

“THE RIGHTS OF A CHILD IN INDIA: DON’T EMPLOY US, EMPOWER US.”

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ABSTRACT

This article deals with the vulnerability of children in the present times and discusses the loopholes in the society which causes child maltreatment. The various types of **child abuse** have been emphasized alongwith their causes. Statistics provided in this paper reveal clearly the poor status of our mentality inspite of modernization in this 21st century. The paper relies on the data given by **Declaration of Child Rights** and **National Society for Prevention of Cruelty to Children (NSPCC)**. The **Prevention of Children from Sexual Offences (POCSO) Act** introduced in 2012 is an effective and powerful mechanism of punishing child abuse offenders but it also has certain ambiguities which have been discussed in this article. With the increase in the number of child abuse and harassment cases, the legislature has framed various preventive and protective laws in this regard which has been dealt with in this article collectively. **Parental criminal liability** which is a new species in the genus of child abuse has been talked about and certain guidelines have been laid down in the conclusion to make children more aware of such circumstances and ways to prevent harassment. The Article also critically analyses the POCSO Act and the challenges faced in the current system. The cited case reveals that children aged a few days are also not spared from such heinous activities. The strict measures taken by the court while giving justice to such children should be emphasized and the legislature should introduce “**chemical castration**” for such inhuman crimes committed on children.

Key terms: Child Abuse, NSPCC, POCSO, Parental Criminal Liability, Chemical Castration.

“The rights of a child in India: don’t employ us, empower us.”

“Mankind owes to the child the best it has to give”

- Declaration of the Rights of the Child (Geneva)¹

The above saying rightly provides that if we do not nurture our children today, no bright future awaits us. Child abuse being one of the most trending criminal activities is shameful not only for

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the society but for the humanity as a whole. Children coming from broken houses, poor families and ignorant parents are subjected to worst cases of exploitation and abuse. Every year more than 3.6 million referrals are made to child protection agencies. The US has one of the worst records among industrialized nations losing around 4 to 7 children every day to child abuse and neglect.

A report of child abuse is made every 10 seconds². In 2014, State agencies found an estimated 702,000 victims of child maltreatment.³ Neglect, disrespect and sexual exploitation has always been their staple diet. They do not deserve the ill-treatment they receive due to external factors of debt, child marriage, dowry or trafficking. Therefore this article will emphasize on prevention and protection of children from abuse and neglect.

CHILD ABUSE

Child abuse can be defined as when a parent or caregiver, whether through action or failing to act, causes injury, death, emotional harm or risk of serious harm to a child. There are many forms of child maltreatment, including neglect, physical abuse, sexual abuse, exploitation and emotional abuse.⁴ The single term 'child abuse' including all acts of ill-treatment towards children emerged in the late 1960s and early 1970s.

In 2011 an estimated 1,545 children died from abuse or neglect, with majority of 81.6% being less than 4 years of age.⁵ Children who are brain damaged or maimed are less visible but more frequent. In recent years more than 78.5% of child victims suffer from neglect, 17.5% suffer from physical abuse and 9.1 % suffer from sexual abuse.⁶ Child Abuse Prevention and Treatment Act refers to maltreatment as physical, sexual, emotional abuse.⁷

The Internationally recognized Organizations of UNICEF (United Nations International Children's Emergency Fund) and WHO (World Health Organisations) has come to the conclusion that Child Abuse comprises of: Physical, Emotional and Sexual.

a. Physical abuse:

It can be defined⁸ as any physical act that cause or can cause a physical injury to a child. This is one abuse which is widely caused by the parents of the child themselves. Physical abuse is one of the several options available to parents when children are unable to fetch their expected results.

It leads to lower self esteem of the child and results in under achievement. According to NSPCC⁹, 1 in every 14 children have been physically abused atleast once. Disabled children are 3 times more likely to be abused than non-disabled children. Over 6000 children were identified as needing protection from physical abuse in 2015. The NSPCC's helpline responded to over 10,000 contacts about physical abuse in 2015.¹⁰

Causes of physical abuse by adults:¹¹

1. Emotional or behavioral problems such as difficulty in controlling their anger.
2. Family member relationship problems.
3. Experience abuse as a child.

