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## CASE REPORT

### CHILD ABUSE AND NEGLECT- REPORTING IN INDIA

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#### ABSTRACT

All children have the right to live in safety and dignity in a protective and nurturing environment, both at home and in the community. Very often crimes against children are either not reported or cognizance is not taken and also that some crimes against children are not covered under existing legislations in developing countries, like India. Strong networking is required among government, civil society, communities and concerned stakeholders to complement each other's effort to fight against child abuse. This paper highlights the existing legislation in India as well as the non-governmental organisations working towards the fight against child abuse.

## INTRODUCTION

According to World Health Organization, an estimated 40 million children between 0-14 years of age suffer from abuse or neglect and require health or social care. Child abuse or maltreatment constitutes all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity, in the context of a relationship of responsibility, trust or power. Neglect is the inattention or omission on the part of the caregiver to provide for the development of the child in all spheres: health, education, emotional development, nutrition, shelter and safe living conditions, in the context of resources reasonably available to the family or caretakers and causes, or has a high probability of causing harm to the child's health or physical, mental, spiritual, moral or social development. This includes the failure to properly supervise and protect children from harm as much as is feasible (WHO, 1999). Most of the research based evidence on child abuse and neglect comes from developed nations. Less is known regarding the prevalence of abuse and neglect in children from low- and middle income countries, such as India. The only national survey conducted to date on child maltreatment in India was in 2007 by the Ministry of Women and Child Development (Kacker et al., 2007). The growing complexities of life and the

dramatic changes brought about by socio-economic transitions in India have played a major role in increasing the vulnerability of children to various and newer forms of abuse. An often experienced dilemma in the assessment of child maltreatment is the variation in the definitions across countries, as perception of 'child maltreatment' varies according to cultural norms. These issues are compounded in countries, such as India, where there is no legal definition of child abuse or neglect (except sexual abuse), and where only a handful of research studies exist. This paper aims to explain the process of reporting child abuse and neglect in Indian Country, existing legislations, who mandatory reporters are and who they report to and encourage the reporting of child abuse.

### Magnitude of problem in India

India is home to the largest child population in the world, with almost 41 % of the total population under 18 years of age (Seth, 2015). Harmful traditional practices like child marriage, caste system, discrimination against the girl child, child labour and Devadasi tradition impact negatively on children and increase their vulnerability to abuse and neglect. As per Government of India (2007) survey, the prevalence of all forms of child abuse are extremely high- physical abuse (66%), sexual abuse (50%) & emotional abuse (50%) (Kacker et al., 2007). In these contexts, the problems of child protection in India, with huge populations, and additional socioeconomic constraints, need serious and wider consideration.

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## Legislation and Reporting in India

### Who is a child?

Most of the Government programs on children are still targeted for the age group below 14 years. The Convention on the Rights of the Child (UNCRC), 1989 (UNICEF, 1989) defined the child as “every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier. After the introduction of the Juvenile Justice (Care and Protection) Act, 2000 (amended 2006), for all practical purposes, a child is considered as a person below 18 years (Aggarwal *et al.*, 2010).

### Constitution of India

The Constitution of India recognizes the vulnerable position of children and their right to protection. The right to equality, protection of life and personal liberty and the right against exploitation are enshrined in Articles 14, 15, 15(3), 19(1) (a), 21, 21(A), 23, 24, 39(e) 39(f) and reiterate India's commitment to the protection, safety, security and well-being of all its people, including children (Kacker *et al.*, 2007; Mouden and Bross, 1995; Leung and Robson, 1992; Runyon *et al.*, 2002) (Table 1).

## National and International Conventions and Declarations

India has made national and international efforts to prevent child abuse and neglect. Table 2 enlists some of the existing national policies in India (Aggarwal *et al.*, 2010 and Leena 2015). It is signatory to a number of international instruments and declarations pertaining to the rights of children to protection, security and dignity. At the international front, the World Conference on Human Rights was held in Vienna in the year 1993. The Vienna Declaration and Programme of Action urged States to ratify and implement promptly the CRC and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) (Bhakhry, 2006). The CRC is “the most complete statement of child rights ever made”. It acceded to the UN CRC in 1992 (Seth, 2013), reaffirming its earlier acceptance of the 1959 UN Declaration on the Rights of the Child and is fully committed to implementation of all provisions of the UN CRC. The Convention prescribes standards to be adhered to by all State parties in securing the best interest of the child and outlines the fundamental rights of children, including the right to be protected from economic exploitation and harmful work, from all forms of sexual exploitation and abuse and from physical or mental violence, as well as ensuring that children will not be separated from their families against their will.

**Table 1. Constitution of India (Kacker *et al.*, 2007; Mouden and Bross, 1995; Leung and Robson, 1992; Runyon *et al.*, 2002)**

Article no.	Law
14:	The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India
15:	The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them
15 (3):	Nothing in this article shall prevent the State from making any special provision for women and children
19(1) (a):	All citizens shall have the right (a) to freedom of speech and expression
21:	Protection of life and personal liberty-No person shall be deprived of his life or personal liberty except according to procedure established by law
21A:	Free and compulsory education for all children of the age of 6 to 14 years
23:	Prohibition of traffic in human beings and forced labour-(1) Traffic in human beings and beggars and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law
24:	Prohibition of employment of children in factories, etc. -No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment
39:	The state shall, in particular, direct its policy towards securing: (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter vocations unsuited to their age or strength. (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

