

DE JURE NEXUS LAW JOURNAL

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**CHILD ABUSE BY PARENTS AND OTHER CARETAKERS IN INDIA –
A SOCIAL LEGAL PROBLEM:****Introduction:**

Children are often targeted to different forms of exploitation due to their vulnerability. The Child maltreatment and child abuse are global phenomenon which are rooted deeply across the world in economic, social and cultural aspects. The atrocity of child abuse is only beginning to become apparent amidst rape, gender violence, sexual harassment. While there has been significant recognition of sexual abuse and exploitation against women, little recognition is given to issues pertaining to sexual abuse and exploitation against children. With the growing complexities, socio-economic transitions, lack of understanding of the magnitude of the issue has led to the increase in the vulnerability towards children. Exploitation, labor, abuse, abandonment in children have been incessant across all parts of India. Child maltreatment includes child abuse in all forms like physical, emotional, sexual abuse, neglect, ill-treatment which have the considerable potential to harm the child's health, development etc.

Meaning and Definition of Child Abuse:

The UN Convention on the Rights of Children (UN CRC) has provided the definition of child as every-one below the age of 18 years unless, as per the law which is applicable to the child majority is attained earlier.¹ The intention behind inserting such a definition is empowering,

¹ Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49

which aims at providing dual benefit to the child, the benefits of adulthood as per the respective national law and can also claim protection under the Convention.

The World Health Organization (WHO) has provided an insightful definition of child abuse. It defined 'Child Abuse'² so as to include all forms of physical, emotional, ill-treatment, sexual abuse, neglect or negligent treatment or commercial or any other form of exploitation thereby ensuing to actual or potential harm to the child's health, survival, development or dignity in relation to the relationship of responsibility, trust or power exerted by the individual over the child.

'Child Neglect' is a phenomenon where there is failure on part of the parent, guardian or any other caretaker who is in a position or has resources to provide for the development of the child but abstains from doing the same, neglect can occur in various areas such as education, health, nutrition etc.

Child Abuse in simpler words includes any kind of harmful contact inflicted upon a child's body, any kind of verbal or non-verbal communication which has the potential to inflict harm upon the child whether physically or mentally. It is imperative to note that it also includes any omission or unreasonable deprivation on part of the parent, guardian, caretaker, to nurture whether intention or unintentional, thereby hampering the growth and development of the child.

The definition of child abuse should have a broad spectrum and strict interpretation should be avoided. The aspects related to the actions of adults in line with the slightest possibility of the potential to cause harm to the child, whether physically or mentally shall be taken into consideration.

Types of Child Abuse

Child abuse can be categorically divided into 4 kinds:

- 1) **Physical Abuse:** World Health Organization defined physical abuse as an interaction or lack of interaction resulting in actual or potential harm which is exercised by the person who is in the position of authority, control, responsibility, trust. Physical abuse primarily involves intentional or unintentional physical violence or force exerted on the child leading to an injury.

² Report of the Consultation on Child Abuse Prevention, 29–31 March 1999, WHO, Geneva. Geneva, World Health Organization, 1999 (document WHO/HSC/PVI/99.1)

The intention is immaterial, physical injury inflicted upon even with the intention of disciplining or improving the child is considered as Physical abuse.

Forms of Physical Abuse are: burning, hitting/beatings, kicking, excessive punishments, bullying, slapping, submersion in extreme hot or cold water, assault etc.

Signs of Physical Abuse on the child: Unexplained repeated burns/injuries/bruises on different parts of the body, discoloration of the skin, fractures, swellings etc. Other kinds of behavioral signs are: the child conceals injuries, makes excuses for injuries, reluctant to go home or anywhere outside, avoids physical contact with others.

- 2) Emotional Abuse: Child Emotional Abuse refers to a behavioral pattern which includes verbal abuse, mental abuse, emotional/psychological abuse which has an adverse effect on the child's mental health development and growth. It is failure on the part of parent, guardian or caretaker to provide a conducive environment to the child. The most critical aspect in the emotional child abuse is the difficulty to provide adequate evidence in furtherance of the emotional abuse.

Forms of Emotional Abuse: stigmatizing the child, restricting the child's movement, continually taunting, ridiculing, belittling, degrading disgraceful remarks, insulting, criticizing and other forms of emotional/mental forms of hostile treatment.

Signs of Emotional Abuse include excessive shyness and frightened, secluded and isolated, extremely low on self-esteem, anti-social behavior, inappropriate behavior depending on the age.

- 3) Sexual Abuse: The World Health Organization defined Child Sexual Abuse as the involvement of child in inappropriate sexual behavior that he does not understand or the child is not fully developed and thereby is unable to give informed consent. The sexual advancements are made for the sexual gratification of the person who may be a caretaker, guardian or the parent of the child. In order to construe these acts as child sexual abuse it should be performed by the person who is responsible or has authority/power over the child. If such inappropriate sexual behavior is exercised by the stranger it will come under the ambit of sexual assault.

Forms of Sexual Abuse: sexually touching, kissing, fondling of genitals, sexual intercourse, rape, sodomy, incest, oral sex, sexual exploitation of the child commercially.

Non-touching sexual offences include exhibitionism of sexual parts, exposure to pornography, obscene remarks, virtual sexual exploitation, indecent sexual behavior.

Signs of Sexual Abuse: The child might show excessive interest in sexual acts which are inappropriate to his age, displaying unusual behavior whether aggressive or passive, the child may have trouble sitting or standing, swelling, bleeding in the genitals, sexually transmitted disease, pregnancy in case of girls.

