

CHAPTER II

HISTORICAL PERSPECTIVE OF CHILD SEXUAL ABUSE AND GLOBAL CONSENSUS

*“I continue to believe that if children are given the necessary tools to succeed, they will
succeed beyond their wildest dreams!”*

— David Vitter¹

Child sexual abuse is not a problem faced solely by the modern society because it is a problem which has been rooted in the society from the historical age. Child sexual abuse is not specific to only one or two nations of the world but is a major problem experienced by almost all the countries around the globe from time immemorial till date.² Sexual violence is a worldwide phenomenon that causes great harm and if the said offence is committed against a minor or child, irrespective of gender, it becomes more drastic and the effects are worst. When we speak about child rights, it is imperative to discuss certain forms of abuses and exploitation of children out of which, child sexual abuse is noteworthy. Hence, the researcher thought it essential to explore the historical imprints of child sexual abuse and the effort of international community to recognize the problem as a global problem and the measures adopted to minimize or rather curtail the same.

2.1. Historical Imprints and Changing Perspective on Sexual Abuse of Children across the Globe:

Child sexual abuse is not a new concept and it has a long history. In the ancient civilization children were recognized as the property of their parents and more specifically

¹David Vitter, Former U.S. Senator

² P.K. Pandey, *Human Rights*, (APH Publishing Corporation, New Delhi, 1st edn., 2012).

the father, who had complete control and autonomy over their children.³ In the State of Rome from 1st century B.C to 235 A.D the senior most male members of a family had complete control over children of the household to such an extent that, they could even decide, whether a child should be kept alive or killed or sold out for purpose of slavery or left abandoned.⁴

Again, as per Babylonian law of the Babylonian Dynasty, '*disobedient children are severely punished. For example, if an adopted child someday replies to his parents that he do not recognize them as his father or mother, the child would be punished by cutting his/her tongue.*'⁵

We find instances of child abuse when we go through the literature namely, *The Code of Hammurabi*, which was created by '*Hammurabi*' the king of Babylon in the 18th century B.C. The code stated that, children are protected above proprietary rights. Under the said law; offences like kidnapping of children were severely punished.⁶

The children's suffered from various form of abuse including sexual abuse since 15th and the 16th century which is evident from the available literature on households of Europe, where we find that the children were treated as sexual plaything by the adults of the elite households. One such example is when General Sir Eyre Coote, in 1819 was caught at Eton by a housemaster while compromising with one of the students. Prince regent stripped the general of his knighthood due to such act.⁷

³ J. E. Martin, "Incest and Child Sexual Abuse". 13 *Journal Of Holistic Nurshing* 134 (1995).

⁴ *Ibid* at 135.

⁵ Barry M. Coldey, "The Sexual Abuse Of Children: The Historical Perspective", 85 *Studies: An Irish Quarterly Review* 370-380 (1996).

⁶ *Ibid*.

⁷ Loveleen Kacker, *Child hood betrayed: Child abuse and neglect in India*, 187 (Harper Collins, Lucknow, 1st edn. 2015).

In 1880 in Vienna, there were stories about child sexual abuse, which were heard by Sigmund Freud a Austrian neurologist and founder of psychoanalysis⁸ from his female client.⁹ Freud was perplexed to accept such incidents as reality and did not realize that child sexual abuse was a common feature in the middle class families of the society. However, when he realized the truth, he was deeply moved by the suffering of his women patients.

Similar instances are found among the Americans because between the periods of 1790 to 1876, among the total number of rape cases registered in New York itself one third of the rape victims were minor that is less than 19 years.¹⁰ In the entire America among the cases of sexual violence the cases of child sexual violence was 76 percent.¹¹ A well-known historian ‘Lunn Sacco’ stated that more than 500 newspaper that were in circulation in America, published reports of father daughter incest within 1817 & 1899 A.D. Again, a text book namely, “*A System Of Legal Medicine*” published in the year 1894 reported that, “*rape of children is the most frequent form of sexual crime committed in the society*”¹²

However, people rarely believed cases of child sexual abuse and were least interested. But, gradually, concern over child sexual abuse increased in the post Civil War period *i.e*; after 1865 in the post Progressive era *i.e*; 1920 and more significantly after the 2nd World War *i.e* 1945.¹³

In the post civil war period and during the progressive era *i.e*; in the early 20th Century mass immigration, divorce, child labour & juvenile delinquency was in its peak,

⁸ G.K. Behlem, *Child Abuse And Moral Reform In England* 225 (Stanford University Press, California, 1st edn., 1982).

