



# REVIEW OF RESEARCH

ISSN: 2249-894X

IMPACT FACTOR : 5.7631(UIF)

UGC APPROVED JOURNAL NO. 48514

VOLUME - 8 | ISSUE - 9 | JUNE - 2019



## LAW FOR THE PROTECTION OF CHILDREN UNDER POCSO ACT : A CRITICAL ANALYSIS

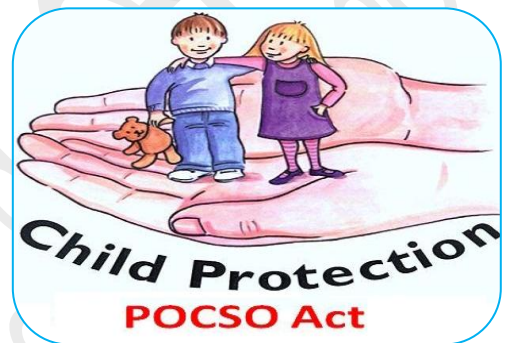
**Dr. A. M. Tripathi**

Associate Professor, Deptt of Defence Study, K.G.K. College, Moradabad.

### ABSTRACT:

*Children are the God gift to humanity and most important assets of nation and family every family has many and more expectations from his children. Future of every country depends upon children's so protection of children is most important.*

**KEYWORDS:** *humanity , protection of children , right to protection.*



### INTRODUCTION

The children have a right to protection against any kind of abuse, trafficking and exploitation. Children are easily gullible, vulnerable to abuse and exploited by the vested interests since they are tender in their age.

Childhood is the most sensitive stage of the life of every human being. It is in this period of life that every individual is brought up. Educated and adjusted to realities of life. The identity of individual is formed during the childhood. The children comprise about 50% of the world's population and they depend on adults for everything. The children normally encounter various difficult circumstances.

So child rights are discussed and debated intensely across the globe over a period of time.

A child is regarded as belong into or even being the property of the family in many societies. A child is also defined as an infant, a minor or an adolescent by some persons. The child is understood to have certain rights and duties in modern society. Usually, all person who do not have full legal capacity varies from state to state.

The Constitution of India guarantees several rights to children and enables the State to make provisions to ensure that the tender age of children is not abused. Even though India is a signatory to a host of International Covenants and Instruments focusing on Child Protection, these along with the existing domestic legal mechanisms have not been able to provide the necessary systems which could prevent child abuse. The 12th Five Year Plan (2011-

2016) of the Ministry of Women & Child Development has unequivocally stated that "Strict measures are required to ensure that abuse of the child for sexual purposes is prevented". The National Policy for Children, 2013, recognizes that "childhood is an integral part of life with a value of its own". One of the key priorities of the Policy mandates the State to "create a caring, protective and safe environment for all children, to reduce their vulnerability in all situations and to keep them safe at all places, especially public spaces" and "protect all children from all forms of violence and abuse, harm, neglect, stigma, discrimination, deprivation, exploitation including economic exploitation and sexual exploitation, abandonment, separation, abduction, sale or trafficking for any purpose or in

any form, pornography, alcohol and substance abuse, or any other activity that takes undue advantage of them or harms their personhood or affects their development”<sup>1</sup>

Despite the best intentions and plans in place, as well as two comprehensive legislations for the protection of children, The Juvenile Justice (Care & Protection of Children) Act, 2000 and the Protection of Children from Sexual Offences Act 2012, instances of child abuse have been known to occur in our schools, homes for children and other child care institutions as also in the child's own residence. India is home to the largest child population in the world, the health and society of the country's children is integral to any vision far from its progress and development. Child Abuse was and continues to be, one of the most heinous crimes designed and perpetuated by human beings against some of the most vulnerable and defenceless sections of the community. It is a malaise on a society that prides itself on the rule of law, democracy and the various freedoms enshrined in the Constitution. Globally, it has been recognised and seen as a particularly burdensome challenge, and numerous instruments, from the Geneva Declaration of the Rights of the Child of 1924<sup>2</sup> to the United Nations Convention on the Rights of the Child<sup>3</sup> and the Stockholm Declaration and Agenda for action<sup>4</sup> have called upon nation States to create and enhance Child Protection Systems to ensure that “in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. *According to the World Health Organisation, “Child maltreatment, sometimes referred to as child abuse and neglect, includes all forms of physical and emotional ill treatment, sexual abuse, neglect, and exploitation that results in actual or potential harm to the child's health, development or dignity. Within this broad definition, five subtypes can be distinguished – physical abuse; sexual abuse; neglect and negligent treatment; emotional abuse; and exploitation”<sup>5</sup>.*

Sexual abuse is defined as the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared, or else that violates the laws or social taboos of society. Children can be sexually abused by both adults and other children who are – by virtue of their age or stage of development – in a position of responsibility, trust or power over the victim<sup>6</sup>.

