



A Socio Legal Study of Child Abuse in India with Special Reference to POCSO Amendment Bill 2019

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Abstract

The study deals with the definition and various types of abuses with reference to children such as Physical abuse, mental abuse, emotional and sexual abuse. There are certain socio-legal factors that have been the reason for the abuse being inflicted on the children. Despite the abuse is prohibited by the Constitution of India being the supreme law of India, the abuse is still prevalent in the society, in addition to constitutional protection, there are other laws also such as Juvenile Justice Act, POCSO Act 2015, and provisions of Indian Penal Code 1860 that prevents and criminalizes sexual as well as moral abuse to children. There are also various historical factors which are reasoned for the increasing child abuse in India. The paper suggests that lack of awareness; education and other factors are responsible for the growing child abuse. Therefore, in order to protect the children from abuse, there must be awareness among all the stakeholders and implementation shall be monitored to avoid any kind of abuse being inflicted to children.

Keywords: POCSO, Child abuse, sexual offences, protection of children, Constitution of India.

Introduction

Child abuse is the willful infliction of the pain and maltreatment on the child who has not attained eighteen years of age, by way of physical, mental, sexual, emotional mistreatment to the child with or without his consent. The term consent is not applicable to the children as they are not legally empowered to form consent as they are not fully empowered and understand the treatment being inflicted upon him.

The term Abuse is often interpreted as a verbal or physical violence, but it actually denotes any kind of maltreatment to the child which is threat to his mental, physical, social, and emotional health. The term Child abuse also includes neglect of the child as it directly hampers the growth

of the children in numerous ways. It can be inflicted by parents, family member, relative, caregiver, or even a family friend.¹

Before 1970s the scope of the term child abuse was restricted to Physical violence only. But since then the interpretation of the term child abuse has expanded. With the changing times and the nature of the society, this term has also included numerous aspects. Furthermore there are various concepts that come in the ambit of child abuse such as unjustified verbal abuse, unnecessary pressure, lack of physical, mental, emotional support and availability to children.

With the changing times, incest, cases of sexual abuse, molestation and rape cases have increased. The use of children for prostitution and pornography is very common form of child abuse these days.²

Classification of Child Abuse

The child abuse cannot be classified accurately; however generally there are five types of abuses recognized which are discussed as below:

Physical Abuse

The term physical abuse means hampering the child physically. It includes all kinds of physical violence but its meaning is not restricted to hitting. Physical abuse also includes all the actions that are either being inflicted on the child or the child is performing any act without his consent. Furthermore it also includes those acts that are performed by children under pressure or threat such as working in domestic or commercial sites etc.

Emotional or Psychological Abuse

Any act that is hostile or dismissive in nature hampering the psychology of child is emotional abuse. It also includes such acts that may cause trauma, feeling of insecurity, or scares the child. The acts which hamper the emotional or psychological growth is considered as emotional or psychological abuse.

Physical Neglect

The parents or person under whose care and protection the child is bound to take care of all the physical needs of the child, therefore any kind of neglect in taking care which may hamper him physically either temporarily or permanently is an act of physical neglect. The child does receive the basic care and nurturing is physical neglect.³

¹Ministry of Women and Child Development, Study on Child Abuse: India 2007, *available at*: www.wcd.nic.in (last visited Feb. 7, 2025)

²*Ibid*

³Save the Children, Types of Child Abuse and Its Impact, *available at*: www.savethechildren.in (last visited Feb. 7, 2025).

Emotional and psychological neglect

With the changing times, the work culture has emerged as overburdening due to which many parents provide the best care physically to the children but are not able to provide care and protection to the child emotionally. It includes various acts of neglect such as not applauding the child for his achievements, lacking warmth, lack of communication, lack of love etc.

Sexual Abuse

Any kind of sexual act inflicted on the child is included in sexual abuse. This is the most prevalent form of abuse in the modern times.⁴

Historical Background of Child Abuse

Child abuse has emerged as a global issue and a significant health issue that extends before culture, social context, and race. The concept of child abuse includes act as well as omissions of the maltreatment of the child. This may result in harming, causing threat to the child during any time of his lifetime. According to WHO (World Health Organisation) more than 40 millions of the child are victim to child abuse, globally. The extend and trend of the rates are not determinable. But there are various common factors emerging in most of the nation's resulting in child abuse which is discussed below:

Societal norms and Cultural beliefs

Normalization of violence: There are various societies where it is considered that it is essential to empower children. In some school system it has been prohibited that there shall be no physical punishments given to children however there are many schools and even households where the violence is normal and considered as matter of right. Such child abuse is often unrecognized or unreported but often leads to lacking of confidence, causing trauma and feeling of fear in children.

Gender Discrimination: this issue is more prominent in Asian countries more specifically India is a victim to this orthodox belief. More often, the male child is given more preference and the female child is neglected in terms of love, care, protection and education. This is also a kind of abuse prevailing in most of the homes.

