summons, warrants, notices;
37. the State Government to take a decision within three months regarding abolition of court-fees on applications made before Juvenile Welfare Boards and Juvenile Courts;
38. the Director General of Police to issue directions to all police stations not to appear before Juvenile Courts in uniform and not to tie juveniles with rope while bringing them to Court;



39. the State Government to establish separate juvenile cells in each district to deal with cases involving juveniles;
40. the Registrar of this Court to write to District Judges to submit to this Court within six weeks information relating to the cases pending before Juvenile Courts and the manner in which such cases can be expedited and the pendency cleared;
41. all District Judges to issue appropriate directions to the concerned Juvenile Courts to take effective steps for disposal of pending cases;
42. the District Judges every three months to check disposal of matters before Juvenile Courts and look into reasons for prolonged pendency;
43. Juvenile Courts to hold their sittings in the Observation Home and not in Courts;
44. the High Court to incorporate the subject of juvenile law in workshops held for judicial officers;
45. TISS to prepare a programme for training of Magistrates in respect of juveniles, and such programme to be incorporated in the Judge's Training Institute at Nagpur, called JOTI, and the Director of JOTI to extend co-operation in this behalf.

#### The Women's and Children's (Licensing) Act 1956

1. The Women's and Children's (Licensing) Act was enacted to provide for the licensing of institutions for women and children and for matters incidental thereto. The main object of this Act is to protect women and children from exploitation and inhuman conditions prevailing in institutions.
2. Under this Act "child" means a boy or a girl who has not completed the age of 18 years. An "institution" means an institution established and maintained for the reception, care, protection, and welfare of women or children.



3. No institution can be established or maintained without the prior permission of the licensing authority, viz. the State Government. The license contains the conditions to be complied with by the institution. The license is to be periodically renewed.
4. The license may be revoked on the institution not complying with the provisions of the Act or the license conditions. On revocation of a license, the children are restored to the custody of the parent / guardian, or are transferred to another institution. The person responsible for contravening the provisions of this Act or the licence conditions, is punishable with imprisonment or fine or both.
5. On revocation of licence, the option of changing the management of the institution and closely monitoring its functioning should be explored.

#### The Child Labour (Prohibition and Regulation) Act 1986

1. The Child Labour [Prohibition and Regulation] Act 1986 was enacted to prohibit the engagement of children in certain employments, and to regulate their conditions of work in certain other employments.
2. This Act is based on Article 24 of the Constitution under which no child below the age of 14 years is to be employed in any factory or mine or engaged in any other hazardous employment.
3. Under this Act, a child means a person who has not completed 14 years of age.
4. This Act contains a Schedule with two parts, i.e. Part A and Part B. Part A contains a list of occupations such as transport of passengers or goods or mail by railway, cinder picking, etc. Part B contains a list of processes such as bidi-making, carpet-weaving, manufacture of matches, explosives and fireworks, etc. No child is to be employed in any of the occupations and processes listed in the Schedule.



5. The Central Government has the powers to add any occupation or process to the Schedule in consultation with the Child Labour Technical Advisory Committee.
6. The government is to employ Inspectors to ensure compliance with this Act.
7. This Act contains provisions to regulate the conditions of work in those occupations or processes in which child labour can be employed, e.g. a child should not be made to work between 7.00 p.m. and 8.00 a.m., nor should a child be made to work overtime, nor should a child be made to work for a period exceeding six hours a day.
8. Any person who employs a child in any occupation or process mentioned in the Schedule or who does not comply with the provisions of this Act, is to be punished with imprisonment or fine or both.
9. Any person, police officer or Inspector may file a complaint in respect of non-compliance of the provisions of this Act before the Metropolitan Magistrate or a Magistrate of the First Class.

M.C. Mehta vs. State of Tamil Nadu [AIR 1997 S.C. 699]

This case dealt with employment of child labour in manufacturing of matches and fire-crackers at Sivakasi. On 31st December 1985 there were 221 registered match factories in Sivakasi; these factories employed 27,338 workmen of which 2,941 were children. This judgment examines the reasons for continuation of child labour despite the Child Labour (Prohibition and Regulation) Act 1986. The Supreme Court has noted the causes of child labour as mentioned by Dr. J.C. Kulshreshtra in the book 'Indian Child Labour', viz. (i) poverty, (ii) low wages of the adult, (iii) unemployment, (iv) absence of schemes for family allowance, (v) migration to urban areas, (vi) large families, (vii) children being cheaply available, (viii) non-existence of provisions for compulsory education, (ix) illiteracy and ignorance of parents, and (x) traditional attitudes.



The Supreme Court directed :-

- (a) The offending employer to pay compensation of Rs. 20,000/- for every child employed in contravention of the provisions of the Child Labour (Prohibition and Regulation) Act.
- (b) This sum to be deposited in a fund known as Child Labour Rehabilitation-cum-Welfare Fund. Such fund to be established district wise.
- (c) Inspectors appointed under the Act to secure compliance of the payment.
- (d) An adult member of the family to be provided by the State Government with a job. If State Government is unable to provide a job to an adult member of the family, the State Government to contribute Rs. 5,000/- to the Child Labour Rehabilitation-cum-Welfare Fund.
- (e) The liability of the employer does not cease even if he desires to disengage the child presently employed.
- (f) On discontinuation of employment, the child to be assured an education in a suitable institution. The Inspectors to ensure that this direction is carried out.

The Bonded Labour System (Abolition) Act 1976

1. The Bonded Labour System (Abolition) Act 1976 was enacted to provide for the abolition of the bonded labour system with a view to prevent the economic and physical exploitation of the weaker sections of the people.
2. This Act is based on Article 23 of the Constitution under which begar and other forms of forced labour is prohibited.
3. The 'bonded labour system' means the system of forced or partly forced labour under which a debtor has entered into an agreement



with the creditor in consideration of an advance or other economic consideration obtained by the debtor or his lineal descendants or ascendants, to render labour or service through himself or any member of his family for a specified period or unspecified period with nominal wages or without wages.

