CHAPTER 2

CONCEPTUALISATION OF CHILD SEXUAL OFFENCE IN INDIA AND ITS TYPES

"All kids need is a little help, a little hope and somebody who believes in them." - Earvin "Magic" Johnson

Child sexual abuse has been part of history for centuries but it has not always been an acceptable subject of public conversation. For years, it was taboo in society to discuss any disturbing intimate details of family life and public knowledge about sexual abuse was minimal. Most people, if they knew anything about child sexual abuse, thought that it only happened among the poor and ethnic minorities. Awareness and public discourse about CSA did not occur until the late 20th century. People started to speak openly about child sexual abuse and take concerted action against it. CSA was first widely exposed in the public eye in the early 1970s when feminists led an anti-rape movement and used child sexual abuse as one example of a repressive patriarchal society. Public figures and other non-feminists soon joined in the fight against CSA during the 1970s and 1980s. Politicians took matters into their own hands to try and create government policy to protect children. Part of the motivation for politicians to take action was to gain positive public attention, but political and public interest in the issue of CSA slowly decreased. Feminist organizations were still the leaders in the movement to build awareness of CSA in the 1980s and also called for a new campaign strategy that vocalized the abuse so that victims could tell their stories and let go of the pain. The detailed and harrowing narratives of the victims had the most impact on society and caught the attention of all types of mass media. Newspapers, television stations, magazines and radio stations started covering many reports of childhood sexual abuse, something they had long avoided. Most people who

1He is an American retired professional basketball player. Since his retirement, Johnson has been an advocate for HIV/AIDS prevention and safe sex, as well as an entrepreneur, philanthropist, broadcaster and motivational speaker.
told their stories were adults and were discussing crimes that were committed many years, even decades, before in their childhoods. The coverage of the media about this subject made it a current public concern because the narratives illustrated that child sexual abuse was present in all aspects of society—not just among low socio-economic groups. The personal stories made sexual abuse a real concern for the public because it resonated with many people; encouraging them to get involved in creating policies to protect children. This new awareness has led to extensive research in the area and an improved knowledge base about its causes and possible treatments.

The subject of child sexual abuse is still a taboo in India. There is a conspiracy of silence around the subject and a very large percentage of people feel that this is a largely western problem and that child sexual abuse does not happen in India. Part of the reason of course lies in a traditional conservative family and community structure that does not talk about sex and sexuality at all. Parents do not speak to children about sexuality as well as physical and emotional changes that take place during their growing years. As a result of this, all forms of sexual abuse that a child faces do not get reported to anyone. The girl, whose mother has not spoken to her even about a basic issue like menstruation, is unable to tell her mother about the uncle or neighbour who has made sexual advances towards her. This silence encourages the abuser so that he is emboldened to continue the abuse and to press his advantage to subject the child to more severe forms of sexual abuse. Very often children do not even realize that they are being abused. In a study on Women's Experiences of Incest and Childhood Sexual Abuse conducted by RAHI\(^2\), some of the respondents have stated that till the questionnaire was administered to them they did not realize that they had been abused as children.

They had buried the incident as a painful and shameful one not to be ever told to anyone. Some deep seated fear has always moved Indian families to keep their girls and their 'virginity' safe and many kinds of social and

\(^2\)RAHI Foundation, established in 1996, is a pioneering organization focused on women survivors of Incest and Child Sexual Abuse (CSA).
cultural practices have been built around ensuring this. This shows that there is knowledge of the fact that a girl child is unsafe though nobody talks about it. However this fear is only around girls and the safety net is generally not extended to boys. There is evidence from this as well as other studies that boys are equally at risk.

Many times we can’t prevent ‘sexual abuse’ because of the simple reason that we don’t know what exactly ‘sexual abuse’ is.

American Psychological Association defines ‘sexual abuse’ as:

“Sexual abuse is unwanted sexual activity, with perpetrators using force, making threats or taking advantage of victims not able to give consent. Most victims and perpetrators know each other. Immediate reactions to sexual abuse include shock, fear or disbelief. Long-term symptoms include anxiety, fear or post-traumatic stress disorder. While efforts to treat sex offenders remain unpromising, psychological interventions for survivors — especially group therapy — appears effective.”

The WHO defines ‘child sexual abuse’ as:

“Child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person. This may include but is not limited to:

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4 The World Health Organization is a specialized agency of the United Nations that is concerned with international public health. It was established on 22 July 1946 headquartered in Geneva, Switzerland.
• the inducement or coercion of a child to engage in any unlawful sexual activity;

• the exploitative use of a child in prostitution or other unlawful sexual practices;

• the exploitative use of children in pornographic performance and materials”.

2.1 DYNAMICS OF CHILD SEXUAL ABUSE

The sexual abuse of children is a unique phenomenon; the dynamics are often very different to that of adult sexual abuse and therefore abuse of this nature cannot be handled in the same way. Features that characterize child sexual abuse include:

• Physical force/violence is very rarely used; rather the perpetrator tries to manipulate the child’s trust and hide the abuse.

• The perpetrator is typically a known and trusted caregiver.

• Child sexual abuse often occurs over many weeks or even years.

• The sexual abuse of children frequently occurs as repeated episodes that become more invasive with time. Perpetrators usually engage the child in a gradual process of sexualizing the relationship over time (i.e. grooming).

• Incest/intra familial abuse accounts for about one third of all child sexual abuse cases.

