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## **ANALYSING AND UNDERSTANDING THE HISTORICAL OVERVIEW OF CHILD SEXUAL ABUSE IN INDIA**

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### **ABSTRACT**

Children and childhood across the world have broadly been construed in terms of a golden age 'that is synonymous with purity, liberty, joy, and the like. It is the time when spared the rigors of adult life. But, then, it is also true that children are vulnerable, especially when they are very young. The victimization of children through various forms of violence physical, social and economic has been persistent and pervasive problem of the past and continues to be the problem of the present. It is a different matter that most of the societies (including Indian society) have ignored for long the existence of such violence against children as a tolerable deviation of certain families troubled by the traumas of domestic incompetence.

In the Indian context, a child needs to be given the right attention, love, care, and food, however experience indicates that there are instances where children are abused. When a parent rejects their child rather than leaving them alone, and the child works for his own maintenance exclusively in a factory, motel, small business, or other roadside establishment, the child is being treated cruelly. A child becomes linked to crimes and criminals under numerous motivating reasons when they lack a safe haven. The grim familial situations, the social milieu, the poverty, the ignorance of family planning and unrestrained population control, the lack of appropriate care and attention, and the absence of parental love and affection are all contributing factors to child exploitation in India. A child's personality is mostly shaped by their familial environment because here is where information is initially ingrained in children.

**KEY WORDS:** Child Abuse, Pocsso, Offence Etc

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## INTRODUCTION

The purpose of the Protection of Children from Sexual Offences Act (POCSO) of 2012 is to effectively combat child sexual abuse and exploitation. Finding out what existed prior to the act's introduction and what the children's circumstances were following its introduction is the primary goal of my research. Sadly, the Prevention of Offenses Against the Child Bill, 2009, which attempted to address all offenses against children, including sexual offenses, was never able to pass the Parliament. It was introduced in 2009. One of the major issues in India is the very high prevalence of sexual abuse and sex trafficking. There has been evidence of a rise in the prevalence of STDs in youngsters over the past 20 years. Youngsters who experience sexual abuse frequently have similar knowledge about the abuser. More severe and unambiguous penalties are required to address the issue of child sexual abuse.<sup>4</sup> To effectively handle the horrible crime of sexual abuse and sexual exploitation of children, the legislature drafted The Protection of Children from Sexual Offences Act, 2012 in an effort to contain this threat. The Act was approved by the President on June 19, 2012, and on June 20, 2012, it was published in the Indian Official Gazette. Protecting children from sexual assault, harassment, and pornography is the main objective of the act. The incidence of child sex abuse is quite high in India. The child sex abuse doesn't mean rape only. It involves dependent and developmentally immature children in sexual activities they do not truly comprehend. Unfortunately, the researcher on Child Sex Abuse in India is at the nascent stage with reported incidents only<sup>3</sup>.

### 1.1 HISTORICAL BACKGROUND OF CHILD ABUSE

The practices that legitimized violence against children depict the mindset of people who found nothing wrong in treating their children as their property over which they exercise total control. Such a monopolistic relationship was described as patria potestas which given power to the parents to do anything with their child, including pledging, selling and even sacrificing him under a superstitious belief for the wellbeing of the family. Even in India, under the exercise of patria potestas, children were exposed to various forms of violence in form of infanticide, death of a child for family well-being, sale of children, etc. For understanding this issue of abuse by parents and other caretaker, different standards and expectations for parenting behaviour in the range of cultures around the world should be consider. Culture is a society's mutual account of opinions and behaviours, and its concepts. In other words, culture helps

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<sup>3</sup> Neha Gupta, N.K. Aggarwal & M.S. Batia, —The Protection of Children from Sexual Offences (POCSO)l, Delhi Psychiatry Journal, Vol. 16 No. - 2, October,429(2013).

define the care of children. Every philosophy has their own rules about what are adequate parenting practices<sup>4</sup>

### **1.1.1 PRE HISTORICAL PERIOD**

Our two great epics, the Ramayana and the Mahabharata also eulogise the Indian view of childhood whereby there is an intense parental longing for children, and their upbringing is characterised by affectionate indulgence. This child centeredness, however, was found to be limited to boys only. The Indian tradition all along has been indifferent, if not overtly hostile, to the developmental fate of girls. Secondly, the Indian tradition subscribed to an ideology that downgraded the role of the environment and nurture in the development of a child, and instead emphasized upon a deterministic conception of mystical heredity. This mystical heredity in the Mahabharata was reduced to the karmas of the previous life and the attributes of the father (especially his caste) transmitted through his seed. These epics also displayed as to how young children, especially boys, were placed under the tutorship and guidance of respected gurus wherein moral precepts enjoined in the shastras were taught on a one-to-one basis. But, this too, was confined to the boys of the ruling upper-castes.

