

# Identifying Challenges and Presenting Solutions to Counter Child Abuse

**OPEN ACCESS**

Volume: 12

Special Issue: 1

Month: September

Year: 2024

E-ISSN: 2582-0397

P-ISSN: 2321-788X

Received: 05.08.2024

Accepted: 04.09.2024

Published: 27.09.2024

Citation: Bokshi,  
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“Identifying Challenges and Presenting Solutions to Counter Child Abuse.” *Shanlax International Journal of Arts, Science and Humanities*, vol. 12, no. S1, 2024, pp. 1–10

DOI:

<https://doi.org/10.34293/sijash.v12iS1-Sep.10659>

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## Abstract

Children in a country like India which exhibits a unique socio-cultural landscape, encounter a multitude of issues comprising sexual abuse, exploitation, servitude, and child trafficking. These concerns not only jeopardise the physical well-being of children but also have an enduring impact on their mental health. This review paper provides insight into the complex multifaceted issues faced by children in India. It analyses the existing legal frameworks meant to safeguard children from any form of abuse. Furthermore, it explores initiatives aimed at fostering a safe and inclusive environment for children. The concept of “safety and inclusivity” encompasses physical, mental, and emotional certainty. By highlighting these issues, this study seeks to enrich the conversation surrounding child welfare and ensure the effective implementation of policies that guarantee the holistic development and safety of young individuals who symbolize a promising future.

**Keywords:** Child sexual abuse, child trafficking, legal fallacies, child welfare

## Introduction

India has a comprehensive and extensive legal framework aimed at safeguarding the welfare and rights of children. Children across the world, specifically in countries with distinct socio-cultural statuses such as India are faced with multifaceted problems, which include harsh and severe issues such as child trafficking, either for sex-based abuse or for any non-gender-based exploitations. These range from working in a bangle factory to even disturbing acts of cutting and discretion of children’s body parts to either sell their organs or mutilate those children to make them appear destitute and make them beg for charity. Although the legal framework of India encompasses many protective laws aimed at ensuring a safe and secure environment for children, inefficiencies in legislature and execution by the legal authorities hinder the effectiveness of this purpose. They are exposed to violent behaviour from a young age, seeing their parents engage in Intimate Partner Violence (IPV).

This paper also attempts to answer the following questions:

1. What are the multifaceted problems faced by children in India?
2. How efficient and responsible is the legal framework of India meant to protect children from varied forms of child abuse?
3. What are the safe spaces that attempt to provide mental and psychological comfort to the victims of child abuse?

## **Multifaceted Problems Faced by Children in India**

### **Child Trafficking in India**

Child trafficking commences when a child is enlisted to work by an individual, the child then contacts a recruiter for employment details or intends to relocate because of particular situations. In recent years, the issue of human trafficking, especially involving women and children, has risen to prominence as a major social problem in different fractions of the world. Although trafficking is predominantly a form of a well-formulated crime that crosses even world borders, India in specificity along with many other South-Asian nations, is rapidly becoming a central location for traffickers to operate as both a starting source, transit point, and end destination (Ghosh, 2009).

### **As Mentioned Earlier Child Trafficking is Majorly Sub-Sectionalized into Three Divisions**

#### **1) Sex-Based Abuse or Forced Prostitution**

It is upsetting that the trafficking of girls below 18 years of age has now become a common practice in many cities and rural villages in India. Many teenage girls and even children younger than 12 years are moved and trafficked to different states and countries, where they are sold in the materialistic sex market to the highest bidder as sex slaves. The reason behind these kinds of markets still operating is unfortunately sex trafficking, is a demand-driven problem (Kumar, 2023).

#### **2) Bride Trafficking**

Trafficked girls are not only subjected to forced prostitution but some of them also must reconcile themselves to bride trafficking. Several reports of young children (Girls) being trafficked for marriage have been seen in the past, but now it is more extensive, systematic, and on a larger scale. In South-eastern regions of Asia, forced marriages transpire without obtaining the consent of the victims. Trafficking of women for these feigning marriages was once more common in developed nations, but now it is widespread in emerging nations like India and China. Women and girls are deceived with fake promises of marriage and employment, then transported from their home regions (Irshad, 2020).

