

# CHILD ABUSE IN INDIA: LEGISLATIVE AND JUDICIAL PERSPECTIVE

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## ABSTRACT

The children are the most precious asset as they are the future of the nation. They are very much human beings though weak and immature. Their needs and rights should not be attended merely as a by-product of progress nor are they attended as an end and means of progress. Children are abused every day either physically or mentally or verbally or in the form of sexual harassment or neglected to be a child who constitutes or comes under the purview of child abuse. The abuse of children among Indians has grown rampantly and it has reached 50% as per the survey being conducted by the Ministry of Women and child Movement controlled by the central Government of India. In this article, an attempt has been made to discuss the various legislative enactments pertaining to the protection and welfare of the child along with the role of the judiciary in protection of them.

**Keywords:** Child, Child Abuse, Sexual Harassment, Judiciary.

## INTRODUCTION

“A nation’s children are its supremely important asset and the nation’s future lies in their proper development. An investment in children is indeed an investment in the future. A healthy and educated child of today is the active and intelligent citizen of tomorrow.”<sup>[1]</sup>

Children are recognized worldwide as supreme assets of the Nation. The future of the nation lies on them. The National Policy for Children, 1974 declared that “Children are a supremely important national asset” and the same was approved in a celebrated case *Sheela Barse v. Union of India*.<sup>[2]</sup> The future well-being of the nation depends on how its children grow and develop. It is the duty of the State to look after every child with a view to assuring full development of its personality. The condition of the children are still in deplorable condition even after taking many after taking action by the government for the welfare of the children through various legislation.

Child abuse occurs when they are being mistreated or misuse or showing no value to them for their growth as an individual and treat them in a manner that lowers or degrades their well-being in the society. Abuse of children has become the order of society. The abuse of a child has both physical and psychological consequences. Protection of children from all forms of abuse and exploitation across the world is the need of the hour.

### *Definition of Child:*

In India, there is no uniform definition child. The child has been defined by several legislations and also prohibits any act against the protection of the children providing penalty as well as other modes of sanction to the violator of the protection of the child given to them. The constitution does not define the term Child. However, the term child cannot be said to be identical with the minor. The majority Act, 1987 defines child as a person who has completed 18 years of age. The Immoral Traffic Prevention Act defines child as a person who has not completed his eighteen years of age.<sup>[3]</sup> Under the Child Labour (Prohibition and Regulation) Act, 1986, a child means a person, who has not completed his fourteen years of age,<sup>[4]</sup> and is prohibited from working in hazardous processes. However, children of fourteen years and above can work in hazardous industries subject to facilities provided by them by the employer of hazardous industries to protect them from any act which injuries to their health. The State

Shops and Establishment Acts define the age of child between twelve and fifteen years. Apart from the above, the Factories also defines a child as a person who has not completed the age of 14 years for employment in the factory.

### ***Definition of Child Abuse and its Various Forms***

Child abuse is a complex issue that is a matter of serious concern for all that poses a threat to their dignity, development, and in socialization process as well. In most of child abuse cases, the “abuser” is either related to, known person or stranger or otherwise. Therefore, it is very difficult to detect the real culprit-Abuser for reasons best known either to the victim child or to their parents. Child Abuse can be defined as any act, failure or negligence on the part of any individual; adult, or child, that leads to a severe threat to the life and development of a child and results in prolonged physical and psycho-social impacts on his/her health and wellbeing.<sup>[51]</sup>

According to WHO: "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." Child abuse is a gross violation of human rights that has been granted to children for their well-being and it has become critical matters to discuss on the international level as a human rights agenda. In the Indian context, acceptance of child rights as primary inviolable rights is fairly recent, as is the universal understanding.

