

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 3

2024

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Unveiling the Shadows: A Comprehensive Exploration of Child Abuse in India

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ABSTRACT

Child abuse is one of the major issues in India, encompassing physical, sexual, emotional, and psychological mistreatment. This paper aims to highlight the critical position that India holds in safeguarding its children amid the dynamic shift of society and the factors that are responsible for child abuse. The paper also discusses the position of the Indian judiciary as illustrated by some of the crucial cases, casting a spotlight on both the efforts made to protect the rights of children as well as the obstacles that came in the way of enforcing these measures effectively. It also highlights the role of the judicial system in addressing affairs such as child labor, neglect, maltreatment of a child, right to education, and child prostitution. It is concluded that child abuse represents the infringement of fundamental human rights making it necessary for the government, judiciary, and society to take effective steps for its elimination. Suggestions that would help safeguard the children and raise awareness among them are also given in this paper.

Keywords: WHO, ISPCAN, APSAC, RAD.

I. INTRODUCTION

“There can be no keener revelation of a society’s soul than how it treats its children”.

-Nelson Mandela

With over 19 percent of the world’s child population, India claims the distinction of hosting the largest number of children globally. This emphasizes the crucial position that India holds in safeguarding its children amid the dynamic shift of society. As a result, India confirms both the fundamental and legal rights of its children and integrates the importance of their well-being and development into its comprehensive programs and policies. Despite the various attempts made through numerous acts and amendments related to children and their safety, child abuse still stands as a distressing issue in society, that encompasses different forms of maltreatment such as physical abuse, sexual abuse, emotional abuse, neglect, and psychological abuse.

According to the reports submitted by the National Crime Record Bureau 53% of the child

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population in India suffers from some kind of abuse, and an alarming increase in the cases of rape and murder has also been noticed. Unfortunately, such atrocious acts are underreported, sustaining a cycle of silence because of the psychological impact that it has on the victims. The hesitation to report is often influenced by social factors such as family reputation, societal image, and many others, it is these issues that somehow overshadow justice and leave a lifelong scar on the victims.

Child abuse in itself is a gross violation of the basic fundamental human right. Former Chief Justice of India, Justice K. Subba Rao, has observed that “Social Justice begins with children. Just like a fragile plant requires care and proper nourishment to thrive into a strong and valuable tree, prioritizing the safety of children should also be a priority in the hierarchy of social justice.”³ Children being the most valuable asset of the nation, demand particular safeguarding from exploitation and neglect. It is the responsibility of the state to actively work towards it. However, the efforts made by the Constitution of India through various legislations, national policies, conventions, and recommendations have yet not succeeded in improving the condition of a child. Even in the 21st Century, the rights of children are still compromised even though society is progressing rapidly. The genuine gauge of humanity embraced by society and its justice system depends on how affectionately they treat children who are the most vulnerable segment of society. A society that reflects genuine care for the younger generation also shows signs of development and maturity.

(A) Definition of Child Abuse

The Black’s Law Dictionary outlines child abuse as any type of violence that jeopardizes a child’s physical, mental, or moral well-being. Further, the Black’s Law Dictionary also categorizes abused and neglected children as those who suffer from severe physical harm and emotional trauma, which may also include conditions like malnutrition.

Parke and Collmer stated that “the occurrence of non-accidental physical harm inflicted upon a child which arises from the actions or neglect of their parents or caretakers that violate the community standards about the treatment of children can be defined as child abuse.”⁴

According to Burgess, child abuse can be characterized as a non-accidental physical and psychological injury experienced by a child due to the actions or neglect of their parents, guardians, or employees.⁵

³ K. Subba Rao, *Social Justice and Law*, DELHI NATIONAL PUBLISHING HOUSE, 1974, at p4.

⁴ Parke, R and Collmer, C, *Child Abuse, An interdisciplinary Analysis*, 5 REVIEW OF CHILD DEVELOPMENT RESEARCH, 509589 (1975).

