

CHILD ABUSE IN INDIA AND UNITED STATES OF AMERICA*

ABSTRACT

The paper discusses the origin of child protection laws in India and the United States of America and how they have evolved over time to take the form of the laws prevalent at present in both the countries. The purpose of this Article is to understand the concept of child abuse, what it constitutes, highlight the instances of child abuse through all these years in both the countries and examine what needs to be done in order to tackle it. The paper probes into important cases of child abuse in order to draw attention to the need for more organized law in both the countries. Further, the paper examines some of the legal provisions and underlines the shortcomings in the laws of both the countries. The paper has addressed the problem of enforcement of laws in India and the United States by exploring these provisions and their impact on the cases.

Key Words: *Child Abuse, India, United States of America, Sexual Abuse, Physical Abuse, Mental Torture, Negligence.*

INTRODUCTION

Overcoming abuse doesn't just happen, it takes positive steps everyday. Let today be the day you start to move forward. Maggie Young, Assunta Harris

Child abuse is second in terms of reported violence after violence against women. According to an estimate made by the UNICEF, millions of children are victims of sexual abuse.¹ Child abuse could be physical, mental, and sexual or torture by negligence. Negligence occurs when parents fail to cater to child's development, with regard to his/her health, education, nutrition, shelter and emotional development.²

*Prerana R. Saraf, Advocate, Bangalore, preranars@gmail.com

¹ *Sexual Violence Against Children*, UNICEF, Feb. 2nd, 2015, http://www.unicef.org/protection/57929_58006.html. (Last visited Aug. 31st, 2015).

² Dr. Loveleen Kakkar, Srinivas Vardan and Pravesh Kumar, *Study on Child abuse: India 2007*, Ministry of Women and Child Development, 2007 <http://www.childlineindia.org.in/pdf/MWCD-Child-Abuse-Report.pdf>. (Last visited Aug. 28th, 2015).

Children who have been victims of child abuse tend to keep it to themselves and hold back from sharing it with anyone. The harassment that these children suffer in silence leads to various emotional complexities. The child might fall into depression, social withdrawal, have anxiety attacks, suffer from mental problems or even worse, decide to commit suicide. It is important for the society to be aware, acknowledge the barbarity of child abuse and demand for well-settled laws in order to safeguard the rights of the children.

This paper discusses the present situation in India, the history of child abuse and how the need for legislation on child abuse was felt, it then explores the cases on child abuse in India, the international conventions of which India is part of and the national legislations that address child abuse, how the laws have changed to meet the present times and the challenges that the legislations face. It further discusses the importance of reporting these cases and the procedure involved and then concludes as to what needs to be done in order to avoid the loopholes.

Similarly, the paper discusses child abuse in the United States of America, the history of how the laws on child abuse were enacted, explores the cases involving child abuse, the national legislations that address child abuse, the amendments that have made in the legislations lately in view of the present situation, the challenges in the implementation of the law and recommendations for effective implementation of the law.

INDIA

A study on Child Abuse by the Government of India in 2007 supported by Save the Children and UNICEF has revealed that two out of every three child in India are physically abused out of which 88.6% of the children are physically abused by their own parents. Also, 53% of the children have faced one or more forms of sexual abuse exhibiting that children are victims of repeated abuse as the incident is not reported immediately.³ It is eerie to know that so many children are being abused in our country and it is even more frightening because it happens within the closed doors of private homes, in the vicinity of schools, by caretakers, at railway platforms, in jails, etc. Child abuse is shrouded in silence.

1. HISTORY:

Earlier, cases relating to child abuse were brought under **The Indian Penal Code**⁴, which provides punishment for sexual offences. However, it has no definition for *child abuse*. Provisions relating to physical abuse of women were extended to children as well. Sections

³ India Committee of the Netherlands, Ministry of Women and Child Development, *Study on Child Abuse: India 2007*, www.indianet.nl/docs/childabuseIndia.doc. (Last Visited Nov. 24th, 2015).

⁴ Indian Penal Code 1860, Sec. 376, 354.

376 and 354 punish offences viz. rape, sodomy or unnatural sex but these are not interpreted to cover the range of child abuse. It does not covers filming and fondling of children for pornographic purposes. Only penal penetration is considered as grave sexual offense, other offences are considered less offensive. Further, under Section 377, punishment for unnatural sex extends to 10 years.⁵

Earlier, all types of physical abuses were not covered adequately. If a girl was the victim of non-penetrative sexual abuse, the perpetrator would be charged with *assault with an intention to outrage the modesty of a woman*. If a boy were abused, then the perpetrator would be charged under colonial-era-anti homosexual law for *carnal intercourse against the law of nature*. Moreover, they could only be charged if the police officers were of the opinion that the laws covered non-penetrative acts as well, which was not always the case. Also, it is germane to note that most children are victims of repeated abuse, as they keep it to themselves causing mental trauma.⁶ However, the legislature has not felt the need to enact a provision, which deals with repeated offense.

In 2007, **Ministry of Women and Children Development (MWCD)** released a report on nationwide child abuse. According to the report, there was a widespread incidence of child abuse. 69% of the children were reportedly physically abused out of which majority were abused by their own parents.⁷ Yet, laws relating to children were very inaccurate and lousy under the IPC. Offences relating to children were covered under provisions such as *outraging the modesty of a woman*. Interpreting modesty of a woman in context of a child is injudicious. It is absurd that it took so long for a country that has innumerable instances of child abuse to take notice of this.