#### **3) Non-Gender-Based Exploitation**

Human and child trafficking does not just comply with women and young girls; the trafficking of minor boys is also a huge problem in India. A great number of gullible, innocent, and desperate boys from remote villages are tricked into working for an unknown organization for the minimum wage. Boys are often forced into child labour, bonded labour, and forced labour. Many industries, such as those of cotton farming and manufacturing of bangles, saris and firecracker production, often rely heavily on the hands of children. Many minors mostly work on cotton farms due to their small stature, allowing them to work quickly and more coherently. The re-trafficking of victims presents a major obstacle in these sectors as employers (traffickers) prefer to exploit children with previous trafficking experience and essential skills over new children who would need much time and many more resources for training. Some of the challenges that occur are due to the crime occurrence between states, which causes a breakdown in communication and coordination among local law enforcement at the starting point and end destination (Kumar, 2023). After several months or years of their release, they were threatened and told not to speak about the organization

where they worked; physical violence was holding its place for the people who had not done their work properly and did not meet their daily quota. There is one last precautionary measure set by the traffickers where victims are threatened in such a way that they cannot even go to court for justice, if they went, the victims were told that their families could get hurt and there would be dire consequences.

### **Exposure to Violence**

Exposure to violence is the image that is laid and publicized in front of children by their parents, be it violence received by children under the name of punishment for not “behaving” properly or Intimate Partner Violence (IPV), performed by parents between themselves which then sadly affect the child, mentally and psychologically. (Das et al., 2014) highlighted that boys all around the world may feel compelled to demonstrate sexually forceful behaviour, while gendered expectations differ in sexual and intimate relationships, with girls often expected to cater to the needs of males. The concerning trend of sexual aggression and violence is condoned by adolescent boys, particularly in South Asian societies. Factors affecting attitudes towards wife-beating in South Asian teenage boys found that children from non-violent households were 50% less prone to support such attitudes. Just 22% of boys strongly disapproved of violence against girls, while the other 78% were okay with some level of violence against girls. Attitudes endorsing violence against girls were strongly associated with the gender attitude scale. Among boys with high levels of gender-equitable attitudes, those in the top third were the ones least likely to accept violence against girls, making up 35% of this subgroup.

Observing parental violence and experiencing childhood abuse are key factors that can lead to aggression in adulthood. In societies with strong male dominance, IPV stems mainly from male domination backed by authority and power in both the family and society and can impact individuals across different socioeconomic, religious, and cultural backgrounds (Sinha et al., 2023).

Research has also shown that victims, who are primarily women, are frequently blamed for their involvement in IPV. Studies exploring the factors that contribute to the justification of IPV highlight that individuals with low economic status, previous exposure to parental violence, living in rural areas, lacking education or having minimal education, and being unemployed are key traits associated with justifying IPV. Men raised in violent domestic environments are more likely to have a positive attitude towards wife-beating if they desire autonomy and power. Factors within the family have been shown to be important indicators of support for violence against women and the perpetration of intimate partner violence by adult males (Carlson & Worden, 2005). The study highlights the importance of establishing a household that is violence and gender-bias-free so children can grasp the value of equality and respect towards their female partners and dismantle societal norms. Emphasizing gender education in schools by teaching sex and family life education to young people, at least until the end of secondary education, could enable them to question gender stereotypes and break the cycle of perpetuating these beliefs in future generations.

### **Child Abuse and Child Sexual Violence (CSV)**

Child sexual violence- CSV is a type of maltreatment inflicted on a minor by a perpetrator, which can include emotional abuse or extreme violence such as rape. (Seth & Greenbaum, 2024) States that child sexual exploitation is a pressing public health concern in India and can have negative effects on behavioural health, both immediate and prolonged. Children affected by the situation are at a higher risk of experiencing post-traumatic stress disorder (PTSD), depression, anxiety disorders, behavioural problems, and substance abuse. Mental health professionals are likely to come across patients who may be at risk of or already have a known history of child sexual abuse

(CSA), sexual exploitation, or sex trafficking. A study shows that in India, the frequency of CSA varies from 1.6% to 57%, with factors influencing the results, like sample groups, abuse categories, and assessment methods. An estimated 2.8 million women and children in India are trafficked for purposes of sexual exploitation, such as prostitution, child pornography, and child marriage. 102 million out of the 223 million child brides in India were married before reaching the age of 15 (Seth & Greenbaum, 2024). This highlights the several cultural norms in India and also shows the level of unfortunate, despicable acts followed in the country.

