CHILD ABUSE AND ITS LEGAL ASPECTS

ABSTRACT

Child abuse is a pressing human right issue and public health concern. The act of child abuse affects individual and society in several ways. It is one of the serious problem that call for focused consideration, speedy actions and preventive measures from all over the world. Accordingly, this paper focuses on what child abuse is, its various types including physical, sexual, emotional and neglect. These factors can leave the child with serious, long-lasting psychological damage. This paper enumerates the causes of child as well as its effects and what are its symptoms. In the present paper, the legal provisions in India to eradicate the
stigma of child abuse are also discussed. Lastly, the paper also throws light on some preventive measures which can be adopted to overcome this global problem.

Keywords- child abuse, psychological maltreatment, mental abuse, child neglect, negligent treatment.

“Childhood should be carefree, playing in the sun; not living a nightmare in the darkness of the soul.”

-Dave Pelzer

INTRODUCTION

According to the Report on Crimes in India for 2016, released by former Indian Home Minister Rajnath Singh in Delhi, 106,958 cases of crimes against children were recorded in 2016. Out of these 36,022 cases were recorded under POCSO (Protection of Children from Sexual Offences) Act.¹

Child abuse is one of the biggest social stigma in Indian society. A child can be abused physically, sexually or mentally. It refers to any form of action or omission that results in harm or possible harm for a child.

WHAT IS CHILD ABUSE?

According to the definition given by World Health Organisation (WHO) child abuse and child maltreatment includes “all forms of 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’s health, survival, development or dignity in the context of a relationship of responsibility, trust or power”.

UNICEF defines that “violence can be in the form of injury, neglect or negligent treatment, forced sexual stimulation, exploitation and sexual abuse. It can take place in homes, schools, orphanages, residential care facilities, on the street, in the work place, in prisons and in places of detention. It has a very grave effect on the overall development of the child and results in deterioration to the health, survival, development and dignity of the child”.

TYPES OF CHILD ABUSE

1. PHYSICAL ABUSE: - Physical abuse is the causing physical injury to a child. The parent or caretaker may not have the intention to hurt the child, however, it may be the result of over discipline or physical

punishment that is inappropriate to the child’s age. The WHO defines “physical abuse as intentional use of physical force against the child that results in – or has a high likelihood of resulting in – harm for the child’s health, survival, development or dignity. This includes hitting, beating, kicking, shaking, biting, strangling, scalding, burning, poisoning and suffocating. Much physical violence against children in the home is inflicted with the object of punishing”.\(^2\)

Its symptoms: -

- Unexplained injuries, such as bruises, fractures and burns.
- Injuries that don’t match the given explanation.

2. EMOTIONAL ABUSE: - Emotional abuse is also known as verbal abuse, mental abuse and psychological maltreatment. Emotional abuse happens when there is lack of a supportive environment and also when it is conveyed to the child that they are inadequate, unloved, worthless or only valued as far as the other persons need are concerned. This includes: not allowing children to express their views and opinions, restricting movements, threats, discrimination, mockery, preventing their social interactions, emotional blackmail and criticism. Indian school and college system are today considered as the main place of emotional abuse. It is prima facie evident in the high rate of suicides at India’s premier institutes.

Its symptoms: -

- Loss of self-confidence or self-esteem.
- Withdrawal from society or a loss of interest or enthusiasm.
- Depression
- Seeking affection desperately.
- Loss of previously acquired development skills.
- Having nightmares or trouble sleeping.
- Have trouble in paying attention or be hyperactive.

3. SEXUAL ABUSE: - Sexual abuse is defined as any act that forces or entices a child or young person to participate in sexual activities. Children cannot give consent to sexual activity, and therefore engaging a child in any sexual activity, or even exposing him/her to sexual content amounts to abuse. It may include:

• Assault by penetration, such as rape or oral sex
• Non-penetrative sexual activities, such as touching outside of clothing, rubbing, kissing, and masturbating.
• Watching others performing sexual act or getting a child to watch such acts.
• Looking at, showing, or sharing sexual images, videos, toys or other material.
• Encouraging child to behave in a way that is sexually inappropriate.