4. It is an offence to advance a bonded debt or compel a person to render any bonded labour under this Act. This offence is a cognizable and bailable offence. This Act abolishes the bonded labour system; any bonded debt which remains to be satisfied at the commencement of this Act is deemed to be extinguished.
5. The State Government is to appoint a District Magistrate to ensure that the provisions of this Act are complied with. The District Magistrate may appoint a subordinate officer to exercise such powers and duties. If any person is found to be enforcing the bonded labour system or any other system of forced labour, the District Magistrate or subordinate officer is to take action to eradicate the enforcement of such forced labour.
6. The State Government is required to establish Vigilance Committees in each district and its sub-divisions. The Vigilance Committee is to ensure that the provisions of this Act are complied with, to provide for economic and social rehabilitation of freed bonded labourers, to conduct a survey as to whether there is any offence of which cognizance ought to be taken, etc. The District Magistrate or any person nominated by him will be the Chairman of the Vigilance Committee.

Bandhua Mukti Morcha vs. Union of India [AIR 1984 S.C. 802]

Bandhua Mukti Morcha is an organisation that works for release of bonded labour in the country. The organisation conducted a survey of stone quarries in Faridabad district. This survey reflected that there were a large number of labourers from Maharashtra, Madhya Pradesh, Uttar



Pradesh and Rajasthan who were working in these stone quarries under 'inhuman and intolerable conditions', and many of whom were bonded labourers. The organisation addressed a letter to the Supreme Court setting out these facts; this letter was converted by the Court into a writ petition. The Court appointed Dr. Patwardhan of I.I.T. to carry out a socio-legal investigation into the matter. The investigation reflected the existence of the bonded labour system and the appalling conditions in which they worked.

- (a) The Court directed the State Governments to constitute Vigilance Committees in each district and its sub-divisions.
- (b) The District Magistrate is to take up as top priority the task of identification of bonded labour.
- (c) The State Government is to concentrate on rehabilitation of bonded labour and evolve effective programmes for this purpose. Main features of rehabilitation are as follows :-
  - (i) psychological rehabilitation;
  - (ii) physical and economic rehabilitation, including allotment of house-sites, providing of credit, facilities for acquiring new skills or developing existing skills, education of children of bonded labourers, etc.
  - (iii) integration of various Central and State sponsored schemes for a more qualitative rehabilitation; and
  - (iv) released bonded labourers to be provided with alternatives for their rehabilitation.

#### Criminal Procedure

BAILABLE OFFENCE is an offence where bail can be availed of as of right. The police are empowered to release on bail a person arrested for a bailable offence.





NON-BAILABLE OFFENCE is an offence where bail may be granted by the Court; the granting of bail is discretionary and the Court must record the reasons for granting or refusing bail.

An alleged juvenile offender produced before JJB is to be released on bail irrespective of whether the juvenile is accused of a bailable or non-bailable offence. A juvenile offender may not be released on bail if release will bring him into association with a known criminal or expose the juvenile to physical / psychological danger.

COGNIZABLE OFFENCE is an offence for which a police officer may arrest the offender without a warrant, i.e. without obtaining an order from the Magistrate. Offences committed against children under the Juvenile Justice [Care and Protection of Children] Act are cognizable offences. Examples of such offences are, cruelty to child by a person in charge or control of a juvenile, employment of a child for begging, exploitation of child employee.

NON-COGNIZABLE OFFENCE is an offence for which a police officer has no authority to arrest without a warrant. In such cases a NC complaint is recorded at the police station.

If an accused has committed two or more offences of which at least one is cognizable, the case will be treated as a cognizable case.

- ✓ A person under 16 years of age or a woman is generally to be released on bail even in case of a non-bailable offence.
- ✓ A police officer during investigation is to examine a woman or boy child under 15 years of age at her/his place of residence, and such persons should not be made to attend the police station.
- ✓ A child can give evidence as a witness if the child is capable of understanding the question, and of answering the same.



## First Information Report

First Information Report [FIR] is the first statement recorded in a police station that a cognizable offence has been committed. On lodging of FIR, the investigative machinery is set into motion.

1. A FIR may be lodged by the victim, or parent / guardian of the victim, or any other person who knows that a particular offence has been committed. A representative of a non-governmental organisation may also lodge a FIR.
2. It is preferable to lodge a FIR at the police station within whose jurisdiction the offence has been committed.
3. Oral information related to a police officer is to be recorded in writing by the police officer, read over to the informant, and signed by the informant. A copy of FIR must be given free of cost to the informant.
4. Information in writing and signed by the informant may be submitted to the police station. Acknowledgement of receipt by police station must be taken on a copy of the writing.
5. If the police officer refuses to record the information, the information must be sent in writing to the Superintendent of Police or Assistant Commissioner of Police. This writing should categorically state that the concerned police station refused to record the information. A copy of the writing must also be sent to the Commissioner of Police, Deputy Commissioner of Police and Senior Police inspector.

## Indian Penal Code 1860

Section 83 : Nothing is an offence which is done by a child under 7 years of age. Any act done by a child above 7 years of age and under 12 years is not an offence if the child is not of sufficient maturity and understanding to judge the nature and consequences of the act.



Section 292 & 293 : These sections deal with the selling, distribution, publishing or circulating of obscene material such as books, magazines, drawings, paintings, etc. The commission of such acts amount to an offence punishable with imprisonment which may extend to 3 years and fine; any subsequent convictions for the same offence is punishable with imprisonment for a term which may extend to 7 years and fine. The Indian law does not have any distinct provisions with regards to child pornography.

Section 300 : Murder is an act which causes death, and is done with the intention to cause death. Murder is punishable with death, or imprisonment for life and fine.

Section 304A : This section punishes with imprisonment for a term which may extend to 2 years or with fine or with both, the causing of death of a person by doing any rash or negligent act. The rash or negligent act must be the direct cause of death. There is no intention to cause death. For example, driving a car on the wrong side of the road and killing children playing on the pavement will be an offence punishable under this provision of law.

Section 305 : Abetment of commission of suicide of a person under 18 years of age is punishable with death or imprisonment for life or imprisonment for a term not exceeding 10 years and fine.

Abetment is the instigating of a person to commit an offence or intentionally aiding a person to commit an offence.



