



## Research Article

### THE EVALUATION OF CHILD ABUSE IN INDIAN PERSPECTIVE

\*Anant Singh Jeliyang

J.R.F. Student Sociology, 6-MIG, ADA Colony, Mumfordganj, Allahabad (U.P.), India

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#### ABSTRACT

The nature of exploitation of children may vary but prevalence of exploitation has no exception whether it be developed, developing or under developed nation. This issue plagues most of the societies. In India, a sizeable number of children is deprived of their basic needs. Parents are unable to discharge their parental responsibility due to several reasons as extreme poverty, illiteracy, ill-health or disturbed mental states. Family disintegration is another cause which makes the situation worse resulting into truancy and vagrancy, bringing children onto the street's. Such children are subject to emotional abuse. Physical or sexual abuse or traumas also hit children making them more vulnerable. In recent years, children and their problems have been receiving attention both of the government as also of the society but we must say that the problems are of such enormous magnitude that all that has been done till now is not sufficient.

#### INTRODUCTION

The term 'child' has not been defined 'either in the Constitution of India or in the General Clauses Act, 1897. However, it is defined in various international documents and national statutes which are given as follows:

- The United Nation Convention on the Rights of the Child, 1989 provides that for purposes of this Convention a child means every human being below the age of 18 years, unless, the law applicable to the child, majority is attained earlier.
- The Juvenile Justice (Care and Protection of Children) Act, 2000 defines a child as a person upto 18 years of age.. According to Section 2 (k) of the Act, juvenile or child means a person who has not completed eighteen years of age.
- Webster's New World Law Dictionary defines the term 'abuse' as the mental or physical mistreatment of a person, frequently resulting in serious emotional, mental, physical, and/or sexual injury. Thus, 'child abuse' is a state of emotional, physical, economic and sexual maltreatment meted out to a person below the age of eighteen years and is a globally prevalent phenomenon.
- However, in India, as in many countries, there has been no understanding of the extent, magnitude and trends of the problem.

- World Health Organisation (WHO) (1990) defines child abuse or maltreatment as "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 or responsibility, trust or power."

#### Forms of Child Abuse

- Child Labour
- Prostitution
- Child Marriage
- Work on Street by Children
- Domestic Child Servants
- Bonded Child Labour

#### Impact of child abuse

Incidence of child abuse may leave short term as well as long term effects on victim children. They may experience a range of physical, emotional and psychological problems and trauma as a result of being abused or neglected. In their adulthood, they may continue to struggle with their emotional feelings which may lead to depression or anxiety.

#### LEGAL FRAMEWORK OF CHILD

##### Constitution of India

\*Corresponding author: Anant Singh Jeliyang,  
J.R.F. Student Sociology, 6-MIG, ADA Colony, Mumfordganj,  
Allahabad (U.P.), India.

## Fundamental Rights

The children have rights to enjoy all the fundamental rights which are guaranteed to the citizens of India under Constitution of India because the children in India are also citizens of India. The fundamental rights which are available only to the citizens are:

- The right not to be discriminated against on the grounds of religion, race, caste, sex or place of birth (Art. 15 of the Constitution).
- The right to equality of opportunity in the matter of public employment (Art. 16).
- Article 21 of our Constitution protects our life and personal liberty. It reads as-"No person shall be deprived of his life or personal liberty except according to procedure established by law." However, the Article does not say much expressly but the Supreme Court of India has interpreted the terms 'life', 'personal liberty' and 'procedure established by law' in their broader sense to include almost all the dimensions of the life.
- By the Constitution (86th Amendment) Act, 2002 a new Art. 21-A has been added which has made 'right to education' a fundamental right for children of the age of six to fourteen. The Article runs as "the State shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the State may, by law, determine." The paramount object of this fundamental right to children is to educate them and also make them aware about the surroundings.
- Article 23 of the Constitution prohibits traffic in human beings, beggar and other similar forms of forced labour and exploitation. This provision protects the individual from exploitation not only against the State but also against any private person- Although the Article does not specifically say about children, yet it is applicable to them.
- Article 24 of the Constitution provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment, The provision is made specifically for the welfare of the children. It is a natural, birth and human right of every child to live his childhood in the proper way. Cultural and educational rights conferred by Articles 29 and 30 of the Constitution.