- 4) Neglect: Neglect is defined as the failure on part of the parent, guardian or caretaker to provide for the development of the child when the person has resources to provide the same. Child's basic needs such as food, clothing, shelter, educational needs are continually denied or not adequately/reasonably provided. It also includes lack of love, care, affection, emotional support thereby hampering child's emotional development and growth.

Forms of Neglect: omission from care, failure to protect from harm, failure to provide adequate food, giving torn/ripped clothes, failing to monitor child's activities

Signs of Neglect: A child might be dressed inappropriately, bad hygiene, troublesome disruptive behavior, frequently late to school, incompleteness of school assignments.

Legal Approach:

Article 15, 21A, 23 and 24 are enshrined in the Constitution of India to ensure protection of rights of children in all forms. It also ensures additional protection through Directive Principles of the State Policy. Indian legislation encompasses various statutes for the protection of children from all kinds of exploitation.

- 1) The Juvenile Justice (Care and Protection of Children) Act, 2015:

This Act is a comprehensive legislation which has been enacted in furtherance of its measures of child protection. It conforms to the international conventions such as United Nations Convention on Child Rights, the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) 1985 etc. This Act aimed to expand the scope of the definition of child so as to provide better protection. It makes an explicit demarcation between juvenile offender and the neglected child. It focuses on restoration and rehabilitation of the child rather than regulating and punishing the child. This Act establishes various institutions and authorities like Child Welfare Committees, State and District Child Protection Units. It also establishes Special Juvenile Police Unit which aims at safeguarding children from all forms of exploitation and abuse.

Under the relevant Act, Section 75 deals with offences, neglect, abandonment, abuse, assault, cruelty against children by the person who has authority over the child shall be punished with imprisonment not exceeding 3 years and fine of 1 lakh or both.

- 2) Protection of Children from Sexual Offences Act, 2012:

This Act was enacted to effectively address the heinous crimes of sexual abuse, sexual assault, sexual harassment and pornography against children. The distinctiveness regarding this Act is

that it covers various different kinds of abuse or exploitation against children that can happen sexually or through pornography. This Act seeks to ease the judicial process by establishing children friendly mechanisms through the establishment of Special Courts. This enactment, also makes it mandatory to report an offence which is committed or is likely to be committed under this Act and failing to do the same shall make the person punishable under the relevant provisions of the Act.

Various provisions under this Act, have been inserted so as to prioritize the child's welfare and interest. The entire trial process including reporting, recording of evidence, investigation has been made child-friendly. It also incorporates the provisions relating to confidentiality of the name of the child thereby in furtherance of the child's interests. Under Section 9 of the Act, it provides punishment for a person indulging the child in Aggravated Sexual Assault by a person in authority which results in imprisonment which may extend up to seven years and fine.

3) Commission for Protection of Child Rights Act, 2005:

The purpose behind the enactment of this legislation was the establishment of National Commission for Protection of Child Rights, a statutory body to ensure that the laws, policies, programs, administrative mechanisms adopted are in conformity with the Child's Rights as guaranteed under the Constitution of India and also in line with the United Convention on Child Rights Centre. This Act also provides for the establishment of children's courts for speedy trial and disposal of crimes committed against children. NCPCR carries out certain significant functions like examining and reviewing the rules, procedures laid down for the protection of children and making necessary recommendations to ensure effective implementation. Examine the special needs of children in relation to disadvantaged children, children in conflict with law, children without family, children of prisoners etc.

A way forward:

- Societal factors are considered to have influence on the family and children, thereby forming a greater risk in furtherance of child abuse³. It includes cultural values, family values, difference in the income inequalities, gender roles, inadequate policies relating to maternal leave and child care arrangements. The role played by societal factors is to be understood and examined in light of child abuse.

³ Sariola H, Uutela A. The prevalence and context of family violence against children in Finland. *Child Abuse & Neglect*, 1992, 16:823–832.

- There are various schemes, policies and programs brought in by the Government in a piecemeal manner with minimal resources reaching minuscule people. The requirement at this instance is of a centralized scheme with adequate resources to establish its branches across various states, districts, rural areas to provide maximum support and protection to children. Financial and Human resources shall be provided with which it shall be ensured that a protective environment is provided to the children.
- It is observed that maximum child abuse cases happen within the family, thus awareness, education among adults as well as children must be guaranteed. The scope of emergency child helpline services and outreach to children in schools, workshops shall be expanded considering most of the cases of child abuse are not reported.
- It is pertinent to understand the aftermath of child abuse psychologically, emotionally and mentally. It hampers the future development and growth of child in the coming future. It is essential to set up psychological centers for such children where they can receive necessary counselling thereby not putting their entire future in jeopardy.
- One of the most essential components in dealing with child abuse is school. Schools are the safest place for children. Awareness programs, workshops on different kinds of abuse, their impact shall be made accessible to children. Emergency cells can be set up in schools so as to encourage the children to report any kind of child abuse. Sexual Education should be made mandatory in all the schools at the primary level also.
- Prevention of Child Abuse is a shared responsibility by the Government as well as the community for any legislation, policy, protocol, program to be effective there should be synergy between Government's efforts and the community or society as a whole to make it successful. The Society has a role to be vigilant and report the child abuse cases or even the suspicion of child abuse.
- It is imperative to note that the ultimate responsibility of the protection of children is vested with the Government. There is a wide gap between policy making and implementation leading to failure of the programs and initiatives taken up by the Government. The present legislations dealing with child protection lack effective implementation strategies.
- There is an explicit need for National legislation to deal with the issues under Child Abuse. The existence of different regulations for the protection of children create ambiguity. It is imperative to have one comprehensive legislation dealing with all the aspects of child abuse, sexual abuse, child pornography etc. The legislation should focus on implementing reporting mechanisms as many cases of child abuse remain unreported.



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