

PROCURATION OF MINOR GIRLS

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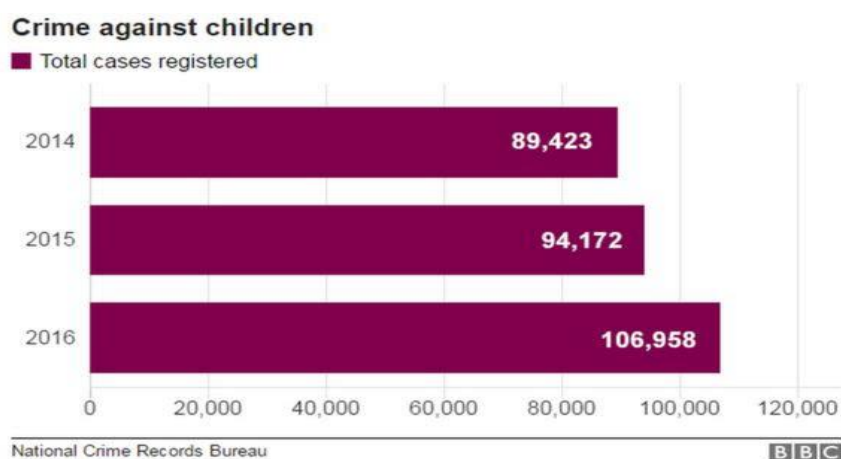
INTRODUCTION

The United Nations defines violence against women as "any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."¹

Violence against children includes all forms of violence against people under the age of 18 years. Girls are at a greater risk of sexual abuse. As children reach adolescence, peer violence and intimate partner violence, in addition to child maltreatment, becomes highly prevalent.²

In India, a child is sexually abused every 15 minutes, according to the latest government figures.³

The National Crime Records Bureau report, released on Thursday, shows a steady rise in incidents of offences against children.



¹ United Nations. Declaration on the Elimination of Violence Against Women. New York: UN, 1993.

² https://www.who.int/health-topics/violence-against-children#tab=tab_1

³ <https://www.google.com/amp/s/www.bbc.com/news/world-asia-india-42193533.amp>

According to the report on crimes in India for 2016, released by Indian Home Minister Rajnath Singh in Delhi, 106,958 cases of crimes against children were recorded in 2016.

Of these, 36,022 cases were recorded under Pocso (Protection of Children from Sexual Offences) Act.

Although both boys and girls are victims of sexual abuse, but it is seen that girls below the age of 18 years are at a greater risk of child sexual abuse than boys. 82% of all victims under 18 are female.⁴

One in 9 girls and 1 in 53 boys under the age of 18 experience sexual abuse or assault at the hands of an adult.⁵ Not only that, females ages 16-19 are 4 times more likely than the general population to be victims of rape, attempted rape, or sexual assault.⁶

STATEMENT OF PROBLEM

The following are the statement of problems that have been found in the thesis:-

- Increase in the number of cases.
- Inter-jurisdictional transfer of minor girls.
- Unawareness or lack of knowledge among the mass about the existing laws that are in force.
- Lack of available, approachable legal aid for the common people.

RESEARCH QUESTIONS

1. Why do people commit the offence of procurement of minor girls?
2. What laws have been enacted to stop this crime?
3. Is poverty a leading cause behind commission of this offence?
4. How does this crime affect the child in the long term?

⁴ Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Sexual Assault of Young Children as Reported to Law Enforcement (2000).

⁵ David Finkelhor, Anne Shattuck, Heather A. Turner, & Sherry L. Hamby, The Lifetime Prevalence of Child Sexual Abuse and Sexual Assault Assessed in Late Adolescence, 55 Journal of Adolescent Health 329, 329-333 (2014)

⁶ Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, Sex Offenses and Offenders (1997).

5. How are the statistics of this crime in the other countries?
6. How can this crime be reduced in the country?
7. Are there any leading case laws regarding this topic?

RESEARCH OBJECTIVES

1. To understand the areas that law still needs to touch.
2. To understand how these laws are helping to prevent this crime.
3. To find out if the problem can be minimised if poverty is controlled.
4. To find out if there are any long term effects of abuse on the child.
5. To study if this is a leading crime only in India or in other countries as well.
6. To find new working mechanisms to implement the laws more strictly and stringently.
7. To compare how the decision of Courts altered with the alteration of the facts of the cases.

RESEARCH METHODOLOGY

In this research paper, doctrinal research methodology has been used. Statutes, legal books, articles, conventions and conclusion of pre-existing experiments have been used as a framework of this research paper. Case laws and the practical applications of the statutes have also been highlighted.

