

MAJOR OFFENCES AGAINST CHILDREN: AN OVERVIEW UNDER THE INDIAN PENAL CODE 1860

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Offenses committed against children encompass a wide range of physical and emotional abuse, neglect, and exploitation. These heinous acts even extend to child pornography and the trafficking of minors for sexual purposes. Both the Indian Penal Code and an array of specialized protective and preventive laws, both at the national and local levels, explicitly address offenses where children are the victims. The age of the child varies according to the definition given in the applicable Acts but the age of the Child has been defined to be below eighteen years as per the Juvenile Justice (Care and Protection of children) Act, 2000. Therefore, an offence committed on a victim under the age of eighteen years is considered as the crime against the children. Children, considered as valuable assets of a nation, inherently possess the right to life, well-being, and access to healthcare, proper nutrition, shelter, and protection from conflicts, neglect, exploitation, abuse, and injustice. They represent our future, making it essential to uphold their right to grow and thrive. As the stability and prospects of a society are intrinsically tied to its children, contingent upon the state's planning for their welfare, it's vital to consider children as an integral part of the societal fabric rather than isolating them during specific developmental stages. A foundational principle is to always remember the saying, "Let children be children."

Keywords- Child Abuse, Juvenile Justice, Right to Education, POCSO

Introduction

India holds the position of being the second most populated country globally, with nearly 41% of its population being under the age of eighteen. Unfortunately, a significant number of these minors have fallen prey to instances of sexual abuse. In many cases, these young individuals are unaware of their victimization, driven by fear to not report the abuse, or coerced into silence through threats. Despite India's commitment to protecting its children from any form of sexual exploitation, as demonstrated by its signing of the Convention on the Rights of the

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Child, the prevalence of such cases continues to rise. In a disheartening revelation, the National Crime Bureau's report on September 29, 2019, indicated a 4.5% surge in crimes against children in 2019 compared to the preceding year. The report additionally noted a concerning 18.9% uptick in the registration of cases under the Protection of Children from Sexual Offences (POCSO) Act of 2012.

It is a sad reality that most crimes against children come from their immediate circle, and many of these go unnoticed due to various reasons such as embarrassment, fear of police, family respect, economic conditions, etc. Sexual abuse can have long-term effects on the child, including psychological stress, emotional problems, behavioral issues, and abnormal sexual behavior. It is important for parents and caregivers to be vigilant and take necessary steps to protect children from such abuse. It is also important for society as a whole to raise awareness about this issue and work towards creating a safer environment for children.

Definition of Child

In common parlance or general comprehension, a "child" denotes a person who lacks the ability to support themselves. The determination of who qualifies as a child is guided by the provisions outlined in various Acts exclusively concerned with children. To put it another way, the classification of an individual as a child hinges on their age and the specific circumstances they are placed within. Age stands as the sole determinant in establishing one's child status. Within India, several legislations revolve around defining the age of a child, such as:

1. Juvenile justice Act, 2000, now replaced by the Juvenile Justice (Care and Protection of Children) Act, 2015.
2. POCSO Act, 2012
3. RTE Act, 2009
4. The Prevention of Immoral Traffic Act, 1956.
5. The Factories act, 1948.
6. The Child labor (Prohibition and Regulation) Act, 1986.
7. Convention on the Rights of child adopted by the general assembly of united nation, 1989.

According to Section 2(a) of Immoral traffic prevention Act 1956, "a child is a person who has not completed the age sixteen years".¹

1 *Immoral traffic prevention Act 1956 § 2(a) NO. 104, Acts of Parliament, 1956 (India)*

According to Section 2(c) of Factories Act, 1948, “child means a person who has not completed fifteen years of age”.²

As per the Convention on the rights of the child, “child means a person male or female who is below eighteen year of age.”

Causes of offence against children

Justice V.R. Krishna Iyer has stated, “*The Hallmark of culture and advance of civilization consists in the fulfillment of our obligation to the young generation by opening up all opportunities for every child to unfold its personality and rise to full stature- physical, mental and spiritual. It is the birth right of every child to demand justice from whole world.*”

- Lack of awareness and care by parents:
- Poverty
- Corrupt government officials.
- Society
- Internet
- Effective strength of law enforcement agencies.

