

## **Legal Dimensions of Child Abuse Manifestations in India - An Analytical Overview**

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### **Abstract**

Child sexual abuse represents a serious and widespread issue not only in India but globally. The psychological trauma stemming from such abuse often leads to significant developmental hindrances and a spectrum of emotional and psychological disorders, from which some children and adolescents might never fully recover. The failure to report incidents of sexual abuse and the lack of protective and therapeutic interventions leave victims to endure their suffering in silence. In India, the pervasive nature of child abuse leads to immediate and detrimental effects on the victims, potentially resulting in a myriad of lifelong challenges. Victims of child sexual abuse are at risk of encountering numerous mental health challenges, including but not limited to anxiety, depression, anger, cognitive distortions, post-traumatic stress disorder, interpersonal difficulties, eating disorders, risky or maladaptive sexual behaviour, aggression, and various personality disorders. Contrary to common misconceptions that child sexual abuse is a rare occurrence predominantly targeting young girls in impoverished urban settings, it is, in reality, a disturbingly frequent phenomenon. Millions of children across diverse communities, cultures, and socioeconomic backgrounds fall victim to such abuse. Offenders encompass a wide array of individuals including both men and women, strangers and acquaintances, and members of every sexual orientation, socioeconomic status, and cultural background. This research aims to explore the nature and scope of minor sexual abuse in India, shedding light on its prevalence and the critical need for comprehensive strategies to combat and prevent such abuse effectively.

*Keywords: Child Sexual Abuse, Psychological Trauma, Developmental Hindrances, Emotional Disorders, Cognitive Distortions, Victim Support*

## Introduction

Child sexual abuse is deeply distressing form of abuse in which adult or an older adolescent exploits minor for the purpose of sexual gratification. This exploitation represents both a civil and criminal offense, starkly contradicting any notions of typical or socially acceptable behaviour. The underlying principle, universally acknowledged yet not fully acted upon, is that every child is a collective responsibility of society, deserving of love, support, protection, and respect for their inherent rights and dignity. However, despite these noble sentiments, there exists a troubling silence and inaction surrounding the issue of child sexual abuse, primarily due to its sensitive and distressing nature.<sup>i</sup>

Human rights, emanating from the intrinsic dignity of being born human, encompass a set of fundamental entitlements crucial for leading a life of dignity and respect. Children, by virtue of their vulnerability and innocence, often fall prey to violations of these rights, with sexual abuse being one of the most heinous. The advocacy for children's rights stems from the belief that acknowledging and enforcing these rights could herald significant change, empowering those who cannot advocate for themselves. It underscores the societal imperative to intervene and uphold rights of child, thereby transforming lives of children from a matter of private concern to one of public responsibility.

In India, the legal framework addressing child sexual abuse has been critiqued for its inadequacies. Despite the existence of various laws under the Indian Penal Code to prosecute sexual offenses against children, an analysis of these laws reveals significant gaps in effectively preventing harm to children and in aligning legal provisions with the realities of social practice. A pivotal study conducted in 2007 by Ministry of Women and Child Development, in collaboration with UNICEF & Save Children, illuminated the alarming prevalence of child sexual abuse in India. Over half of the respondents reported experiencing some form of sexual abuse, with two-thirds having suffered physical abuse. Shockingly, the majority of these abuses were perpetrated by individuals known to child, often in positions of trust & authority. This revelation is particularly disturbing as it highlights a breach of trust at the most fundamental level, compounded by the fact that most victims remain silent, not reporting the abuse to any authority.<sup>ii</sup>

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<sup>i</sup> (2008). *Recovering from childhood sexual abuse: is a "Storybook ending" possible?*, American Journal of Family Therapy, 36(5), 413-424.

<sup>ii</sup> *Sexual abuse of children shows "inhumane mindset" of accused: Mumbai court.* (2023, July 4). Republic World. <https://www.republicworld.com/india/sexual-abuse-of-children-shows-inhumane-mindset-of-accused-mumbai-court-articleshow/>.

The issue of child sexual abuse has, in recent years, gained considerable attention, spotlighting the plight of millions of children subjected to trafficking and sexual exploitation annually. Although India is a signatory to numerous international conventions aimed at protecting children from sexual offenses, the persistently high rates of child sexual exploitation suggest that international and national efforts, though significant, have been insufficient in curbing this menace.