Other than the legal aspect, the sociological aspect is also touched upon in this paper. The factors, the causes and effects of the crime and how the crime can be minimised, what role the society has in the crime and how the society needs to come together to reduce it is mentioned in the paper.

CHAPTER 1: INDIAN PENAL CODE, 1860

1.1 BACKGROUND TO SECTION 366A

In 1819, General Sir Eyre Coote, a hero of the Napoleonic wars, was caught by a housemaster at Eton in a compromising situation with one of the students. The embarrassed officer blurted: "Do you not know who I am?" to which the schoolmaster replied: "who you are I do

not care: what you are I plainly see!"

Sexual offences against children especially girl child has always been an issue across the country and also the world at large. The growth of the social reform movement during the late 19th century gave momentum to international efforts by women's rights groups, social hygiene activists, and others, to address trafficking in women and children and its role in prostitution and labour exploitation.⁷

The League of Nations, formed in 1919, quickly became the organization coordinating international efforts to study and attempt to end the practice. The work of the League in this area is considered to be one of its successes.⁸

As a step to safeguard the dignity of the girl child, in the year 1923 the legislature felt the need to make an amendment in the Penal law of the land to incorporate a few Articles of the International Convention for the Suppression of the Traffic in Women and Children, concluded at Geneva on 30 September 1921.

1.2 INTERNATIONAL CONVENTION FOR THE SUPPRESSION OF THE TRAFFIC IN WOMEN AND CHILDREN

The various relevant Articles that laid down the steps to be taken to safeguard the safety and prevent the trafficking of women and children are as follows:-

1. **Article 2:** The High Contracting Parties agree to take all measures to discover and prosecute persons who are engaged in the traffic in children of both sexes and who commit offences within the meaning of Article 1 of the Convention of May 4, 1910.
2. **Article 3:** The High Contracting Parties agree to take the necessary steps to secure punishment of attempts to commit, and, within legal limits, of acts preparatory to the commission of the offences specified in Articles 1 and 2 of the Convention of May 4, 1910.
3. **Article 6:** The High Contracting Parties agree, in case they have not already taken

⁷https://en.m.wikipedia.org/wiki/International_Convention_for_the_Suppression_of_the_Traffic_in_Women_and_Children

⁸ Kershaw, Ian (2015). To Hell and Back, Europe 1914-1949. London: Penguin. p. 249. ISBN 9780141980430.

legislative or administrative measures regarding licensing and supervision of employment agencies and offices, to prescribe such regulations as are required to ensure the protection of women and children seeking employment in another country.

4. **Article 7:** The High Contracting Parties undertake in connection with immigration and emigration to adopt such administrative and legislative measures as are required to check the traffic in women and children. In particular, they undertake to make such regulations as are required for the protection of women and children travelling on emigrant ships, not only at the points of departure and arrival, but also during the journey and to arrange for the exhibition, in railway stations and in ports, of notices warning women and children of the danger of the traffic and indicating the places where they can obtain accommodation and assistance.

1.3 SECTION 366A

The exact words of the section as mentioned and written in the Indian Penal Code, 1860 are as follows-

"Procuration of minor girl.—Whoever, by any means whatso-ever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine. "⁹

The aim of this section is to prevent immorality and it's provisions are framed more with the desire of safeguarding the public interest of morality than the chastity of one particular woman.

1.4 ELEMENTS OF SECTION 366A

The essential elements of this section are as follows:

- The accused must have **induced** a girl: this is an absolutely necessary essential that the accused have to, in order to be accusable under this section, induce a girl.

⁹ Section 366A of Indian Penal Code, 1860.

- The girl in question has to be a **minor**: In this element it is necessary that the girl in question is a minor according to the law of the land for the time being in force. In India, it is the Majority Act, 1875. In India every person domiciled in India shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before.¹⁰
- Inducement of the minor girl to **go from any place or to do any act**: There has to be some kind of inducement by the accused to make the minor girl do something or go from one place to another. Any reason given by the accused to move the girl from one place to another is sufficient for inducement. Even where she discovers that she is not being so taken and falls with the plan of the accused, the inducement is complete, and the girl's subsequent willingness will neither prevent the offence nor reduce its gravity.¹¹
- The accused did the above act with the **intent** that such girl maybe, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person: the accused must have the knowledge that such an act of forcefulness or seduction or illicit intercourse can take place with the girl. An offence under this section is only committed when a girl below eighteen years of age is induced by a person to go from any place with intention that she maybe or knowing that it is likely that she will be forced or seduced to illicit intercourse with another person.