Table No. 1

The following are the data has been released by the National Crime Record Bureau³ Crime against Children (2017-19)

S. No.	State/Union territory	2017	2018	2019	Percentage state-wise to All India (2019)
1.	Andhra Pradesh	2397	2672	2524	1.7
2.	Bihar	5386	7340	9320	6.3
3.	Madhya Pradesh	19038	18992	19028	12.8
4.	Maharashtra	16918	18892	19592	13.2
5.	Goa	196	182	167	0.1
6.	Gujarat	3955	4929	4685	3.2
7.	Haryana	4169	4869	5119	3.5
8.	Uttar Pradesh	19145	19936	18943	12.8
9.	Delhi	7852	8246	7783	5.3

² Factories Act, 1948§ 2(c) NO.63, Acts of Parliament, 1948 (India)

³ National crime records bureau data: available at <https://ncrb.gov.in/en/crime-india-2019-0> retrieved on 21December 2022

10.	Punjab	2133	2308	2625	1.8
11.	Rajasthan	5180	5150	7385	5.0

Crime against Children

Both children and women have fallen victim to criminal offenses. The crimes perpetrated against children are not confined to any specific gender or age group. This is primarily because children often lack the capacity to comprehend the nature of the offenses committed against them, making them vulnerable targets for offenders. The innate innocence typically associated with children makes them particularly susceptible to offenders. Crimes against children encompass not only physical abuse but also emotional maltreatment, neglect, and exploitation. Perpetrators of child-related crimes often include relatives, caretakers, and other acquaintance who may face charges. Individuals such as school officials, medical professionals, and law enforcement officers are obligated to report any indications of child abuse or exploitation. Society witnesses various types of offenses committed against children, some of which are:

1. Cruelty

Child cruelty was largely misunderstood in Indian society. Simply put, there was a prevailing notion that unless guardians adopted a strict and authoritarian approach towards children, they would not learn discipline. Apart from parents, educational institutions also held the belief that physical punishment was the only means to instill discipline in children. Consequently, cruelty towards children became normalized.

In more recent times, the incidence of child cruelty within educational institutions has decreased thanks to stringent legislative measures. However, addressing domestic abuse of children remains a challenge, primarily because children themselves are often unaware of their rights

2. Kidnapping and Abduction

Kidnapping is often used interchangeably with abduction to describe a similar purpose, yet there is a subtle distinction between these two. Kidnapping involves removing of a minor child from the custody of their parents or guardians. On the other hand, abduction typically entails forcibly transporting an adult individual against their will. In cases of kidnapping, the consent of the abducted minor holds no significance. On the other hand, in instances of abduction, the consent of the person(major) abducted may serve as a valid defense for the accused against criminal liability.⁴

⁴ Indian Penal Code, 1860, § 359, NO.45, Acts of Parliament, 1860 (India)

3. Begging

The significant factors contributing to desperate actions like child begging, a prevalent and severe issue in our nation, are poverty and lack of education. Child begging has inflicted profound harm upon countless children, robbing them of their childhoods and subjecting them to lives of servitude.⁵

Moreover, it's evident that children from economically disadvantaged backgrounds are at a higher risk of abuse due to parental poverty. This dire circumstance coerces them into begging in order to supplement their family's income. Adding to the complexity are certain criminal networks that not only exploit and mistreat these children but also expose them to drug use as a means of sedation. Additionally, children with disabilities are often coerced into begging, as their presence invokes sympathy among the general populace. Tragically, they are subjected to physical abuse and mutilation for this very purpose.

Begging today is a result of the complex socio-economic disorganization and breakdown of the joint family system. Factors that are responsible for begging are poverty, destitution, famine, drought and disaster, whether manmade or natural leading to migration, homelessness etc. Which are pushing people into begging

The following are few important causes of begging:

- a. Economic causes
- b. Social cause.
- c. Natural calamities.
- d. Religious causes.

4. Sale and Procurement

The buying and selling of children is a pressing and concerning matter in today's era. Once abducted, children are traded through networks of human trafficking and exploited for various purposes, including:

- For the purpose of employing in the beggary.
- To coerce them towards illegal marriage or illicit relationship.
- To force them to indulge in the child prostitution.
- To hire them for domestic help.

5. Other Offences

5 Arkadyuti Sarkar, "Offences against Children" available at <https://blog.ipleaders.in/offences-against-children/> retrieved on 20 Aug 2022

a. Child Pornography

Child pornography entails the manipulation or coercion of a minor to engage in sexually explicit actions, which are then recorded. These actions might involve luring a young individual with financial incentives or other methods. Child pornography is universally prohibited, and regulations mandate explicit content involving minors to be expeditiously removed from pornographic websites worldwide. The extent of the problem is difficult to document but numerous investigations suggest trafficking in minors for sexual abuse like pornography is very common. The poverty ridden girls and teenage children are becoming the victims of pornography in the internet. The Pandemic year 2020 not only brought the physical ailments but also increased the child pornography industry in India.⁶

b. Child Prostitution

Among all forms of child abuse, child prostitution stands out as the most egregious. This dark practice has escalated to the scale of a multibillion-dollar industry, treating children as mere commodities for trade, purchase, and sale. Child prostitution inflicts severe harm on children, leading to their dehumanization across social, physical, and emotional dimensions. Moreover, it strips these children of their fundamental rights to a wholesome and normal life. In spite of this realization, various repressive policy and regulatory measures on prostitution, the situation is deteriorating and the number of child prostitutes are rapidly increasing in India. The following are the common causes of the child prostitution.

