



CHILD ABUSE WITH SPECIAL REFERENCE TO SEXUAL ABUSE: A DILEMMA FACED BY THE NATION

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Abuse manipulates and twists a child's natural sense of trust and love. Her innocent feelings are belittled or mocked and she learns to ignore her feelings. She can't afford to feel the full range of feelings in her body while she's being abused—pain, outrage, hate, vengeance, confusion, arousal. So she short-circuits them and goes numb. For many children, any expression of feelings, even a single tear, is cause for more severe abuse. Again, the only recourse is to shut down. Feelings go underground.²

Juvenescence is the tender stage of life. It knows no anxiety or worry, no evil or good. It is the stage of both innocence and ignorance. The heart of a child is as pure as a crystal and it is also said that "God lives in a child". But some people without even second thought ruined the life of child by Abuse, Which left such a bad impact on their life that ruined their present and future

Child Abuse the word which was available in books only Now become the word of everyone's mouth, every day when we start our day with Newspaper or with E Newspaper, we get to read such heinous crime. This is a alarming situation for the Nation. Child abuse is the one of the biggest stigma attached to our society. According to the National Crime Records Bureau, the cases of rape and murder of children increase every year. The growing complication of life and the varying social economic conditions have exposed the children to new and different forms of abuse. But the sad state of the affairs is that such heinous acts are reported less. It has such a psychological impact on the mind of the child that he seldom gathers the courage to speak about the act being committed against him. If even if he confides the fact with someone, the social factors let the fact being dumped under the fear of family reputation and other related issues. In fact child abuse is a violation of the basic human rights of a child. . The Development of child is effect adversely by any kind of violence. Child

¹ UILS, Chandigarh University, Asst. Professor

² Laura Davis, *Allies in Healing: When the Person You Love Is a Survivor of Child Sexual Abuse*



Abuse literally effect in actual or potential harm to the child's health, survival, development and dignity.³

Child abuse is in no way a recent development. Children have been suffering from maltreatment around the world for thousands of years. The social perception of child abuse and neglect has changed a great deal over time. What used to be considered acceptable behavior is no longer legally or socially permissible?

Throughout history, subjecting a child to physical abuse, sexual abuse, psychological abuse, and neglect has been condoned, and in some cases even encouraged. Children were commonly exploited and used for the advancement of parents or adults. Historically, children were given few or no rights and were often considered to be insignificant or unimportant. In many cases, children were subjected to cruel and unusual treatment and were offered little or no protection from abuse and exploitation. It took many years for child abuse prevention organizations to be established and much longer for various countries to institute laws which condemn child abuse and neglect.

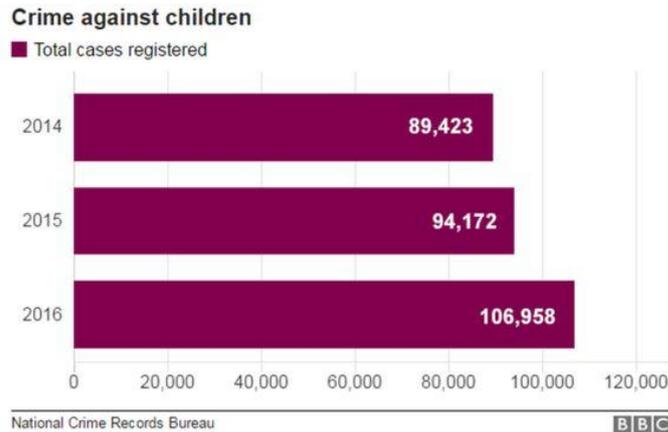
Since early history, the social perception of children and child abuse has been altered a great deal. Even within the last few decades, public opinion regarding child abuse and aggressive discipline has changed drastically. Although child abuse still occurs today, the views and opinions of children and child abuse are not the same as they were in the past.

In India, a child is sexually abused every 15 minutes, according to the latest government figures. According to the National Crime Records Bureau report, there is steady rise in incidents of offences against children. According to the report,⁴106,958 cases of crimes against children were recorded in 2016.Of these, 36,022 cases were recorded under Pocso (Protection of Children from Sexual Offences) Act. 53% of children surveyed said they had been subjected to some form of sexual abuse.⁵

³ <http://www.helpline.law.com/family-law/CAII/child-abuse-in-india.html>

⁴ Report on crimes in India for 2016, released by Indian Home Minister Rajnath Singh in Delhi

⁵ Study conducted by India's ministry of women and child development, in 2007



The Figure depicts that there is a great shoot in Child Abuse from 2014 to 2016, which is not a good sign for the nation .Because child Abuse is not the hindrance in the development of Child only, but also in development of the Nation.

