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LOST INNOCENCE: EXPLORING THE ROOTS OF VIOLENCE AGAINST CHILDREN

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I. ABSTRACT:

The future of any nation hinges on its youth, as Nelson Mandela once said. ²Children represent the seeds of tomorrow, requiring nurturing and protection to flourish. Sadly, many face a myriad of violent threats, from within their homes to their wider environments, including maltreatment, bullying, and exploitation. This global issue not only harms their physical and emotional well-being but also violates their fundamental rights. Despite legal frameworks in place, the prevalence of such violence persists, especially affecting vulnerable groups like girls. Addressing root causes such as poverty and trauma is crucial to building a safer society for all children. This paper seeks to examine the complexities of violence against children, its causes, and far-reaching consequences. It advocates for comprehensive efforts including robust legal measures, effective child protection systems, awareness-raising, education, and accessible support services. By creating a nurturing environment free from violence, we can empower children to pursue their future endeavours without fear.

II. KEYWORDS

Child abuse, violence, exploitation, vulnerability, special protection.

III. INTRODUCTION:

Childhood should be a time of innocence and joy, but for millions of children around the world, it is blemished by violence. Violence against children incorporates all forms of violence against people who are under the age of 18. It is a critical global issue with devastating consequences for individuals, families, and communities. Though

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² <https://unfoundation.org/blog/post/12-nelson-mandela-quotes/> (last visited May 28,2024).

violence poses a threat to all individuals, women and children are vulnerable to victimization since they have limitations in their rights and access to adequate protection. The definition of violence according to the **WORLD HEALTH ORGANISATION (WHO)** is, “the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community, which either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment, or deprivation”.³

Violence against children takes many forms, including physical, emotional, sexual, and neglect, and can occur in various settings, such as homes, schools, institutions, and online. In spite of making multiples efforts to address this issue, it continues to leave lasting scars on the lives of millions of children. In recent times, technological advancements have facilitated the rise in a number of white-collar crimes i.e., cybercrimes. Among all demographics, younger populations are active users of the Internet, rendering them vulnerable to becoming victims of such offenses. Cybercrimes confines various forms such as cyberbullying, child pornography, stalking, and more. The underlining source for the increase in the case of violence against children is the underreporting of cases by victims, fuelled by social stigma that cheers offenders to perpetrate further crimes.

IV. CHILD PORNOGRAPHY 4AND ITS RELEVANCE IN INDIAN LEGAL SCENARIO:

Child pornography refers to broadcasting and transferring obscene, vulgar clips of children through digital media. Child pornography causes significant harm to children who are exploited and victimized in the production of such material. It can lead to severe psychological and emotional trauma, including feelings of shame, guilt, and worthlessness. Additionally, it perpetuates the cycle of abuse and can have long-lasting effects on the victim's mental health, relationships, and overall well-being.

³ World health Organization, Definition and typology of Violence <https://www.who.int/groups/violence-prevention-alliance/approach> (last visited March 28, 2023).

⁴ P.K. Pandey, Children's Rights laws, Policies and Practice (2013).

Moreover, it is illegal and contributes to the demand for further exploitation of children.

In India, there is no explicit definition in any of the laws dealing with child pornography. However, it is regarded as a serious crime under various laws of the country including the Constitution. Article 23 of the Constitution which generally prohibits traffic in human beings and other forms of forced labour, is normally employed in arresting the criminals against child pornography. The Directive Principles of State Policy explicitly directs the state to protect the tender age of children and to provide a healthy environment where children can grow without any kind of exploitation that affects the dignity of childhood. The Information Technology Act, of 2008 is the only law, which makes it an offence of production, transmission, and browsing of obscene materials.

According to the provisions of the Act, any first-time offender is punishable with an imprisonment of three years and a fine up to three lakh rupees, and for a subsequent offense it may extend to five years of imprisonment and a fine up to five lakh rupees. As the national context is concerned, the Government of India needs to adopt a uniform definition of child. The different definitional perspectives of children in various laws, lead to confusion in with the issues dealing with of children.

The Commissions for Protection of Child Rights Act, 2005 be amended to suitably define child pornography and empowering the national and state child rights commission to deal with the issue of child pornography in a strict perspective. As a party to the child rights convention and optional protocol on the prevention of sexual exploitation of children and other human rights instruments, the Government needs to compulsorily introduce human rights education in all types of education coupled with moral and value-based principles.

