



CHILD ABUSE: AN UNIVERSAL PHENOMENON

Dr.Diptirekha Mohapatra

Assistant Professor, P.G.Department of Law, Sambalpur University.

Abstract

Child abuse is a state of emotional, physical, economic and sexual maltreatment meted out to a person below the age of eighteen and is a globally prevalent phenomenon. However, in India, as in many other countries, there has been no understanding of the extent, magnitude and trends of the problem. The growing complexities of life and the dramatic changes brought about by socio-economic transitions in India have played a major role in increasing the vulnerability of children to various and newer forms of abuse. Although child abuse prevail everywhere irrespective of culture and status of a country yet several developed countries in the world have well developed child protection systems, like a mandatory reporting, identification and investigation mechanism of affected children and often taking coercive action to make the system effective and more responsive. The burden high level of reporting and investigation is not only on the family but also on the system. The laws pertaining to child abuse do differ from country to country.

Key Words: Child Abuse, Mandatory Reporting, Identification, Investigation.

Introduction

The Children are future of the nation. Present children are the citizens of tomorrow. So many rosy and lofty words we use for children yet child abuse in general and child sexual abuse in particular is found to be deeply associated with historical values and perspectives. The children have inherent rights as recognized by the society. Each period in history as well as each culture should have treated children as valuable property of the society and proper care should be taken to protect their health i.e. physical, mental, and emotional. The supreme court of India in **Sheila Barse and others V/s Union of India**¹ has declared that “Child is a national asset. So a child required proper care, love affection and nourishment but experience shows, that the children are subjected to abuse in some situations. The child exploitation is a result of ignorance of family and care and affection and lack of love and affection of the parents.”

One of the major problems in understanding the scope of the subject of child abuse is that it is extremely difficult to get responses from children on such a sensitive subject because of their inability to fully understand the different dimensions of child abuse and to talk about their experiences. It is therefore difficult to gather data on abused children. Further, definitions of abuse are not yet consistent within countries, much less from country to country or region to region. Yet governments do estimate that the number of abused and neglected children is alarming, and unless governments get their act together and respond to the situation by way of both prevention and treatment, we will be doing a grave injustice to our children and would be denying them their basic rights.² The worst part is that such abuse is inflicted upon a child by a person in his immediate circle and a stunning majority of these cases go unnoticed. Also, reasons like shame, plain depravity and family honour contribute towards shunning and covering the cases of child abuse.³

The term 'Child Abuse' may have different connotations in different cultural milieu and socio-economic situations. Child abuse has serious physical and psycho-social consequences which adversely affect the health and overall well-being of a child. According to WHO: "Child abuse or maltreatment constitutes all forms of

¹ AIR 1986 SC 1873.

² L. Kacker , S. Varadan , P. Kumar, The Study on Child Abuse: India 2007, Ministry of Women and Child Development Government of India, New Delhi 2007, p.4.

³ A. Kumar, A. Pathak, S. Kumar, P. Rastogi, P. Rastogi ,The Problem of Child Sexual Abuse in India, Indian Acad Forensic Med. 2012, Vol. 34, No. 2, p.2



physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child'.

Physical Abuse: Physical abuse is the inflicting of physical injury upon a child. This may include burning, hitting, punching, shaking, kicking, beating or otherwise harming a child. The parent or caretaker may not have intended to hurt the child. It may, however, be the result of over-discipline or physical punishment that is inappropriate to the child's age.

Sexual Abuse: Sexual abuse is inappropriate sexual behaviour with a child. It includes fondling a child's genitals, making the child fondle the adult's genitals, intercourse, incest, rape, sodomy, exhibitionism and sexual exploitation. To be considered 'child abuse', these acts have to be committed by a person responsible for the care of a child (for example a babysitter, a parent, or a daycare provider), or related to the child. If a stranger commits these acts, it would be considered sexual assault and handled solely by the police and criminal courts.

Emotional Abuse: Emotional abuse is also known as verbal abuse, mental abuse, and psychological maltreatment. It includes acts or the failures to act by parents or caretakers that have caused or could cause, serious behavioral, cognitive, emotional, or mental trauma. This can include parents/caretakers using extreme and/or bizarre forms of punishment, such as confinement in a closet or dark room or being tied to a chair for long periods of time or threatening or terrorizing a child. Less severe acts, but no less damaging, are belittling or rejecting treatment, using derogatory terms to describe the child, habitual tendency to blame the child or make him/her a scapegoat.

