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The Role of the Legal System in Preventing and Responding to Child Abuse

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ABSTRACT

Child abuse is a pervasive and deeply troubling issue that affects countless children worldwide, leaving enduring emotional, psychological, and physical scars. This abstract explores the complex dynamics of child abuse, shedding light on its various forms, causes, consequences, and preventive measures. Child abuse encompasses physical, emotional, sexual, and neglectful maltreatment of minors. It often occurs within families, affecting children's well-being, trust, and development. The causes of child abuse are multifaceted, with factors such as parental stress, substance abuse, mental health issues, and intergenerational cycles of abuse playing significant roles. The consequences of child abuse are far-reaching, affecting victims well into adulthood. It can lead to a range of problems, including mental health disorders, impaired social relationships, and increased risk of engaging in abusive behavior themselves. Prevention is the cornerstone of addressing child abuse. Public awareness campaigns, improved social services, and accessible mental health resources for families can mitigate risk factors and promote child safety. This abstract emphasizes the urgent need to recognize, prevent, and respond to child abuse, with a collective effort to ensure every child's right to a safe and nurturing environment. Only through comprehensive and sustained action can we protect the world's most vulnerable members and break the cycle of abuse.

Keywords: Child Abuse, Constitution, POSCO, Convention.

I. INTRODUCTION

According to oxford dictionary 'Child' is defined as a young human being below the age of full physical development.³The U.N. Convention on the Rights of the Child, 1989 defines that term 'Child' means any human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.⁴ Children are the base of human society. The silhouette of future human society shall be resolute by their mental and physical well-being. Child abuse is one of the biggest glitches affecting families and society. It happens all around

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³ Catherine Soanes and Angus Stevenson (ed.), Oxford Dictionary of English, New Delhi, Oxford University Press, 300 (2004)

⁴ U.N. Convention on the Rights of the Child, 1989 -Article 1

the world, in all societies and ironically too often it happens in the family. Child abuse is an extensive term that involves numerous types of child mistreatment. Child trafficking, forced labour, child soldiering, intimate partner violence and domestic violence are a few of the most common offenses.

According to the World Health Organization, 1 in 2 children ages 2 to 17 suffer from some form of abuse each year.⁵ Children experience abuse when individuals, including relatives, teachers, community members, peers, or strangers, violate their physical, sexual, or emotional well-being. Abuse against children is a universal crisis and a human rights violation. Regrettably, despite there being several resolutions and laws both at national and global level, the condition of children is far from acceptable. History is the witness that this innocent and helpless creature has been subject to variety of exploitation.⁶ Childhood violence and abuse have profound and long-lasting effects on a child's physical, psychological, and mental well-being. Without adequate support and care, these experiences can hinder a child's development and impact their future.

Furthermore, children who have endured violence are more likely to perpetuate such patterns, passing them on to their peers or future generations. Just as an adult's personality is shaped during their early years, a nation's development is influenced by how it prioritizes the well-being of its children. Recognizing children as valuable national assets, it is crucial for national policies to prioritize their care and ensure their physical, mental, social, and moral health. Therefore, putting an end to violence against children is not only essential for safeguarding their rights but also for fostering healthy communities and societies. Regardless of every affirmative action taken with respect to children through numerous acts and amendments, their condition has not changed much over time.

The fact that children are the most vulnerable section of the society has not varied even after decades of independence. Initiating from the first 5-Year Plan, successive governments came up with various policy reforms and laws for changing the conditions of children and uplifting their standards of living. Yet exploitation, abuse, labour, and abandonment remain the ground reality of children across India.⁷ Half of the children in India face some form of sexual abuse, with 21% having faced severe sexual abuse. Boys accounts for 53% and girls account

⁵ Global status report on preventing violence against children. Geneva: World Health Organization; 2020. Licence: CC BY-NC-SA 3.0 IGO

⁶ M.B. Jameel, "Menace of Child Labour," Paper Published in Souvenir of National Seminar on Child Rights in the Background of the U.N. Convention on the Rights of Child, 1989 organised by the Department of Law, Rd. Ambedkar College, Nagpur, 73 (15th & 16th February, 2004)

⁷ Amisha U. Pathak, Child Abuse in India –An Analysis, *Indiathink.org*, 1 (2021), <https://indiathink.org/Child-Abuse-in-India-An-Analysis-by-Amisha-u-Pathak.pdf>

for 47% of all children reporting abuse.⁸

II. TYPES OF CHILD ABUSE

Violence and abuse on children are the harsh reality of our society. According to UNICEF report it was found that there are 30 different forms of verbal and physical abuse that Indian parents use on children as young as 0-6 years as part of discipline efforts.⁹ Yasmin Ali Haque, representative of UNICEF in India has said that various form of violence against children includes physical violence (burning, pinching, slapping, beating with implements like stick, belt, rods) verbal abuse (blaming, shouting, criticizing, use of foul language) witnessing physical violence (on siblings, on parents or on any other family member) and emotional abuse (restraining movement, denying food, locking in bathroom, discrimination).¹⁰ Instances of school-based abuse are prevalent in our nation. In situations where incidents of sexual abuse come to light, some schools often resort to denying or undermining the credibility of the victims.

