

“Child Abuse leading to the 2012 Enactment”

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ABSTRACT

Child abuse has always existed in society. It's unfortunate that awareness among the victims is pretty scarce and also the fear of further abuse that they may be subjected to and the benefits that arise for victims might outweigh that of the abuse in certain cases since most of these victims are generally from the economically backward classes, these are some reasons for such cases being un-noticed. Overtime there has been an increase in the awareness that has been brought about by NGO's, and also the Right to Education Act passed in 2009 has played a pivotal role in reducing such incidents. The issue has and can be studied from various angles but no solution has proved absolute thus far. A significant number of children in India face some form of child sexual abuse some of the factors that attribute to children being soft targets include the lack of stringent laws and also the ineffective implementation of the same.

One of the more efficient ways of curbing child sexual abuse would be education of the masses and the psychological treatment of the victim and others who are likely to be subjected to such kind of inhumane treatment. The laws that exist are insufficient to curb such a menace alone. The offender tends to find loopholes very easily, even the provisions present in the Constitution hasn't served its purpose hence the Parliament came up with a comprehensive legislation to curb child sexual abuse through the means of THE PROTECTION OF CHILDREN AGAINST SEXUAL OFFENCES ACT, 2012. Though this Act just deals with punishments for the acts, it does not seek for prevention of the crime as such

INTRODUCTION

Child Abuse has been defined as an act, or failure to act, on the part of a parent or caretaker that results in the death, serious physical or emotional harm, Sexual Abuse, or exploitation of a child or which places the child in an imminent risk of serious harm.¹ This will also include denial of food, denial of shelter and denial of clothing, the basic needs of any man. The Protection of Children from Sexual Offences Act, 2012 characterizes a youngster as any individual underneath the age of 18 years and gives insurance to all kids less than 18 years old years from the offenses of rape, inappropriate behavior and smut. These offenses have been unmistakably characterized without precedent for law in India.

Child abuse can take place in homes, schools, orphanages, residential care facilities, on the streets, at workplace and in places of detention. A little more than half of the children in India face some form of child sexual abuse.²

¹<http://legal-dictionary.thefreedictionary.com/Child+Abuse> – Last visited on 23rd August 2015.

² Child Abuse In India, <http://www.helplineindia.com/docs/main.php3?id=CAIII> – Last visited on 25th August, 2015.

Child abuse has many forms. The most common of these are: physical, emotional, neglect and most importantly sexual.

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.³ It may or may not be a deliberate act to abuse the child. The caretakers and parents are often seen taking the defense the abuse inflicted by them on the ward was a mere way of instilling discipline on them. They must realize that the discipline they want to instill must be with tender love and affection and must be in the best interest of correcting the child.

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.⁴

Neglect:

Child neglect, a very common type of child abuse, is a pattern of failing to provide for a child's basic needs, whether it be adequate food, clothing, hygiene, or supervision. Child neglect is not always easy to spot.⁵ Neglect includes abandonment, the lack of any emotional support and love.

Sexual Abuse:

Sexual abuse is inappropriate sexual behavior 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 as child abuse, these acts have to be committed by a person responsible for the care of a child (for example a baby-sitter, a parent, or a daycare provider), or the person must be in anyway related to the child.⁶ If a stranger commits these acts, it would be considered sexual assault and handled solely by the police and criminal courts.

CURBING CHILD ABUSE THROUGH EDUCATION AND PSYCHOLOGICAL TREATMENT

Education starts at home and parents are the first teachers. They mentally prepare us for the hardships and the difficulties that life is going to harbor each individual with. The statistics show that Child Abuse takes place mostly at home and parents are the ones who mostly abuse their Children. Parents often mistake between the role of discipline and abuse. They fail to understand the thin line separating the two. Parents must be educated on the difference between discipline and abuse. Discipline is a softer and a milder approach towards mending a child's behavior

³ Child issues- Abuse and Violence <http://www.childlineindia.org.in/child-abuse-child-violence-india.htm> - Last visited on 25th August 2015.

⁴ Dr. Loveleen Kacker, Srinivas Varadan Pravesh Kumar, Study on Child Abuse in India, Ministry of Women and Child Development Government of India.

⁵ Recognizing, Preventing, and Reporting Child Abuse, http://www.helpguide.org/mental/child_abuse - last visited on 25th August 2015.

