**ABUSE AND NEGLECT IN ASYLUMS, ORPHANAGES, AND CARE HOMES**

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**ABSTRACT**

Children are that set of population who are regarded as the future of the nation and are one of the most vulnerable segments. Despite the special protection offered by the state to preserve their rights the situation and the plight are miserable. Children with the parents are presumed to be in the safest hands but what about the children without the parents in asylums, orphans, and care homes? Is there fortification and security not the responsibility of the state?

This paper will work as the catalyst in understanding the quandary of the children in the orphans and the various associated aspects. Afore elucidating the topic, it is essential to understand the scope and meaning of the orphanages. Orphanages are the institutions to look after the children without parents (orphans). But the author credence that it is the delusion as approximately up to 80 percent of the children in orphanages have a living single parent and they end up in these institutions because of the innumerable factors like poverty, illiteracy, disability, etc. The number of children in these institutions is increasing at an alarming pace globally and approximately 2.7 million children are surviving in these institutions worldwide. India has the second-largest population in the world, 42 percent of this population is less than the age of 18 years. These institutions are conventional to provide support, care, guidance, and shield to the children but girls and boys who live in them are at amplified risk of violence and ill-treatment and the authors have talked specifically about the locus of children in the orphanages.

This research paper is an endeavor to illuminate the situation in the orphanages, types of abuses faced by the acquitted children, sexual exploitation, need and prominence of the family for the well-being and growth of the children, international perspective and law and probable solutions. To support the research, the paper will include a comparative analysis between the two countries i.e. India and the United States of America for a better understanding of the concern, overcoming the hurdles in the path of implementation of the policies, and to bring an evident change.

The methodology of research is doctrinal and sources are secondary in nature. The basic source of information is the publically available information on various legal databases, books, journals, articles, etc. For the legal sanctions, the help of laws, case laws, reports, and legislations are given due consideration.

Keywords: Children, Violence, Abuse, Care homes, Exploitation

**INTRODUCTION**

“**Children are not mini-human beings with mini-human rights. But as long as adults continue to regard them as such, violence against children will persist.”**

-**Maud de Boer-Buquicchio, Deputy Secretary-General of the Council of Europe**

Despite the plethora of the laws as the safety device of the children from abuse and exploitation, they are still subjected to such brutality. This sounds ironic but it is the dark truth. Child abuse is the globally prevalent phenomenon with an adverse impact on the health, skills, growth, and development of the children. According to WHO, "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."[[1]](#footnote-2) But where do these heaps of the laws fail to protect the little human beings with not very little human rights?

Around the world, millions of boys and girls are growing up independently not by choice but because of the heat of compulsion. In some cases they end up living on the roads, under the bridges or certain institutions. The institutions they live in may be disguised as orphanages, asylums, children's homes, foster care, care homes, juvenile detention facilities, etc. The objective and persistence which these institutions have to cater are to provide care, support, assistance, and fortification to children but they turn into abusive monstrosities, which subject them to violence and abuse.

India is the second-largest child population in the world, 42% of India's total population is below eighteen years. It has been estimated that approximately 2.7 million children under 18 years old are living in institutional care worldwide, although the quality of available data from many countries is poor and under-reporting is a problem, as many institutions are unregistered and the children living them are not officially counted.[[2]](#footnote-3) Most of these children are placed in these organizations because of poverty, parents' inability to provide proper care, illegitimate child, disabilities, illiteracy, etc. Globally, it is estimated that there are approximately 153 million children who have lost a mother or a father; 17.8 million of them have lost both parents.[[3]](#footnote-4) These factors are elucidated in the paper in detail. These children who are abandoned become a social obligation- society's children. The protection of children is a mutual value of our cultures and traditions. The growth of the children into a responsible adult is the responsibility that goes beyond parents and is shared by the society, community, and state.

Unfortunately, the number of children in the care homes, orphans, and asylums is intensifying day by day at a tremendous speed. Cambodia saw a 75% increase in the number of orphanages to 269 orphanages housing 11,945 children during the five-year period from 2005 to 2010. Recent studies on residential care in sub-Saharan Africa have shown substantial increases in the number of orphanages and children in care. In Uganda, for example, the number of orphanages went from 30 in late 1992 to an estimated 800 in 2013. More than 95% of the facilities were not appropriately licensed by the government to operate and were, therefore, operating in violation of national child protection laws. In Ghana, despite a concerted effort aimed at decreasing the use of orphanages and increasing family-based options, the number of orphanages has increased since 2006, from 99 to 114. The number of children documented as living in those orphanages has grown from 3,388 in 2006 to 4,432 in 2012.[[4]](#footnote-5)

These innocent children, unaware of the filthy world are unprotected. In their wretched plight when they do not have the sustenance of family and friends, they are subjected to the abuse either physically, emotionally, sexually, and psychologically or neglect. This puts the non-repairable influence on them which encumbers their progression and growth. The most common antagonistic effects that children who grow up in care homes, orphans, and asylums experience include: developmental delays; behavioral problems; attachment disorders; lack of life skills; institutionalization; and difficulty forming and maintaining healthy relationships.[[5]](#footnote-6) This endangers not only their present existence but also their forthcoming and the future of the nation. Therefore, in this paper the author will expound the various factors which drag them in this miserable plight, the significance of family in the growth of the children, sexual exploitation of the children, probable solutions to end the quandary of the immaculate children, etc.

**LAWS OF THE LAND: INDIA**

Children are the first and foremost individuals, born with inalienable and intimate human rights and they are the set of individuals who have the capacities to realize their set of rights. Children constitute over 400 million of the total Indian population and with time, a number are relevant changes in the policies, institutions, and laws related to the protection and security of children. There is a shift from the need and welfare-based approach to the rights and development based approach. In this approach the state is duty-bound to preserve the rights of the children (rights holder).

Before 1839, there was the existence of the authoritative concept which means that the outright authority and control of the father on the children. She/he was the beneficiary or the recipient of the orders and the responsibilities but now there is a drastic shift and he is the master of his/her own life. This alteration has taken place majorly in the 20th century. There are large numbers of attempts in the form of legislative initiatives, importing bills, court interventions to make the laws more children friendly.