- *State of Maharashtra v. Vijay Prakashbarve* AIR 1992 SC 1275:⁵ In this case, the accused was charged under the Information Technology Act, of 2000, and POCSO Act, of 2012, for sharing child sexual abuse material online. The

⁵ State of Maharashtra v. Vijay Prakashbarve, AIR 1992 SC 1275.

Bombay High Court upheld the conviction, highlighting the seriousness of the offense and the need for strict punishment.

- *Shalu Nigam v. Union of India* AIR 2016 DELHI 130:⁶ This case, heard by the Delhi High Court in 2015, addressed the issue of blocking websites hosting child sexual abuse material. The court directed the government to take necessary measures to block access to such websites and to enhance cooperation with international agencies to combat child pornography.

V. VIOLENCE AGAINST GIRL CHILDREN:

*“A daughter is someone to be cherished and protected, not a burden to be hidden.” –
Desmond Tutu*

The population of India is young, with nearly 37 percent consisting of children below 15, thus two out of every five persons are below 15 years. Most of the cases of violence against children are reported only against girl children because of their vulnerable condition in our society. Though the term ‘Violence against children’ incorporates the cruelty taking place against both boys and girls, a bulk of victims are only girls. Children are the future pillars of our nation and the concern of violence happening against girl children needs immediate attention. This dates back to ancient times where girls were not given permission to access education and were not permitted to move out with a male dependent.

Child marriage was more prevalent in classical times where girls after attaining adolescence were coerced to marry a man many years with senior. During their early childhood days, they encounter a wide range of problems from their husband such as female genital mutilation, early pregnancy, and so on. The victims of such violence often encounter long term psychological and bodily consequences which in turn have negative effects on both educational and social. Female feticide and infanticide are another significant issues wherein girl children were murdered either in the womb itself by using prenatal sex detection or after the birth.

⁶ *Shalu Nigam v. Union of India*, AIR 2016 DELHI 130.

This is because girls are considered as burden because of the practice of the dowry system and superstitious belief that the birth of a boy baby extends the lineage and provides protection, safety, and security to the family. The downfall of sex ratio also affects the growth of the nation. Though this practice has been reduced over a period of time, it is still common in some parts of society. The Constitution, the Supreme Law of the land contains certain articles ensuring the protection of girl children and there are various subordinate legislations enacted for the sole purpose of regulating violence against the girl child.

In 1974, the Government of India wholeheartedly embraced a National Policy for Children, affirming the nation's children as "paramount assets" deserving of utmost care and protection. This policy lays down that the State shall provide adequate services to all children both before and after birth and during the growing stages for their full physical, mental, and social development. Despite having laws, policies, and conventions for decreasing the rate of violence against girls, the state should be more conscious on this issue.

A. Case Laws:

In the landmark case of *Vishakha v. State of Rajasthan* AIR 1997 SC 3011,⁷ a group of social activists petitioned the Supreme Court following the gang rape of Bhanwari Devi while performing her duties as a social worker. The Court held that sexual harassment violates the fundamental rights of women under Articles 14, 15, and 21 of the Constitution. It established guidelines known as the Vishakha Guidelines, outlining preventive, protective, and remedial measures to combat sexual harassment in the workplace until legislation was enacted. This case set a precedent for addressing workplace sexual harassment and promoting a safe environment for women employees.

In *Sakshi v. Union of India* (2004) Writ petition crl. no.33, 1997,⁸ Sakshi, a women's rights organization, petitioned the Supreme Court seeking directions to address sexual harassment in educational institutions. The Court observed the prevalence of

⁷ *Vishakha v. state of Rajasthan*, AIR 1997 SC 3011.

⁸ *Sakshi v. Union of India* (2004) Writ petition crl.no.33, 1997.

sexual harassment and issued guidelines to prevent and address such incidents, emphasizing the duty of educational institutions to provide a safe environment for students. It mandated the formation of complaints committees and the implementation of awareness programs. The Court held that the right to education encompasses the right to be free from sexual harassment, underscoring the importance of creating conducive learning environments for all students, particularly girls.

In the case of the *State of Maharashtra v. Madhukar Narayan Mardikar* AIR 1991 SC 207,⁹ the accused was charged with raping a minor girl. The incident occurred when the victim, a 13-year-old girl, was returning home from school. The trial court convicted the accused, which was later upheld by the Bombay High Court. The case reached the Supreme Court, where it emphasized the gravity of crimes against women and children, stressing the need for stringent punishment. The Supreme Court affirmed the conviction, highlighting the societal impact of such offenses and the imperative to safeguard the rights and dignity of girl children from sexual violence.