- Poverty.
- Money.
- Child trafficking.
- Orphans.

c. Child Molestation and Rape

Rape and child molestation involve sexual interactions between an individual who is below the age of consent and someone who is not. Currently, molestation and rape do not discriminate based on gender. Any

6 “It has been observed that, there has been increase of 200 percent in the demand for the violent child pornographic material in the internet which is both the alarming and disappointing one” Marchi, N. C., Fara, L., Gross, L., Ornell, F., Diehl, A., & Paim Kessler, F. H. (2021). Problematic consumption of online pornography during the COVID-19 pandemic: Clinical recommendations. *Trends in Psychiatry and Psychotherapy*, 43(3), 159-166. <https://doi.org/10.47626/2237-6089-2020>

child, regardless of their gender, can become a victim of sexual molestation or rape. Perpetrators of these offenses could include family members, friends, school teachers, household staff, and others.

In most cases, a child lacks the understanding and maturity to fully comprehend the gravity and repercussions of such acts. Alternatively, they might remain silent due to threats from the perpetrators. There are instances where families advise children to keep such incidents hidden in order to safeguard the family's reputation. In recent times, the number of sexual offenses against children has been on the rise, with a significant portion of cases going unreported.

Remedies under Indian Penal Code

Children worldwide are universally seen as among the most susceptible and guileless recipients of societal crimes. Two vital legislations aimed at protecting children's rights and ensuring their security are the POCSO Act of 2012 and the Juvenile Justice Act of 2000. Meanwhile, the Indian Penal Code of 1860 identifies a range of offenses perpetrated against children and stipulates the corresponding punishments for their commission. These offenses encompass homicide, feticides, kidnapping, sexual acts etc.

- **Hurt and Grievous Hurt:** The hurt is defined under the Section 319 of IPC, which states that "whoever causes the bodily pain, disease or infirmity to any person is said to be hurt." There are three ingredients of hurt:
 - a. Bodily pain
 - b. Disease
 - c. Infirmity etc.

The act which neither intended to cause the death nor the grievous hurt to the person may be the hurt even though it results in death. The accused will be guilty under this Section if the injury was caused not the serious one. Whoever causes hurt to the child with the intention or with the knowledge that it likely to cause the hurt to the child then it is said to be voluntary causing hurt. The person who causes the hurt may be liable for the imprisonment of one year, or with fine up to one thousand rupees or both.

Grievous Hurt is defined under the Section 320⁷ of Indian Penal Code. The Section designates eight kinds of grievous hurt and provide the punishment in each of the case.

Any person whose voluntarily grievous hurt to the child then he or she may be punished under the Section 325 of Indian Penal Code, for the term which may extend to seven years, and shall also liable for the fine. The major ingredients which requires the person to be held liable under the voluntary grievous hurt are follows:

- a. The accused must cause the hurt to the child.
- b. The hurt must be the grievous one as specified in Section 320 of IPC.
- c. The hurt must be caused voluntarily one.

• **Abetment of Suicide**

Section 305 of the Indian Penal Code, deals with “*abetment of suicide of child, below the age of eighteen years, or an insane person, or a person in the state of intoxication, or an idiot, commits the suicide, whoever abets the commission of such suicide, then such person shall be punishable with death or imprisonment for life, or the imprisonment of not exceeding ten years and shall also liable for fine.*”

The Section only applies when the person abetted to commit suicide as the result of instigation to a child. The conviction of the accused is possible only when the prosecution proved, the three component of suicide that is:

- a. The commission of suicide has done by the deceased.
- b. Mental State of the Accused at the time of commission of the crime.
- c. The third and the most important components of Abetment of Suicide is Instigation done by the accused for the purpose of committing the suicide.