i. Physical Abuse

Parents frequently resort to physical punishment under the guise of disciplinary measures or when a child does not achieve satisfactory academic results or for various other reasons. Physical abuse involves inflicting significant injuries on a child, which can have long-lasting effects on their health. This abuse can come from parents, siblings, caregivers, or other family members. Boys tend to experience a higher incidence of physical violence compared to girls. According to studies mothers physically abuse children more as compared to fathers.¹¹ Physical violence can manifest differently across different classes of children. School-going kids may experience more frequent beatings compared to children engaged in child labour. The causes of physical abuse can be multifaceted, as suggested by various social scientists. Some attribute it to parental behavioural traits or the dynamics of the parent-child relationship.

Parents who feel the need to assert their dominance or have experienced abuse in their own childhood or are involved in toxic and abusive relationships are more likely to resort to hitting their children. Others highlight the role of parental needs and expectations, where parents may resort to physical punishment when their children fail to meet their expectations. Psychological factors are also considered, where parents may project their frustrations onto their children. It is important to note that there is not one specific reason, but rather a multitude of factors that

⁸ The POSCO (Amendment) Bill, 2019: An Introduction

⁹ Express News Service, "Indian parents use 30 different kinds of abuse on kids from 0-6 years," UNICEF study, *The New Indian Express*, June 3, 2020.

¹⁰ *ibid*

¹¹ Mohammed Reza Irvani, "Child Abuse in India," *Asian Social Science*, Feb. 2011

can lead to child abuse. Children are vulnerable to abuse both within their own homes and at school, facing physical violence from parents, teachers, and non-teaching school authorities. Corporal punishment remains prevalent in numerous schools, where it is a regular occurrence. Normal range of punishments, which continue unabated, are caning, beating knuckles with stick or steel scale, kneeling, standing on the bench and so on.

Writing impositions for more than fifty times within a short time, which is physically not possible to complete, is a new type of punishment.¹²

ii. Sexual Abuse

The lasting impact of sexual abuse is something that stays with a child throughout their entire life. According to NCRB data, 32608 cases were report in 2017 and in 2018, 39827 cases were reported under the Protection of Children from Sexual Offences Act (POCSO). There were 47,221 POCSO cases out of 1,28,531 cases of crime against children in 2020 and 47,335 of 1,48,185 such cases in 2019 .Whereas 1,49,404 cases of crime against children were registered in 2021 of which 53,874 were under the Protection of Children from Sexual Offences Act (POCSO).¹³ Child Sexual Abuse (CSA) is defined by the World Health Organization as the engagement of a child in a sexual activity that they do not fully understand, are unable to provide informed consent to, or for which they are not developmentally prepared and incapable of giving consent.

It also includes acts that violate the laws or social norms of society. This may include but is not limited to: the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of child in prostitution or other unlawful sexual practices; the exploitative use of children in pornographic performances and materials.”¹⁴ According to studies it was revealed that in 90% cases the abuser is known to the child and he or she trusts the abuser hence it makes difficult to know about child abuse or provide help from outside.¹⁵ internet Sexual Abuse happens over the online mostly. Young people are prone to cyberbullying, grooming, sexual exploitation, and emotional abuse. This act can be done by anyone. Children often feel trapped and unable to escape from child sexual abuse due to the constant fear that perpetrators can reach them at any time and invade their personal boundaries.

¹² <https://endcorporalpunishment.org/corporal-punishment-of-indias-school-children/>

¹³ Nayanika Sengupta, “109 children sexually abused every day in India in 2018: NCRB,” India Today, Jan. 12, 2020. <https://indianexpress.com/article/india/crime-against-kids-a-third-still-under-pocso-8119689/>

¹⁴ World Health Organization. Report of the consultation on child abuse prevention (WHO/HSC/PVI/99.1) World Health Organization; Geneva (Switzerland): 1999. Available at: <http://www.who.int/mip2001/files/2017/childabuse.pdf>.

¹⁵ Reetu Ravi, “90% of abuser is known to victim: How is this NGO is prepping families to fight child sexual abuse,” The Logical Indian, April 30 2020.