1.5 INTERPRETATION OF THE SECTION BY VARIOUS COURTS IN DIFFERENT CASES:

- A person who induces such a girl without force or fraud to go from any place with the intention that she will have illicit intercourse with himself does not commit any offence in this section.¹²
- The expression "illicit intercourse" in this section means sexual intercourse between a man and a woman who are not husband and wife.¹³
- Merely giving shelter to a girl or taking her from one place to another without knowing that she is a married girl and without any intention or knowledge that she is

¹⁰ Section 3 of Majority Act, 1857.

¹¹ Bhagwati Prasad (1929) 30 Cr LJ 985; (1929) AIR (A) 709.

¹² Abbas Bahara (1932) 34 Cr LJ 341.

¹³ Kesar Mal (1932) 33 Cr LJ 673.

likely to be forced or seduced to illicit intercourse with another person is no offence under this section.¹⁴

- The accused took a girl of less than eighteen years of age from place to place with the intention of compelling her to marry against her will or in order that she may be forced or seduced to illicit intercourse. There was no evidence to that the girl was compelled to accompany the accused by force or by deceitful means. It was held that the accused was guilty of an offence under this section.¹⁵

CHAPTER 2: PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT, 2012

In the past few years activists, Non-Governmental Organisations (NGOs) and the central government's Ministry of Women and Child Development have actively engaged in helping break 'the conspiracy of silence' (HRW 2013) and have generated substantial political and popular momentum to address the issue. The movement, spearheaded by the Ministry of Women and Child Development, led to the enactment of new legislation called the Protection of Children from Sexual Offences (POCSO) 2012.¹⁶ The Act is quite distinctive in that it penalises abetment of or attempt to commit any of the offences listed in the preceding sections (section 16).

The most relevant provisions of the Act are as follows:

Section 16 - Abetment of an offence:

A person abets an offence, who--

First.--Instigates any person to do that offence; or

Secondly.--Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or

Thirdly.--Intentionally aids, by any act or illegal omission, the doing of that

¹⁴ Rati Ram (1927) 28 Cr LJ 584.

¹⁵ Saadat Khan (1925) 26 Cr LJ 1151.

¹⁶ <https://crimesciencejournal.biomedcentral.com/articles/10.1186/s40163-015-0037-2>

offence.

Explanation I.--A person who, by willful misrepresentation, or by willful concealment of a material fact, which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that offence.

Explanation II.--Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Explanation III.--Whoever employ, harbours, receives or transports a child, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position, vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of any offence under this Act, is said to aid the doing of that act.

According to explanation I of section 16, procurement of a minor girl not only is an offence under section 366A of the Indian Penal Code, 1860 but also under this Act. Procurement falls under the definition of abetment of an offence. The punishment for the offence is provided under section 17 of the Act.

Section 17 - Punishment for abetment:

Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence.

Explanation. -- An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid, which constitutes the abetment.

CHAPTER 3: RELATIONSHIP BETWEEN POVERTY AND PROCURATION OF MINOR GIRLS

Growing concerns about female infanticide, child rapes and institutional abuse of children led to the commissioning of the first large scale government sponsored research study to

assess the extent and nature of child abuse in India (Kacker et al. 2007). The study, based on a well-designed methodology, covered 13 states (two states from each of the six geographic zones in the country) including states with the highest through to the lowest crime rates in terms of offences against children. The sample was purposive and included 12,447 children, 2324 young adults and 2449 stakeholders representing five different evidence groups: children in the family, at the workplace, in schools, on the streets and in institutions. The study reported widespread emotional, physical, and sexual abuse prevalent in all the states surveyed. Half of sexual abuses reported were committed by “persons known to the child or in a position of trust and responsibility”. The paper summarises the findings of several studies and reports that there is regional and rural–urban variation in the rates and extent of CSA in the country. Girls are more vulnerable to sexual abuse, although boys too reported a high percentage of victimisation and are subject to greater social stigma. Finally, Carson et al. (2013) suggest that although sexual exploitation and abuse is strongly correlated to poverty, it occurs in families across the socioeconomic and religious spectrum. However, factors that facilitate CSA (child sexual abuse), such as poverty, overcrowding, extended family living arrangements, abundance of street children, and lack of recreational facilities in families (Carson et al. 2013) are by no means exclusive to India. Admittedly, their impact might be exaggerated or intensified given the population density and size in India. Thus, a complex mix of individual, ecological and situational factors that are said to facilitate CSA (Smallbone et al. 2014) might account for its prevalence in the Indian context. However, the absence of empirical research precludes definitive conclusions.¹⁷

CHAPTER 4: EFFECTS OF SEXUAL ABUSE ON CHILDREN

4.1 CONSEQUENCES OF SEXUAL ABUSE EXHIBITED IN CHILDHOOD

Neurobiological changes	Depressive symptoms
Developmental delays	Anxiety, fear, distrust of others
Anger, aggression	Maladjustment in school

¹⁷ Kacker, L., Mohsin, N., & Dixit, A. (2007). Study on child abuse: India 2007. New Delhi: Ministry of Women and Child Development, Government of India.