In India, Child Abuse occurs in various spaces including the home, neighbourhood, schools, and temporary homes of shelter for abandoned and neglected children, railway platforms, jails and refugee camps. The problem is deep rooted and is one that the community is hesitant to accept and acknowledge<sup>7</sup>.

The Protection of Children from Sexual Offences (POCSO) Act 2012 is appropriate to the entire of India. The POCSO Act 2012 characterizes a kid as any individual beneath the age of 18 years and gives insurance to all kids younger than 18 years from sexual maltreatment. It additionally expects to ensure the youngster through all phases of legal procedure and gives central significance to the rule of “best enthusiasm of the kid”.

Penetrative and irritated penetrative rape, sexual and exasperated rape, inappropriate behavior, and utilizing a tyke for explicit reasons for existing are the five offenses against youngsters that are secured by this demonstration. This demonstration visualizes rebuffing even abetment or an endeavor to submit the offenses characterized in the demonstration. It perceives that the aim to submit an offense, notwithstanding when ineffective should be punished. The discipline for the endeavor to submit is up to a large portion of the discipline endorsed for the commission of the offense

This demonstration proposes that any individual, who has a misgiving that an offense is probably going to be submitted or has learning that an offense has been submitted, has a compulsory commitment to report the issue for example media work force, staff of inn/lodges, medical clinics, clubs, studios, or photographic offices. Inability to report draws in discipline with detainment of as long as a half year or fine or both. It is currently obligatory for police to enlist a FIR in all instances of tyke misuse. A tyke's announcement can be recorded even at the tyke's living arrangement or a position of his decision and ought to be ideally done by a female cop not underneath the position of sub-controller .

According to this demonstration, the kid's therapeutic examination can be led even preceding enrollment of a FIR. This watchfulness is surrendered over to the Investigation Officer (IO). The IO needs to get the tyke restoratively inspected in an administration emergency clinic or nearby medical clinic inside 24 hours of accepting data about the offense. This is finished with the assent of the youngster or parent or a capable individual whom the kid trusts and in their quality.

Tyke Welfare Committees (CWC) assume a crucial job under the POCSO Act, cases enlisted under this demonstration should be accounted for to the CWC inside 24 hours of chronicle the objection. The CWC should consider the conclusion of the tyke to choose the case inside three days and close whether the tyke ought to stay in a foundation or be with the family. The CWC ought to assign with the assent of the tyke parent/gatekeeper/other individual who the kid believes, a help individual to help the kid during the examination and preliminary of the case.

The State Commissions for Protection of Child Rights (SCPCR) has been enabled and with the duty of checking the usage of the arrangements of the POCSO Act 2012, to direct request and to report the exercises attempted under the POCSO Act 2012, in its yearly report. The commission is additionally enabled to require a report on a particular instance of tyke sexual maltreatment falling inside the ward of a CWC. The commission can likewise suggest between time alleviation, or make proposals to the state government to successfully change the issue. The rules laid down in this act also had defined a criteria of awarding the compensations by the special court that includes loss of educational and employment opportunities along with disability, disease or pregnancy as the consequence of the abuse. This compensation would be awarded at the interim stage as well as after the trial ends<sup>8</sup>.

A portion of the kid amicable methods which are visualized under the POCSO Act are as per the following:-

1. At night no kid to be kept in the police headquarters.
2. The articulation of the kid to be recorded as spoken by the kid.
3. Frequent breaks for the kid during preliminary.
4. Child not to be called more than once to affirm.

For offenses under this demonstration the weight of evidence is moved on the blamed, keeping in view the powerlessness and honesty of youngsters. To forestall abuse of the law, discipline has been accommodated false protests or false data with malignant aim.

The media has been banned from revealing the character of the tyke without the authorization of the uncommon court. The discipline for breaking this arrangement by media might be from a half year to one year. For speedy trial, the evidence of the child is to be recorded within a period of 30 days. Also, the Special Court is to complete the trial within one year.