Section 317 : Exposure and abandonment of a child under 12 years by parent, i.e. father or mother is punishable with imprisonment which may extend to 7 years or with fine or with both.

The object of this provision is to prevent the abandonment or desertion by parents of children who are unable to care for themselves.

Section 339 & 341: Wrongful restraint is the preventing of a person from proceeding in any direction in which that person is entitled to proceed. Wrongfully restraining a person is punishable with imprisonment which may extend to 1 month or with fine or with both.

Section 340 & 342: Wrongful confinement is the preventing of a person from proceeding beyond certain limits. Wrongful confinement is punishable with imprisonment which may extend to 1 year or with fine or with both.

Section 354 : Assaulting or using criminal force upon a woman with the intention of outraging her modesty is punishable with imprisonment which may extend to 2 years or with fine or with both. In case of fondling of a girl child, this provision of law is applied. The offence is bailable and the punishment negligible.

It is necessary to distinguish between Section 354 and attempt to rape. When the accused removes his and the girl child's under-pants, and makes the girl child sit in his lap it amounts to attempt to rape and not mere outraging of modesty.



- Section 359 : Kidnapping is of two kinds, (i) kidnapping from India, and (ii) kidnapping from lawful guardianship.
- Section 361 : Kidnapping from lawful guardianship is the enticing of a male under 16 years of age, or a female under 18 years of age, or a person of unsound mind from custody of a lawful guardian without consent of guardian. This offence is punishable with imprisonment which may extend to 7 years and fine.
- The object of this provision is twofold, (i) to protect children from being abducted or seduced for improper purpose, and (ii) to protect the rights of parents and guardians having care and custody of children.
- Section 362 : Abduction is the compelling or inducing of a person by force or deceit to go from any place.
- Abduction is in relation to any person, and not only a child or minor. Force and deceit are essential to constitute an offence under this provision of law.
- Section 363A : Kidnapping or maiming a minor for purpose of begging is an offence. Kidnapping a minor for purpose of begging is punishable with imprisonment which may extend to 10 years and to fine. Maiming a minor for purpose of begging is punishable with imprisonment for life and fine. A person not being the lawful guardian of a minor who uses a minor for purpose of begging is presumed to have kidnapped the minor for purpose of begging.



"Minor" means a male under 16 years of age, and a female under 18 years of age.

"Begging" means,

- (a) asking for or receiving alms in a public place either directly or by singing, dancing, etc.,
- (b) entering private premises to ask for or receive alms,
- (c) exposing any wound, deformity, disease, etc. with the object of receiving alms, or
- (d) using a minor as an exhibit for purpose of asking for or receiving alms.

Section 366A : Inducing of a minor girl under 18 years of age to do any act that may force or seduce her to illicit intercourse with another person is punishable with imprisonment which may extend to 10 years and fine.

Section 366B : Importing a girl under 21 years of age into India from a country outside India or from Jammu and Kashmir with the intent that she may be forced or seduced to illicit intercourse with another person is punishable with imprisonment which may extend to 10 years and fine.

Section 369 : Kidnapping or abducting a child under 10 years with intention to steal from the child is an offence punishable with imprisonment which may extend to 10 years and fine.

Section 372 : Selling or hiring a person under 18 years of age for purpose of prostitution or illicit intercourse with



any person, or for any unlawful or immoral purpose is punishable with imprisonment which may extend to 10 years and fine.

Section 373 : Buying or hiring a person under 18 years of age for purpose of prostitution or illicit intercourse with any person, or for any unlawful or immoral purpose is punishable with imprisonment which may extend to 10 years and fine.

Section 374 : Unlawfully compelling a person to labour against his/her will is punishable with imprisonment which may extend to 1 year or fine or both.

Section 375 : "Rape" is committed when a man has sexual intercourse with a woman (i) against her will, (ii) without her consent, (iii) with her consent, when consent has been obtained by putting her or any person in whom she is interested in fear of death or hurt, (iv) with her consent when she believes that he is her husband, (v) with her consent, when consent was given due to unsoundness of mind or intoxication or administration of stupefying / unwholesome substance because of which she is unable to understand the nature and circumstances of her act, (vi) with or without her consent when she is under 16 years of age.

To constitute sexual intercourse, vaginal penetration is essential.

Sexual intercourse by a man with his own wife under 15 years of age amounts to rape.

Rape is an offence committed by a man upon a woman.



Rape is a non-bailable offence and is punishable with imprisonment [which in certain cases may extend to life imprisonment] and fine.

Section 376 : Punishment is more stringent if (i) rape is committed by management or staff of Remand Home or other place of custody established under law or children's institution, (ii) rape is committed upon a woman under 12 years of age, (iii) gang rape is committed.

Section 376C : Sexual intercourse not amounting to rape committed by Superintendent or manager of a Remand Home or other place of custody established under law or children's institution is punishable with imprisonment which may extend to 10 years and fine. This provision of law is attracted when the Superintendent or manager induces or seduces a woman into sexual intercourse by taking advantage of his official position.

Section 377 : Voluntarily having sexual intercourse against the order of nature with any man or woman or animal is punishable with imprisonment for life, or imprisonment which may extend to 10 years and fine.

Sodomy is punishable under this section, therefore sexual abuse of a boy child is covered by this provision of law. Anal or oral penetration is necessary to constitute an offence. Freddy Peats was sentenced to life imprisonment by the Additional Session Judge at Margao for sodomising young boys under this section of IPC.





## Torture

Torture includes physical, mental and emotional torture.

Causing hurt to a person is an offence under the Indian Penal Code and punishable with imprisonment or fine or both. "Hurt" means the causing of bodily pain, disease or infirmity. "Grievous hurt" is that hurt which causes loss of sight, hearing, limb, tooth, or disfiguration of head or face, or fracture of bone, or any hurt which endangers life or causes the sufferer to be in severe bodily pain for twenty days or prevents the person from leading a normal life.

Under the Juvenile Justice [Care and Protection of Children] Act, any person having actual charge of or control over a child, assaults, abandons, exposes or neglects the child in a manner likely to cause the child unnecessary mental or physical suffering will be punishable with imprisonment which may extend to 1 year and fine.

