



ISSN: 2249-894X
 IMPACT FACTOR : 5.7631 (UIF)
 UGC APPROVED JOURNAL NO. 48514
 VOLUME - 8 | ISSUE - 8 | MAY - 2019

CHILD ABUSE: TERROR SUBSISTING IN THE ESSENCE OF MANKIND IN INDIA

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ABSTRACT:

During the past 50 years, there have been reported cases of increased child abuse and harassment across the globe. Irrespective of the economic status, almost all the countries globally have faced heinous incidents on child abuse and sexual assaults that have disgraced the worldwide phenomenon of gender equality. Child abuse and sexual assaults on children being global issues have considerably plagued the global culture and integrity to a significant extent. The traumatized cases of child abuse have been so devastating that it destroys the psychological growth of the child mind-set. It even pushes the child towards conducting

outrageous acts of self-destruction and suicidal indulgences.

For a longer period of time and greater social eventualities, the aspect of child protection have been a notion of importance and initiates a locus of discussion to deal with the child abuse incidents. The legal structures of the nations across the globe including the developing nations like India have placed special focus on the phenomenon. The introduction of the POCSO act in 2012 within the Indian Judicial System has been specially designed and to cater to the child abuse and sexual assault cases at large. This act forwards itself as a discipline to mend the barriers of child protection and safety in order to bridge the gaps of national security standards.

This article is based on the derivate that have been inducted from a range of studies conducted on the basis of a myriad of sources that decode the implications and limitations of child abuse cases in India. With special focus on the POCSO, Child Labour Act, Child Marriage Act and other such pertinent legal acts hedging the issue of child protection are being explicitly discussed through the literature review. Considering the experience of child abuse as early as at the age of 11 months, the article offers a strong artefact of evidentiary renditions and the significant constraints that need to be resolved.

KEYWORDS: *global issues , global culture and integrity.*

CHILD ABUSE IN INDIAN CONTEXT

Child abuse has become one of the major social stigmas that affect the social balance and ruin

human relationships within a social structure. Child abuses in India can you witnessed in the form of physical or mental injury, forced sexual stimulation, forced sexual activity, scaring, blaming, and negligent treatment outcomes. It is

reported that 53% of the total population of Indian children witness different forms of child abuses¹. Surprisingly, the numbers of deaths by child rape and other physical or mental torture have increased rapidly in India in last few years.

¹ Gelles, R.J., 2017. What to learn from cross-cultural and historical research on child abuse and neglect: An overview. *Child Abuse and Neglect: Biosocial Dimensions-Foundations of Human Behavior*. Oxon: Routledge.

FORMS OF CHILD ABUSES IDENTIFIED BY UNICEF

UNICEF defined that the child abuse can be both mental and physical and it is meant to be addressed as major violence against the children. Any activity related to child abuse may occur in schools, homes, orphanages, speech, residential care facilities and even in prisons. Such violence not only affect the psychological setup of a child but it also negatively influences the emotional arrangements within any community or larger area².

PHYSICAL ABUSE

Physical abuses in this context refer to the occurrence of the physical injury on a child, which includes hitting, shaking, punching, kicking, beating, burning and other ways to harm a child. In many instances, the caregiver or even the parent both intentionally or unintentionally hurt the child for the purpose of scolding, scaring, or taking passive revenge on the children³.

SEXUAL ABUSE

Sexual abuse indicates at inappropriate behaviour quick and child, which may encompass the activities including fondling of child genitals, comparing a child to fondle genitals of any elderly people, incest, intercourse, sodomy, exhibitionism, rape, for any other sexual exploitation. All these activities are considered as child abuse or child maltreatment. These activities are mostly conducted by the people responsible for the children care, including the day-care provider, babysitter or even the parent⁴.