The children are innocent, curious, their life should be promised for tomorrow full of hope, play, joy and enjoyment. The exploitation of children both physically and mentally is a crime against humanity.

India is home to the largest child population in the world and almost 42% of total population under 18 years of age being Pasco Act sexual abuse and sex trafficking remain highly prevalent and are among the serious problem in India. In the last two decades, an increase in the prevalence of sexually transmitted diseases has been shown in children.<sup>9</sup>

### WHO IS CHILD?<sup>10</sup>

Biologically a child (plural: children) is a human being between the stages of birth and puberty. The legal definition of child generally refers to a minor, otherwise known as a person younger than the age of majority.<sup>11</sup>

### LEGAL, BIOLOGICAL, AND SOCIAL DEFINITIONS

The United Nations convention on the rights of the child defines a child as "a human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier. This is ratified by 192 of 194 member countries. In US immigration law, a child refers to anyone who is under the age of 21. Biologically a child is generally anyone between birth and puberty. Children

generally have fewer rights than adults and are classed as unable to make serious decisions and legally must always be under the care of responsible adult,

**Child abuse** is an act, or failure to act, that endangers a child's physical or emotional health and development. Child abusers inflict physical, sexual, and emotional trauma on defenceless children. Victims of child abuse often become abusers themselves, continuing the cycle. While laws have been enacted in most countries making such abuse a crime, many cultures regard parenting as a private family affair, which leads to significant underreporting. Even so, agencies designed to deal with child abuse victims and perpetrators are overwhelmed by the numbers of cases that are reported. Confusion with corporal punishment, which is disciplinary in nature and not intended to have severe or long-term effects, also hampers prevention and reporting.

Efforts to prevent child abuse involve support through social services, education, and counselling on the individual (child), family, community, and societal levels. The solution to the widespread phenomenon of child abuse cannot be found in legislation, or in merely stopping abuse that has already damaged a child. Human beings should develop the heart of true parents to properly raise children<sup>12</sup>.

**Child abuse** also known as **cruelty to children** or **child maltreatment**, is defined as: 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. (Child Abuse Prevention and Treatment Act (CAPTA))

There are several different forms of neglect and abuse, and many governments have developed their own legal definitions of what constitutes child maltreatment for the purposes of removing a child and/or prosecuting a criminal charge. The United States Federal Government has published a full definition of child abuse and neglect, including a summary of each state's definition. (See Definitions.)

### CHILD ABUSE AND CORPORAL PUNISHMENT

Child abuse is sometimes closely connected with "corporal punishment" which is defined as follows:

Corporal punishment is any action on the part of an adult or caretaker that intentionally inflicts, or causes to result, pain or physiological discomfort in a person under the age of 18 for the purposes of punishment or containment (Couture 2000).

Corporal punishment can include spanking, slapping, smacking, paddling, or "strapping" with a belt. The results of such punishment should be only mild bruising and no permanent damage. Thus, it differs from child abuse in that it does not result in the level of harm to the child required to meet the legal definition of abuse. The distinctive line between corporal punishment and abuse is sometimes very slim. Something that in one state or country may be characterized as corporal punishment, in others might be regarded as abuse. Because of this, many countries have completely banned the use of corporal punishment<sup>13</sup>.

### IDENTIFYING CHILD ABUSE

Child abuse can generally be divided into four types: Physical Abuse, Emotional Abuse, Sexual Abuse, and Neglect. However, it is often the case that children suffer more than one type of abuse from the same abuser.

### PHYSICAL ABUSE

Physical abuse is the easiest form of maltreatment to identify. The only challenge for the investigator is to determine whether the injuries are accidental or due to abuse. Typical indicators of abuse (from Medline [1]) include:

1. Injuries that do not fit the given explanation or time frames
2. Unusual and unexplained bone fractures
3. Bruise marks shaped like hands, fingers, or objects (such as a belt), or unexplained bruises in areas where normal childhood activities would not usually result in bruising

