Page 1:  
LAW COMMISSION  
OF INDIA  
  
ONE HUNDRED AND FORTY - SIXTH  
  
REPORT  
ON  
SALE OF WOMEN AND CHILDREN  
  
PROPOSED SECTION 373 - A  
INDIAN PENAL CODE,  
1993  
  
  
Page 2:  
KAN. SINGH  
  
2 ‘CHAIRMAN  
LAW COMMISSION  
GOVERNMENT OF INDIA  
‘SHASTRI BHAWAN  
NEW DELHLI001  
‘Teo. Om. Saas 75  
Res. 0196s  
  
bf  
DO. No. 63) (19)93-L.C. (LS) Febrary 2, 1993  
Dear Prine Minister,  
  
“The soca evil of sale of women and children has been growing a India during reeat years. This  
qdissbtatally cee he poor ecto our soi All nan Digs epecaly women and  
‘hldren need special protection of aw as they ar» perticulasy Vulnerable to explonation. The Law  
‘Commission has condered this subject suo mote having regard to ae importance ofthe subject inthe  
Tight of soca justice to the poor. Though the Tndian Penal Code contains Serta provisions detgned 10  
‘eal wits the dsposslof persons below a cenain ageby way of saleor other mode of taaster, But those  
sions are confined to cases where the transection ik entered inte for one of te ‘pesied  
fr those cetions But where sacha purpose doss wot exist ors not proved at thot tiene prions  
‘ae not adequate to sfeguard thetaterest of Woman and children  
  
The Law Comission has considered the quite in detail and Ihave grat pleasure in forwarding  
deci sh th Report oi La Commisn af no he et of “Sof Wom and  
Gaiden wie x" roponl to ad Seton 379A tothe lndan Peal Gods to tho meet the toda  
  
‘Thsis the thing Report of 3th Law Commission,  
With regards,  
‘Your sincerely  
s-  
(© N. Singh)  
  
Hos'ble Shri PL. Narasimha Rao,  
Prime Minister and Minister for  
Law, Justice & Company Afr,  
New Del,  
  
Copy to  
Hon'ble Shri H.R. Bhardwal,  
Miniter of State for Law, Justice and  
Company Affairs,  
  
‘haste Bha waa,  
New Del  
  
(RN. Sigh)  
o  
  
  
  
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Cuarien 4  
  
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The Present Lepal Position  
[Need for amesdineat of the Law  
Recommendation  
  
Footnotes  
  
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CHAPTER  
Introduction  
  
1.1 Genesee Repent  
“The subject det with in this Report bas been taken. up by the Law Commission of Indi for  
ccnsiduion sn mato, having reesed tthe import oft sbjectinthelight of socal justin,  
  
1.2 The Seca vit  
  
‘The socal eyil of sais of women nd children ns been growing in ‘Indi during recent years!  
(Whilst incins Tel Code cxtain afew prowiatone designed to dca! withthe disposal of persous  
Selow sccrsat age by nay of elec: othr mode of raster. those provsions tre confined to caves  
hove fc transetion ie lero st, for one of the purpors speciied in those sections. Where such a  
Parrne dosaateot ocean ie! oroed at ah these Yetions cannot be pressed lato service.  
  
Tse Commision fet thatthe matter noeded 8 examination, witha view to remedying ny  
‘Rhcleney ntiees ting a that niga be Waeaverca cst esto sach sas neon,  
  
“Trly peaking. no huraa bein gcan bo allowed tobe treated cs. cat in thi twonteth en  
won dnd ale however, arcany need te prtscion th lam sean thy are pecan  
  
Pre ocrere chert °  
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serrleatioy ovs, oun etc ie Ss rate Dt rae  
  
ere ee re ed Or tepid  
  
FA erlo deatea te an  
  
‘Accordicgy, the pssent Report devotesitselfo an eaiinstion of thelew eating sae of women  
ad children tr reatetionsanslogeus thereto wil view to suggesting refors,irmecded.  
  
Vaan ete  
eas een tp pn en  
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Page 5:  
CHAPTER 2  
  
he Present Legel Position  
2.1 Proviscasin the Indian Peral Cove :sctlow 372 und 378.  
  
