

Discussion Paper on
Legal Provisions Regarding Age of Child
To protect the Rights of Children

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Abstract

This paper presents various legal provisions of age for defining the child, for the purpose of protections and realizing the rights of the children in India. A brief account of the position on this point in US, Japan and other countries is given for comparison. All the information logically leads to conclusion that for all protective purposes the age of the child should be uniformly 18 and for the purposes of protecting the right to life of girl child the provision of marriage age shall also be recommended to be raised up to 21 on par with male person, as young girls in this country require more protective cover or at least equal protective cover. The age of consent as per penal law on sexual offences also should be raised from present 16 to 18 so that the protections or expected to extend and cover much more vulnerable groups by making law and liability stricter. A person inducing a girl of age group 16-18 and securing consent for sexual intercourse is escaping from liability as per law, which is unreasonable and thus be removed. There shall be criminal liability for such offences in spite of the consent of girl child before attaining 18 years of age.

1. The Constitution of India

The Age of Free Education and Child Labour: In India, after amending the Article 21, the minimum compulsory age of education is now fixed as 14 years. Constitution of India, Article 21A, Right to Education: The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine. (Inserted by Constitution (Eighty-sixth Amendment) Act, 2002, Section 2.) Until the State makes the law, this right will not come into existence and operation. Now it is left to 'states' to make the law. No state has made any law so far. It is thus just a declaration not more effective than the Directive Principle of State Policy, which remains as recommendation or suggestion.

Another fundamental right dealing with children is **Article 24: Prohibition of Employment of Children in Factories, etc:** *No child below the age of fourteen years shall be employed to work in any factory or mine OR engaged in any other hazardous employment.*

The legislations such as the Child Labour (Prohibition and Regulation) Act, 1986, Merchant Shipping Act 1958, Motor Transport Workers Act 1961, Apprentices Act 1961, Bidi and Cigar Workers Act, 1966, Plantation Labour Act 1951, Factories Act, 1948, deal with employment and working conditions of workers and prescribed the eligible age as **14** for both the boys and the girls will straight away contradict this fundamental right guaranteed under Article 24 and deserves to be declared unconstitutional. Article 24 read

with Article 21A, also read with various judgments of Supreme Court on Right to Education of children and about the prohibition of Child Labour are totally violated by these legislations as they permit the children to be employed in factories and other areas of work. Argument that Article 24 permits employment of children in non-hazardous employment does not hold any water because that article says no child below the age of 14 years shall be employed to work in any factory or mine OR in any other hazardous employment. The word OR used between ‘...in any factory or mine’ and ‘any other hazardous employment’ means making a child to work in factory or mine is equal to a hazardous employment and it is mandatory for the state not to allow child to be employed in any factory or mine. The state fulfilled that mandate by prohibiting employment of child in any mine, but violated it by reducing the age of employment eligibility to 14 in Factories Act and other legislations. Hence those laws are unconstitutional to the extent they permitted the employment of child above 14 to 18, because of inherent contradiction with Article 24. The legal luminary Upendra Baxi said: “any discussion on child labour which raises the question whether child labour below 14 should be prohibited or not is at the outset anti-constitutional. Child labour, I repeat, is explicitly prohibited by the terms of the constitution”. He also criticized the dichotomous situation saying: ‘India is a land of great paradoxes. Things may be unconstitutional without being illegal.’ He has rightly suggested unified child labour law which will make illegal what is on all accounts unconstitutional.

Directive Principles of State Policy: Article 39. Certain Principles of policy to be followed by the State: The State shall in particular, direct the policy towards securing – (f) 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.

Article 45: Provision for early childhood care and education to children below the age of six years: The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years. (This is substituted the earlier Article 45 by the Constitution (Eighty Sixth Amendment) Act 2002) Earlier in 1993 the Supreme Court held in *Unnikrishnan v State of Andhra Pradesh*, 1993(9) SCC 645 that this directive principle became a fundamental right the moment ten years were passed without providing free and compulsory education for all children until they complete the age of fourteen years.