2. THE CASES:

Monster Mother Case Pune, India

With regard to the viciousness in every case of child abuse, a recent bestial act committed by a mother on her partially handicapped 13-year-old son in Pune, Maharashtra is an appalling example. To make matters worse, she claimed that she killed her son as he tried to make sexual advances towards her. However, upon investigation it was found that she killed her son, as she wanted to claim Rs. 10 lakh insurance policy that was in her son s name. The

⁵ Alok Kumar & Ors, *The Problem of Child Sexual Abuse in India Laws, Legal Lacuna and the Bill PCSOB-2011*, J INDIAN ACAD FORENSIC MED. Vol. 34, No. 2, April-June 2012.

⁶ Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Dec.18, 1979, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46), 193, U.N. Doc. A/34/46.

⁷ Childline 1098 Night & Day, *Child Protection and Child Rights*, <http://www.childlineindia.org.in/child-abuse-child-violence-india.htm> (Last visited Aug. 28th, 2015).

neighbors also made statements saying she used to beat him repeatedly to keep him under her control. She had restrained him from going to school since Class 6 and would never let him go out to play.⁸ The mother killed her own son because of her insatiable want for money. This is just one such incident; there are millions of such nightmarish abuses against children occurring every year.

Case of Amrita Bangalore, India

In December, 2009, a 14 year old Amrita was admitted to a hospital in Bangalore with 23 burns and bruises on her body and she recalled the ordeal of how the couple for whom she worked as a maid, used rolling pin and frying pan to beat her up. Her employers were arrested on charges of physical abuse and she was sent to a residential care facility.⁹

Case of Drone Foundation Haryana, India

It was one of the most ghastly cases of institutional abuse wherein children affected by HIV were living in their residential facility for medical care and schooling and were abused by the 42-year-old owner, Ankur Gupta. The facility's name was Apna Ghar. The children were threatened to not talk about it or he would throttle their neck. When a girl child tried telling others, she was slapped. The incident came to light only in 2012 when an employee called the helpline for children called Childline. The place was raided within hours and the children were rescued.¹⁰

There are a horde of such cases, which requires adequate laws and efficient enforcement to tackle them.

3. INTERNATIONAL TREATIES:

India is part of many international human rights treaties that protect children. They are: **International Covenant on Civil and Political Rights (ICCPR)**¹¹, **Convention on the Rights of the Child (CRC)**¹², and **Convention on Elimination of all forms of**

⁸ Chaitrally Deshmukh, *Monster Mom beats 13 year old with a Cricket Bat*, <http://www.mid-day.com/articles/monster-mom-beats-13-year-old-to-death-with-a-cricket-bat/16433178> (Last visited 7 Aug. 2015).

⁹ *13 year old Domestic Maid Tied by the Techie Couple, Brutalised*, <http://www.newindianexpress.com/cities/bengaluru/13-year-old-Domestic-Maid-Tied-Up-by-Techie-Couple-Brutalised/2014/08/09/article2370965.ece> (Last visited 9 Aug. 2014).

¹⁰ Varinder Bhatia, *Haryana Government moved sexually abused HIV+ girls from Apna Ghar*, (Jun. 19, 2012), <http://archive.indianexpress.com/news/haryana-govt-moved-sexually-abused-hiv--girls-from-apna-ghar/963585/> (Last visited 21 December 2015)

¹¹ International Covenant on Civil and Political Rights (ICCPR), Dec. 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16), 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171.

¹² Convention on the Rights of the Child (CRC), G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N.Doc. A/44/49 (1989).

Discrimination against Women.¹³ These Conventions impose an obligation on India to protect child rights.

ICCPR's objective is to hold state responsible for not just abusive state acts but also acts committed by a private party. If a state is unable to prevent, punish, investigate or redress the harms caused by these acts, then they are said to be violating the covenant.¹⁴

CRC sets out the nadir of the protection that is required to be given to all children under the age of 18. CRC has to undertake all possible steps to protect them from sexual abuse and exploitation. More importantly, it also imposes the obligation on States to ensure physical and psychological recovery of children who are affected by any kind of abuse or exploitation.¹⁵

CEDAW has worked closely with CRC in bringing about guidelines for protection of women and children alike. CEDAW has consistently suggested that people from all walks of life including professionals, politicians, doctors, religious leaders, police authorities have to participate and co-operate in order to enforce child protection and deliver justice in such cases.¹⁶

4. NATIONAL LEGISLATIONS:

At present, the laws in India, with regard to protection of children against child abuse are:

(A) THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000

The objectives of the Act are to ensure adequate quality of mental health, monitoring children individually to assist in their overall development, segregation of children in residential facilities according to their age, etc.¹⁷ However, there is no harmony between this Act and Prohibition of Child Marriage Act, 2006, The Child Labour Prohibition and Regulation Act, 1986, or The Right to Education Act, 2009. According to Juvenile Justice Act, a child is anyone who is under the age of 18. However, under Child Marriage Act, for male, child is under the age of 21 and for female, under the age of 18. Moreover, the Juvenile Justice Act

¹³ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13,

¹⁴ Human Rights Committee, General Comment 31, *Nature of the General Legal Obligation on State Parties to the Covenant*, Para. 9, U.N. Doc. CCPR/C/21/Rev. 1/Add.13 (2004).