‘The provisions of the Indian Peral Code that come nearest to {i sbsct under consideration  
{a this Report ure wections 172 and 473 ofthe Code These sections poole the al geen a  
Iaze or otherwise dspoxng ofa child forthe purpose spesied = the cevtiont as ako the ones  
  
Suaduct of purchasing, hing or othervivenbtaining potwsion ct a ek forthe pected perpen  
Thesecions areconcerncd withheslcete of uperonbclow hessear even  
2.2 Linked scope  
  
(As these soctions ars conned tos irczsuction entered int fs: speed purpose, theit ambit  
  
‘slimied,roadhy speaking the scope ofthe two scctions is conteed to wc or parchagg eee  
Frstiution ori intercour cwithany penon orforeny unlawful and nrsorl purpose Exponatiog  
M so section 372 (which apres to section 199 alo) deine ile Itereourac’ steam ae ted  
meer tice ily maior Sy ayer hich ‘uough ot omni  
toa marrage: i recognised by the personal law or custom ofthe coninanty to on  
sterttey front dient comiantic, of botsuchcommenic ss cotatae eee aoe  
  
2.3 Adoption Act  
  
‘A provhion occuring i the Hinga Adoptions and Maintenance Ac. 19S6also may be refered to,  
‘auahis Stage a rater of intrest. Section 17 ofthat Act prohibs the charging of eourdertos fot  
‘Bynes child in adoption under the Ae I is obvious tha the section 5 contned to case Whos the  
‘take ofthe child takes place in connection with, or coupled mith, sdoption. I wil have no aay ad  
‘Smet be prewed into sevice. where the malpractice im quesion het no connection With  
‘Atranazction having no connection with adoption ele for Re. 12.100 reportedly wen a  
  
2.4 Lg psn ned oon  
seidenfitat ses tent wee oc i ca tbe dda  
ot Thoug nn ose) Teerachant aging te rcoanenee ema te  
ste i enh nag eo aston Sec eg  
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Senate tf eae an Se  
  
1 pay ao be menaced ttn ante cae decided ty the sine High Cour the roposion  
‘hat fd comattcoeeats aes hate  
  
2.5 The casefor Amendment  
  
shall exine in detail ia the nent Chaptc the question wher the provisions of the Petal  
‘Code retdequate odes wit he sociatevl ith whieh is Report wconccrned  
  
  
  
Page 6:  
CHAPTER 3  
Nest for Ameedmest of the Law  
  
3.1 Defclency lathe present tion.  
1: appears to we that 1  
  
pon tg mate ant  
gel agit sor ate a eso  
Boa  
  
tis ako worth merioring tbat the setion do not cover te case of sale oF of adult  
‘norwen, We are ofthe sew oat on both these points the law should havea specie penal provision.  
essorsare stout is the mea fe: pana,  
  
Je 23, ter alia, protibits the tafe in human beings and en:  
‘fence panuahable by law. This is fasdaroeatal fight. sad  
‘befosly iste ete) ston that Ge neoessy thestaiute  
BeoE OF course. hi docs nov enn That a now (pot-Constitation) legislation should Be enacted for  
the purpon  
Besides ths te brood objetivo il ate undying the Constitution and the pie eros  
vision in he Port cons ning Ovsctive Principles of Sate Pole, which direct that the Bile, must  
fexplottion 0 “ichuldnen snvioage that cnadict inthe nature of exploitation be  
courage.  
isan imperative ofthe Constitution that—  
(7 the content ofthe existing statster be studied, in orderto consider how far they cary out the  
Constitutions! msadite, an  
  
(ago ic asi esting ste ny be oad to be imndoge,nseseiry amendment te  
  
Hteanaot be dene! thst the salvo women and children, whatever be the object of such sale,  
nrountsto tte in hurts being or partakes ofthe character of sacl aff. Even ifit be argoed  
thet "tale" contomplstess ten te murs of condact (ves series of ate) aad may not embrace  
ttiolsted acto set chon bo ompivs sod that an olated sai offends the opin of Article 23,41  
‘is ene  
  