The various laws relating to rights of labour prohibit a person under the age of 14 years to work. Thus, the minimum age at which compulsory education ends synchronizes with the minimum age of employment. According to this law the child attains ‘majority’ for the purpose of employment is 14. This means that employment of the children from 14 to 21 as the labour is legal and permitted. This is the most controversial area of law, which affects rights of millions of children in India. This law needs to be amended and uniformly the age of 18 be prescribed for abolition of child labour and provision of compulsory education. If not, it means that a child can attain majority at 14 to stop education and start working, whereas s/he cannot enter into a contract of employment or marriage until s/he attains 18 years (21 in case of male)

Child Labour: The legislations such as Child Labour (Prohibition and Regulation) Act, 1986, Merchant Shipping Act 1958, Motor Transport Workers Act 1961, Apprentices Act 1961, Bidi and Cigar Workers Act, 1966, Plantation Labour Act 1951, Factories Act,

1948, deal with employment and working conditions of workers and prescribed the eligible age as **14** for both the boys and the girls. All these enactments contradict the prescription of age of **18** for child by the UN Child Rights Convention. Unless the eligibility age is made 18, the child labour continues to be a legally valid activity and enforcement of laws against the employment of children below 14 also becomes difficult. It will almost impossible to effectively stop the labour of child below 14 also. Mines Act, 1952 alone prescribed the age of employee as **18** years. That means, except Mining, almost all other employment avenues are presumed to be non-hazardous and thus permitted to employ a child up to **14** years, which requires a total change to eradicate the problem of child labour and to provide compulsory and free education to all of them. The Mining Act provision needs to be extended to all employment legislations to effectively prohibit the child labour.

2. The International Law

The I.L.O. Minimum Age Convention No. 138 proclaimed that the basic principle that minimum age for admission to employment or work should not be less than the age for completing compulsory schooling and in no event less than the age of 15. It also provided that the minimum age should be progressively raised to a level consistent with the full physical, mental and spiritual development of young persons. It allows an element of flexibility for countries not sufficiently developed in economic and education facilities. Those countries can initially specify a general minimum age of 14 instead of 15. On the other hand the convention sets a higher minimum age of 18 for hazardous work. However, India has not ratified this convention so far.

The Worst Forms of Child Labour Convention, 1999: The latest and most recent convention on child labour is the Worst Forms of Child Labour Convention, 1999 accompanied by the Worst Forms of Child Labour Recommendation, 1999. The 87th Annual International Labour Conference has unanimously adopted this convention which applies to all persons under the age of 18 and calls for immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency.

The I.L.O.'s **International Programme on Elimination of Child Labour IPEC** is the worlds' largest technical cooperation programme on child labour. It laid down the policy standards and also launched action oriented programmes.

UNICEF: United Nations International Children's Emergency Fund created by the General Assembly in 1946, now with a changed name of United Nations Children's Fund, retaining the well known acronym UNICEF, is mandated to advocate for the protection of the children's rights to help meet their basic needs and to expand their opportunities to reach their full potential. UNICEF is guided by the UN Convention on the Rights of the Child RC and strives to establish children's rights as enduring ethical principles and international standards of behavior towards children. The very first Article of CRC says "for the purpose of the present convention the child means every human being below the age of 18 years unless under the law applicable to child, the majority is attained earlier". The laws in India those are applicable to child as mentioned above, though stated that the child attained majority earlier, which are apparently saved by the Article 1 of CRC, are unreasonable and unconstitutional.