Its symptoms: -

• Sexual behaviour or knowledge that is inappropriate for the child’s age.
• Pregnancy or a sexually transmitted infection.
• Blood in the child’s underwear.
• Statements that he or she was sexually abused.
• Inappropriate sexual contact with other children.

4. NEGLECT: - Neglect or negligent treatment is intentionally ignoring some or all developmental needs of the child with the purpose of harming the child, which results in diminishing of the child’s health or development. It can involve:

• Not providing adequate food, clothing or medical care.
• Rejection and abandonment.
• Not providing adequate shelter, excluding them from the family home.
• Lack of emotional support and love.

In Indian society people still have special affection for boys and due to this the daughters are often neglected by the families while the sons are given preference in everything. Children who face neglect from their family and friends are likely to suffer from psychological complications. It also affects their physical and mental growth and sometime such children become either very aggressive or too shy.

Its symptoms: -

• Poor growth or weight gain or being overweight.
• Poor hygiene.
• Lack of clothing or supplies to meet physical needs.
- Taking food or money without permission.
- Hiding food for later.
- Lack of appropriate attention for medical, dental or psychological problems or lack of necessary follow-up care.
- Poor record of school attendance.

**CAUSES OF CHILD ABUSES**

There can occur several factors leading to abuse of children. Some of them are as follows:

1. **DOMESTIC VIOLENCE:** It is commonly seen that houses where domestic violence takes place usually are responsible for the greater risk for children in certain circumstances. Children are likely to become victims of abuse themselves where men abuse their female partners.

2. **ALCOHOL AND DRUG ABUSE:** Parents who are addicted to alcohol or drug abuse can be responsible for child abuse. Substance abuse can lead to ill-treatment of child including physical abuse and intentional neglect. Due to this, the parents become incapable to care for their children, make good parenting decisions, or control often dangerous impulses.

3. **UNTREATED MENTAL ILLNESS:** This is a common cause of child abuse where parents are themselves are suffering from anxiety, depression, mental illness or bipolar disorder which may lead to difficulty in caring of themselves and their children. A mentally ill-parent may have to stay away from their children or may be withdraw from them, which often put a child in danger.

4. **LACK OF PARENTING SKILLS:** The parents are required to possess some skills as caregivers to manage the physical or emotional needs of their children and when they failed to do so, it results in the abuse of the child. For example; there are many parents who become very strict in disciplining their children and might have idealistic expectations from their children lead to abusing them. Therefore, parents need to adopt to therapy caregiver support group and parenting classes to understand the role of parent.

5. **STRESS AND LACK OF SUPPORT:** The job of a parent can be a very time demanding, stressful job specially when a parent is raising a child without support of family and friends. It is often seen that parents find difficulty in dealing with the emotional need of a child when they are facing stressful situations. Therefore, it is important that a parent should have a support so that it may help emotionally and physically to support your child.
IMPACTS OF CHILD ABUSE

Child abuse and neglect often leave lasting scars on the child that may be difficult to erase from the mind and the body throughout the life of child. It may be physical or emotional too which can have an immense effect on the way the child manages their future relationship during adulthood, detoriate their self-confidence and their ability to function. These effects may include: -

1. TRUST ISSUES AND RELATIONSHIP DIFFICULTIES: - When the children are victims of abuse, it become difficult for them to trust other people which can result in difficulty in maintaining strong and healthy relationship in adulthood.

2. FEELINGS OF BEING WORTHLESS: - If a child has been told over and over again that they are stupid or of no good, it becomes difficult to overcome from these core feelings. These negative feelings often lead them to neglect their education or settle for low paying jobs because they believe it to be unworthy. They develop feelings of inferiority and being worthless when they grow up. In the same way sexually abused children cannot ignore the shamefulness of the act and the stigma attached to it.