EMOTIONAL ABUSE

Emotional abuse in the context of child abuse is also known as verbal abuse, which is also followed by psychological and mental maltreatment to a child. In the most common instances, it includes the acts of fallacies by the parents, babysitter or other caretakers. They are often found imposing effective parts in emotional abuses through cognitive, serious behavioural, mental and psychological trauma. this usually takes place when they apply weird forms of punishment, such as confinement in a dark room or inside a closet, tying up with bed or chair on anything fixed furniture for the long term and terrorizing a Child for threatening in different ways⁵.

NEGLECT

Neglect is described in the context of child abuse when a child is denied to get the basic requirements. it also encompasses varied forms including educational, emotional and physical. In most of the cases, neglect related to education refers to the fallacy of the parents of the caretaker to provide appropriate educational needs and schooling. Furthermore, the emotional or psychological neglect include the deficiency of emotional or psychological support from the families or the teachers or the siblings.

² Shahidullah, S.M., 2017. Criminalization of Child Abuse and Violence against Children in South Asia: Law and Legal Advances in India, Pakistan, and Bangladesh. In *Crime, Criminal Justice, and the Evolving Science of Criminology in South Asia* (pp. 109-144). Palgrave Macmillan, London.

³ Kumar, A., Bhagyalakshmi, K.C. and Foster, J.M., 2018. Child Sexual Abuse: Evaluating the School-Based Prevention Programs in India. In *Social, Psychological, and Forensic Perspectives on Sexual Abuse* (pp. 166-178). IGI Global.

⁴ Dayal, R., Kalokhe, A.S., Choudhry, V., Pillai, D., Beier, K. and Patel, V., 2018. Ethical and definitional considerations in research on child sexual violence in India. *BMC public health*, 18(1), p.1144.

⁵ Behere, P.B., 2018. Child Sexual Abuse Indian Scenario: Existence in India. *Journal of Indian Association for Child & Adolescent Mental Health*, 14(1).

LEGAL PERSPECTIVE FOR CHILD PROTECTION

As per the legal perspective in India, children of this country are meant to enjoy the right to be protected from any sort of vulnerable situations and exploitations in any form. However, it needs people to be aware and spread awareness about the preventive measures for child abuses. For this, it is necessary to detect the real problems along with the risks associated with the bringing up of the children so that we can prevent them from becoming the victims or future criminals. Both the elderly men and women are liable to understand the remedies for each issue and form of child abuses in light of the legal perspective in order to abide by them and convince others not too violet them risking the future of a child⁶. By the term of a legal perspective, people should know the policies and laws that protect the children from being abused within and externally from the family.

CONSTITUTIONAL INTERFERENCE

The protection and welfare of the children in India are safeguarded by the Indian Constitution that contains numerous provisions to prevent child abuse. Indian Constitution in this context has been amended several times and has shaped up into the present form with the empowered Legislature including distinguished policies, special laws and safeguarding measures of children rights. In this context, Indian Penal Code and the articles of 14, 15, 15(3), 19(1) (a), 21, 21(A), 23, 24, 39(e) and 39(f) that ensure the safety and protection of the children within any territory of the country⁷. All these articles of Indian penal code are empowered for the purpose of ensuring the provisions for safety, protection, security, and wellbeing of the children along with the people who are accused but yet to be proved.

THE INDIAN PENAL CODE, 1860

The protection of children and ensuring their safety from any sort of child abuse or maltreatment had been initiated in Colonial India when the British government used to rule this country. According to the Indian penal code, 1860 was further updated in 1994 with the Amendment Bill highlighting the issue of validity in the present post-colonial India. This bill was amended and passed in the name of Regulations and Preventions of Misuse Act 1994 comprising with more advanced Diagnostic techniques for the victims and the accused abusers⁸. this amendment has been proven more dynamic to ensure the interests of the victims of child abuse and neglect along with the interests of the accused before being proved with his or her crime. Foeticide and infanticide had been described as two major criminal offenses, which are punishable by the court. Any act of foeticide under the section of 315 and 316 was described as a punishable act done by any person even from the family. This punishable act has been accompanied by another punishable act of infanticide under the section of 315, which regulates punishments to the person who violated this act under the Indian Penal Code. This act also had emphasised on the abatement of suicide under the section of 305 to protect the minors from committing suicide due to any form of child abuses and neglect.