VI. LEGISLATIONS IN INDIA DEALING WITH THE REGULATION OF PROTECTION OF CHILDREN:

A. Constitution of India, 1950:

The Indian Constitution being the Supreme Law of Land incorporates certain articles for the protection of children's rights. All other subordinate laws are framed in line with the provisions of the Constitution.

- **Article 14: Equality before law**¹⁰ Article 14 states that the state shall not deny to any person equality before the law or the equal protection of laws within the territory of India.
- **Article 15(3)**:¹¹ Clause 3 of Article 15 empowers the State to enact legislation and provision for women and children. The Constitution feels that women and

⁹ *State of Maharashtra v. Madhukar Narayan Mardikar* AIR 1991 SC 207.

¹⁰ Constitution of India, 1950 (2023) 4

¹¹ *Ibid.*

children are the vulnerable sections of people in society, it delegates the authority to state for enacting special provisions for the upliftment of women and children.

- **Article 21: Right to Free and Compulsory Education**¹² This article mandates the state to provide free and compulsory education for all the children who fall under the age category of 6-14. Many cases of child abuse go unreported due to societal aftermath. Education raises awareness which protects the children from such violence.
- **Article 24a: Prohibition of employment of children in factories, etc.**¹³ This article states that no children below the age of 14 shall be employed in hazardous activities and it also protects children from forced labour.
- **Article 39(f):** ¹⁴This article states that the younger generation should be protected from exploitation and violence and that they should progress in a healthy manner.

B. Indian Penal Code, 1860:

The Indian Penal Code (IPC), 1860 is the supreme criminal code in India dealing with criminal activities. It encompasses provisions and sections for violence against children. They are,

- **Section 366A**¹⁵: This section penalizes the act of influencing a minor girl to have sexual intercourse with another person. The punishment for violating this section includes imprisonment which may 10 years along with a fine.
- **Section 372 & 373:** ¹⁶This section states that buying or selling of minor girls for prostitution and illegal intercourse for immoral purposes is punishable under section with the imprisonment of 10 years and a fine.

¹² Ibid 7.

¹³ Ibid 8.

¹⁴ Substituted by the Constitution (forty-second Amendment) Act,1976,w.e.f. 3-1-1977.

¹⁵ Indian Penal code,1860 (2023) 113.

¹⁶ Ibid 115.

- **Section 375:**¹⁷ Sec 375 of the Indian Penal Code, 1860 gives the definition for rape. It states that rape is said to have been committed when there is sexual intercourse with a girl against her will, coercing, misrepresentation, or fraud, or when she is intoxicated, if she is in an unsound mind, and if she is a minor i.e., less than 18 years of age.

C. The Protection of Children from Sexual Offenses Act (pocso), 2012:

The Protection of Children from Sexual Offense Act (POCSO), 2012 is enacted solely to address the issues of violence against children. One of the notable features of this Act is it doesn't make any discrimination on the basis of gender. This legislation provides a definition of various sexual offenses happening against children and incorporates stringent punishment for offenders.

VII. FEATURES OF THE ACT:

This Act defines “**child**” as individuals under the age of 18, and it is gender neutral

- a. POCSO also embodies a theory which is called the ‘**LAST SEEN THEORY**’, wherein it is presumed that the person who is last seen with the victim would be the offender of such crime, provided that the time gap is only to a smaller extent
- b. It incorporates all kinds of sexual violence such as pornography, penetrative & non penetrative sexual assault without limiting to sexual harassment
- c. This Act mandates and allocates a police officer to take care of the victim during the investigation process to avoid re-victimization of the child
- d. It mandates the establishment of Special Courts for the trial of such offenses
- e. This Act provides rigorous punishment for the offenders of sexual abuse. An offender under the act of sexual assault on a child under 12 years of age is punishable with imprisonment for a minimum of 20 years which may extend to

¹⁷ Ibid 116.

life and an offense of sexual abuse between the age categories of 12-18 is punishable with the imprisonment of minimum 10 years which may extend to life.

The Protection of Children from Sexual Offenses Act (POCSO), 2012 also lays down 12 key principles which are to be followed by the government, the general public, Children welfare organizations etc.

A. Case Law:

Tukaram & Ors. Vs. State of Maharashtra 1979 AIR 185, 1979 SCR (1) 810¹⁸: The Bombay High Court convicted a father for raping his 13-year-old daughter, reiterating that penetration isn't necessary to prove rape under POCSO Act.