Child Marriage: In India, the practice of Child marriage is still prevailing in the backward areas or villages of some states, this cause trauma and hampers the growth of the children. This also violates various rights of the child

Family structures and Parenting Practices

Broken families: it is often found that the fights of the parents and unstable environment at home cause an irreparable trauma to the children. Also, the strict and hierarchical families promote strict discipline which every child cannot handle. The concept of gentle parenting is still

⁴K. Radhakrishnan, "Understanding Psychological Abuse of Children: A Legal Perspective," *Journal of Indian Law*, Vol. 18, No. 3, pp. 145-162 (2020).

not accepted in many families. Divorces and continuous fights may increase child's vulnerability to abuse.

Economic factors

Poverty and unemployment: Financial constraints are also one of the reasons of neglect and abuse to children by their families. The frustration and insecurity often results in child labor and domestic violence due to which the environment of the family is hampered.⁵

Child labour: The concept of child labour is more prevalent in those families who lack financial resources. It is culturally undertaken by the financially poor families to give birth to more children so that they can be employed at more places. This practice is seen mostly in slums.

Lack of education and awareness: due to financial constraints, it is often seen that the education is not pursued by the parents and then the children. As education is important aspect of everyone's life that promotes awareness and knowledge. Due to lack of education, it is often witnessed that there is lack of awareness regarding abuse. The most victims of such abuse are commonly women and children. It also results in sexual as well as criminal abuse.

Social stigma, religious beliefs and superstitions

Fear of shame: many superstitious are such that are practiced at highest level. Therefore failing to perform the same is considered as shame or failure to raise right individuals by the society. Also in many cases, the parents or the family do not recognize emotional or sexual abuse as wrong.

Legal framework for Child Abuse in India

International Conventions and Declarations

India is part of various international conventions and declarations such as United Nations Convention on the Child rights which states various rights of the children. India has also signed International Convention on Civil and political rights (ICCPR) in addition; India is an active member of the Child Rights Committee. India is also party to SAARC convention on Prevention and Combatting Trafficking in Women and Children for Prosecution.

Constitution of India

The Constitution of India has various provisions that deal with protection and welfare of the children. In the Fundamental rights, the parliament has been authorized to make special laws and policies with regard to welfare of children that shall not be questionable on their validity. Article 14 that denotes Right to equality has also been granted to all the citizens irrespective of the age. Article 23 provides that there shall be no trafficking in human beings and forced labour. Article 24 prohibits employment of the children in factories etc. Article 21A deals with right to

⁵M. Saxena, "Economic Exploitation and Child Labour in India," Economic and Political Weekly, Vol. 55, No. 12, pp. 34-42 (2019).

education of the children aged at 6-14 years. Article 39(f) states that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and the childhood and youth shall be protected against exploitation, moral and material abandonment.⁶

IPC

The Indian Penal Code 1860 under section 317 provides exposure and abandonment of the childless than twelve years of age is a crime punishable under IPC. The act shall be conducted with an intention to abandon the child.

Juvenile Justice Act

The act deals with two types of children that is firstly the child in care and protection of law and secondly Child in conflict with law. The act specializes in providing care and protection to those children who needs special treatment and development. The act also offers protection to children against the offences of cruelty under section 23, begging under section 24, and hazardous employment under section 26.

POCSO2012

The act provides the legal provisions to protect children from sexual abuse and exploitation. The act provides that any child who is under eighteen years of age is protected from any kind of sexual abuse, sexual assault, harassment and pornography. Rigid punishments have been prescribed in this act to prevent the commission of the offences.⁷

The POCSO (Amendment) Act 2019

The amendment to POCSO has been introduced with an objective to safeguard the children from offences of sexual assault and sexual harassment. Following are the features of The POCSO (Amendment) Act 2019:

1. The amendment has made the act gender neutral signifying that the sexual assault, harassment is equally punishable whether committed on male child or female child.
2. The scope of the sexual assault has been extended including the administration of chemical substances in order to make children mature before age for using them for the purposes like prostitution and trafficking.
3. The act has penalized transmitting porn content to children and has been synchronized with the Information Technology Act 2000.
4. The act has also introduced Death penalty as punishment and enhanced punishment.
5. There has been sanctioning of more than one thousand Fastrack Courts by the Government.

⁶M.P. Jain, Indian Constitutional Law, 8th ed., LexisNexis (2018).

⁷The Protection of Children from Sexual Offences (POCSO) Act, 2012, No. 32, Acts of Parliament, 2012 (India)

6. There has been expanded scope of various definitions introduced by the amendment act such as Pornography etc.⁸

Conclusion

Child abuse is one of the grave and most common form of abuse found in India. it is matter of urgent intervention. Despite of so many laws being framed to protect and prevent sexual abuse in India with special reference to children but the offences of child abuse have been increasing day by day. Due to various factors such as lack of awareness, education, social stigma, fear of shame, underreporting etc. the issue is under addressed. No doubt a comprehensive framework is there to address but the no of offences increasing day by day. There is a need for more effective implementation at the grassroots level. There shall be sensitization regarding the abuse to the parents, care givers, law enforcement agencies etc. all the stakeholders shall be sensitized. Socially there are deep rooted issues that are the reasons for the weak implementation such as lack of education, poverty, legal reforms and societal norms. Therefore to address these issues the awareness must be raised, the community engagement shall be enhanced. All the stakeholders shall collectively implement and put forward in order to prevent children from any kind of abuse.

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⁸*Ibid*