

OLD WINE IN A NEW BOTTLE? EXAMINING CHILD SEXUAL ABUSE LAWS IN INDIA

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Few images are more painful to us today than those of sexual offences committed on innocent children.¹ There is no standard definition to child sexual abuse, but according to the World Health Organization, child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or that violates the laws or social taboos of society.² The effects of such sexual offences on the child victim are horrendous, and they suffer a range of psychological and behavioural problems, often scarring their childhood, and prevent them from living normal adult lives. 'Child sexual abuse may include fondling a child's genitals, masturbation, oral-genital contact, digital penetration, and vaginal and anal intercourse.

Child sexual abuse is not only constrained to physical contact; such abuse could include non-contact abuse, such as exposure, voyeurism, and child pornography. Abuse by peers also occurs.³ Pain and tissue injury from child sexual abuse can completely heal in time, but psychological and medical consequences can persist through adulthood. Associated sexually transmitted diseases (such as HIV) and suicide attempts can be fatal.⁴ Nearly 53% of India's children have faced some form of sexual abuse.⁵ Sexual offences against children are committed in many situations and circumstances- marriage, trafficking, prostitution, employment to name a few. Child labourers are subject to sexual abuse in the hands of their employers and even customers. A considerable number of girls from economically weaker families are often forced to enter into the flesh trade so that their family can live off the earnings from the same. Children across caste and class lines are vulnerable within their families, to abuse from relatives and friends of the family.⁶ Child sexual abuse is a huge world-wide concern, and is, unsurprisingly, a pressing issue in India as well. India has a checkered history of sexual offences committed on children, and the law has evolved substantially since the first provisions on sexual offences under the penal code. Since independence, there have been many changes to the perception of child sexual abuse and the laws which attempt to

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¹Frank D. Fincham, Steven R. H. Beach, Thom Moore and Carol Diener, 'the Professional Response to Child Sexual Abuse: Whose Interests Are Served?' [July 1994] Vol. 43, No. 3, pp. 244

²WHO (2002), *World Report On Violence And Health*, p. 187

³Understanding Child Sexual Abuse: Education, Prevention and Recovery, <http://www.apa.org/pubs/info/brochures/sex-abuse.aspx>, Accessed 6th August 2012

⁴CF Johnson, 'Child Sexual Abuse', *The Lancet*, Volume 364, Issue 9432, 462

⁵Study on Child Abuse: India 2007 <http://wcd.nic.in/childabuse.pdf> (accessed on 14th August 2012)

⁶HavoviWadia, 'The sounds of silence: Child sexual abuse in India' *Info change India News and Features* (March 2011)

stamp it out.

Indian law on sexual abuse of children falls under broadly three heads. The Constitution, the standard criminal legislation i.e., the Indian Penal Code and the special legislation i.e., the Protection of Children from Sexual Offences Act, 2012. The Indian Penal Code has largely been silent on child sexual abuse and offers a broad but ambiguous umbrella to protect underage victims of certain offences such as rape. Although the Constitution recognized child rights to be on par with human rights and treated children in India to be as good as adult citizens to enforce the fundamental child rights, rights of children against abuse and exploitation was only acclaimed by virtue of the 42nd Amendment of 1976. The Protection of Children from Sexual Offences is momentous and crucial towards enforcing child rights and ensuring that they are not abused or exploited. Conversely, there are blatant grey areas around where these laws intersect which the new legislation fails to address.

It is in this context that this essay seeks to analyse various perceptions towards child rights, child-victims of sexual offences, legal provisions for protection of child-victims and an in-depth study of certain important aspects of the Protection of Children from Sexual Offences, Act 2012. It examines international law and the jurisprudence of other nations on child sexual abuse to draw arguments for reform in the Indian legislature. It concentrates on the biggest loophole which arguably amounts to a conflict of laws i.e. the age of consent for sexual offences.