The ambulation of the CSA is such that it differs from adult sexual abuse as children seldom report sexual abuse right after it happens. Furthermore, the disclosure doesn't make it any easier for the victims to state the incident and express their feelings as the act of revealing information is typically a gradual procedure instead of a one-time event. In a culture that often blames the victim, the survivor of CSA experiences indescribable mental and physical trauma (Srivastav et al., 2017). Cultural beliefs about sex, such as taboos on premarital sex and discussing sexual issues openly, make it challenging for healthcare providers to bring up the topic when necessary. Children and families hesitate to report abuse to health practitioners for similar reasons, so it is the responsibility of providers to identify risk factors and signs and to take the necessary legal and treatment actions. Resistance to detect or address concerns of CSV stems from a lack of knowledge about community resources and fear of potential court involvement.

Child abuse: A study performed in 2007 defines child abuse as any type of maltreatment and negligence towards children, resulting in physical or emotional damage. This entails sexual abuse, neglect, and exploitation that may negatively affect a child's well-being, growth, and respect in contexts of trust or power. It also divides the sorrowful plethora of child abuse into forms of maltreatment which further dissects its cruel and extensive practices into sexual abuse, physical abuse, psychological and emotional abuse, and further neglect. If we dig deeper, the main cause of child abuse would be neglect which is seen at the family, societal, and state level. And impacts of such practices could and may very well lead to serious issues in a child's developmental growth and well-being (Dabir & Nigudkar, 2007).

A fascinating study about child abuse added more depth to different types of abuse by conducting an experiment on only girls and among all the group members, 70.57 per cent claimed they had gone through neglect. Almost all of them faced an uptick in household duties (70.38%), with around half taking care of their siblings (48.69%) and having unsupportive parents (48.44%). Interestingly, the focus was on the viewpoints of stakeholders, rather than on the children, when it came to dealing with this form of abuse. 54.6 per cent thought that raising awareness was essential in decreasing neglect, while 54.72 per cent favoured family over NGOs or the community in addressing neglect. These findings clearly showed that the fabric of society in India is constructed in a way that the perception of children by adults is mostly negative, leading to the belief that punishment is an acceptable way to handle them. Both the family and society lack an understanding of the importance of a healthy childhood (Study on Child Abuse, 2007).

### **Fallacies in the Legal Framework**

Mikhail Bakhtin stated that are neither the property of their parents nor the society. They are entitled to their own future freedom. India has a comprehensive and extensive legal framework aimed at safeguarding the welfare and rights of children. The principal legal framework of child protection is established through several key laws:

Juvenile Justice (Care and Protection) Act (2000, amended in 2015), the Prohibition of Child Marriage Act (2006), the Protection of Children from Sexual Offences (POCSO) Act (2012), the Right of Children to Free and Compulsory Education Act, 2009, and the Child Labour (Prohibition

and Regulation) Act (1986, amended in 2016) are some of the important protective laws. Despite these legislative efforts, gaps and loopholes in the legal framework such as ambiguously defined laws, lack of resources for enforcement, inadequate implementation, and administrative inefficiencies can lead to consequences that can adversely affect the safety and well-being of a child. This paper seeks to explain and analyze a few of these laws and provide insights into their existing inadequacies.

### **Child Labour (Prohibition and Regulation) Act, 2016**

Definition of child labour may be subjected to variations depending on the social, economic, environmental or physical context, but the fundamental concept of “child labour” is that part of the child population of a country that is engaged in either paid or unpaid labour. Largely, it is observed that children are forced to work by their guardians due to poor financial conditions. The worst forms of child labour encompass all forms of slavery, child trafficking, forced recruitment of children in armed conflict, and the exploitation of a child for illegal activities such as drug trafficking, involvement in pornographic performances, etc (Sil, 2017).

