

CHILD ABUSE: WHEN WILL WE STOP?

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INTRODUCTION

“Child abuse or maltreatment constitutes all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child’s health, survival, development or dignity in the context of a relationship of responsibility, trust or power”. (World Health Organization)

"Any recent act or failure to act on the part of a parent or caretaker, which results in death, serious physical or emotional harm, sexual abuse, or exploitation, or an act or failure to act which presents an imminent risk of serious harm" (The Child Abuse Prevention and Treatment Act – CAPTA)

“Child abuse is a very complex and dangerous set of problems that include child neglect and the physical, emotional, and sexual abuse of children.” (MedicineNet.com)

“Child abuse is the physical and/or psychological/emotional mistreatment of children”. (Wikipedia)

“Institutional Abuse or Neglect is that which occurs in any facility for children, including, but not limited to, group homes, residential or public or private schools, hospitals, detention and treatment facilities, family foster care homes, group day care centers and family day care homes.” (Office of Health and Human Services, US)

TYPES OF ABUSE

Child abuse happens in many different ways, but the result is the same- serious physical or emotional harm. Physical or sexual abuse may be the most striking types of abuse, since they often unfortunately leave physical evidence behind. However, emotional abuse and neglect are serious types of child abuse that are often more subtle and difficult to spot. Child neglect is the most common type of child abuse.

(i) Physical

Physical Abuse of a child is that which results in actual or potential physical harm from an interaction or lack of an interaction, which is reasonably within the control of a parent or person in a position of responsibility, power or trust. Such injury or incidence is considered abuse regardless of whether the caretaker intended to hurt the child. There may be single or repeated incidents.

Physical abuse includes but is not limited to the following:

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| <ul style="list-style-type: none"> • Punishing a child excessively • Smacking, punching, beating, shaking, kicking, biting, burning, shoving, choking, throwing, stabbing, grabbing • Hitting a child (with a hand, stick, strap, or other object) • Leaving a child in an uncomfortable and/or undignified posture for an extended period of time or in a poor environment | <ul style="list-style-type: none"> • Forcing a child to work in poor working conditions, or in work that is inappropriate for a child's age, over a long period of time • Gang violence • Harmful initiation ceremonies • Bullying • Threatening to harm someone |
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Signs of Physical Child abuse:

- **Physical signs.** Sometimes physical abuse has clear warning signs, such as unexplained bruises, welts, or cuts. While all children will take a tumble now and then, look for age-inappropriate injuries, injuries that appear to have a pattern such as marks from a hand or belt, or a pattern of severe injuries.
- **Behavioral signs.** Other times, signs of physical abuse may be more subtle. The child may be fearful, shy away from touch or appear to be afraid to go home. A child's clothing may be inappropriate for the weather, such as heavy, long sleeved pants and shirts on hot days.
- **Caregiver signs.** Physically abusive caregivers may display anger management issues and excessive need for control. Their explanation of the injury might not ring true, or may be different from an older child's description of the injury.

(ii). Emotional

Emotional Abuse is a pattern of behavior that impairs a child's emotional development or sense of self-worth. Emotional abuse is often difficult to prove and, therefore, Child Protection System (CPS) may not be able to intervene without evidence of harm to the child. Emotional abuse is almost always present when other forms are identified. Physical abuse includes but is not limited to the following:

<ul style="list-style-type: none"> • Isolating or excluding a child • Stigmatizing a child • Withholding love, support, or guidance • Treating a child who is a victim as a suspect (repeated questioning and investigation) • Failing to provide a supportive environment • Failing to give a child an appropriate sense of self (for example, criticizing weight) 	<ul style="list-style-type: none"> • Treating or looking at a child with disdain, disrespect, denigration • Patterns of belittling, denigrating, blaming, scaring, discriminating or ridiculing • Spreading rumours • Blackmailing a child • Institutionalising a child without exploring other options • Cyber bullying and sexual Solicitation
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• Main caregiver(s) does not respond to a child's emotional needs	• Exploiting a child
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Signs of Emotional Child abuse:

- **Behavioral signs.** Since emotional child abuse does not leave concrete marks, the effects may be harder to detect. Is the child excessively shy, fearful or afraid of doing something wrong? Behavioral extremes may also be a clue. A child may be constantly trying to parent other children for example, or on the opposite side exhibit antisocial behavior such as uncontrolled aggression. Look for inappropriate age behaviors as well, such as an older child exhibiting behaviors more commonly found in younger children.
- **Caregiver signs.** Does a caregiver seem unusually harsh and critical of a child, belittling and shaming him or her in front of others? Has the caregiver shown anger or issues with control in other areas? A caregiver may also seem strangely unconcerned with a child's welfare or performance. Keep in mind that there might not be immediate caregiver signs. Tragically, many emotionally abusive caregivers can present a kind outside face to the world, making the abuse of the child all the more confusing and scary.

(iii). Sexual

Sexual Abuse is an involvement of a child in a sexual activity that s/he does not fully comprehend, is unable to give informed consent to, or is not developmentally prepared for, such as:

Contact	Non-contact
<ul style="list-style-type: none"> • Kissing or holding in a sexual manner • Touching and fondling genital areas • Forcing a child to touch another person's genital areas 	<ul style="list-style-type: none"> • Obscene calls or obscene remarks on a computer or a phone or in written notes • Virtual sex • Online sexual solicitation and grooming

<ul style="list-style-type: none"> • Forcing a child to perform oral sex • Vaginal or anal intercourse and other sexual activity • Biting a child's genital area • Incest, rape, sodomy, indecent exposure • Sex with animals • Sexual exploitation, where sexual abuse of a child involves some kind of commercial transaction (monetary or in-kind) • Child sex tourism, where abusers travel to a place other than their home and there have sex with a child 	<ul style="list-style-type: none"> • Voyeurism • Exhibitionism • Exposed to pornography or used to make pornography • Sexually intrusive questions or comments • Forced to self-masturbate or watch others masturbate • Sexual exploitation and child sex tourism also may be abusive without physical contact (for example, a tour operator or taxi driver who arranges tours and/ or children for sex tourists is an exploiter of children as well).
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INDIAN LAWS ON CHILD LABOUR

The present regime of laws in India relating to child labour are consistent with the International labour conference resolution of 1979 which calls for combination of prohibitory measures and measures for humanising child labour wherever it cannot be immediately outrun.