4. Specific patterns of scalding, seen when a child is immersed in hot water as a punishment—particularly "glove" or "sock" burn patterns
5. Burns from an electric stove, radiator, heater, or other hot objects, usually seen on the child's hands, arms, or buttocks
6. Cigarette burns on exposed areas or the genitals
7. Black eyes in an infant or a similar, unexplained injury in a child
8. Human bite marks
9. Lash marks
10. Choke marks around neck
11. Circular marks around wrists or ankles (indicating twisting or tying up)
12. Separated sutures
13. Bulging fontanelle
14. Evidence of unexplained abdominal injury (such as bruised or ruptured intestines due to punching)
15. Unexplained unconsciousness in infant  
Typical injuries sustained by abused children include:
16. Bleeding in the back of the eye, seen with shaken baby syndrome or a direct blow to the head
17. Internal damage, such as bleeding or rupture of an organ from blunt trauma
18. Any fracture in an infant too young to walk or crawl
19. Evidence of fractures at the tip of long bones or spiral-type fractures that result from twisting
20. Fractured ribs, especially in the back
21. Evidence of skull fracture (multiple fractures of different ages may be present)
22. Subdural hematoma (collection of blood in the brain) without plausible explanation
23. Multiple bruises of different ages, especially in unusual areas of the body (e.g., not the shins) or in patterns suggesting choking, twisting, or severe beating with objects or hands.

### EMOTIONAL ABUSE

Emotional abuse is one of the hardest to identify. Generally speaking, emotional abuse can be described as the systematic, intentional, and slow process of breaking down a child's self-concept. This includes rejecting the child, ignoring the child's needs, isolating the child, enforcing deviant behaviour, threatening or terrorizing the child, and name-calling or other verbal abuse. All these prevent the normal emotional development of the child<sup>14</sup>.

Emotional abuse can be identified based on the parent's behaviour: describes child as "different," belittles or humiliates the child in front of others, exhibits excessive demands, blames the child for different reasons, uses the child as a vehicle for marital fighting, makes the child watch violence, destroys the child's possessions, etc.; or from the child's behaviour: manipulative, withdrawn, timid, disruptive, overly demanding, fearful of caregiver, depressed, wilfully injuring animals, fire setting, etc.

### EFFECTS OF CHILD ABUSE

The effects of abuse depend on the severity and frequency, as well as the type of abuse.

1. **Physical abuse** may result not only in physical injuries and body defects, but in difficulties of children to build trustful relationships, or later to develop physical closeness and intimate personal relationships in adulthood. Such children may exhibit higher levels of anxiety or depression, accompanied with problems at school or work. Often they themselves become abusive parents or caregivers.
2. **Emotional abuse** often results in various behavioural, emotional, or psychological problems.
3. **Sexual abuse** may result in difficulties of the victim to relate sexually in intimate relationships. The victim may develop distorted views on sexuality, or even deviant sexual behaviour, or various types of mental problems. Children who were sexually abused are seen to exhibit sexual behaviour toward their peers, thus perpetrating sexual deviance.

4. **Neglect** may result in low self-esteem and the sense of worthlessness. Children who are neglected over long periods of time may have developmental delays (especially in language), or may exhibit higher levels of anxious attachment. Neglected children typically learn to be passive, and tend toward helplessness under stress. Neglect may result in significant brain damage, due to lack of sufficient stimulation required for normal development<sup>15</sup>.

### SUGGESTION

Though the Act bars the media from disclosing the identity of the child without the permission of the special court it does not make any reference of child sexual abuse via internet which is quite a recent phenomenon. Only Section 67 of the Information Technology Act, 2000 states that publication and transmission of pornography through the internet is an offence. Therefore the scope of child sexual abuse via internet is bound to grow in the coming years and we require a stringent provision to penalize the same and so amendments to the POCSO are highly recommended.

Other issues include the routine production of children before CWCs; directions by the CWC to the police urging them to facilitate the recording of a second statement under Section 164, Cr. PC; lack of clarity as to when a child should be restored to the family by the CWC and non-reliance on reports of the CWC by the Special Court.