The Convention on the Rights of the Child makes it clear that if child is under 18 s/he should not have to do work that harms or exploits him or her. Harmful work is defined as work that: damages child's health and development; causes physical or emotional stress; prevents child from getting an education; and prevents child from having time to rest and play. Exploitative work is work that children are forced to do; involves buying or selling children (child trafficking); involves being prostituted or used in pornography; takes away dignity and self-esteem; and doesn't pay fairly. It is generally thought that work that does not violate these conditions can be good for child, and the International Labour Organization Convention says that child should be able to do light work from the age of 13 (or as young as 12 in countries at a lower level of development) as long as it does not interfere with your education. 'Child labour' is the term used for work that doesn't meet those standards.

3. Legislations on Age of Child in India

Child Labour and Contract Act, 1872: Employing children below 18 is basically against the fundamentals of general Contract Act. Employment of a child is a contract and the child is not capable of entering into contract until s/he did not attain age of majority, 18 years according to Section 11 of Indian Contract Act, 1872.

Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject.

Age of Majority: According to Section 3, Indian Majority Act, 1875, "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 (second paragraph). Same section provides that where a guardian is appointed for the property of the minor, the minor is deemed to have attained majority when he shall have completed his age of twenty-one and not before (first paragraph).

(Computation of age: Section 4 of the Act says "in computing the age of any person, the day on which he was born is to be included as a whole day, and he shall be deemed to have attained majority, if he falls within the first paragraph of section 3, at the beginning of twenty-first anniversary of that day, and if he falls within the second paragraph of section 3, at the beginning of the 18th anniversary of that day.)

Contracts for Necessaries: Under the Common Law an infant was a person under 21 years of age. By the Family Law Reform Act, 1969, every person under 'eighteen years of age' is a minor. Under the English common law enforceability of contract with infant depends on the nature of contract entered into by the minor. The Common Law allows even infants to enter into contracts for necessaries. But for this beneficent rule an infant who has no cash on hand would not be able even to buy food on credit and if the seller cannot enforce the infant's contract to pay for the food he would not be willing to sell on credit. Goods suitable to the conditions in life of the infant having regard to his station in life are regarded as necessaries. Even if we extend this principle, employment is not part of child's necessaries while the education is.

Thus, every contract of employment with child below 18 is an invalid contract, despite the provisions of the other legislations facilitating the child labour. A child cannot enter into a contract detrimental to his health and other interests. It is obvious that employment at tender age would harm the health apart from affecting the future of child besides violating his right to education. To be in tune with the general eligibility of being a party to the contract according to Indian Contract Act, the law shall be that a child before attaining majority shall not be employed. As the best interest of child lies only and only in education, and that the child is legally incapable of entering into a contract of any kind including the contract of employment, the child shall not be employed till age of 18. The provision of law that permit guardian or parent to act for child cannot be extended to employment of child because parents or guardians are expected to protect the interests of the children. Making children to work depriving their education and agree with employer to give work to child so that parents or guardians could make money is dereliction of their duty, breach of trust, unreasonable exercise of their parental authority and against basic rights of child.

Contracts that benefit child and the age of child: Every person, even unborn, can hold the property, as per the Transfer of Property Act (Section 13) and Indian Succession Act (Section 20). It is perfectly legal if a wealthy person wants to transfer his property to an unborn person through a living person. According to customs of Hindu Undivided Family, a child becomes member of the joint family the moment s/he is born. According to recent amendment in 2005 the girl child also becomes the coparcener. Thus, eligibility to hold the property, though not to deal with the property is available to unborn or just born child.

Age of capacity to marry: 18 to 21 years: The age of capacity to contract a marriage is 18 years for a girl and 21 years for a boy, for all communities. The Child Marriage Restraint Act, 1929, defines a child as a person who, if a male, has not completed 21 years of age, and if a female, has not completed 18 years of age. Under Section 5 of this Act whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment up to three months and shall also be liable to fine, unless he proves that he had reason to believe that the marriage was not a child marriage. This uniform legislation is an effort to discourage child marriages under personal laws.