Neglect: It is the failure to provide for the child's basic needs. Neglect can be physical, educational, or emotional. Physical neglect can include not providing adequate food or clothing, appropriate medical care, supervision, or proper weather protection (heat or cold). It may include abandonment. Educational neglect includes failure to provide appropriate schooling or special educational needs, allowing excessive truancies. Psychological neglect includes the lack of any emotional support and love, never attending to the child, substance abuse including allowing the child to participate in drug and alcohol use.⁴

1.1. Child abuse Universal Phenomenon

Although child abuse prevails everywhere irrespective of culture and status of a country yet several developed countries in the world have well developed child protection systems, like a mandatory reporting, identification and investigation mechanism of affected children and often taking coercive action to make the system effective and more responsive. The burden high level of reporting and investigation is not only on the family but also on the system. The laws pertaining to child abuse do differ from country to country.

1.1.1. South Africa:-

South Africa is one of the countries, where the position of child sexual abuse is very high⁵. According to 2009 report by the world union solidarity help line, one child is raped every minute in South Africa⁶. The age of the child in South Africa is below 16 years old. Individuals aged 12 or younger in South Africa are not legally able to consent to sexual activity and such activity may result in prosecution for statutory rape or the equivalent local laws in South Africa statutory rape in law is violated when an individual has consensual sexual contact with a person under the age of 16 and is violated when an individual has consensual sexual contract with a person under the age of 16 years and is liable for the punishment under the provision. South Africa does not have age exemption for voluntary sexual activity. Because of which, it is possible for two individuals both under the age of 16 years who willingly engages in intercourse to both be prosecuted for statutory rape although

⁴ WHO, Prevention of child maltreatment, accessed: September 17, 2014, available: http://www.who.int/violence_injury_prevention/violence/neglect/en/

⁵ www.ibtimes.co.uk/Childsexual abuse.12 Oct.2015.

⁶ Ibid.



this is rare. Similarly, no protection are reserved for sexual relations in which one participation is a 15 years old and the second is 17 years old.

The South African Children's Act No. 38 of 2005 defines a child as a person under the age of 18 years. According to the latest population estimates, there are 15 454 742 children under the age of 14 in SA (from a 2013 mid-year estimate of 52.98 million), and a further 5 168 797 between the ages of 15 and 19. This means that almost 38% of the SA population are legally defined as children. Thirty per cent of the population is under 15 years of age, with a further 8% between the ages of 15 and 19.

Despite progressive children's rights legislation in line with international conventions, the official statistics for crimes perpetrated against this vulnerable population in SA remain alarmingly high. For the period 2012 - 2013, 495 540 cases of crimes against children were reported. The literature indicates that these crimes are usually under-reported, and this statistic is estimated to be at least nine times lower than the actual number. Research into rape in SA revealed that in 84% of all sexual crimes committed against children, the perpetrator is known to the child. Children are subjected to a full spectrum of abuse, including verbal, physical, emotional and sexual abuse.⁷

International Conventions

The United Nations (UN) and its signatories acknowledge that children are a vulnerable group and provide some guidelines on how children and their rights should be protected by signatories to the Convention on the Rights of the Child.^[10] Article 19 of the Convention compels signatory states, of which SA is one, to 'take all appropriate social and educational measures to protect the child from all forms of physical or mental violence, injury, neglect or negligent treatment, maltreatment or exploitation including sexual abuse'. Article 19(2) of the Convention makes it clear that measures used to protect children need to be protective and preventive and should encompass the identification, reporting, referral, investigation and treatment of child abuse.

Article 16 of the African Charter on the Rights and Welfare of the Child^[11] echoes the obligations set out in the UN Convention. The Charter obligates the African Union (AU) and its signatories to establish special monitoring units and to provide the necessary support for the abused child and his/her caretakers.

South African legislation

The South African Constitution^[12] explicitly addresses the rights of children and affords them specific protection. Section 28(1)(d) holds that 'every child has the right to be protected from maltreatment, neglect, abuse and/or degradation'. The Children's Act No. 35 of 2005^[13] and its amendment 41 of 2007 (promulgated in 2010)^[13] addresses children's rights in its entirety. Section 110 specifically deals with the protection of children and resonates with the UN Convention and the AU Charter on the protection of children's rights.

Mandatory reporting of child abuses in South Africa

Section 110 of the Children's Amendment Act provides details of the right to protection that children are afforded in terms of section 28 of the Constitution. This section compels certain professional sectors to report any child abuse, neglect or maltreatment that is suspected on reasonable grounds to a designated child protection organization, the provincial department of social development or a police official. If the reporting is done in good faith and substantiated to the relevant authorities, the professionals responsible will not be held liable to civil claims as a result of their reporting. The Act further stipulates that the Department of Social Development must assess and further manage the situation in the best interests of the child.

In addition, section 54 of the Sexual Offences and Related Matters Act compels a person who knows or who has a reasonable belief or suspicion of any form of sexual abuse against a child or mentally challenged individual to

⁷ Ibid



report it to a police official. If such reporting is done in good faith, in terms of section 54(2)(c), the person reporting cannot be held liable in criminal or civil proceedings.