4. Parenting difficulties including unrealistic expectations from children, not understanding a child's needs or no idea how to respond to a child.

b. Emotional abuse:

It can be defined ¹²as injury to the psychological capacity or emotional stability of the child as evidenced by an observable or substantial change in behavior, emotional response or cognition, or as evidenced by anxiety, depression, withdrawal or aggressive behavior according to Child Welfare Information Gateway 2009.

Emotional abuse may include neglect, ignorance, demotivation and insult. Any child exposed to continuous humiliation and bully would be victimized under emotional abuse. It can cause several after effects of distorted mental capacity, low self esteem, fear of people and anxiety. It affects the child's cognitive and emotional development resulting in frightened behavior or corruption of children.

Causes of emotional abuse:¹³

1. Humiliating and constantly criticizing a child.
2. Threatening, shouting at a child or calling them names.
3. Making a child a subject of joke or sarcasm.
4. Blaming or scapegoating.
5. Making a child perform degrading acts.
6. Not recognizing a child's own individuality and trying to control their lives.

c. Sexual abuse:

Sexual abuse of a child is defined¹⁴ as involvement of a child in sexual activities to provide sexual gratification or financial benefit, including contacts for sexual purposes, prostitution, pornography or any other sexually exploitative activities¹⁵. As many as 93% of the victims below 18 years of age knows the abuser.¹⁶It happens to minors who do not understand the gravity of the offence where they are victimized and this impact has a long lasting effect.

Forms of sexual abuse include:-

1. Obscene phone calls, text messages, digital interaction.
2. Fondling the private parts of a minor.
3. Masturbation in the presence of a minor or forcing the minor to masturbate.
4. Intercourse.
5. Sex of any kind with a minor including vaginal, oral and anal.
6. Producing, owning or sharing pornographic images.
7. Sex trafficking.
8. Any sexual contact that is harmful to a child's mental, physical or emotional.

Sexual abuse can be either contact or non-contact abuse¹⁷. Contact abuse involves activities where the abuser touches or physically contacts the child including penetration. It includes sexually touching any part of the body, rape, penetration or encouraging and forcing a child to take part in sexual activity. Non contact abuse involves non touching activities like showing any obscene video or image to the child or allowing someone to make and distribute child abuse images or child exploitation¹⁸ and child trafficking.

PARENTAL CRIMINAL LIABILITY

In developing countries like India, there are instances seen everyday where parents sell off or trade their children to earn money or because of illegitimacy of their relationship. This does not take place only in interiors but also on the face of posh towns and cities. It is not always poverty that compels children to work but also the society that does not take account of children literacy. Children below 14 years of age are being kidnapped in mass and are being transported or trafficked to various places either to work in hazardous circumstances or for sexual exploitation.

Parents are often made liable because of their ignorance towards the child which inculcates in the child the urge to move apart and start earning. Findings from the ABS Personal Safety Survey, 2005 indicates that for participants who had experienced sexual abuse before the age of 15, only 13.5 % identified that the abuse came from their father or step father, 30.2 % was perpetrated by other male relatives, 16.9% by family friend, 15.6% by acquaintance and 15.3% by other known persons.¹⁹

They should understand the grievous effect of sexual exposure at a young age which affects their cognitive development. It becomes a dark side of each and every child who has atleast once been exploited and it remains a part of them throughout their lives.

According to my opinion, parents should become more concerned and responsive towards the child's activities, people they meet, friends and associations where they communicate. Patiently handling problems and prior explanation of things to the child while they are growing up should be practiced and adequate time should be given to them. For children of 1 to 3 years of age who barely learn to talk parents should always accompany them while going out and not keep them with any person as caretakers before being satisfied about the character of that person.