*Rekha M. Kholkar vs. State of Goa & Ors.* [III (1995) CCR 470 (DB)]

This case was filed by a part-time domestic helper who had been working daily since the last 8 to 9 years at the residence of Respondent Nos. 3 and 4. Rekha was interrogated by the police in connection with a theft that had taken place at the residence of her employer. Though Rekha repeatedly told the police that she had nothing to do with the theft, she was slapped, beaten and abused by the police. Rekha's skirt was removed by female police in the presence of male police in order to shame and humiliate her, and force her to confess to having committed the offence. A rope was put under and round Rekha's shoulder, and she was left hanging from the ceiling for a long while during which time the police continued to beat her. Rekha was later released. Rekha required medical treatment in a hospital.

The Court ordered compensation of Rs. 30,000/- to be paid to Rekha for the physical injuries, and mental and moral trauma caused to her on account of the illegal action on the part of the police.



## The Probation of Offenders Act 1958

1. The Probation of Offenders Act was enacted for the release of offenders on probation or after due admonition and for matters connected therewith.
2. Under this Act, Courts have been given the power to release certain offenders on probation of good conduct or on due admonition. Such orders can be passed by the Court empowered to try and sentence the offender or hear the appeal or by the High Court.
3. The Courts are required to ordinarily release a person under 21 years of age after due admonition or on probation if found to be guilty of an offence punishable with imprisonment, not being life imprisonment. This Act does not apply to offences which are punishable with death or life imprisonment.
4. The Courts have been taking recourse to the provisions of this Act in cases of young offenders to provide them with an opportunity to reform themselves. This Act is especially applied in cases where there has been no history of convictions.
5. This Act also empowers the Court to pass a supervision order, i.e. putting the offender under the supervision of a specific Probation Officer. The State Government appoints Probation Officers, but in special circumstances the Court may appoint a Probation Officer. The duties of a Probation Officer are;
  - (a) to inquire into the circumstances or home surroundings of an offender,
  - (b) to supervise probationers,
  - (c) to find suitable employment for probationers, etc.
6. The provisions of this Act read with the provisions of the Juvenile Justice [Care and Protection of Children] Act, ensures that a person under 21 years of age is not sentenced to imprisonment.



## The Immoral Traffic (Prevention) Act 1956

1. The Immoral Traffic [Prevention] Act was enacted in pursuance of the International Convention for the Suppression of the Traffic in persons and of the Exploitation of the Prostitution of Others signed at New York on the 9th day of May 1950 for the prevention of immoral trafficking. This Act replaces the Suppression of Immoral Traffic in Women and Girls Act 1956.
2. This Act is based on Article 23 of the Constitution which prohibits trafficking of human beings.
3. Under this Act, a "child" means a person who has not completed the age of 16 years.

A "minor" means a person who has completed the age of 16 years but has not completed the age of 18 years.

A "major" means a person who has completed the age of 18 years.

"Brothel" includes any house, room, conveyance or place, or any portion of any house, room, conveyance or place, which is used for purpose of sexual exploitation or abuse for the gain of another person or for the mutual gain of two or more prostitutes.

A "corrective institution" is where persons in need of correction are detained, and includes a shelter where under trials may be kept in pursuance of this Act.

A "protective home" is an institution where persons in need of care and protection are kept.

4. Prostitution is not per se an offence. This Act punishes the brothel-keeper and the procurer. A prostitute can be arrested only if she is found soliciting in a public place.
5. This Act punishes with imprisonment any person who procures or attempts to procure a child for prostitution, or any person who is



found with a child in a brothel. It shall be presumed that a child or minor found in a brothel has been detained in such place for the purpose of prostitution.

6. Punishment is more stringent in case of an offence against a child or a minor.
7. Where the person rescued is a child or minor, the Magistrate may direct the placement of the child or minor in an institution established or recognised under the Juvenile Justice [Care and Protection of Children] Act. The Magistrate is to maintain a list of experienced social workers, particularly women social-workers who may be called upon for assistance.
8. As trafficking is an inter-State offence, the Central Government is to appoint trafficking police officers for dealing with offences under this Act, and their powers extend all over India.

The State Government is to appoint Special Police Officers for dealing with offences under this Act, and they can exercise their powers only in their respective States.

1997 (4) Bom.CR 171 - The Public at Large vs. State of Maharashtra & Ors.

This petition arose due to suo moto 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 cause as to why action had not been taken under Sections 336 and 366 of the Indian Penal Code, and Sections 5 and 6 of the Suppression of Immoral Traffic in Women and Girls Act 1956.

The Court passed directions as under :-

- "(i) To frame proper Scheme so that the women including minors who are procured for sexual slavery are released from the confinement of their procurers;



- (ii) 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; and
- (iii) Considering the spread of the dreaded disease of AIDS, the state of Maharashtra is directed to frame proper scheme with the active assistance of the Municipal Corporation of Greater Bombay for carrying out HIV tests for the willing sex workers, so that the disease may not spread like a wild fire in the city."

On the basis of the directions passed by the Court, raids were carried out and about 473 minor girls and children in prostitution were rescued by the police and kept in the custody of Juvenile Homes, etc. The Respondents pointed out in their affidavit that majority of the girls had come to Bombay from neighbouring states of Karnataka, Kerala, Tamil Nadu, Andhra Pradesh, etc. and North Eastern states e.g. Assam, and countries like Nepal and Bangladesh.

The Court constituted a Committee for the rehabilitation of the rescued girls. The rescued girls were sent back to their respective States. Consensus was arrived at between the Respondents and social workers as under :-

- "a) There was unanimity on the point that the rescued girls should not be subjected to HIV test.
- b) If HIV tests have already been carried out on some of the girls, their identity should not be disclosed and they should not be informed of the result of the test.
- c) All the rescued girls must be subjected to medical examination for finding out their age and also for treatment if they are suffering from any other diseases.



- d) If the girls are found to be adult and are not covered by the Juvenile Act and if they do not desire to remain in the present institutes, they may be allowed to leave the said Homes.
- e) Rehabilitation of these girls is possible if they are segregated in groups of 10 or 15 and thereafter counselling work is done."

The Respondents were directed to evolve a long term policy so that minors are not sent to brothels by deception, fraud or misrepresentation and to provide residential accommodation to the girls rescued from brothels so that they could be rehabilitated in society after proper counselling.