WHAT IS CHILD ABUSE?

Any form of violence or mistreatment, be it physical, sexual or psychological against children may be referred as child abuse. It may be induced by care takers, relatives or parents.

Following are the types of child abuse:

1. **Emotional Abuse:** Emotional abuse or maltreatment, also known as psychological abuse or maltreatment is the most common form of child abuse. It is also experienced by children witnessing domestic violence. While many parents are emotionally abusive without being violent or sexually abusive, emotional abuse often accompanies physical and sexual abuse. It includes acts of omission (what is not done) e.g. emotional neglect e.g. not expressing or showing love and affection and commission (what is done) e.g. rejection, humiliation, insults, setting unreasonable expectations or restricting opportunities for the child to learn, socialize or explore. Each can negatively impact a child's self-esteem and social competence
2. **Physical Abuse:** Physical abuse refers to 'any non-accidental physical act inflicted upon a child by a person having the care of a child'. It is not always a result of intent to hurt a child but sometimes can be justified as being a form of discipline. However when it is fear based, and involves unpredictability or lashing out in anger, it



constitutes physical abuse. Physical abuse is the type of abuse most likely to be accompanied by another form, specifically emotional abuse or neglect.

3. **Sexual Abuse:** Child sexual abuse describes any incident in an adult, adolescent or child uses their power and authority to engage a minor in a sexual act, or exposes the minor to inappropriate sexual behavior or material. A person may sexually abuse a child using threats and physical force, but sexual abuse often involves subtle forms of manipulation, in which the child is coerced into believing that the activity is an expression of love, or that the child bought the abuse upon themselves. Sexual abuse involves contact and non-contact offences.
4. **Neglect:** Neglect can be defined as ‘any serious act or omission by a person having the care of a child that, within the bounds of cultural tradition, constitutes a failure to provide conditions that are essential for the healthy physical and emotional development of a child’. Neglect refers to circumstances in which a parent or caregiver fails to adequately provide for a child's needs: e.g. provision of food, shelter and clothing, access to medical care when necessary, providing love, care and support, adequate supervision, appropriate legal and moral guidance, regular school attendance.
5. **Domestic and family violence:** It is a pattern of abusive behavior in an intimate relationship, which features coercion and control, which that over time puts one person in a position of power over another, and causes fear. It can incorporate a range of abuses including but not limited to: physical, sexual and emotional assaults; stalking; isolating the person from friends and family; financial abuse; spiritual/cultural abuse; legal abuse; damage to personal property; threats of harm to pets and loved ones; psychological abuse e.g. manipulation, denial etc.
6. **Organized Sexual Abuse:** Organized sexual abuse refers to the range of circumstances in which multiple children are subject to sexual abuse by multiple perpetrators. In these circumstances, children are subject to a range of serious harms that can include child prostitution, the manufacture of child pornography, and bizarre and sadistic sexual practices, including ritualistic abuse and torture.

Eight cases of sex crimes against children have been registered every day in the years 2013 and 2014. The number of convictions is only 166 that is 2.4% of the total cases registered⁶.

⁶ Data from National Commission for Protection of Child Rights

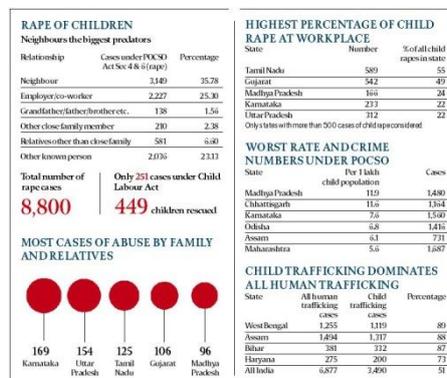


Surveys indicate that a large number of children in India are sexually abused by known persons like relatives, neighbors, at school, and in residential facilities for vulnerable children⁷.

Exploitation involved in child labor is indicating by the, latest government statistics that shows over 25 per cent of rapes on children last year were committed by their employers and co-workers. According to survey 8,800 cases of rape on children were registered across the country under the Protection of Children Against Sexual Offences Act (POCSO). In 2,227 cases, or 25.3 per cent, the offenders were found to be employers or co-workers.. The data also shows that less than two per cent of rapes committed on women 2015 happened at the workplace.⁸

In the case of children, the data reveals:

- Neighbors were the biggest abusers in such cases in 2015 — 3,149 (35.8%).
- In over 10 per cent of cases last year, children were subjected to rape by their own family members or relatives.
- In 94.8 per cent of cases, children were subjected to rape by someone known to them.
- 14,913 cases were registered under POCSO in 2015.