Paedophiles are individuals who prefer sexual contact with children to adults. They are usually skilled at planning and executing strategies to involve themselves with children. There is evidence to suggest that paedophiles may share their information about children

(e.g. child pornography). This can occur at an international level, particularly through the use of the Internet.\(^6\)

### 2.2 RISK FACTORS FOR VICTIMIZATION

A number of factors that make individual children vulnerable to sexual abuse have been identified:

- Female sex (though in some developing countries male children constitute a large proportion of child victims);
- Unaccompanied children;
- Children in foster care, adopted children, stepchildren;
- Physically or mentally handicapped children;
- History of past abuse;
- Poverty;
- War/armed conflict;
- Psychological or cognitive vulnerability;
- Single parent homes/broken homes;
- Social isolation (e.g. lacking an emotional support network);
- Parents with mental illness, or alcohol or drug dependency.

### 2.3 PHYSICAL AND BEHAVIOURAL INDICATORS OF CHILD SEXUAL ABUSE

- **Sexualized behaviors**

  Sexualized behaviors include such activities as kissing with one’s tongue thrust into the other person’s mouth, fondling one’s own or another person’s breasts or genitals, masturbation, and rhythmic pelvic thrusting. Distinguishing inappropriate from developmentally

\(^6\)ibid
appropriate, i.e. normal, sexual behaviors is often very difficult. Generally speaking, sexualized behavior in children could be defined as problematic when:

- It occurs at a greater frequency or at a much earlier stage than would be developmentally appropriate (e.g. a 10 year-old boy versus a 2 year-old boy playing with his penis in public, or a 6 year-old girl masturbating repeatedly in school);
- It interferes with the child’s development (e.g. a child learning to use sexual behaviors as a way of engaging with other people);
- It is accompanied by the use of coercion, intimidation or force (e.g. one 4 year-old forcing another to engage in mutual fondling of the genitals or an imitation of intercourse);
- It is associated with emotional distress (e.g. eating or sleeping disturbances, aggressive or withdrawn behaviors);
- It reoccurs in secrecy after intervention by caregivers.

### Physical and behavioural indicators of child sexual abuse

<table>
<thead>
<tr>
<th>PHYSICAL INDICATORS</th>
<th>BEHAVIOURAL INDICATORS</th>
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<tbody>
<tr>
<td>Unexplained genital injury</td>
<td>Regression in behaviour, school performance or attaining developmental milestones</td>
</tr>
<tr>
<td>Recurrent vulvovaginitis</td>
<td>Acute traumatic response such as clingy behaviour and irritability in young children</td>
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<tr>
<td>Vaginal or penile discharge</td>
<td>Sleep disturbances</td>
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<tr>
<td>Bedwetting and fecal soiling beyond the usual age</td>
<td>Eating disorders</td>
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## Anal complaints (e.g. fissures, pain, bleeding) | Problems at school
---|---
Pain on urination | Social problems
Urinary tract infection | Depression
STI* | Poor self-esteem
Pregnancy** | Inappropriate sexualized behaviours*
Presence of sperm *** |  

*Considered diagnostic if perinatal and iatrogenic transmission can be ruled out.

**Diagnostic in a child below the age of consent.

***No one behaviour can be considered as evidence of sexual abuse; however, a pattern of behaviours is of concern. Children can display a broad range of sexual behaviours even in the absence of any reason to believe they have been sexually abused.

### 2.4 FORMS OF CHILD SEXUAL ABUSE

#### 2.4.1 Physical Abuse

Physical abuse is the forcing of physical injury upon a child. This may include burning, hitting, punching, 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 in appropriate to the child's age.³

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2.4.2 Sexual Abuse

Sexual abuse is inappropriate sexual behaviour 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 ‘child abuse’, these acts have to be committed 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 criminal courts.8

2.4.3 Emotional Abuse

It 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 behavioural, cognitive, emotional, or mental trauma. This can include parents/caretakers using extreme and/or bizarre forms of punishment, such as confinement in a closet or dark room or being tied to a chair for long periods of time or threatening or terrorizing a child. Less severe acts, but no less damaging, are belittling or rejecting treatment, using derogatory terms to describe the child, habitual tendency to blame the child or make him/her a scapegoat.9

2.4.4 Neglect

It is the failure to provide for the child's basic needs. Neglect can be physical, educational, or emotional. Physical neglect can include not providing adequate food or clothing, appropriate medical care,

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supervision, or proper weather protection (heat or cold). It may include abandonment.10

2.4.5 Educational Neglect

Includes failure to provide appropriate schooling or special educational needs, allowing excessive truancies. Psychological neglect includes the lack of any emotional support and love, never attending to the child, substance abuse including allowing the child to participate in drug and alcohol use.11

2.4.6 Behaviours

Child Sexual Abuse includes touching and non-touching behaviours.12

**Touching behaviour includes the following:**

- Touching a child’s genitals (penis, testicles, vulva, breasts, or anus) for sexual pleasure or other unnecessary purpose.
- Making a child touch someone else’s genitals, or playing sexual (pants-down) games.
- Putting objects or body parts (like fingers, tongue or a penis) inside the vulva or vagina, in the mouth, or in the anus of a child for sexual pleasure or other unnecessary purpose.

**Non touching behaviour includes the following:**

- Showing pornography to a child.
- Exposing a person’s genitals to a child.
- Asking children to interact sexually with one another.
- Online enticement of a child for sexual purposes.

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12 https://www.parentsprotect.co.uk/wat_is_child_sexual_abuse.htm, accessed on 3/06/2017
Photographing a child in sexual poses.

- Exposing a child to adult sexual activity in person or through the use of technology.
- Watching a child undress or use the bathroom, often without the child’s knowledge (known as voyeurism or being a ‘Peeping Tom’).

The aim of mentioning such behaviours is to bring to light that abuse goes beyond touching and doesn’t stop at it.

This may include but is not limited to:

(i) The inducement or coercion of a child to engage in any unlawful activity.
(ii) The exploitative use of a child in prostitution or other unlawful sexual practices.
(iii) The exploitative use of children in pornographic performances and materials.

