

CHILD ABUSE IN INDIA: A CRITICAL STUDY

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ABSTRACT

“IF YOU SAY THERE IS NO SUCH THING AS MORALITY IN ABUSOLUTE TERMS, THEN CHILD ABUSE IS NOT EVIL, IT JUST MAY NOT HAPPEN TO BE YOUR THING”

-Rebecca Manley Pippert

The laws in India are in flux. In several respects we find that provisions of law are not capable of preventing certain forms of crimes against children. Child abuse or exploitation of children takes place all over the world; those from developing countries such as India are more vulnerable because of poverty, illiteracy, lack of support groups, low status of girls, lack of implementation of laws and lack of awareness about the rights of child, in both communities and children themselves. Societal norms many a times prevent discussion or dialogue on issues especially related to sex which also go unreported or ignored.

Child abuse takes place in all caste, communities and across all strata of society irrespective of economic, social or educational background of the children's family; both male and female children are abused. However across the board, the girls are abused more frequently than boys. There is broad range of potential or actual abusers including parents, relatives, domestic help, older siblings, friends of family, neighbours, teachers, traffickers etc...

In these circumstances it may be difficult to formulate a full proof theory of law for children, still; it should be possible for us to identify certain general features which have application for their treatment and rehabilitation as per their psychological and emotional needs of child, throughout the body of child related laws. Identification of the factors which contribute to the proper functioning of the justice system related to children needs to be done. This can be done by way of analysis of case laws in light of constitutional, statutory and international provisions in context of new development in society.

The aim of the study is to develop a comprehensive understanding the phenomenon of child abuse, its consequences, with a view to facilitate the formulation of appropriate policies and programs meant to effectively curb and control the problems of child abuse in India.

Introduction:

The child (who is abused), at their tender age, are unable to find words to voice their experience. Child can be abused at various levels. Child abuse has become ubiquitous in every part of world and India is no exception to the same. To add-up one of the major difficulties in study child abuse is to get responses from children on such a sensitive subject because of their inability to fully understand the different dimensions of child abuse and talk about their experiences. A survey conducted had found and estimated that 40 million children between 0- 14years of age suffer from abuse or neglect and are in serious needof health and social care². Child abuse or neglect has been defined as ***“Act, by parents or care taker or any stranger on a child resulting in death, serious physical or emotional harm, sexual abuse or exploitation, or that present an imminent risk of serious nature”***.As to world health organization (WHO) child abuse can be formally divided in four parts:

1. Physical abuse

(Inflicting bodily injuries like burning, hitting, kicking, beating etc.)

2. Sexual abuse
(Fondling genitals, intercourse, incest, rape, sodomy, pornography etc.)
3. Emotional abuse
(Verbal abuse, mental abuse, psychological maltreatment, using derogatory terms, rejecting etc.)
4. Neglect
(Abandonment, not providing adequate food, cloths, education, protection, medicines or medical facilities etc.)

As to Indian context definition of child abuse is *“intentional, non- accidental injury, maltreatment of child by his parents ,caretaker, employers or others including Governmental or Non-Governmental bodies which may led to temporary or permanent impairing of their physical, mental, psycho-social development, disability or death”*³

Basically in India, most of the forms of child abuse can be blame on the harmful traditional practices like child marriages, caste system, discrimination against girl child, child Labour, devadasi etc.... many a times these traditions impacts negatively on child and increase their vulnerability to abuse and neglect. Apart from these traditions rise in poverty, lack of adequate nutrition, poor access to medical and educational facilities, breakdown of family, begging, etc.. Had increase their vulnerability and exploitation.

Reason for increase in child abuse :

Independent India has taken large strides in addressing issues like child education, health and development however, child protection from abuse had remained largely unaddressed. Child abuse is shrouded in secrecy and there is a conspiracy of silence around the entire subject in fact there was a well-entrenched belief that there was no child abuse in India and certainly there was no sexual abuse in the country, but it's a myth... to speak aloud many a kind of traditional practices that are accepted across the country, knowingly or unknowingly amounts to child abuse. Furthermore there is widespread belief that family is the ultimate and supremely capable of looking into the best interest of the child. In fact interference in anyone's family matters is perceived as infringement on privacy of family as a result a lot of abuse remain hidden which happen in family and go unreported, Beating or humiliating the child mostly named under the umbrella of disciplining the child. Whether it is discipline or venting of frustrations, the fact is that it is grave violation of rights children to live with dignity. Generally physical abuse are largely seen in homes where frustrations are high, parents have poor parenting skills and have little or no self-control, or where there are visible marital problems, substance abuse and domestic violence, poverty, distress etc.