In 1986 Child labour (Prohibition and regulation) Act was passed, which defines a child as a person who has not completed 14 years of age. The act also states that no child shall be employed or permitted to work in any of the occupations set forth in Part A or in the process set forth in Part B, except in the process of family based work or recognised school based activities. Through a notification dated 27 January 1999, the schedule has been substantially enlarged to add 6 more occupations and 33 processes to schedule, bringing the total to 13 occupations and 51 processes respectively. The government has amended the civil service

(conduct) rules to prohibit employment of a child below 14 years by a government employee. Similar changes in state service rules have also been made.

The framers of the Indian Constitution consciously incorporated relevant provisions in the constitution to secure compulsory primary education as well as labour protection for children. If the provisions of child labour in international conventions such as ILO standards and CRC are compared with Indian standards, it can be said that Indian constitution articulates high standards in some respects. The constitution of India, under articles 23, 24, 39 (c) and (f), 45 and 21A guarantees a child free education, and prohibits trafficking and employment of children in factories etc. The articles also protect children against exploitation and abuse. Equality provisions in the constitution authorises affirmative action policies on behalf of the child.

The National child labour policy (1987) set up national child labour projects in areas with high concentration of child labour in hazardous industries or occupations, to ensure that children are rescued from work and sent to bridge schools which facilitate mainstreaming. It is now recognised that every child out of school is a potential child labour and most programs working against child labour tries to ensure that every child gets an education and that children do not work in situations where they are exploited and deprived of a future. Similarly, there are other programmes like National authority for elimination of child labour, 1994 (NAECL) and National resource centre on child labour, 1993 (NRCCL). Recently, government of India notified domestic child labour, and child labour in dhabas, hotels, eateries, spas and places of entertainment as hazardous under the child labour (prohibition and regulation) Act, 1986, effective from 10-10-2006.

National human rights commission has played an important role in taking up cases of worst forms of child labour like bonded labour. In 1991 in a silk weaving village of Karnataka called Magdi it held an open hearing which greatly sensitised the industry and civil societies. It also gave rise to new NCLP programmes.

JUDICIAL REFLECTIONS

Judiciary in India has taken a proactive stand in eradicating child labour. In the case of *M.C. Mehta v. State of Tamil Nadu and Ors*, this Court considered the causes for failure to implement the constitutional mandate vis-a-vis child labour. It was held that the State Government should see that adult member of family of child labour gets a job. The labour inspector shall have to see that working hours of child are not more than four to six hours a day and it receives education at least for two hours each day. The entire cost of education was to be borne by employer.

The same was reiterated in *Bandhua Mukti Morcha v. UOI* and directions were given to the Government to convene meeting of concerned ministers of State for purpose of formulating policies for elimination of employment of children below 14 years and for providing necessary education, nutrition and medical facilities.

It was observed in both the case that it is through education that the vicious cycle of poverty and child labour can be broken. Further, well-planned, poverty-focussed alleviation, development and imposition of trade actions in employment of the children must be undertaken. Total banishment of employment may drive the children and mass them up into destitution and other mischievous environment, making them vagrant, hard criminals and prone to social risks etc. Immediate ban of child labour would be both unrealistic and counter-productive. Ban of employment of children must begin from most hazardous and intolerable activities like slavery, bonded labour, trafficking, prostitution, pornography and dangerous forms of labour and the like.

Also, in case of *PUCL v. UOI and Ors* children below 15 years forced to work as bonded labour was held to be violative of Article 21 and hence the children were to be compensated. The court further observed that such a claim in public law for compensation for contravention of human rights and fundamental freedoms, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights.

However, Human rights experts criticise the scheme of payment of compensation envisage in Child labour act and further adopted by the Judiciary with gusto. They say that monetary compensation is like washing away ones conscious which still believes that if a child labour is sent to school he must be compensated for the amount which he might have got if he had worked instead. This only confuses the already divided opinion of the society today which still thinks that poor and needy children are better off working.

CONCLUSION

India has done well in enacting suitable legislations and policies to combat child labour. Nonetheless, its implementation at grass root level is very much lacking. The child labour laws today are like a scarecrow which does not eliminate child labour but only shifts it geographically to other places, to other occupations like agriculture which may be less paying or it might be still continued clandestinely. The lack of a specialised enforcement officer leads to lesser attention being given to child labour legislations. Furthermore, many of the child labour programmes remain poorly funded.

Child labour is a complex problem which cannot be eliminated without first attacking it at the roots. Thus, poverty, unemployment, lack of social security schemes, illiteracy and the attitude of society need to be tackled first before any progress can be made. A starting point can be to treat Child labour as a human rights problem and discouraging its manifestation in any form. If the society as such sees child labour as a social malaise, we will be much closer at achieving success.

Lastly, there is a lot of debate over the age from which child labour should be banned. The ILO conventions do not give a definite age, 14 years seems to be the general understanding but CRC defines a child to be below 18 years. Right to education is for children below 14 years and Child labour is prohibited till age of 14 years. This brings the question as to whether children of age 14-18 years are to be denied basic human rights and are to be left vulnerable.