1. Appointment of Special Public Prosecutors (SPP) should be made exclusively deal with the POCSO cases and other offences against children.
2. Periodic trainings of prosecutors and Legal Aid Lawyers should be conducted for techniques of interviewing children and appreciating their testimony.
3. Joint trainings of police and prosecutors on age and developmentally appropriate techniques of interviewing children, lapses that should be avoided, and the manner of investigation and prosecution in sexual offences.
4. Training of Chairperson and Members of Child Welfare Committees should be scheduled periodically.
5. Allocation of sufficient funds to facilitate the construction of waiting rooms for child victim specifically for sexual abuse and their families, show that they are not exposed to the accused or to other adult criminals, the police personnel in uniform and other such persons.
6. An Action Plan should be developed to address the support gap and to facilitate greater coordination between support persons, lawyers, prosecutors, and children and their families. The Action Plan should indicate measures that will be taken to ensure the availability of competent and sensitive Support Persons immediately after a FIR is lodged till the completion of trial.
7. Trained cadre of Support Persons should be appointed with the assistance of Indian Legal Services Authority and District Child Protection Units under the Juvenile Justice (Care and Protection of Children) Act, 2015.
8. Allocation of funds should be allocated for Child Welfare Committees to provide remuneration and travel expenses to Support Persons appointed in POCSO cases.
9. It should be ensured that compensation ordered by the Special Court is paid within 24 hours.
10. Instruction should be given for Public Prosecution to issue a guidance note for prosecutors to enable them to conduct the prosecution in a child-sensitive manner. The note should also address the need for cooperation between the prosecutor, lawyer of the victim, and the Support Person.

There is a fear that this would end up taking away safeguards available to victims under the POSCO Act, especially girls in the 16-18 age tracked. The benefits of POSCO Act would trickle down to the child only if this Act is implemented in its true sense and spirit by all the agencies<sup>16</sup>.

The twentieth century witnessed serious development toward better understanding, identification, prevention, and treatment of victims of child abuse. Laws and reporting procedures have been but in place that protect the victims. We have gained important knowledge concerning the different factors that play a role in child abuse. There is not only one cause that leads to child abuse, for example the parent's situation the child temperament. Rather, child abuse is a complex result of various interacting risk factors. Four levels factors are involved –

- a) Individual (child)
- b) Family
- c) Community
- d) Society

Under standing preventing, and treating child abuse must take into consideration all four levels. The solution to the widespread phenomenon of child abuse cannot be found in legislation. Primary prevention is the key and successful primary prevention means that human being should reach maturity and come to value all children as the future of humankind giving them there, parental love.

## REFERENCE

1. [http://delhi.gov.in/wps/wem/connect/DOJT\\_DCPCR/deher/publication/guidelinestpartpreuention+childabuse](http://delhi.gov.in/wps/wem/connect/DOJT_DCPCR/deher/publication/guidelinestpartpreuention+childabuse).
2. Adopted 26 September, 1924, League of Nations. <http://www.un-documents.net/gdrc1924.htm>
3. Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989
4. Adopted at the First World Congress against Commercial Sexual Exploitation of Children, Stockholm, Sweden, 27-31 August 1996
5. World Health Organization (1999): Report of the Consultation on Child Abuse Prevention; Geneva
6. Preventing child maltreatment: a guide to taking action and generating evidence: World Health Organization and International Society for Prevention of Child Abuse and Neglect, 2006.
7. [http://delhi.gov.in/wps/wem/connect/DOJT\\_DCPCR/deher/publication/guidelinestpartpreuention+childabuse](http://delhi.gov.in/wps/wem/connect/DOJT_DCPCR/deher/publication/guidelinestpartpreuention+childabuse).
8. Analyzing the Posco Act, Emidio Pincho, Times of India, April, 25, 2013. <[http://time of India.indiatimes.com/city/goa/Analyzing-the Posco-Act, 2012/articleshrus/19718160.cms](http://timeofindia.indiatimes.com/city/goa/Analyzing-the-Posco-Act,2012/articleshrus/19718160.cms)>
9. Dr. Manjula S.R./Deepa T.N. (The Children and Laws in India with special reference to Pasco Act, 2012 (ISBN 978-1-64249-572-0)
11. Ibid.
12. [http://www.newworldencyclopedia.org/entry/child\\_abuse](http://www.newworldencyclopedia.org/entry/child_abuse).
13. [www.newworldencyclopedia.org/entry/child-abuse](http://www.newworldencyclopedia.org/entry/child-abuse). (12-10-2018)
14. [www.newworldencyclopedia.org/entry/child-abuse](http://www.newworldencyclopedia.org/entry/child-abuse).
15. [www.newworldencyclopedia.org/entry/child-abuse](http://www.newworldencyclopedia.org/entry/child-abuse).
16. [http://timesofindia.indiatimes.com/city/goa/Analyzing-the-POSCO-Act-2012/articles show/197/8160.cms](http://timesofindia.indiatimes.com/city/goa/Analyzing-the-POSCO-Act-2012/articles_show/197/8160.cms).