The Regulation and Prevention of Misuse Act 1994 also encompasses exposure and abandonment under the section of 317 that prevents any sort of crime from the parents or others outside the family against the children to leave or expose with loneliness with or without the intention of abandonment. On the other hand, starting from section 362 section 369 under the Regulation and Prevention of Misuse Act 1994 protects the children from being kidnapped or abducted. This act also focuses on the procurement of minor girls by force or inducement to seduce are having illicit intercourse under the section of 366-A. in India, child trafficking is another major issue that needs

⁶ Jain, R., 2017. Sexual Predation: Protecting Children In The Era Of Internet-The Indian Perspective. *Fiat Iustitia*, (1), pp.141-152.

⁷ Peterson, V., 2016. Speeding up Sexual Assault Trials: A Constructive Critique of India's Fast-Track Courts. *Yale Hum. Rts. & Dev. LJ*, 18, p.59.

⁸ Sharma, A., 2016. Fines as a punishment in Indian Penal Code, 1860: A jurisprudential failure or commodification of an offense?. *Journal of Contemporary Criminal Justice*, 32(3), pp.243-263.

distinct attention from the Supreme Court. For this reason, this act also emphasizes section 372 in order to prevent any arrangement or intention to sell girl child for prostitution. With the private attention on the pre-natal Diagnostic techniques, this act also enables section 373 to prevent the counterpart of 372 by protecting the girl children from being bought for prostitution⁹. Section 376 also encompasses the safety of the girl children from being raped as well as the elderly woman who is a victim under the same section... the prenatal Diagnostic technique under this act is enabled to prioritise the prevention measures of any misuses of the determinants under any section of this act.

THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

The Juvenile Justice (Care and Protection of Children) Act 2000 ensures extensive care provisions for the children along with enabling treatment and protection for the children. As per this act, the children are meant to be taken care of, protected and treated in any conflict situation associated with care and development needs. The objective of this act has been enabled on the pride foundation of the assurance for child-friendly approaches within the disposition and adjudication of matters associated with the best interest of the children. Furthermore, it also empowers the child care facilities with the ultimate rehabilitation arrangement with the help of various institutions of government established under section 23 to 26 of this act¹⁰. These sections of this act are also liable to deal with any situations related to child abuse and the confirmation of their rehabilitation as soon as possible.

CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986

Child labour issue is one of the dreadful phenomena in India that not only prevents the children from having proper education but also ruins their natural growth dynamically. It is very shameful for any constitution that this issue still remains even with increasing rate. Thus, the Supreme Court of India has enabled Child Labour (Prohibition and Regulation) Act 1986 for this issue to be resolved or prevented properly. This act enables the provision for child labor to be eliminated from any social structure and allow the children to get there right to education. This act also encompasses the provision for punishments and penalties for the people employing children under the age of 14 years¹¹.

THE IMMORAL TRAFFIC (PREVENTION) ACT, 1956

Women trafficking and child trafficking are two extremely dreadful issues in India that the government has been witnessing for many years. The Government of India, a few years after the Independence, had brought this issue in the light. In 1956, the Indian Constitution has been amended with The Immoral Traffic (Prevention) Act in order to deal with this issue and the related offenses of sexual exploitation with the children especially for the purpose of commercial benefits by individual or syndicates¹². Furthermore, it also had enabled this act to ensure the provision for punishment and penalties for the people or individual involved with any sort of child trafficking under this act.

THE COMMISSIONS FOR THE PROTECTION OF CHILD RIGHTS ACT, 2005

The childhood rights had been found with the needs of further amendments in order to ensure their requirements related to their protection to be delivered properly. The Commissions for the Protection of Child Rights Act was passed in the year of 2005 in order to maintain the provision what

⁹ Sarmah, M. and Mahanta, S., 2017. Crime against women in India with reference to the Indian Penal Code. *Clarion: International Multidisciplinary Journal*, 6(2).