⁵ Burgess, R. L, *Child Abuse, A Social Interaction Analysis*, 2 ADVANCES IN CLINICAL CHILD

World Health Organization also defines child abuse or child maltreatment as all forms of physical and emotional mistreatment, sexual abuse, neglect, and exploitation that result in actual or potential damage to the child's health, development, or dignity.⁶

According to the Juvenile Justice (Care and Protection of Children) Act, 2015⁷, "Child in need of care and protection" means a child who:

- i. Is found begging or who is a street child or a working child;
- ii. Is found without having any home or settled place of abode and without any ostensible means of subsistence;
- iii. Who resides with a person (whether a guardian of the child or not) and such person has threatened to kill or injure the child and there is a reasonable likelihood of the threat being carried out, or has killed, abused, or neglected some other child or children and there is a reasonable likelihood of the child in question being killed, abused or neglected by that person;
- iv. Who is mentally challenged or ill, or children suffering from terminal diseases or incurable diseases having no one to support or look after;
- v. Has a parent or guardian who is unfit or incapacitated to exercise control over the child;
- vi. Lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution or is found to associate with any prostitute or any other person who leads an immoral, drunken, or deprived life;
- vii. Who is being or is likely to be grossly abused, tortured, or exploited for sexual abuse or illegal acts;
- viii. Who is found vulnerable or is likely to be inducted into drug abuse or trafficking;
- ix. Who is being or is likely to be abused for unconscionable gains;
- x. Who is a victim of any armed conflict, civil commotion, or natural calamity.

II. STATUS OF CHILDREN IN INDIA

Traditionally children were often disregarded and were not actually included in the discussions and decisions that affected their lives, which hindered their access to information, limiting their

PSYCHOLOGY 141 (1979).

⁶ *Child Maltreatment*, www.who.int/news-room/fact-sheets/detail/child-maltreatment accessed 25 February 2024.

⁷ The Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2, Acts of Parliament, 2016.

choices and opportunities to seek assistance beyond their immediate surroundings. It was in the 20th century that the idea of Child's Rights underwent a significant transformation which shifted the focus from welfare to a rights-based approach. This evolution brought progress in both governmental and civil societies. The change prioritized issues like social justice, non-discrimination, and equity, treated children with more love and care, and regarded them as citizens providing them rights under the Indian Constitution and United Nations Convention on Child Rights 1989.

According to the National Census population of children in India constitutes a significant proportion of approximately 440 million individuals below 18 years of age making up forty-two percent of its total population. Although India acknowledges that education, health, and opportunities play a very vital role in the proper upbringing of children. Still, they suffer from neglect, abuse, and exploitation which leaves them traumatized and underconfident for the rest of their lives. Over 2.1 million children die before turning five every year out of which half of them don't get to live even for 28 days.⁸ The main reason for this dire state of children is malnutrition, low birth weight, and high prevalence of communicable diseases.

A significant number of children suffer from poverty, leading to the emergence of Children in Especially Difficult Circumstances (CEDC). These poor individuals are vulnerable, marginalized, and neglected, depriving them of their fundamental rights including care, protection, food, health, education, and shelter. This fragile and perilous group can be classified as orphans, abandoned, poor children who work on the streets, and children who are in quarrels with the law or are children of those whose parents are in jail. India holds the unfortunate distinction of having the world's largest population of children on the street.⁹ In modern India, at least 18 million children live either on the streets or do child labor as they are the most susceptible and economically affordable source of employment which exposes them to extreme physical and mental abuse and forces them to work in hazardous conditions.

Although children are the most crucial segment of human society, they have been subject to abuse across different periods and societies. Shockingly, around 40% of them lack access to necessities. In India, the issue of child rights violations has yet to gain sufficient attention. Multiple factors contribute to this violation such as inadequate education, unemployment, single parents, poverty, and the incapacity of parents to control their impulses. Child abuse is not an isolated issue but rather a rooted one that reflects the poverty and economic underdevelopment

⁸ *Mother and Child, India has the largest number of newborn deaths in the world*, THE TIMES OF INDIA (NEW DELHI), July 24, 2008.

⁹ Human Development Report, UNDP (2011).

of the country.