In response to the urgent need for more robust legal mechanisms to protect children from sexual abuse & exploitation, India enacted Protection of Children from Sexual Offences Act (POCSO) in 2012. This landmark legislation represents a critical step towards addressing the gaps in existing laws, offering a more comprehensive legal framework dedicated to the protection of children. The POCSO Act is envisioned to significantly enhance the legal safeguards for children, offering hope for a more effective response to the challenges posed by child sexual abuse and exploitation.<sup>iii</sup>

The fight against child sexual abuse demands a multifaceted approach, encompassing stronger legal frameworks, heightened public awareness, and a collective societal effort to break the silence surrounding this issue. It requires the concerted efforts of governments, civil society organizations, communities, and individuals to create a safe and nurturing environment for every child, where their rights are protected, and their dignity upheld.

### **Historical View on Abuse of Children**

The recognition of children's rights as inherent human rights marks a distinctly modern paradigm, diverging sharply from historical perspectives where the rights and welfare of children were often considered secondary, akin to those of animals, rather than of equal importance to adults. This shift in perception is a relatively recent development, with roots tracing back to evolving societal norms and legal frameworks across various cultures and epochs.

Historically, societies like those of ancient Babylon and Rome exemplified an outlook where children were largely seen as possessions under the dominion of societal structures. These societies mandated that children conform to established norms and expectations, often without consideration for their individual rights or well-being. This paternalistic view held sway for millennia, subtly evolving but largely remaining unchallenged until modern times.

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<sup>iii</sup>(2018). *A Global Quagmire: Child Sexual Abuse and Child Pornography*, 7 SUPREMO AMICUS 112.

The issue of child sexual abuse, although historically shrouded in silence & taboo, presents a glaring contradiction to the notion of protective societal structures. In India, this issue is particularly poignant, exacerbated by a lack of robust legislative frameworks and a pervasive culture of silence. Despite misconceptions that child sexual abuse is predominantly a Western problem, India, with its significant share of the global population and a staggering number of vulnerable children, faces a critical challenge in addressing and mitigating this abuse.<sup>iv</sup>

India, home to 17% of the world's population according to the 2011's Census, harbours nearly 19% of world's children, of which a considerable portion requires urgent care and protection. The widespread prevalence of child sexual abuse in India underscores urgent need for comprehensive strategies and effective legislation to safeguard children's rights and well-being.

In ancient India, societal attitudes towards children, as reflected in the Laws of Manu, offered a nuanced blend of paternalism and protection. Children, while occupying a lower status within the social hierarchy, were nonetheless accorded a degree of protection, particularly in matters of discipline. The prescribed methods of punishment, such as beating with a split bamboo stick, were intended to minimize physical harm while maintaining disciplinary authority. This approach, though far from contemporary standards of child welfare, highlights a historical precedent for societal concern for children's well-being, albeit within a markedly different cultural and legal context.

### **Child Abuse**

Child abuse encompasses a spectrum of harmful behaviours directed at children, including physical and emotional mistreatment, as well as neglect. A significant portion of this maltreatment takes place within the child's own home, but it can also occur in settings where children are supposed to find safety and support, such as schools, organizations, and community spaces. The repercussions of such abuse are profound and far-reaching, violating fundamental children's rights, including access to education, and severely impacting their physical health and emotional well-being. Despite widespread acknowledgment and condemnation of these heinous acts, the private and often hidden nature of child abuse complicates efforts to combat it. Victims frequently suffer in silence, with their plight either unnoticed or outright denied.

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<sup>iv</sup>(2022-2023). *Child Mental Health Care in the Perspective of India*, 4 INDIAN J.L. & LEGAL RSCH. 1.

Globally, certain forms of child abuse & neglect are universally recognized, including physical, sexual, emotional, & psychological abuse, as well as abandonment and the troubling phenomenon of street children. However, specific issues may be more prevalent or pronounced in certain regions due to cultural, economic, and legal differences. The Supreme Court, in *Sheela Barse v. Union of India*, has highlighted country's obligation to its children, recognizing them as national assets deserving of care, love, affection, and protection.<sup>v</sup> Despite this, many children in India face maltreatment due to poor family conditions, societal factors, poverty, ignorance, and a lack of proper care and emotional support.