Child abuse includes physical abuse, sexual abuse, substance abuse, emotional abuse, child labour, bonded child labour, child marriage, Juvenile Justice, child rag pickers, children in armed conflict, etc., and there are some other categories of children who are abused and exploited namely, in a family environment, children in schools, children at work, children on the street and children in institutions.<sup>[61]</sup> The various forms of child abuse are discussed below-

a) **Physical Child Abuse** results in potential physical harm to the children, which is within the control of a parent or a person in a position of power or authority. The resultant injuries are

considered abuse irrespective of whether the intent of the action was to cause hurt or not. Physical Child Abuse primarily comprises of -1) Excessive Punishments, 2) Beating / Hitting a child, Leaving a child in an undignified posture, 3) Forced Work Conditions, 4) Bullying.<sup>[7]</sup>

### **B) Child Emotional Abuse**

It is a humiliation of children; it is also known as verbal abuse, mental abuse, and psychological maltreatment. It includes acts or failure to act by parents, caretakers, peers, friends, relatives, and others that have caused or could cause serious behavioural, cognitive, emotional, or mental distress/trauma. This form of abuse can have more long-lasting negative psychological effects than any other form of abuse to the children.<sup>[8]</sup> The lack of evidence in the case of Child Emotional Abuse is considered as a major challenge to the existing Child Protection System. Emotional Abuse is always seen in the child when any other form of abuse is caused to children. Since emotional abuse has the most adverse impact on the child, therefore it is necessary to take steps to tackle such kind of abuse. Child Emotional Abuse primarily comprises of following instances:

- Isolation or Exclusion of a Child
- Stigmatizing a Child
- Failure to provide a supportive environment and black mailing a child.

**Signs of Child Emotional Abuse-** The various signs of child emotional abuse includes 1) Excessive Shyness and Fear, 2) Behavioural Extremes, 3) Antisocial Behaviour, 4) Inappropriate Age Behaviour.

### **C) Child Sexual Abuse**

Sexual abuse is inappropriate sexual behavior with the child. The sexual abuse of children is a violation of basic human rights. It is an emasculation of the backbone of a society. Children who are on street, at work, and in institutional care reported the highest rate of sexual abuse. Child Sexual Abuse is primarily divided into two major types:

- i) **Contract type:** - It includes Kissing or holding in a sexual manner, forcing to touch genital areas, Vaginal or Anal Intercourse, Sexual Exploitation, Incest, and Rape

- ii) ii) *Non-contract type*: - It includes Obscene Remarks, Virtual Sex, Online Solicitation, Exposed to Pornography, Sexually intrusive comments and Voyeurism

### ***Signs of Child Sexual Abuse:***

*Behavioral signs* –This sign display knowledge or interest of the child in sexual acts inappropriate to his or her age, or even seductive behavior or display unusual behavior- either being very aggressive or very passive.

*Physical signs* –This kind of sign may display the trouble of a child sitting or standing, or have stained, bloody or torn underclothes. Swelling bruises or bleeding in the genital area is a red flag. *Caregiver signs* – The caregiver may seem to be unusually controlling and protective of the child, limiting contact with other children and adults.<sup>[9]</sup>

### **Causes of Child Abuse**

Abuse of children can occur in several circumstances. These circumstances that lead to the child abuse are as follows-

- 1) Domestic violence
- 2) Lack of parenting skills
- 3) Stress and lack of Support
- 4) Mental illness
- 5) Poverty

## **LEGISLATIVE AND JUDICIAL APPROACH TOWARDS VARIOUS FORMS OF CHILD ABUSE**

### ***Child Labour***

The problem of child labour in India is alarming as compared to other developing countries of the world. It is affecting not only the productive efficiency of the country but also poses a great threat to the very vital of the Indian democracy. It is one severe form of Practice of child abuse that we have been seeing in day-to-day life. The Children who are involving in hazardous and

non-hazardous works have certainly been exploited and abused more in comparison to others. Large-scale exploitation and abuse of children employed in domestic work and hotels are indicators of child labour and its abuse. The practice of child labour is a hard reality.

### ***Forms of Child labour***

A) ***Bonded labour*** - It is an inhuman practice that is practicing in society. The factors that are responsible for bonded labour are Financial crisis in the family, natural calamity/accident, sudden loss of employment, sustainable expenses on wedding and other social functions, alcoholism, migration, and trafficking.