1.1.2. United Kingdom:-

Child sexual abuse is one of the heinous crime extents in United Kingdom. It is not only coming physical contact but also can happened in online. In 2016-17 there were 43,522 recorded sexual offence against children under 16 years old and a further 11,324 offences against young people aged over 16 and under 18. Police recorded 6,009 rapes of children aged about less than 13 years. A statutory provisions of the Sexual Offence Act 2003 differences between sexual contracts with children under than 13 and sexual contact with age of 16⁸. A minor can also be guilty for sexual contact with another minor can also be guilty for sexual contract with another minor (section 13) but the question as to whether to prosecute in cases where both parties are minor are to be taken on a case by case basis. Reporting of child abuses and neglect is not mandatory in the United Kingdom.⁹

1.1.3. United States: -

The age of consent in United States is 16 years old individual ages 15 or younger in united states are not legally able to consent to sexual activates, and such may result in prosecution for statutory rape or the equivalent local law. United States statutory rape law is as such where each state in the United States has local laws setting and age of consent and associated laws such as close in age of exemplation. United States has a close in charge exemplation enforce in away to prevent the prosecution of underage couple who engages in consensual sex and one or both are below the age of consent¹⁰.

1.1.4. China :

Child abuse in china is not clearly defined by the Chinese law code. The law of the people's republic of china on the protection of minors and the criminal China do not yet have an article on the subjects of the child abuses. However, the 49th of the Chinese constitutions forbids the physical abuses of early people women and children¹¹. In the past decade there has been considerable growth in the analysis of the occurrence and consequence of the child abuse against the children has been found to impair the current and further health and well-being of the children in every country. while some violence is parented by strangers most is carried out by people whom children know and should be able to trust for protection including parents, relating school mates teachers religious leaders are managing their responsibility for the protection children from child abuses .A violence against children is serious offence in China.

The child protection policy and accompanying procedures are based on local, national and international law, including:¹²

The PRC Minors Protection Law, 2012:

Article 5:

In the protection of minors, the following principles shall be followed: (1) respecting the personal dignity of minors; (2) following the laws which govern the minors' physical and mental development and the characteristics of such development; and (3) combining education with protection.

Standing Committee of the National People's Congress, Law of the People's Republic of China on the Protection of Minors (2012 Revision) Order of the President No.65 PRC.

⁸ Sexual offences Act 2003 Retrieve on 11-02-2018.

⁹ www.children.gov a .ca /htdocs /topic/ children said/ reporting abuses neglected/abused and neglect.

¹⁰ 1995 cr.lj 3363.

¹¹ Constitution of China people 15th March 2004.retrieve on 24 - 11- 2017.

¹² Available at <https://www.ycis-sh.com>, accessed on 10.10.2019 at 8.30 p.m.



Anti-domestic Violence Law of the People’s Republic of China, 2015:

In 2015, a new law was passed (effective March 1st 2016) that protects foreigners and Chinese citizens within China’s borders from domestic violence. Two articles of this law have specific implications for children and schools:

Article 14: Schools, kindergartens, medical institutions, residents' committees, villagers' committees, social service agencies, aid management agencies, welfare agencies and their staff members shall promptly report cases to public security organs if they find, during the course of their work, that persons with no civil capacity or persons with limited civil capacity have suffered or are suspected of suffering domestic violence. Public security organs shall keep confidential the identity of case reporters.

Article 35: Where a school, kindergarten, medical institution, residents' committee, villagers' committee, social service agency, aid management agency, welfare agency and its staff members fail to report a case to a public security organ in accordance with Article 14 herein, resulting in serious consequences, the person directly in charge and other persons subject to direct liabilities shall be given disciplinary sanctions pursuant to the law by the relevant superior competent department or their own employer.

Standing Committee of the National People’s Congress, (2015) Anti-domestic Violence Law of the People’s Republic of China. Order No.37 of the President, PRC.

UN Convention on the Rights of The Child:

This policy is also based on the United Nations Convention on the Rights of the Child of which China is a signatory. The two key articles are:

Article 19 – Protection from abuse and neglect

1. States parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 34 – Protection from sexual exploitation

States parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, states parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

United Nations International Children’s Emergency Fund (UNICEF), (1989) The United Nations Convention on the Rights of the Child.