In school the teachers order are as good as commandments which are necessary to be followed otherwise the teacher is presumed to have rights to treat their wards at their own whims and fancies. This adversely affects the progress of the child.

At work places the child has to bare the harassment done to them quietly coz if they revolt then job will go, parents will scold, what about the dependency of which they are taking care etc... all these problems make them the sufferer.

With the advent of globalization, sexual abuse of children had rampant. Children have become casualties on the march to a global society. Under the pressure of commercialism, children have changed from being subjects and are being made into objects. When the global values are determined by television and commercial market forces, children and young women end up becoming

commodities to be bought and sold at whim. This must change. Children cannot be purchased like items in supermarket. They are not goods to be smuggled across borders to meet the illegal demands of people. Child is an easy prey for sexual abusers. Children because of immaturity of understanding or not able to form a rational behind what is going on with them, bear the consequences mutely most of the times? The maximum retaliation is in form of either cry or run away from the situation. In cases of sexual abuse the children are not willing to indulge in act, but at the time of sexual assault or intercourse the soft hands are not able to resist the situation as are in the clutches of the perpetrator. Furthermore the apprehension which is cause is horrifying for the child.

The existing socio-economic conditions also render risk to children. Now we are realizing that offences against these community called 'children' is largely increasing. Though there are innumerable laws, policies, and schemes for protection of child victims and neglects, but still the menaces is going out of control. The situation is alarming dangerous.

Indicators and effects of abuse on child

Child abuse can result in both short-term and long-term harm, including Psycho-pathological in later life. Indicators and effects include poor self-esteem, somatization, sleep-disorder or disturbance, depression, anxiety, dissociative, eating disorder etc.... including post-traumatic stress disorder. The child may exhibit regressive habits or behaviour of bed-wetting, thumb sucking or nail biting. Child may withdraw from school and social activities and exhibits various learning disorder and behavioural problems including cruelty to animal, aggressiveness, loud cry, hyperactivity disorder and can also result in self- inflicted harms. One of the studies⁴ has revealed that child abuse including sexual abuse, especially chronic abuse starting at early age has found to develop high levels of dissociative symptoms, which includes amnesia for abuse memories. More over the long term effect of the same can be seen in additional victimization in their adolescence and adulthood. Some may land up with criminal or suicidal tendencies, alcoholism and drug addiction. Most of the male who were abused as children more frequently appear in criminal cases then in clinical mental health settings. The list is infinite.

Some important land mark cases on various areas of child abuse :

The constitution of India has, in several provisions, including Art.15(3) Art.21,Art.21-A,clause(1)and(2) of Art.22, Art.23, Art.24, clause (e) and (f) of art.39,Art39-A, Art.45,47 and 51-A(k)imposes on State a primary responsibility of ensuring all the needs of children are met and that basic rights are fully protected. For the same the constitutionally established Courts i.e. the Supreme Court and the High Courts should keep a check by passing precedents in form of rulings or land mark judgments.

On issues related to child labour :

- M.C.Metha vs. State of Tamil Nadu & others⁵

Are the two leading judgments relating to children working in hazardous industries. The issues of child labour has been raised many a times like in construction workers, migrant labour, bounded labour, in every case child finds mention. But for the first in these cases Court had saddled responsibility on the state u/Art 39(f) to make provisions to control the menace of child labour (as child abuse) and related problem and specified guidelines for their protection and rehabilitation.

On issues related to education :

- Unnikrishnan vs. State of A.P⁶

Right to education is directly connected to dignified life u/Art.21 of the constitution. Children if educated can progress more as compared to illiterate in future. Because of poverty the children are not able to go to schools and so, The Supreme Court of India in this landmark case held that right to free and compulsory education up till the age of 14yrs to be read under Art.21 of the Constitution.

On issues related to child trafficking for flesh trading :

- Vishal Jeet vs. Union of India and other states and union territories⁷

Gaurav Jain vs. Union of India⁸

These are the two leading cases on the aspect of children (trafficking) in brothels and their sexual abuse and exploitation. The Court understanding the plight of victims of prostitution, especially children who are forced into this, passed direction to the governments to implement the law and take measures to eradicate the problem of prostitution and train personnel to rehabilitate the victims of trafficking.

