

# NATIONAL LEGISLATIONS AND UN MECHANISMS IN CONNECTION WITH PROTECTION OF CHILDREN FROM CHILD ABUSE IN INDIA

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**Abstract:** Child Abuse is one of the hateful crimes and threatening our future generation; Children are not safe, even in homes and entire society. Mostly, occurrences of child abuse and neglect or negligent by parents, caretakers, teachers, relatives, employers, and strangers. WHO defined child abuse it can be classified three major types such as Physical abuse, Sexual Abuse and psychological abuse. Sometimes emotional blackmails and assaults. Many times children are killing by neighbours and strangers. It is highly needed to protect them for the betterment of their future life. Preamble of constitution providing certain rights and remedies to protection of life and personal liberty and the right against exploitation are protected in Articles 14, 15, 15(3), 19 (1) (a), 21, 21(a), 23, 24, 39 (e), 39(f) and repeat India's commitment to the protection, safety, security, and well-being of all its people, including children. Even though, the numerous crises in the Indian Penal Code deals with cases of child abuse a recent amendment in the POCSO Act, 2012 strengthening the aims of serious action against child abuse especially child sexual abuse.

The Government of India, having confirmed the Convention, has establish it appropriate to re-enact the accessible law relating to children behavior in mind the standard prescribed in The UN Convention on the rights of the child in 1989, is the most important tool in the history of child rights, which confirmed the convention in 1992.and all other relevant international instruments and international organizations to attempts to protect the children from all types abuses. In this backdrop, this present paper attempt to find out the occurrences of child abuse in the country and guidelines of UN mechanisms and international organizations like UNICEF and others what strategies to protect the children from such forms of abuses and what actions should be needs to prevent the children from major forms of child abuses

**Index Terms-** Child Abuse, Constitution, UN Convention, Declaration, POCSO Act.

## I. INTRODUCTION

Child Abuse is one of the serious crimes against children in our modern society Children are not safe, even in homes and also in the entire society such as homes, school, child care institutions, and working places, etc. Numerous times, children are abused and maltreated by the parents, caretakers, teachers, neighbours, employers and also the strangers. Generally, child abuse is three major types such as Physical abuse, Sexual Abuse and Verbal abuse. Sometimes emotional blackmails, assaults and sexual exploitation are carried by the neighbour sand powerful peoples in the society. Most can go for get away, even if cases are reported. What we necessitate is the alteration of attitude to protect the weak and vulnerable among us. Hence, it is greatly necessary to protect them for the betterment of their future life. We have to cherish the next generation with genuine love and spirit of sacrifice. The problem of child abuse and the subsequent human rights violation establish the most significant item on the international human rights agenda (Rufus D et al, 2007).

### 1.1. Definition of Child Abuse

A broader definition of Child Abuse is “Whatever which individuals, groups, or progressions does (acts) or fail (omissions) to do which directly or indirectly harm or maltreatment of children the visions of safe and healthy development into adulthood”.

The WHO Report on the discussion on child abuse and Prevention (1999) suggested altered explanation for Child Abuse or maltreatment establish all forms of physical and or emotional mistreatment, sexual abuse, rejection or neglect or negligent treatment or commercial or other exploitation, subsequent in actual or potential harm to the child’s health, subsistence, development or dignity in the perspective of a relationship of responsibility, trust of power”.

The UN Congress declare that term child abuse and neglect means, the physical and mental injuries, sexual abuse and exploitation, negligent treatment or maltreatment of a child under the age of eighteen , or age specified by child protection law of the state in question, by person who is responsible for the child’s welfare, under circumstances which indicates that the child’s health or welfare is maltreated or endangered thereby as determined in covenant with regulations prescribed” (Susheela Bhan, 1991).

