EDITORIAL NOTE

Lexkhoj Publication is committed to bring the highest quality research to the widest possible audience through an unparalleled commitment to quality and reliability. It is established with the objective of promoting academic research and fostering debate on contemporary legal issues all across the world. Lexkhoj Publications collectively bring together leading scholars in the field to cover a broad range of perspectives on all the key issues in national and international law.

Lexkhoj is delighted to announce the Issue of the Lexkhoj Research Journal of Law and Socio-Economic Issues which is an international journal, publishing critical approaches to socio-legal study and multi-disciplinary analysis of issues related to law and socio-economic. The journal will strive to combine academic excellence with professional relevance and a practical focus by publishing wide varieties of research papers, insightful reviews, essays and articles by students, established scholars and professionals as well as by both domestic and international authors. Authors should confirm that the manuscript has not been, and will not be, submitted elsewhere at the same time.

The Journal provides a forum for in-depth analysis of problems of legal, social, economic, cultural and environmental transformation taking place in the country and word-wide. It welcomes articles with rigorous reasoning, supported by proper documentation. The Journal would particularly encourage inter-disciplinary articles that are accessible to a wider group of Social activist, economist, Researcher, policy makers, Professionals and students.

This quarterly issue of the journal would like to encourage and welcome more and more writers to get their work published. The papers will be selected by our editorial board that would rely upon the vibrant skills and knowledge immersed in the paper.

*Needless to say, any papers that you wish to submit, either individually or collaboratively, are much appreciated and will make a substantial contribution to the early development and success of the journal. Best wishes and thank you in advance for your contribution to the Lexkhoj Research Journal of Law and Socio-Economic Issues.*
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Child Abuse in India: A Socio Legal Analysis

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“The greater a child’s terror, and the earlier it is experienced, the harder it becomes to develop a strong and healthy sense of self.”
— Nathaniel Branden

Abstract

Child abuse in India is often a hidden phenomenon especially when it happens in the home or by family members. Focus with regards to abuse has generally been in the more public domain such as child labour, prostitution, marriage, etc. Intra-family abuse or abuse that takes place in institutions such as schools or government homes has received minimal attention. This may be due to the structure of family in India and the role children have in this structure. Children in India are often highly dependent on their parents and elders; they continue to have submissive and obedient roles towards their parents even after they have moved out of their parental home. This belief that parents and family are the sole caretaker of the child has proved to have negative effects on child protection laws and strategies. Numbers of cases of child abuse in the home are hard to attain because most of these crimes go unreported. Societal abuses that are a result of poverty such as malnutrition, lack of education, poor health, neglect, etc are recognised in various forms by the Indian legal system. But India does not have a law that protects children against abuse in the home. Mal-treatment of care givers has the potential to emotionally and mentally harm children to a very different degree. Studies in intra-familial child abuse in the US have shown correlation to delinquency, crime, teenage pregnancy, and other psychosocial problems.
Introduction:

Child abuse is any injury that is intentionally inflicted on a child by a caregiver or during discipline. While the caregiver is usually an adult, most often the mother of the child, it can also include teenagers who are in the care giving role, like a babysitter or a camp counselor. It is important to understand that child abuse must involve injury, whether physical or emotional, visible or not immediately visible. So while most child-care professionals (for example, psychiatrists, psychologists, pediatricians, and teachers) do not recommend the use of corporal punishment due to the risk of emotional damage and accidental physical injury, spanking a child does not automatically constitute child abuse unless the child sustains some kind of injury.

The most common types of child maltreatment are neglect, physical, emotional, and sexual abuse:

- **Neglect** is the failure of the child's caretaker to provide adequate care for the child. Examples of this form of child maltreatment include a lack of supplying adequate food, shelter, season-appropriate clothing, supervision, medical or mental health care, or a lack of providing appropriate emotional comfort. Supervision neglect is the most common form of child neglect.