⁹ J. E. Martin, “Incest and Child Sexual Abuse”. 13 *Journal Of Holistic Nurshing* 134 (1995).

¹⁰ *ibid*.

¹¹ S. Kumar & P. Bali, Child Sexual Abuse India: Legislative and Judicial Response. 18 *Naya Deep: The Official Journal Of NALSA* 2 (2017).

¹² *ibid*

¹³ *Ibid*.

which also resulted in high rise of cases of child sexual assault in the said period. Another significant reason for the increase in the number of cases of sexual abuse of children was new concept of single parenthood and working mother concept that evolved during the period.¹⁴

In America until 1930, 30 percent of the registered rape cases of minor were settled by taking recourse to marriage or any other mode of financial payment to the victim rather than severe punishment like imprisonment and death sentence to the offender.¹⁵

It is in the 20th century that a number of attempts had been made to understand the sexual abuse of children. Few theories like; young people's psychological development and the embrance of Freudian notion of the sexual child had resulted in better understanding of cases of child sexual abuse.¹⁶ However, it was not unanimously accepted by the experts that sexual abuse had lasting and scary effects upon the victim child.¹⁷

Until first half of the 18th century, children were seen as the cattle of their father. Thus, rape of a minor girl, was not considered to be a serious offence rather it was presumed to be the theft of a girls virginity that could be rectified by making payment in the form of compensation to the victim girl father.¹⁸

Prevalence of the concept of child sexual abuse was quiet limited in the 18th century and hence, only a few offences related to child sexual abuse were recognized in Australia that too in the last part of 18th and beginning of the 19th century. The recognized

¹⁴ Muhammad Faiz A.U, *Sexual offences against children and its methods to eradicate it*, (2019) (Research paper, ICSSR Sponsored National Seminar on Child rights in India: Issue and challenges).

¹⁵ *Ibid.*

¹⁶ Deborah A. Connolly and J. Don Read, "Remembering Historical Child Sexual Abuse" 47 *Criminal Law Quarterly* 438-480(2003)

¹⁷ Nuzhat Parveen Khan, *Child Rights and the Law*, 321 (Universal Law Publishing, Haryana, 2nd edn., 2012)

¹⁸ *Ibid.*

forms of sexual offences were sodomy of boys and forcible rape of girl child under the age of 10 years.¹⁹

In the 19th century, the Victorian conservatism and moral Puritanism emphasized the importance of protecting children from all types of abuse including sexual abuse from others. During that period few educators encouraged parents to keep supervision of their child and to ensure that they were never naked in front of others irrespective of their age.²⁰

2.2. Recognition of Child Rights as a Part of Human Rights against Various Forms of Abuse and Exploitation:

Mankind owes to the child the best that it has to give. Recognition by the world community of the priority to be accorded to children goes back to the earliest declarations of human rights.

“To look into some aspects of the future, we do not need projections by super-computers. Much of the next millennium can be seen in how we care for our children today. Tomorrow’s world may be influenced by science and technology but more than anything, it is already taking shape in the bodies and minds of our children.”²¹

The earliest concern of any world body for the protection of children was of the International Labour Organization (hereinafter ILO). In one of the earliest Convention²² in 1919, the ILO prescribed minimum age of employment in any industrial undertakings to be fourteen years. It also legislated another Convention²³ prohibiting children and young person below the age of 18 years to be employed during night shifts. Apart from these two

¹⁹ *Ibid.*

²⁰ *Supra* note 17

²¹ Kofi A. Annan, Secretary general of the United Nations, 1999

²² V.L. Moni and S.K. Chaturvedi, “Child prostitution, Indian context” in P.K. Pandey(eds) '*Children's Rights*' Regal Publications, New Delhi.