The constitution is the "grundnorm" of the country, the basic norm as illustrated in the pure theory and includes the fundamental rights and directive principles of state policy. By the way of positive discrimination, the constitution has succeeded in providing special status and protection to the children. The rights to equality, liberty, protection of life, education, against exploitation, untouchability, child labor, trafficking are treasured under article 14, 15, 16, 17, 21,21A, 23 and 24 of the constitution in the form of the fundamental duties applicable on all the citizens of India irrespective of age.

It is after the 86th constitutional amendment act that the article 21A (right to compulsory education from 6-14 years) was made the fundamental right, but the right to early childhood and education of children below the age of 6 years has been denied. The RTE Act should have covered the entire school education system for children aged 0-18 years and this exclusion of groups of children is a violation of human rights. The Constitutional Right of Early Childhood Care and Education must be restored and the requisite provisions for its quality delivery must be made. The directive principle in the Constitution relates to early childhood care and education and also states that it is the fundamental duty of parents to send their children to school. It would have been more effective if early childhood care and education had been guaranteed as a fundamental right rather than as a directive principle.[[6]](#footnote-7)

Before perforating deep in the laws of the land, let us comprehend the meaning and scope of the child. Every act of the human is somewhere related to the age, for instance- marriage, voting, joining armed forces, criminal culpability, work, etc. But what if there is a dilemma about the same. There is a gray area as the different statutes give the diverse definitions of the child. No uniformity serves as an escape for the offenders, for instance – IPC defines a child as the one under the age of the 12 years whereas the Indian Traffic Prevention Act defines minor as the person below the age of the 18 years.

Another discrepancy in the Indian legal system is that even though there is a dubious distinction between child abuse and sexual abuse cases; there is no specific law for either of them. The only relief which can be resorted to is under the IPC and POCSO although there is no law to cover child abuse in all dimensions. Under IPC as rightly there is no definition of the "child abuse" or "child sexual abuse". Unlike many other laws, Indian law has not created the classical distinction between rape and sexual abuse. The cases related to sexual abuse are covered in section 375[[7]](#footnote-8) of IPC. But the definition of rape has two key elements i.e. "committed by men" and "penetration" leaving an escape for the offenders of the male child leading to a need for the gender-neutral definition of rape. The only resort of remedy for the male child victims is under section 377 if the offense is committed by the same gender. There is no accountability or answer if the crime is committed by the opposite gender for males.

Rape is an offense under the IPC, but lesser forms of sexual offenses against children, are covered by grossly inadequate and inexact provisions such as "outraging the modesty of a woman." How do we define modesty and apply Section 354, on outraging the modesty of women, concerning children? The gravity of the offense under Section 509, dealing with obscene gestures, is less. Yet even in such cases, the child's psyche may be affected as severely as in rape.[[8]](#footnote-9)Even the offense of rape recognized the other forms of penetration other than a vaginal penis after the petition of the Sakshi Ngo in according to the order passed by the Supreme Court in Sakshi vs. Union of India & Ors.[[9]](#footnote-10), the Law Commission of India.

This is because of the hazy laws and Lucama, India is heaven for child abuse. It is strange but true that the Indian Penal Code does not recognize child sexual abuse and there is neither proper law nor policy on child sexual abuse in India. The laws dealing with sexual offenses are outdated and do not specifically address child sexual abuse, only rape and sodomy can lead to a criminal conviction and anything less than rape amounts to outraging the modesty. There are no procedural provisions to ensure that the best interests of the child are protected. The laws focus more on technicalities. Medical reports prepared by some insensitive doctors are vague and inadequate. The absence of a proper medical report in the case of a sexual assault goes against the assaulted child. The insensitive interviewing of children by untrained police personnel also causes further trauma to the child. Further, a child has to give his/her evidence several times and re-live the trauma and the laws have no provision to prevent such trauma to the child.[[10]](#footnote-11)

POCSO Act, 2012 is a comprehensive law to provide for the protection of children from the offenses of sexual assault, sexual harassment, and pornography, while safeguarding the interests of the child at every stage of the judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offenses through designated Special Courts[[11]](#footnote-12). POCSO has been initiated by the government to curb the violence. It fails to define "child abuse". The definition of the rape or the aggravated penetrative assault does not provide any remedy to the male child. There is an urgent need for gender-neutral laws against sexual offenses.

The late Prime Minister, Jawaharlal Nehru, agreed very positively to the idea that a child is dependent only temporarily and is in fact an integral part of our investment in the future.[[12]](#footnote-13)Thus, there is the need to safeguard the interest of the victims, witnesses, and the future investment of the nation by the way of amendment in the legislation and statutes. This is to ensure the mental and physical prosperity of children.

**FORMS OF CRUELTIES**

This chapter focuses on the omissions and commissions by the parents or the caretakers. It exfoliates the prevalence and existence of the foremost types of maltreatment by the caregivers in orphanages:

* Physical abuse is defined as the commission of those acts by the caregivers which results in the physical harm or the potential physical harm or injuries to the children. It may include burning, hitting, punching, shaking, kicking, or otherwise harming the child by overwork. It can be the outcome of the over-discipline or incongruous physical acts of punitive nature and a clear form of physical pain is child labor which largely evident in these institutions. Children purportedly do an unacceptable degree of work like cleaning, washing dishes, and clothes, etc. Many orphanages recruit children from poor parents and physically exploit them, furthering the notion of the exploitation of the children to meet the economic and financial self-regarding ends.
* Sexual exploitation is the unapt sexual behavior with the child. It is the practice of exploitation of the child for sexual gratification. Most of the children in institutions are subject to sexual abuse by the caretakers. The ratio of the girl child in this is at peak but boys are as well exploited sexually but because of the lack of sex education these acts are lost in the slumber of ignorance and not reported.
* Emotional mishandling is also known as verbal abuse, mental abuse, or psychological ill-treatment and the omissions on the part of the caretakers or parents lead to behavioral problems, mental trauma, cognition, etc. This can be the outcome of the dangerous or the bizarre forms of punishment like confinement in the darkroom, pejorative remarks, rejection, etc resulting in an unsupportive and unhealthy environment for the progress of the child.
* Neglect is another form of mistreatment, which refers to the inability, omission, or failure on the part of the caretakers to sustenance the prerequisites and progress of the child. There exist many manifestations of child neglect, including non-compliance with health care recommendations, failure to seek appropriate health care, deprivation of food resulting in hunger, and the failure of a child physically to thrive. Other causes for concern include the exposure of children to drugs and inadequate protection from environmental dangers. Besides, abandonment, inadequate supervision, poor hygiene, and being deprived of education have all been considered as evidence of neglect.[[13]](#footnote-14)