CRITICAL APPRAISAL OF PREVENTION OF CHILDREN FROM SEXUAL OFFENCES ACT

The Prevention Of Children From Sexual Offences (**POCSO**) Act would help to curb or cure a lot of instances of sexual exploitation and harassment to children. It lays down the following provisions with respect to the child protection:

It protects children below 18 years of age from penetrative sexual assault, sexual assault, aggravated sexual assault and sexual harassment and punishes offenders with fine and imprisonment either for a term not less than three years and it extends to imprisonment for life. It provides for punishment even for abetment or attempt of any such offence against children.

Punishment extends to fine and imprisonment upto half of the term actually prescribed for offenders.

The Act judiciously provides that any police officer, public servant, managerial staff of educational or religious institutions, army officer, relative of the child through blood, guardianship, marriage, adoption living in the shared household who commits any kind of aggravated sexual assault to a child below 12 years of age may be imprisoned for life.

The Act makes it compulsory that any person having knowledge or apprehension of any act of child abuse should report it to the local police or special juvenile police unit. Every report shall be recorded in writing and read over to the informant. Punishment of imprisonment is also imposed on people for not reporting a case within their knowledge or for giving false information knowingly and also for humiliating a victim in media or in person.

A Special Court will be dealing with these cases which will have a child friendly atmosphere and the child will not be called frequently in the court to testify. It will act like a fast track court and the cases will be solved within 1 year of taking cognizance of the offence. Child Welfare Committees (CWC) play a vital role under the POCSO Act, cases registered under this act need to be reported to the CWC within 24 hours of recording the complaint. The CWC should nominate with the consent of the child's parent / guardian / other person who the child trusts, a support person to assist the child during the investigation and trial of the case.²⁰ To provide relief to the child the Act provides that as soon as the complaint is made to the special juvenile police unit or local police, immediate arrangement is made to provide care and protection to the child by sending the child to a shelter home or to the nearest hospital within 24 hours of the report filed.

CHALLENGES WITH THE CURRENT SYSTEM

If the offender is a child, the **method of calculating the age** of a child should be determined more extensively. It is silent on what documents should be considered for determining the age of the child. The bone ossification test does not always give the correct result. Further Amendments of this act should take into concern this aspect more seriously and determine whether benefit of doubt will be given to a person if there is an anomaly with respect to determination of age.

The Act is silent about **who will bear the medical expenses** when a child is being admitted to the hospital. Either the State has to take the responsibility of reimbursing all such emergency child care treatments or it has to expressly provide that the offender should mandatorily pay all expenses otherwise substandard medical treatment will be provided.

The Act should also provide for **training of medical practitioners** on dealing cases of immediate child care facilities with respect to abuse or rape. The Act makes it mandatory that in case of a female victim only a female doctor can examine her but under the **Criminal Law Amendment Act** Section 166A of Indian Penal Code, it is mandatory for every Government

medical officer on duty to examine a victim of rape. Therefore, the ambiguity about what is to be done if a female doctor is not present or available has to be cleared.

LEGISLATIVE PROVISIONS ON PROTECTION OF CHILDREN

1. The **CONSTITUTION OF INDIA** provides for certain provisions to protect the rights of the children and provide them with the basic necessities in life. The concerned Articles are discussed below:-

Article 21A of the Constitution of India provides that the state shall provide free and compulsory education to all children of age 6 to 14 years. The right to education has also been upheld by the Supreme Court to be a Fundamental Right. Education to children not only makes them competent to earn a livelihood but also enhances awareness in them regarding various aspects of life and reality. Children education is a welfare and empowerment mechanism of the State to promote protection of child rights and prevention of child abuse.²¹

Article 23 of COI provides for prohibition of trafficking in human being and forced labour. Children who should be considered as the most vulnerable and protected section of the society, are being forced to work in factories dealing with hazardous substances, cannabis cultivation, trafficked for sexual purposes and are being used for sexual entertainment purposes. The Indian Penal Code provides for punishment of persons dealing in girls under 18 years of age for prostitution or trafficking or for any other immoral purpose.²²

Article 24 of Constitution of India lays prohibition of employment of children in factories. The legislature's intent behind framing this provision is to safeguard a child's interest and preventing them from exposure of hazardous substances.²³ This is complementary to the provision of compulsory education of children. At such an age a child should be nurtured for a better future. This provision mandates that no child below 14 years of age shall be employed to work in any factory or mine or be engaged in any hazardous employment.