²³ *Ibid.*

conventions there were many more conventions legislated by the ILO which were primarily concerned with minimum age fixation for employment, prohibition of employment in night shifts and medical examination of the child workers.²⁴

2.2.1. International Laws: International Conventions and Treaties Declaring Child Rights against Abuse including sexual abuse:

Child rights have been recognized in the international platform since the beginning of the 20th century.²⁵ The first step took place when, it was recognized that every individual including children have certain basic rights which are to be protected by every nation subject to the international human rights law.²⁶ It was a land mark step and since then the United Nation (UNO) had played active role in giving due importance to children rights by every member nation to the United Nations. As a result of such consciousness series of discussion took place in the international platform and the fruit of such discussion were the number of international conventions and instruments which got their birth in order to protect the children from various types of inhuman acts. These conventions and instrument have contributed considerably towards the issues of child rights in general and child abuse in particular.

Among the many international conventions declaring rights of child, there are a few provisions which specifically deal with rights of child against various types of abuse. A few of the important international conventions and treaties which specifically deal with rights of child against various types of abuse are discussed below:

²⁴ Nirmal Kanti Chakrabarti, M.K. Nag, *et.al.* (eds.), *Law and Child 03* (R. Cambray & Co. Pvt. Ltd., Kolkata, 2004)

²⁵ D. Finkelhor & Jill Korbin, "Child Abuse as an International Issue" 12 *Child Abuse & Neglect* 03 (1988)

²⁶ Asian Centre for Human Rights, *Report on Status of Children in India: A Submission to the UN Committee on the Rights of the Child*, (October, 2003)

A) Geneva Declaration of the Rights of child, 1924(GDROC)-

The Geneva Declaration is itself a landmark in the history of development of child rights because it was the first international document which was solely drafted and accepted by the international community for giving recognition to child rights. The member states promised to incorporate the principles adopted in this declaration in their respective municipal laws for the protection of rights of the child. This declaration emphasised mainly on four key rights related to child namely, right to development, assistance, relief and protection. It clearly states that the child must be protected against every form of exploitation.²⁷ Widely interpreting the term exploitation would also include sexual exploitation or sexual abuse.

B) Universal Declaration Of Human Rights, 1948(UDHR)²⁸-

The Universal Declaration of Human Rights, adopted by the General Assembly of the then recently established United Nations in 1948 stress that “*All human being are born free and equal in dignity and rights...*”. The Universal Declaration while upholding ‘everyone’s rights’, in addition confirmed that motherhood and childhood are to special care and protection, and promoted the family as the natural and fundamental group unit of society.

Also in 1948 the General Assembly adopted its first brief seven point Declaration of the Rights of the Child building on the 1924 Declaration. The UDHR is a sacred document for the entire human civilisation around the globe because it was the first international document which brought a list of different categories of rights and freedoms such as right to life, liberty, equality, protection etc. under one single umbrella of human rights. One important

²⁷ N.P. Khan, *Child Rights and the Law*. 110 (Universal Law Publishing, Haryana, 1st edn., 2012)

²⁸ Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948

aspects of this declaration was that children were recognised at par with the adult and hence the rights given to the adults were also made applicable to the children. Again, special rights of child were first enunciated in the UDHR under Article 25(2) which stated that motherhood and childhood are entitled to special care and assistance and every child shall enjoy the same social protection as that of the elderly people.²⁹

C) The Convention for the suppression of the Traffic in persons and of the Exploitation or the Prostitution of Others, 1949³⁰ -

This convention was called upon with the primary object to suppress trafficking of persons and exploitation or prostitution specially of women and children. As per Article 1 of the convention, the state parties those have signed and ratified this instrument shall agree to punish those persons who procures or leads away another person for the purpose of prostitution. It is immaterial whether the person was procured with or without his/her consent. Article 2 provides that the member states shall punish all those persons who is found to keep or manages or finances a brothel or rent a building or any other place for prostitution. Article 3 and 4 states that attempts to commit any of the above offence and international participation of a person shall also be punished in the domestic courts. Further, Article 16 emphasises on measures for prevention of prostitution and rehabilitation of victim of prostitution which also include child victim. Article 20 cast duty upon the member states to the convention to take suitable measures so that employment agencies employing

²⁹ Loveleen Kacker, *Child hood betrayed: Child abuse and neglect in India*, 187 (Harper Collins, Lucknow, 1st edn. 2015).