On issues related to children in confinement :

- Sheela Barse vs. Union of India⁹

Sheela Barse one of the well-known child activist, filed a series of cases in relation to children who are kept in prison. The court had intervened in many cases, and had repeatedly held that children who come in conflict with law should have separate homes (to stop their exploitation at hands of jail authorities and other inmates) which are rehabilitative and are in position to provide overall care and protection for their overall development.

On issue related to child abuse in form of starvation :

- People Union for Civil Liberties v.UOI

Commonly known as the starvation death's case, the Supreme Court intervened actively on the issue of the right to food and directed that mid-day meals be provided to all primary school children. Yet, if move towards the northern belt of India like Uttar- Pradesh and Bihar, one would find that this order is being disobeyed with impunity. And the abuse is in form of starvation of children coz of scarcity of food and poverty.

On issues related to child give in International Adoption :

- Laxmi Kant Pandey vs. Union of India¹⁰

This case aimed at curbing the menace of sending Indian babies abroad for monetary consideration, trafficking in little babies. These babies from Lambadatribal's in Andhra Pradesh were sold to foreign couples for huge amount of money. The tribal women cheated of their babies with the lure of sucks of grain.

On issues related to sexual exploitation :

- JanardhanTewary vs. State of Bihar¹¹

The court, after finding that a witness had narrated the entire incident to grandmother of the victim and the medical evidence which had found that rape had been committed even though the test was conducted two days later, upheld the conviction of the accused by the session court. The court overruled the argument that the Doctor ought to have smear from the vagina to see if

spermatozoa could be found. To stop the secondary victimization/ exploitation of child rape victim (by strict courts procedure) guide lines were given in the following case *Bhuginbahirjibhai v. State of Gujrat*¹²

Areas are varied and infinite. As part of judicial activism the Courts of whatever hierarchy, must extend its support by understanding the issues and problems of child abuse and foster the needs by extending the help in forms of decision on equitable grounds.

Conclusion :

Legal system in India has failed in providing protection to children in cases of child abuse. Absence of political commitment is the main reason why children in India are not able to enjoy the benefits of laws enacted to protect and promote their rights. The awareness on issue of child abuse is minimal as compared to exploitation and such ignorance is no longer bliss. It is about time that we recognize and take remedial measures.

A momentum needs to be sustained and should be carried forward in the form of moment that will take all stakeholders along the road to sustainable development and create a protective environment for child in India. Lack of empirical evidences and qualitative information on various dimensions make it difficult to address the issue in a comprehensive manner. In order to deal with this problem, it is necessary to talk about it, visualize its extent, nature and understand its gravity. A child is vulnerable to an onslaught from the state, society, and family. A child friendly and accessible judicial system is the only way through which a child can redress his/her grievances and attain some semblance of justice. There is need to adapt certain concepts from foreign laws and International instruments to make Indian laws child friendly and provide genuine relief to the child. As well said "Dynamic laws which changes with the efflux of time are most effective to redress contemporaneous situation"

Recommendations:

- Laws should encourage transparencies and accountability; this will help bringing the abuses within families and institutions and simultaneously will act as deterrence on them.
- People should make themselves aware of these child abuses and ask the state authorities to conduct regular social audits of child care facilities, this will keep the child carers vigilant and expose any deficiency before it's too late
- NGOs should set up help lines and monitor transit points such as bus stand railway station etc. and should support the police to conduct surprise checks and inspection of people taking children under suspicious circumstances (especially in cases of child trafficking)
- Short stay homes are to be provided to the child abuse till the time measures with respect to their permanent stay or rehabilitation is done.
- India to actively cooperate with International community to combat child abuse in every corner of world
- Strict procedures to be adapted by Stakeholders to release and rehabilitation of the children found out of, which were either bonded labour or victims of trafficking or found in miserable condition.
- Agencies like Ombudsman should be promoted by courts to keep a check on the agencies who are working for welfare promotion of children, coz most of the abuse are promoted or supported by the nexus protecting authorities.

(Endnotes)

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- 2 by World Health Organization
- 3 Nation seminar in India (1988),on "Child Abuse and Neglect(CAN)
- 4 By Martin and Fleming
- 5 (1991)1 SCC 283 and (1996)6 SCC485 respectively
- 6 (1993) 1 SCC 645
- 7 (1990)3 SCC318
- 8 (1997)4 SCC 114
- 9 (1986)3 SCC 596, (1986) 3 SCC 632, (1981)1 SCC 76 and (1995) 5 SCC 654.
- 10 (1984) AIR SC 469.
- 11 1971(3) SCC927
- 12 1983 (3) SCC217