¹⁰ Agarwal, S. and Kumar, N., 2016. Juvenile Justice (Care and Protection of Children) Act 2015: A Review. *Space and Culture, India*, 3(3), pp.5-9.

¹¹ Deb, S., Sun, J., Gireesan, A., Kumar, A. and Majumdar, A., 2016. Child rights as perceived by the community members in India. *International Law Research*, 5(1), pp.1-15.

¹² Shukla, R., 2018. 1.1 Suppression of Immoral Traffic (Prevention) Act, 1956. *International Journal of Applied Psychoanalytic Studies*, 15(1), pp.61-63.

the constitution of both the state and national commissions to protect the child rights in every federal state within the Union Territory of India¹³.

THE PROHIBITION OF CHILD MARRIAGE ACT, 2006

Child marriage, especially among the girl children, is another frightful issue for the Indian society, which is no less harmful than the child labour issues in this country. This is the reason why the Child Marriage Act had to be amended in 2006 with the name of The Prohibition of Child Marriage Act, 2006. The objective of this act is to enact with people for the purpose of bringing an end to the practice of both physically and psychologically misleading practices of child marriages in India. It enables the awareness for the people to not to engage any girl child in marriage before the age of 18 years, which was validated for the boy child until he gets the age level of 21 years¹⁴. It also indicates that every child marriage practice is meant to be voidable at the option of contracting party who used to be a child under the age of 18 years while getting married.

PROTECTION OF CHILDREN AGAINST SEXUAL OFFENCES ACT, 2012

The explicit child abuses incidents are mostly found associated with diverse sexual offenses and in India, the rates are increasing since the last decade. In the year 2012, the child protection activities related to the sexual offenses has been amended in the parliament with Protection of Children against Sexual Offences Act 2012¹⁵. The objective of this act is to strengthen the legal options for the victims of childhood rape and other sexual assaults. It also protects both the boy and girl children from being sexually abused or exploited within or outside their family. This act also empowers the notion that no child can intentionally or unintentionally be involved in any sexual arrangements until the age of 18. This act encompasses various areas related to childhood sexual offenses related to sexual harassment, sexual assault or casting in pornography. Rigorous imprisonment in accordance with the gravity of the offense is meant to be provided to the accused if the incidents are proved in the court. In addition to it, this act also enables the court to take fine from the concrete alongside the rigorous imprisonment. Section 3 of this act was the penetrative sexual assault that imposes not less than 7 years of imprisonment and up to life imprisonment with fine under Section 4. Section 5 of this act prevents aggravated penetrative sexual assault by imposing 10 years of imprisonment at least and it can be extended up to a lifetime with fine if the time is proven under section 6. Section 7 refers to the normal sexual assault, which does not allow the criminal to be released before at least three years of imprisonment or extended up to 5 years according to the gravity of the crime¹⁶. Under section 11 and 12, sexual harassment on child issues are treated strictly with no less than 3 years of rigorous imprisonment with fine. Section 13 and section 14 of this act prevents the children from being used and tough state in pornographic purposes. 5 years minimum to 7 years of imprisonment is meant to be imposed for the offended if the event is proved in the court.

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT

A requirement of the robust legislative framework has been observed by the Indian Parliament as well as the government for the purpose of protecting the child rights and preventing child abuses from the country. In the year 2012, the Indian Parliament and passed the bill for the Protection of

¹³ Bhattacharyya, R., 2017. Sociologies of India's missing children. *Asian Social Work and Policy Review*, 11(1), pp.90-101.

¹⁴ Pandya, Y.P. and Bhandari, D.J., 2015. An epidemiological study of child marriages in a rural community of Gujarat. *Indian journal of community medicine: official publication of Indian Association of Preventive & Social Medicine*, 40(4), p.246.