**TENDENCIES OF UNREPORTED ABUSE CASES**

Though the definition of child abuse varies from state to state and region to region but still the numbers of the neglected and abused children are alarming, but less number of the cases are recorded and reported because of the various factors:

* The primary reason for underreporting of child abuse and child neglect cases is extreme difficulty to get the responses from children on sensitive subjects because of the inability to understand the dimensions of abuse and neglect and to talk about their sufferings. Many times the abuse is detected by the behavioral changes, injuries on the body, disheveled, etc.
* The abuse in inflicted in most of the cases by the person in close and immediate relation which is the leading factor to contribute to the unnoticed cases. Many cases are not reported because of embarrassment, disgrace, decadence, and family honor add towards the shunning and banishment of cases of child abuse.

**RATIONALE WHY CHILDREN WIND UP IN ORPHANAGES?**

Numbers of children have been snowballing at a great pace in these institutions. For instance, in India, there are about 440 million children; about 40% of them are vulnerable or experiencing difficult circumstances.[[14]](#footnote-15) There are various factors which have responsibility for such acceleration. Those factors have been deliberated upon, in detail as follows:

* **Poverty** is the vicious circle that can be blamed for oodles of the glitches faced by mankind. It has been recognized as the main driving factor for the abandonment of the children. In most countries where parents are unable to afford the necessary care for the bare survival of the child are left with no choice. Punishing poverty, homelessness, illiteracy, disadvantaged migrated population, rural communities are majorly concealed under this. It has been studied that poverty instead of the nonexistence of family is the most corporate reason for the relinquishment of the children. In parts of Africa and Asia, poverty combined with the inability to provide education (supplies, transport, clothing, etc.) or parental illness is a driving force for families to place a child in orphanages.[[15]](#footnote-16) Children end up in these institutions. In a study of maternity hospitals in Europe, staff in 75% of hospitals stated poverty as a possible cause of abandonment.[[16]](#footnote-17) Over 50% of children in orphanages were admitted due to poverty in Sri Lanka.[[17]](#footnote-18) Chronic diseases such as AIDS and lack of adequate medical treatment are frequently correlated with poverty. A recently published study of Rwandan orphanages found that poverty, together with the death of a parent or abandonment by a parent, was the reason for placement in an orphanage in 40% of all cases. There were similar findings from a study of orphanages in Malawi.[[18]](#footnote-19)
* **Disability, learning difficulty, illness** is another factor. The stigma attached to children with disabilities (physical or mental) threatens their mere existence. Social attitudes harm the mindset of the family and encourage them to give up on their disabled children. They consider themselves unlucky, cursed, or lack of access to the proper treatment and support service. Children with disabilities may also be abandoned, at birth, or later, as a result of cultural beliefs and persistent discrimination.[[19]](#footnote-20) These attitudes lead to the desertion of 45% of children in Russian institutions. In eastern European countries the child has the 46 times increased likelihood in Central and Eastern Europe and commonwealth independent states.
* **Discrimination** based on sex has been in existence since time immemorial. In India girl child is still considered as the "parayadhan". The rate of abandonment of the girl child in India is 90 percent of the 11 million children. The reason for the swelling crimes against the woman is the large scale no acceptance of the female. Some are killed before birth and those who are not killed before are abandoned after birth.
* **Recruitment, child trafficking, and exploitation** is another reason for desertion. When the parents are unable to look after the needs of the child due to poverty, illiteracy etc., children are considered as the source of the income. In the country like India, Nepal, China, Bangladesh, Pakistan; parents trade their children who are further exploited by the way of child labor, prostitution, unethical adoptions etc. in these institutions.In Malawi, over 50% of institutions reported directly 'recruiting' children by encouraging parents to place their children there to meet their selfish ends.[[20]](#footnote-21)
* **Child abuse and neglect** is the reason why children leave their families but the situation in the institutions is even deteriorated. Relatively very few children are placed in these institutions due to this reason.In a survey of 11 European countries, 14% of children were admitted due to abuse or neglect.[[21]](#footnote-22)Abuse, alcohol, drugs or untreated mental illness, running away, living on streets, broken families etc. are the associated explanations. Sometimes the children may enter into these institutions because of the separation from the families in natural disasters either temporarily or permanently.

**“The children must, at last, play in the open veldt, no longer tortured by the pangs of hunger or ravaged by disease or threatened with the scourge of ignorance, molestation and abuse, and no longer required to engage in deeds whose gravity exceeds the demands of their tender years.”**

**-Nelson Mandela, Nobel Peace Prize Laureate**

The author considers that the laws made for the protection of the children against the abuse are not proficiently implemented. There is a need to give a wider interpretation of the term "PROTECTION". It should not be confined only against abuse, assault and violence but also extend to the protection of fundamental and human rights. The real essence of the right to life is to live it with utmost dignity and uprightness and not mere animal survival.

**HORROR OF SEXUAL EXPLOITATION AT ZENITH**

The subject of child abuse is not deliberated and explored in India yet. It is still a taboo and the reason why the crime rate is at its peak is that there is the pin-drop silence about the subject. Parents, guardians, or caretakers never recognize the prominence of sex education and do not deliberate about sex, sexuality, physical, emotional and hormonal changes during the growing years. There is a false belief that sexual exploitation of the children is not prevalent in India and it is a western phenomenon.