## Directive Principles of State Policy

Apart from above fundamental rights, our Constitution lays down some Directive Principles of State Policy. These principles obligate the State to take positive action in certain direction in order to promote the welfare of people including children.

### Policies to be followed by the State

Article 39 (e) of the Directive Principles of State Policy enshrined in the Constitution reaffirms the policy of protection against exploitation. Further, article 39 (f) of the Constitution directs the State to follow the policy to provide children opportunities and facilities to develop in a healthy manner and in exploitation free conditions.

## Right to Work, to Education and to Public Assistance in Certain Cases

Article 41 provides that the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Though it does not mention children, but the ending words "... and in other cases of undeserved want." cover the suffering children.

## Just and Humane Conditions of Work and Maternity Relief

Article 42 of the Constitution says that the State shall make provision for securing just and humane condition of work and for maternity relief. The measures for maternity relief are meant for expectant mothers and mothers during the period of pregnancy and after the child birth.

## Early Childhood Care and Education to Children below the Age of Six Years

Article 45 required the State to make provision within ten years from the commencement of the Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

## Promotion of Educational and Economic Interests of Scheduled Castes, Scheduled Tribes etc

Article 46 provides that the State shall promote with special care, the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice, and all forms of exploitation of the children of these weaker sections of our society.

## Duty of State to Raise Standard of Living and Public Health etc

Article 47 imposes a primary duty upon the state to raise the level of nutrition and the standard of living of its people and improvement of public health. Thus, it is the responsibility of the State to provide nutritious food to the children as word 'people' includes not only adults but children as well. Perhaps this provision becomes more relevant in case of children as the malnutrition can cause irreparable danger to the personality of the children though mental retardation and blindness. However, the Directive Principles are not justifiable by the court of law but the importance of them is that they contain positive obligation of State towards its citizens. The obligation lies on the state to apply these directive principles while making laws.

## Fundamental Duties

Ten fundamental duties were added in the Constitution by the Constitution (42<sup>nd</sup> Amendment) Act, 1976 under Article 51 A inserting Part IV-A. However, for the welfare of children, the Constitution (86th amendment) Act, 2002 added a new clause (k) to Article 51A of Part IV-A of the Indian Constitution which imposes a fundamental duty on parents or guardians of the child saying that "who is parent or guardian to provide opportunities for education to his child, or as the case be, ward between the age of six and fourteen years."

## Statutory Instruments

Child abuse is a matter on which both the Union Government and State Governments can make laws. A number of legislature initiatives have been undertaken at both levels. Some of the important national instruments related to child welfare are as hereunder-

### Indian Penal Code, 1860

There is no separate chapter of offences against children in Indian Penal Code, 1860. However, Indian Penal Code has various provisions wherein children are protected against several offences as-

- Infanticide and Foeticide
- Abetment of Suicide: Abetment to commit suicide of minor
- Exposure and Abandonment: Crime against children by parents or others to expose or to leave them with the intention of abandonment
- Kidnapping and Abduction
- Sexual offences

### Factories Act, 1948

A large number of children in India works in factories where several hazardous activities are carried on. Such children are under the risk of their persons and lives. The Act prohibits the employment of children below the age of fourteen years in any factory.

### Hindu Adoption and Maintenance Act, 1956

This Act was enacted for the safeguard of the Hindu children, legitimate or illegitimate, from wrong adoption and to provide them proper maintenance during their childhood.

### Orphanages and Other Charitable Homes (Supervision and Control) Act, 1960

This Act is made to provide for the supervision and control of the orphanages and other charitable homes for neglected children. The Act deals with the fate of children living in such institution if the institution ceases to function. In such condition, the inmates of such homes shall be restored to the custody of his or her parents, or transferred to another recognized home, or entrusted to the care of any other fit person.

### The Motor Transport Workers Act, 1961

The Act prohibits the employment of children in any motor transport undertaking providing that no child shall be required or allowed to work in any capacity in any motor transport undertaking.