However, for the purpose of this study, sexual abuse is defined as severe forms of sexual abuse and other forms of sexual abuse.

**Severe forms of sexual abuse include:**

a) Assault, including rape and sodomy
b) Touching or Fondling a child
c) Exhibitionism- Forcing a child to exhibit his/her private body parts
d) Photographing a child in nude

**Other forms of sexual abuse include:**

a) Forcible kissing
b) Sexual advances towards a child during travel
c) Sexual advances towards a child during marriage situations
According to Darkness to Light, activities that are classified as sexual abuse include (but are not limited to):

- Touching of a child's genital by an adult;
- An adult telling the child to touch the adult's or another's genitals;
- Voyeurism
- Exposure of the child’s genitals, including photographing the child's genitals or the child in a sexual position;
- An adult masturbating in front of a child;
- Rubbing (masturbating) against a child;
- Oral sex performed on a child or telling a child to perform oral sex;
- Any type of penetration of a child's vagina or anus, however slight, by a penis, finger, tongue or other object;
- Exposing a child to pornography or using a child in pornography;
- Talking, commenting and or teasing a child in sexual ways.

2.5 INDIA COUNTRY EXPERIENCES & MAGNITUDE OF PROBLEM

One of the biggest social stigmas attached to a society is that of child abuse. A child can be abused physically, sexually or mentally. It can be in the form of injury, neglect or negligent treatment, blaming, forced sexual stimulation and activity, incest exploitation and sexual abuse. Child abuse can take place in homes, schools, orphanages, residential care facilities, on the streets, in the workplace, in prisons and in places of detention. Violence in any

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13 Ibid
14 Darkness to Light is a national non-profit organization committed to empowering adults to prevent child sexual abuse.
form has a very deep impact on the overall development of the child. Child abuse results in actual or potential harm to the child's health, survival, development and dignity. 53% of children in India face some form of child sexual abuse. According to the National Crime Records Bureau, the cases of rape and murder of children increase every year. The growing complexities of life and the changed social economic conditions have exposed the children to new and different forms of abuse. But the sad state of the affairs is that such heinous acts are reported less. It has such a psychological impact on the mind of the child that he seldom gathers the courage to speak about the act being committed against him. If even if he confides the fact with someone, the social factors let the fact being dumped under the fear of family reputation and other related issues. In fact child abuse is a violation of the basic human rights of a child.

Sexually abused children are severely let down by systemic failure of the criminal justice system to redress their grievances and by social ostracism associated with such abuse. Only 3% of CSA offences uncovered by, study were reported to the police. It is unsurprising that CSA is severely underreported given the shame and associated socio-cultural stigma, especially if the abuse is in the context of the family. This phenomenon is not unique to India but common to collectivist cultures in other Asian countries where an individual’s experience is ignored so as to protect the family from shame associated with sexual abuse.

In India, the number of children needing care and protection is huge and increasing. Uncontrolled families, extreme poverty, illiteracy result in provision of very little care to the child during the early formative years. Even services that are freely available are poorly utilized. The urban underprivileged, migrating population (a very sizable number) and rural communities are

15“Sexual abuse in women with special reference to children: Barriers, boundaries and beyond” available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3890930/ accessed on 23/05/2017
particularly affected. In large cities, there are serious problems of street children (abandoned and often homeless) and child labourers, employed in menial work. Children in difficult circumstances such as children affected by disasters, those in conflict zones, refugees, HIV AIDS need appropriate care and rehabilitation.\textsuperscript{18}

\textbf{2.6 WIDER IMPLICATIONS OF ‘PROTECTION’}

The term ‘protection’ readily relates to protection from all forms of violence, abuse, and exploitation. However, from India’s perspective, the Indian Child Abuse Neglect & Child Labour (ICANCL) group has strongly propagated the view that ‘protection’ must also include protection from disease, poor nutrition, and illiteracy, in addition to abuse and exploitation. The 9\textsuperscript{th} ISPCAN Asia Pacific Conference of Child Abuse & Neglect (APCCAN)\textsuperscript{19} conference outcome document “Delhi declaration” re-confirmed & pledged a resolve to stand against the neglect and abuse of children and to strive for achievement of child rights and the building of a caring community for every child, free of violence and discrimination. It urged and asserted the urgent need to integrate principles, standards and measures in national planning process to prevent and respond to violence against children.\textsuperscript{20} Very recently the Supreme Court of India in the case of Exploitation of Children in Orphanages of Tamil Nadu v. Union of India\textsuperscript{21} observed a broader and purposeful interpretation of ‘child in need and care’ in S.14(2) of JJ Act, 2015 so that it should also include victims of POCSO Act.

The SC held that Even though a child in need of care and protection is defined in Section 2(14) of the Juvenile Justice (Care and Protection of Children) Act, 2015 (hereinafter referred to as “the JJ Act”) the definition does not specifically include some categories of children. Consequently, we are of the view that


\textsuperscript{19} Conference was held in New Delhi, India from 6th to 9th October, 2011. The theme of the Conference is “Child Abuse & Neglect in Asia Pacific Countries: Challenges and Opportunities”.


\textsuperscript{21} (2017)7 SCC 578
since the JJ Act is intended for the benefit of children and is intended to protect and foster their rights, the definition of a child in need of care and protection must be given a broad interpretation. It would be unfortunate if certain categories of children are left out of the definition, even though they need as much care and protection as categories of children specifically enlisted in the definition. Beneficial legislations of the kind that we are dealing with demand an expansive view to be taken by the courts and all concerned.