B) ***Child ragpicker*** - Ragpicking is another severe and worst form of child labour. The most unhygienic, dangerous job in scrap collection is ragpicking. The children belonging to Scheduled Caste/Scheduled Tribes/ Other Backward Classes (SC/ST/OBC castes) or slum dwellers are engaged in the profession of Ragpicking. This profession is mostly dominated by those children whose age is between 6 to 15 years who do not have any other skills and thus by way of refuse collection contribute to household income or own survival.

C) ***Child Prostitution***-Child Prostitution is one of the worst forms of child labour. It means the use of children by the parents or any other trafficking groups in sexual activities for remuneration or any other form of consideration. It is detrimental to the child both physically and emotionally and violates the child rights. They get infected with various diseases like Sexual Transmitted Diseases (STD) and even HIV infection (AIDS).<sup>[10]</sup>

### ***Legislative Provision***

#### **i) The Children (Pledging of Labour) Act, 1933**

The Children (Pledging of Labour) Act, 1933 was enacted with a view to eradicating the evils arising from the pledging of labour of young children by their parent's employers in lieu of loans or advances. Previously the Act extended to the whole of India except Jammu and Kashmir, but after September 1, 1971, it has been extended to Jammu and Kashmir also. The Act declares an agreement oral or written, to pledge the labour of children, whereby the parents

or the guardian of a child in return of any payment or benefit to be received, undertakes to cause or allow the services of a child to be utilized in any employment, to be void.

### **ii) The Employment of Children Act, 1938**

The Employment of Children Act, 1938 to prevent the employment of children in hazardous employment and certain categories of employment which is an unhealthy occupation evident from the very nature of the work where the children is employed. The Act prohibits the employment of children below 15 years of age in any occupation connected with the transport of passengers, goods or mail by railway, or an authority within the limits of a port. With the exception of children employed as apprentices or trainees no child between the ages of 15-17 years can be employed or permitted to work in these occupations unless he is allowed rest interval of at least 12 consecutive 43 hours in a day. The period of rest is to include at least 7 such consecutive hours between 10 p. m. as may be prescribed by the appropriate government

### **iii) Constitution of India, 1950**

The framers of the Indian constitution consciously incorporated relevant provisions in the Constitution to secure the protection of children labour. The following provisions of the Constitution have a direct bearing on the child labour-

**Article 23: Prohibition of traffic in human beings and forced labour:** “Traffic in human beings and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.”

**Article 24: Prohibition of employment of children in factories etc.:** “No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.” Again , Article 39(e) lays down that "the health and strength of workers, men and women, and the tender age of children are not abused and that children are not forced by economic necessity to enter avocations unsuited to their age or strength”.

### **iv) Bonded Labour System (Abolition) Act, 1976.**

The Government of India enacted the Bonded Labour System (abolition) Act in order the remove the social taboo of bonded labour from society. The Act provides for the abolition of

the system of any custom, agreements or instruments requiring any person to render any service as bonded labour void. The law provides that (a) no suit or other proceedings shall be instituted in any Civil Court for the recovery of any bonded debt; (b) every attachment made before the commencement of the Act for the recovery of any bonded debt shall stand vacated; and (c) such movable property shall be restored to the bonded labourer.

#### **v) The Child Labour (Prohibition and Regulation) Act, 1986**

The Act aims to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments. According to this Act, Child labour should not be employed for domestic or other purposes and whoever violates the provisions of this Act of 1986 shall be liable to be punished. With the passing of the child labour (Prohibition and Regulation) Act, 1986, the government of India repealed the employment of Children Act, 1938. All rules made in this Act will be in addition to the provisions of the Factories Act, 1948, the Plantations Labour Act, 1951, and the Mines Act, 1952. The Act clearly lies down that no child will be allowed to work for more than six hours per day with a rest period of one hour after three hours of work. Once a week he will be given a holiday. The government proposes to bring in amendment to the Child Labour (Prohibition Regulation) Act, 1986, to make it more effective.