³⁰ Approved by General Assembly resolution 317 (IV) of 2nd December 1949 Entry into force: 25 July 1951.

women and child can be supervised in such a manner that the women and child who seek employment will not be exposed to the danger of prostitution.

D) United Nations declaration on the Rights of child, 1959(UNDRC)³¹-

Ten years later after the UDHR, the 1959 Declaration of the Rights of child was adopted retaining some of the earlier language and adding detail. This declaration was drafted by the United Nations Commission on Human Rights and adopted by the General Assembly of the United Nations on 20th November, 1959. Principle 1 of the declaration states that every child shall have equal rights irrespective of his race, colour, sex, religion etc...³² Principle 2 is a directory provision whereby the member states are directed to enact legislation to give special protection to the children and provide opportunity by law for his/her overall development.³³ Principle 8 is supplementary to Principle 2 because it states that protection and relief of child should be given highest preference in comparison to others. Principle 9 of the declaration states that it is the responsibility of the states to make suitable provisions so that every child is well protect against all forms of neglect, cruelty and exploitation and will not be subject to traffic in any form.³⁴ Thus, these principles clearly indicate that the United Nation had well recognised the problem of child sexual abuse along with other form of exploitation. However, the problem with this document was that it was a non-binding resolution of the United Nation and hence it was directory rather than mandatory for the state parties.

³¹ On 20 November 1959, the Declaration of the Rights of the Child was adopted unanimously by all 78 Member States of the United Nations General Assembly in Resolution 1386 (XIV).

³² N.P. Khan, *Child Rights and the Law*. 110 (Universal Law Publishing, Haryana, 1st edn., 2012)

³³ *Ibid.*

³⁴ P. B. Behere, "Sexual abuse in women with special reference to children: Barriers, boundaries and beyond" 55 *Indian J Psychiatry*. 332 (2013)

E) United Nations Convention on the Rights of child, 1989(UNCRC)³⁵-

It was not until 1989 that the global community adopted the UNCRC, making it the first international legally binding document concerning child rights. The Convention on the Rights of the Child(CRC) drafted by the UN Commission on Human Rights and adopted by the General Assembly of the United Nation on November 20, 1989 is a set of international standards and measures meant for protecting and promoting the well being of children in society. The convention consists of 54 articles covering all four major categories of child rights: Right to life, Right to development, Right to protection, and Right to participation. It came into force on the 2nd September 1990. In 1993 , 159 countries either signed the convention or became state parties to it by ratification, accession or succession, the goal being that by the end of 1995 all countries of the world would have ratified the convention.

The initiative to create a body of rights for children came from the draft document submitted by the Government of Poland to the Commission on human rights in 1978. A decade was spent drafting the Convention by an alliance of a number of small NGOs including Radda Barnen of Sweden, the International Child Catholic Bureau, and Defense for Children International, and United Nations human rights experts.³⁶ Today the convention has been ratified by 192 countries becoming the most ratified among all international Human Rights treaties. India signed and ratified the convention in 1992. The Convention defines a 'child'³⁷ as a person below the age of 18, unless the laws of a particular country set the legal age for

³⁵ Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990.