#### **(a) Female foeticide**

The unfavorable atmosphere that developed against woman from the Smriti age was further polluted by customs that cropped up during the Mughal period. The custom of dowry entirely changed the scenario and as a result, the bringing forth of the girl child got a very poor and hostile response in the families and even among people in the society at large. In order to escape from future foreseeable problems people started the custom of killing the newborn girl child immediately after her bringing forth. Female infanticide emerged from the general Vedic manner towards females. The huge dowry recommended by the Vedas implied that a girl was viewed as burden. The woman, who brought forth a girl child, was regarded with disrespect as much shame was connected to her. Henceforth, infanticide emerged as a helpful method for disposing of the burden. Reject<sup>5</sup>.

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<sup>4</sup> Sydney Moirangthem, Naveen C. Kumar and Suresh Bada Math, Child sexual abuse: Issues and Concerns, Indian J Med Res 142, July 2015,

<sup>5</sup> S.C Tripathi & Vibha Arora "Law Relating to Women & Children." 423 (Central Law Publications, Allahabad, 6th edition, 2015).

## **CAUSES FOR THE EXISTENCE OF FOETICIDE**

- 1. Conceptual Preference for Boys:** The patriarchal society in India generally shows a cultural bias against women. The Girls are generally considered as a liability and it believed that investment of any kind in girl's education and empowerment of girls is considered as purchasing an asset in failed enterprise. Their physical security is added responsibility on the family. Practice of dowry puts extra burden on the parents and all these results into general preference for son and girl foeticide and infanticide.
- 2. Socio-economic conditions:** The socio-economic conditions are one of the reasons for encouraging the act of foeticide. In economically poor families there is absence of family planning tools. In such families the discrimination in child care and nutrition leads to increased cases of female infanticide.
- 3. Absence of women in decision making:** Absence of women in the decision making has resulted into their opinions being ignored. They are forced to carry on foeticide against their choice. At higher levels in political circles and police & administration these issues are hushed up because of absence of will to strongly enforce the provisions of the laws.
- 4. Instances of sexual harassment and associated law & order problems:** Women are considered as weaker sex and their security has always been a concern for family. During historic times Rajput and Maratha families started the practice of female infanticide and jauhar to protect the dignity of women. Increased cases of rapes and sexual harassment leads to the economic disempowerment of women and which further results into them being disfavored by parents.
- 5. Decline in moral and ethical standards:** There has been a decline in the moral and ethical standards as individuals and families have failed to consider the rights of the girl child and the overall benefits that females bring to society, whereas individual or family interests have been promoted. It is also the violation of Hippocratic Oath by physicians when they do sex selective abortion.
- 6. A Girl cannot precede the family lineage:** People think girls cannot precede the father family because girls will marry and to go another family. The relation between them ends after her marriage and no one will be there for the care of her parents. But girls love their parents more than boys. They are always with the parents in joy and sorrow<sup>6</sup>

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<sup>6</sup> Chris Jenks, "The Sociology of Childhood" (Batsford Academic and Educational Ltd., 1st edition.1982).

### **1.1.2 PURDAH SYSTEM**

Purdah is a religious and social practice of female seclusion prevalent among some Muslim and Hindu communities. It takes two forms: physical segregation of the sexes and the requirement that women cover their bodies so as to cover their skin and conceal their form. A woman who practices Purdah can be referred to as pardanashin or purdahnishan. The term Purdah is sometimes applied to similar practices in other parts of the world. Purdah was rigorously observed under the Taliban in Afghanistan, where women had to observe complete purdah at all times when they were in public. Only close male family members and other women were allowed to see them out of purdah. In other societies, purdah is often only practised during certain times of religious significance. Married Hindu women in parts of Northern India observe purdah, with some women wearing a ghoonghat in the presence of older male relations on their husbands' side; some Muslim women observe purdah through the wearing of a burqa. A dupattais a veil used by both Muslim and Hindu women, often when entering a religious house of worship. This custom is not followed by Hindu women elsewhere in India.