On July 24, the Supreme People’s Court of China released information about its handling of four “typical” cases that involve sex crimes against children. According to a court official, the revelation of its decisions on



the cases indicates that China has adopted a “zero tolerance” attitude toward sexual abuse of minors and is striving to raise public awareness of the issue.¹³

Per China Youth Daily (in Chinese), the justice system’s declaration of its stance on child sexual abuse is timely because this kind of assault has become a hidden, growing epidemic in China in the past few years. Since 2017, courts across the country have heard more than 8,000 cases of child sexual abuse. The reality is probably even more disturbing because cases reported to authorities each year likely fall far short of the actual number.¹⁴

“Child sexual abuse is a significantly under-reported crime since it often happens in private,” the official said, adding that a notable percentage of claims do not enter legal process due to an array of “objective and subjective reasons,” such as child victims’ fear of making their allegations public, and the difficulty of validating statements from minors.¹⁵

1.1.5. Canada:

Although provincial or territorial child protection laws can be used to place children under protective supervision or to remove them from abusive situations, these laws have limitations. They are not designed to actively prevent people from engaging in abusive behaviour. As well, courts handling child welfare matters have no power to convict people of criminal acts or to pass sentences in order to deter such acts.¹⁶

The Badgley Report documented the limited ability of the pre-1988 federal law to protect children from the recurrence of sexual abuse. Research referred to in the report indicated that the Criminal Code definitions of sexual offences against child: i1 were inadequate to deal with the sexual abuse of children. In addition, laws on the rules of evidence and the rules of procedure required that a child’s testimony always be supported by other testimony. These rules usually did not provide younger children with the chance to testify. As a result, it was often difficult to call in the powers of the criminal justice system to deal with incidents of child sexual abuse. As victims, children therefore did not enjoy the same protection that adults had before the law.¹⁷In recognition of these gaps in the law, Bill C-1S was introduced in Parliament and amendments were made to the Criminal Code and the Canada Evidence Act. The changes came into effect on January 1, 1988.¹⁸

More than a third of Canadians have suffered some kind of child abuse in their lives and that abuse has a strong correlation with mental disorders, according to a new national study touted to be the first of its kind in Canada.¹⁹ The study, published in the Canadian Medical Association Journal, found that 32% of Canadians had experienced physical abuse, sexual abuse, exposure to intimate partner violence or a combination of these while they were young — a number that includes behaviour once deemed socially appropriate forms of discipline, such as spanking with an object and slapping.²⁰

1.1.6. India:-

The enactment of the Protection of Children Against Sexual Offences Act (2012) and Immoral Traffic (Prevention) Act have more scope to fight against child rights violation. The National Crime Records Bureau

¹³ Available at <https://supchina.com/2019/07/24/china-vows-to-take-a-hardline-on-child-sexual-abuse>, accessed on 10.10.2019 at 7p.m.

¹⁴ Ibid.

¹⁵ Ibid

¹⁶ Available at <https://www.ncjrs.gov>, accessed on 10.10.2019 at 8 p.m.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ <https://nationalpost.com/news/canada/one-third-of-canadians-have-suffered-child-abuse-highest-rates-in-the-western-provinces-study-says>

²⁰ Ibid



has spoken about the relationship of victim and accused in child abuse cases. With the demonstrated high volume of workplace sexual abuse, the data is a proof of the unsafe nature of child labour of any kind.²¹

It is well known that cases of sexual exploitation involve perpetrators known to the child more often than strangers. The latest data finding is that 25% of rapes of children in the year 2015 were committed by their employers and co-workers. This fact has been extracted from the National Crime Records Bureau (NCRB) 2015 data on the 8,800 child rape cases registered using the Protection of Children Against Sexual Offences Act (POCSO).²² Interestingly, the registered rape cases, in which women were sexually assaulted in their workplace, were only 2%. In child labour cases, boys were abused as frequently as girls according to the 2007 study conducted along with the Ministry of Women and Child Development. 488 cases saw the victim raped by grandfathers, brothers, fathers and even sons. At 55% and 49% respectively, Tamil Nadu and Gujarat reported the highest number of child workplace sexual abuse cases.

Further:

- i. The number of cases registered for child abuse raised from 8,904 in the year 2014 to 14,913 in the year 2015, under the POSCO Act. Sexual offences and kidnapping account for 81% of the crimes against minors
- ii. Preventive measures designed to ward off strangers (installing CCTV cameras and providing self-defence training) will be ineffective, as children do not know how to ward off unwanted sexual advances from their known relatives, acquaintances or workplace seniors, who they trust.
- iii. POSCO: State wise cases - Uttar Pradesh led the highest number of child abuse cases (3,078) followed by Madhya Pradesh (1,687 cases), Tamil Nadu (1,544 cases), Karnataka (1,480 cases) and Gujarat (1,416 cases).²³

Conclusion

The foregoing discussion reveals that child abuse is a phenomenon universal in nature although the mechanism to handle such heinous practice differs from country to country. The developed countries have better systems to address such problem in comparison to their counter parts i.e. developing or underdeveloped countries like India. The stringent law dealing with child sexual abuse is just at mushroom stage in India. In spite of this, National Crime Bureau of India records high incidence of such crime ever after the enactment of POCSO Act, 2012 calling for revisiting of such a law.

²¹ <https://www.savethechildren.in/resource-centre/articles/recent-statistics-of-child-abuse>

²² Ibid.

²³ Ibid