¹⁵ Committee on the Rights of the Child, *Concluding Observations: Benin*, Para 70(f), CRC/C/BEN/CO/2.

¹⁶ Joint General Recommendation, Committee on the Elimination of Discrimination against Women Comment and Committee on Rights of the Child, *Rights of the Child on Harmful Practices*, Comment No. 18, CEDAW/C/GC/31-CRC/C/GC/18.

¹⁷ The Juvenile Justice (Care and Protection of Children) Act [Act No.56 of 2000] 30th December, 2000.

does not deal with child sexual abuse or any kind of other abuse.¹⁸ What is even worse is that while the Juvenile Justice Act declares a girl under the age of 18 as a minor, it does not offer protection to a girl under 18 when she is married to someone and she is sexually abused by her husband. In 2014, United Nations Committee on Rights of Child documented the plight of such girls and stressed the need to criminalise marital rape of girls under the age of 18.

(B) NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, 2007

The Commission plays a vital role in protection of children from abuse in India. It analyses existing laws and policies, and investigates incidents of child abuse. It can also take up suo motu investigations, if it feels that a complaint is not being taken up honestly and follows up on the case, as it is a quasi-judicial body. It led the investigation of sexual abuse of children in residential institutions in Haryana in the year 2012 and found that the State has unfortunately failed in protecting child rights and held a meeting with the top officials of Haryana to undertake the necessary steps. All states have to establish State Commission for Protection of Child Rights in their respective states but only 15 states have established the commission. The appointments in the ones that are established are not transparent.¹⁹

(C) INTEGRATED CHILD PROTECTION SCHEME, 2009

One of the benchmarks of Ministry of Women and Child Development was the initiative to improve child protection measures in India: the Integrated Child Protection Scheme, 2009.²⁰ The plan was to appoint social workers and establish committees in every district to look after child protection. The need for such a scheme was felt as various measures for child protection were failing due to lack of financial resources, lack of support to children and families involved in child abuse and lack of training for officials involved in child protection.

While the objective of the Integrated Child Protection Scheme was appreciated and it boasted of a lot of effective ideas, it is noticed that in spite of the scheme, the situation in India remains largely unchanged. The reason is that India is a large country and government machinery struggles to administer the situation. However, on a positive note one measure of the ICPS is Child Helpline, which has been a success. The Ministry, in partnership with a

¹⁸ Dr. Loveleen Kakkar, Srinivas Vardan and Pravesh Kumar, *Study on Child abuse: India 2007*, Ministry of Women and Child Development, 2007 <http://www.childlineindia.org.in/pdf/MWCD-Child-Abuse-Report.pdf>. (Last visited Aug. 28th, 2015).

¹⁹ *19 States, UTs yet to set up Panel to protect Child Rights*, TIMES OF INDIA, http://articles.timesofindia.indiatimes.com/2013-01-04/india/36148272_1_child-rights-uts-union-territories (Last visited January 4, 2013).

²⁰ Human Rights Watch, 2013, *Breaking the Silence, Child Sexual Abuse in India*, <http://www.hrw.org/sites/default/files/reports/india0113ForUpload.pdf> (Last visited Aug. 22, 2015).

NGO named as ChildLine India Foundation, launched it in 1996 in Mumbai and it now operates in more than 200 cities. It has received over 21 million calls.²¹

D. PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT 2012:

In order to come to grips with the unbridled number of child abuse cases, the Government of India introduced Protection of Children from Sexual Offences Act, in 2011 that for the first time dealt exclusively with sexual offences against children. It proposed establishment of special courts for such cases, a jail term of up to 7 years and a fine of up to Rs. 50,000. Subsequently, the Lok Sabha passed the Bill on 22nd May 2012.²²

The Act is particularly important as it was passed to strengthen the legal provisions for the protection of children from sexual abuse. As mentioned earlier, sexual offences are covered under different sections of IPC but it does not differentiate between adult and child victims.

Whereas, the Protection of Children from Sexual Offences Act, 2012 defines child as anyone under the age of 18 years and protects him or her from sexual abuse. It provides for stringent punishments graded on the basis of gravity of the offense and provides child friendly procedures like conduct of trial in-camera in special courts without revealing the identity of the child, the child can have a parent or have assistance from an interpreter, or other professionals while giving evidence.

It also provides that a spouse of a person below 18 years can be prosecuted irrespective of whether the marriage was contracted voluntarily as marriage of a girl below 18 years is voidable not void-ab-initio.²³ Also, even though the age to legally consent to sexual intercourse is 18 years for girls,²⁴ it would be unfair to let a man rape his minor wife though she does not consent with it just because she is married to the man violating her. Therefore, the Act rightly provides punishment for marital rape if the victim is below 18 years old. The Act also provides that all cases of child sexual abuse must be disposed off within a year.

As the Protection of Children from Sexual Offences Act, 2012 is believed to be a comprehensive piece of legislation dealing with every form of child abuse. It is important to scrutinize it at length to understand how beneficial the Act really is.

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012:

²¹ *Ibid.*

²² The Protection of Children from Sexual Offences Act [No.32 of 2012], 20th June, 2012.

²³ Prohibition of Child Marriage Act, 2006.

²⁴ Criminal Law (Amendment) Act, 2013.