COMPARISON OF JURISDICTIONS ON CHILD SEXUAL ABUSE

Child sexual abuse is well-recognized under International Law. It is a major element of child rights. 'The Charter of the United Nations was adopted on 26th June 1945. It referred to Human Rights and fundamental freedoms as one of the aims of the Organization.'⁷ The charter was pivotal in recognizing the basic rights of humans on an international level and had a significant impact on the formation of international human rights. The United Nations has also acknowledged Child Rights to be as basic as human rights and formulated the focal international charter relating the child rights- The UN convention on the Rights of the Child. The United Nations General Assembly has passed resolutions reiterating that the rights of children require special protection to ensure their development and education.⁸ Child Rights are mainly engulfed in the Convention of The Rights of the Child. The Convention of Rights of the Child is as fundamental and crucial as recognizing and enforcing human rights. If the rights and freedoms of children are not duly acknowledged, then it will have an utmost detrimental effect on the very development of the child. The Convention on the Rights of the Child was a significant development towards international

⁷Olivier De Schutter, *International Human Rights Law: Cases, Materials, Commentary*. (1st Ed., Cambridge University Press 2010) 12

⁸Durga Das Basu, *Commentary on the Constitution of India*, (8th Ed., Vol. 3, Lexis Nexis Butterworths Wadhwa, 2008) 4095

recognition of child rights. It puts an onus on member states to undertake all appropriate legislative, administrative, social and educational measures to protect the child from sexual abuse and sexual exploitation.⁹ It also provides for effective administrative mechanisms, social support, social programs and well-structured judicial involvement.¹⁰ Furthermore, it formulates measures specific to protection of children from sexual abuse by entrusting the state with the duty of formulate laws to prevent coercing a child to engage in unlawful sexual activity, sexual abuse and exploitation of children, and use of children in pornography.¹¹ Additionally, it also makes provisions for the prevention of abduction, traffic and sale of children.¹² African Charter of Rights and Welfare of the Child has also resolved to provide a basis of promotion and protection of the rights of children at national and regional levels and imposes an obligation on the State for the same.¹³

Apart from the UN, there are many international organizations which place child rights on par with human rights. The European Convention on Human Rights and the European Social Charter clearly are the most important human rights instruments adopted within the council of Europe.¹⁴ The ASEAN Intergovernmental Commission on Human Rights (AICHR) is a humble step taken by the ASEAN towards implementing and recognizing human rights in the South-East Asian region.

BRITISH LAW ON CHILD SEXUAL ABUSE: A CONSUMMATE LEGISLATION

Under British Law, there has been substantial legal development in the area of sexual offences. The Sexual Offences Act, 2003 replaced the erstwhile Sexual Offences Act, 1956. The act is hailed to be more specific and provides exclusive provisions for child sexual abuse such as causing a child to watch a sexual act, for example. The old law was described to by the government to be 'archaic, incoherent and discriminatory.'¹⁵ It makes specific provisions for child sex offences not just by any perpetrator, but specifies whether it is by a family member, someone who the child trusts, trafficking, rape, prostitution and use of children for pornographic purposes. These offences have been designated specifically to protect children from sexual abuse. Section 9¹⁶ of the Act makes sexual touch an offence even when the victim consents to such touching.

⁹Article 19 (1), *Convention on the Rights of the Child*, Adopted by the UN General Assembly on 20.11.1989, Ratified by India in December, 1992.

¹⁰*ibid* Article 19 (2)

¹¹*ibid* Article 34

¹²*ibid* Article 35

¹³See n.(8)

¹⁴See n.(7)

¹⁵Jonathan Herring, *Criminal Law: Text, Cases, and Materials* (3rd Ed., Oxford University Press, 2008) 412

¹⁶Section 9, Sexual Offences Act, 2003- a person aged 18 or over, commits an offence if (a)He intentionally touches another person (b) the touching is sexual.