VIII. OTHER LEGISLATIONS:

In addition to these legislations, we also have several other legislations for the protection of children from violence in India. They are,

- ***Child Labor (Prohibition and Regulation) Act, 1986 (CLA)***: This Act aims to prevent all kind of child abuse in employment and also restricts the employment of children in hazardous occupation who fall under the age of 14 years. Children are prohibited from engaging in such occupations which are listed under Part A of the Schedule of this Act.
- ***The Immoral Traffic (Prevention) Act, 1987 (ITPA)***: This legislation penalizes the trafficking of women and girls for the purpose of sexual exploitation. While this Act legalizes prostitution, it is still illegal to run a brothel. This Act provides for fines and punishments for the aforesaid illegal activities.
- ***Prohibition of Child Marriage Act, 2006 (POCMA)***: The aim of this Act is to prevent young children from child marriage. This Act states that the legal age of marriage for boys is 21 and for girls is 18. It also provides penalties and punishments for those who solemnize marriages below the legal age.
- ***Right of Children to Free and Compulsory Education Act, 2009 (RTE)***: The objective of this Act is to provide free education. It says that it is the duty of the

¹⁸ *Tukaram & Ors. Vs. State of Maharashtra* 1979 AIR 185, 1979 SCR (1) 810

state to provide free and compulsory education to all children who fall under the age category of 6-14. According to this Act, the right to education was inserted as a fundamental right and it was removed from the Directive Principles of State Policy by the 86th Amendment Act (2002).

IX. LACUNAE IN THE INDIAN LEGISLATIONS:

- The implementation of the **POCSO Act, of 2012** brings significant benefits to victims of sexual harassment, facilitating justice for those affected. However, it also bears certain loopholes and shortcomings which could potentially empower offenders, and that requires attention to elevate this legislation to a masterpiece
- **Section 3 of the POCSO Act¹⁹** provides the definition and essentials of penetrative sexual assault. This section contains the pronoun 'He' which is used for the accused. Thus, it clearly portrays that only a male can be suspected and accused under this section. One of the notable features of this Act is it is Gender Bias. The victim under this legislation can be any person irrespective of their gender. There are many instances of a male being abused but they are rendered helpless because of this discrimination.
- **Section 11²⁰** of this Act provides provisions and punishment for sexual harassment. This section states that 'sexual intent' will be a question of fact in a court of law. However, there are criticisms that sexual intention is difficult to prove in a court of law which might lead to the acquittal of the offenders.
- **Section 27(2)²¹** of this Legislation states that if the victim is a female child or adolescent then the medical examination should be done only by a female doctor. On the other hand, Sec 166A of IPC, 1860 mandates a government medical officer to examine the victim irrespective of their gender. These provisions raise questions in the absence of a female doctor.

¹⁹ <https://www.indiacode.nic.in/bitstream/123456789/2079/1/AA2012-32.pdf> (last visited April 5, 2024)

²⁰ Ibid.

²¹ Ibid.

- **Section 3A of Child Labour (Prohibition and Regulation) Act,1986**²² lacks clarity and ambiguity regarding hazardous work definition led to weak enforcement and continued exploitation.

X. CONCLUSION:

Violence against children is one of the complex issues in the contemporary world. Children are often targeted as victims since they are a vulnerable group of people in the society. The younger generation are the future pillars of our nation, but the concern is they get affected by such violence which has long-term ill effects affecting their education, livelihood, etc. Young people become the victims of such offenses due to a wide array of factors such as individual, family, societal factors, and so on. Moreover, understanding the long-term consequences of violence against children is essential for developing effective prevention and intervention strategies. Despite having a number of legislations and regulatory frameworks, there has been a concerning rise in crime rates against minors. This is because of the offender who employs various modus operandi for various crimes which is challenging for the investigation officers to detect.

One of the main sources of violence is underreporting of cases by the victims largely influenced by the societal perspective. There is a general view in society that violence against children happens only against girls, but the reality is boys also become the victims of such violence. Thus, most of the legislation and policies are framed in such a way that it only addresses the issue of girls neglecting the needs and experiences of boys in these matters should be corrected and perpetuate gender equality. The penalty imposed for violent activities occurring against children should be made more stringent which prevents the offenders from doing further violations.

This research paper concludes that violence happening against children is a very serious issue which needs immediate attention and an indispensable need to draft comprehensive gender-neutral legislation with stringent punishments.

²² https://www.indiacode.nic.in/handle/123456789/1848?sam_handle=123456789/1362 (last visited April 5, 2024).

“There can be no keener revelation of a society’s soul than the way in which it treats its children” -Nelson Mandela²³

XI. REFERENCES:

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²³ <https://brainly.in/question/48053534> (Last visited May 29, 2024).