III. KINDS OF CHILD ABUSE

Child Abuse cannot be determined by a single factor rather it is a phenomenon involving multiple causes through which one can understand the reason behind the violent behavior of adults toward kids. The World Health Organization (WHO) and The International Society for Prevention of Child Abuse and Neglect (ISPCAN) recognize numerous factors at the individual, relational, community, and societal levels that are collectively responsible for child maltreatment. Some of the various kinds of child abuse are as follows:

(A) Physical Abuse

Physical abuse is one of the most common forms of child abuse in India. It takes place when a child is physically injured, usually, it is done by his parents, teachers at school, or guardians. Hitting a child with objects such as a wooden stick, plastic or metal device, beating him using hands, burning, and shaking infants are all examples of physical abuse. Children being the most vulnerable beings are dependent upon their parents and sometimes when the frustration is taken out on them, it leads to a lifelong trauma to a child. Physical abuse is not only confined to assault inflicted by parents or guardians but any type of physical neglect, child labor, and malnourishment all form a part of physical abuse.

(B) Emotional Abuse

Emotional abuse is frequently recognized as a recurring behavioral pattern that hinders the emotional development of a child, posing significant challenges in terms of proof. The absence of concrete evidence in instances of child emotional abuse is acknowledged as a substantial obstacle to the current Child Protection System. Emotional abuse tends to coexist with other kinds of abuse when identified in a child. Emotional abuse can have a lasting effect on a child. Children who are ignored, humiliated, teased, and shamed suffer psychologically which leads to them losing becoming underconfident, and having abandonment issues.

According to multiple child development studies, the brain of a kid is influenced by the experiences he has had with his family's caregiving and community treatment. Children who are abused from a very tender age can grow up having trust issues, insecurities, low self-esteem, and even anxiety. Usually, when a child is neglected and abused at home, he finds solace in strangers. When a child is abused in his preschool or at home he becomes affectionate towards strangers or people whom he has not known for a very long time. Reactive Attachment Disorder (RAD) can also be seen in children usually starting from five years of age.

It is very disheartening to see that though mental health and emotional well-being are the burning topics in today's era and every second individual is talking about his struggles as a child yet there are no laws that can relate to emotional abuse of a child and can protect an innocent being from being the victim of child abuse and having a lifelong trauma.

(C) Sexual Abuse

The alarming rise in the instances of child abuse is obstructing the healthy growth of our younger generation, hindering their ability to evolve into promising members of the future. Children are either abducted or chased like prey to please the sexual appetite of the perpetrators and are even sold to brothels for business motives.¹⁰ Children belonging to poor families are more prone to sexual abuse and prostitution, they are publicly abused and are made victims of sex rackets.

In India, both genders suffer equally be it a male or a female child. Tourist places such as Puri in Orissa where the localities depend upon the tourists for their survival, children of these people are usually the victims of sexual assault by the tourists and sadly they do not even protest even though they are well-versed with what is happening.¹¹ It is also observed that according to the 'devadasi' tradition, females belonging to lower casts are consecrated by their parents to a deity or temple. In such a scenario, they are sexually assaulted by those who favor this practice.¹²

Reports concerning the disappearance of male kids indicate that even they are not safe and are vulnerable to sexual abuse. They are tempted by materialistic things and are taken to distant places such as hotels where they are drugged and abused for days or sometimes weeks as well.¹³ Some reports also suggest that even altar boys are not safe and are sexually assaulted by priests.¹⁴

"Sexual abuse" is defined as "any kind of sexual encounter with a child which disrupts or has the potential to hinder the child's development".¹⁵ Children being fragile and innocent usually become the victims of sexual abuse, sometimes they are unaware of what is happening to them and they often remain silent and carry this scar with them for the rest of their lives. While the adults take advantage of these innocent beings to satisfy their urges by sexually exploiting them.

¹⁰ Newspapers bring to light shocking instances of child sexual abuse. *A ten - month-old baby was raped and killed in Trivandrum*, THE INDIAN EXPRESS, February 2, 1997.

¹¹ THE NEW INDIAN EXPRESS, September 6, 2007.