The parents, guardians, or caretakers do not make their child comfortable and open. For example, the mother who has not even communicated to her girl child about the menstruation, the child is unable to explain the sexual advances towards her by any other person. This silence encourages the abusers to exploit the opportunity of ignorance. The prevalence of sexual abuse in the upper and middle class was found to be proportionately higher than in lower or in the lower middle class.

A report, Trafficking in Women and Children in India, sponsored by the National Human Rights Commission (NHRC) highlights that India has become one of the hottest child sex tourism destinations. In 2000, UNICEF carried out a national survey in Romania on "Child abuse in residential care institutions". The study found that 37.5 per cent of children in residential care institutions report that they have been victims of severe physical punishment or "beatings" (approximately two-thirds were boys and one-third girls). 77 percent of cases reported residential care staff as the perpetrators. 19.6 percent (approximately half boys and half girls) claimed to have been blackmailed for sexual activities and a further 4.3 per cent claimed that they were "constrained" to have sex. The reported perpetrators of these acts of sexual abuse were older residents of the same sex (50 per cent), older residents of the opposite sex (12 per cent) and institutional staff.[[22]](#footnote-23)

Orphans are considered as the form of child trafficking in international law. There is a high menace of sexual exploitation by the international volunteers because the tourism agencies or the orphanages do not require any formal police clearance reports to check the background and lack of the authorities to check the conduct of these volunteers. There are no consistent child protection policies or codes either in care centers or in tourism operators. Some orphans have the "open door" policy which allows these volunteers to come and go as per their plea and also take children out of the institution as per there discretion. Lack of answerability and parameters in residential care centers means that abuse is often rampant.

Children in the orphanages are used as the means to attract the funds by the way of the donations or volunteers. They may be compelled to beg or perform on behalf of centers. There are care homes established to please western desires. The children are portrayed as orphans to attract international funds.Child trafficking is defined by the United Nations (UN) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children 2000 (Article 3(c); the UN Trafficking Protocol) as the recruitment, transportation, transfer, harboring or receipt of a child for exploitation. Exploitation in this context includes, at a minimum, sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.[[23]](#footnote-24) This leads to additional exploitation: the malafide status about the orphanhood of the children and upbringing in the institutional environment. This practice has been documented by agencies working in child protection in Nepal, among other places, where there have been reports of care operators removing children from their biological families under the guise of education, and then placing children in residential care centers to attract orphanage tourism and funding. In some cases, children are kept in destitute or unhealthy conditions to appeal to donors and volunteers. Further, children who are involved in begging or performing for tourists, often have no access to education. Also, there is some evidence that volunteering makes children vulnerable to other forms of harm, impacting their socio-emotional development. Children become attached to multiple short-term visitors and volunteers and are then subject to repeated abandonment when these volunteers leave.[[24]](#footnote-25)

Scammers may pose as charities collecting donations for orphanages or asking for sponsorship of what [[25]](#footnote-26)orphans. Donations may be elicited via telephone calls, emails or scam websites, using photographs and stories of fake orphans to garner sympathy. Corrupt orphanage operators have also been known to directly scam international tourists who have volunteered in orphanages. These scams are not directly linked with the children but reflect the misuse of the plight of children for personal materialistic gains.

Therefore, international voluntarism and child sex tourism overlap. International volunteers travel around the world to have sexual contact with children. This makes them vulnerable orphans in the more wretched state of life.

**INTERNATIONAL FACETS**

The Convention on the Rights of Children (CRC) is the universally accepted human right agreement. This illustrates both the standard of the rights and duties and the responsibilities and commitments of the parties regarding the rights. The rights of children everywhere, as described in the instrument, can be grouped into four main categories: the right to survival, the right to develop to his/her potential, the right of protection against all forms of neglect, abuse, and exploitation, and the right to participate in family, community and society.[[26]](#footnote-27)

In the UN CRC, Article 19.1, Child Protection has been defined as “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.[[27]](#footnote-28)

This convention attempts to provide the special protection and security to the children separated from the family naturally or maliciously under articles 19 and 20 of the said treaty. To protect the children from the violence adhered to them in these institutions adds to the responsibility of the state to take the appropriate measures. The CRC recognizes that children should grow up in a family environment: the Convention’s Preamble states that “… the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding.”[[28]](#footnote-29) Article 34 and 35 of CRC protects the children from all forms of exploitation, especially prostitution, pornography and trafficking. There is an international law specifically directed towards the child sexual abuse i.e. (OPSC) Article 3 to accolade CRC. Moreover, it identifies the onus of the state to rehabilitate and recover the children subjected to ferocity, cruelty and exploitation. Under article 43 the state is required to make a committee and under article 44 the committee is supposed to submit a report on the steps taken by them for the elimination and recovery of child abuse and headway made. Article 23 assures a decent life to the disabled children. Another important instrument used to jettison the problem of child labor is the International labor organization.

As a reaffirmation to the commitment in CRC and OPSC during the second world congress against the sexual ill-treatment of children resulted in the Yokohama Global Commitment 2001 (YGC). It strengthens the notion and agenda of the elimination of all forms of violence against children. It is an ample tool to curb the imminent concern.

**REQUISITE OF FAMILY AND EVOLUTION OF CHILD**

**“We have to wipe their tears and transform their gloomy faces into happy ones. We have to kindle the flame of hope and a better tomorrow in them.”**

**-The First Lady of Pakistan, Begum Sehba Pervez Musharraf, 2005**

Children's well-being and growth are greatly prejudiced by the type of environment they are oriented. There is a stout body of evidence which specify the fact that absence of the healthy environment, family or early institutionalization is responsible for the more depressive symptoms, aggressive behavior, bitterness, developmental delays, attachment disorder, lack of life skills, striving in forming and maintaining relationships etc. which are evident in orphans at the wide scale. These variants are discussed in depth:

* **Orphans and emotions**-Age is the most relevant element. There has been superfluity of the evidences which indicates that orphanages at an early age are most injurious for the mental health of the child. The children in the first five years have a crucial period of physical, mental, psychological, social and cognitive. But they experience the plight of life that too without any emotional support. Orphanages do not contribute even a little to this area. There are bundles of reasons like lack of adequate knowledge, cultural belief that children do need emotional support, difficulty to identify mental illness, inability to handle problems. [[29]](#footnote-30)