The medical examination of the rescued girls revealed that 70% were HIV positive and the remaining 30% suffered from other venereal diseases.

A report was also submitted by PRAYAS, Department of Crime and Administration, Tata Institute of Social Sciences which suggested that large scale raids should not be conducted; raids on small scale should be conducted to enable better rehabilitation.

The Court directed the Committee to visit all the institutions twice a month to find out the problems faced by the rescued girls and sort out the same. The Court whilst referring to a newspaper article with regards to rehabilitation of rescued girls observed that,

'On occasions, some social workers and also Government are taking action for releasing the bonded labourers but up till now, no serious action is being taken by the Government for rescuing the bonded prostitutes who are kept in the hell on earth for no fault of theirs. May be that in some cases, poverty might have driven the parents or guardians to sell their minor girls. May be, in some other cases, they might have been lured by unscrupulous elements to come to Mumbai and fall in the trap. As per the said report, the girls are kept in a brothel and in beginning they get severe punishments from eunuchs. Teenagers are required to entertain as many as 15 to 20 men on a single day. Only



those who could entertain above 15 persons were treated well and were given incentives. If they were not in a position to entertain a certain number of persons, they were beaten and were tortured. In brothel houses they are under constant state of fear psychosis.'

The Court further observed that,

"22. No doubt in recent years both the Government of India and the State Government have been paying some attention and confronting the issue of child prostitution. However, if the number of girls who are lured into the sex trade every year is an indication the effort has not succeeded. The Directorate of Health Services, Government of Maharashtra, has recognised that in the State of Maharashtra there are about 30,000 girls in the sex trade. Most of them are in the city of Mumbai and other cities and a large number of them are children or minors.

23. Hence, the entire approach to this problem is required to be changed. We have to consider that minor girls and young women who are forcibly thrown into this trade are also daughters and sisters of someone. Apart from this, we have to consider that they are also human beings and they are required to be treated as such in a civilised society. The Government of India has set up the National Commission for Women. The National Commission has prepared a report on Societal Violence on Women & Children in Prostitution. The said report gives an insight into the problems of women working and children forced into the sex trade. Instead of keeping that report on desk, it is high time that the country takes note of the suggestions and serious steps are taken to prevent the exploitation of women, more so of young children who are victims of the economic depravation. In this Golden Jubilee year of a free and democratic India, we owe them that much."

The Court concluded by passing the following directions;



" V. Directions

32. Hence, in conclusion, we issue the following directions :-

- (1) The various directions given by the interim orders, if not complied with, should be complied with and acted upon periodically.
- (2) The Respondents-State Government to 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 women 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 a Police Officer who detects this type of activity does not take immediate action on the ground that such duty is assigned to some other Officer. In our view, this is not the proper approach because all Police Officers are bound to prevent, to take immediate action in those cases where cognisable offences are committed. It is true that they may not investigate those cases but can certainly report them to the proper officer and during such time take preventive measures. Section 107 of the Indian Penal Code provides that a "person abets the doing of a thing who intentionally aids, by any act or illegal omission, the doing of that thing."
- (3) It is high time that the State Government should take serious steps :-
  - (a) to prevent forcible pushing of women and young girls into prostitution;
  - (b) to prevent trafficking in women i.e. buying and selling of young girls.





These girls may be victims of kidnapping, they may be victims of various deprivation, they may be victims of circumstances beyond their control. For this purpose, regular raids should be carried out in the area where sex workers operate. On numerous occasions it is reported in newspapers that persons from social organisations who dare to rescue these girls are manhandled, beaten or threatened. To prevent such situation, for the time being the government must have a Squad of Police Officers who can take immediate action.

- (4) The State Government to set up an Advisory Committee, if not already set up within 4 weeks from today in terms of Direction No.2 of paragraph 15 of the Judgment of the Apex Court in the case of Vishal Jeet (supra) to comply with the objects set out therein and to further take steps to implement the suggestion made by the Advisory Committee.
- (5) To set up homes for rehabilitation of rescued sex workers including children so as to enable these rescued sex workers to acquire alternative skills in order to enable them to have alternative source of employment. It is also to be noted that when the girls were rescued, it was difficult for the State Authorities to help them. The State was not having any infrastructure to meet such a situation. It is true that in Mumbai City premises are very costly, but in the periphery of the City, the State government can certainly provide such facility, more so when it is throughout claimed that Maharashtra State is a much more industrialised, developed and civilised state. In such a State, 473 rescued girls were not properly accommodated and no steps could be taken to rehabilitate them for want of premises and they were required to be sent to their respective home States. This type of situation arises only because of lack of interest on the part of the concerned authorities in implementing the decision of the Supreme Court in the case of Vishal Jeet (Supra). If the problem is looked at



from the angle that these young girls are also daughters and sisters of someone and that they are also required to be treated as human beings, then the State authorities can easily find out a solution to the problem. During the course of hearing, we have noted that there are no adequate facilities available in the State of Maharashtra, particularly in Mumbai, where these rescued girls could be rehabilitated or kept for some period for bringing them out of the clutches of unscrupulous elements who deal in trafficking of women. Adequate training facilities are also not available and it appears that serious thought is not given to this problem by the State Government. In a civilised State, it is the duty of the State to take preventive measures to eradicate child prostitution without giving room for any complaint of culpable indifference. One should not forget that these rescued girls are also fellow human beings who require some support and treatment for getting out of the immoral activities.

- (6) Regularly carry out AIDS Awareness Programme in the areas where sex workers normally operate.
- (7) The State Government is also directed to submit periodical reports, by taking out Notices of Motion, either through the learned Advocate-General or the learned Government Pleader, stating what steps are taken pursuant to the aforesaid directions and how many girls are rescued from the clutches of middlemen, whether medical treatment is given and whether rehabilitation facilities are made available to them. Even recent newspaper reports indicate that pimps or middlemen are raising their muscle strength to prevent NGOs from receiving legally confined girls.
- (8) The State Government is further directed to place before this Court the compliance report of these directions."