¹⁵ Belur, J. and Singh, B.B., 2015. Child sexual abuse and the law in India: a commentary. *Crime Science*, 4(1), p.26.

¹⁶ Moirangthem, S., Kumar, N.C. and Math, S.B., 2015. Child sexual abuse: Issues & concerns. *The Indian journal of medical research*, 142(1), p.1.

Children from Sexual Offences Act or popularly known as POCSO. It enables the protection measures for children from any sort of offenses regarding sexual assault, pornography, and sexual harassment. This act also safeguards the interests of the children from the various states of the Indian judicial process¹⁷. the fundamental framing of this act intends to put every child first by making things easier for him or hard by using the inclusion of children-friendly reporting mechanism followed by evidence recording, an investigation with full pace and rapid trial arrangement with the help of the designated Special Courts. .

CONTENTION AROUND IMPLEMENTATION OF POCSO

With the growth in criminal incidents over the last decade across the nation, the cases of child abuse and mental torture remain in the obscure. There have been public outrages over the cases of adolescent and child rape that aghast the integrity of the nation at large¹⁸. According to Lodha and De Sousa (2017), there have been instances of ignorance about the **Protection of Children from Sexual Offences Act**, who may be in dire need of it. Thus, the distressed and bereaved family members of the affected children consider themselves as helpless and confused and are not able to make up with the debacle situation¹⁹.

Despite of the implementation of the **Protection of Children from Sexual Offences Act** on November, 2012, this special customized law remains in the darkness and lacks a strong enforcement and enactment. According to the demographic ration, 40% of the Indian population are under the age range of 18 years and out of the 40%, 53% of the children have been victims of the some kind of sexual abuse or the other²⁰. With the specific terms and clauses in the law, POCSO is especially tailored to safeguard the interests and of the children and adolescent under the age of 18 years and any kind of illegal offences like, physical assault, sexual abuse of pornography are stringently punishable under the law²¹.

WEAKER IMPLEMENTATION OF THE POCSO ACT

Despite having such stronger implementations under the POCSO act, the act remains as un-executed at significant levels. This **Indian Penal Code** calls for severe punishments for sexual abuse, however, fails to distinguish between the sexual assaults against the children and adults. It has the special provision of the punishing the wrong doer if he belongs to the defence, public servant , observation homes or any member belonging to the educational institution²². Having such intermediaries within the legal rule book, the law attempts to persecute the felon on the ground rules placed forth by the act. Although having such robust provisions, the implementation remains weak in

¹⁷ Seshadri, S. and Ramaswamy, S., 2019. Clinical practice guidelines for child sexual abuse. *Indian Journal of Psychiatry*, 61(8), p.317.

¹⁸ Seth, R. and Srivastava, R.N., 2017. Child Sexual Abuse: Management and prevention, and protection of children from Sexual Offences (POCSO) Act. *Indian pediatrics*, 54(11), pp.949-953.

¹⁹ Pathak, M.K., Jha, S.S. and Rai, S., 2018. A Case Reported Under POCSO Act and Murder. *Journal of Punjab Academy of Forensic Medicine & Toxicology*, 18(2).

²⁰ Kumar, A., Bhagyalakshmi, K.C. and Foster, J.M., 2018. Child Sexual Abuse: Evaluating the School-Based Prevention Programs in India. In *Social, Psychological, and Forensic Perspectives on Sexual Abuse* (pp. 166-178). IGI Global.

²¹ Seth, R., 2015. Child abuse and neglect in India. *The Indian Journal of Pediatrics*, 82(8), pp.707-714.

²² Kumari, V. and Barn, R., 2018. 002_Sentencing In Rape Cases A Critical Appraisal of Judicial Decisions In India.

the sense that the incidents authenticating the act often lack an expedited proceeding and thus the phase of reaching at conclusions remain difficult²³.