In some cases children are reprimanded for showing the undesirable emotions. Indonesian institutions lay more emphasis on the primary education of the children along with the basic need this means that little or no attention is paid to the mental wellbeing of the orphans. The use of violence, in particular physical and psychological punishment, was found to be prevalent in the great majority of institutions. Government childcare institutions tended to have a militaristic style of operating with 'call-up', 'lining up', 'public hearings' and in terms of sanctions, pushups, rollovers, crawling and running or even in one instance collective beatings. Faith-based institutions with strong regimes of rules and practices, in particular some of the more traditional Islamic based child care institutions, emphasized abiding by religious rules and teachings.[[30]](#footnote-31) Children undoubtedly feel humiliated and insulted in public which undermined self-esteem, dignity and confidence of the children.

* **Orphans and bereavement**- like adults, children also grieve the loss of the family and parents. Unlike adults they do not have the maturity and understanding to recover from the loss. These unresolved conflicts within them keep on growing with not only ruin their childhood but also the forthcoming life. They are neither listened nor talked which results in no appetite for food, lack of strength, inattentiveness, depression, anger etc.

Disinherited affections and emotional vulnerability revealed by these children place them in jeopardy of physical and sexual abuse, as their longing for attention may consequence in a readiness to trust strangers and make themselves obvious targets for substance misuse and sexual exploitation.

* **Orphans and social change**- popular opinion about orphans is to support the children and to protect them but the admission of children in these institutions is the turning of the world upside down. Middle class or upper-middle-class children, after the death of the parents, move with the relatives, separation from the siblings, forced to live on their own or eventually ending up in orphanages.

It is feared that many children may find it difficult to adapt to new changes. Minde (1988) makes it clear that it is not the social change itself that may cause psychological problems; rather it is the failure of the individual to adapt to social change. Like bereavement, social change and the resultant need to adapt to it create stress. According to Minde (1988), this stress may be shown in symptoms of confusion, anxiety, depression, and behavioral disorders such as disobedience. The same symptoms may cause learning problems. Children who are frustrated, fearful, and depressed may fail to concentrate in class and therefore perform badly. Failure by the school and the home systems to recognize these symptoms and address them will aggravate the child's psychological problems.[[31]](#footnote-32)

* **Orphans and physical labor**- there is a shortage of the learning material, poor mealtimes a shortage of electricity in dorms, having to wake up early to do chores before going to school. In some institutions children were tangled in activities such as cooking and physical drills before school started in the morning. By the time they go to class they were exhausted and lost concentration. There were instances when children were not able to propagate their religion. If children disobeyed they were advised, cautioned or given a punishing task, for instance cleaning toilets or digging pits etc.

The need for the family in childhood is equivalent to the need of a ventilator for the patient. Love, sense of belonging, lifelong connections, and cultural, traditional and shared history helps to strengthen the personality and growth of the child. Children seek interaction with adults, especially in the early years between birth and 3 years of age. They babble, search for eye contact, and listen for the voices of their parents. The absence of this kind of warm, responsive, and reciprocal relationship between a child and an adult can result in damage to brain development. Children raised in biological, foster, and adoptive families demonstrate better physical, intellectual, and developmental outcomes as compared to children living in institutional care.[[32]](#footnote-33)

**INDIA AND USA**

The laws in the USA are at two levels state and federal. In the USA there is the definition of the term "child abuse", unlike India, under the Child Abuse Prevention and Treatment Act. The number of cases has been increasing which invited a lot of criticism. At the same time, they have been accused of interfering unnecessarily in families through adversarial investigations of parenting practices. Public concern grew during the 1970s over the large number of children being placed in foster care, the length of time they remained in care and the number who drifted from foster home to foster home, neither returning to their parents nor being released for adoption. ‘With the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272), the federal government required states to make "reasonable efforts" to prevent out-of-home placement and to promote family reunification or find permanent homes to be found for the children.[[33]](#footnote-34)

The reforms are not implemented completely. The courts are not ready for the new roles assigned to them back in 1980. The budget restrained the further functioning of the agencies. Those problems were addressed in the amendment 1993 to the social security act. The CPS staff has been appointed to boost the efficiency of the mechanism. CPS staff members must conclude the cogency of the accusations, the identity of the perpetrator, and the conditions of children. Public support for any such system will depend primarily on whether it can assure that safety while simultaneously recognizing and respecting the responsibilities of parents to raise their children.[[34]](#footnote-35)

**FULL STOP TO CHILD ABUSE: RECOMMENDATIONS**

* With adequate support and facilities, many children who have been otherwise abandoned by the parents would have nourished in their families. The significance of the family has been very illustrated in the paper. Moreover, the cost of bringing up a child is comparatively less in the families than in the institutional cares. More facilities like free education, mid-day meals, etc. should outreach the lower starts of society. Children with disabilities are in the intensive need for financial assistance, it will provide a fall in the number in institutional care. This demands greater political and economic commitments from the governments. As the investment in the institution of the family is crucial for the social setting.
* Children cannot survive without the care and support of the parents and institutional cares do not pull up to the needs of the adolescents. Therefore, there is a need for an alternative for institutional care. Fostering, kinship care, and other positive care alternatives, as well as adoption, must be developed, regulated and maintained in line with international standards. Efforts should be made to provide the child with a sense of permanency, a ‘primary attachment figure,’ and to enable them to be with people they know and trust.[[35]](#footnote-36) Institutional care should be the last resort.
* It has been documented that most levels of violence are perpetrated by the staff members. Therefore, there is a need for some strict selection and recruitment procedure after a proper check on the background. The staff must be efficiently trained about the human rights and non-violent disciplinary measures to tackle with the orphans. There should be separate health care, cleanliness and counseling staff. This will bring a positive shift in the status co of the institutions.
* Another way out to curb the maltreatment against children is by independently inspected and monitored by qualified bodies with full access to the facilities and freedom to interview children and staff in private. These bodies should have the power and capacity to monitor conditions and investigate any allegations of violence promptly. Such bodies could include ombudspersons, independent commissions, citizens or police review boards.[[36]](#footnote-37) The children should be provided with the special training about the self-defense and assistance protocol in cases of troubles.
* The international Guidelines for the Alternative Care for Children are a vital tool for improving the care and protection of children. Governments should adopt and follow them in national strategies, laws and policies, budget allocations, human resource development plans and the development of care services. Particular priority should be given to ensuring that children under the age of three can stay with their parents and/or families or have access to high quality family-based alternative care.[[37]](#footnote-38)The situations and conditions in these institutions should confer to the CRC and other international benchmarks in all the compasses like health, mental health, nutrition, sanitation, child’s dignity and personal space, no overcrowding, recreation and mobility.