The ideal perception of schools as safe and secure spaces for students has been shattered by the increasing number of allegations of sexual abuse by students. In May 2021, Chennai alone witnessed more than 200 complaints of sexual abuse made by students against their teachers, attracting significant media attention. Although the large number of cases grabbed headlines, it is important to note that sexual abuse within school environments is not a recent occurrence. The Protection of Children from Sexual Offences Act, 2012, or POCSO, is the most comprehensive legislation on child sexual abuse and it mandates reporting by any person to the police if child sexual abuse is suspected. This has implications on schools as well, to report such complaints to the police.¹⁶

iii. Emotional Abuse

Emotional abuse refers to a pattern of harmful behaviour or actions that negatively impact a child's emotional well-being and development. It involves the consistent use of words, actions, or neglect that undermine a child's self-esteem, self-worth, and overall emotional health. The worst part regarding this is not a single law which relates to the emotional abuse of child prevails in India. Some of the form of emotional abuse is limitations, stigmatising the child, blacking the child, or isolating the child comparison of children, sending them to hostels and to boarding school.¹⁷

III. INTERNATIONAL LEGAL FRAMEWORK ON RIGHTS OF CHILD

Article 19 of the UN Convention on the Rights of the Child (UNCRC) in 1989 establishes that all forms of discipline that involve violence are not acceptable. The article emphasizes that children possess the fundamental right to be safeguarded from any form of physical or mental harm and mistreatment. It further calls upon governments to guarantee that children are provided with appropriate care and protection, ensuring they are shielded from violence, abuse, and neglect inflicted by their parents or any other individuals responsible for their well-being.¹⁸ Similarly, the children who have been neglected or abused should receive special help to restore their self-respect.¹⁹ During the 42nd session of the UN Committee on the Rights of the Child held in Geneva in May-June 2006, a general comment titled 'The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment' was issued. This comment emphasized the obligation of all state parties to swiftly enact laws

¹⁶ <https://theprint.in/opinion/majority-of-indian-schools-dont-have-means-to-prevent-combat-child-sexual-abuse-survey-finds/864776/>

¹⁷ JJ Freyd, FW Putnam, TD Lyon, et al. "Psychology-The science of child sexual abuse," *Science* 308 (5721): 501. (April 2005)

¹⁸ United Nations Convention on Right of the Child, 1989-Article 19

¹⁹ *Id.*, Article 39

and measures to prohibit and eliminate all forms of corporal punishment and other cruel or degrading punishments inflicted upon children. The comment also outlined the legislative, awareness-raising, and educational steps that states should take to fulfil this obligation.

In a subsequent special session on children held in New York in 2002, the progress made for children since the 1990 World Summit for Children was reviewed. Following deliberations, the Assembly adopted "A World Fit for Children," which established goals and a specific action plan to ensure that millions of young people worldwide have access to adequate education, health services, and improved living standards.

IV. LEGAL FRAMEWORK FOR CHILD PROTECTION IN INDIA

According to the law, individuals who have committed criminal offenses must face appropriate punishment specifically designed for criminal wrongdoing, rather than civil matters. This punishment is administered by the proper authority. In cases where parents, guardians, or school teachers who are not considered appropriate authorities' subject children to severe punishment or abuse, the law becomes relevant. The law serves to protect the child who is the victim and ensures that the perpetrator is held accountable and receives suitable punishment. It provides safeguards for children against any form of harm or abuse, whether it occurs within the domestic setting or is inflicted by unknown individuals.

(A) Constitution of India

The Indian Constitution, enacted on January 26, 1950, ensures the rights of children. Article 21-A guarantees the entitlement of all children between the ages of 6 and 14 to receive free and compulsory primary education. The Constitution of India ensures that children are safeguarded from engaging in any dangerous employment until the age of 14.²⁰ Additionally, children possess the same rights as adult citizens of India, including the right to equality,²¹ personal liberty, due process of law,²² protection from trafficking, and prevention of forced labour,²³ among others. Child protection laws in India are designed in accordance with the constitutional provisions to protect and uphold the rights of children.

(B) Provisions under Indian Penal Code

The Indian Penal Code also protects children's interests, and if a crime is committed against them, there are harsh procedures to deal with it. It also makes sure that no child is ever

²⁰ Constitution of India, 1950 Article 24(a)

²¹ Id., Article 14.