One of the major issues with Protection of Children from Sexual Offences Act is the provision that mandates consent before medical examination. The Act is not clear about what is to be done if the child refuses to undergo examination but parents are willing to get their children examined. An eminent scholar of Bengaluru, Suresh Bada Math is of the opinion that parents consent should be enough if the child is below the age of 12 years and consent of both the child and parents should be taken if the child is between 12-18 years old.²⁵ However, one should not get into the legality of such issues when it comes to treatment of a child who is in critical situation.

Lack of availability of female doctors is another setback in the implementation of the Act. Moreover, the Act does not deal with the issues of child marriage. An article published recently in July 2015 by the Bengaluru Scholar Suresh Bada Math, in Indian Journal of Medical Research suggests that the extent of child abuse can only be curbed if Protection of Children From Sexual Offences Act, 2012 is productively amended to incorporate the following changes: (i) The consent provision wherein, emergency treatment needs to be initiated without getting into consent issues or legality to protect the right of the child.²⁶ (ii) The Act should provide that the medical examination of all victims, including girls must be done by the available medical officer, as female medical officers are not always available. (iii) Sexual intercourse between two adolescents should not be an offence if it is consensual. Apart from these, training to all the concerned officials and reporting laws need to be made more efficient.

CHALLENGES IN THE ACT:

While the Act has benefits like:

- (i) it is gender neutral
- (ii) shifts the burden of proof on the accused, and
- (iii) it brings a distinction between sexual assault and penetrative sexual assault.

However, the issue with the Act is that it criminalizes sexual act with anyone under the age of 18 even if it is consensual. Many experts have criticized this new age of consent as too high. It is in total disregard to the social reality as the law intends to assume that all adolescents in the country are sexually inactive and in any case of an adolescent sexual activity, the law

²⁵ Nitindra Bandyopadhyay, *A Child is Abused Every Second, Says Study*, <http://www.newindianexpress.com/cities/bengaluru/A-Child-is-Abused-Every-Second-Says-Study/2015/09/01/article3003404.ece1> (1 Sept. 2015).

²⁶ Moirangthem S, Kumar NC, Math SB, *Child Sexual Abuse: Issues & Concerns*, INDIAN J. MED. RES. Vol.142, Pg.1-3, 2015.

would deem it as a violation of sexual autonomy of the person. This would lead to draconian and regressive effects. Moreover, the Act states that where the victim is below the age of 16, then it would be presumed that the accused has committed the offence. However, this violates the right to presumption of innocence under both Indian law²⁷ and International Covenant on Civil and Political Rights,²⁸ according to which an accused is considered innocent until proven guilty.

6. REPORTING:

It is pertinent to mention that, if there is an apprehension that an offence under this Act is likely to be committed or has been committed then, information is to be provided to the special juvenile police unit or the local police.²⁹ Besides that, the Act provides for mandatory reporting but there is no specific way of implementing this provision. Some child right groups had earlier campaigned that mandatory reporting should be restricted to professionals only, namely doctors and teachers. However, it is unclear how even this can be implemented, as it is not possible to burden only some section of the society with reporting of child abuse cases.³⁰ Reporting provision will only be effective if all adults in the society are given the responsibility of mandatory reporting.

In spite of this provision, people are hesitant to report such cases to the police or even agencies that work in the field of delivering justice to such victims. This is perceptible in the Pune case mentioned earlier, wherein, the neighbors made statements that the mother used to habitually beat up her partially disabled son and threatened anyone who questioned her actions with false cases against them or their family. It is really appalling to know that despite the fact that the neighbors knew about the plight of the son, they were jittery to come forward and report it to a police officer or an agency fearing legal hassles against themselves.

There are few strategic deficiencies in the provisions of the Act. Some of which are as following:

(i) The Act has certain lacunae in definition and identification of *culpable mental state*. It is defined as sexual intent, motive and knowledge. There is a need for a better definition. There is also a provision, wherein the medical professionals are required to report offences to the

²⁷ Narendra Singh and Anr. v. State of Madhya Pradesh, Appeal (crl.) 298 of 1997 (2004).

²⁸ International Covenant on Civil and Political Rights ICCPR) adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316(1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 14 (2).

²⁹ The Protection of Children from Sexual Offences Act, § 19 [No. 32 of 2012].

³⁰ Human Rights Watch, *Breaking the Silence, Child Sexual Abuse in India*, [http://www.hrw.org/sites/default/files/reports/india0113ForUpload.pdf\(2013\)](http://www.hrw.org/sites/default/files/reports/india0113ForUpload.pdf(2013)) (Last visited 21 December 2015)

police, failure of which will result in punishment, including fine or imprisonment of 6 months or both. This would actually reduce the number of reports as parents and medical professionals would not want to get involved in any sort of legal inconvenience.³¹

(ii) Section 21(1) makes it mandatory to report incidents of child abuse, otherwise it is an offence under the Act. The onus is on the citizens i.e., parents, doctors, school personnel who have to report cases of child abuse to the law enforcement authorities. Additionally, it also refers to police officers who refuse to register such cases. The objectives of Section 21 are: (i) to identify victims of child abuse, (ii) to prevent them from coming to further harm. Therefore, anyone who has knowledge of such a case has an obligation to report the same.³² The shortcoming of the provision is that many cases still go unreported. This is because citizens are not aware of their responsibilities in cases of child abuse and majority of the times they do not understand the plight of the child. Training and spreading awareness among the parents, police and professionals is the only effective course of action.