A similar view was expressed in *ESI Corpn. Vs Francis De Costa* when it was observed that: (SCC p. 105, para 5)

“5. … It is settled law that to prevent injustice or to promote justice and to effectuate the object and purpose of the welfare legislation, broad interpretation should be given, even if it requires a departure from literal construction.”

The necessity of giving a purposeful interpretation to a provision in a statute was recognised in *MSR Leathers Vs S. Palaniappan*: “29. … one of the salutary principles of interpretation of statutes is to adopt an interpretation which promotes and advances the object sought to be achieved by the legislation, in preference to an interpretation which defeats such object. This Court has in a long line of decisions recognised purposive interpretation as a sound principle for the courts to adopt while interpreting statutory provisions.”

The Union Government and the Governments of the States and Union Territories are directed to enforce the minimum standards of care as required by and in terms of the JJ Act and the Model Rules positively on or before 31-12-2017.

The training of personnel as required by the JJ Act and the Model Rules is essential. There are an adequate number of academies that can take up this task including police academies and judicial academies in the States. There are also national level bodies that can assist in this process of training including bodies like the Bureau of Police Research and Training, the National Judicial

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22 *ESI Corpn. v. Francis De Costa*, 1994 SCC (L&S) 195
23 *MSR Leathers v. S. Palaniappan*, (2013) 1 SCC 177
Academy and others including established NGOs. Wherever possible training modules should be prepared at the earliest

2.7 THE ROOTS OF CHILD ABUSE

Child abuse and child victimization, like any other social harm, stem from certain causes. It should be noted that factors contributing to child abuse in any society depend on economic, social, and cultural conditions as well as the rules that govern that society. For example, in underdeveloped or developing countries, child abuse is often caused by poverty, illiteracy, and parent’s lack of knowledge while in developed countries, poor family foundations is the inconsiderable factor in causing child abuse.

So, family is the most important institution, which, directly or indirectly, plays a major role in child abuse. Family is the essential and most sensitive social unit in shaping the child’s personality, physical abilities, and spiritual characteristics. When this social entity is undermined, children will be the first to be affected by considerable damages, which may lead to a deteriorated future and dark destiny for this group in society.

As mentioned earlier, depending on cultural, economic, and social conditions, many factors contribute to child abuse. This chapter describes and analyzes four important factors, namely child factors, family factors, cultural and social factors and religious factors, as causes of child abuse.

2.8 CHILD FACTORS

Child abuse happens by various reasons. Age, health, psychological and social development increase child maltreatment. “Due to their small physical size, early developmental issues, and need for constant care, infants and young children may be particularly vulnerable to certain forms of maltreatment. Sometimes, a child abused or neglected at home may also experience violence and abuse on the part of other adults and peers at school or in community” .

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“Poly-victimization”\textsuperscript{25}, as it is a situation in which a child experiences multiple types of victimization, can heighten vulnerability.\textsuperscript{26}

The following describe factors that are associated with child abuse and neglect, and explain these issues in terms of the scope of the problem, risk factors, and prevention strategies. In this section we will look at age, gender, disability, and street children as important factors that may contribute to these problems, and explain situations in families and culture as well as religion, which are regarded. In addition, several tips will be offered for identification and assessment of child abuse and neglect, and how to respond to these issues collectively, and where to locate training resources.

\textbf{2.8.1 Age}

When defining child abuse, one must take into account age as a significant factor.\textsuperscript{27} In cases where the victim is young, it will be enough to use the non-specific term “child” however, in cases where victims are considered teenagers, it becomes necessary to identify a point in time when a child becomes an adult.\textsuperscript{28}

Many believe that children under sixteen are vulnerable and should be protected against abuse.\textsuperscript{29} However, today it is accepted that at this age children begin to obtain some degree of autonomy. In addition, it is believed that adulthood occurs at eighteen.\textsuperscript{30} Many problems arise at the interval sixteen to twenty-five.

\textsuperscript{25}The data collected from a national study in the US on child victimization contain evidences which suggest trauma symptoms in poly-victim children are more prominent even that those children who repeatedly experience a single form of victimization. Professionals who work with children must look historically at all experiences of abuse and the interaction among these experiences in order to identify and address the adverse consequences. Finkelhor, D. Ormord, D. Turner, H.A., and Hamby, S. (2005 b), Measuring Poly-victimization Using the Juvenile Victimization Questionnaire, Child Abuse and Neglect, 29: 1297-1312

\textsuperscript{26}Ibid.

\textsuperscript{27}There is a particular concern about very young children when it comes to physical abuse and failure to drive since children at these ages are more vulnerable and dependent. Evidences show cases of child sexual abuse at much younger ages as well as physical abuse at relatively late ages. Corby, Brian. (1993). Op. cit. p. 80. Younger children are more victimized at home than they are by strangers. Older children are likely to be victimized by a wider range of abusers since they have more relationships and spend more time outside home. Radford, Lorraine. (2012). op. cit. p. 71.

\textsuperscript{28}Ibid.


\textsuperscript{30}Ibid.
Teenagers at this age are sometimes regarded as adults while they are legally considered minors and need protection. For the purpose of the CRC, a child is defined as a person below the age of eighteen. Nonetheless, some Islamic countries do not have in place specific and similar measures for defining childhood.

Clearly, lack of a proper demarcation between childhood and adulthood based on scientific and international standards will result in negative consequences in terms of child victimization since once a differential criminal policy is approved and protective measures for this vulnerable group of society are deployed against criminal actions and once required mechanisms are adopted within the internal criminal law, such policies and protections will only cover children if they are legally defined as children.

2.8.2 Gender

The gender of a child is a major factor in discussing child abuse. The process of lawmaking at some points did not coincide with the interests of children, and particularly girls, and departed from the social reality and scientific achievements. This has resulted in obscure laws and ill-defined precedent.