Recent and Extreme cases of Child Abuse:

- The **Kathua rape case** refers to the abduction, rape, and murder of an 8-year-old girl, in Rasana village near Kathua in the India. The rape and murder made headlines in India when the charges were filed in April. The rape and murder drew widespread condemnation Which Really shake the whole nation

⁷ <http://www.insightsonindia.com/2015/08/05/4-the-incidents-of-child-abuse-are-on-the-rise-in-india-as-reported-by-news-in-recent-days-what-measures-need-to-be-taken-by-the-go>

⁸ Data compiled by the National Crime Records Bureau (NCRB) for 2015



- The **Unnao rape case** refers to the alleged rape of an 17 year old girl on 4 June 2017, by person of High Profile.
- In One case The Girl was raped by a neighbor when she was 14 years old. The neighbor had been harassing her for a long time, and then one night he came on motorcycles with friends and threatened to kill her if she didn't get on the bike with him. He took her to a friend's house and raped her.⁹
- In other case in UP the girl was raped by a doctor in her village. She says she was walking to the market to buy sweets when the doctor, who her family estimates is around 50 years old, forcefully pulled her inside his clinic and raped her. Afterward she stumbled out onto the street and fainted. When her family found her she was covered in blood and profusely bleeding¹⁰
- As many as seven girls at an orphanage were allegedly abused for weeks together, at Kalpatta in Wayanad district¹¹
- Two separate cases of young boys being abused have come to light in the city. In the first case registered with the Powai police in July last week, two boys, aged 13 and 10, consumed rat poison dissolved in a soft drink on July 12. While the 10-year-old passed away the same day, the 13-year-old succumbed on July 25. The boy, who had been prohibited water because of his critical condition, told his mother he and his friend had been sexually abused when she agreed to give him some water¹²
- In 2016, when a 12-year-old boy studying in a Satara boarding school fared miserably in his final exams, his mother realised he had withdrawn from the family. During counselling, the boy said he had been sodomised by the school warden. The incident came to light 35 days after the assault.¹³
- A 17-year-old juvenile in conflict with the law was physically assaulted in David Sassoon Special Home in Matunga. He succumbed to his injuries later. He had told his family he had been threatened and asked to perform sexual acts on older boys in the home. In 2016, another 17-year-old was sexually abused twice in the home. The

⁹ https://www.buzzfeed.com/anonwriter/heartbreaking-accounts-of-child-rape-in-india?utm_term=.ik3NX2lwq1#.sfMkVW0oyD

¹⁰ Ibid

¹¹ <https://gulfnnews.com/news/asia/india/two-new-child-abuse-cases-rock-india-s-kerala-state-1.1989645>

¹² <http://indianexpress.com/article/india/sexual-abuse-of-boys-shame-poor-awareness-behind-under-reporting-4786889/>

¹³ ibid



child spoke to a probation officer about the incident who filed a complaint with the Shivaji Park police.

- The case of Dhananjay Chatterjee , a security guard who was executed by hanging for raping and murdering 14 year old Hetal Parekh on March 5, 1990 at her apartment residence in Bhawanipur, Kolkata.
- Aarushi murder mystery also involves the case of child abuse where a girl was killed for no fault of hers.

Such cases are existing examples proving that demons still exist in our society and these demons can only be killed if the individuals and the government join hands for a fight against child abuse. We should keep in mind the fact that if we want to abolish child labor from its very roots we should first take oath that we will not employ and child to help us in the domestic purposes.

There is a common misconception that children from well-to-do families are immune to sexual abuse. Gender, education and income do not provide any security against this crime. At some point of time, one out of every two children in India faces sexual exploitation – and more than half of the victims are boys also.

In majority of the above said cases, the perpetrator is known to the child.

Who are the perpetrators?

- Neighbors are also a big threat; according NCRB data on cases registered under POCSO in 2015, in 3,149 cases registered, that is 35.8 percent of the cases, the person next door was the perpetrator.
- In over 10 percent of cases last year, children were subjected to rape by their own family members or relatives.
- Experts in the field of mental health and child abuse say perpetrators are seemingly normal like any of us and they are living in our homes.
- According to the data for 2015, in 488 cases, the victim was raped by either his/her grandfather, father, brother or son. Close family members were the offenders in 891 cases and relatives in 1,788 cases.