### **JUDICIAL DIRECTIVES**

#### ***Sheela Barse v. Union of India* <sup>[11]</sup>**

In this landmark case apex court says that the future well-being of the nation depends on how its children grow and develop. It is the duty of the State to look after every child with a view to assuring full development of its personality.

#### ***Rajangam, Secretary District Beedi Workers 'Union v. State of Tamil Nadu and others* <sup>[12]</sup>**

In this case hon'ble Supreme Court held that tobacco manufacturing has indeed health hazards. Therefore, Child labour, in this trade, should therefore be prohibited as far as possible and employment of child labour should be stopped either immediately or in a phased manner to be decided by the State Governments.



***N. Bhageerathan v. State of Tamil Nadu***<sup>[13]</sup>

In this Tamil Nadu High Court held that if an accused or employer is unable to prove that children employed were not below fourteen years, he can be convicted for the offence of employing child labour.

***Neeraj Choudhary v. State of M.P***<sup>[14]</sup>

In this case Supreme Court held that the bonded labourers must be identified and released. On release, they must be suitably rehabilitated. Any failure on the part of the State Government in implementing the provisions of the Bonded Labour System (Abolition) Act, 1976 would be violative of Articles 21 and 23 of the Constitution of India.

Sexual exploitation of Children is exploitation and a violation of human rights. Children are easy prey to all mentally frustrated persons who intend to satisfy sexual desire and lust. Harmful traditional practices like child marriages, caste system and discrimination against the girl child, child labour and devdasi impact negatively on children and increase their vulnerability to abuse and neglect. The government of India has enacted numerous legislations to remove the growing menace of child sexual exploitation from society but it is stopped. Every day children are sexually abused which stands as a hindrance to their well-being in Society.

**FORMS OF ABUSE**

a) ***Child marriage***- Child Marriage is a social evil and its practice is not only abuse of child and exploitation but also legal abuse. It stunts growth and development, particularly of the girl who is more vulnerable to domestic violence and sexual abuse. The early marriage of the children also deprives of them acquiring education and lives with human respect and dignity which is a basic requirement in society a meaningful life of human beings.<sup>[15]</sup>It has an extremely deleterious effect on the health and well-being of the child.

b) ***Child Pornography***- This is another severe form of Child sexual abuse that alarmingly increases in society. Today's era is considered as a digital era, people are extensively using the internet for various purposes. It has both good and bad impact on its user. One of the bad impacts of the internet is the increase in rate of cybercrime related to child pornography. People

show pornography to children who is not matured enough to judge the act, and thereby, they fulfil their sexual lust.

### **INFORMATION TECHNOLOGY ACT, 2000**

The Government of India has enacted the Information Technology Act in the year 2000 to combat with the various categories of cyber-crime. The Government of India is a signatory to the UNCITRAL and owing to the obligation obtained from the UNCITRAL as well as to give effect to it, the government of India enacted the Information Technology Act, 2000. The Act prescribes penalties for various kinds of cyber-crime committed by the use of internet such as Child Pornography, Cyber Tourism, Internet Fraud, Data privacy etc.

### **INDIAN PENAL CODE, 1860**

The Indian Penal code was drafted by Lord Macaulay in the year 1860 and it came into force on 1<sup>st</sup> January 1862. The Indian Penal Code is the penal law of India. It lays down various kinds of offences as well as their punishment for the commission of such offences by the offenders. Though the Indian penal code deals with various kinds of offense but it doesn't specifically deal with child sexual abuse as an offence. A child sexual offender is booked under various other sections of the Indian Penal Code - Offences of rape (Sec. 375), outraging the modesty of a woman (Sec.354). An act of child rape is an inhuman act that leaves a permanent scar on the child and thereby retrains them from growth and development appropriate to their age.