2.8.3 Children with Disability

Obviously, families that have children with physical and mental disabilities experience additional child-rearing strains partly because these children are more vulnerable to abuse and neglect.

“Children with physical, sensory, intellectual, or mental disability are more often stigmatized and marginalized compared to other children. Although all

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31Ibid.
32Ibid.
33In 1989, UN General Assembly passed the UN Convention on the Rights of the Child which was later recognized by many states as a standard for minimum rights of children. Member states are required to incorporate its principles to their laws and policy. CRC is composed of 54 Articles that pertain to civil, economic, social, and cultural rights.
34Ibid.
children may fall victim to violence, the risk is far greater for the disabled children as they experience stigma, negative traditional beliefs, and ignorance on the part of others. In addition, insufficient social support and lack of opportunities for education, employment, and engagement in community activities are among the factors that isolate disabled children and their families from other groups in society, and this situation is worse for disabled children with parents who experience other sources of environmental stress which furthers hardship and strain.”

Moreover, many abusers, in particular sexual abusers, see disabled children as easy victims.\

2.8.4 Street Children

“A street child or street youth is any minor for whom the street has become his or her habitual abode, and who is without adequate protection”. Article 20(1), CRC defines a street child as “a child temporarily or permanently deprived of his or her family environment.”

In its definition, UNICEF has classified these children into two categories: “the first group includes those children who are allowed by their family to work and to earn money for their families. Statistics shows that 95% of street children have family. Outpatient services may be helpful in reducing the harm to these children. Some also believe that collecting and keeping them in dedicated centers for short time may solve the problem.”

36Johnes I (1996). Violence against Children with Mental Disability. In: Children’s Right and Childhood Policies in Europe: New Approaches. Strasbourg: Council of Europe Publishing. p.39. In 1993, Child Protection Center in Kiel, Germany conducted a survey on 63 institutions that were responsible for taking care of mentally disabled children. The results indicated high level of concerns among professionals: 70% believed that violence toward physically or mentally disabled children and teenagers was a frequent concern; 42% reported that such violence may remain unnoticed in their respective institution.


40Ibid.

The second group is composed of those children who have run away from home\textsuperscript{42}, have no parents, or have been abandoned by their families.\textsuperscript{43} Apparently, due to lack of care or parent’s moral corruption, street children are at higher risks that may target their physical health or moral fiber.\textsuperscript{44}

Street children are usually found on the streets of almost all developing countries\textsuperscript{45}, where migrations from rural to urban areas, unemployment, poverty, and broken families have led to their increased number.\textsuperscript{46} They all suffer from deprivation, violence, and fear.\textsuperscript{47} Given the special situations of street children, they are more likely to become victimized in different types of crimes. Therefore, supportive and preventive measures, that match the provisions of Article 20 of the CRC, should include alternatives such as foster placement, Kefalas in Islamic law, adaptation, and if necessary, provision of care in proper institutions.

\textbf{2.8.5 Family Factors}

Some assume that heightened surveillance, monitoring, controls, and the roles played by parents provide children with greater protection against abuse.\textsuperscript{48}

Particular attention must be given to violence toward children within their families.\textsuperscript{49} In addition, children’s development should be studied within environments where they experience direct threat, loneliness, and

\begin{itemize}
\item The run-away rate is predictably larger for children who experience abuse at home. They may drift into the streets where they become more susceptible to sexual exploitation. Tagore, Rabindranath. (1986). Mute Victims. Street children. op. cit. p. 32.
\item Ibid.
\item The governments often ignore the issue of street children, although few governments have taken practical measures to address the issue. Harrington, Michael. (1989). Coercion by Authority: Street children. op.cit. p.60.
\end{itemize}
abandonment. Moreover, children often experience misconduct on the part of those parents who have been the victim of emotionally hard conditions during their childhood and who are reluctant to tell therapists about their background.

The social issues such as divorce, addiction, unemployment or inflation are the most important to increase child abuse. The following describe the significant and main reasons in terms of the scope of the family factors.

### 2.8.6 Poverty and Violence against Children

There is a strong correlation between poverty and different types of abuse. A large body of evidence supports the link between poverty and child abuse. Factors such as extreme stress, unemployment, unstable housing, inadequate community support, threatening environment, and lack of access to healthcare contribute to this association. Parents who are not capable of dealing with these issues lack the ability to protect their children.

### 2.8.7 Divorce, Separation, and Child Custody

Many scholars have raised concerns about how the shapes of family are changing and how this may affect child care practices and children’s behavior.

Children who live with single parents experience helplessness while others remain susceptible to anger, violence, and aggression.

In other words, in divorced families, children not only experience regular violence and abuse prior to divorce, but are also exposed to many threats when they start to live with one parent. Divorce, and probably re-marriage, leaves these children to step parents who are more likely to abuse

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51 See, pp. 264,265.
53 Ibid. p.27.
In addition, criminological and psychological studies show that parent conflicts are threats to foundations of families, expose children to mental pressures, and deny them their basic rights.  

Security, sense of belonging, affection, etc. are among the children’s needs which are not satisfied in a disrupted family, and this interrupts the course of development for children. In cases where these conflicts end in divorce and separation, children experience a wider range of problems, which require a whole other discussion to cover the unwanted consequences that rise from these issues.

2.8.8 Large Families

There are more responsibilities in families with many children. Parents in these families have more to do and this may limit the availability of resources. “The risk of physical abuse is higher for children who live in large families, particularly if they suffer from poverty and deprivation. In these families, or low-income families, parents feel greater pressure and tension as they have to use limited resources to take care of a baby and probably older siblings.”

Statistical data obtained from a study on conditions of the families where children have been abused indicated that 56% of these children lived in families with more than 4 members. Therefore, child abuse is more likely in families with a larger number of family members.