Sexual behaviour problems	Social isolation behaviour
Symptoms of post traumatic self disorders	Somatic problems
Dissociative symptoms	Low self esteem

4.2 CONSEQUENCES OF SEXUAL ABUSE EXHIBITED IN ADOLESCENCE^{18 19 20}

Delinquency	Alcohol and drug use
Gang involvement	Self-mutilation and self-destructive behaviour
High-risk sexual behaviour	Teen pregnancy
Suicidal thoughts or attempted suicide	Eating disorders (anorexia, bulimia)
Sexually transmitted and blood-borne infections (STBBI)	Strained relationships with family
Sexual revictimization and offences	Multiple sexual partners

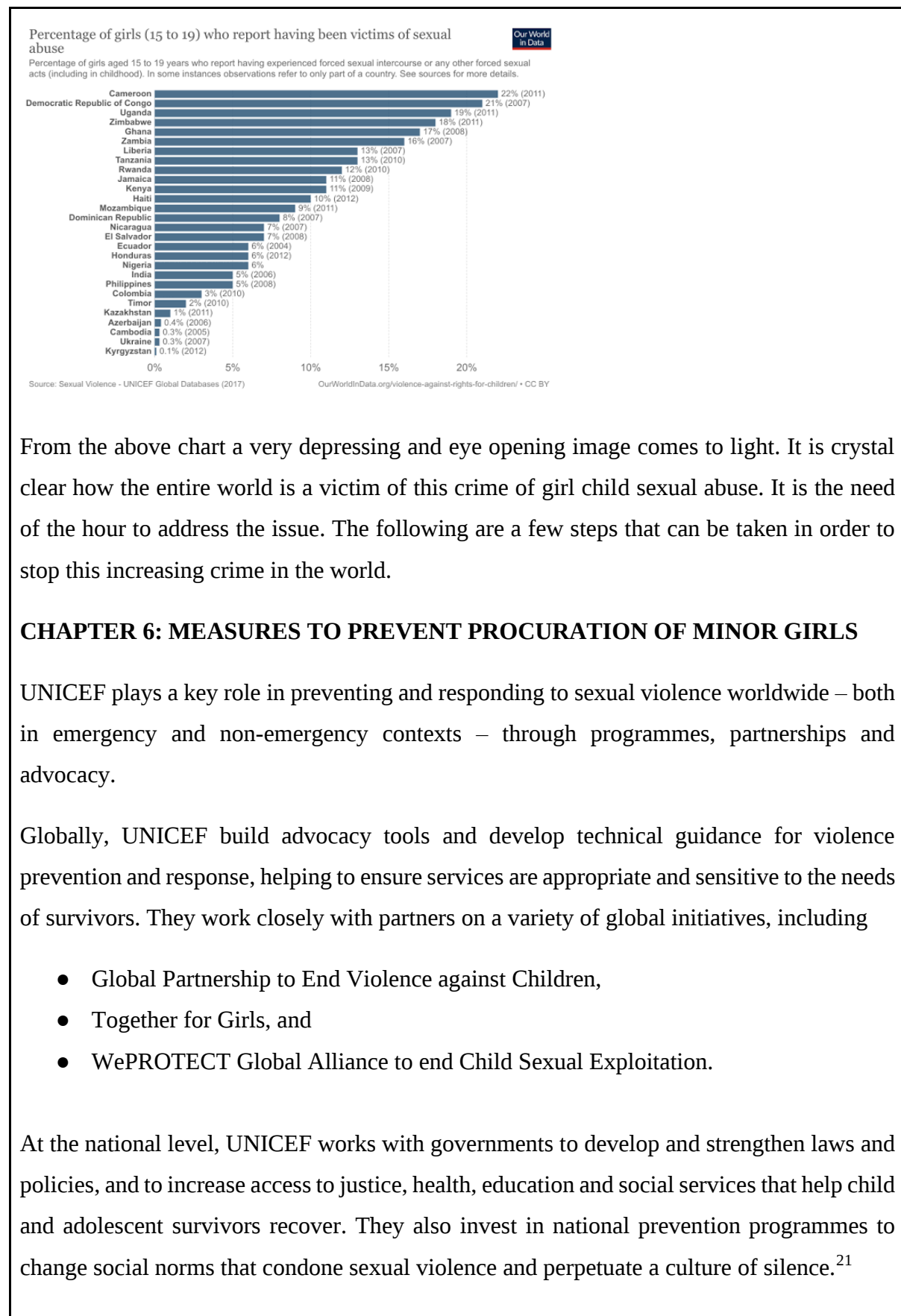
CHAPTER 5: CHILD SEXUAL ABUSE IN DIFFERENT COUNTRIES

Sexual abuse against girl child isn't a problem just in India but also in other parts of the world. Research shows that even the developed countries have a very high rate of sexual abuse among girl child. The following statistics showcases how child sexual abuse among young girls is an ongoing issue which needs to be addressed all across the globe.

¹⁸ Baril, K. and Tourigny, M. (2009). La violence sexuelle envers les enfants. In M.E. Clément and S. Dufour, eds., La violence à l'égard des enfants en milieu familial (pp. 145-160). Anjou: Éditions CEC. (Available in French only)

¹⁹ Hébert, M. (2011). Les profils et l'évaluation des enfants victimes d'agression sexuelle. In M. Hébert, M. Cyr, and M. Tourigny, eds., L'agression sexuelle envers les enfants Tome 1 (pp. 149-204). Québec: Presses de l'Université du Québec. (Available in French only)

²⁰ Wolfe, V.V. (2007). Child sexual abuse. In E.J. Mash and R.A. Barkley, eds., Assessment of Childhood Disorders (4th ed.) (pp. 685-748), New York: Guilford Press.



From the above chart a very depressing and eye opening image comes to light. It is crystal clear how the entire world is a victim of this crime of girl child sexual abuse. It is the need of the hour to address the issue. The following are a few steps that can be taken in order to stop this increasing crime in the world.

CHAPTER 6: MEASURES TO PREVENT PROCURATION OF MINOR GIRLS

UNICEF plays a key role in preventing and responding to sexual violence worldwide – both in emergency and non-emergency contexts – through programmes, partnerships and advocacy.

Globally, UNICEF build advocacy tools and develop technical guidance for violence prevention and response, helping to ensure services are appropriate and sensitive to the needs of survivors. They work closely with partners on a variety of global initiatives, including

- Global Partnership to End Violence against Children,
- Together for Girls, and
- WePROTECT Global Alliance to end Child Sexual Exploitation.