¹⁷The law also recognizes that sexual abuse mostly happens when the abuser is in a position of trust with the child. The term 'position of trust' is extensively defined in Sections 22 and 23.¹⁸ The 2003 Act also created a number of offences which are designed to protect children from abuse by family members.¹⁹ This is a paramount step towards protection of the child from sexual abuse from family members, which is usually neglected. The act also has extensive provisions relating to child pornography and child prostitution. The provisions are designed to render illegal the payment for sex with a child under Section 47, or causing, inciting, controlling, arranging or facilitating child prostitution or pornography under Sections 47, 48, 49, 52 and 53 of the Act.²⁰

Most importantly, the Sexual Offences Act makes the important distinction of distinguishing between sexual offences where there is proximity in age between the perpetrator and the victim and where there is not. This principle is also shared by certain other jurisdictions like some states in the United States which will be discussed in the section on reforms.

INDIAN CONSTITUTION AND PROTECTION OF THE CHILD

The Constitution of India is often hailed for its stand on not only recognizing child rights to be on par with the fundamental rights as citizens, but also according a special status to them. Under Section 39(f)²¹, the ambit to protect the child is very wide. Children need special care and protection. In *Satyavan Kottarakara v State of Kerala*,²² it was held that any exploitation of children in any form which has a tendency to exploit them either physically, mentally or otherwise is objectionable and that the State shall direct its policy towards securing that children are given opportunities to develop in a healthy manner. In *Gaurav Jain v Union of India*, the Supreme Court recognized the fact that children of prostitutes must be treated with dignity and that no stigma should be attached to them. It also gave necessary directions for their rehabilitation.²³ In *Bachpan Bachao Andolan v Union of India*,²⁴ or more commonly known as the Children's Circus case, the court suggested that sexual harassment and sexual abuse to be made cognizable offences under the Indian Penal Code. In this case, children were forcefully detained in circuses and were denied access to their families under extreme inhuman conditions. There were instances of sexual abuse

¹⁷Jonathan Herring, *Criminal Law: Text, Cases, and Materials* (3rd Ed., Oxford University Press, 2008) 447

¹⁸*ibid* at p. 449

¹⁹*ibid* at p.450

²⁰*ibid* at p.451

²¹Article 39(f), *Constitution of India*, 1949- that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

²²AIR 1997 Ker 133

²³Durga Das Basu, *Commentary on the Constitution of India*, (8th Ed., Vol. 3, LexisNexis ButterworthsWadhwa, 2008) 4094

²⁴AIR2011SC3361

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on a daily basis, physical as well as emotional. The children were deprived of their basic human needs of food and water.²⁵ The Court also recognized the devastating statistics about commercial sexual exploitation and sexual abuse of children in India. In a further improvement regarding victims of child sexual abuse, the Bombay High Court in *Prerana v State of Maharashtra*²⁶, held that children who are being or who are likely to be grossly abused, tortured or exploited for the purpose of sexual abuse or illegal acts and they will have to be produced before the Child Welfare Committee. The state should endeavour to ensure that the tender age of children is not abused and that childhood and youth are protected from exploitation and more moral and material abandonment.²⁷ The protection and care of children is crucial towards building a welfare state.

Responsibility on the shoulders of the courts is more onerous so as to provide proper legal protection to children.²⁸ Children need to be given adequate legal representation. Although the Constitution provides for free legal aid to those who cannot access adequate legal resources²⁹, there is more often than not, a dearth of adequate legal resources to children who have been victims of sexual abuse. The policy of requiring that attorneys be appointed to represent children in protection proceedings is based on the assumption that attorneys will provide a significant benefit to allegedly abused and neglected children.³⁰ This would then justify the need to allocate funds for providing child-victims with legal representation. Decisions concerning custody or return of children to parents or guardians are central to judicial strategies for handling abused and neglected children.³¹ While determining the environment in which the abused child-victim must be placed, the best-interests and welfare of the child needs to be kept in mind. The child is most likely to be in a fragile state of mind, and his custody must be placed in the hands of such person who is interested in his best interests and well-being. Taking a leaf out of the American system of representation of child-victims, the role of the attorneys must be clearly defined for them to have a significant impact on the child-victims. The representation system needs to provide both independence and incentives for adequate time commitment.³² In addition, they can also provide effective representation.