2. **THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT** was enforced by the Parliament on 26th May, 1993 to provide for ban employment of children, regulate a schedule of banned occupations, lay down guidelines for work areas where children can be employed and to uniformly define "children" in all related acts. It laid down health and safety measures of children in work places and strict penalty to be imposed for disobeying the law.
3. **THE RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION ACT, 2009** provides for the duty of the government to cater to children education, opportunity to be given to children to be admitted to a class of his/her age if they have not been admitted to any school or was unable to complete the elementary education, no capitation or any other kind of fee required to avail this education, child's right to seek transfer to another school if the school where he had been last admitted is unable to provide for the completion of elementary education.²⁴

4. **UNITED NATIONS** elaborately deals with protection of child rights and lays down the following principles which deals with the rights to every child with no distinction on the race, color, creed, language, religion, property and the child who is physically, socially or mentally handicapped shall be given special treatment, the child, for a full and harmonious environment needs love and care. A child shall not be separated from his mother. The child shall be given full opportunity for play and recreation. The child shall be protected from practices which may foster racial discrimination and shall be brought up by a spirit of tolerance, friendship and peace.
5. **THE CONVENTION ON RIGHTS OF THE CHILD (CRC)** drafted by UN Commission on Human Rights was adopted by the General Assembly of UN on November 20, 1989. It is a set of international standards and measures for protecting and promoting the welfare of children in the society. In 1993, 159 countries either signed the convention or became a party to by ratification. This Convention recognizes the vulnerability of children and their right to special care and assistance. The principle "1st call for children" states that the essential needs of children should be given highest priority in allocation of resources at all times. It emphasizes importance of the conducive environment of the family in the proper growth and development of children. It creates empowerment of children so that they can have a secure life and grow in full potential. It classifies social, political, civil, economic and cultural rights of a child as Right to Survival, Right to Protection, Right to development and Right to Participation.²⁵

CITED JUDGEMENT

*Supreme Court Women Lawyers Association vs Union of India*²⁶

In this case, the Petitioner, Supreme Court Women Lawyers Association (SCWLA), being immensely sensitively ignited by the atrocious, inconceivable and brutal sexual offence where certain psychologically and possibly psychographically perverted culprits have not even spared **28 days old baby girl** and also in certain situations have monstrously behaved with other small girls who come within two to ten years of age as if they are totally **trivial commodities**, has invoked the jurisdiction of this Court Under **Article 32 of the Constitution of India** for considering **imposition of "chemical castration"** as an additional punishment for such child abusers. The following quoted paragraphs (13, 14 and 15) have been taken from the judgement which specifically emphasizes on the **grievousness of child abuse** and requests the Legislature to frame more strict forms of punishment.

13. "It is urged by Ms. Pavani, learned senior Counsel that the term "child" requires to be defined, regard being had to the situation obtaining in the present day society. Learned Counsel would suggest that a woman below 16 years is definitely a minor but a child, though a minor, may stand in a different category. The pain and suffering of a child is a brutal assault on her physical frame, when she is raped. She has no idea about sex or rape. It is a nightmare. It is a gross violation of the social values and a failure of an individual. It is an act of extreme depravity. Therefore, the situation that has emerged compels one to rethink.

14. We must appreciate the stand taken by Mr. Rohatgi, learned Attorney General for India, who has keenly expressed his concern relating to the **child abuse**. It can never be forgotten that it is duty of the society to make a child happy. In this regard, it is apt to quote a few lines from Buxton:

The first duty to children is to make them happy. -If you have not made them so, you have wronged them, -No other good they may get can make up for that.