²² Id., Article 21

²³ Id., Article 23

abandoned by their parents. If the father or mother of a child under the age of 12 exposes or abandons the child in any way with the intent to completely abandon the child, they may be punished with a prison sentence of up to 7 years²⁴. The code also addresses severe harm and the associated penalties. A person who intentionally causes harm to a child may be found guilty of this offence and punished with up to 7 years in jail as well as a fine. In addition, they may be held responsible for causing grave harm.²⁵ Another provision guards regarding the exploitation of young girls sexually. According to the section, anyone who forces or seduces a minor girl to move from one place to another or to take any other action with the intent that she will be forced or seduced into having illicit sexual relations with another person faces up to ten years in prison as well as a fine.²⁶

(C) The Protection of Children from Sexual Offences (POCSO) Act, 2012

Prior to the Act's implementation in 2012, sexual offences could only be recorded under the Indian Penal Code, 1860. However, no other type of non-penetrative sexual assaults, harassment, or exploitation were specifically recognised, except for rape, outraging a woman's modesty, and unnatural conduct as specified in Section 377. Child pornography, sexual assault, and sexual harassment were all made crimes with the implementation of the POSCO Act. The Act was created to establish special tribunals for quick trials and to protect children from sexual offences, pornography, and sexual exploitation through legal measures. The salient features of the act were,

- According to the Act, a child is younger than 18 years old.
- It covers a wide range of sexual offences, including as exhibitionism, stalking of children, showing children pornography, exploiting children for pornography, and complete and partial penetration as well as non-penetrative sexual assault. The legislation guards against both physical and psychological sexual abuse of children.
- It provides punishment for all types of perpetrators no matter their gender and age and places the burden of proof on the accused.
- It ignores consent-based sex between kids and between kids and adults.
- It specifies that sexual offences must be reported.
- It introduces child-friendly policies and clarifies the police's responsibility to protect

²⁴ Indian Penal Code, 1860 -Section 317

²⁵ Id., Sections 320-325

²⁶ Id., Section 366A

children.

- The Act mandates that the case be resolved within a year after the reporting date.²⁷

The minimum sentence for penetrative sexual assault was raised from seven to ten years under the POCSO (Amendment) Act, 2019. The bill has improved the definition of child pornography and increases penalties for those who utilise children in sexually violent ways for pornographic objectives. Two new penalties for storing child pornographic material have been created by the law. These include (i) neglecting to remove or report pornographic content featuring children and (ii) sending, exhibiting, or otherwise disseminating such content without having the intention of doing so.²⁸

(D) Right of Children to Free and Compulsory Education Act, 2009

The Act sets an extremely clear ban against corporal punishment. It forbids corporal punishment and psychological abuse of children and specifies the disciplinary measures that must be taken against the offender in accordance with the service standards that apply to that person.²⁹

(E) Indian Judiciary's Approach to the Rights of Children

Indian judiciary has always been concerned when it comes to children. As always it believes that children are the future pillars of the country its decision when comes with children's rights or the matters that are regarding children it has always been conscious. The Delhi High Court in *Court on its own Motion v. Govt. of NCT of Delhi*,³⁰ observed: "Today's children constitute tomorrow's future. To warrant an optimistic future of our children, we must certify that they are educated and not demoralized. The delinquent is more byzantine in developing countries like ours, where child labour exists in connection with illiteracy and poverty.

In a famous case of *Bijou Emmanuel and others v. State of Kerala and others*³¹ the Supreme Court held that such children did not display any contempt towards National Anthem by not joining in singing the National Anthem at school's prayer. Removal of children from the school on this ground was held to be violative of their fundamental right failsafe under Articles (19) (1) (a)³²and 25(1).³³The Supreme Court ordered the concerned authorities to re-admit the

²⁷ The POCSO (Amendment) Act, 2019

²⁸ Ibid

²⁹ Right of Children to Free and Compulsory Education Act, 2009-Section 17

³⁰ Writ Petition (C) No. 9767/2009. (Delhi High Court)

³¹ AIR 1987 SC 748

³² The Constitution of India, 1950-Art. 19(1) All citizens shall have the right to freedom of speech and expression.

³³ Id., Art. 25(1)-Subject to public order, morality, and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise, and propagate religion.

children into the school, to provide authorization to pursue their studies without hindrance and to help the pursuit of their studies by giving them necessary facilities.

V. CONCLUSION

Child abuse, whether it be physically, emotionally, or sexually, is an unpleasant reality of our culture. There is a need to address the issue of child abuse in both families and schools as a result of the rise in incidents. It is necessary to change the stigma around the subject as well as parents' persistent denials that their children may ever experience such a thing. It is exceedingly challenging to confront the subject of sexual assault in a nation where talking openly about sex and sexuality are taboo. NGO's and the law can only assist if the victim or their family speak forward. No one outside the family can step in and solve the issue at hand. On the other hand, the school system in our country has not done anything to address this problem.

People persist to be unaware of the importance of sexual education. The youngster should be taught about appropriate and inappropriate touch by educators and other educational institutions. Every educational institution should be required to offer sex education. It counts for parents to understand their children and to observe attitudinal changes in them. Regardless of its effectiveness in enforcing discipline, the habit of physically disciplining children serves as unabated. Children replicate their elders and learn from them. If a family sets poisonous and abusive examples for their children, it is very likely that such toxic tendencies will be adopted by the children. It is critical for parents to ensure that their children grow up in a safe and secure environment.