²⁵ AIR 2011 SC 3361

²⁶ 2003 Bom CR(Cri) 481

²⁷ H.M. Seervai, *Constitutional Law of India*, (4th Ed., Vol. 2, Universal Law Publishing Co. Pvt. Ltd., 2008) 2010

²⁸ See n.(23)

²⁹ Article 39, *Constitution of India*, 1950

³⁰ Robert F Kelly, Sarah H Ramsey, *The Legal Representation of Children in Protection Proceedings: Some Empirical Findings and a Reflection on Public Policy*, Family Relations, Vol. 34, No.2 (Apr. 1985) pp. 277

³¹ *ibid* at pp. 278

³² *ibid* at pp. 282

LAWS UNDER THE INDIAN PENAL CODE AND THE PREVENTION OF SEXUAL OFFENCES AGAINST CHILDREN ACT, 2012

The penal code does not take into account the reality of many different acts of sexual violence committed on children and the range of sexual contexts according to the extent of coercion, injury, age and incapacitation of the child.³³ The Protection of Children from Sexual Offences Act, 2012 which is yet to receive the president's approval is a legislation that is also the pivotal shift between the draconian laws of the Penal Code and modern law on sexual offences and children.

The Prevention of Sexual Offences against Children Bill, 2011 delineates various kinds of sexual abuse and the prescribed response to each under the law.³⁴ It is comprehensive as it acknowledges all forms of sexual crimes. This is a great advancement over the outmoded provisions of the Indian Penal Code as it identifies with many forms of sexual abuse- penetrative and non-penetrative, homosexual and heterosexual, and verbal and physical. Thus, the state can take a clear punitive stand on any kind of sexual violation.³⁵ The concept of relationship with the child, crucial in such cases, is completely absent in the penal law, there are no separate provisions to address sexual violence committed by family, friends or those in positions of power.³⁶ Except for Section 377, the Penal law is largely silent on sexual violence on the boy child. However, the new act that has come into place addresses all forms of sexual violence on children- girls and boys included. The fact that the new act is gender neutral and gender inclusive makes it a progressive and modern legislation. The common perception in India is that only girls can be subject to sexual abuse and such abuse can only be inflicted upon a girl by a man. However, in reality, boys are equally abused sexually. The Act has to be applauded for being a harbinger of much needed administrative mechanisms in order to implement measures towards handling of child sexual abuse cases. The Act makes provisions for separate special courts and child support systems, building a strong and responsive judicial system towards sexual abuse in children. The Act is also meritorious in ensuring that judicial proceedings are done in a sensitive manner, keeping in mind the welfare of the child victim. Another important feature of the Act is the provisions with respect to speedy delivery of justice. It asks for recording evidence related to the trial within a period of thirty days and lies down that the special court takes one year at the most to dispose of a case. It is a well-documented fact that it is a terrible mental ordeal for the child to revisit the crime over and over again during the course of a trial. The Act tries to limit the exposure of the child to the criminal justice system by inserting the

³³GeetaRamaseshan, 'Law and the age of innocence', *The Hindu* (Chennai, June 19 2012)

³⁴HavoviWadia, 'The sounds of silence: Child sexual abuse in India' *Info change India News and Features* (March 2011)

³⁵*ibid*

³⁶See n.(33)

above provision.