In July 2016, the Child Labour (Prohibition and Regulation) Act passed by the Government of India, was aimed at prohibiting and regulating the employment of children in certain occupations. It constituted of the following features (The Black Seed Project, 2017).

1. The definition of a child had changed from that of 18 years to 14 years to bring the law in line with The Right of Children to Free and Compulsory Education Act or Right to Education Act (RTE), 2009 which stipulates that all children aged six to fourteen years are provided with free and compulsory education.
2. A child below 14 years is not permitted to work in any industry except when it is a family enterprise.
3. The number of hazardous occupations for children was shockingly reduced from 83 industries to a mere 3 including mining, explosives, and occupations mentioned in The Factories Act, 1948.

The Child Labour Act was introduced with the intention of strengthening the protection of children but it has faced significant criticisms for its ambiguous provisions which legitimise certain forms of child labour. According to the 2011 census, 62% of child labourers between 5 to 14 years of age primarily work in agriculture, forestry and fishing. These occupations, among others like the textile and garment industry, glass industry, handicraft industry, etc, involve numerous processes and activities that can be termed ‘hazardous’ but remain unregulated due to the predominantly informal nature of the sectors (Sapkal et al., 2020). It has also been overlooked that children working within family enterprises might be involved in a variety of tasks that place diverse demands on the physical and mental health of a child. These include (i) participation in strenuous activities such as embroidery work, carpet weaving, bangle making, beedi rolling, etc; (ii) being compelled to work at irregular hours; (iii) facing the threat of being exposed to sexual, and physical and emotional exploitation; (iv) significant health hazards in certain occupations such as food processing, chemical industries, brick kilns; and (v) distress due to migration (Ganotra, 2016). Such an exception also exempts the law from regulating industries where activities could be outsourced to home-based units.

### **The Protection of Children from Sexual Offences Act (POCSO)**

The POCSO act was enacted by the Government of India in 2012 for the security of children against any form of sexual exploitation, harassment or pornography. This act safeguards the interests of children in every step of judicial proceedings by mandating child-friendly legal procedures and

keeping the identity of the child confidential (Rao & Sandeep, 2021). These initiatives are designed to minimize the mental trauma of the victims and their family members. Furthermore, the act also established Special Courts which are aimed at speedy trial within a year. Its gender-neutral aspect ensures justice for both female and male victims.

Despite its stringent policies, The POCSO Act has been subjected to a lot of criticism regarding its effectiveness in implementation, delays in investigation, and restrictive understanding of the law among other legal inefficiencies.

**Misuse of POCSO Act:** Contrary to previously established legal norms, the individuals accused under the POCSO act are subjected to the presumption of “guilty until proven innocent” (Juris Centre, 2023). This has led to several instances of individuals being wrongly implicated in false allegations. It is motivated by several factors such as land dispute, matrimonial dispute, personal vendetta, political reasons or the pursuit of personal gain (Lead India, 2023). The case of Govind Shivkumar vs State Of Karnataka, 2024 exemplifies the misuse of POCSO act, specifically under custody battles where the father of a child falsely accuses his former spouse’s new partner of sexually abusing the child to gain leverage in the custody battle (Indian Kanoon, 2024). Eventually, the court found the allegations to be fabricated. This is just one among numerous other cases that underscore the need for judicial vigilance to prevent the exploitation of protective laws.

**Ambiguity on the position of consensual sex:** Consensual partnerships are those in which both parties voluntarily and consciously engage in romantic or sexual relationships without any form of coercion or manipulation (Varnekar & Chutia, 2023). The legal age of consent as mandated by the POCSO Act was increased from 16 to 18 years. Thus, all sexual activities are criminalized if the individual is below 18 years of age. This denies consenting adolescents their bodily autonomy and makes it difficult for guidance counsellors and medical professionals to talk about positive sexual health and about consequences of engaging in sexually risky behaviour. According to the Juvenile Justice Act of 2015, children can be tried as adults if they are between 16 to 18 years of age and it is proven that they understand the gravity of the crime committed. However, the same age group is not deemed legally capable of consenting to sexual activities under the assumption that they lack sufficient knowledge or understanding of the matter (Reddy & Showmick, 2023). This highlights the inconsistency of legal treatment of children which can further perpetuate the problems of their experiences not being fully acknowledged due to “lack of maturity.”