## II. WORLDWIDE EXPLANATION OF CHILD ABUSE

The concept of ‘Child Abuse’ may have different meanings in a different cultural setting and socio-economic situations. A Worldwide explanation of child abuse in the Indian context does not exist and has yet to be defined. According to World Health Organization classified four categories of Abuses such as i) Physical Abuse, ii) Sexual Abuse, iii) Emotional Abuse and iv) Neglect or Negligence. These four categories of Abuses elaborately discusses below/-

### 2.1. Physical Abuse:

Physical Abuse is the performing of physical injury upon a child. This may include sweltering, thrashing, hitting, 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 age.

### 2.2. Sexual Abuse

Sexual abuse is unfortunate sexual behavior with a child. It includes fondling the child’s genitals, making the child fondling the adult’s genitals, intercourse, incest, rape, sodomy, exhibitionism, and sexual exploitation. To be measured ‘child abuse’ these acts have to be involved 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 the criminal courts. (Rufus, et al)

### 2.3. Emotional Abuse

It includes failure to provide a developmentally suitable, supportive environment, including the availability of a primary attachment figure so that the child can develop a stable and full range of emotional and social competencies commensurate with her or his potential, and in the context of the society in which the child dwells. There may also be acts towards the child that cause or have a high probability of causing harm to the child’s health or physical, mental, spiritual, more or social development. These activities need to be reasonably within the control of the parent or person in a relationship of responsibility, trust or power. Acts include restriction of movement, patterns of belittling, and denigrating, scape-goating, threatening, scaring, discriminating, ridiculing or other physical forms of hostile or rejecting treatment. (EENET, Asian New letter, 2007).

## 2.4. Neglect (or) Negligent

It is the failure to provide for the child's basic needs. Neglect can be physical, educational, or emotional. Physical abandonment can be not providing adequate food or clothing, appropriate medical care, supervision, or proper weather protection (heat or cold). Educational neglect may be the failure to provide suitable schooling or special educational needs, allowing excessive truancies. Psychological neglects include the lack of emotional support and love, never attending to the child, substance abuse including allowing the child to participate in drug and alcohol use (Alankaar Sharma, 2007).

## III. CHILD ABUSE STATISTICS IN INDIA AND WORLDWIDE

The World Health Organization (WHO) estimates that worldwide, approximately, one billion children aged between 2 and 17 years have practiced physical, sexual, emotional violence or neglect in the previous year, and cautions that experiencing violence in childhood has an enduring impact on health and wellbeing. In 2012, 9,500 children and youngsters were killed in India, signifying 10% of all children globally and making India the third largest contributor to child killing after Nigeria and Brazil (WHO, 2014, Global Health Estimates). In this circumstance, one of the targets of the 2030 agenda for sustainable development is to "end abuse, Mistreatment, trafficking and all customs of violence against and torture of children" (Ramya Kannan & Poorvaja Sundar, 2018).

The available statistics on the occurrence of child abuse increased from 8,904 in the year 2014 to 14,913 in the year 2015, under the POSCO Act. Sexual offenses and kidnapping amount of 81 % of minors. The State-wise cases registered under POCSO Act: Uttar Pradesh led the highest number of cases of child abuse (3,078) followed by Madhya Pradesh (1,687 cases), Tamilnadu (1,544 cases), Karnataka (1,480 cases) and Gujarat (1,416 cases). Along with workplace cases, here are other findings of rapists being known to children: 94.8% of rape cases saw children being raped by someone they knew, not strangers. These acquaintances include neighbors (3,149 cases) who were the biggest abusers (35. 8%). 10 % of cases saying children being raped by their own direct family members and relatives.

In 2016, NCRB statistics reveals that the child is sexually abused every 15 minutes. And also India recorded a statistics that 106 rapes a day and four out of every ten victims were minors. While, another shocking fact that the 94. 6 percent cases, the perpetrators were none other than the victim's relatives including brothers, fathers, grandfathers, sons or acquaintances. The report showed that in the year, 2016, a total of 38,947 cases of rape were registered in the country under POSCO Act as well as section 376 and other related section of the Indian Penal Code.