(iii) Even though, under Chapter VI of the Act, the police officers, the doctors, the lawyers, etc. must modify their professional practice while dealing with such cases to make it children friendly. There are doctors who refuse to examine these children, school managements which are unwilling to implement children safety programs in school, police officers also are not approachable and make mistakes in charging offenders in the appropriate category. Sensitization of all these people involved in a child abuse case is necessary. They need to decipher the significance of handling such cases with utmost judiciousness.

7. LAW COMMISSION OF INDIA ON CHILD ABUSE:

In a major breakthrough, the Law Commission of India in its report suggested that protection of children under the age of 6 from all forms of neglect, harm and abuse should be secured under the Constitution, citing that early childhood is the phase of maximum vulnerability. The Commission was of the opinion that Constitutional Framework of Fundamental Rights and Directive Principles must recognize the right to protection of children below six years. In order to recognize the same, it suggested that a new **Article 24A** must be added in part III of the Constitution. The Article is worded as follows, *every child shall have the right to care and assistance in basic needs and protection from all forms of neglect, harm and exploitation*. The Article would be helpful as it provides for protection of children below 6 years from all forms of neglect and abuse. It would also make their right to care and

³¹ Neha Gupta & Ors, *The Protection of Children from Sexual Offences (POSCO)*, DELHI PSYCHIATRY JOURNAL, Vol. 16, No. 2, Oct. 2013.

³² Alok Kumar & Ors, *The Problem of Child Sexual Abuse in India Laws, Legal Lacuna and the Bill PCSOB-2011*, J INDIAN ACAD FORENSIC MED. Vol. 34, No. 2, April-June 2012.

assistance an enforceable right during the formative stage of first six years of a child's life. This would help administer greater extent of protection, as it would be considered as a constitutional right. The Commission further stated that policies and schemes relating to child development must be given statutory backing for proper enforcement.³³

8. CONCLUSION:

Child abuse has for long been a reality in the country. It has affected the lives of millions of people and although there have been various laws that were passed to provide protection to victims of child abuse, majority of the cases have gone unnoticed and unreported due to the insensitivity of the investigation and law enforcement agencies. Reporting has finally been made mandatory in the 2012 Act along with child friendly investigation procedures.

Therefore, it is essential for the Government to concentrate on implementing Protection of Children from Sexual Offences Act, 2012 in the right way. For proper implementation, there is utmost necessity to fulfill the following:

- (i) Train police officers, health professional, NGOs or other agencies to follow the provisions of the Act diligently. Also, awareness about importance of reporting child abuse cases should be imparted. For example, in Karnataka a Child Sensitive Police Training Programme has shown particular success and is emerging as a model for other states in the country.
- (ii) Establishment of special courts for speedy trial.
- (iii) Framing a policy documents that outlines the responsibilities and roles of each stakeholder that is parent, police officer, school authorities, medical professionals etc.
- (iv) All schools should have a Child Abuse Monitoring Committee. Schools should also have uniform modules to train children on sexuality and gender education.
- (v) Counseling services should be provided to parents and children by establishing counseling centers.

Thus, India needs a more comprehensive law that covers all the loopholes that exist today. Apart from that, we need an elaborate guideline on tackling child abuse or child exploitation. Each element of the society needs to be given clear-cut roles and responsibilities, help them understand the legal process involved in such cases. In pursuance of this, Indian Medical Association recently, in August 2015 drew up a plan to create awareness among parent-

³³ *Protect rights of kids below 6: Law Panel*, <http://timesofindia.indiatimes.com/india/Protect-rights-of-kids-below-6-Law-panel/articleshow/48704436.cms>, (Last visited Aug.28, 2015)

teacher community about the various child protection laws prevalent in India. The scheme has already been launched among the doctors and will soon be expanded to educational institutions. Unless, the laws are suitably amended and properly implemented, Prevention of Sexual Offences Act, 2012 will do little in combating child abuse.

UNITED STATES OF AMERICA

United States of America has one of the worst records of child abuse in the world. According to the Child Abuse and Neglect Fatalities 2013³⁴, an estimated 1,570 children died from abuse and neglect in 2011 and an average of four children die everyday from abuse and neglect.

1. HISTORY OF CHILD ABUSE IN THE UNITED STATES:

Child abuse attracted United States attention in early 1860s when children were considered as property of their fathers. However, in 1866, Massachusetts allowed judges to intervene in cases where a child was neglected or abused by reason of orphanage or otherwise. In 1869, an Illinois father was prosecuted for confining his blind son in a cold cellar.³⁵ The glorified case of Mary Ellen Wilson drew everyone's attention to the fact that there was no law that dealt with child abuse cases. Mary Ellen was being whipped and beaten daily by her foster mother and with no organization to protect such children; it was addressed by attorneys for the American Society for Prevention of Cruelty to Animals (ASPCA). The foster mother was held guilty of assault and sentenced to one-year imprisonment. More importantly, the case created enough resentment in the minds of the citizens to establish New York Society for the Prevention of Cruelty to Children.³⁶

By 1922, there were over 300 non-governmental organisations for child protection spread across the United States of America. Correspondingly, world's first juvenile court was established in Chicago in 1899 and soon all states established the court.