³⁶ United Nation Convention Of Child Rights 1989, available at: <http://www.childlineindia.org.in/united-nations-convention-on-the-rights-of-the-child.htm> (Visited on September 18, 2018)

³⁷ Article 1, Convention on the Rights of child, 1989

adulthood younger. The CRC recognizes the exceptional vulnerability of children and proclaims that childhood is entitled to special care and assistance. It is guided by the principle of “1st call for children”, the principle that the essential needs of children should be given highest priority in the allocation of resources at all times. It obligates the state to respect and ensure that children get fair and equitable deal in society. It lays emphasis on the importance of family and the need to create an environment that it is conducive to the healthy growth and development of children. It also, advocates concerted public action by all individuals and agencies, government and non-government, to promote the rights of child. The CRC in a sense is an instrument of empowering children and creating an environment in which all children are able to live securely and realise their full potential in life. In addition to these the specific rights declared in this convention for the protection of child from different forms of abuse are as follows:

- Article 4 states that the Governments have a responsibility to take all available measures to make sure children’s rights are respected, protected and fulfilled. Governments are obliged to take all necessary steps to ensure that the minimum standards set by the Convention in these areas are being met.
- Article 11 imposes duty on Governments. It states that government should take steps to stop children being taken out of their own country illegally. This article is particularly concerned with parental abductions. The Convention’s Optional Protocol on the sale of children, child prostitution and child pornography has a provision that concerns abduction for financial gain.
- Article 19 provides for Protection from all forms of violence. Children have the right to be protected from being hurt and mistreated,

physically or mentally. Governments should ensure that children are properly cared for and protect them from violence, abuse and neglect by their parents, or anyone else who looks after them.

- Articles 34 instruct the government to protect children from all forms of sexual exploitation and sexual abuse. For these purposes, state parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
 - i) The inducement or coercion of a child to engage in any unlawful sexual activity
 - ii) The exploitative use of children in prostitution or other unlawful sexual practices
 - iii) The exploitative use of children in pornographic performances and materials.
- Article 35 puts a ban on abduction, selling or trafficking of child. This provision in the Convention is augmented by the Optional Protocol on the sale of children, child prostitution and child pornography.
- Article 36 states that Children should be protected from any activity that takes advantage of them or could harm their welfare and development that is any form of exploitation.
- Article 39 speaks about rehabilitation of child victims. Children who have been neglected, abused or exploited should receive special help to physically and psychologically recover and reintegrate into society. Particular attention should be paid to restoring the health, self-respect and dignity of the child.

- Articles 43-54- These articles discuss how governments and international organizations like UNICEF should work to ensure children are protected in their rights.

F) International Convention Concerning the Prohibition and Immediate Action for the Elimination Of the Worst form Of Child Labour, 1999³⁸-

This was an ILO Convention which was adopted on June, 1999. This convention defines worst form of child labour and includes a ban on forced and compulsory recruitment of child soldiers. The term “*worst forms of child labour*”³⁹ is defined as and includes the following practices of child exploitation, which can be brought under the definition of child sexual abuse:

- (a) The use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (b) Work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.

G) Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 2000(OPSC)⁴⁰-

The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, 2000 is one among the two protocols supplementary to the Convention on the Rights of Child. This protocol gives special emphasis on

³⁸ The General Conference of the International Labour Organization, Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 87th Session on 1 June 1999

³⁹ Article 3, International convention concerning the prohibition and immediate action for the elimination of the worst form of child labour, 1991.

⁴⁰ Adopted and opened for signature, ratification and accession by General Assembly resolution A/RES/54/263 of 25 May 2000 entered into force on 18 January 2002

crimes like sale of child, use of child for prostitution and pornographic purposes. It had criminalized not only the act of accomplishment of such crime but also attempting to commit such crime. Further, it states that every member nation should enact suitable legislations for protecting child victim and to give compensation to the victim to the extent possible. Article 10 is a direction to the member state parties to take steps to strengthen international cooperation in order to prevent, detect and punish offences like child prostitution, child sex tourism etc.⁴¹ Articles 34⁴² and 35⁴³ of the Convention on the Rights of the Child say that governments should protect children from all forms of sexual exploitation and abuse and take all measures possible to ensure that they are not abducted, sold or trafficked. The OPSC supplements the Convention by providing States with detailed requirements to end the

⁴¹ Article 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

⁴² Article 34 States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

⁴³ Article 35 States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

sexual exploitation and abuse of children.⁴⁴ It also protects children from being sold for non-sexual purposes—such as other forms of forced labour, illegal adoption and organ donation.