UNICEF identifies six primary situations that contribute to child abuse on a global scale:

- *Forced or Bonded Labor* - The International Labor Organization (ILO) estimates that around 300 million children are exploited through labour, with approximately 200 million working in hazardous conditions, such as mines and factories, or exposed to dangerous substances like chemicals and agricultural pesticides. An alarming six million children are subjected to the worst forms of labour, including virtual slavery through bonded labour.<sup>vi</sup>
- *Human Trafficking* - Each year, approximately 1.2 million children are trafficked for labour and sexual exploitation, a lucrative and immoral trade that spans the globe. Poverty and a lack of awareness among parents about the dangers of trafficking contribute to this issue, with children often being deceived by promises of a better life. This exploitation includes the trafficking of young girls from Asia and Eastern Europe for marriage or forced labour in the sex industry.
- *Sexual Exploitation* - It is estimated that around 1 million children, including significant number of boys, are sexually exploited in commercial sex trade each year. This form of abuse is usually perpetrated by individuals known to the victim, challenging the misconception that sexual tourism is the primary driver. The rise of the internet has further facilitated the spread of child pornography, representing a growing concern for the safety of children worldwide.
- *Child Soldiers* - Over the past decade, conflicts around the world have resulted in the deaths of approximately 2 million children, with another 6 million suffering from serious injuries or permanent disabilities. Currently, over 300,000 children, some as

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<sup>v</sup> AIR 1986 SC 1873.

<sup>vi</sup> *What is Child Sexual Abuse?* (n.d.). Sneha Mumbai. Retrieved March 27, 2024, from <https://www.snehamumbai.org/child-sexual-abuse/>.

young as eight years old, are exploited as soldiers in more than 30 countries, subjected to horrors of armed conflict.

- *Separation from Parents* - Children who lose their primary caregivers due to various reasons, such as war, disease, or institutionalization, face increased risks of abuse, neglect, and exploitation. The absence of familial and community support structures leaves these children vulnerable to a range of dangers, impacting their physical and psychological development.
- *Violence in Educational and Home Settings* - Various forms of violence, including punishment and torture, are prevalent in both educational institutions and homes across different societal strata. The long-term effects of such violence can be devastating, leading to lifelong psychological trauma and, in some cases, physical injuries.<sup>vii</sup>

### **Judicial Framework for Child Sexual Abuse**

Child sexual abuse can happen outside the house, by someone like a friend, neighbour, child care provider, educator, or stranger; it can also happen within the family, by a parent, stepparent, sibling, or other relative. When a kid has experienced sexual abuse, they may experience a range of upsetting emotions, ideas, and actions.

In *Abdul Walid v. State of Maharashtra*, the father sexually assaulted his eight-year-old daughter. It was decided that an irresistible drive overcame the deed rather than lust. As a result, the sentence was lowered to 10 years in jail.<sup>viii</sup>

In India, there are many different places where child abuse occurs: households, neighbourhoods, schools, temporary dwellings used as shelters for abandoned or ejected children, route stages, prisons, and evacuee camps. Protecting children from violence, abuse, and drug use is a crucial part of guaranteeing their rights to life, growth, and development. Despite the fact that this is a well-established issue, the group finds it difficult to acknowledge and comprehend.

In *Laxman Naik v. State of Orissa*, the accused was found guilty of assault following the murder of a 7-year-old girl by her own uncle, and the court once more upheld the death punishment. The accused seems to have behaved in a vicious manner, according to the court. After achieving his goal, he imagined that the victim of abuse would reveal his

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<sup>vii</sup>(2019). Child Sexual Abuse in India: an understanding. *International Journal of Law Management & Humanities*, 2(1), 378-385.

<sup>viii</sup> 1992 CRILJ 1900.

identity to her family and other people, condemn him from a vantage point to prevent the confirmation of the inappropriate behaviour, and end the life of that sincere young woman.<sup>ix</sup>

In *Kamta Tiwari v. State of Madhya Pradesh*, the High Court heard an assault case that resulted in the death of a 7-year-old girl. Evidence showed that the accused was well-liked by the deceased's father, who used to refer to him as "uncle". Because of their imagined connection, this court encouraged the defendant to go to the basic supplies shop where the young woman was abducted by him, assaulted, and eventually strangled to murder by putting her dead corpse into a well.<sup>x</sup>

### **India's Legal Provisions concerning Child Sexual Abuse**

The evolution of legal frameworks and societal recognition of child abuse, particularly in the United States, marked a significant turn during the latter half of the 20th century, reflecting a growing awareness and commitment to addressing the vulnerability of children to abuse and neglect. This period witnessed a series of legislative actions aimed at strengthening the protection and rights of children, particularly in the context of abuse, which includes physical, emotional, and sexual abuse.