**REFERENCES**

1. Child protection initiative, ‘Children without Appropriate Care Standard Advocacy Messages Child Protection Initiative, 24 May 2011’ < https://resourcecentre.savethechildren.net/library/children-without-appropriate-care-advocacy-messages > accessed on 5 May 2020
2. UNICEF, ‘violence against children in care and justice institution’ [1999] < https://www.unicef.org > accessed on 5 May 2020
3. Patricia A. Schene, ‘Past, Present, and Future Roles of Child Protective Services’[1998] 8 (1) The Future of Children < https://www.jstor.org/stable/1602626> accessed 1 May 2020
4. James Sengendo and Janet Nambi, ‘The psychological effect of orphanhood: a study of orphans in Rakai district’ [1997] 7 Health Transition Review <https://www.jstor.org/stable/40652297 > accessed on 2 May 2020
5. ‘Children orphanages and families: A summary of research help guide faith based action’ < https://www.faithtoaction.org/wp-content/uploads/2014/03/Faith2Action\_ResearchGuide\_V9\_WEB > accessed on 3 May 2020
6. Evie Browne , ‘Children in care institutions’ [2017] Helpdesk Report < https://www.academia.edu/42269504/The\_Phenomenon\_of\_Child\_Abuse\_in\_India > accessed on 3 May 2020
7. Sara Shapouri, 'Ending Child Sexual Abuse and Exploitation: A Guide for Child Protection in Iran' (2007) 7 Whittier J Child &FamAdvoc 63
8. Mason P Jr Thomas, 'Child Abuse and Neglect Part I--Historical Overview, Legal Matrix, and Social Perspectives' (1972) 50 NC L Rev 293
9. Samantha Lyneham and Lachlan Facchini, ‘Benevolent Harm: Orphanages, Volunteerism And Child Sexual Exploitation In South-East Asia’ [2019] 574 Trends & issues in crime and criminal justice<file:///C:/Users/HP/Downloads/benevolent\_harm\_orphanages\_voluntourism\_and\_child\_sexual\_exploitation\_in\_south-east\_asia%20(2).pdf >accessed on 9 May 2020
10. UNICEF, ‘An End To Violence Against Children’< https://www.unicef.org/publications/files/Ending\_Violence\_Against\_Children\_Six\_strategies\_for\_action\_EN\_9\_Oct\_2014.pdf> accessed on 8 May 2020
11. BeataPietkiewicz-Pareek, ‘The Phenomenon of Child Abuse in India’ [2014] Electronic International Interdisciplinary Conference < https://assets.publishing.service.gov.uk/media/5b9a43caed915d666f681e10/029\_Children\_in\_Care\_Institutions\_v2.pdf > accessed on 13 May 2020
12. ‘Children in Institutions The Global Picture’ < https://bettercarenetwork.org/sites/default/files/1.Global%20Numbers\_2\_0.pdf > accessed on 7 May 2020
13. Rajeev Seth, ‘Protection of Children From Abuse and Neglect in India’ [2013] 56 (5) JMAJ < https://www.med.or.jp/english/journal/pdf/2013\_05/292\_297.pdf> accessed on 3 May 2020 Better Care Network Secretariat, ‘GLOBAL FACTS ABOUT ORPHANAGES’ [2009] <https://bettercarenetwork.org/library/the-continuum-of-care/residential-care/global-facts-about-orphanages > accessed 8 May 2020
14. Child abuse and neglect by parents and other caregivers’ < https://www.who.int/violence\_injury\_prevention/violence/global\_campaign/en/chap3.pdf > accessed on 12 May 2020
15. Ministry Of Women And Child Development, ‘Model Guidelines under Section 39 of The Protection of Children from Sexual Offences Act, 2012’ [2013] < https://wcd.nic.in/sites/default/files/POCSO-ModelGuidelines.pdf> accessed on 13 May 2020
16. Tara Ali Baig, ‘A Child's Right to be Human’[1986] 13 India International Centre Quarterly < www.jstor.org/stable/23001441> accessed o 13 May 2020
17. Alok Kumar, AshaPathak, Sandeep Kumar, PoojaRastogi and PrateekRastogi, ‘The Problem of Child Sexual Abuse in India Laws, Legal Lacuna and the Bill – PCSOB-2011’ [2012] 34(2) J Indian Acad Forensic < http://medind.nic.in/jal/t12/i2/jalt12i2p170.pdf> accessed on 13 May 2020
18. AshaBajpai, ‘ The Legislature and Institutional Framework For Protection Of Children In India’ [2010] IHD - UNICEF Working Paper Series Children of India: Rights and Opportunities < http://www.ihdindia.org/pdf/IHD-UNICEF-WP-5-asha\_bajpai.pdf > accessed on 5 May 2020
19. Indian Penal Code , 1860
20. MeeraKosambi, ‘Society's Children: A Sociological Study of Destitute Children in Maharashtra’ [1988] 23 (20) Economic and Political Weekly < https://swww.jstor.org/stable/4378492> accessed on 1 May 2020
21. Patrice L. Engle, Victor K. Groza, Christina J. Groark, Aaron Greenberg, Kelley McCreery Bunkers and Rifkat J. Muhamedrahimov, ‘The Situation For Children Without Parental Care And Strategies For Policy Change’ [2011] 76(4) Monographs of the Society for Research in Child Development < https://www.jstor.org/stable/41408762> accessed on 1 May 2020
22. ‘Action for the Rights of Children (ARC)’ < https://www.unhcr.org/afr/protection/children/3bb81bad4/action-rights-children-arc-foundations-child-adolescent-development.html > accessed on 11 May 2020
23. ‘ Protection Of Children In India’ < 5228\_1476691412\_protection-of-children-in-india-booklet-english.pdf> accessed on 11 May 2020
24. M. Mudasir Naqshbandi1 \*, RashmiSehgal (Rimsha Abdullah) 2 , Fahimul Hassan, ‘Orphans in orphanages of Kashmir and their Psychological problems’ [2012] 7(3) International NGO Journal <http://www.academicjournals.org/app/webroot/article/article1381917901\_Naqshbandi%20et%20al.pdf>accessed on 15 May 2020
25. Grace Zhou, ‘Understanding the Psychosocial Well-being of Orphans and Vulnerable Children (OVC): The Intersection of Research and Policy’ [2012] Duke University <https://dukespace.lib.duke.edu/dspace/bitstream/handle/10161/5386/Grace%20Zhou%20FINAL.pdf?sequence=1> accessed on 15 May 2020
26. Alex Shashkevich , ‘Matching neglected children with foster care families earlier in life promotes resilience, healthy functioning’ [2018] <https://news.stanford.edu/2018/02/01/foster-care-helps-neglected-children-resilient-healthy/> accessed on 11 May 2020
27. Childline India Foundation and Ors. v. Allan John Waters and Ors.[2011] 2 RCR(Criminal)339
28. Chandigarh Administration v. Nemo [2009]156 PLR 48
29. State of Maharashtra and Ors. v. RamchandraSambhajiKaranjule and Ors [2016]2BomCR(Cri)615
30. Sakshi v. Union Of India [2004] 5 SCC 518