2.8.9 Drugs and Alcohol

Parents or caregivers addiction to drugs or alcohol is a leading factor in intensified child abuse and neglect especially when the addicted person experiences extreme pressure and makes severe physical harms to children.

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56 A survey on abused children and the structure of their families in Iran revealed that 11% of these children live in reconstituted families. Ghasemzadeh, F. (2011), Say Yes to What Children Need, Madar Ma Publication.

57 Ibid.


“A drunken parent or one who is under drug influence cannot provide adequate supervision. These people are isolated from the society and lack community support. “Alcoholic or addicted parents focus on drug and alcohol and do not have the required time and energy to take care of children. These families particularly experience inconsistent practices and attention. While children of these families are sometimes subjected to strict discipline and attention, at other times they receive little or no attention.”

“In families with addicted parents, sometimes it takes a large amount of time and effort to find and pay for drugs. Also, children sometime inappropriately receive drug or alcohol and find the substances left by their parents. An addicted life-style is totally unstructured. Children with addicted parents often see their physical and psychological need unmet. They receive little or no attention. In highly broken families, children may even lack access to food, physical care, or medical care, even in emergencies.”

Stress and tension arising from recurrent illnesses and financial and interpersonal issues lead to intensified violence between addicted or alcoholic parents, and between parents and children.

2.9 CULTURAL AND SOCIAL FACTORS

Child abuse is a complicated experience and it becomes more complex when culturally based differences in beliefs, preferences, and behaviors come in to play.

“Definitions of acceptable, or unacceptable, behavior are a part of the culture and, therefore, have to be studied in that context. Efforts made to alter these definitions or to use new ones are associated with the core values of the

62Ibid
64Ibid
society and how members treat each other. Thus, the outcome of such efforts represents the distribution of cultural power.”

Struggles to promote human rights rely on cultural and social values, which affect the definition of human rights violation. Even by reviewing vague wording and minimal standards one may realize that although some States parties do not agree with specific measures of values in connection to human rights, they still endorse these rights. For instance, Article 1, CRC defines a child as “every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.” By invoking this definition, States parties can freely define children or non-children while eliminating controversial issues associated with religion or culture. In this way, some States parties discontinue protections for children who are under eighteen and, based on religious or cultural beliefs, put the interests of children at a high risk.

Mindsets, cultures, or beliefs will not be changed by human rights. They may only become subject to gradual changes, which can facilitate the process through which any legal remedy may impose its impact. Human rights only facilitate the formation of communities, shared discourse, and contexts that bridge past to future and help bringing creativity and change into traditions.

2.10 RELIGIOUS FACTORS

A major factor contributing to increased or decreased level of child abuse is religion. Each religion usually defines certain rules of social conduct

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68 Ibid.
69 Ibid.
70 Ibid.
71 Ibid.
72 For example, in a competitive environment, organizations need cheapest and easy-to-control workforce. Child labor indicates that some international causes cannot be readily remedied by law and how child rights violations may lead to abuses. Ibid.
73 Ibid.
Religions are responsible for protecting children as persons who will build the future of society and future of religion.  

**Beliefs about Corporal Punishment in Islam**

Some religious figures and leaders believe that there are hadiths by Prophet Muhammad and Imam Ali that allow parents to use corporal punishment. They argue that based on these hadiths, parents may beat or corporally punish their children. However, all these hadiths are related to praying and allow parents to punish a seven, eight, or ten-year-old child who refuses to say his/her prayer.

An important point to note here is that parents intentional behaviors to harm children may not be justified in any way. Corporal punishment that results in cuts or bruises is forbidden in religion and that is why religious legislators have provided for financial sanctions for this type of crime. A question that may arise is that whether such financial penalties can make up for physical and psychological harms that the child may suffer from for the rest of her life. On the other hand, Islam calls for kindness and benevolence and mainly emphasizes reward instead of punishment. Rewarding strategies, therefore, can be used to increase the child’s interest in religious matters.

**Circumcision of Children in Islam**

‘Circumcision’ is a concept found in Judaism, Christianity and Islam. There are both male and female circumcisions based on cultural or religious factors in some countries. Every

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75 Ibid.
80 Ibid.
year thirteen million boys and two million girls fall victim to this practice. The age at which circumcision is performed is different, but it is preferably that the child be circumcised early, in the first days, and that he not reach puberty intact.

The Koran as a main source of Muslim Law is silent about male and female circumcision. Opponents of the practice of circumcision interpret this silence as Koranic philosophy of perfection of God's creation; thus regarding circumcision as contrary to Koran. Proponents prefer to take refuge behind two ambiguous verses, which according them, sustain male circumcision. They agree that female circumcision has no basis in the Koran, but they add this is because the Koran did not regulate all social questions and that its lacunae must be filled by resorting to the Sunnah of Mohammad, the second source of Muslim Law. But recourse to the Sunnah is not an easy thing. Indeed, the authenticity of many narratives assigned to Mohammad is put in doubt and some Muslims even refuse any resort to the Sunnah.

It should be mentioned that throughout history, human beings have altered their bodies and the bodies of others, with a significant amount of destructive urges focusing on the genitalia. If circumcision is to occur at all, then it should be allowed only after removing any high risk factors to children.