The new law which seeks to protect children from sexual offences, reforms the law on sexual violence on children to a large extent, but however, is not free from loopholes. Even the new law is largely more comprehensive than the penal law; it has eliminated an important distinction of sexual abuse that is contact and non-contact sexual abuse rather than the verbal and physical distinction. This loophole paves way for wide misuse by perpetrators of sexual abuse. This bill is also peculiar in the sense that it puts the burden of proof of innocence on the accused rather than the state proving his guilt. Although, this is a *bona fide* provision with the intent to ensure justice to the children who have been victims of such crime, it is in violation of natural justice principles which envisage the doctrine that an accused is 'innocent until proven guilty.' The said principle of assumption of innocence of the accused forms the backbone of our criminal justice system. The additional administrative structure that the bill seeks to provide for will no doubt, add to administrative difficulties in the judiciary. This might hamper speedy justice to the child victims of sexual abuse. Further, the bill does not take into account marital rape and therefore, in such a case of marital rape, the penal law will apply. The penal code defines marital rape as a sexual offence committed on a girl below fifteen years of age, which is three years younger than the age of consent laid down in the present legislation. This has sparked off a huge debate on the age of consent. In addition, the new bill penalizes all sexual activity between two persons below 18 years of age as a sexual offence. This provision is irrational in the wake of a shooting rise in pre-marital sexual relationships in India, especially those above 16 years of age.

THE NEW LAW: RE-OPENING THE AGE OF CONSENT DEBATE

The debate surrounding the age of consent with regards to sexual offences has been raging for quite some time and is unlikely to go away soon with the recent introduction of the Protection of Children from Sexual Offences Act, 2012. The fact that the Act covers some glaring loopholes in the law (such as the inability of the law to distinguish between adult and child victims of rape) does not paper over the fact that it reopens the debate over age of consent by directly being in conflict with Section 375 of the Indian Penal Code which sets the age of consent at sixteen unlike the present legislation which puts it at eighteen.³⁷

The foundation of the law governing rape in our country seems to have been laid with the notion that the essence of the offence is force and coercion used by the perpetrator and not the lack of consent of the victim. What is important is that one looks at the philosophical foundations of why rape (and broadly allied sexual

³⁷Age factor makes bill on sexual offences controversial, *Rediff News*, May 4, 2012, available at

<http://www.rediff.com/news/report/age-factor-makes-bill-on-sexual-offences-controversial/20120504.htm> (Last visited on July 19, 2012)

offences) is criminalized. It is necessary to distinguish which rights of a person criminal law endeavours to protect to understand the role of consent in determining culpability.

The most familiar argument to justify is that a person has a right *not* to be raped. This in turn leads us to the line of thought that usage of one's sexual organs by another infringes upon the proprietary rights of the said victim. It is just 'non-consensual borrowing of sexual organs'.³⁸ Another line of thought dictates that rape is wrong because it is dehumanizing and leaps from the objectification³⁹ of a person. As the Kantian argument goes⁴⁰, it is the sheer *use* of a person as a means which makes rape wrong. While non-sexual offences such as homicide and assault can be criminalized using the same rationale the logic that Kant employs is especially true of sexual offences.⁴¹ D.A. Dripps argues it is the consent which is the philosophical cornerstone of the law which protects against rape.⁴² It is not force or coercion that makes up the wrongness of sexual offences. They are just the means that are used to negate consent. As such the law framed must be such that allows the judiciary adequate means to test the presence of consent and not the just prima facie test the ingredients which vitiate consent. In this context, the role of the legislating body in deciding the age of consent becomes especially significant because it is the sole barrier between a law which objectively tests consent on a case to case basis and a law which arbitrarily sweeps teenage consensual sex under the blanket of criminal law.

In layman terms 'age of consent' in the present context means the age at which a person is capable of consenting to sexual intercourse. Barring a few countries, the average age of consent worldwide hovers around 14-16.⁴³ One would be inclined to think that such a fact would give weight to those in favour of keeping the age of consent in sync with international standards but on the contrary the international standards argument is used to justify the raise in the age of consent. One of the arguments forwarded in favour of the change is that it is necessary to do so keeping in mind the fact that India is a signatory to the United Nations Convention on the Rights of the Child (UNCRC).⁴⁴ India being a dualist country needs explicit domestic legislation to validate her commitments in the international arena. A cursory

³⁸GA Cohen, 'Self-Ownership', *Freedom and Equality* (1995) 224

³⁹Martha Nussbaum, 'Objectification', *Philosophy and Public Affairs* 24, (1995) 249

⁴⁰Immanuel Kant, 'Lectures on Ethics', trans. Louis Infield 156 (Indianapolis, Ind.: Hackett, 1963)

⁴¹Immanuel Kant *Lectures on Ethics*, trans. Louis Infield 156 (Indianapolis, Ind.: Hackett, 1963)(According to Kant, a woman who passively allowed another to assault her sexually should have no defence as she has abetted the crime by not resisting.)