Prerana vs. State of Maharashtra (Writ Petition No. 1332 of 1999  
- Bombay High Court)



This petition was filed by a non-governmental organisation working for the welfare and development of women and children who are victims of commercial sexual exploitation. This petition sought directions to the State Government in respect of Kasturba Sadan, a rescue home established by the State Government for such victims. The petition alleged that the living conditions of the inmates of Kasturba Sadan are absolutely appalling, i.e. insufficient and dirty toilets with inadequate water supply, institution housed in a dilapidated structure, no indoor or outdoor recreation facilities, no medical facilities for sick inmates, sub-standard quality of food, no professional counselling for the inmates, etc.

A Commissioner was appointed by the Court to visit Kasturba Sadan and submit a Report. The Commissioner's Report supported the contentions made by the Petitioner, and stated inter alia as under :-

'I directly went to the barracks and I noticed that both the halls were very untidy and dirty. Dirty clothes, half eaten chappatis and bits of paper were lying on the floor. Whole place was stinking and was emitting foul smell and repulsive odour. I found the place unhygienic and unhealthy for living purposes. When I inquired with the inmates as to how the place was not clean, they informed me that earlier, last week they were told to clean the place since somebody was expected to visit. They said that if the place gets dirty, they themselves clean the same. I talked to two of those 30 inmates who were brought in March 1999. One of them gave her name as 'Baby Krishna Gawda' and other gave her name as 'Razia Saiyed Aziz'. Both of them and other inmates informed me that though the food is given to them twice a day, the same is half cooked and many of them throw away the same. They informed me that the quality of the food which was given earlier was bad compared to the food which is given since last one week. The non-vegetarian food does not have any taste and they are unable to eat the same. According to the inmates the said place is very dirty and was full of mosquitoes and rats, when I checked the kitchen, I noticed that the kitchen floor was dirty. The vegetable basket contained decayed onions and other vegetables.'



The Petitioner prepared a draft scheme for the rehabilitation centre pursuant to directions issued by the Court. The Court observed that the Respondent's response to the draft scheme was lukewarm and they did not seem interested in taking any positive steps for rehabilitation of the sex workers and particularly in the context of child sex workers.

In agreement with the Respondent, the Court passed an order constituting a Monitoring and Guidance Committee under the Deputy Secretary, Woman and Child Development Department, and whose members consist of representatives of non-governmental organisations specialising in different fields. This Committee has been authorised to supervise the functioning of the rehabilitation home, to visit the home, to look into the accounts of the home to ensure that the monies are spent in accordance with the scheme, and all other things for proper implementation of the scheme and proper rehabilitation of the girls.

The Court further directed;

1. A new building to be constructed as rehabilitation centre on priority basis within a period of two years.
2. Shramik Vidyapeeth, a semi-government organisation specialised in vocational training to be engaged initially for 50 inmates on a six monthly basis to provide vocational training to the inmates.
3. Pratham to be consulted and involved in the education programme of the inmates, i.e. to guide education classes / bridge courses.
4. Committed Communities Development Trust, a trust well reputed in the field of counselling and community work to start counselling work in the home at the earliest and training of staff.
5. The Respondent to procure equipment for recreation purpose, such as ladies bicycles, board games, swings, skipping ropes, badminton facilities, books.



6. Annapurna has been appointed to provide meals and supervise the cooking, and to purchase vegetarian and non-vegetarian items.
7. CEHAT, a trust which specialises in health issues to supervise and monitor the health aspect of the home and its inmates.
8. The State Government to carry out minor essential repairs to the toilets and kitchen of the existing structure within two months, and fill up staff vacancies as expeditiously as possible and preferably within six months.
9. The Monitoring and Guidance Committee to submit a Report to the Court within three months.

#### Maintenance of Children

1. A person having sufficient means is legally bound to maintain his children who are unable to maintain themselves. The main object is to prevent vagrancy and to ensure that a child is not rendered destitute.
2. Chapter IX of the Criminal Procedure Code 1973, more particularly Section 125, deals with maintenance of children.
  - (a) A person having sufficient means is required to maintain
    - i) his legitimate or illegitimate child, whether married or not, unable to maintain itself, and
    - ii) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is by reason of any physical or mental abnormality or injury unable to maintain itself.
  - (b) A "minor" means a person who, under the provisions of the Indian Majority Act 1875 has not attained majority.
  - (c) A father is required to maintain a minor married daughter till she attains majority if her husband is unable to maintain her.



- (d) If a father fails to maintain a child, the child through a mother or guardian may file a complaint before the Magistrate's Court or the Family Court.
  - (e) Though Section 125 indicates that the maximum maintenance payable is Rs. 500/- per month, certain States have increased this upper limit.
  - (f) The maintenance awarded can be altered by the Court on proof of change in circumstances. For example, the maintenance amount will be increased if there is a substantial increase in the father's salary.
3. The Hindu Adoption and Maintenance Act 1956 deals with maintenance amongst Hindus. This Act applies to any person who is a Hindu, Buddhist, Jain and Sikh.
- (a) Under this Act, a "minor" means a person who has not completed 18 years of age.  

"Maintenance" includes provision for food, clothing, residence, education, medical treatment and reasonable expense of marriage in the case of a daughter.
  - (b) A Hindu is bound to maintain his/her legitimate and illegitimate children during his/her lifetime.
  - (c) Maintenance can be claimed for minor children. An unmarried adult daughter is eligible for maintenance if she is unable to maintain herself out of her own earnings or property.
  - (d) A petition for maintenance can be filed before the Family Court or the District Court or the High Court.
  - (e) There is no upper limit to the amount of maintenance that can be awarded by the Courts. The amount of maintenance awarded is discretionary, and depends on the status of the parties and the reasonable needs of the claimant.



4. Divorce is governed by personal laws, i.e. the religious laws. The law differs depending upon the religion professed. Upon divorce, the father or under certain personal laws both parents are bound to maintain their children. The custody of the child is generally given to the mother, but the father will be required to maintain the child. If the father fails to obey the orders of the Court, an order may be obtained directing the employer to deduct the maintenance amount at source, i.e. directly from the salary, and pay the same to the mother for maintenance of the child. The maintenance awarded by the Court depends on the income of the father. It is necessary to have proof of income, e.g. salary slip. If no proof of income can be obtained, the income will be calculated on the expected earnings of the father, i.e. the salary a man with particular qualifications is expected to draw.
5. The amount of maintenance awarded may be altered on change of circumstances.