It has also been debated by intellectuals, who opine that the proceedings of such cases must be strictly done under the secured environments and that there should be any kind of contact or bad mouthing of the accused against the child victim²⁴. Considering the challenges regarding the implementation of the act, it has been noted further that conducting optimized training to the relative stakeholders pertaining to the process of implementation of the act has been facing a considerable chasm. Incidents of the lack of speedier processing in some of the recent cases like the Delhi rape case and the **Rohtak Shelter Home case of 2012**, where 100 shelter members facing sexual abuse have not yet been under the legal scanner²⁵. Additionally, the Supreme Court had issued a strong directive in implementing the POCSO act by ensuring that the legal regulatory bodies and the legislative cohort must be proactive and prompt in action and enforcement of the act²⁶. However, the challenge lies in the fact that such intermediary bodies have been partially functional and active in their individual accountabilities.

Thus, looking at the weaker implementation of the act, it has been initiated by the High Court to order to for a mandatory registration of all the child homes and shelters across the nation along with the care centres²⁷. The legal instruction for amending special Children courts have been incepted by the Supreme Court to deal with the child abuse cases individually in order to raise a mass voice against the disgraceful acts of child abuse. Another challenge that has characterized the child abuse act has been the lack of infrastructure that has led to the inadequacy in execution of the legal interventions²⁸. A dearth of child friendly atmosphere and children being exposed to the accused at any point of time during the legal proceedings have been construed as areas of contention and incongruence in delivering the legal provisions of the POCSO act.

Lack of infrastructure includes video-conferencing, curtains and the single-visibility mirrors have been discovered as the areas of much needed rectitude. The act also calls for interventions and engagements of NGOs and experts to assist the child in the case proceeding, under the section 39 of the POCSO act²⁹. The provision of recording the child's statement at the place of residence is also missing under the legal intercessions conducted by the legal professionals within the act. However, some of the exemplary cases likely the **Agnelo Valdaris Case** have been a commendable representation of the ensuring severity in punishment and spreading a sense of cognition to raise voice against the highly sensitive issue of child abuse³⁰. Thus, it needs to be stated that POCSO despite being a compact act with

²³ Juyal, D., Setia, A., Sayana, A., Kumar, A., Rathaur, V.K. and Dhawan, B., 2017. Lack of special courts under protection of children from sexual offences act: A structural deficit. *Journal of family medicine and primary care*, 6(4), p.881.

²⁴ Patil, B., Hegde, S. and Yaji, A., 2017. Child abuse reporting: Role of dentist in India—A review. *Journal of Indian Academy of Oral Medicine and Radiology*, 29(1), pp.74-74.

²⁵ Raha, S. and Sengupta, S., 2018. Rights of Women with Disabilities under Indian Legislations. *Socio-Legal Rev.*, 14, p.190.

²⁶ Lodha, P. and De Sousa, A., 2017. The Prevention of Child Sexual Offences (POCSO) Act and ethical considerations for children in therapeutic practice. *GLOBAL BIOETHICS ENQUIRY*, p.87.

²⁷ Shetty, C.K., Biradar, G. and Shetty, P., 2017. Sexual assault in Ballari, Karnataka, India: a four year retrospective review. *Arab Journal of Forensic Sciences & Forensic Medicine (AJFSFM)*, 1(6).

²⁸ Singh, S., 2018. Self-Proclaimed God Convicted, POCSO Amended. *Space and Culture, India*, 6(1), pp.7-15.

²⁹ Deb, S. and Ray, M., 2016. Child abuse and neglect in India, risk factors, and protective measures. In *Child safety, welfare and well-being* (pp. 39-57). Springer, New Delhi.

³⁰ Agnihotri, S. and Das, M., 2015. Reviewing India's protection of children from sexual offences act three years on. *South Asia@ LSE*.

having all sorts of provisions must witness higher scalability and levels of implementation rather than squandering over exploring alternatives of the POCSO act.



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