**Judicial inefficiencies and shortcomings:** The POCSO act states that child victims must provide their testimony in court within 30 days of the court acknowledging the case. Furthermore, Section 309 of the Code of Criminal Procedure mandates that judges must conduct trials on a daily basis and witnesses should testify when they are present in court. These provisions are crucial for the rightful conviction of the accused and for recording truthful testimony of the victims (Economic and Political Weekly, 2024). In spite of promises of speedy justice, The Indian criminal legislation falls short in addressing a topic as delicate as that of child abuse due to lack of adequate infrastructure, limited special courts, and a lack of awareness (Maan, 2022). In the case of Mohan Lal vs State of Punjab a teenage girl was gang raped by her teachers and the court took five dates to record her testimony (Economic and Political Weekly, 2024). At that time of the establishment of fast-track courts (FTSC), legal and child rights experts had cautioned that merely setting up such courts would not help appoint additional judges or provide public prosecutors with proper training and sensitization to handle such sensitive cases (The Wire, 2023). According to a report by the India Child Protection Fund, Fast-Track Courts in 2022 managed to dispose of only 28 cases on average under the POCSO Act accounting for a mere shocking 3% of total cases nationally. Furthermore, it is projected that as of January 2023, considering the current rate of case disposal, it will take almost 9 years to address the pending 2.43 lakh cases (Indian Child Protection Fund, 2023).

Juvenile Justice (Care and Protection) Act, 2015: The Juvenile Justice Act (JJA), 2000 had been ratified by the Indian Government to establish regulations that address juvenile offenders. The amendment of 2015 introduced two key bodies to be formed in each district for dealing with juvenile offenders a) the Child Welfare Committee (CWCs) and b) the Juvenile Justice Boards (JJBs). The JJB is tasked with assessing the emotional and physical capacity and maturity of the child to consider the consequences of their actions (Prakash, 2019). Cases of juvenile delinquency are rampant in our country. India has reported a total of 340,168 crimes between the years 2013 and 2022. Further, more than 75% of the juveniles apprehended for various crimes between the years 2017 and 2022 were in the 16 to 18 years age bracket. One of the most significant principles of JJA is section 15 which states that if a child between 16 to 18 years of age has committed a “heinous crime” that is defined by Section 2(33), then the Juvenile Justice Board shall conduct a preliminary evaluation to understand their physical and mental capacity to commit such offence, their understanding of its consequences, and the contextual factors associated with the alleged offence. This was heavily criticized by Shashi Tharoor, a Member of Parliament (MP) from the Indian National Congress. He pointed out that this clause was in direct contradiction with international standards and that many children who break the law come from a poor socio-economic background and thus should be educated not penalized (Staff, 2015).

Furthermore, heinous offences those with a potential sentence exceeding 7 years, include at least 46 offences for which juveniles between 16 and 18 years could potentially face trials as adults. Although murder and rape are commonly cited juveniles can also be tried as adults for NDPS Act, MCOCA Act, etc. These points underscore the necessity of a legal framework that focuses on rehabilitation rather than punishment. Placing adolescents in jails with adult criminals puts them at risk of physical, sexual, and emotional abuse, while also increasing the likelihood of further criminalization by experienced adult offenders (Kumar & Singh, 2016).

### **Creating Safe Physical Spaces for Children**

i) Medical care: It is critical that medical health professionals recognise potential indicators of abuse in children. These may include apparent signs of distress at the time of the office visit, heightened anxiety when separated from a caregiver, refusal to undress for examination, or reluctance to be examined by the healthcare provider. Caregivers may express concern about abnormal behaviour of their child such as increased fear of the dark, recurrent nightmares and bedwetting of a previously potty-trained child or signs of sadness, withdrawal, irritability, and sudden outbursts of anger. Furthermore, children may exhibit knowledge about sexual behaviour and language that is inappropriate for their age group. This necessitates further screening and assessment (Hanson & Wallis, 2018)

The POCSO Act mandates registered medical practitioners to take a comprehensive and multifaceted approach to providing care to child abuse victims. This includes collection of forensic evidence after rigorous medical examination, treating genital and other physical injuries, and conducting age assessments if necessary. They must offer prophylaxis for sexually transmitted infections, including HIV, and discuss emergency contraception with teenage children and their guardians. A baseline mental health evaluation must be conducted along with monthly follow-ups for at least six months to monitor for psychiatric disorders. Additionally, practitioners must provide family counselling and assist the court by supporting the child’s interview process and offering expert testimony if needed (Moirangthem et al., 2015).

ii) Home: The child population of India constitutes 19 per cent of all the children around the globe. However, it is shockingly estimated that every second child is exposed to child abuse and violence (Fernandez et al., 2021).