¹² Badar Ahamed, *Protection to Children under Indian Islamic Law*, XI ALIGARH LAW JOURNAL 149, 154 (1996).

¹³ THE INDIAN EXPRESS, November 8, 1997.

¹⁴ THE INDIAN EXPRESS, July 18, 1998.

¹⁵ Child Abuse Prevention and Treatment Act, 1974,

(D) Psychological Abuse

According to The American Psychological Association, deliberate verbal or symbolic behavior by a parent or caregiver leads to significant psychological harm to the child. In 2014 the association stated that “Childhood psychological abuse tends to cause equal if not more harm as that a sexual, emotional or physical abuse can cause to a child.”¹⁶

The definition of child abuse given by the American Professional Society on the Abuse of Children (APSAC) in 1995 says that the recurring pattern of behavior of caregivers or extreme episodes that shows children that they are unworthy, flawed, unloved, unwanted, endangered, or only valuable in fulfilling the needs of other individuals¹⁷ or the deed of rejecting, terrorizing, exploiting, corrupting, withholding emotional responsiveness, or neglecting all contribute in causing “mental harm”.¹⁸

By analyzing the definitions given by APA one can conclude that psychological abuse is the result of all kinds of abuse be it domestic abuse, sexual abuse, physical abuse, child trafficking, child malnourishment, child labor, or verbal abuse because all of it has an everlasting effect on a child’s mental health which eventually leads him to isolation, underconfident, and sometimes leaves them anxious.

IV. CAUSES OF CHILD ABUSE¹⁹

Child abuse is influenced by a variety of factors extending from the personality characteristics of both victims and perpetrators to their surroundings. Some of these factors are discussed below:

(A) Parental factor

Parents are the most important person in a child’s life, it is they whom a child looks up to. Parents who have experienced child abuse in the past are more likely to perpetrate the same against their children. Domestic violence can also result in child abuse, including physical assault, harassment, or threats between parents and other individuals, and even parental intoxication sometimes makes a child a victim of abuse.

(B) Structure and size of family

The structure and size of a family play a key role in child abuse. It is usually noticed that children

¹⁶ THE AMERICAN PSYCHOLOGY ASSOCIATION, October 8, 2014.

¹⁷ John E.B. Myers, *The APSAC Handbook on Child Maltreatment*, SAGE PUBLICATION INC., 126 – 130 ISBN 978-1-4129-6681-8.

¹⁸ *Child Abuse Laws*, STATZ FINDLAW RETRIEVED, September 25, 2015.

¹⁹ Reena, *Nature, Causes and Consequences of Child Abuse: A study*, 9, INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (November 11, 2021), <https://ijcr.org/papers/IJCRT2111051.pdf>

of larger families are more vulnerable as they don't get quality time from their parents. Those who come from dysfunctional or economically backward families are at higher risk of being the victims of child abuse.

(C) Lack of effective implementation of legislation and policy

Poor implementation of legislation and policy also contributes to child abuse. Disparity between the law and its enforcement encourages perpetrators to commit such atrocious acts. The delay in trial, convictions, and evidence tampering often results in offenders not being punished.

(D) Traditional and cultural practices

The primary catalysts of child abuse are traditional and cultural practices. Practices such as child marriage, preference for male children, discrimination based on caste, child labor, and neglected children being females all contribute to the prevalence of child abuse in society.

(E) Poverty and illiteracy

Poverty and illiteracy are the greatest threats and the main reason for child abuse. Lack of knowledge and poor economic conditions impact a child's growth and development. Studies have shown that children whose families are suffering from poverty are more vulnerable to child abuse than those born in financially stable families. Similarly, insufficient education hampers parents' ability to adequately provide for their child's needs resulting in frustration which ultimately leads to the abuse of a child.