- **Physical abuse** is defined as a caretaker inflicting physical injury on a child through assault. That includes corporal punishment that results in physical injuries, like bruises, scratches, welts, or broken bones.

- **Emotional abuse** involves statements by a caretaker that can injure a child's sense of self-esteem. Examples of emotional abuse include calling the child negative names, cursing at, or otherwise insulting the child.

- **Sexual abuse** is defined as exposing the child to inappropriate sexual content, behavior, or contact. That can include allowing the child to see pornography or sexual acts between adults or a caretaker having sexual contact with the child.

Neglect, physical, and sexual abuse are the types of child abuse that usually result in reporting to and intervention by the authorities.
Child abuse is the violation of basic human rights of a child. The problem of child abuse and child rights violation is one of the most critical matters on the International Human Rights Agenda. In the Indian Context, acceptance of child rights as primary inviolable rights has been recently understood. According to the WHO, “Child abuse or maltreatment constitutes all forms of physical and emotional ill-treatments, 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.”

It’s easy to forget we live in a global world. Most of us live relatively simple lives. We wake up, have our coffee, run to work/school and then around five or six o’clock we begin our slow march home where we can finally take off our shoes (aka bras) sit back and relax. But for most of the world such is not the case. It may be strange to ponder, but you are much closer to the one percent than you may think. Your basic needs are met daily. Food, water and shelter, check. And most days you enjoy the benefits of a first-world living, which the majority of the human population can only dream of. You drive to work, eat what you want, drink clean water, watch television, surf the internet and at the end of the day sleep safely in bed that is yours alone.

We forget we are the lucky ones, especially when everything in our culture is telling us the opposite. You are not lucky and you are by no means enough. You need more—buy more, do more, eat more—the cycle is never-ending. And what’s more, it’s damaging. If you believe you are not enough, you are essentially trapped, tangled up in yourself. How can I think about others when there’s so much of me left to fix? This is why it is absolutely essential we remain grateful for everything we have. The reality is you are blessed, you are enough, and in realizing this you are given the greatest gift of all, the ability to look outside of yourself and help others.

India has 350+ million children, more than any other country in the world. Their condition has improved in the last five decades, with child survival rates up, school dropout rates down, and several policy commitments made by the government at the national and international levels. Resource allocations by the State, however, remain quite inadequate to take care of the survival and healthcare needs of infants and children, their education, development and protection.
The Convention on the Rights of the Child, which India has ratified, defines children as persons below the age of 18. However, in India there are several different definitions of the child. The Census of India defines children as those below the age of 14.

According to the Constitution of India (Article 23), no child below the age of 14 must be employed in a factory or mine or engaged in any other hazardous employment. Article 45 says that the State will provide free and compulsory education to all children up to the age of 14. While under the Indian Penal Code, the age of sexual consent for girls is 16 years.

Right now a worldwide crisis is happening; one which goes unreported everyday in favor of an endless stream of celebrity gossip. Girls around the world are being kidnapped, raped, abused, sold into sexual slavery, denied food, education and the chance to live a happy life simply because they are girls. In most of the world having two x-chromosomes means an automatic lower quality of life. Why even in our own country women continue to struggle against the age old battle of sexism and inequality. We are not immune to the evils of this world simply because our GDP is larger than most. In America, we still suffer the horrors rape and sexual abuse, and yet there is a marked difference between our rights and those living in the third-world, we are given a voice. Though in our country there remains a stigma around the women and men brave enough to report the abuses which they have suffered— an unjustified blaming of the victim for the evils that have befallen them— at least it can be said they have a voice, or an opportunity to have one.

In an 82-page report by the Human Rights Watch, a startling truth was revealed. Children in India are being sexually abused by relatives, friends and trusted acquaintances and with absolutely no path to justice or resolution.