Age of Minority - 18 to 21 years: If a court appoints legal guardian, the age of majority of the child goes up to 21. Where the law satisfied that there was need to secure the property related rights and welfare of the child it extends that protection up to 21. Even the marriage laws indicate that a male attains age of valid consent when he completes 21 while a girl at 18. If it is legally recognized that a boy gains age of consent only when completes 21, why not vulnerable girl child be protected up to 21 for the purposes of education, welfare, health and postponing the marriage. Looking at the prevailing social conditions in India, a girl child needs protection up to her age of 21. According to Indian Majority Act, a child (male or female) holding property that is being managed by the court appointed guardian, attains majority only after completing 21 years. Thus the marriage laws and majority laws provide protection to minors up to age of 21 and different circumstances.

3. Infancy and Criminal Liability:

According to criminal law under Indian Penal Code, section 82 considers that the child up to 12 is not capable of committing an offence, while section 83 says nothing is an offence which is done by a child who has not attained sufficient maturity of understanding to judge the nature and consequence of his conduct on that occasion. Thus there is total immunity from criminal responsibility up to the age of 7 and from 7 to 12 years, the liability depends upon the capacity of understanding of the child. From 12 to 18 years, though the liability is not conditional, the Juvenile Justice Act provides for care and protection of the rights of child in conflict with law, and certain special procedure and forum was created to judge the criminality with concern for all social circumstances which might have compelled or influenced to commit crime.

Age of consent for Sexual acts: Section 375 Indian Penal Code considers age of 16 years as the right age of consent to decide the criminality of the offence of rape. In the case of marriage, sex with a female of 16 years or younger is considered rape under this Section 375 except in the Territory of Manipur where this age is 14. The limitation of age as to consent to sex is arbitrary. Why not the girl of Manipur up to 16 is protected against sexual offences instead of leaving the benefit to accused to argue that girl is of 14 years or he thought that the girl was of 14 years in Manipur? Why not the age of majority or age of right to exercise franchise is considered the age of capable consent in offences relating to sex to extend the protection to girls up to age of 18? What is the basis of presumption that a girl is immature or infant enough to enter into a contract which only deals with her civil or property related rights, will be mature and capable enough to give consent to sex with a male? This 'age of consent' need to be replaced with 'age of protection' as far as the legal provisions regarding sexual offences are concerned. It is relevant to look at the law in UK in this regard (discussed below).

In January 2004, a Division Bench of the Kerala 's High Court suggested that the age of consent should be raised from 16 to 18 in that state. Justice R. Basant said he considered "illogic(al)" that a legal system in which an age of 18 is used for other purposes – like the Indian Majority Act, the Contract Act, the Juvenile Justice Act, the Child Marriage Restraint Act and the Representation of People Act – has a different approach in the case of sexual consent. It is a protective cover offered to young girls. If the age of consent is increased from the present 16 to 18 would extend the protection, which is required. Having sexual intercourse with a girl below age of 18 even with the consent should be considered a crime to reduce the sexual crimes and cheating crimes against the girl children.

The legal age of consent – the minimum legal age at which child can decide to have sex with someone – varies around the world. These are a few examples of the heterosexual age of consent: For child in some parts of the United States, or in Egypt, it's 18; in Northern Ireland, it's 17; in Namibia, 16; in Sweden, 15; in Canada, 14; in Korea, 13; in Mexico, 12. But 16 is by far the most common age of consent. In some countries, there are also different ages of consent for girls and for boys, and for gay men and lesbians, though in many countries gay and lesbian sex remains illegal. There aren't any international laws or guidelines on the age of consent, though the Convention on the Rights of the Child says that a child has the right to be protected from all forms of sexual abuse and exploitation. In addition, the

Committee on the Rights of the Child, which keeps track of how children's rights are being implemented around the world, argues that *countries with a low legal age of consent should raise it*.