3.3 Tegiativecompetcne.  
  
tm this coutest, its pertinent to point out that where, a particular socal malpractice is found to  
‘patravene the provisions of Artele 23 of the Constitution, hen, by vrte of Article 35(0) of the  
Goatteton, Parianent i competent to enact «law on the sobject Further, under the, Concurrent  
MEutny®, ior ale, lepsietios on Criminal Law (ineuing matters dost within the Yadan Penal  
fe he commencenent ofthe Consign) 8 within the competence of Parfiament,  
3.4 The gravity ofthe offevce.  
[Not much arrunent is ncoded to support the proposition that the sal of human being (of any  
cs) sam antesoeal act ofthe mot heinous character whatever be the Tends (0  
  
a eraanner nas cing ee neers eat tate  
ee ee  
  
“The greatest harm scans by such condact othe individual so tested. He or sheloses the most  
Fests ofa human bag, mul respect one anda co ety nan wre  
Riot ence dignity. Na grater harm can bscaused to an individual th the inflicting of a. Wound  
‘mis or fcr dignity the maining of his or her respect Zor oneself, the degradation ofthe soul. A  
Wwiich teratcy such coussct sot saly hata il! by deprading ts moral level, bat Is also  
  
fpaby ofinjsticetotheiadivaual and alinately damages theoctal fabric  
  
  
  
Page 7:  
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dav td Bay coms sie i a seal sae ond pate ome  
ymmor ater tee propiions have ber adirean inthe cours of hry to 10 many\_paeation  
GFoncnsnd women te pst sndhogghtinsmy bo reer ss ngnato—s may BE ness  
Insure. But there sopct have ssrumed  
Gudalicg ler detag wih oslo of von tad  
Sigh i mes neceary to amend Andie  
  
Of addition of a pew oflener can be esi. only Uns need or tis demonstested by Tessong,  
‘hat caries is ownconvizsing rer os the moval isve,  
  
3.6 Magnitude and fequeeey cite Evi.  
  
I aslpesticels found to pevailin a particular society  
scurefosthimterveatinof thls hers relia:  
  
ve deserter  
  
iners of the a0 ty to: be appropri  
  
is Sopropests = neseiph~ may not be  
  
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Gh which ay are conesreod. couse  
  
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norms ean be dealt with by ler :  
Timany eaves Sometimes it  
  
ete in practice. Even apr font  
‘riminal sanetions, Bat fst  
ial coving ti sep  
‘eatier paragraphs of ths Chis. 1  
Ferious harmo the iii  
  
Thivoe dest stores cies ar (eves tat  
‘totinypenl provi snd ida sasomai  
  
23.7 Some recut nstazees  
  
this stage, it appers to be proper toronto that th  
the evil eflects of sachs pracuceand the abiorence at  
Several actunlietance ofsuchsale, reported -e=stye fs  
Samine hele  
  
3.8 Sexton 372404373 ofthe indian Penal Coe.  
  
“The socalevilot sling women snd chiens dle wts inthe Penal Code, dire ot inc,  
ty scrotal prenlons Assaiedsboves the provstonathatea wneset to ths pat wad cons eron  
secs San tds Penal Code cbreasueier =  
  
ice of sls of woman and children,  
reeves, areailamply demonstrated by  
‘shine this bac eproundithat we proceed  
  
“S72, Seling minor for purgaxesefprosition, ee  
whoever sels ets oie,  
  
: pares cuenre  
yeleciia Tiaaiptar a  
Saget aa  
  
Explanation [-—Wha.fomale ender the age of eighteen year it sol et for hire, or otherwise  
‘Guposed of toa prositute orto soy person who keeps ot manages a brothel, the perso. 0.  
ang of ssh fern hal nt the contrary prov, be prenumedto have doponsdot her with  
Fisinfcrethctsheshallbe wee forthe purpor af prostiion,  
  
Explanation H—Fos the purposes ofthis ston, “ili intercourse” means sexual iatercoune  
feteocn persons aot used by marriagor by any ulon of Ue which, though nat amountngto &  
arrage i ecognise bythe pert kw of atom o th community to whia they belong of,  
there thy long to difers:coszsilit, of tosh such coamuaisy, 28 eoasturng baw  
theme qurs-roatal ation  
  
“373, Buving minor for purpases of position, exc.—Whozver buys, ites or otherwise obtains  
povesion fy eto we agen Yar wate hatach prs balla aay  
fete Sr eed forte purpos of roattution oF lil atercouess wah cy pstson ot  
‘Sranywnafland nina pupons, or owiag too hay that sch ptt dl tay ae  
  
‘i elke deere  
  
(Sled raed arty hp al bn spon  
‘foal asin etal yin, aad sao alata  
  
  
Page 8:  
5  
  
“Explonaisa Any prosttae or any person keeping oF managing brothel, who buys ies or  
‘ciotuing obtains posession of Temaie under the age o eghtcn years shal, wal the conay  
prove, Be presanted 10 ha rad possesion of such female with the inten hate sal Be  
  