V. HISTORICAL PERSPECTIVE OF CHILD ABUSE

The acknowledgment of different types of child abuse came to the forefront in the 20th Century. However, children have been victims of abandonment and abuse for decades as it was believed that they are the property of their parents.²⁰ Child maltreatment became the center of discussion with the publication of the article "The Battered Child Syndrome" by pediatric psychiatrist C. Henry Kempe in the year 1962. Before the publication of Kempe's article injuries to children were not widely recognized as the outcome of intentional trauma. Rather, physicians sought explanations for undiagnosed bone diseases or believed in parents' narratives of such mishaps. Until the 1970s children in Western countries belonging to ethnic minorities were forced by the state and church authorities to leave their families and assimilate. The study of child abuse made an appearance as an academic discipline in the United States in the early 1970s. As argued by Elisabeth Young-Bruel, regardless of the increasing number of advocates dealing with cases

²⁰ *Child Abuse: A History*, www.encyclopedia.com/reference/encyclopedias-almanacs-transcripts-and-maps/child-abuse-history, (March 8, 2024).

related to children and the growing interest in safeguarding them, categorizing them into abused and non-abused categories has artificially limited the concept of children's rights to mere protection from mistreatment. This has impeded the investigation of broader societal discrimination against them. Another consequence of child abuse and neglect studied by Young-Bruehl was that this excluded taking into account how children personally perceive mistreatment and the significance of adults' attitudes towards them.

Until the 17th century, there was no particular focus on childhood as a distinct phase of life. Plato, for instance, acknowledged the significance of early childhood training in shaping an individual's later vocational aptitudes and adjustments. In his Republic, he explored inherent differences among individuals and suggested identifying each child's exceptional aptitudes for tailored education and early training.

In Western Europe, up until 3-4 centuries ago, children were not considered a separate class of individuals and were not treated differently. Once weaned and capable of basic self-care, children were regarded as "small adults," engaging in activities alongside mature individuals. Medieval art portrayed children as immature adults, and even in the 15th and 16th centuries, they were depicted in non-religious paintings participating in work, leisure, or sports with adults. Their attire also mirrored that of men and women from their social class.

(A) History Before 17th Century

Before the 17th century, people had a very explicit understanding of the concept of child abuse. Society often treated children as miniature adults due to which they had a perspective that they are not that delicate and vulnerable. The prescriptions of a physician from this era rarely addressed particular treatment for children and their well-being was mainly the responsibility of the midwives. It was believed that kids did not notably respond to medical interventions.

In ancient civilizations such as Rome and Greece, infanticide was not an alien concept. Infants who were born with some disabilities or were unwanted by their families due to their financial status were often killed or left to die. Children were treated as the property of their fathers and were either sold to slavery or abandoned on the streets.

It was seen that children were considered an economic asset during the medieval period. However, the concept of "chattel childhood" continued when they were still treated as the property of their parents and guardians. Child Labor was very common during those days; children were often found working in harsh conditions with little to no concern about their health. The lack of education during that period played a pivotal role as it limited the understanding of child rights. It was the elite class that had the privilege to enjoy learning.

While the cases of child abuse were not recorded at a larger length it was quite evident that children were vulnerable to maltreatment in the society before the 17th Century. The lack of legal awareness contributed to the neglect of their rights and well-being.

(B) The 17th Century and Beyond

During this period of the 17th Century, the attitude of society towards children continued to be harsh and cruel, and various instances of maltreatment took place. Corporal punishment was accepted as an ideal form of punishment to build discipline in children. Parents, guardians, and teachers believed that physical punishment was more efficient than any other form of punishment as a result of which children were subject to severe beatings. The theory “*spare the rod, spoil the child*” was deeply rooted in many cultures to an extent where physical abuse was tolerated.

In the year 1833, a law addressing child labor was passed in England which overcame strong opposition from factory owners. Restrictions were imposed on the weekly working hours for children which permitted up to forty-eight hours of working for those aged between 9 to 13 and sixty-eight hours for those aged 13 to 18, prohibiting children below the age of 9 from engaging in any kind of work. Despite this regulation, children aged 5 and 6 years were still found working in coal mines in the 1840s. The mines had tight space, poor ventilation, and drainage forcing those working to toil in mud and water.