Position in UK: A shift in the burden of proof: In September 1974, the UK's **Sexual Law Reform Society** proposed a system in which the age of consent would be replaced with what was called an “**age of protection**” – if not for all ages below the age of majority (18), then at least for the ages between 14 and 18, in combination with an age of consent of 14. People below this “age of protection” (if totally replacing the age of consent) – or between a lower age of consent and this age of protection – would be subject “to a context in which the onus of proof that valid consent existed would lie with the older partner”.

4. Voting and Expression

Age of Voting: The age at which child can vote in government elections (sometimes called 'the age of majority' – the age at which children are no longer considered a minor) also varies from country to country, though 18 is by far the most common age chosen. A few examples: in Iran, the voting age is 15; in Cyprus and Cuba, 16; in Indonesia, 17; in Bolivia, it's 18 if you are married but 21 if you are single; in Austria and Jordan, it's 19; in Cameroon and Japan, 20; in Côte d'Ivoire, Kuwait and Sierra Leone, 21. In India, it is 18 years.

Expression of Opinion: Even if children are too young to vote, they have a right to have opinions. With reference to expression of opinion and giving evidence, there is no incapacity prescribed based on infancy. According to section 118 of Indian Evidence Act, all persons shall be competent to testify unless the court considers that they are not capable of understanding the questions because of tenderness of age, etc. Law did not prescribe any age limitation but provides entire discretion to the judge to evaluate the capacity of each person based on the tenderness of age.

The Convention on the Rights of the Child says children have the right to express those opinions – and have they listened to. In particular, children are expected to have their say in decisions that affect them, and their opinions should be given 'due weight' according to the age and maturity. Children also have the right to form groups and associations. They can express their opinion through media, by joining or setting up school councils, and by participating in a local youth parliament, etc.

Armed forces and combats: A child below 16 cannot enlist himself in to the armed forces. Unless he attained 18 years a child cannot take part in active combat. (According to National Institute for Public Cooperation and Child Development, Government of India, Notification dated July 31, 2000)

Emancipation of Child in US: In advanced countries like United States there is a provision for emancipation where a minor can seek freedom from controls of parents or guardians before they attain majority age. This is subject to certain restrictions and exemptions in case of needed protective circumstances.

In the United States, a person is a minor (and therefore under the control of their parent(s)/guardian(s)) until they attain the Age of Majority (18 years), at which point they're an adult. However, in special circumstances, a minor can be freed from control by their guardian before turning 18. In most states, the three circumstances in which a minor becomes emancipated are: (1) enlisting in the military [requires parent/guardian consent], (2) marrying [requires parent/guardian consent], (3) obtaining a court order from a judge [does not require parent/guardian consent].

An emancipated minor is legally able to do everything an adult can do, except *purchase tobacco, pornography, and lottery tickets; those items are based entirely on being the specific age of 18*, so minor/emancipated minor/adult status is irrelevant. So emancipated minors can *register to vote, sue and be sued in their own name, enter into contracts, seek or decline medical care, obtain a driver's license, obtain housing and motor vehicles, drop out of high school, get married, join the military, et cetera*. Thus emancipated minor-ship is, for all intents and purposes, equal to adulthood.

The exact laws and protocols for obtaining emancipation vary by state. In most states, the minor must file a petition with the family court in his/her jurisdiction, formally requesting emancipation and citing reasons why it is in his/her best interest to be emancipated. He/she must prove that he/she can support himself/herself financially. Many states require that the minor have been living separate from his/her parent(s)/guardian(s) for a period of time; however, that requires the consent of the parent(s)/guardian(s) in order to not classify simply as "running away". Until emancipation is granted by a court, a minor is still subject to the rules of their parent(s)/guardian(s).

Emancipations are rarely granted, because of the subjectiveness and narrowness of the definition of "*best interest*". On one end of the spectrum are minors who have been victims of abuse; in most cases, the state's department of child services is notified and the child is placed in foster care. On the other end of the spectrum are minors who are seeking emancipation for what many regard as superficial or bratty reasons, such as not being pleased with their parents'/guardians' rules. In those cases, the emancipation will most likely be denied and the minor will be send back home with the parent/guardian.