### 3.1. Statistics on Child Sexual Abuse in India

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## IV. CHIDLINER INDIA FOUNDATION

Childline India Foundation is project supported by the Union Ministry of Women and Child Development, Govt of India. It has collaborated with state governments, Non-governmental Organizations, Bilateral and Multilateral agencies, and the corporate sector. It is accounting for the formation of child line centers through the country as well as functions as a national center for awareness, promotion, and training on issues related to child protection. Childline 1098 facilities is a 24 hours free emergency phone outreach service for children in need of care and protection (Priyanka, M.K, 2019)

## V. THE ROLE OF INTERNATIONAL ORGANIZATIONS

The United Nations International Children's Fund (UNICEF), It was called the United Nations Children's Emergency Fund, This fund was to be utilized for the benefit of children and adolescents of countries which had been victims of hostilities without discrimination. They work closely with national and local governments and other partners around the world. The United Nations has addressed child abuse as a human rights issue, addition a section exactly to children in the United Nations of Human Rights which states as "Identifying that the child, for the full and tuneful growth of his or her personality, should grow up in a family environment, in an atmosphere of 80 happiness, love and sympathetic should be afforded the right to survival, to develop to the fullest, to protection from harmful influences, abuse and exploitation and etc. (Sarna and Santosh, 2002, p.2) International NGO Council on Violence against Children also one leading worldwide organization working for support strong and effective follow-up to the UN Study on Violence against Children. As well as many worldwide and national wide organization working for children issues and protection from the abuses.

SAARC convention on preventions and combating trafficking in women and children for prostitution emphasizes that the evil of trafficking in women and children for the purpose of prostitution is unharmonious with the dignity and honor of human beings and is a violation of basic human rights of women and children.

Constitution of India guarantees to all the citizens of India: such as the right to equality, protection of life and personal liberty and the right against exploitation are enshrined in articles 14, 15, 15 (3), 19 (1) (a), 21, 21 (A), 23, 24, 39 (e), 39 (f) and reiterate India's commitment to the protection, safety, security and wellbeing of all its people, including children.

### 5.1. UN Convention on the Rights of the Child, 1989

The UN Convention on the rights of the child in 1989, is the most important instrument in the history of child rights, which confirmed the convention in 1992. The four major articles pertaining to child sexual offence and neglect in the convention are: Article 3: Protect the best interests of Children; Article 19; Protect the children from all customs of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse while in the care of parents, legal guardians or any other person in whose care they are; Article 34 undertake to protect children from all forms of sexual exploitation and sexual abuse; and Article 35; Take all appropriate national, consensual and multi-lateral actions to prevent the abduction of, sale of or traffic in children for any purpose or in any form. (L.Kacker (IAS).

### 5.2. National Policies and Legislations addressing child sexual victims:

The major policies and legislation formulated in the country to ensure child rights and improvement in their status are:

- 1) National Policy for children, 1974
- 2) Report of the committee on prostitution, Child prostitutes and children of prostitutes and plan of Action to Combat Trafficking and commercial sexual Exploitation of women and children, 1998
- 3) National charter for children, 2004- Underlying the National charter for children, 2004, is the intent to protect for every child the right to a strong and happy childhood, to address the root causes that negate the healthy growth and development of children, and to awaken the conscience of the community in the wider social context to protect the children from all form of abuse, while strengthening the family, society and the nation. This charter has the following sections on child protection:
- 4) National Plan of Action for children, 2005. (CIIF, NISD & UNICEF, 2000)

### 5.3. Related National Acts/Legislations:

#### 5.3.1. The Indian Penal Code:

Under the Indian Penal Code the following sections are enumerated to curb the children from abuse: 1) Exposure and Abandonment: Crime against Children by parents or others to expose or to leave them with the intention of abandonment (section, 317), 2) Kidnapping for extortion (Section, 360), Kidnapping from lawful guardianship (Sec, 361), Kidnapping for ransom (Sec,



363), Kidnapping for begging (363- A), Kidnapping to compel for marriage (Sec 366), Kidnapping for Slavery etc.(Sec 367), Procurement of minor girls by inducement or by force to seduce or have illicit intercourse (Section 366-A). 2) Selling of girls for prostitution (Section 372). 3) Buying girls for prostitution (Section 373). 4) Rape (Section 376). 5) Unnatural Sex (Section 377) and etc.