The Protocol provides definitions for the offences of ‘sale of children’, ‘child prostitution’ and ‘child pornography’.⁴⁵ It also creates obligations on governments to criminalize and punish the activities related to these offences. It requires punishment not only for those offering or delivering children for the purposes of sexual exploitation, transfer of organs or children for profit or forced labour, but also for anyone accepting the child for these activities.

The Protocol also protects the rights and interests of child victims. Governments must provide legal and other support services to child victims. This obligation includes considering the best interests of the child in any interactions with the criminal justice system. Children must also be supported with necessary medical, psychological, logistical and financial support to aid their rehabilitation and reintegration. As a complement to the Convention on the Rights of the Child, interpretation of the Optional Protocol’s text must always be guided by the principles of non-discrimination, best interests of the child and child participation.

⁴⁴ S.K.Chatterjee, *Offences against children and juvenile offences* 271 (Central Law Publication, Allahabad, 2nd edn., 2016).

⁴⁵ Article 2 For the purpose of the present Protocol: (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration; (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration; (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

2.2.2. Role of International Agencies in Promoting Child Rights and Preventing Child Abuse:

A) United Nations Children's Fund (UNICEF):

UNICEF was a creation of the United Nation General Assembly in the year 1946 on the basis of the Convention on Rights of Child(CRC). The primary object behind creation of this agency was to give emergency health and food services to the children in those countries which were devastated and ruined by the 2nd world war. However, with the passage of time it became a permanent body of the UN and started to work for overall development of children all over the world, among which protection of children from different forms of abuse is a key activity of the organization. Presently, UNICEF is operating in 190 countries for the greater interest of protecting the children from exploitation and abuse.⁴⁶

UNICEF works with other agencies both government and non-government around the globe especially in developing countries like India to fight against sexual violence and exploitation of children. They work together in order to create awareness about child sexual abuse in the educational and social institutions. They also provide for comprehensive services to child victims. The key initiative of UNICEF for the battle against sexual abuse can be highlighted under the following points:

- ✓ Spread awareness about the cause and effects of child sexual abuse
- ✓ Fight for the rights of child in general
- ✓ Economic support to vulnerable households
- ✓ Help to overcome illiteracy

As per the survey conducted by UNICEF on 2014 millions of children's are exploited sexually through prostitution and pornography each year. The survey report also highlighted that most of the cases of sexual abuse go

⁴⁶ Nuzhat Parveen Khan, *Child Rights and the Law*, (Universal Law Publishing, Haryana, 2nd edn., 2012)

unreported due to fear, shame or lack of confidence in the enforcement machinery of the government. Till date UNICEF has trained more than 300 professionals as multipliers and 3000 lay men as community members for helping the government agencies' in various states to take measures in order to protect children from sexual abuse.

B) International Labour Organization (ILO):

ILO was founded in the year 1919 to achieve the object of social justice after the 1st world war. From the date of its inception, ILO had been working for the rights & welfare of the labour class, which include protection of human rights of child worker along with adult. The organisation is motivated to eradicate the exploitation that the children suffer as child labour around the globe. The ILO had taken special care to address the problem of worst form of child labour that also include sexual abuse or exploitation of the child workers. The organization had stated that commercial sexual exploitation in children is one of the major challenges for the child labours. In order to deal with the matters of commercial sexual exploitation of children, ILO had identified a list of activities within the concept of commercial sexual exploitation of children. They are as follows⁴⁷:

- ✓ Trafficking of children for sex trade
- ✓ Use of children in sex tourism industries
- ✓ Use of children in sexual activities in places like Massage parlour, Hotels, Bars & Brothels
- ✓ Promotion, production and distribution of child pornographic materials
- ✓ Use of child actors in sex shows

⁴⁷ N.P. Khan, *Child Rights and the Law*. 110 (Universal Law Publishing, Haryana, 1st edn., 2012)

C) Asia Foundation:

Asia foundation is an international organization established in the year 1954 with its headquarter in San Francisco, United States. The primary object behind formation of this organization was to develop the Asian countries by empowering women, strengthening governance and do all the needful activities which are regarded as a challenge in these countries from time to time. Among the various issues handled by Asia foundation one of the prominent is sexual abuse of child in the form of Trafficking, pornography and child marriage. In order to prevent such abuse the organization had taken a number of anti-sexual initiative especially in the countries like India, Nepal, Pakistan and Bangladesh.⁴⁸

D) Office of the High Commissioner of Human Rights (OHCHR):

The OHCHR is an integrated part of United Nation since its inception and had worked in all possible manners to achieve the object for which it was created. Broadly speaking, OHCHR work for promotion of human rights throughout the world but as because child rights also comes under the umbrella of human rights it had done tremendous work for the protection of girl child from trafficking for sexual purpose.

E) End Child Prostitution, Child Pornography and Trafficking of children for sexual purpose (ECPAT):

ECPAT was founded in the year 1990 with an intention to work upon possible means to eliminate all forms of sexual abuse of children. The organization prepared a report where it had stated that nearly 20 % of victim of trafficking are children with the motive of sexual exploitation. The ECPAT

⁴⁸ A. Bajpai, *Children Rights in India: Law, Policy and Practice*. 121 (Oxford University Press, New Delhi, 2003)

had been working hard to eliminate most prevalent form of commercial sexual abuse of children namely; child prostitution, child pornography, child sex tourism etc.

In order to end child prostitution ECPAT had found out the probable causes of child being forced to prostitution which are requirement of food, clothing and shelter. Thus, ECPAT had tried to fulfill the needs of the children are spread awareness regarding such exploitation. It has also published a guide on 2014 to spread awareness among the children regarding the tips to remain safe from online sexual exploitation.

Child pornography is a flourishing business whereby children's are sexually exposed in the cyberspace by sexual predators as because children are easy target due to their immaturity. ECPAT has advocated for building strict and strong legal mechanism so that every person indulged in such activities are punished. It is also playing significant role for technological advancement in order to deactivate child pornography in online mode.

Further, ECPAT has been working with the tourism industry to eradicate child sex tourism. It has also launched a task force with the primary object of keeping a check on the growth of sexual abuse of children in tourism industry of a nation.

2.3 Discussion:

Instances of child sexual abuse is found in various part of the world since the 15th and 16th century but it got recognition as a problem only towards the end of 19th century but there were very less literature available to prove such instances due to lack of serious research in this field. Many times the concept of child abuse or physical abuse of child over through the concept of child sexual abuse in the literature work which are available till now. The countries had not taken it as a serious problem due to the social norms and

people were reluctant to believe that offence like sexual abuse of child could take place in the society.⁴⁹ People rarely believed that child sexual abuse takes place in society because there was a myth that children's were loved by their parents and were brought up under control of their parents or relatives.⁵⁰ Due to these reasons child sexual abuse remained unrecognized for a long period although it prevailed in various forms in the society.

Child sexual abuse is not the product of a day, month or year but it is a problem which was common in practice even in the medieval period all over the world. It means that it was in practice for several decades but was not recognized as a social problem may be due to lack of research on the subject and mindset of the society. Child sexual abuse was not given the status of a severe crime in any of the countries all over the globe and hence we don't find specific law enacted in any of the countries to deal with such crime. It is in the 20th century that a number of attempts had been made to understand the concept sexual abuse of children as a problem, which could be said to be the starting point for the development of law on CSA.

The earliest concern for child was witnessed in one of the Convention of International Labour Organisation(hereinafter ILO) in the year 1919 for protection of children from exploitation in the working place. This Convention namely, 'Convention 05' prescribed the minimum age to be 14 years for employment in an industrial undertaking. The ILO had also legislated upon another Convention, namely 'Convention 06' prohibiting children and young persons below the age of 18 years to be employed during night shift. With this start the world had never looked back while working unitedly to protect children and take necessary steps for their welfare.

⁴⁹ A. Bajpai, *Children Rights in India: Law, Policy and Practice*. 121 (Oxford University Press, New Delhi, 2003)

⁵⁰ P.K. Pandey (ed.), *Human Rights*. (APH Publishing Corporation, New Delhi, 2012).