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1. BeataPietkiewicz-Pareek, ‘The Phenomenon of Child Abuse in India’ [2014] Electronic International Interdisciplinary Conference < https://www.academia.edu/42269504/The\_Phenomenon\_of\_Child\_Abuse\_in\_India > accessed on 13 May 2020 [↑](#footnote-ref-2)
2. Evie Browne , ‘Children in care institutions’ [2017] Helpdesk Report < https://assets.publishing.service.gov.uk/media/5b9a43caed915d666f681e10/029\_Children\_in\_Care\_Institutions\_v2.pdf > accessed on 3 May 2020 [↑](#footnote-ref-3)
3. ‘Children orphanages and families: A summary of research help guide faith based action’ < https://www.faithtoaction.org/wp-content/uploads/2014/03/Faith2Action\_ResearchGuide\_V9\_WEB.pdf > accessed on 3 May 2020 [↑](#footnote-ref-4)
4. ‘Children orphanages and families: A summary of research help guide faith based action’ < https://www.faithtoaction.org/wp-content/uploads/2014/03/Faith2Action\_ResearchGuide\_V9\_WEB.pdf > accessed on 3 May 2020 [↑](#footnote-ref-5)
5. Evie Browne , ‘Children in care institutions’ [2017] Helpdesk Report < https://assets.publishing.service.gov.uk/media/5b9a43caed915d666f681e10/029\_Children\_in\_Care\_Institutions\_v2.pdf > accessed on 3 May 2020 [↑](#footnote-ref-6)
6. AshaBajpai, ‘ The Legislature and Institutional Framework For Protection Of Children In India’ [2010] IHD - UNICEF Working Paper Series Children of India: Rights and Opportunities < http://www.ihdindia.org/pdf/IHD-UNICEF-WP-5-asha\_bajpai.pdf > accessed on 5 May 2020 [↑](#footnote-ref-7)
7. Indian Penal Code, 1860 [↑](#footnote-ref-8)
8. Alok Kumar, AshaPathak, Sandeep Kumar, PoojaRastogi and PrateekRastogi, ‘The Problem of Child Sexual Abuse in India Laws, Legal Lacuna and the Bill – PCSOB-2011’ [2012] 34(2) J Indian Acad Forensic <http://medind.nic.in/jal/t12/i2/jalt12i2p170.pdf> accessed on 13 May 2020 [↑](#footnote-ref-9)
9. Sakshi v. Union Of India [2004] 5 SCC 518 [↑](#footnote-ref-10)
10. AshaBajpai, ‘ The Legislature and Institutional Framework For Protection Of Children In India’ [2010] IHD - UNICEF Working Paper Series Children of India: Rights and Opportunities < http://www.ihdindia.org/pdf/IHD-UNICEF-WP-5-asha\_bajpai.pdf > accessed on 5 May 2020 [↑](#footnote-ref-11)
11. Ministry Of Women And Child Development, ‘Model Guidelines under Section 39 of The Protection of Children from Sexual Offences Act, 2012’ [2013] < https://wcd.nic.in/sites/default/files/POCSO-ModelGuidelines.pdf> accessed on 13 May 2020 [↑](#footnote-ref-12)
12. Tara Ali Baig, ‘A Child's Right to be Human’[1986] 13 India International Centre Quarterly <www.jstor.org/stable/23001441> accessed o 13 May 2020 [↑](#footnote-ref-13)
13. ‘Child abuse and neglect by parents and other caregivers’ < https://www.who.int/violence\_injury\_prevention/violence/global\_campaign/en/chap3.pdf > accessed on 12 May 2020 [↑](#footnote-ref-14)
14. Rajeev Seth, ‘Protection of Children From Abuse and Neglect in India’ [2013] 56 (5) JMAJ < https://www.med.or.jp/english/journal/pdf/2013\_05/292\_297.pdf> accessed on 3 May 2020 [↑](#footnote-ref-15)
15. Children orphanages and families: A summary of research help guide faith based action’ < https://www.faithtoaction.org/wp-content/uploads/2014/03/Faith2Action\_ResearchGuide\_V9\_WEB.pdf > accessed on 3 May 2020 [↑](#footnote-ref-16)
16. ‘Children in Institutions The Global Picture’ <https://bettercarenetwork.org/sites/default/files/1.Global%20Numbers\_2\_0.pdf > accessed on 7 May 2020 [↑](#footnote-ref-17)
17. Better Care Network Secretariat, ‘GLOBAL FACTS ABOUT ORPHANAGES’ [2009] <https://bettercarenetwork.org/library/the-continuum-of-care/residential-care/global-facts-about-orphanages> accessed 8 May 2020 [↑](#footnote-ref-18)
18. 'Children orphanages and families: A summary of research help guide faith-based action' <https://www.faithtoaction.org/wp-content/uploads/2014/03/Faith2Action\_ResearchGuide\_V9\_WEB.> accessed on 3 May 2020 [↑](#footnote-ref-19)
19. 'Children orphanages and families: A summary of research help guide faith-based action' <https://www.faithtoaction.org/wp-content/uploads/2014/03/Faith2Action\_ResearchGuide\_V9\_WEB.> accessed on 3 May 2020 [↑](#footnote-ref-20)