⁴²DA Dripps, 'Beyond Rape: An Essay on the Difference between the Presence of Force and the Absence of Consent' [1992], *Columbia Law Review* 92, 1780

⁴³'Age of Consent', http://en.wikipedia.org/wiki/File:Age_of_Consent_-_Global.svg (accessed on July 19, 2012)

⁴⁴'Regressive laws clashes with IPC rape laws', *The Times of India*, (April 30, 2012) http://articles.timesofindia.indiatimes.com/2012-04-30/india/31506390_1_sexual-offences-consent-penetrative(accessed on July 19, 2012)

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examination of the said Convention however shows how inadequate and fallacious this justification is. Article 1 of the said Convention clearly states that the maximum age of consent is to be eighteen but places no obligation upon the signatory nations to set the age of consent at eighteen.⁴⁵ In fact it recognizes that the signatories might have a lower age of consent and explicitly states that such domestic legislation would have precedence.

The most obvious justification is that the present law would protect minors from exploitation. This would make sense but for the fact that it introduces ambiguity with regards to the age of consent laws. Sec 375 of the Indian Penal Code, 1860 has the age of consent as sixteen while the present Act has it as eighteen. The fact that scopes of these two laws overlap is borne out by the usage of the phrase 'penetrative sexual assault' under Section 3 of the Protection of Children from Sexual Offences Act, 2012. This is quite contrary to what was claimed by the Standing Committee report⁴⁶ wherein the deletion of provision to clause 3 and clause 7 of the Act was justified. The proviso attempted to be consistent with Section 375 of the IPC. Quite clearly the rules of harmonious interpretation cannot reconcile these legislations.

Such ambiguity will lead to prolonged juristic interpretations and in any case it can do no good to achieve the objective of the Act i.e. protection of minors against sexual exploitation.

A common and often dangerous thought is to judge a law based on its enforceability (A notable example is the manner in which Section 377 of the Indian Penal Code 1860 was used more to harass than to convict people.⁴⁷) It is pertinent to note that the effect of laws are not restricted to the courts but are felt across the social spectrum affecting the way we think and interact with our fellow beings. Legislations on the age of consent not only allows direct state intervention in the lives of teenagers but also affecting struggles between teenagers, parents and state officials over teenage sexual activity.⁴⁸ It is not by the number of convictions by which we judge legislation but by the effect that it has on social interactions as a whole.⁴⁹

PROPOSALS FOR REFORM

The present legislation only adds teeth to the rampant moral policing and unreasonable

⁴⁵Convention on the Rights of the Child, 1990 <http://www2.ohchr.org/english/law/crc.htm> (accessed on July 19, 2012)

⁴⁶Clause 6.8, Standing Committee Report on Protection of Children from Sexual Offences Bill, 2011 <http://www.prsindia.org/uploads/media/Protection%20of%20children/SCR%20Protection%20of%20Children%20from%20Sexual%20Offences%20Bill%202011.pdf> (accessed on July 19, 2012)

⁴⁷'377 Quit India!' *Hard News*, <http://www.hardnewsmedia.com/2008/08/2295> (accessed on July 19, 2012)

⁴⁸Kate Sutherland, 'From Jailbird to Jailbait: Age of Consent Laws and the Construction of Teenage Sexualities', [2002-2003] 9 Wm. Mary J. Women L. 313

⁴⁹Duncan Kennedy, 'The Stakes of Law or, From Hale and Foucault', in *Sexy Dressing Etc., :Essays on the Power and Politics of Cultural Identity* (1993)

harassment that is a reality on the streets of our country today.⁵⁰ It lays down an unhealthy precedent wherein a consensual activity is arbitrarily criminalized in direct conflict with a long standing legislation on the same. Keeping some of the above mentioned points in mind that the Delhi High Court held that the Act was 'regressive'⁵¹ and 'draconian'⁵² and acquitted a youth of charges of raping a seventeen and a half year old girl from Delhi. Additional Sessions Judge Kamini Lau referred to standards across the globe for deciding such cases and expressed the need to be sensitive to social realities to decriminalize consensual teenage sex.