### Adoption

In India, there is no uniform law of adoption. Adoption is governed by personal law. Presently only Hindus can take a child in adoption under the Hindu Adoption and Maintenance Act 1956. Muslims, Indian Christians, Parsis and Jews cannot take a child in adoption. Those professing these religions and desiring to take a child in adoption, can only take a child in guardianship under the Guardians and Wards Act 1860.

The Ministry of Welfare, Government of India deals with matters relating to adoption.

1. Article 44 of the Constitution of India states that, "the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India." Attempts to pass a uniform Adoption of Children Bill have failed.



2. The Guardian and Wards Act 1890 empowers the Court to appoint a guardian for the person and/or property of a minor when it is satisfied that the appointment of guardian is for the welfare of the child.
  - i. This law applies to all Indians irrespective of the religion they profess.
  - ii. Under this Act, a "minor" means a person who under the provisions of the Indian Majority Act 1875 is deemed not to have attained majority.

"Ward" means a minor for whose person and/or property a guardian is to be appointed.

"Guardian" means a person having the care of the person of a minor and/ or property of a minor.
  - iii. A guardianship application may be made by a person desirous of being appointed as guardian, any relative or friend of a minor, or the Collector of the District or other local area within which the minor resides or has property.
  - iv. The guardianship application is to be made before the Family Court or the District Court or the High Court having jurisdiction in the place where the minor resides or has property.
  - v. A guardian of the person of a minor is in charge of the custody of the minor and is to care for the minor's health, education, etc. A guardian of the property of a minor is to deal with the property of the minor as if it were his own.
  - vi. The welfare of the minor is of paramount importance. If the minor is old enough to form an intelligent preference, the Court may consider such preference.







- iii. A male Hindu who is married, can adopt with the consent of his wife. The married woman is merely a consenting party and cannot take a child in adoption.
- iv. An unmarried Hindu woman or man can take a child in adoption.
- v. The adoptive parents at the time of adoption should not have children, grand-children, or great grand-children of the same sex as that of the adopted child.
- vi. The adoptive mother and father should be at least 21 years older than the adopted child.
- vii. An adopted child has the same rights as that of a natural born child.

Lakshmi Kant Pandey vs. Union of India [AIR 1984 S.C. 469]

This petition was initiated on the basis of a letter addressed by Lakshmi Kant Pandey complaining about malpractices indulged in by social organisations and voluntary agencies engaged in the work of offering Indian children in adoption to foreign parents. The Supreme Court in this judgment laid down normative and procedural safeguards to be followed during inter-country adoptions.

1. The primary object of giving a child in adoption is the welfare of the child, therefore, great care has to be exercised in permitting the child to be given in adoption to foreign parents, lest the child be neglected or abandoned by the adoptive parents, or the child be subjected to moral or sexual abuse or forced labour, and the child be placed in a worse situation than that in his own country.
2. This judgment mainly relates to destitute or abandoned children offered for adoption, and not to children living with biological parents.
3. Every application from a foreigner desiring to adopt a child must be sponsored by a social or child welfare agency recognised or licensed by the government of the country of the adoptive foreign parents.



4. The government of India shall prepare a list of social or child welfare agencies recognised or licensed for inter-country adoption.
5. The social or child welfare agency sponsoring the adoptive foreign parent must conduct a home study through a professional worker. The home study report should contain particulars, such as personality of husband and wife, description of home, relationship with community, accommodation for the child, etc.
6. The social or child welfare agency sponsoring the adoptive parent must send to the concerned social or child welfare agency in India, progress reports in respect of the child until the adoption is effected.
7. Only social or child welfare agencies recognised or licensed by the government of India can process an application from an adoptive foreign parent. All private adoptions conducted by unauthorised individuals or agencies are prohibited.
8. This judgment spoke about the desirability of establishing a Central Adoption Resource Agency (CARA) to act as a clearing house of information in regard to children available for inter-country adoption.
9. The social or child welfare agency which is looking after the child selected by a prospective adoptive foreign parent may legitimately receive maintenance expenses from such adoptive parents, not exceeding Rs. 60/- per day. Exorbitant demands made by social or child welfare agencies under the label of maintenance charges and medical expenses is a pernicious practice requiring curtailment.
10. An application for adoption by adoptive foreign parents is to be placed before the High Court or the District Court, and the same is to be scrutinised by a Scrutinising Agency, such as the Indian Council of Child Welfare or the Indian Council for Social Welfare. Appropriate orders will be passed by the Court based on the report of the Scrutinising Agency.



11. In case the biological parents of the child being given in adoption are known, the biological parents should be properly assisted in making a decision about relinquishing the child in adoption by the social or child welfare agency or institution to which the child is being surrendered. The biological parents should be helped to understand all the implications of adoption, including adoption by a foreigner. A period of three months must be given to the biological parents to reconsider their decision. Once the decision is taken and not reconsidered, the decision to give the child in adoption is irrevocable and the procedure for adoption may commence.

The Supreme Court in *Karnataka State Council for Child Welfare & Anr. Vs. Society of Sisters of Charity St. Gerosa Convent & Ors.* [AIR 1994 SC 658] stated that before giving a child in foreign adoption, attempts should be made to find Indian parents or parents of Indian origin for the child, and if that is not possible within a reasonable time, then the question regarding adoption by foreign parents may be considered. The importance of Indian children growing up in Indian surroundings so that they retain their culture and heritage was emphasised. The Supreme Court categorically stated that the order passed in *Lakshmi Kant Pandey's* case is binding on all High Courts and any guidelines framed should conform to the principles laid down by the Supreme Court in that judgment.

#### Central Adoption Resource Agency

The Central Adoption Resource Agency [CARA] is an autonomous body established under the Ministry of Social Justice & Empowerment, Government of India. It deals with all matters concerning adoption in India. Its objective is to help both Indian and foreign agencies involved with inter-country and in-country adoption of Indian children. CARA acts as a clearing house of information with regards to children available for inter-country and in-country adoption, and to regulate, monitor and develop programmes for rehabilitation of children through adoption.