But there is no piece of legislation has been enacted to deal exclusively with child abuse in India. The recent amendment in POCSO Act, 2012 and Immoral traffic prevention Act, 1986 have been strengthened their fighting against child abuse (Priyanka, M.K, 2019)

### **Importance of Criminal Law Amendment Ordinance, 2018 in POCSO Act, 2012**

Under the Protection of Children from Sexual Offences (POCSO) Act, 2012, any sexual activity with a child below 18 years, whether boy or girl, is a crime. As defined by the Act, sexual offenses include penetrative sexual assault (Section 3), sexual assault (i.e., non-penetrative) (Section 7), sexual harassment (Section 11), and use of a child for pornography (Section 13). A sexual offense under the Act includes the following contact and non-contact behaviors:

- Actual or attempted penetrative sexual intercourse with a child;
- Non-penetrative sexual activity, e.g. rubbing the penis between the child's thighs or genitals;
- Fondling a child's sexual parts, i.e. genitals, breasts or buttocks;
- Oral sex with a child, i.e. mouth to sexual parts;
- Forcing a child to masturbate another person;
- Masturbating a child;
- Fondling child's private body parts
- Making the child fondle private parts
- Forcible kissing
- The adult showing his or her private parts to the child;
- Inappropriately watching a child undress or using the bathroom;
- Photographing a child in sexual poses;
- The exploitative use of a child in prostitution or any other unlawful sexual practice;
- The exploitative use of children in pornography;
- Showing pornography or any pictures of a sexual nature to the child that he or she does not want to see; and
- Letting the child watch or hear an act of sexual intercourse.

The Law ministry of state has cleared a suggestion to amend the Protection of Children from Sexual Offences (POCSO) Act, 2012, for enhancing punishment in cases of sexual assault against young boys. The amendment is essential because of the passage of the Criminal Law (Amendment) Ordinance, 2018, on April 22 which provides for the death penalty only for those convicted of raping a girl below 12 years of age (Murugesan, D & ramakrishnan, D, 2019)

## **VI. CONCLUSION**

The above discussions undoubtedly indicate that prevalence of child abuse how to affect younger generation in India today. The existing national as well as international legal mechanism show to protect the children from various forms of abuse by their family members, relatives, neighbours, teachers, care takers and also unknown person. The recent amendments in Protection of Children from Sexual Offences Act (POCSO Act)2012 highlights the special attention towards protection of children from all forms of violence includes rape and other serious crimes. In this backdrop, this present paper attempt to make an effective implementation of the existing national laws and UN mechanisms which may include child protection strategies at rural, taluk, district and state levels create the awareness among the parents, by the NGOs, social workers and medical practitioners at the local level. Apart from that, the parents should participate among themselves by voluntarily in the child abuse campaign and they could suggest the protection strategy to their children in a child-friendly manner. Moreover, the role of media is very essential to create awareness among the parents about legal provision and preventive mechanisms to child protection practices in homes and public places. In addition that, schools should be taught about 'self-protection mechanism' among the children how to protect from the sexual abuse by helping children participate in their own protection

through age-appropriate information, skills and self-esteem as well as the teachers have to be trained to handle the problematic students through proper guidance and counseling instead of corporal punishment. In the developed countries children are protected from organized laws and principles. Moreover, some control mechanism such as state-level stakeholders to protect mainstream children. But our country needs to protect children from all types of abuses. The existing national laws and UN convention and declarations not only enough to protect the children from all forms of violence. The government should take the cautious actions along with NGOs, legal experts, stakeholders, academicians, and voluntary organizations among themselves initiate to take some preventive measures and control mechanisms to prevent the children from abusive environment.

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