Criminal law should attempt to strike a balance between the protection of young persons from sexual exploitation and the right to sexual expression.⁵³ Age of consent laws such as the present legislation which fail to distinguish between two seventeen year olds engaging in sexual intercourse and a seventeen year old engaging in sexual intercourse with say a fifty year old paint a picture of a State determined normative teenage sexuality pattern. Setting the age of consent at eighteen puts India in the same bracket as Rwanda, Uganda and Peru, none of whom can be considered as liberal democracies. If courts interpret the present law literally or if status quo is maintained then the only countries that have harsher age of consent laws are countries that do not recognize age of consent at all such as Saudi Arabia and Pakistan. A possible way to reconcile the conflict in our law is to take a leaf out of the legislations of certain US states such as California.⁵⁴ California has the age of consent set at eighteen which is *prima facie* rather high but the effect is offset by the 'close-in-age' exception to the age of consent law. This exception, also called 'Romeo and Juliet' law, allows for the criminal offence to be converted into misdemeanour if the age difference between the two consenting parties is three years or less.

'Close-in-age' exceptions provide a defence against prosecution for consenting parties even though the action itself may be illegal. In some jurisdictions this exception only applies if both parties are being prosecuted or one party refuses to testify against the other. From a logical standpoint, 'close-in age' exception makes the most sense for a jurisdiction such as India where one child out of every two is sexually abused⁵⁵ because a very low age of consent law would throw the doors open for rampant abuse of the same. In a way this keeps the grey area around the minimum age of consent still grey but at least acknowledges the same and provides a way out of the proverbial maze.

⁵⁰No Let-up', *The Times of India*, (July 2, 2012) http://articles.timesofindia.indiatimes.com/2012-07-02/edit-page/32495560_1_pub-ban-dance-bars-mumbaikars (accessed on July 19, 2012)

⁵¹'The Bill to raise age of consent regressive: Court' (*Lawyer's Collective*) <http://www.lawyerscollective.org/news/177-bill-to-raise-age-for-consensual-sex-regressive-court.html> (accessed on July 19, 2012)

⁵²*ibid*

⁵³Arfan Khan, 'Comment on Sexual Offences Act 2003' [2004]68 J. Crim. L. 220 at p.226

⁵⁴California Legal Age Of Consent (Legal Age for Consensual Sex) <http://www.age-of-consent.info/states/California> (accessed on 14th August 2012)

⁵⁵See n.(5)

CONCLUSION

Child-victims of sexual offences are the most traumatized and affected victims of crime. Such horrid experiences scar them for life, and it is a grim and arduous time for them. In case of such vile crimes, the law plays an imperative role in punishing the callous offenders and ensuring protection of the child-victims. Protection of child victims engulfs many factors such as formulating a child-sensitive trial procedure, methods of investigation, mode of interrogation and punishment for the offender. This legal protection stems from international law on child rights under which such rights have been placed on par with basic human rights. Legislations all over the world and in India accord a high status to child rights based on the social belief that children would play a central role in contributing to the country in the future. The British Law on Child sexual offences is a consummate law, as it recognizes all forms of sexual abuse on children and prescribes child sensitive trial proceedings and methods of compensation. In some ways, the new Indian law on child sexual abuse is a welcome step towards enforcing child rights and protection of children from these horrendous crimes. Yet, there are many glaring setbacks in the law which cries desperately for reform, the age of consent debate being one. For the Act to be an ideal and effective child sexual abuse law, it must adhere to a more comprehensive framework on protection of child victims and perpetrators of such horrid abuse.