### Child Labour (Prohibition and Regulation) Act, 1986

The Act prohibits the employment of a child in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on.

"However, a child is allowed to work in a workshop wherein any process is carried on by the occupier with the aid of his family or in any school established by, or receiving assistance or recognition from government.

### The Commission for Protection of the Rights of the Child Act, 2005

As rights of children are frequently violated by adults, therefore, this Act is made to provide for the constitution of a National Commission, State Commissions for Protection of Child Rights and Children's Courts for providing speedy trial of offences against children or of violation of child rights.

### The Prohibition of Child Marriage Act, 2006

Child marriage was a common practice in India in ancient time. However, at present also, the practice of child marriage is an open truth of our society. These are taking place on large scale in rural India. Considering the need of a law against this practice was being felt for a long time. Hence, in 2006 parliament passed the prohibition of Child Marriage Act making it punishable to solemnize a child marriage. It provides that if a male adult, above eighteen years of age, contracts a marriage with child, he shall be punished with rigorous imprisonment or with fine or with both.

### The Right of Children to Free and Compulsory Education Act, 2009

In wake of Article 21-A of the Constitution, recently Indian Parliament has passed the Right of Children to Free and Compulsory Education Act, 2009. Purpose of the Act is to provide for free and compulsory education to all children of the age of six to fourteen years.

### The Protection of Children from Sexual Offences Act, 2012

Taking into consideration the seriousness of the increasing incidences of sexual abuse against children recently The Protection of Children from Sexual Offences Act, 2012 has been enacted by Parliament. Object of the Act is to protect children from offences of sexual assault sexual harassment and pornography and to establish Special Courts for trial of the offenders. The Act deals with sexual assault, sexual harassment and use of children for pornography, and abetment and attempt thereof. It lays down stringent punishment up to life imprisonment and fine also for offences underlying different categories. To prevent the re-victimisation of children by judicial system, the Act makes provision for recording child's evidence and for providing children assistance of experts having professional knowledge of psychology, social work, physical health, mental health and child development. The Act undoubtedly will fill a glaring lacuna in the existing laws. While I.P.C. deals with several sexual offences, even then it is deficient in dealing with a range of sexual crimes such as groping and harassment. Another important thing is that the Act is gender neutral and hence, saves male children too from sexual abuse along with girl children as contrary to general presumption a large number of male children are also victims of child sexual abuse. To bring more children under the protection of the Act, a child is defined as any person below the age of eighteen years.

## Conclusion

It is submitted that the Government of India has taken several steps in form of many Constitutional and statutory provisions for preventing the occurrence of incidences of child abuse. Discussion held in above establishes that child abuse does not mean only the physical injury but it refers to any act or omission also that violates the rights of the child, endangering his or her optimum health, survival and development. The legal framework relating to the prevention of child abuse in India suffers with the multiplicity of the provisions. There are numerous statutes which are related with well being of children or prevention of child abuse but few have been discussed over here. Multiplicity of the laws eventually connected into inconsistency and haziness of implementation resulting into inconsistency and leading to ineffective implementation of the statutory provisions. The definition of 'child' also varies in various statutes, farther, resulting into state of confusion. On the basis of above, it can be said that there is urgent need of a compendium or code of child laws in order to remove sense of confusion and inconsistency and ill-effect of multiplicity of the laws.

So, it can be said that the available legal framework in India is not optimum to meet the exigencies relating to the child.

## REFERENCES

- See Articles 5 to 11 of the Indian Constitution and the Indian Citizenship Act, 1955.
- Preamble of the Hindu Adoption and Maintenance Act, 1956.
- Section 3 of the Child Labour (Prohibition and Regulation) Act, 1986.
- <http://indiacode.nic.in/incodis/whatsnew/prenatal.htm> visited on 18-10-2010.
- Section 2(k) of the Juvenile Justice (Care and Protection of Children) Act, 2000.
- Section 4(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000.
- Section 24 of the protection of Children from Sexual Offences Act, 2012.
- Article 1, U.N. Convention on the Rights of the Child, 1989.

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