### **THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012**

The Protection of Children from Sexual Offences Act, 2012 is enacted by the parliament in order to strengthen the legal provisions for the protection of children from sexual abuse and another form of exploitation. For the first time, a special law has been passed by the parliament to address the issue of sexual offences committed against children. Till the passing of this Act, the law relating to sexual offences against children was lying scattered in various provisions of

the Indian Penal Code, 1860. But, now with the passing of this Act, we have a separate law relating to sexual offences against children. The present Act has its genesis in Article 15 (3) of the Constitution of India.

The Protection of Children from Sexual Offences Act, 2012 defines a child as any person who has not completed the age of 18 years. The Act provides protection to all children who are under the age of 18 years from the offences of sexual assault, sexual harassment and pornography. These offences have been clearly defined for the first time in law. The Act provides for stringent punishments, which have been graded as per the gravity of the offence.

## **PROHIBITION OF CHILD MARRIAGE ACT, 2006**

Due to the toothless provisions of the Child Marriage Restraint Act, 1929, there was a demand for making the law on child marriage with stringent punishments to eradicate or prevent the evil practice of child marriage. The government of India has enacted the Prohibition of Child Marriage Act, 2006 to curb the menace of child marriage which is practicing in society and thereby repealed the Child marriage restraint Act, 1929. The Act has made promoting, permitting or participating as punishable.

## **JUDICIAL DIRECTIVES**

*I) Smt Seema V. Ashwani Kumar<sup>[16]</sup>*, in this case the Hon'ble Supreme Court made it mandatory for all marriages to be registered and directed authorities across the country to amend rules so that its order could be implemented within three months. The Central and state governments were asked to incorporate appropriate provisions for the consequences of non-registration as well as false documentation during the registration of marriages.

*II) Sakshi v. Union of India<sup>[17]</sup>*, In this case, the Apex court gave certain directions for holding the trial of child sex abuse or rape. These are: (i) a screen or some such arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused. (ii) the questions put in cross-examination on behalf of the accused, insofar as they relate directly to the incident should be given in writing to the Presiding Officer of the Court who may put them to the victim or witnesses in a language which is clear

and is not embarrassing. (iii) The victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

## CHILD TRAFFICKING

It is another severe form of child abuse. Child trafficking means the procurement, recruitment, transportation, transfer, harbouring or receipt of persons, legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise.<sup>[18]</sup>

The trafficked children are used for various illegal purposes such as drug peddler, Child beggar, child prostitution, organ trade and thereby it becomes a source of income for child trafficker. This social taboo of Child trafficking should be removed from the society to protect the children who are considered as the future of the nation.

## LEGISLATIVE PROVISION

**i) The Immoral Traffic (Prevention) Act, 1986-** The Immoral Traffic (Prevention) Act, 1986 (ITPA) was enacted for the prevention of human being trafficking. All persons, whether male or female, who are exploited sexually for commercial purposes, fall under the purview of ITPA. Offences involving children are being dealt with through increased strictness by enhancing the period of imprisonment. Prostitution per se is not illegal in India but related activities such as brothel-keeping, living off the earnings of a prostitute, soliciting or seducing for the purposes of prostitution are all punishable offences. ITPA provides more severe penalties for the trafficking of women and child prostitution. The Immoral Trafficking (Prevention) Act (ITPA) has to be broadened to cover the trafficking of children to beaches, hotels and guesthouses, and their subsequent sexual abuse.

**ii) Indian Penal Code, 1860-** The Indian Penal Code which came into existence in 1860 addresses the problem of human trafficking in human beings. It is addressed in Section 370 and 370 A of the Indian Penal Code. It prohibited the trafficking of women and girls and

prescribed ruthless punishments for the criminals. It lays down that anyone who buys or sells the person under the age of 18 years for the purpose of prostitution and for sexual exploitation and for other immoral purposes shall be liable to imprisonment for up to 10 years and also be liable to fine.