The League of Nations in the year 1924 adopted a Declaration to give recognition to right of child. This declaration is known as the “Geneva Declaration on the Rights of Child” which is treated as the landmark in the history of development of child rights as it was the first international document which was drafted specifically for children. This declaration mostly focused on the right to development, right to assistance, right to relief and right to protection. All these rights were recognized and guaranteed for the overall development of the child but the forth right; *i.e.* right to protection is a step forward to address the issue of abuse and exploitation of children in any form. On wide interpretation of the term exploitation, it would include sexual exploitation, which is a common form of exploitation of children. Thus, for the first time there was a international document to safeguard the rights of child against sexual abuse along with along with other form of exploitation.

After a gap of more than two decade in 1948, the General Assembly of the United Nation(hereinafter UN) adopted and proclaimed a Code commonly known as Universal Declaration of Human Rights(UDHR) which called on member states to pledge themselves to achieve, interalia, and promote ‘special protective care and assistance’ to children. The most important aspects of this declaration was that the children were recognized at par with the adult person and hence the rights recognized for adult were also applicable for children.

Just a year after the UDHR, the UN called upon a Convention for the Suppression of the traffic in person and of the Exploitation or the prostitution in the year 1949, with the primary object to suppress the offence of human trafficking and their exploitation. The problem of prostitution was also taken into consideration, which was recognized as one of the prominent reason for trafficking. This convention cast duty upon the State parties to make arrangement for curtailing the problem of trafficking and prostitution in

all possible manner which indirectly also had a positive effect upon the children's because they were the worst victim of trafficking, prostitution & exploitation.

The Declaration of the Rights of Child , 1959 was an another move from the UN whereby it stated that children have equal right irrespective of his race, colour, sex, religion or place of birth. This declaration contains 10 articles known as 'Principles' which were adopted to give 10 most valuable right to children at the international level. Among these 10 principles the most important from research point of view was right to protection from all forms of neglect, cruelty and exploitation. Thus it can be said that the UN had given recognition to the problem of CSA. However, the problem with the document was that, it was a non-binding resolution of the UN and hence it was directory in nature.

The United Nation Convention on the Rights of Child was made the first international legally binding document concerning children in the year 1989. It was meant for protecting and promoting the wellbeing of children in society. This convention gave a universal definition of the term 'Child' as a person below 18 years of age. However, scope was given to the States to make alteration in the age while defining child in their respective territory. It guided the state parties to protect children from all form of sexual exploitation and abuse.

International Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst form Of Child Labour was an another initiative of ILO wherein the term child prostitution and child pornography was inserted within the definition of 'worst form of child labour'.

Optional Protocol on the sale of Children, Child Prostitution and Child Pornography was supplementary to the Convention on the Rights of Child, which contributed a step forward to eliminate sexual abuse of children in the form of buying,

selling, prostitution and pornography of child. However, among the various international efforts the most important is the Convention on the Rights of Child, 1989 and the Optional Protocol which was supplementary to the convention, because until 1989 all other international laws did not directly deal with the problem of sexual abuse of children and were non-binding upon the State parties.

Apart from the conventions and declaration the role of international agencies in promoting child rights and preventing child abuse cannot be neglected. The UNICEF was created by UN has been working world wide to help the childrens in several aspects including protecting from exploitation and abuse.

Similarly, ILO had taken steps to address the problem of sexual abuse by recognizing it as a worst form of child labour. In addition to it, it had identified a list of activities within the meaning of commercial sexual exploitation of children. ASIA Foundation which is mostly active in Asian countries has handled the issue of sexual abuse of children in the form of trafficking, pornography and child marriage. The OHCHR mostly meant for protection and promotion of human rights had also taken steps for protection of girl child from trafficking.

However, among the various international agencies it is observed that the End Child Prostitution, Child Pornography and Trafficking of children for sexual purpose was founded directly to work on the possible means to eliminate all forms of sexual abuse and exploitation of children.