In some states, free legal aid is available to minors seeking emancipation, through children's law centers. This can be very useful, in terms of creating a convincing emancipation petition.

It can be seen that there ample safeguards are provided in US while permitting emancipation of minor for beneficial purposes, which reveals the concern the state is expected to have for protection of best interests of child.

State of Japan follows different ages for defining the child for different purposes. Though the definition of child stipulates age of 18 years, for employment 15 is considered as right age. It also recognizes 20 as required age for some contractual and medical purposes.

Law in Japan

Article 4 of the Child Welfare Law of Japan defines "child" as "anyone below 18 years of age." Measures for promoting child welfare have been implemented in accordance with the fundamental policy of this Law as described in its paragraph 1 of Article 1 with "everyone shall strive to ensure the sound birth and growth of children, both in mind and body" and also in its paragraph 2 of Article 2 as "the livelihood of each and every child shall be equally guaranteed and protected."

Age limitation applied to legal competency in Japan: The Civil Code of Japan provides that anyone who has attained the age of 20 may conduct juristic acts independently. Therefore, all contracts or agreements on medical treatment entered into by a person under 20 years of age without the consent of his/her legal representative may be canceled by the legal representative, though such contract or agreement remains effective retained if not canceled by the legal representative.

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Age of employment: With respect to a person under 18 full years of age, the Labor Standards Law provides for restrictions on working hours and work on rest days, prohibition of night work in principle, and restrictions on engaging in dangerous and harmful jobs. In addition, the same Law provides that children, for whom March 31 (the end of school year) has not passed since they reached the age of 15, shall not be employed as workers. However, children above 13 full years of age may, as an exception, be employed in occupations in non-industrial enterprises to perform light labor which is not injurious to the health and welfare of the children, with the permission of the administrative office. Children under 13 full years of age may be exceptionally employed in motion picture production and theatrical performance enterprises with the permission of the administrative office. The provisions in the Labor Standard Law also apply to part-time employment.

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Age for punishment: The Law for Punishing Acts Related to Child Prostitution and Child Pornography, and for Protecting of Children, which took effect in November 1999, the law defines "child" as anyone less than **18 years** of age and punishes such acts as engaging in child prostitution, producing child pornography for the purpose of sale, etc.

Defence Forces: In Japan, there is no conscription system and the enlistment to the Self-Defense Forces is completely based on voluntary applications. It is ruled (by the Enforcement Regulations of Law (Article 25) and Instructions for Assignment of Youth Cadets) that the Self-Defense Forces may accept applications only from those who are **18 years** old or over, except for the application for its educational institutions (youth cadet program).

Participation in a hostile act: As mentioned above, those under **18 years** of age are not legally eligible to enlist in the Self-Defense Forces, except for the enrollment in its educational institutions (youth cadet program). Even those who have been employed by such educational institutions are not supposed to participate in any hostile act in combat. Therefore, there is no possibility that those under 18 years of age could directly take part in a battle action.

Age of Criminal Liability: The Penal Code of Japan provides that anyone below **14 years** of age shall not be subject to penal punishment. The minimum age at which a person shall be subject to criminal liability is fourteen.

Adoption, etc; The Civil Code of Japan provides that anyone who has attained the **age of 15** may change his/her family name or agree to be adopted and dissolve the adoptive relation by himself/herself. It is also provided that all married persons, even if they are under 20 years of age, may affect divorce by agreement.

Offences against children; In Japan, the Law for Prohibiting Liquor to Minors and the Law for Prohibiting Smoking to Minors respectively prescribe punishments for such acts as selling alcoholic drinks or cigarettes to juveniles under the age of **20 years**.