Being exposed to violence not only threatens a children physical health and safety but also has a significant impact that goes beyond emotional and behavioural disorders. In addition to posing threats to the child's personal safety, these forms of violence disrupt the child's immediate environment as a safe haven and compromise parents' availability for physical and emotional care (Margolin & Gordis, 2000).

Thus, it is very important that parents provide a nurturing and supportive environment for children where open communication is highly encouraged. Parents should exemplify non-violent behaviour, manage conflicts calmly and encourage children to discuss freely about any form of abuse that they go through.

iii) School: Schools and educational institutions are crucial for development of children and adolescents. They are considered safe spaces where children spend their time under the supervision of teachers and qualified caregivers. All the staff members including teachers, administrators and non-teaching staff should be trained in prediction, prevention, and preparation, which are the must-do things to ensure a safe environment in schools. Prediction involves anticipating potential risks in and around schools that can harm the children and lastly, prevention involves taking measures to avoid further occurrences of these incidents. Furthermore, schools should be prepared to deal effectively with situations threaten the safety of the students. Moreover, schools should establish a zero-tolerance policy against any form of bullying, ensure access to mental health professionals, and create safe spaces for children for emotional regulation (Thomas et al., 2018).

### **Ensuring the Mental and Emotional Welfare of Victims of Child Abuse**

i) Non-Governmental Organizations (NGOs): Many victims of heinous crimes such as child sexual violence and abuse seek help emotionally and psychologically through various non-governmental organisations, as they are the very initial point of contact for seeking mental and emotional reliance. NGOs were initially created to address the gaps in government services for human welfare. Past research has consistently demonstrated that both sexual abuse and physical problems can persist into adulthood, including problems such as depression, PTSD, anxiety, substance abuse, self-harming behaviours, dissociation, sexual dysfunction, and even a chance of experiencing further victimisation in future relationships. Hence, prompt delivery of services in CSA is essential to prevent the delayed onset of symptoms. In addition to offering direct services to CSA victims, NGOs emphasise the importance of also participating in training sessions and increasing awareness among employees on subjects like recognising symptoms and handling cases correctly. Certain organisations are even educating kids on how to protect themselves by teaching children about "good touch and bad touch" and supporting them to speak up and share their experiences of CSA with a trusted adult. (Das, 2017). This inclusive and supportive environment makes it easier for the patients and the victims to open up to the practitioner which as a result makes an excellent means of recovery.

ii) Government organisations and public hospitals: There are many public hospitals and government-run organisations in India that offer support to the unfortunate victims of CSA and child trafficking; people seldom choose public hospitals as government-run organisations tend to be cheaper than private practitioners. (Das, 2017) told in her research "Institutional Care and Response to Victims of Child Sexual Abuse in India: The Role of Non-governmental Organizations & Public Hospitals", that in most instances at public hospitals, the discussion about CSA happens in a different setting. Nevertheless, some medical superintendents have noted that they have identified signs of CSA, such as bruising or scarring while performing routine physical exams on children. Hospital employees must deal with the consequences of abuse on a child, like ongoing fear, suspicion, and unease being in the presence of adults other than their parents while going through

physical pain and emotional distress. One of the many examples of a government-run organisation is The Multi-Disciplinary Child Protection Centre which provides five crucial services: 1) Health care which includes thorough treatment and evidence collection for high-risk cases, 2) Psycho-social care for children and guardians with a non-judgmental and supportive approach, 3) Family engagement to prevent re-victimization and strengthen support, 4) Networking with various organisations for a team response, and 5) Research-informed practice to improve practices based on experience (Das, 2017).

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