1. CARA maintains a list of all recognised foreign adoption agencies enlisted by Government of India.
2. CARA maintains a list of all recognised Indian adoption agencies.
3. CARA liaises with Indian diplomatic missions abroad in order to safeguard the interests of children of Indian origin adopted by foreign parents, against neglect, maltreatment, exploitation or abuse, and to maintain a watch over the welfare and progress of such children.
4. CARA arranges an annual meeting of Recognised Adoption Agencies, Voluntary Coordinating Agencies and Scrutinising Agencies for discussing matters of mutual interest.
5. Information on adoption and CARA, including CARA Guidelines is available on [www.adoptionindia.nic.in](http://www.adoptionindia.nic.in).

Manuel Theodore D'Souza [2000 (2) Bom.C.R. 244]

This matter was decided by the Bombay High Court with regards to adoption of a child by Indian Christian parents. The Bombay High Court whilst permitting adoption by an Indian Christian parent held that :-

1. the fundamental right to life of an orphaned, abandoned, destitute or similarly situated child includes the right to be adopted by willing parents and to have a home, a name and a nationality;
2. in the absence of any legislation setting out who can adopt, persons who have taken a child in guardianship under the Guardians and Wards Act have a right to petition the Courts to adopt the child;
3. a child may be given in adoption by way of a miscellaneous application in the Guardianship Petition by the Court having jurisdiction to pass orders on Guardianship Petitions, viz. Family Courts or District Courts or High Courts;
4. a period of 2 years must elapse from the date of order of guardianship before the Court considers the petition for adoption;



5. the legal consequences of an order of adoption will be that the personal law of the adoptive parents will be applicable to the child whose right of inheritance will be the same as that of a natural born child;
6. the adoptive parents have the right to apply and get rectified the Register of Births to show the adoptive parents as parents of the adopted child.

The effect of this judgment is that within the jurisdiction of the Bombay High Court, viz. Mumbai, Goa, and Dadra & Nagar Haveli, any person can adopt a child irrespective of the religion the adoptive family professes.

The Person with Disabilities (Equal opportunities, protection of rights and full participation) Act 1995

1. This Act was enacted to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region. This Proclamation was adopted at the meeting to launch the Asian and Pacific Decade of Disabled Persons 1993 - 2002 held at Beijing in 1992. India is a signatory to this Proclamation.
2. Under this Act, the term "disability" means blindness, low vision, leprosy-cured, hearing impairment, locomotor disability, mental retardation and mental illness. "Person with disability" means a person suffering from not less than 40% of any disability as certified by a medical authority.
3. The government is required to take appropriate steps to prevent the occurrence of disabilities. For example, screening all the children at least once a year to identify "at risk" cases, take measures for pre-natal, perinatal and post-natal care of mother and child.
4. Government and local authorities are to ensure that every child with disability has access to free education till the age of 18 years, to



promote the integration of students with disabilities in normal schools, to promote the establishment of special schools in the government and private sectors for those in need of special education, to equip special schools with appropriate facilities for vocational training.

5. The government and local authorities are required to frame and implement schemes and programmes for imparting education to children with disabilities, and also to provide aids and appliances to persons with disabilities. The government is also required to allot land at concessional rates for establishment of special schools and special recreation centres.
6. One such Scheme framed by the Ministry of Human Resource Development is the "Scheme of Integrated Education for the Disabled Children". The Scheme is to be implemented by the State Government. The main objective of this Scheme is to provide educational opportunities for disabled children in common schools, and to facilitate their retention in the school system.
7. The object of this Act is to ensure that there is no discrimination against a person with disability, and conditions are such that a person with disability is able to participate in normal activities.
8. In pursuance of the primary object of this Act, the government is required to provide for facilities such as ramps in public buildings, transportation and roads to be adapted for easy access, etc.
9. Complaints relating to deprivation of rights of persons with disabilities are to be filed before Commissioners appointed for such purpose by the State Government.

#### The Child Marriage Restraint Act 1929

1. The Child Marriage Restraint Act was enacted to restrain the solemnisation of child marriage. The object of this Act is to restrain child marriage, but it does not render a child marriage illegal or void.



2. Under this Act, a "child" means a male who has not completed 21 years of age and a female who has not completed 18 years of age. A "minor" means any person who is under 18 years of age. A "child marriage" means a marriage to which either of the contracting parties is a child.
3. The following are offences under this Act, and are punishable with imprisonment and/or fine :
  - (a) a male above 18 years of age and below 21 years of age who contracts a child marriage;
  - (b) a male above 21 years of age who contracts a child marriage;
  - (c) any person who conducts or directs a child marriage, unless such person can prove that there was reason to believe that the marriage was not a child marriage [a priest who solemnises a child marriage is liable to be punished];
  - (d) a parent or guardian who permits the solemnisation of a child marriage between minors [a woman is not punishable with imprisonment even if she has permitted the solemnisation of a child marriage].
4. The jurisdiction to try an offence under this Act is with the Metropolitan Magistrate or the Judicial Magistrate First Class. A complaint should be filed within one year of the offence having been committed.
5. The Courts also have the power to restrain by an injunction an intended child marriage from being solemnised. Any person who disobeys a restraining order shall be punishable with imprisonment or fine.





Annexure I

Case Classification

Category	Case No.
1. Child labour	7
2. Domestic child worker	
False Charges	5
Death during employment	6
Physical abuse	2, 4
Financial abuse	3
3. Children in conflict with law	21,22
4. Abuse	
Abuse in Family	1,13
Abuse in institution	12,18,19
Abuse by Police	8
Sexual abuse	14-18, 20
5. Child Marriage	11
6. Missing children	23,24
7. Children affected by HIV/AIDS	26-28
8. Admission refusal by hospitals	29,30
9. Treatment refusal by hospitals	28,30
10. Family in crisis	37



Case Classification (contd.)

Category	Case No.
11. Death	19,31
12. Repatriation	25
13. Accident	32
14. Differently abled children	34
15. Mentally challenged children	35-36
16. Guardianship	33
17. Adoption	39-41
18. Domicile	38



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