The 17th century also witnessed a notable shift in the vision regarding children and their upbringing which attributed to the impact of the church at the time of reformation. Clergy members and other people of this era favored the distinction of children from adults. They scraped out the understanding that children are mini-adults. Over the period there was an evident shift in the attitude of parents towards their children giving rise to novel family dynamics revolving around the wellbeing of the child and their education. This transformation marked the emergence of the belief wherein the child is assumed to be fragile and special and is treated with love and affection. Moral education became the center of teaching in the schools.

Throughout the 20th Century, society developed more understanding and became aware of child abuse as a social problem that needed to be addressed to safeguard the younger generation. Various legal reforms were brought to protect children from abuse and neglect, and child protective services were established. Furthermore, The United Nations Convention on the Rights of the Child was adopted in the year 1989 which highlighted the importance of safeguarding a child from any kind of abuse and neglect.

VI. JUDICIAL APPROACH IN ADDRESSING CHILD ABUSE

The welfare of a child is the paramount concern in every developed society which cannot be ignored at any cost. The advancement of child welfare plays a pivotal role in fostering a community and, on a broader scale, contributes to the progress of the nation. Children are considered the most important assets of the nation; therefore, the growth of the nation is directly associated with the well-being and upbringing of its children. Recognizing them as individuals and treating them right plays a crucial part in their growth not only physically but mentally as well. Failing to secure the basic rights of the country puts its progress at stake as well.

The Constitution of India through its articles reflects the growing awareness of child welfare. Notably, Article 15 Clause 3 empowers the State to establish provisions, especially for minors, while Article 24 makes it mandatory that no child below the age of 14 years should be employed in any factory, mine, or any kind of hazardous occupation. Human Rights have gained attention over the past several years but unfortunately, the actual adherence of these rights remains relatively low. The increase in apathy towards human rights stemming from the ignorance of legislative and administrative bodies has put the very existence of humanity at risk.

Although the government is actively paying attention severe human rights violations are occurring daily. Which most of the time the government is directly involved in perpetuating these criminal acts. The judiciary plays a very crucial role in ensuring the protection of human rights, particularly for children. While the Indian judiciary has to some extent succeeded in reaffirming regulations in favor of human rights, still there have been instances where it has fallen short in addressing the same. Initially, the judicial system of India had a traditional approach that emphasized basic human rights rather than paying attention to the directive principles. With the advancement over time, noticeable changes were seen in the approach of the judicial system concerning the socio-economic rights of the people. Also, the Indian judiciary has passed various judgments concerning children and their rights.

Children are considered the most vulnerable, weakest group who are dependent upon the State for their protection. It is the responsibility of the State to safeguard their basic human rights as well by facilitating their growth and development. Failure to do so renders their right to life and liberty. Regardless of a clear constitutional mandate that shields the younger generation from exploitation and prohibits their engagement in age-inappropriate work due to economic pressure on their families²¹, child labor remains prevalent in India.

²¹ INDIA CONST. art. 39, cl. c.

In the case of *Vishaljeet v. Union of India*,²² the Supreme Court held that all state governments must direct law enforcement personnel and authorities concerned to swiftly address any instance of child abuse. Furthermore, the court recommended the establishment of committees comprising responsible members and experts from various fields to provide recommendations for the elimination of any kind of prostitution that involves children and to ensure proper care for rescued children by establishing rehabilitation homes and conducting surveys to assess the practice of old traditions such as *jogins* and *devdasiin* in their respective areas.

*Gaurav Jain v. Union of India*²³ stands as a landmark case about the rights of children born to prostitutes. In this case, PIL was initiated by the petitioner, urging the central government to issue appropriate instructions for the protection, improvement, and rehabilitation of children born as a result of prostitution.

In the case of *Sakshi v. Union of India*,²⁴ the Supreme Court issued guidelines for the trial proceeding of the case concerning sexual assault on a child. The court further ruled that measures such as using a screen or other arrangements should be made in a way to prevent the witnesses and the victim from having a direct encounter with the accused. Questions raised in the cross-examination of the accused were to be submitted to the presiding officer in writing, who would then communicate the same to the child who is the victim in a manner that avoids embarrassment. The victim of sexual abuse should be granted sufficient breaks as needed while providing the required evidence.