Almost 6,80,000 children were subject to abuse and neglect in 2013 and about 1500 children died due to it. Just like India, Children's Advocacy Institute at the University of San Diego School of Law states in its study that the laws relating to child abuse are not being enforced proficiently. Cases regarding child abuse and neglect remain unreported. While the federal

³⁴ Child Welfare Information Gateway, *Child Abuse and Neglect Fatalities 2013: Statistics and Interventions*, <https://www.childwelfare.gov/>(Last visited 21 December 2015)

³⁵ Fletcher v. People, 52 Ill. 395 (1869).

³⁶ FindLaw, *Child Abuse Background and History*, <http://family.findlaw.com/child-abuse/child-abuse-background-and-history.html> (Last visited 21 December 2015)

government has passed child welfare guidelines, not even a single state has completely adhered to them.³⁷

2. THE CASES:

Lachaux and Philips Case, Las Vegas

Recently, in April 2015, a 3-year-old girl was found dead in her Las Vegas home. According to reports, the couple took the children to a trip to Oakland and left two of their children, a teen and a sick 3-year-old daughter at their Las Vegas home as their rented vehicle was full. Lachaux had impregnated the teen girl who gave birth to a baby at home without any medical help. The 3-year-old daughter's health kept deteriorating and was hospitalized in extremely critical condition but she died. Lachaux hid the corpse of the toddler in a box in the back of a broken down Mercedes in the garage and kicked the teen girl out of the house fearing that the mother would find out about her pregnancy.

William James Vahey Case, Houston

William James Vahey, 64 of South Carolina had taught in American schools in various countries for years. The images shown to Houston FBI by Vahey's maid in 2014 reveal that Vahey had sexually assaulted children while teaching at the American school of Nicaragua. They were called in to investigate as Houston agents working with Crime Against Children Task Force are asked to assist law enforcement of other countries, when U.S. citizens are suspected of committing violations of U.S. Federal Law. When a school employee confronted him, he said *I was molested as a child, and this is why I do this. I have done this for years.* He reportedly gave them sleeping pills and molested the unconscious children. He committed suicide, when the FBI investigation started.

Chaminade College Preparatory School, St.Louis

The reports in 2011 revealed child abuse instances happening for decades in the locker rooms at the Chaminade College Preparatory School, St.Louis, United States. A victim called Christopher Wimmer stated that, two staff members abused him for seven years. The John Jay College Criminal Justice's 2011 report estimates that there have been 17,200 victims in the U.S. The case is still going on.

3. NATIONAL LEGISLATIONS:

³⁷ *Child Abuse And Neglect Laws Aren't Being Enforced, Report Finds*, <http://www.npr.org/sections/health-shots/2015/01/27/381636056/child-abuse-and-neglect-laws-arent-being-enforced-report-finds>, Jan. 27, 2015. (Last visited 21 December 2015)

The Government got involved in child protection in 1912 with the formation of Child Bureau. The purpose of the Bureau was to investigate and report upon all matters of children welfare and child life among all classes of people. Social Security Act, 1935 extended funds in order to support child welfare services but there was no active involvement of federal officers in identifying and protecting child abuse victims. Subsequently, in 1974, Congress passed Child Abuse Prevention and Treatment Act. It focused on providing trainings to officers in order to make identification and reporting more efficient. Under this Act, twenty five to thirty five percent of the children were removed from their houses and sent to foster homes due to parents' abuse or neglect in a span of four years.

In 1978, Indian Child Welfare Act was passed to reduce the number of children sent to foster homes from the Indian families, as many Indian families were broken. The Act provided for proper hearing of cases involving Indian families before children are sent to foster homes. In 1980, Adoption Assistance and Child Welfare Act was passed to assist children who are removed from their maltreating parents to be adopted by parents who are willing to help needy children. Family preservation was the main aim of the Act.³⁸

While sexual abuse was not defined in India until 2012, United States had dwelled upon a suitable definition much earlier. By the end of 1970, the Child Abuse Prevention and Treatment Act included sexual abuse in its definition of maltreatment. By 1976, all the states in the United States had reporting laws for child abuse and the issue was brought to light like never before.³⁹ The Act directs U.S. Health and Human Services Administration to allocate grants to communities for child abuse prevention programs.

4. PENN CASE AND THE CHANGING PERSPECTIVES ON IMPORTANCE OF REPORTING:

Just when United States thought that its facilities relating to child protection and reporting of child abuse cases is running smoothly, one distinctive child abuse case in 2011 shook the States. A former Penn State football coach abused several boys on multiple counts over a 15 years period. The incident created resentment in the minds of the people and several questions as to the effectiveness of the existing laws were brought up. The fact that these

³⁸ John E.B.Myers, *A Short History of Child Protection in America*, https://www.americanbar.org/content/dam/aba/publishing/insights_law_society/ChildProtectionHistory_authcheckdam.pdf (Last visited 21 December 2015)

³⁹ *Ibid.*

multiple cases of abuse by the coach went unreported all these years brought to forth the ineffectiveness of the law.⁴⁰

However, reporting laws in the United States of America differ from state to state. They have certain common components. At the outset, child abuse cases are reported at a designated hotline or child protection services agency, the phones are answered by trained officials, who receive all the relevant information and take the next course of action. They decide if there is sufficient information in the allegation, if it falls within their jurisdiction and if it meets the required standards to be called in for investigation.⁴¹ Child Protection Services (CPS) also determines the need for further agency oversight, the need to remove the child from the home, the need for establishment of special courts and other services.