“… Current government responses are falling short, both in protecting children from sexual abuse and treating victims. Many children are effectively mistreated a second time by traumatic medical examinations and by police and other authorities who do not want to hear or believe their accounts. Government efforts to tackle the problem, including new legislation to protect children from sexual abuse, will also fail unless protection mechanisms are properly implemented and the justice system reformed to ensure that abuse is reported and fully prosecuted, Human Rights Watch said.” –New York Times
In essence, the children of India are left to fend for themselves when it comes to rape and sexual abuse. Those brave enough to attempt to report abuse are often met with the cruelest of responses.

The ordinary criminal laws are totally inadequate to protect the children, who are victims of sexual abuse. These sections do not include the common forms of child sexual abuse nor their impact on the children. The restrictive interpretation of "penetration" in the Explanation to Section 375 is an obstacle to cases of CSA. Explanation to Section 375 does not treat forced sexual intercourse by a husband against the wife (above 15 years) as an offence. Section 376(A) also has the same reasoning. The Indian Penal Code needs to be reviewed.

The existing definitions of rape and molestation should be suitably amended to adequately address the various types of sexual assault on children. In fact, sexual assault on children should be made a specific offence requiring stringent punishment. There is no provision to deal with the trauma of the child. The testimony of the child victim is not recorded sensitively by the police/judge/prosecutor magistrate. The recording of the statements of child victims need a special provision in the Cr.PC. There is no such provision at present.

Trained personnel should interview the victim children. The language of the child is to be understood by the legal system. Under the present system the natural habitat of the victim is generally disturbed, which is a source of trauma to the child. The delays in the system at every stage further add to the trauma of the child victim. There are several cases pending in the courts as the trial goes on for years. In several cases the girls have become adults by the time the final judgment comes through. The investigation of trial of sexual offences have to be made time bound. Special courts need to be set up. There is a need for a special provision relating to medical examination of child victim in the CrPC. The absence of a proper medical report in the case of a sexual assault goes against the child assaulted the mental health of victim needs to be attended to, as the trauma had to be reduced. As the result of which the Protection of Children against Sexual Offences Act (POCSO) came into effect.

A 2007 survey by the Ministry of Women and Child Development showed that 53% of children in India had been sexually abused. At the end of our Child Sexual Abuse episode, we asked if there should be a specific law against this crime. Out of all the responses we received, 99.6% said ‘Yes’.

EXKHOJ
This was only one indication of the increasing public pressure for the law, which was passed by both houses of Parliament on May 22, 2012. The Protection of Children against Sexual Offences Act (POCSO) came into effect on Children’s Day, November 14, 2012.

POCSO is gender neutral. It makes the reporting of abuse mandatory. It makes the recording of sexual abuse mandatory. It lists all known types of sexual offences towards minors. It provides for the protection of minors during the judicial process.

In 2007, the Ministry of Women and Child Development (MWCD) released a study report on child abuse. The report discusses incidence of child abuse nationwide. It is estimated that 150 million girls and 73 million boys under 18 have been subjected to forced sexual intercourse or other forms of sexual violence. In 2002 there were 53,000 reported cases of child homicide. A Global School-Based Student Health Survey found that 20% and 65% of school going children reported having been verbally and physically bullied in the last 30 days. ILO estimates show there were 218 million child labourers in 2004, out of which 126 million were engaged in hazardous work. UNICEF estimated 3 million girls and women in sub-Saharan Africa, Egypt and Sudan are subjected to female genital mutilation every year. W.H.O. estimates show that 150 million girls and 73 million boys under 18 have been subjected to forced sexual intercourse or other forms of sexual violence. In 2002 there were 53,000 reported cases of child homicide. A Global School-Based Student Health Survey found that 20% and 65% of school going children reported having been verbally and physically bullied in the last 30 days. ILO estimates show there were 218 million child labourers in 2004, out of which 126 million were engaged in hazardous work. UNICEF estimated 3 million girls and women in sub-Saharan Africa, Egypt and Sudan are subjected to female genital mutilation every year.