3. TROUBLE IN EXPRESSING EMOTIONS: - Abused children are unable to regulate and express their emotions and feelings positively, which results in bottling up of emotions leading to various psychological problems. They find difficulty in explain anxiety, depression or anger in adulthood and often resort to the use of alcohol or drugs to overcome their painful feelings.

LEGAL PROVISIONS FOR PROTECTION OF CHILDREN

India has signed a number of international documents and declarations that pertain to the rights of the children. The United Nations Convention on the Rights of the Child (UN CRC) was assented to by India in 1992. In 2005, the Government of India accepted the two Optional Protocols to the UN CRC, addressing the involvement of children in armed conflict and the sale of children, child prostitution and child pornography. India also signed the International Conventions on Civil and Political Rights, and on Economic, Social and Cultural Rights. India is also a signatory to the Convention on the Rights of the Child (CRC) adopted by the UN General Assembly in 1989 prescribing standards to be adhered to by all State parties in securing the best interest of the child and outlines the fundamental rights of children, Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) also applicable to girls under 18 years of age and the SAARC Convention on Prevention and Combating Trafficking in Women and Children for Prostitution.
CONSTITUTION OF INDIA
The Constitution of India contains a number of provisions for the protection and welfare of the children. It has empowered the legislature to make special laws and policies to safeguard the rights of the children. Articles 14, 15, 15(3), 19(1) (a), 21, 21(A), 23, 24, 39(e) 39(f) of the Constitution of India contain provisions for the protection, safety, security and well-being of all its people, including children.

NATIONAL POLICIES
The major policies that have been formulated to ensure child rights and improvement in their status are:

- National Policy for Children, 1974
- National Policy on Education, 1986
- National Policy on Child Labour, 1987
- National Nutrition Policy, 1993
- National Health Policy, 2002
- National Charter for Children, 2004
- National Plan of Action for Children, 2005

STATUTES DEALING WITH THE PROTECTION OF CHILDREN
Following Acts were enacted for the welfare and protection of the rights of the children:

1. The Indian Penal Code, 1860

- Foeticide (Sections 315 and 316)
- Infanticide (Section 315)
- Abatement of Suicide: Abatement to commit suicide of minor (Section 305)
- Exposure and Abandonment: Crime against children by parents or others to expose or to leave them with the intention of abandonment (Section 317)
- Kidnapping and Abduction (Section 360 to Section 369)
- Procurement of minor girls by inducement or by force to seduce or have illicit intercourse (Section 366-A)
- Selling of girls for prostitution (Section 372)
- Buying of girls for prostitution (Section 373)
• Rape (Section 376)
• Unnatural Sex (Section 377)

2. The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994

This is an Act for the regulation of the use of pre-natal diagnostic techniques and for the prevention of misuse of such techniques for the purpose of prenatal sex determination leading to female foeticide and for matters connected therewith or incidental thereto.

3. The Juvenile Justice (Care and Protection of Children) Act, 2000

The Juvenile Justice (Care and Protection of Children) Act, 2000 provides for proper care, protection and treatment of children in conflict with law and children in need of care and protection by catering to their development needs, and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under the Act. Sections 23, 24, 26 of the Act deal with the provisions of child abuse.

4. The Immoral Traffic (Prevention) Act, 1956

The Immoral Traffic (Prevention) Act (ITPA) deals with the offences related to sexual exploitation of children for commercial purposes and to provide enhanced penalties for offences involving children and minor.

5. Child Labour (Prohibition and Regulation) Act, 1986

The Child Labour (Prohibition and Regulation) Act, 1986 Act provides for elimination of child labour and provides for punishments and penalties for employing children below the age of 14 years in various hazardous occupations and processes.


The Prohibition of Child Marriage Act, 2006 was enacted to put a stop to the practice of child marriages in India. For marriages already contracted, it says that every child marriage shall be voidable at the option of the contracting party who was a child at the time of the marriage.
7. The Commissions for the Protection of Child Rights Act, 2005

The Act provides for the Constitution of a National and State Commissions for protection of Child Rights in every State and Union Territory.