The rapid development of international conventions and demands for the internationalization of the rights of children creates obligations; these obligations require duties and duties call upon positive actions which have to be fulfilled by all States parties regardless of their political, military, economic or geographical differences. In addition, the globalisation of the international political and legal community is based on trust, transparency and equality of all States parties before the law. All this means that international conventions

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82 Ibid. p.355
83 Ibid. p.10.
84 The way of life prescribed as normative in Islam, based on the teachings and practices of Muhammad and on exegesis of the Koran. http://www.thefreedictionary.com
85 Ibid.p.106.
86 Ibid.p.8.
require authentic application and enforceability before national, regional and international courts. This is particularly essential in the case of protection of the rights of minors who are incapable of protecting and safeguarding themselves. Again, this means that States parties and international entities have to take seriously their responsibility for the implementation of the rights of children and demonstrate the efficiency of their legislation. This can best be seen in many European Union laws which have extensively protected the rights of children with the chief intention of fulfilment of the best interest of the child and accountability of those who are recognised as the violators of the rights of the child. In so doing, European States parties such as Germany have endeavored to prevent for the occurrence the basic reasons of crimes against.

The raison d’être for child abuse are inter alia age, gender, disability, street children and family conditions such as poverty, large family, drugs, alcohol and divorce.

In the case of child abuse, age and gender are two of the most challenging and provocative issues under. Particularly the question of age is one of the most complicated issues, involving complex and problematic legal dilemmas. This should particularly be underlined when it grasps the serious collision of marriage, childhood and adulthood compared with that of international standard. A qualified comparative examination between the position of international and national regulations regarding the victimization of children based on the perspective of age demands. This is particularly problematic regarding the age of girls. They are also regrettably considered as the carriers of cultural, theological, social and matrimony duties, the conditions of which are often provocative. The instance of the latter creates much more complicated result when it comes to the period of pregnancy and giving birth to a child. This problem of age is much more tangible in less populated cities and villages where family units have particular responsibility for the protection of their daughters and their premature marriages.

87It is a French expression commonly used in English, meaning "reason for being" or "reason to be".
Data on violence against children, especially girls, shows a fraction of the real picture.\textsuperscript{88}

- In 2012, 9500 children and adolescents were killed in India, representing 10 per cent of all children globally and making India the third largest contributor to child homicide after Nigeria and Brazil (WHO 2014, Global Health Estimates).

- In India, one in three (34 per cent) of adolescent girls (aged 15-19) married or in union have experienced physical, sexual or emotional violence by their husband or partner. Among these, more than one in 10 (13 per cent) have experienced sexual violence by their partner.

- Almost half of girls (45 per cent) and boys (48 per cent) justify wife beating.

- Twelve million adolescent girls – that is almost one in five – have experienced physical violence since the age of 15.

- In these cases, the most common perpetrator of physical violence for married girls is the husband or partner (33 per cent). For non-married girls the mother or stepmother is the most common abuser (41 per cent), followed by the father or stepfather (18 per cent) and teacher (11 per cent).

- Of girls aged 15-19 years, 2.6 million, or 4.5 per cent, married or unmarried, have experienced forced sexual intercourse or another form of forced sexual act. The majority of girls who experienced forced sexual intercourse – about two-thirds –suffered sexual violence in the ages 15 to 19, although girls did experience sexual violence throughout childhood.

\textsuperscript{88}http://unicef.in/Whatwedo/28/Violence-Prevention-and-Response, last accessed on 4 june 2017
The most common perpetrator of sexual violence is the husband or partner (77 per cent of girls). Only 3 per cent of girls reported sexual violence by a stranger.

Thus the Researcher after analyzing the data on child sexual violence also found that the UNICEF and IMA join hands to help doctors to identify, treat cases programme aiming to build a nation-wide cadre of doctor-trainers who can later disseminate the knowledge at different levels. In 2012, India adopted the Protection of Children from Sexual Offences (POCSO) Act, a comprehensive law which defines a child as any person below the age of 18. The POCSO Act applies to all cases of sexual assault on a child and defines sexual offences as penetrative sexual assault\(^{89}\), (non-penetrative) sexual assault\(^{90}\), sexual harassment \(^{91}\) and use of a child for pornography.\(^{92}\)

Announcing the special partnership, UNICEF India and IMA said they will equip medical practitioners with a detailed understanding of diverse facets.

\(^{89}\) Section 3- Penetrative sexual assault : A person is said to commit "penetrative sexual assault" if— (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person or (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.

\(^{90}\) Section 7- Sexual assault : Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.

\(^{91}\) Section 11- Sexual harassment : A person is said to commit sexual harassment upon a child when such person with sexual intent,- (i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or (ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or (iii) shows any object to a child in any form or media for pornographic purposes; or (iv) repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means; or (v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act; or (vi) entices a child for pornographic purposes or gives gratification there for.

\(^{92}\) Section 13- Use of child for pornographic purposes : Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification, which includes— (a) representation of the sexual organs of a child; (b) usage of a child engaged in real or simulated sexual acts (with or without penetration); (c) the indecent or obscene representation of a child, shall be guilty of the offence of using a child for pornographic purposes.
of child sexual abuse (CSA), along with relevant legal provisions. Medical practitioners are often the first point of contact in a child sexual abuse case and are required to take prompt action to ensure immediate and effective treatment of the child. The programme aims to build a nation-wide cadre of doctor-trainers who can later disseminate the knowledge at different levels. Under the supervision of IMA state branches, these doctor-trainers will take the training forward to state and district levels. To assist these trainers, UNICEF has provided technical support to IMA for the preparation of a teaching manual and key messages for doctors. The focus will be to inform and implement 10-key action points about child sexual abuse that every doctor 93 should know while handling such cases.