**Table 2. Existing schemes and programmes to prevent child abuse in India (Aggarwal *et al.*, 2010 and Leena, 2015)**

1.	National Policy for Children, 1974
2.	Child Labour (Prohibition and Regulation) Act, 1986
3.	Convention on the Rights of the Child (CRC) 1989
4.	Juvenile Justice (Care and Protection of Children) Act, 2000
5.	National Plan of Action for Children, 2005
6.	Right to Information (RTI) 2005
7.	Goa Children (amendment) Act 2005
8.	The Prohibition of Child Marriage Act, 2006
9.	Integrated Child Protection Scheme (2009)
10.	Right to Education Bill (2009)
11.	Prevention of children from Sexual Offences (POCSO Act 2012)
12.	National Child Labour Project (NCLP)
13.	INDO-US Child Labour Project (INDUS)
14.	Millenium Development Goals (MDG)

**Table 3. Mandated reporters of child abuse (Cases, O.C.S.A. and Packet, R., National Indian Justice Center)**

Health Care Personnel including physicians, surgeons, dentists, podiatrists, chiropractors, nurses, dental hygienists, optometrists, medical examiners, emergency medical technicians, paramedics
Education Personnel including teachers, school counselors, instructional aides, teacher's aides, teachers' assistance, bus drivers, administrative officers, supervisors of child welfare and attendance, truancy officers
Child Care Personnel including child day care workers, Headstart teachers, public assistance workers, group home workers, residential home workers, day care facility workers, social workers
Mental Health Personnel including psychiatrists, psychologist, psychological assistants, marriage, family and child counsellors
Law Enforcement Personnel including law enforcement officers, probation officers, juvenile rehabilitation or detention facility workers, employees of public agencies responsible for enforcing statues and judicial orders

## Reporting child abuse in Indian country

Telephonic help lines (CHILDLINE 1098, CHILD ABUSE HOTLINE: 1-800-633-5155) and Child Welfare Committees (CWC) under the Juvenile Justice Act (2000) have been established (Saini, 2013 and Cases, Of Child Sexual Abuse, and Resource Packet).

## Mandatory Reporting of Child Abuse

Personnel with knowledge or reasonable suspicion that a child was abused in Indian Country or that actions are being taken or will be taken that would reasonably be expected to result in the abuse of a child in Indian Country must immediately report such abuse or action to local child protective services or local law enforcement (Pub. L. 101-630, Title IV, § 404, Nov. 28, 1990, 104 Stat. 4547).

## Mandated Reporters

Table 3 mentions the mandated reporters as required by the Federal Law (Cases, Of Child Sexual Abuse, and Resource Packet).

## How to report a case?

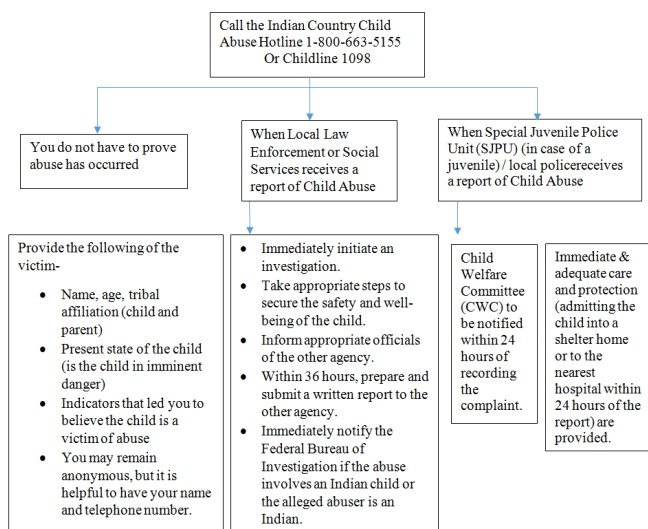


Figure 1. Shows the steps in reporting a case of child abuse.

## Immunity from Liability

Any mandated reporter who reports the abuse of a child based upon his/her reasonable belief and in good faith is immune from civil or criminal liability for making the report (Pub. L. 101-630, Nov. 28, 1990, 104 Stat. 4544).

## Confidentiality

The identity of any person making a child abuse report will not be disclosed without the consent of the individual, unless required by a court of competent jurisdiction (Pub. L. 101-630, Title IV, § 404, Nov. 28, 1990, 104 Stat. 4547).

## Failure to Report Child Abuse

Failure to immediately report the abuse of a child in Indian country or actions being taken or that would reasonably be expected to result in abuse of a child in Indian country to local

child protective services or local law enforcement is a Federal crime (Pub. L. 101-630, title IV, § 404(a)(1), Nov. 28, 1990, 104 Stat. 4547).

## Interfering with a Report of Child Abuse is a Crime

It is a federal crime for any supervisor or person in authority to inhibit or prevent a mandated reporter from making a report that a child was abused in Indian Country or actions are being taken or will be taken that would reasonably be expected to result in the abuse of a child in Indian Country (Pub. L. 101-630; 18 U.S.C. § 1169 (b)(3)).

## Conclusion

In India, child rights, protection and exploitation (street children, child labour, trafficking etc. are intimately linked to poor socioeconomic conditions in a large population base. It the need of the hour to educate parents, teachers, health care professionals to make them aware of child rights. They must demand and fight to obtain them. This could be achieved only by putting in place laws to punish those who abuse/exploit children, taking action to strengthen accountability on the part of government, NGOs and the civil society. Multidisciplinary child professionals should work together and monitor the government efforts in protection of child rights.

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