In *State of Rajasthan v. Manoj Pratap Singh*,²⁵ the accused raped a physically and mentally challenged minor girl. On apprehension of the accused by the police, it was discovered that the victim had died due to severe injuries on her body mainly including her head and private parts. Further, the case was committed to the court having jurisdiction for the trial of the offense committed under sections 302, 363, 365, 376(2)(f) of the Indian Penal Code and section 6 of the POCSO Act. The Hon'ble Court upon examining all the evidence established that the accused is guilty of the murder and rape of an 8-year-old little girl and was therefore sentenced to death by the POCSO Special Court.

In the case of *M.C. Mehta v. State of Tamil Nadu*,²⁶ the Supreme Court observed that, according to Article 45 of the Indian Constitution all children up to the age of 14 years should be entitled to get an education, but sadly this remains a dream due to the poor economic condition of the

²² *Vishaljeet v. Union of India*, AIR 1990 SC 1412.

²³ *Gaurav Jain v. Union of India*, AIR 1997 SC 3021.

²⁴ *Sakshi v. Union of India*, AIR 2004 SC 3566.

²⁵ *State of Rajasthan v. Manoj Pratap Singh*, MANU RH 085 3 2015.

²⁶ *M.C. Mehta v. State of Tamil Nadu*, AIR 1991 SC 417.

country which forces children to work. As a result, the court decided that minors can participate in the packaging of fireworks subject to the condition that it is done at a distant location from the production site to reduce the potential for accidents.

In the historic case of *M.C. Mehta v. Union of India*,²⁷ the Supreme Court in the 3-judges bench observed that the fundamental rights of children against exploitation were being significantly violated by match and fireworks industries in Sivakasi where they were employed. Furthermore, the court said that the manufacturing process in these industries is hazardous in nature which can result in fatal incidents.

This verdict of the Supreme Court has undoubtedly generated remarkable interest in eliminating child labor among various organizations and with the initiatives of the state. The court also noted that a great responsibility to address the exploitation of children through child labor has been entrusted to the inspectors appointed under the Child Labor (Prohibition and Regulation) Act of 1986. However, many of these inspectors contribute to the sluggish implementation of the Act therefore, proper orientation and training of these inspectors and other staff members is necessary to eradicate child labor.

In the *People's Union for Democratic Rights*,²⁸ popularly known as the Asiad case Supreme Court set a benchmark for identifying the cause behind coerced labor in the workplace. The court stated that an individual who provides labor or any kind of service to another for a wage that is less than the minimum wage falls within the purview of forced labor.

In the case of *Neeraj Chaudhary v. State of Madhya Pradesh*,²⁹ following a PIL initiated by a journalist, the court decided that the State Government must establish a vigilance team within one month which is dedicated to the rehabilitation of emancipated child bonded laborers. The court also said that the State Government must take measures in the identification of bonded laborers and freeing them.

Supreme Court in *Mohini Jain v. State of Karnataka and others*,³⁰ delivered a landmark judgment affirming that the constitutional mandate for the education of children is an essential component of the fundamental human right that is "Right to life" under Article 21 of the Indian Constitution. The court also emphasized that the directive principles cannot be isolated from the fundamental rights guaranteed under Part III of the Constitution and they are to be read along with the fundamental rights. It is the constitutional obligation of the State to establish

²⁷ *M.C. Mehta v. Union of India*, AIR 1997 SC 699.

²⁸ *People's Union for Democratic Rights*, AIR 1982 SC 1473.

²⁹ *Neeraj Chaudhary v. State of Madhya Pradesh*, AIR 1984 SC 1099.

³⁰ *Mohini Jain v. State of Karnataka and others*, AIR 1992 SC 1858.

conditions that enable all individuals to equally enjoy fundamental rights. If the right to education under Article 41 is not actualized, the rights under Part III will remain inaccessible to a majority of people. This right is inherently linked to the right to life under Article 21. The fundamental rights including freedom of speech and expression stated under Article 19, hinges on the education of a citizen and their dignity. The State is under the duty to furnish educational institutions across all levels for the welfare of its citizens and access to education should not be made confined to the wealthier segments of the society.