Mediorthe narpoveof prosutution.  
Explanarioy H.—"Miintercoure™ asthe sine meaning ain Section 372°  
  
12.9 Limiatows of sections 372-973, dian Penal Code  
Having quoted scctons 372and 373, lad Penal Code, we would like to point out that (soa as  
nis HOE RES SSN purrose) te operation o thee sections subject ovo important nite  
  
ine 10 sie (or purchase), ting on hire (or aking on hee)  
shoage oF 18 Sour They do  
  
(io ne tana ot eagitn ts dapnsh fs pee  
sarcoma act ada  
«oy Seon th weton ge anid 0 tacts eed nt or any oF he purposes  
Sen tielon cdspatng. score  
  
1a) prostitution.  
tit ietintercoursewithany person, or -.  
(ui) any unlafl andimmora purpose,  
  
“Tay, ste of a pergon above the age of 18 years isnot punished nor is any sale fora purpose not  
spoliniie ccs  
  
3.10 Need for Amendifet  
tivated scope of the two sections that gives rseto the need fr amendment, Thee, we  
patie illo fo atending the seope of the legal provisions sows to cover cases where) woman  
eae el lanteverbethe immeditte or aitimate objectiveothetranssctionand whether auth  
Sees Ssyaeat or not. We have in the Opeaing paragraphs ofthis Chapter, set out "= ofthe  
ete etterstcns that should Be boene mina in upprosching the subRet. Te to! «ery  
denen SScoihing that has been sid in those paragraph It suficent ro sale thatthe Se of &  
Fer eg hay where the quewion of aa ingiidual wh ec special protests of the  
Fae eed aot ouly av practice deverving condemnation oy thelaw, but asco: wet that  
did De secod ith crominal nai, Te presence of an unlawful or aun parse  
shoul eet ys batts absence dos no take aay the heinowsness of the conduct. Such  
J oye ine vrs humanness of the nlvidualso sol. lt.on hire otherinedanoxed of. x=  
Fee oy lew of the dost ol the at tis-demoralsing act becuse, the law does nt  
a eo generate and pespetusis im him an ildious abhorrence of human values 2nd  
Seecgte ie uay of uma bang tnd to reat human omy te chest wed for  
ee er sctemiey motes. The lacuna eusting im the present la, theretore, eds 10 Be  
  
3.11 Section 17, Mind Adoptions Act.  
  
‘We shall make our recommendation om the existing law in due cours, Athi stage, we would like  
tomes anuianes a provision of some interest contained the Hinda Adoptions and Mintenance  
Ra tSie" Section Ti ofthis Act reads asunder  
  
1. Prob of certain payments —  
cp degen enc ages torecgany pom! ofthe vain meting  
GiuidERenton eran person ndno peron sal make orgie or aresto make or gveto any  
a atem ty pa ent ona, ewes of whichis prone by thst.  
  
(2) tf any person contravenes the provision of subsection (1), he shall be pons with  
Pt res ch may otendtocimonti ori of withthe  
  
(6) No procetion under this section shal be nalitued without the previws sanction of the  
og seStmeat ora ofieer authorised bythe Sate Govemmentia hs bball  
  
  
Page 9:  
CHAPTER $  
Recommendation  
  
4.1 Recommendation tolasert section 373- inthe Indian Penal Coe.  
  
ofthe discussion nthe preceding Chapters, we recommend the insertion, site section  
Penal Code, ofa new section onthe fowiaglines =  
  
A Selig woman or mir, ee .  
‘Uy Whoeserinacasenotlingundesestion 37} orsetion 31h  
  
(a) sells lest hire or otherwise disposes of for cosideation, any person under the age of  
‘iabien eats or any woman of209 ape. or  
  
(8) buys. hires or othernise obtains for conidertion the possession of any such person of  
fey woman Shale aise sth ipcbgnment of che esr for etm which ms  
(svandshallalsobelableto ine  
  
(2) The provisions fthissection app in ration fo person of unsound mind. as they apply in  
‘Galan poo adertneapeot Sauengen arty  
  
Explanation : Nothing in this seston shall apply in relation tothe hiring of the services of any  
  