At the national level, UNICEF works with governments to develop and strengthen laws and policies, and to increase access to justice, health, education and social services that help child and adolescent survivors recover. They also invest in national prevention programmes to change social norms that condone sexual violence and perpetuate a culture of silence.²¹

²¹ <https://www.unicef.org/protection/sexual-violence-against-children>

The role of parents

The stigma associated with sex education leads to parents not educating children about sexual advances or threats, which could protect them from abuse. The Western model addresses this through the concept of “bad touch” which is unacceptable. This relieves the taboo-driven secrecy behind sexuality, and therefore also mitigates child sex abuse to a large extent. It also teaches children how their sexuality works, so that they don’t unknowingly harass others. This communication must be constant, friendly, and frank.

Lobby for stronger legislation

The Supreme Court has recently asked for “harsher” punishment for child sexual abuse, molestation and rape. Considering that children as young as two years old are sexual abuse victims today, it is time to redefine the term ‘child’.

Until 2012, the Goa Children’s Act, 2003 provided an incomplete and weak child abuse legislation before the 2012 Act, which addressed various kinds of offences, even including those who abet child sexual abuse, an offence. It also added procedural reforms.²²

CHAPTER 7: SUGGESTIONS AND CONCLUSION

From the above discussion on procurement of minor girls it is clearly evident how the problem of abetment is one of the leading issues in the field of child sexual offences. Although there are laws to prevent the commission of this crime and punish the criminal and also a number of governmental measures have been taken to control it but there is still a long path to traverse before we reach a world free from child sexual offences. The laws need to be enforced more stringently and the mentality of the people have to change. To bring about a change in the world it is necessary to educate the youth about what is right and what is not. It is the youth of today which grows up to become the future of mankind tomorrow. For the legal machinery to work efficiently it is necessary that people not only from the legal sphere but from all spheres of life come together and work hand in hand. It is we who need to sow the seeds of conscience and morality on the minds of children today to reap its benefits in the long run.

²²<https://www.google.com/amp/s/www.savethechildren.in/news/how-to-prevent-child-sexual-abuse-in-india/>

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