⁶ Child Abuse in India, <http://www.helplineindia.com/docs/main.php3?id=CAII2> – last visited on 25th August 2015.

whereas abuse is a violent way of making the child fear for committing an act that would invite the wrath of their parents. Discipline can take forms like making them kneel down; giving them impositions, making them do the right thing repeatedly, so on and so forth. Whereas abuse can be physical assault, corporal punishments, so on and so forth. Parents must take care not to hurt the child physically or mentally, their punishment must only be reformatory in nature. Children at school level must be educated about the different forms of abuse. They must be thought the subtle differences between love and sexual abuse, kindness and physical abuse, punishment and neglect and anger and emotional abuse. These are the basics that need to be instilled in every child with the help of education so that the child themselves may avoid abuse to an extent where they can recognize it. Education is the stepping stone of success in life, and by imparting the basic self-defense and sex-education, a child may be better equipped to cope with abuses of almost every form and it will help the child to develop mentally and physically, after all a child's mind develops the most in the first ten years when he has the urge to question without being scared of the implications that might follow. Efforts should be made to increase the enrolment and retention of children in school by adopting innovative, child friendly methods of teaching. Adequate infrastructure including sanitation facilities, keeping in the mind the special needs of the girl child, will encourage enrolment and retention of girl children in schools.

A psychiatrists' help should be available to treat those who abuse children. Most abusers, who have committed acts of abuse are charged and sent to prison and no help is provided to them to reform their behavior and actions. They must be given a chance to redeem themselves through psychological help. To prevent abuse by changing their behavior, the tendencies to be abusive must first be identified. Once a tendency is identified, the best hope for treating this serious mental disorder is behavioral counseling. The abused child must not be looked down upon. The Child must be given equal rights and treatment as other children of his age are given. The Child must be consoled at all levels given help at every step in this childhood to help him progress in life. Further, the child must be allowed to speak out what is going on the mind after all an empty mind is a devils workshop.

STATUTES DEALING WITH THE PROTECTION OF CHILDREN

Following Acts were enacted for the welfare and protection of the rights of the children:

1. Constitution Of India

The Constitution of India contains various procurements for the security and welfare of the youngsters. It has engaged the governing body to make uncommon laws and approaches to protect the kids' privileges. Articles 14, 15, 15(3), 19(1) (a), 21, 21(A), 23, 24, 39(e) and 39(f) of the Constitution of India contain procurements for the assurance, wellbeing, security and prosperity of every one of its kin, including kids.

2. The Indian Penal Code, 1860

Section 305: Abatement to commit suicide of minor.

Section 317: Crime against children by parents or others to expose or to leave them with the intention of abandonment.

Section 366-A: Procurement of minor girls by inducement or by force to seduce or have illicit intercourse.

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

The Juvenile Justice (Care and Protection of Children) Act, 2000 accommodates fitting consideration, insurance and treatment of kids in strife with law and kids catering so as to need consideration and security to their improvement needs, and by receiving a kid cordial methodology in the settling and manner of matters to the greatest advantage of kids and for their definitive restoration through different organizations built up under the Act.

4. Child Labor (Prohibition and Regulation) Act, 1986

The Child Labor (Prohibition and Regulation) Act, 1986. The Act accommodates the elimination of child labour and accommodates disciplines and punishments for utilizing kids under the age of 14 years in different dangerous occupations.

5. The Prohibition of Child Marriage Act, 2006

The Prohibition of Child Marriage Act, 2006 was enacted to eliminate the practice of child marriages in India. For marriages that were already contracted i.e. before the commencement of this Act, every child marriage shall be voidable at the option of the contracting party who was a child at the time of the marriage.

6. 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.

LOOPHOLES IN THE LAWS THAT GOVERNED CHILD ABUSE BEFORE THE ENACTMENT OF THE 2012 ACT.

The laws for women are generally extended to include children under their purview. The major weakness of these laws is that only sexual offences are considered as grave and other forms of abuse are not given that much of importance. To cause more confusion and problems the word “child” is not defined clearly or comprehensively in any of the Acts at present. The IPC defines the child as being 12 years of age, whereas the Indian Traffic Prevention Act, 1956 defines a ‘minor’ as a person who has completed the age of 16 years but not 18 years. Section 376 of IPC, defines the age of consent to be 16 years of age, whereas Section 82 & 83 of the IPC states that nothing is an offence done by a child under 7 years.⁷ Due to the confusion pertaining to the age of

⁷ Alok Kumar, Asha Pathak, Sandeep Kumar, Pooja Rastogi, Prateek Rastogi, The Problem of Child Sexual Abuse in India Laws, Legal Lacuna and the Bill – PCSOB-2011, J Indian Acad Forensic Med. April-June 2012, Vol. 34, No. 2

the child under various legislations a need arose to pass a comprehensive legislation regarding who a 'minor' is. Further, other forms of abuse also needed to be recognized.