Further in the case of *Society for Un-Aided Private Schools of Rajasthan v. Union of India*,³¹ the Supreme Court upheld the legality of section 12 in the “Right of Children to Free and Compulsory Education Act, 2009”. This provision mandates that all schools regardless of their nature i.e., public or private, must reserve 25% of their seats for students who belong to the minority sector of society. However, the court clarified that the RTE Act cannot enforce the same on private minority schools, respecting the minority’s constitutional right to have access to private educational institutions. The court also stated that the State has the authority to fulfill its education-related responsibilities which may even extend to non-State private institutions, as long as it aligns with the public interest.

VII. CONCLUSION & SUGGESTIONS

The discussion highlights the critical issue of child abuse concerning India, encompassing physical, sexual, emotional, and psychological mistreatment. The prevalence of child harassment as indicated by alarming statistics reflects the urgency of immediate action. Despite legislative efforts and landmark judgments, the challenge continues while putting the well-being and development of the country’s most fragile segment in danger.

The historical perspective emphasizes the shift in the attitude of society over time toward the younger generation, moving away from treating them as miniature adults to acknowledging their vulnerability and the need for safeguarding without neglecting them. The position of the Indian judiciary as illustrated by pivotal cases reflects both the efforts made in safeguarding the rights of children and the obstacles that came in the way of enforcing these protections effectively.

Judicial interventions have played a very vital role in addressing affairs such as sexual abuse of a child, child labor, neglect, maltreatment of a child, right to education, and child prostitution. However, with the increase in demand for effective and continuous initiatives, the Indian

³¹ *Society for Un-Aided Private Schools of Rajasthan v. Union of India*, AIR 2012 SC 3445.

constitution through various provisions concerning child welfare imposes a constitutional obligation over the shoulder of the State to establish an environment that fosters the fulfillment of fundamental rights of every individual with specific emphasis on children. Child abuse represents the infringement of basic human rights making it necessary for the government, judiciary, and society to take effective measures for its elimination.

Lastly, it is crucial to prioritize the safety and rights of children as they are the assets of the nation and the future pillars of democracy. The advancement of society is intricately tangled in a manner in which it nurtures as well as provides a safe environment for its children. Hence, a dedicated and unwavering approach is necessary to secure the future of every child living in India so that he can grow and thrive in surroundings which is free from the shadows of neglect and abuse.

(A) Suggestions

Addressing cases related to child abuse and prioritizing the well-being of a child above everything else rather than being concerned about the perpetrators is in the best interest of the child. An approach that focuses on a child and is child-centered must be adopted which ensures confidentiality when dealing with complaints related to the child and justice to the victim. It is the responsibility of both the parents as well as law enforcement to safeguard children from any kind of abuse or neglect. Several suggestions have been proposed to battle child abuse. Some of these include raising awareness, enforcement of the law, child care services, and cooperation among parents.

Following are some of the suggestions put forward to protect children from abuse:

- i. It is suggested that the age of children should be uniform in all the acts and legislations which will remove any uncertainty related to age and bring more conformity among the laws which deal with children.
- ii. It is also suggested that there must be a new classification of offences focusing on addressing the situation wherein a child perpetrates abuse against another child of a similar age group. For instance, if a child who is 12 years old abuses another child of his age, then what will be the legal consequences of such an act? In such cases, it is essential to establish a rehabilitation center to prevent the offending child from becoming a repeat offender. This also includes child counseling and engaging him in skill development activities to help him divert his mind.
- iii. It is also suggested that the education board at both state, as well as central levels, should integrate chapters that would educate children about their rights and the authorities

whom they can approach in case of any kind of abuse that violates their rights. They should be made aware that the process is easily accessible and child-friendly. This initiative will not only boost their confidence but will also make them aware so that they can deal with situations of abuse. It will also promote coordination between different committees and organizations functioning for child welfare.