Child abuse is a crime which is committed by individuals who are frustrated by their own lives. Most offenders are usually regular sex offenders who think they might just get away



with the crime. According to psychologists and counselors, children are an easy target and hence are more vulnerable.

Many child abuse cases go unreported because the victim is traumatized and therefore reluctant to confide in anyone. In a majority of the cases, the family of the victim may not want to confront the abuser if he or she is an influential family member or an influential person in society, for the fear of backlash or shame. Child sexual abusers often develop a relationship with the child, to manipulate him or her into compliance with the sexual act. These perpetrators are often characterized as exhibiting poor social skills, having feelings of inadequacy or loneliness, or being passive in relationships. Child sexual abuse is a traumatic event in the life of a child. According to the WHO (1999), it results in actual or potential harm to a child's health, survival, development, or dignity in the context of a relationship of responsibility, trust, or power.¹⁴

India houses 40% of children in its total population but is ranked as the sixth most unsafe country for children¹⁵

Child sexual abuse is a punishable act as per the Protection of Children from Sexual Offences Act the bill passed in the parliament in May 2012.¹⁶ Despite strict initiatives like the POSCO Act, government has failed to prevent much of the child sexual abuse from taking place. Most cases go unreported. Poor awareness, social stigma, and negligence remain attached to the issue.

Legislative and Judiciary Measures on Child Abuse:

Constitutional Provisions:

The Constitution of India recognizes the vulnerable position of the children and their rights to protection. The rights of children and their aspirations are of paramount importance in our march towards an inclusive and equitable society. The Constitution of India contains

¹⁴ World Health Organization. Definition of child maltreatment. Geneva, Switzerland: World Health Organization; 1999.

¹⁵ Ministry of Women and Child Development, Government of India. Study on Child Abuse: India 2007. New Delhi: Ministry of Women and Child Development, Government of India; 2007

¹⁶ Ministry of Law and Justice, Government of India. Protection of Children from Sexual Offences Act, 2012. New Delhi: Ministry of Law and Justice, Government of India; 2012.



provisions for survival, development and protection of children. The doctrine of protective discrimination guarantees necessary and special laws and policies that safeguard their rights.

1. The Constitution of India empowers the state Government to make special provisions for the advancement of the children.¹⁷
2. The Constitution of India provides that that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.¹⁸
3. The Constitution prohibits employment of young children in factories. It lays down that, no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in other hazardous employment.¹⁹
4. The Constitution imposes a duty on the state to provide free and compulsory education for all children till they complete the age of fourteen years²⁰

INDIAN PENAL CODE

Though, the Indian Penal Code, 1860 provides provisions (such as Sections 376, 354 etc) to deal with various types of sexual offences committed against women and also Section 377 punishes unnatural sexual acts against both man and women, but there was no specific legislation to counter sexual offences committed against children of both the sexes. Thus, the Parliament enacted a specialized legislation in the year 2012 in the name of Protection of Children from Sexual Offences Act, 2012 to protect children of both sexes from this social menace and to punish the perpetrators. The new Act criminalizes acts of immodesty against children. However, the law doesn't severely punish the molester and seems to lack in its deterrent character.

JUDICIAL VIEW

The judiciary has played a major role to stop this heinous crime against children. Many times the Courts have issued various guidelines for ensuring the security and rehabilitation of the children affected by sexual assault. Following are few cases:

¹⁷ Article 15(3), The Constitution of India

¹⁸ Article 39, The Constitution of India

¹⁹ Article 24, The Constitution of India

²⁰ Article 21A, The Constitution of India



Shankar kisanraokhadev State of Maharashtra²¹

The court observed that in most of the cases children are abused by persons known to them or who have influence over them. The court also held that sexual abuse can be in any form like sexually molested or assaulted or encouraging, inducing or forcing the child to be used for the sexual gratification of another person, using a child or deliberately exposing a child to sexual activities or pornography or procuring or allowing a child to be procured for commercial exploitation and so on.

Gaurav Jain v Union Of India²²

The Supreme Court issued several directions to Central Government, State Governments and Non-Governmental Organizations which are as follows:

(a) The court held that it is the duty of Government and all voluntary NGOs to take necessary measures for protecting them from prostitution rehabilitate them so that they may lead a life with dignity.