The legislative journey began in earnest in 1974 with the enactment of Child Abuse Prevention and Treatment Act (CAPTA). This landmark legislation provided federal funding to states in support of prevention, assessment, investigation, prosecution, & treatment activities & also established National Centre for Child Abuse & Neglect. The creation of CAPTA was a response to increasing awareness of child abuse & neglect as critical social issues requiring federal oversight and resources. This law marked a significant step forward in formalizing the approach to combating child abuse, leading to a substantial increase in reported cases. This increase was not necessarily indicative of a rise in abuse per se but rather an increase in awareness and reporting mechanisms.<sup>xi</sup>

Following CAPTA, the formation of the National Child Abuse Coalition in 1979 represented a consolidation of advocacy efforts aimed at influencing Congress to enact more robust laws against child sexual abuse. This advocacy was instrumental in the passage of further significant legislation.

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<sup>ix</sup> 1994 SCC (3) 381.

<sup>x</sup> AIR 1996 SC 2800.

<sup>xi</sup>(2021). Current Position of Child Sexual Abuse in India. *International Journal of Law Management & Humanities*, 4, 160-[xix].

In 1986, a pivotal moment in the legal battle against child sexual abuse was the passage of the Child Abuse Victims' Rights Act, which extended the rights of children in legal settings. This Act provided child victims of sexual abuse with a civil claim against their abusers, empowering them and their families to seek justice and reparations through the legal system. It was a clear acknowledgment of the severity and specific nature of sexual abuse as a crime that profoundly affects the lives of young victims.

The 1980s and 1990s continued to see an expansion of laws aimed at the prosecution and incarceration of child sexual abusers, reflecting a societal and legislative shift towards greater protection of children and harsher penalties for perpetrators of abuse. These decades were characterized by an increasing understanding of the extensive & long-lasting impact of child sexual abuse, leading to more aggressive stance against abusers.

Parallely, the recognition of children's rights and protection mechanisms has been a significant focus in India, mirroring global trends towards safeguarding children's welfare. The Indian Constitution, through various articles, underscores the state's responsibility towards ensuring the rights to protection, development, and education of children. Articles 15(3), 24, 39(f), 45, and the provisions under Article 243G read with the Eleventh Schedule, collectively provide a constitutional framework aimed at addressing the vulnerabilities of children and ensuring their right to a dignified existence.<sup>xii</sup>

A landmark judgment by Supreme Court of India in *Gaurav Jain vs. Union of India* further emphasized rights of children born into marginalized sections of society, such as the children of prostitutes.<sup>xiii</sup> The court recognized these children's rights to equality of opportunity, dignity, care, protection, and rehabilitation, thereby emphasizing importance of integrating them into mainstream of social life without stigma. The directive to form a committee for the development and implementation of a rehabilitation scheme for such children and child prostitutes underscored the proactive measures required to uplift and protect vulnerable child populations.

These legislative and judicial efforts in the US and India illustrate a broader global movement towards recognizing and protecting the rights and well-being of children, particularly those who are victims of abuse & neglect. The evolution of legal frameworks reflects an ongoing commitment to creating safer, more inclusive societies where the rights and dignity of every child are upheld.

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<sup>xii</sup>(2020). The Reality of Child Sexual Abuse in India. *International Journal of Law Management & Humanities*, 3, 1782-1803.

<sup>xiii</sup> Writ Petn. (C) No. 824 of 1988 with Writ Pet. (Cri.) Nos. 745-754/54 of 1990.



## Conclusion

Child sexual abuse represents one of the gravest and most deplorable challenges faced by Indian society today. This menace, unlike other forms of sexual exploitation, starkly highlights a societal flaw that cannot be attributed to the victim or superficially blamed on external influences such as the impact of Western culture. Instead, it forces us to confront an uncomfortable reflection of ourselves, revealing aspects of humanity we are often too reluctant to acknowledge. The only way to begin addressing this profound issue is to confront it directly, acknowledging its existence rather than attempting to obscure it from our collective consciousness.

The perpetrators of child sexual abuse are frequently individuals within the child's immediate circle of trust or those who wield some form of influence over them. The criminal justice system in India is rife with cases where the abusers are adults who may be struggling with issues like alcoholism, drug dependency, depression, marital strife, etc. However, the preventive measures that could mitigate these abuses before they occur are woefully inadequate or often entirely neglected. Our penal system tends to focus more on punitive measures post-incident, such as dealing with the aftermath of violence, abuse, or exploitation, rather than on preventing these atrocities from happening in the first place.

Witnesses and victims of these egregious acts are frequently silenced by a variety of pressures including social stigma, community backlash, the daunting prospect of navigating the criminal justice system, and in some cases, a complex web of emotional and economic dependence on the perpetrator. In certain instances, family members, including parents, opt not to report these crimes to authorities under the guise of protecting the child from societal shame, believing that doing so might inflict further harm upon the victim.

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