India holds one of the world’s highest youth suicide rates, primarily attributed to limited economic, social, and emotional support. Factors include intense academic pressure, urbanization, social and workplace stress, and weakening support systems. Family value conflicts also

⁷ The kinds of grievous hurt are:

- a. Emasculation {Deprivation of masculine vigor of a male person}
- b. Permanent deprivation of the sight of either eye.
- c. Permanent deprivation of the hearing of either ear.
- d. Deprivation of any member or joint.
- e. Destruction or permanent impairing of the power of any member or joint.
- f. Permanent disfiguration of the head or face.
- g. Fracture or dislocation of a bone or tooth.
- h. And the hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

contribute significantly to the issue. In traditional households, there is often limited support for matters such as financial independence, marriage age, rehabilitation, and caring for the elderly.

Factors that are commonly responsible for suicide among the teenagers are follows:

- a. Depression, trauma, and stress-related disorders can increase the risk of suicide in teenagers.
- b. A previous suicide attempt by the teenager also increases the likelihood of another suicide attempt.
- c. A family history of depression can also be significant and concerning, as can a history of domestic violence, child abuse, and neglect.
- d. Sense of hopelessness and worthlessness that often accompany the depression.
- e. Mental illness is also found in the LGBT community due to the discrimination made by them which cause the low self- esteem and negative sexual and gender identity abuse and neglect. Which is also another factor which increase the suicide rate in teenager.

• **Attempt to Commit Murder**

The Section 307⁸ of Indian penal Code states that, “whoever does any act with the intention or the knowledge that the act which he or she is doing likely to cause the death of that person, then the offender would be held liable under this Section and shall be punishable for the period which may extend to ten years and shall also liable to pay the fine, and if the hurt is caused to any person by the offender then he or she shall be liable either to imprisonment for life or such punishment which is mentioned under this Act.”

8 To attract the provision of Section 307, the following components are necessary to prove in the court that are follows;

- a. An attempted was made to cause the death of the child.
- b. The action was carried out with the intention of causing the death of the child or with the intention of inflicting bodily injury upon them.
 - The accused knew that it likely to cause the death of the child.
 - That it was sufficient done in the ordinary course of nature which would likely to cause the death.
- c. That the accused attempted to cause the death of the child by doing an act which he known to him as imminently dangerous one that will probability cause the death of the child.

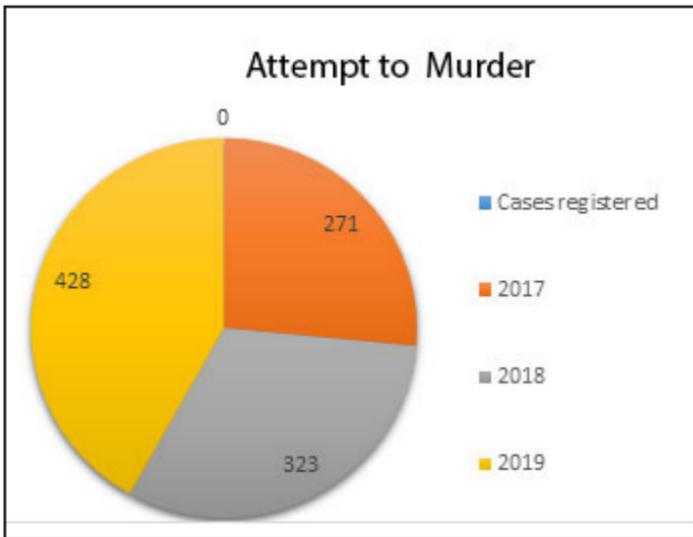
* To constitute attempt, there should be a proof of some expressed act and also the evidence of Mens rea which will be made the accused liable under this act. So the burden of proving the case lies on the prosecution which need to prove by him which as follows:

- a. The Actus Reus means the action taken by the accused, which is legally identified as constituting the commission of the offense.
- b. The Mens Rea, means that he has the intention of causing the death of the person, if the offence has committed.

According to the report which has been published by the National Crime Record Bureau⁹ which says, that a total number of 428 cases of attempt to commit murder against the children has been registered in India during the year 2019. Bihar has registered 199 cases which is highest one among the states, followed up by Maharashtra (51 cases) and Madhya Pradesh (49 cases), which have been accounted to be the majority of such cases in India. The crime rate of all over the India was 0.1 percent, while the highest number of cases of attempt to murder were registered in Bihar (0.4 percent) and Madhya Pradesh (0.2 percent).