(b) The court directed that the abused children should be provided opportunities for education, financial support, development, marketing facilities for goods produced by them. If possible, their marriages may be arranged so that the problem of child prostitution can be eradicated. Marriage would give them real status in society. They should be given housing facilities, legal aid, free counseling assistance and similar add and service so that they do not fall into the trap of red light areas again.

(c) The court held that economic empowerment is one of the major factor that prevent the practice of dedication of the young girls to the prostitution as Devdasis, Jogins or Venkatasins. Referring the various measure taken by the different states the court directed that the social welfare department should undertake similar rehabilitation programmes for the following woman, so that the whole practice is totally eradicated and they are not again trapped into the prostitution.

(d) The court directed that the rescue and rehabilitation of the child prostitutes and children should be kept under Nodal Department, namely, Department of Woman and Child Development under the Ministry of Welfare and Human Resource, Government of India,

²¹ 8(2013) 5 SCC 546

²² 1990 AIR 292, 1989 SCR Supl2) 173



devise, suitable scheme for proper and effective implementation. The court directed the Ministry of Welfare, Government of India for the establishment of Juvenile Homes.

Vishal Jeetv Union Of India²³

The Supreme Court held that this matter is of great importance warranting a comprehensive and searching analysis and requiring a humanistic rather than a purely legalistic approach from different angles. The court stated that this malady is not only a social but also a socio-economic problem and, therefore, the measures to be taken in that regard should be more preventive rather than punitive. The SC issued the following directions inter alia to the State Governments and Union Territories:

(a) Direct concerned law enforcing authorities to take appropriate and speedy action under the existing laws in eradicating child prostitution.

(b) Take steps in providing adequate and rehabilitative homes.

(c) Set up separate Advisory Committee consisting of relevant Government officials, sociologists, criminologists, members of the women/ child welfare/ voluntary social organizations to make suggestions for eradicating child prostitution and the devdasi and jogin tradition; and measures for care, protection, treatment, development and rehabilitation of victims

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

On 22 May 2012, the parliament passed, The protection of children from sexual offences bill 2011. Till the passing of this Act, the law relating to sexual offences against children was lying scattered in various provisions of 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. From the global perspective also, India has correspond its obligation as a signatory of United Nation convention on rights of children, which has prescribed a set of standards to be followed by all State parties in securing the best interests of the child. This Act not only prescribes the different category of sexual offences against children but also provides for stringent punishments for the offences.

HOW TO CURB CHILD ABUSE

²³ AIR 1990 S.C. 1412



1. **Required Stringent Law:** Laws and acts such as the Protection of children from Sexual offences Act (POSCO) , 2012 is initiated with the aim to reduce re-victimization of the exploited child, setting up fast track special courts and support system. State commissions for protection of children from exploitation should also be set up to enhance the focus on the measures to be taken. Government desired to recommend to Amend in POSCO by introducing Death punishment in case of Rape of minor Girl, which may be proved as good initiative to reduce child abuse.

2. **Promoting gender equity:** Majority of the forms of exploitation happens with female children in comparison to their male counterparts. This promotes the need for gender sensitization right from school itself, nukkad nataks and media portraying the same. Involving NGOs for for a greater reach.

3. **Missing children tracking:** Initiating projects like project MILAP by Delhi government as missing children mostly end up in being trafficked, in sex trade, child labour.

4. **Police verification:** Ensuring police verification of school staff, carpool drivers should be done.

5. **Awareness among parents:** It is the duty of the parents also to Make children aware of child abuses so that they become vigilant and alert. Also, Parents should keep a strict watch on family members as in most cases it is the family members who are the real culprits. Parents should also. Ensuring that the school has duly verified staff Parents should be more aware about Using apps like geofencing to help keep track of the child would further help.

CONCLUSION

“Unhappy is he to whom the memories of childhood bring only fear and sadness”. H. P. Lovecraft

Childhood is the golden period of life and it is also said that God resides in a child’s heart. Abusing a child is like insulting the God you preach. A child has a soft heart and is free from all kinds of worries and anxieties as a result of which even a little misbehavior with him leaves a permanent mark in his mind. the memories of childhood have their own significance in one’s life. As one grows up, one feels more and more attached with his childhood, the best period in an individual’s life. Having no anxieties, worries or work, a child is free from the



dirty and filthy noise of the worldly life. So this time to stop this menace if we really wants to develop, this is not possible without the help of every member of society. So let's raise our voice" ZERO TOLERANCE FOR CHILD ABUSE"