8. Protection of Children Against Sexual Offences Act, 2012

The Protection of Children from Sexual Offences Act, 2012 was passed by the Parliament in May, 2012. The Act has been drafted to strengthen the legal provisions for the protection of children from sexual abuse and exploitation. Act defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography. These offences have been clearly defined for the first time in law. The Act provides for stringent punishments, which have been graded as per the gravity of the offence. The punishments range from simple to rigorous imprisonment of varying periods.

An offence is treated as “aggravated” when committed by a person in a position of trust or authority of child such as a member of security forces, police officer, public servant, etc.

CASE LAWS

**Jai Prakash @ Prakash vs State Of Rajasthan decided on 22 February, 2006**

This case is concerned with offence of sodomy and brutal murder of an eight year old boy. The Court held that child abuse, especially sexual abuse, rattles a civilized society and shocks the judicial sensibilities. It is the duty of the State, of the Society, of each of us to protect and promote the child in his formative years. Cases of child abuse require investigational creativity and judicial sensitivity. The appellant has been convicted for offences under Section 377 and 302 IPC. For the former offence, the appellant has been sentenced to 10 years R.I. and fined Rs.500/- and to further undergo a sentence to fifteen days of simple imprisonment in default thereof. For the latter offence, he has been sentenced to life imprisonment and fined Rs. 2,000/- and to further undergo two months’ simple imprisonment in default thereof.

**BachpanBachaoAndolan v. Union of India &Ors.**

It was observed by the Supreme Court that children are entitled to special protection under the Constitution, as well as protection under the Juvenile Justice (Care and Protection of Children) Act and international treaties and conventions related to human rights and child rights, including the Convention on the Rights of the Child, to which India is a signatory. However, there are perpetual violations of the law with respect to

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3 RLW 2006 (2) Raj 1548, 2006 (3) WLC 544.
4 WP (Crl.) No.82 of 2009.
children who are trafficked into circuses. The Court found that, from the comprehensive submissions made by the learned Solicitor General, it is clear that the Government of India is fully aware about the problems of children working in circuses and elsewhere. The Court made the above orders in light of the suggestions of the Solicitor General and others.

Rangesh v State By Inspector Of Police decided on 27 August, 2010

The Court observed that the child abuse is alarmingly increasing day by day. It is shocking to note that child abuse cases particularly increasing in Schools. According to National Commission for Protection of Child Rights (NCPCR), the number of complaints on child excesses in schools, which includes acts of sexual abuse, harassment, humiliation, murder, corporal punishment and wrongful confinement. In this case the appellant/accused, a Physical Training Teacher of a School, who has been tried and convicted for the offence under Section 376(2)(f) IPC and sentenced to 10 years rigorous imprisonment with a fine of Rs.5,000/- in default to undergo 1 year rigorous imprisonment on the allegation of committing heinous crime of rape on a 9 years old school girl.

CONCLUSION

Child abuse is a maltreatment of a child who is under 18 years of age. Child abuse is any action by another person – adult or child – that causes significant harm to a child. The effects of child abuse are devastating. Children are abused usually in four ways Physical abuse, Emotional abuse, Sexual abuse and neglect. The outcome of child abuse can result in both short and long term consequences ranging from social problems, emotional problems, cognitive problems, educational problems, Low self-esteem and self-harm or sometimes it may lead to suicide. At the same time, there are primary preventive measures that can be taken to avoid child abuse. Schools should be the prime target for the working professionals to create awareness among the young children about child abuse. Programmes like Good touch Bad touch, assertive training, and awareness about body parts etc. can be done to create awareness about abuse in children. Parents on the other hand should educate their children about the child abuse and the effects of child abuse. Child and adolescent mental health professionals can help the child to overcome from the consequences of child abuse. At the same time there are child protection policies that protect the child from any type of abuse. Such policies provide safe place where child can be kept and work for the development of the child.

5Crl. A. No. 991 of 2006.