20. ‘Children in Institutions The Global Picture’ <https://bettercarenetwork.org/sites/default/files/1.Global%20Numbers\_2\_0.pdf> accessed on 7 May 2020 [↑](#footnote-ref-21)
21. ‘Children in Institutions The Global Picture’ <https://bettercarenetwork.org/sites/default/files/1.Global%20Numbers\_2\_0.pdf> accessed on 7 May 2020 [↑](#footnote-ref-22)
22. Beata Pietkiewicz-Pareek, ‘The Phenomenon of Child Abuse in India’ [2014] Electronic International Interdisciplinary Conference <https://assets.publishing.service.gov.uk/media/5b9a43caed915d666f681e10/029\_Children\_in\_Care\_Institutions\_v2.pdf> accessed on 13 May 2020 [↑](#footnote-ref-23)
23. Samantha Lyneham and Lachlan Facchini, ‘Benevolent Harm: Orphanages, Volunteerism And Child Sexual Exploitation In South-East Asia’ [2019] 574 Trends & issues in crime and criminal justice<file:///C:/Users/HP/Downloads/benevolent\_harm\_orphanages\_voluntourism\_and\_child\_sexual\_exploitation\_in\_south-east\_asia%20(2).pdf>on 9 May 2020 [↑](#footnote-ref-24)
24. UNICEF, ‘An End To Violence Against Children’<https://www.unicef.org/publications/files/Ending\_Violence\_Against\_Children\_Six\_strategies\_for\_action\_EN\_9\_Oct\_2014.pdf> accessed on 8 May 2020 [↑](#footnote-ref-25)
25. Samantha Lyneham and Lachlan Facchini, ‘Benevolent Harm: Orphanages, Volunteerism And Child Sexual Exploitation In South-East Asia’ [2019] 574 Trends & issues in crime and criminal justice<file:///C:/Users/HP/Downloads/benevolent\_harm\_orphanages\_voluntourism\_and\_child\_sexual\_exploitation\_in\_south-east\_asia%20(2).pdf>on 9 May 2020 [↑](#footnote-ref-26)
26. Sara Shapouri, 'Ending Child Sexual Abuse and Exploitation: A Guide for Child Protection in Iran' (2007) 7 Whittier J Child & Fam Advoc 63 [↑](#footnote-ref-27)
27. Mason P Jr Thomas, 'Child Abuse and Neglect Part I--Historical Overview, Legal Matrix, and Social Perspectives' (1972) 50 NC L Rev 293 [↑](#footnote-ref-28)
28. UNICEF, ‘violence against children in care and justice institution’ [ 1999] <https://www.unicef.org/> accessed on 5 May 2020 [↑](#footnote-ref-29)
29. James Sengendo and Janet Nambi, ‘The psychological effect of orphanhood: a study of orphans in Rakai district’ [1997] 7 Health Transition Review <https://www.jstor.org/stable/40652297 > accessed on 2 May 2020 [↑](#footnote-ref-30)
30. Evie Browne, 'Children in care institutions' [2017] Helpdesk Report <https://www.academia.edu/42269504/The\_Phenomenon\_of\_Child\_Abuse\_in\_India> accessed on 3 May 2020 [↑](#footnote-ref-31)
31. James Sengendo and Janet Nambi, ‘The psychological effect of orphanhood: a study of orphans in Rakai district’ [1997] 7 Health Transition Review <https://www.jstor.org/stable/40652297 > accessed on 2 May 2020 [↑](#footnote-ref-32)
32. 'Children orphanages and families: A summary of research help guide faith-based action' <https://www.faithtoaction.org/wp-content/uploads/2014/03/Faith2Action\_ResearchGuide\_V9\_WEB> accessed on 3 May 2020 [↑](#footnote-ref-33)
33. Patricia A. Schene, ‘Past, Present, and Future Roles of Child Protective Services’[1998] 8 (1) The Future of Children <https://www.jstor.org/stable/1602626> accessed 1 May 2020 [↑](#footnote-ref-34)
34. Patricia A. Schene, ‘Past, Present, and Future Roles of Child Protective Services’[1998] 8 (1) The Future of Children <https://www.jstor.org/stable/1602626> accessed 1 May 2020 [↑](#footnote-ref-35)
35. Child protection initiative, ‘Children without Appropriate Care Standard Advocacy Messages Child Protection Initiative, 24 May 2011’ < https://resourcecentre.savethechildren.net/library/children-without-appropriate-care-advocacy-messages > accessed on 5 May 2020 [↑](#footnote-ref-36)
36. UNICEF, ‘violence against children in care and justice institution’ [1999] < https://www.unicef.org > accessed on 5 May 2020 [↑](#footnote-ref-37)
37. Child protection initiative, ‘Children without Appropriate Care Standard Advocacy Messages Child Protection Initiative, 24 May 2011’ < https://resourcecentre.savethechildren.net/library/children-without-appropriate-care-advocacy-messages > accessed on 5 May 2020 [↑](#footnote-ref-38)