The total number of cases which have been registered during the year 2019 is much higher than the previous years which has been shown in the pie chart.¹⁰

Figure No. 1



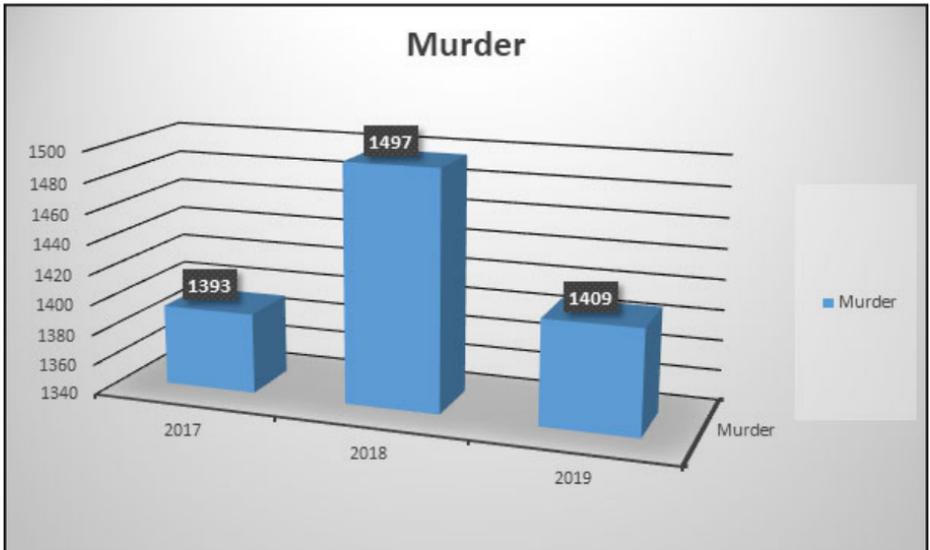
9 National Crime Records Bureau Data available at <https://ncrb.gov.in/en/crime-india-2019-0>, retrieved on 22 September 2022

10 *ibid*

- **Murder¹¹**

According to the report which was published by the National Crime Record Bureau states that a total number of 1409 cases of Murder against the children have been registered in India during the year 2019. Uttar Pradesh has registered 271 cases which is highest one among the states, followed up by Maharashtra (149 cases) and Madhya Pradesh (145 cases), which have been accounted to be the majority of such cases in India. The crime rate of all over the India was 0.3 percent. The total number of cases which has been registered during the year 2019 as compared to previous years have been shown in the graph.¹²

Figure No. 2



Conclusion

Children all throughout the world are subjected to unspeakable violence, putting their lives in danger. This abhorrent treatment takes occurred in a variety of locations, including the streets, schools, workplaces, and

11 *Murder is defined under Section 300 of Indian Penal Code, is the species of the offense of the culpable homicide. Any person who commits Murders will be punishable with the death penalty or imprisonment which may extend to life and shall also liable to the fine as prescribed by the court. Murder is the Aggravated form of Culpable Homicide¹¹. The Section tells the circumstances when the culpable homicide turns into the murder which is punishable under Section 302 of IPC and the exception¹¹ depicts when an offence is not the murder but is the culpable homicide not amounting to murder.*

12 *National Crime Records Bureau Data available at <https://ncrb.gov.in/en/crime-india-2019-0> retrieved on 28 September 2022*

institutions. Shockingly, those entrusted with safeguarding children—their teachers, employers, guardians, as well as police and armed forces—often betray their responsibilities. The range of violence against children encompasses torture, physical abuse, sexual violence, and even murder. Such crimes may appear distant to those who are concerned, prompting people to disregard the matter owing to a lack of personal proximity. These testimonies, however, serve as horrific reminders of the prevalent and terrifying nature of child abuse, which may happen dangerously close to home.

- Poverty often becomes the underlying cause pushing individuals towards criminal paths. The lack of education and poverty lead parents to be unaware of their children's rights. It becomes imperative for both the government and various non-governmental organizations to educate parents about child rights through camps and programs conducted in rural areas.
- The government should allocate resources towards law enforcement and establish explicit legal prohibitions against violence targeted at children. These laws should be effectively enforced.
- To safeguard children from harmful influences, the strict application and execution of laws are necessary.
- Promoting social awareness and strengthening legislation is crucial for curbing violence, sexual abuse, and exploitation of children. It is essential to take proactive measures to eliminate these issues.

To conclude, it can be stated that the children by their nature, are always innocent. Taking the advantage of their innocence, some people try to exploit them, torture them and deprive them of their basic human rights. To fulfil some illegal and nasty intentions, people can go to any extent as discussed above and thereby spoil the lives of such tender aged children. In spite of various provision in the Indian Penal Code, 1860 to protect children and various verdicts of the judiciary, still there is a rise in number of offences against the children. Until and unless we the people of India wake up and protect our own children, nothing can be done to the children because the law alone cannot change the society unless all its stakeholders fulfil their obligations.