On he insertion ofthe above section inthe India Penal Code, consequential amendment of the  
First Schedule to the Code of rocedure, 1973 willbe nesded. That Schedule deals with the  
‘Glegorsation of offences as ailable ete It is suggested thatthe newly created lence should Ben  
  
() cognizable,  
1) noa-bilable, and  
(6) lableeelusively bythe Cour of Session, )  
  
4.3 Persons of unsound ind  
  
‘One minor point may be mentioned. A person of unsound mind may, atleast theoretically, be  
sauce of coat ees euieui Such ete ot he fant racine  
bate should uso be coveredin the new setion. Ineaenttly thes iting sections 978 and 34S of the  
Tedicn Penal Code! do ot concr persons ct unsound med sold fo he purpose of prostitution of Me  
  
|. tercoure or unlswfil or immoral purpose. The "Cotninksion is of the vit that the aforesaid  
sttlonsshould beruitahly amendedtocoversch personals  
  
4.4 Proposed offence distinct from kideapping  
  
Irshould be pointed out that it may nos be appeopeate to link up the sale ee. of the minor  
oct purpose not falling within sstons 372 and S720 the Indian Benal Code) with abduction. ‘The  
fence of Kuneppsee or abduction is primarily one concerning wolation of guardianship tights Gn  
the cise of Kerang from unaul puardiamehip under eectton 361) or iingement of the tight  
to personal liberty by the se of force of traud where the elence i that of kidnapping from Tae  
Garon 30) ovafabuctm(ecien e, Themheondut onthe put oe rental guardian  
Which Snow under consideration, more inthe nature of abuse of guardanship and violation of the  
Sanity of the child plsced in gurdiership. OF course, the ofence may be commatted even by a person  
Iwi fot the guardian of the child. but even in that eas, the offence sn the nature of lato ot  
Inuman dant. leading to exploation of te eildan many ass  
  
45 Remoral from custody  
Htimay alsonot be qiteappropiateto goto the extent of punishing any mode ur device by whicha  
  
«tild ic retoved from thelawhacatouy ofthe parent Suchs provaions bound frase questions of  
Some diticulty—for example. the quetion as tin what circumstances, one paren may festves od  
  
  
  
Page 10:  
ita male, or uader 18 years  
  
7  
  
female) or any person of unsound mid, out ofthe keeping of the lawful  
  
esate fn omen comings lps a ah  
  
ina encepion in gard tothe seta am  
  
{erbe ented 10 the lawful eustody of such cil  
  
Tal purpowe. These complications wl be  
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person why feral imped Tatn el  
  
ikl unebroncer principle tai cild ouphtnot tobe teated asa chattel  
  
We recommend according  
  
sy.  
(8. RANGANATHAN)  
Member  
  
$4,  
(SARDAR ALI KHAN)  
‘Member (Part-Time)  
  
[New Dust The 23d February  
  
sa  
(kN. SINGH)  
‘Chairman  
sa  
  
(DN. SANDANSHIY)  
  
Member  
  
sa. sa.  
(PM, BAKSHD) (MARCUS)  
  
Member (Part-Time) Member (Part-Time)  
  
(CH. PRABHAKARA RAO)  
(Member Secretary)  
  
1998,  
  
La ones such ac committed for an famoral or unlaw-  
iad unc the section ss formulated above. Os prin ples  
thvthe tigate ofthe guardian of sith personal bec. a8  
  
  
Page 11:  
ccuwrten  
1. See Mila Sin. Rm Ba, AIR 1957 SEP. 126  
  
2 Pr Ln of DoncrateRhs . Un of Inn, AIR 942 SC 143: Sad Ray Se of Ratan, AAR  
ts 138; Sl Mtoe Pit Sate of JAK, AIR 19 SC ATT: Bodin Math Morcha v= Usion of  
Ind, AUR 98482; sd Neva Oknry ¥. State of ALP, AIR 1984 SE 109,  
  
coun pre =  
1 Ses paugann 3.8 ff the e,  
  
2. See puragash311 inf  
  
A. THE FRIHUNE, 21 seer 1992 948%  
  
4 Nit Si Re BAI 987 MP. 12612.  
S.Mumah Dai Sate of Mo AUR 1ST NUP 133 13  
  
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EXPRESS, 5 Deemer 192, Pate 1  
3 December, 192, pase  
3 Puraph 2. emn  
  
4 Chap ha  
  
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SAE CRIMALARCA 19) 8395-5