15. This Court cannot provide a higher punishment. It can only suggest to the Legislature. We are absolutely conscious that Indian Penal Code provides punishment for the offence of rape. There can be no doubt that a girl child is a minor but may be a time has come where a distinction can be drawn between the girl children and the minor, may be by fixing the upper limit at 10 for the girl children. We are disposed to think so as by that age, a child, a glorious gift to mankind, cannot conceive of any kind of carnal desire in man. Once she becomes a victim of such a crime, there is **disastrous effect on her mind**. The mental agony lasts long. There is need to take steps for stopping this kind of **child abuse** and hence, possibly there is a need for defining the term "child" in the context of rape and thereafter **provide for more severe punishment** in respect of the culprits who are involved in this type of crime. In the light of the said decision, we part with the suggestion with the fond hope that Parliament would respond to the agony of the collective, for it really deserves consideration.”

REFERENCES

¹ A book on “*Law and Child*” edited by Dr. Nirmal Kanti Chakrabarti, R.Cambray & Co. Private Ltd, 2nd Edition, page 3

² Child Abuse Statistics; <https://www.childhelp.org/child-abuse-statistics/>, (Last accessed on 21.09.2016)

³ *Id.*

⁴ Child Abuse Definition; <https://www.childhelp.org/child-abuse/>, (Last accessed on 21.09.2016)

⁵ U.S. Department of Health and Human Services 2012; Steven M. Cox, Jennifer M. Allen, Robert D. Hanser & John J. Conrad; *A book on Juvenile justice (A guide to theory, policy and practice)*; 8th Edition; page 122.

⁶ Child welfare information gateway 2013; *Id* at 122

⁷ *supra* note 5; at 122

⁸ *Id.*

⁹ Acronym for National Society for Prevention of Cruelty to Children

¹⁰ Physical abuse statistics; <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/physical-abuse/physical-abuse-facts-statistics/>; (Last accessed on 22.09.2016)

¹¹ Preventing child abuse; <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/physical-abuse/what-is-physical-abuse/>; (Last accessed on 22.09.2016)

¹² Steven M. Cox / Jennifer M.Allen / Robert D.Hanser / John J.Conrad, *A book on Juvenile justice (A guide to theory, policy and practice)*, 8th Edition, page 125

¹³ Causes Emotional abuse; <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/emotional-abuse/what-is-emotional-abuse/> ; (Last accessed on 22.09.2016)

¹⁴ *supra* at 12; page 126.

¹⁵ *Id* at 126.

¹⁶ Sexual abuse of children; <https://www.rainn.org/articles/child-sexual-abuse> ; (Last accessed on 22.09.2016)

¹⁷ Sexual abuse of children; <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/child-sexual-abuse/>; (Last accessed on 22.09.2016)

¹⁸ *Id*

¹⁹ *supra* at 12; page 126.

²⁰ Analyzing the Protection of Children from Sexual Offences Act 2012 ;

<http://timesofindia.indiatimes.com/city/goa/Analyzing-the-POSCO-Act-2012/articleshow/19718160.cms> ; (Last accessed on 22.09.2016)

²¹ Child rights under the Constitution; <http://www.legalservicesindia.com/article/article/children-rights-under-the-constitution-285-1.html> ; (Last accessed on 22.09.2016)

²² Raj Bahadur vs Legal Remembrancer; AIR 1953 CAL 522

²³ M.C. Mehta vs State of Tamil Nadu; (1996) 6 SCC 756

²⁴ Kerela Education Bill, Re, 1957, AIR 1958 SC 956

²⁵ A book on "*Law and Child*" edited by Dr. Nirmal Kanti Chakrabarti, R.Cambray & Co. Private Ltd, 2nd Edition, page 50.

²⁶ Supreme Court Women Lawyers Association vs Union Of India; AIR 2016 SC 358.

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