However, what constitutes child abuse differs in these states. While some states consider parents or caretakers as accused in such cases, other states consider any perpetrator as accused, that is, the Act applies to any person, even if he is not responsible for the child. In order to protect the reporters, voluntary reporters can provide information anonymously so that they do not have to fear for any repercussions. Perhaps, this is something that India could also follow. It would encourage people to come forward in reporting of child abuse cases and pull out the fear of legal hassles.⁴²

5. AMENDMENTS IN THE LAW RELATING TO CHILD ABUSE:

The Penn case necessitated amendments in the existing laws. The amendments seek to impose sanctions on people who witness child abuse and fail to report it. However, there are cases where there are no witnesses. There are other amendments that aim on expanding on who can report cases of child abuse. Some laws hold school authorities and private coaches responsible for reporting of child abuse cases, while others want to expand it to all adults.⁴³

In February 2011, Federal legislature revised Child Abuse Prevention and Treatment Act to require all states to amend their laws within two years to mandate all adults to report cases of

⁴⁰ Bill Chappell, *Penn State Abuse Scandal: A Guide And Timeline*, <http://www.npr.org/2011/11/08/142111804/penn-state-abuse-scandal-a-guide-and-timeline>, Jun.21 2012 (Last visited 21 December 2015)

⁴¹ Debra Schilling Wolfe, *Revisiting Child Abuse Reporting Laws*, SOCIAL WORK TODAY Vol. 12 No. 2 P. 14, March/April 2012.

⁴² Debra Schilling Wolfe, *Revisiting Child Abuse Reporting Laws*, SOCIAL WORK TODAY Vol. 12 No. 2 P. 14, March/April 2012.

⁴³ Jessica R. Givelber, *Imposing Duties on Witnesses to Child Sexual Abuse: A Futile Response to Bystander Indifference*, FORD. L. REV., Vol.67, Issue 6 (1999), <http://ir.lawnet.fordham.edu/flr/vol67/iss6/9>.

child abuse. Moreover, the laws in the States have a limitation period within which a child sexual abuse case needs to be reported. However, often victims do not reveal their plight for a long time after the incident. For example, in the Penns Case, the victims came to spoke about the abuse after many years of the occurrence of the abuse. The limitation period, therefore, bars action from being taken against the coach due to the limitation period. Hence, there have been attempts to revisit the limitation period and extend it.⁴⁴

What needs to be considered is that amendments have to be made after careful research and testing. One cannot rush with the amendments. For example, the fact that all adults have been mandated to report cases has automatically resulted in more number of cases being reported in each category. However, most of them are frivolous or do not meet the required standards and in trying to investigate on these cases, the agencies waste quite a lot of time.⁴⁵

6. REPORT ON CHILD ABUSE:

The Associated Press conducted a survey for eight months and submitted a report according to which federal government has failed to enforce child protection laws which is a federal subject and calls it a national disgrace. They pointed out that the laws are weak, their implementation is poor and that the courts are turning a blind eye to the issue. According to the report, around 786 children died due to abuse or neglect including thrashing, sexual abuse, starvation etc., and this figure excludes the information that many states withheld under the confidentiality laws, otherwise the figure would have been much higher.⁴⁶

The U.S. Department of Health and Human Services is responsible for enforcement of laws and implementation of programs related to child health and protection. However, the Department has been very casual about its duties and allowed states to self-certify. It is recommended that the government orders the Health and Human Services to impose fines and withhold funds of states that do not follow federal regulations.⁴⁷

7. CHANGE IN THE CHILD PROTECTION LAWS AT PRESENT:

⁴⁴ Leonard G. Brown III, Kevin Gallagher, Mandatory Reporting of Abuse: A Historical Perspective on the Evolution of States Current Mandatory Reporting Laws with a review of the laws in the Commonwealth of Pennsylvania, 59 VILL. L. REV. TOLLE LEGE 37 (2013).

⁴⁵ Debra Schilling Wolfe, *Revisiting Child Abuse Reporting Laws*, SOCIAL WORK TODAY, Vol. 12 No. 2 P. 14, March/April 2012.

⁴⁶ Aljazeera America, *Federal Government failing to protect children, Report says*, <http://america.aljazeera.com/articles/2015/1/27/federal-government-failing-to-protect-children-report-says.html>, Jan. 27, 2015 (Last visited 21 December 2015)

⁴⁷ Ibid

As laws were being passed to cover various loopholes, the courts could not cope up with the growing pressure as the number of cases reporting child abuse only increased. The child welfare agencies also suffered due to lack of funding. This was partially rectified by the amendment in the Social Security Act in 1993, wherein federal government would provide funds to communities on need basis.