Age of Marriage: Under Article 731 of the Civil Code of Japan, a male may not marry until he has reached **18 years** of age, nor may a female until she has reached **16 years** of age. We (State of Japan) believe that such gender distinction in terms of marriageable age does not violate Article 2 of the Convention on the Rights of the Child. Marriage is an act of people to form a new family to function as a fundamental unit of society, and therefore permission for marriage should not be given to citizens who have not reached maturity. Thus, the law does not allow any children to marry, since they are regarded as immature to do so. We also consider that there is a general difference between males and females with regard to the age at which they become marriageable physically and mentally. We believe that the difference employed by our national law between males and females in the prescribed minimum age of legal competence for marriage is reasonable, since it reflects the above-mentioned difference in the degree of physical and mental development between males and females. Therefore, we believe that such difference does not violate Article 2 of the Convention.

Sexual Crimes against females: No gender or age differences; Under the Penal Code of Japan, we allow gender difference in judicial treatments applied to those involved in a sexual crime. We consider that such difference, introduced in consideration of inherent physiological differences between males and females, does not fall under "discrimination" as mentioned in Article 2 of the Convention. Some examples of such difference follow:

In the Penal Code of Japan, Article 117 (rape), Article 181 (rape resulting in death/bodily injury), Article 214 (rape on the occasion of robbery resulting in death) and Article 182 (inducement to sexual intercourse) all limit the **object of the crime to females**. This limitation is regarded as a mere distinction, considering that there is no gender difference with regard to the subject of the crime and that criminologically such indecent acts are usually committed by a male person against a female person, and that protective measures for rape victims should be designed specifically for the benefit of female persons, taking into account physical and physiological difference between females and males. Article 176 of the Penal Code (forcible indecency) and Article 181 of the same code (forcible indecency resulting in death/bodily injury) do not have any gender limitations on the object of the crime, thereby all assailants shall be punished regardless of whether a victim is female or male.

In the Penal Code, Article 213 (abortion with consent), Article 214 (abortion in the conduct of business), Article 215 (abortion without consent) and Article 216 (abortion with consent resulting in death/bodily injury) all limit the object of the crime to female, while there is no gender difference with regard to the subject of the crime. Such limitation is based on the physical and physiological difference between females and males, or that only females are capable of becoming pregnant, and is also aimed at protecting the life and body of unborn babies and mothers. Thus it is regarded as a mere distinction.

Article 212 of the Penal Code (abortion) limits the subject of the crime to females, but here again; this article aims to protect the life and body of unborn babies and mothers. Also, male persons who have been involved in this crime committed by females are subject to penal punishment as an accomplice of this Article, and above mentioned Articles 214-216 are applicable to male persons. Thus, we (State of Japan) believe that this provision does not fall under an unfair treatment females.

5. Conclusion and Suggestions

All this discussion and information logically leads to following proposals:

1. *For all protective purposes the age of the child should be uniformly up to 18 years. This includes the age for employment which means any person employing the child under 18 shall be subjected penal and civil consequences for the crime and civil wrong of employing child labour, which shall be totally prohibited. This also means that a child until attaining age of 18 shall be entitled to have right to education, compulsory and free.*
2. *For the purposes of protecting the right to life of girl child the provision of marriage age shall also be recommended to be raised up to 21 on par with male person, as young girls in this country require more protective cover or at least equal protective cover.*
3. *The age of consent as per penal law on sexual offences also should be raised from present 16 to 18 so that the protections are expected to extend and cover much more vulnerable groups by making law and liability stricter. A person inducing a girl of age group 16-18 to give consent for sexual intercourse escapes liability as per existing law, which should be removed and criminal liability shall be imposed for such offences though the consent is given by girl child before attaining 18 years of age.*

4. *For receiving benefits, protection, for holding the property, right to expression, giving testimony in courts of law, etc., the age of capacity of child shall not be limited at all, and for all other purposes the age of child shall be under 18 years.*

Annexes

1. The Child and Employment Related Legislation in India by Babu Mathew, NLSIU along with the tables.
2. Wikipedia Data on Age of Child
3. CRC Definition of Child
4. Age of Child in Japan