The Indian government should improve protections for children from sexual abuse as part of broader reform efforts following the gang rape and murder of a student in New Delhi in December 2012, Child sexual abuse is disturbingly common in homes, schools, and residential care facilities in India. A government-appointed committee set up after the New Delhi attack to recommend legal and policy reform has found that child protection schemes “have clearly failed to achieve their avowed objective.” The 82-page report, “Breaking the Silence: Child Sexual Abuse in India,” examines how current government responses are falling short, both in protecting children from sexual abuse and treating victims.94

In the present light circumstances it is also to be noted that sometimes the police blame the 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,

93 Under Section 166B of the Indian Penal Code -whoever, being in charge of a hospital, public or private, whether run by the centeral government, the state government, local bodies, or any other person, contravences the provisions of section 357C of the code of criminal procedure, 1973 (2 of 1974), shall be punished with imprisonment for a term which may extend to one year or with fine or with both.
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 Watch⁹⁵ said. “India’s system to combat child sexual abuse is inadequate because government mechanisms fail to ensure the protection of children,” said Meenakshi Ganguly, South Asia director at Human Rights Watch. “Children who bravely complain of sexual abuse are often dismissed or ignored by the police, medical staff, and other authorities.”⁹⁶ The report uses detailed case studies rather than a quantitative analysis to examine government mechanisms to prevent and respond to child sexual abuse. Human Rights Watch conducted more than 100 interviews with victims of child sexual abuse and their relatives, government child protection officials and independent experts, police officers, doctors, social workers, and lawyers who have handled cases of child sexual abuse. Addressing child sexual abuse is a challenge all over the world, but in India shortcomings in both state and community responses add to the problem, Human Rights Watch said. The criminal justice system, from the time police receive a complaint until trials are completed, needs urgent reform. Poorly trained police often refuse to register complaints. Instead, they subject the victim to mistreatment and humiliation.⁹⁷

Doctors and officials said that the absence of guidelines and training for sensitive medical treatment and examination of victims of child sexual abuse contribute to trauma. In four of the cases documented by Human Rights Watch, doctors had used the ‘finger test’⁹⁸ as a part of the examination of girl rape victims.¹⁰³

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⁹⁵Human Rights Watch is an International NGO that conducts research and advocacy on human rights. HRW is headquartered in New York. The group pressures governments, policy makers and human right abusers to denounce abuse and respect human rights.

⁹⁶Supra note 94


⁹⁸In Lillu V State of Haryana (2013) 14 SCC 643 the SC held “Undoubtedly, the two-finger test and its interpretation violates the right of rape survivors to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot ipso facto, be given rise to presumption of consent,” Medical procedures should not be carried out in a manner that constitutes cruel, inhuman or degrading treatment and health should be of paramount consideration while dealing with gender-based violence.
victims, even though forensic experts say that the test has no scientific value, and a top-level government committee has called for it to be abolished. “It is hard enough for a sexually abused child or their relatives to come forward and seek help, but instead of handling cases with sensitivity Indian authorities often demean and re-traumatize them,” Ganguly said. “The failure to implement needed police reforms to be more sensitive and supportive to victims has made police stations places to be dreaded.” The sexual abuse of children in residential care facilities for orphans and other at-risk children is a particularly serious problem, Human Rights Watch said. Inspection mechanisms are inadequate in most parts of the country. Many privately run facilities are not even registered.

As a result, the government has neither a record of all the orphanages and other institutions operating in the country nor a list of the children they are housing. Abuse occurs even in supposedly well-run and respected institutions because of poor monitoring. Set up by the government in December 2012 in the wake of the Delhi attack, a committee headed by Justice J.S. Verma has made several recommendations to address sexual assault and expressed particular concern over the plight of children in residential care institutions. Instead of facilitating investigations into allegations of child sexual abuse, managers of facilities engage in denials and dismissal of complaints. After investigating allegations of abuse in one such facility, Vinod Tikoo, member of the National Commission for the Protection of Child Rights said that it revealed a massive breakdown. “It is not neglect. It is systemic failure,” he told Human Rights Watch. “Shockingly the very institutions that should protect vulnerable children can place them at risk of horrific child sexual abuse,” Ganguly said. “State governments should immediately implement a more effective system to register and rigorously monitor government, private, and religious child care institutions.”
Human Rights Watch welcomed the enactment of the Protection of Children from Sexual Offences Act in 2012. By adopting this law, the Indian government took a significant step in acknowledging and attempting to address the widespread sexual abuse of the country’s children. Under the law, all forms of child sexual abuse are now specific criminal offenses for the first time ever in India. The law also establishes important guidelines for the police and courts to deal with victims sensitively and provides for the setting up of specialist child courts. However, the government needs to ensure proper implementation of the act and other relevant laws and policies so that there is a vigilant safety net, Human Rights Watch said. This is particularly vital because children are often sexually abused by people known to them and regarded as authority figures, such as older relatives, neighbors, school staff, or the staff and older children in residential care facilities for orphans and other at-risk children.

Implementation of existing measures to improve the well-being of the country’s children, including the Integrated Child Protection Scheme, the Juvenile Justice Act, and creation of independent child rights commissions, remains a challenge.

The Indian government should provide training and resources to ensure that the police, doctors, court officials, and government and private social workers, including child welfare authorities, managers of children’s residential care institutions, and school authorities, respond properly when there are allegations of child sexual abuse. The government should take immediate steps to address the lack of faith in government institutions that prevents many people from reporting child sexual abuse by holding to account those that fail to handle such cases in a prompt and sensitive manner. India is a party to the core international human rights treaties that protect children, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child, and the Convention on Elimination of All Forms of Discrimination against Women. These treaties impose an obligation on states at all levels of government to take measures to protect children against sexual violence and abuse, and to provide a remedy where fundamental protections
have been violated. The ICCPR not only holds a state responsible for protecting individuals from abusive state action, but for responding appropriately and effectively to abuses committed by private actors.

The Indian government at the highest levels recognizes that much more needs to be done to protect the country’s children from sexual abuse, but it has yet to take significant steps to address problems of discrimination, bias, and sheer insensitivity.

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