In spite of the Adoption Assistance and Child Welfare Act, 1980 that aims to preserve families, the National Commission of Children figured that children were being taken away from their families unnecessarily or prematurely, as there is a strong financial incentive to do so. This is because funding cap for keeping family intact is relatively less. Whereas, if the children are sent to foster homes, a portion of the cost is reimbursed to the States. Moreover, according to National Coalition for Child Protection Reform, Adoption Assistance and Child Welfare Act only disrupted more families and encouraged more adoptions. The reason behind this is that the new law gives the state a bounty of up to \$8000 for every child that is adopted. This has led to not just more adoption but also false accusations on parents.⁴⁸

Earlier, child welfare departments took care of children's health, wealth and social services. Now, the laws regarding child protection only provide Child Protection Services (CPS) as a facility for any kind of solution relating to child abuse case. It has been noticed over the years that CPS has without a hitch, transferred many children to substitute families i.e., families that are willing to adopt children who are victims of abuse or neglect. People have discerned now that, the aim is to bring about solidity in one's own family, to help them realize their responsibility towards their children. Transferring children to substitute homes unnecessarily takes away the children from their roots and the probability to have a stable family.⁴⁹

Apart from CPS, there are other important agencies when it comes to protection of children from abuse and neglect. The agencies include a large community consisting of individuals that witness and report instances of child abuse, designated hotline mentioned earlier that receives and analyses the report. The CPS, then investigates the report. Law enforcement agencies are also key players as they collect evidence and initiate criminal proceedings against the perpetrators. CPS provides a variety of services ranging from medical services,

⁴⁸ Dr. Mercola, *CAPTA: The Child Abuse Law Which Could Destroy Your Reputation*, <http://articles.mercola.com/sites/articles/archive/2011/02/05/legal-child-abduction.aspx> Feb. 5, 2011. (Last visited 21 December 2015)

⁴⁹ Patricia A.Schene, *Past, Present and Future Roles of Child Protective Services*, PROTECTING CHILDREN FROM ABUSE AND NEGLECT, Vol.8, No.1, <http://thesociologycenter.com/GeneralBibliography/vol8no1ART2.pdf>, (Spring 1998) (Last visited 21 December 2015)

domestic violence shelter is given to children that are abused by people they work for as servants, mental health evaluation, day time child care facilities to counseling.⁵⁰

PROCEDURE:

At the forefront, CPS intervention is needed when two elements are fulfilled: (i) where there is clear evidence that child has been abused or neglected and (ii) parents are not willing or are unable to protect the child. Also, CPS intervention is required only when parents are not willing to participate in the investigation process. In certain cases, parents participate voluntarily, in such case less coercive agencies can take up the matter. A juvenile or family court hears the emergency case within 72 hours, represented by the CPS caseworker seeking to remove the child from the family. The court, on hearing the case looks for other alternatives like, transferring the child to a relative's place, removal of the accused from the family. Only after the child is sent to a safe haven, is the adjudicatory proceeding held within 60 days in order to decide whether the child was abused or neglected. Subsequently, dispositional hearing is conducted to assign the responsibility of the child to the parent or the state. If the child is given shelter outside of his/her family, then, a periodic review hearing is conducted to keep a tap on the well being of the child.⁵¹

8. CHALLENGES:

First, it is unfortunately noticed that CPS do not pay heed to the claims of all families. It is said that they undertake action on an adversarial basis and do not help all families involved in child abuse. This leads to the second challenge of being too dependent on CPS as it is the only agency that works full time on child protection case while other private and public agencies sporadically pay attention to child abuse cases. Thirdly, the societal involvement is very little.⁵²

9. CONCLUSION:

⁵⁰ National Academy of Sciences, *New Directions in Child Abuse and Neglect Research*, <http://www.ncbi.nlm.nih.gov/books/NBK195993/> (2014) (Last visited 21 December 2015)

⁵¹ Patricia A.Schene, *Past, Present and Future Roles of Child Protective Services*, PROTECTING CHILDREN FROM ABUSE AND NEGLECT, Vol.8, No.1, https://www.princeton.edu/futureofchildren/publications/journals/journal_details/index.xml?journalid=51(Last visited 21 December 2015)

⁵² Mary B.Larner, Carol S.Stevenson, Richard E.Behrman, *Protecting Children from Abuse and Neglect: Analysis and Recommendations*, PROTECTING CHILDREN FROM ABUSE AND NEGLECT, Vol.8, No.1, Spring 1998.

While there is support shown to research on child abuse and neglect by the Office of Child Abuse in US. There is little being done in terms of policy research for child abuse.

Therefore, steps that need to be taken in order to improve laws on child protection are:

- (i) Research on the implementation of law is needed more than the law itself.
- (ii) Training to encourage child and family participation in the investigation process. Also, investigators should be trained and experienced enough to identify child maltreatment cases as law enforcement officers play a vital role in a community's child protection team.
- (iii) Law enforcement officers should involve the medical professionals completely in a child abuse case without any reluctance, as they are important allies. Medical professional should identify the injuries, diagnose and treat the child, report suspected incidents to appropriate authorities and testify during legal proceedings.
- (iv) Collaboration and co-operation services between parents and investigation agencies. Also, co-operation among the various investigation agencies as child abuse is a multi-dimensional problem that requires multiagency team approach that is co-operation between police officers, investigation authorities, medical professionals, police, law officers etc.
- (v) Family preservation and re-unification services in order to reduce the risk of removing children from their family and to maintain optimum link between children and their original family.

Implementation of laws that are already present is the need of the hour in India. Proper guidelines also need to be passed in order to impose clear-cut responsibilities on every person involved in a child abuse case. Whereas, in the United States, apart from proper implementation of laws, the laws need to be amended to make sure that everyone including parents, teachers, guardians co-ordinate with the Child Protection Services in cases of child abuse.

Amendments in the laws are required in both the countries. Also, both the countries need to take affirmative steps towards enforcing the laws. The active involvement of the society i.e., parents, teachers, medical professionals and police officers is of prime importance as child abuse cases can be dealt with, only when they are reported on time by the members of the society.