In 2007, the Ministry of Women and Child Development (MWCD) released a study report on child abuse. The report discusses incidence of child abuse nationwide. The study of the MWCD found a wide spread incidence of child abuse. Children between the ages of 5-12 are at the highest risk for abuse and exploitation. The study found that 69% of children reported to have been physically abused. Out of these 54.68% were boys. 52.91% of boys and 47.09% of girls reported having been abused in their family environment. Of the children who were abused in family situations 88.6% were abused by their parents. Every two out of three
school children reported facing corporal punishment. In juvenile justice institutions 70.21 % of children in conflict with law and 52.86% of children in need of care and protection reported having been physically abused. With regard to child labour 50.2% of children work all seven days of the week. 81.16% of the girl child labourers work in domestic households, while 84% of the boy child labourers worked in tea stalls or kiosks. 65.99 % of boys and 67.92% of girls living on the street reported being physically abused by their family members and other people.

Lastly the study examined emotional abuse and girl child neglect. The study examined two forms of emotional abuse: humiliation and comparison. Half the children reported facing emotional abuse with 83% of that abuse begin conducted by parents. Girl child neglect was assessed girls comparing themselves to their brothers on factors like attention, food, recreation time, household work, taking care of siblings, etc. 70.57% of girls reported having been neglected by family members. 48.4% of girls wished they were boys. 27.33% of girls reported getting less food then their brothers. Of the young adults (ages 18-24) interviewed, almost half of them reported having been physically or sexually abused as children.

Child abuse in India is often a hidden phenomenon especially when it happens in the home or by family members. Focus with regards to abuse has generally been in the more public domain such as child labour, prostitution, marriage, etc. Intra-family abuse or abuse that takes place in institutions such as schools or government homes has received minimal attention. This may be due to the structure of family in India and the role children have in this structure. Children in India are often highly dependent on their parents and elders; they continue to have submissive and obedient roles towards their parents even after they have moved out of their parental home. This belief that parents and family are the sole caretaker of the child has proved to have negative effects on child protection laws and strategies. Numbers of cases of child abuse in the home are hard to attain because most of these crimes go unreported. Societal abuses that are a result of poverty such as malnutrition, lack of education, poor health, neglect, etc are recognised in various forms by the Indian legal system. But India does not have a law that protects children against abuse in the home. Mal-treatment of care givers has the potential to emotionally and mentally harm children to a very different degree. Studies in intra-familial child abuse in the US have shown correlation to delinquency, crime, teenage pregnancy, and other psychosocial problems.
Can you imagine living in a country where you were held for prison in two weeks, without being allowed to contact your parents, because someone raped you? Though unimaginable, this is the reality for so many of the world’s women and children. So what must we do? How can we help, knowing there are those in the world who do not have the power to help themselves? There are three things you can do in your everyday life to bring change to those who seem worlds away: educate, participate and advocate.

1. **Educate:** The first step to helping is realizing there is a problem. Educate yourself; actively seek out stories and reports about the world’s disenfranchised. Sadly, due to the state of our modern media, many of the most important stories are buried under a mound of useless information (aka celebrity gossip, trends and fluff pieces) thus charging you with the responsibility of staying an educated world citizen.

2. **Participate:** So much of our modern technology serves as a distraction from the important things in life, and yet these same tools can be used to make change in our world. Participate in the global conversation of change. Use your Facebook, Twitter and other social networking sites to make others aware of the issues which are most important to you, be it child abuse in India, the world water crisis or factory conditions in China.

3. **Advocate:** Use your voice. You are lucky enough to live in a country that guarantees you the right to free speech, so use it. Advocate on behalf of those who have no voice. Write to your congresswomen and express your concern, let them know you want more foreign aid to be allotted to the plight of young girls around the world.

And there you have it; three easy steps to change you can incorporate in your everyday life. Remember you are enough and because of that you have the power to help those less fortunate than you. So do your part, use your voice and help contribute to making positive change in the world.