## JUDICIAL DIRECTIVES

1) **Vishal Jeet V. Union of India**<sup>[19]</sup>, In this case, the Hon'ble Supreme court issued directions to the State government for setting up of Rehabilitation homes for children found begging in streets and also the minor girls pushed into flash trade to protective homes.

2) **Gaurav Jain v. Union of India**<sup>[20]</sup>, In this case, directions were given by the Hon'ble Supreme Court to rehabilitate children and child prostitutes after conducting an in-depth of the matter. Furthermore, juvenile homes should be used for rehabilitant of child prostitutes.

## PREVENTIVE MEASURES TO TACKLE THE CHILD ABUSE

Child abuse and neglect can be prevented or stopped through the efforts of schools, neighbours, families, and the community. To prevent the child abuse in society, we can adopt the following measures-

1. We should try to understand the causes of child abuse
2. We should learn to identify the warning signs that signify that child is being abused.
3. We should report any known or suspected case of child abuse either to the police station or parents of the child concerned without any delay.
4. We should provide mental support to those who think that he is at risk of abusing a child and thereby protected the child as well as the abuser.
6. Alert others to the problem and help them to recognize and understand the effects of physical, sexual, and emotional abuse and neglect.
7. The parents should provide sexual education to their children without any hesitation.

## CONCLUSION

India is a developing country; socio-economic conditions prevailing in the society are strongly responsible for the abuse of children in different forms. The problem of child abuse is deeply rooted in the socio-culture spectrums. High literacy and low literacy rate, both equally contribute to the problem of child abuse. The Government of India has enacted numerous to combat child abuse which is alarmingly increasing in society. In spite of having legislation to protect the children from being abuse, it is not stopped. It is high time for the government of India to make amendments to the legislation against child abuse and thereby include provisions for stringent punishment. Apart from these, legislation alone cannot prevent the growing menace of child abuse unless it is backed by the society. This is a challenge to society their attitude and behaviour towards the children should be changed. The mind-set of the people can be changed by imparting them value-based education and culture. Capacity building in children especially during abusive situations and school-age children need to be sensitized to different forms of child abuse. Perceptions and attitudes of parents and people towards children are modified to understand the problem of child abuse.

## REFERENCES

<sup>[1]</sup> Rabindranath Tagore, an Indian poet, great philosopher, and humanist. He was First Indian to receive the Nobel Prize. He received a Nobel Prize in the year 1913 for his famous book Gitanjali in the field of literature.

<sup>[2]</sup> AIR 1986 SC 1873

<sup>[3]</sup> Section 2(aa), The Immoral Traffic Prevention Act, 1986

<sup>[4]</sup> Section 2(ii), The child labour (prohibition and regulation) Act, 1986

<sup>[5]</sup> Amisha U. Pathak, “Child abuse in India- An analysis”, *available at* <http://www.indiathink.org/Child-Abuse-in-India-An-Analysis-by-Amisha-u-Pathak.pdf> (last visited on April 10, 2020)

<sup>[6]</sup> *Ibid*

<sup>[7]</sup> *Ibid*

<sup>[8]</sup> Various forms of Child abuse, available at <https://shodganga.inflibnet.ac.in/bitstram/10603/8530/11/11> (last visited April 12, 2020)

<sup>[9]</sup> *Ibid*

<sup>[10]</sup> Asha bajpai, “Legislative framework for the protection of Children in India” 5 *IHD-Working Paper series*, 22(UNICEF 2010)

<sup>[11]</sup> AIR 1986 SC 1873

<sup>[12]</sup> 1992(1) SCC 211

<sup>[13]</sup> 1999( CriLJ) 532

<sup>[14]</sup> 1984 3 SCC 243

<sup>[15]</sup> *Supra* note 10 at 23

<sup>[16]</sup> T.P. Civil No 291 of 2005

<sup>[17]</sup> Writ petition (crl.) 33 of 1997

<sup>[18]</sup> *Supra* note 11 at 23

<sup>[19]</sup> (1990) 3 SCC 318

<sup>[20]</sup> WP (civil) No. 824 of 1988