As a result the Union Government has passed the follow act to curb sexual abuse on children:

THE PROTECTION OF CHILDREN AGAINST SEXUAL OFFENCES ACT, 2012

This is the first time any law has been enacted exclusively for children dealing with the crime of sexual offences against them. This is a welcome initiative to arrest the increasing crime of sexual offences against children.⁸ This Act also aims the arrest the offenders and curb the menace.

The Protection of Children from Sexual Offences Act, 2012 was passed by the Parliament in May, 2012. The Act characterizes a kid as any individual beneath the age of 18 years and gives insurance to all kids less than 18 years old years from the offenses of rape, lewd behavior and explicit entertainment. These offenses have been obviously characterized without precedent for law. The Act accommodates stringent disciplines, which have been evaluated according to the offense's gravity.

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.

Offences covered in the Act are:

Section 3: Penetrative Sexual Assault

Section 5: Aggravated Penetrative Sexual Assault

Section 7: Sexual Assault

Section 9: Aggravated Sexual Assault

Section 11: Sexual Harassment of the Child

Section 13: Use of Child for Pornographic

Keeping the best interest of the youngster as of foremost significance at each phase of the legal procedure, the Act accommodates the foundation of Special Courts for trial of offenses under the Act. The Act consolidates kid benevolent methodology for reporting, recording of confirmation, examination and trial of offenses. The Act perceives that the purpose to confer an offense, notwithstanding when unsuccessful for reasons unknown, should be punished and the wrongdoers be berated. The endeavor to submit an offense under the Act has been made subject for discipline for up to a large portion of the discipline endorsed for the offense's commission. For the more deplorable offenses of Penetrative Sexual Assault, Aggravated Penetrative Sexual Assault, Sexual Assault and Aggravated Sexual Assault, the weight of confirmation is moved on

⁸ Maya Roy, Dimple Chainani, Protection of Children Against Sexual Offences Act, 2012: An Overview, <http://lawquestinternational.com/protection-children-against-sexual-offences-act-2012-overview> - Last accessed on 27th August, 2015.

the denounced to argue blameless. This procurement has been made keeping in view the more prominent defenselessness and blamelessness of kids. The Act tries its best to keep the youngster away the obstructions of the lawful procedures. At the same time, to prevent misuse of the law, punishment has been provided for making false complaint or proving false information with malicious intent. Such punishment has been kept relatively light to encourage reporting. If a false complaint is made against a child, punishment is higher.⁹ The media has been banished from uncovering the kid's character without the Special Court's consent. For expedient trial, the Act accommodates the kid's proof to be recorded under 30 days. Likewise, the Special Court has to complete the trial within one year.

The Act throws an obligation on the Central and State Governments to spread mindfulness through media including the TV, radio and the print media at consistent interims to make the overall population, kids and also their guardians and watchmen mindful of the procurements of this Act. The National Commission for the Protection of Child Rights and State Commissions for the Protection of Child Rights have been made the assigned power to screen the Act's execution.

CONCLUSION

Child Abuse is very heinous crime that takes place mostly at home. Schools are also not safe from these kinds of incidents, corporeal punishments being one such example. Child Abuse needs to end. Though Child Abuse can take up many forms, sexual abuse is the worst of them and the government taking cognizance of this, has passed The Protection of Children against Sexual Offences Act, 2012. Though this Act just deals with punishments for the acts, it does not seek for prevention of the crime. This act hopes to curb sexual abuse of children. Friends, family, teachers and relatives can help in a great extent to curb these offences to the little ones, who are the future of their family and most importantly the country. This Act works for the betterment of the society and helps children to peacefully coexist and develop to become responsible individuals. The country needs more laws like the one discussed in this paper so that Children progress and develop without any inhibitions.

⁹<http://rksassociate.com/articles/Children%20protection%20from%20Sexual%20Assault%20or%20harasement%20%20act,2012.pdf>- last accessed on 27th August, 2015.