### **1.1.3 DEVDASI SYSTEM IN INDIA**

Devadasi, (Sanskrit: female servant of a god) member of a community of women who dedicate themselves to the service of the patron god of the great temples in eastern and southern India. Devadasis system existed in most of the temples. DEV (GOD) Dasi (slave) means marrying god and Goddesses and devoted themselves to them and its rituals for the whole life. Devdasis existed from ancient Veda time to help in temple rituals apart from that they were to sing and dance for gods praising. For this ritual practice family donated their younger girl child to the temple. Status of devdasi was high in the society and known as divine girl. As the time passed, system changed, and they were used for sex obligation for high caste and class people. Major percentage of lower caste and tribal girls are forced to this practice under the cover of religion and some adopt for the reason that family had a history of Devadasis. The devadasi practice is one in which low-caste girls, as young as five or six, are married to a Hindu Goddess and sexually exploited by temple patrons and higher caste individuals.<sup>86</sup> The term devadasi is a Sanskrit word, which literally translates to female slave of God. The practice is particularly interesting, as well as difficult to combat, as it arises out of a crossroads of religion, poverty, and societal norms.

The historical account of the devdasi system is murky due to its early inception. The first

confirmed reference to a devdasi was during the Keshari Dynasty in the 6th century A.D. in South India. The practice began when one of the great queens of the Dynasty decided that in order to honour the gods, certain women who were trained in classical dancing, should be married to the deities. The inception of the practice was one that was imbued with great respect as the women whom were chosen to become devdasi were subject to two great honours: first, because they were literally married to the deity, they were to be treated as if they were the Goddess Lakshmi herself, and second, the women were honoured because they were considered to be those great women who could control natural human impulses, their five senses and could submit themselves completely to God. As they were married to an immortal, the women were considered to be auspicious. Their main duties, in addition to committing to a life without marriage, were to take care of a temple and learn classical Indian dances, usually the bharnatnyam, which they would perform at temple rituals. Patrons were considered to have higher status for their ability to financially sponsor devdasis.<sup>7</sup>

## 1.2 MEDIEVAL PERIOD

In past few decades society has gone through enormous change, with modernization and industrialization it has reaped benefits at micro and macro levels this transformation has also resulted in migration of families to urban sector and formation of nuclear families, breakdown of traditional values and norms, deviants amongst parents and their children and increase in criminality. Today with evolution of science and technological developments new ways of committing crimes have also evolved which has complicated the problems. It has been viewed by scholars, there is no society that is not confronted with the problem of criminality. It's form changes, the act thus characterized as crime are not the same everywhere but everywhere and always there have been man who have behaved in such a way as to draw upon themselves penal repressions...no doubt it is possible that crime itself will have abnormal forms as for example, when its rate is unusually high. To classify crime among the phenomena of normal sociology is not to say nearly that it is inevitable, although regrettable phenomenon, due to incorrigible weakness of man it is to affirm that it is a factor in public health, an integral part of all healthy societies.

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<sup>7</sup> Carson, D., Foster, j., &Tripathi, N. "Child sexual abuse in India; current issue and research.Psychological studies,"58 (3), 318-325 (2013)

### **1.3 CHILD SEXUAL ABUSE IN BRITISH PERIOD**

Since the medieval period the idea of age of consent' had created the offence of statutory rape' (unlawful sex') by fixing an age of protection for girls. In 1885 the age of consent for girls was raised from 13 to 16, where it has remained ever since. At the same time it distinguished between sex with those under 13 (which was viewed as a serious felony) and with those over 13 and under 16 (a less serious misdemeanor). Sexual acts that involved other forms of physical contact (touching) might be prosecuted as indecent assault' (on either males' or females') under the 1861 Offences against the Person Act. The 1908 Children Act enabled these cases to be dealt with by magistrates in a court of summary justice (rather than the higher court of quarter sessions or assizes) if they involved boys or girls under the age of 16. This at least rendered these cases visible in criminal justice statistics: all indecent assault cases heard in magistrates courts related to minors. A small number of cases of familial sexual abuse were prosecuted each year under the 1908 Incest Act; from the 1920s to the 1960s a mean average of 112 people were proceeded with nationally for 'incest' (with little variation across this period). During the British colonial period in India, there were instances of child sexual offenses, but it's important to note that historical records on these matters can be challenging to access and may not provide a comprehensive picture of the extent of such crimes.

The colonial era in India spanned several centuries and involved various regions and communities, each with its own social and cultural norms. British colonial policies and legal systems had a significant impact on Indian society, but the enforcement and recording of crimes, especially those related to sexual offenses, varied widely. It's known that child marriage was prevalent in many parts of India during the colonial period. While child marriage itself was not considered a sexual offense within the prevailing social norms, it often led to child brides being subjected to early and sometimes abusive sexual relationships. Additionally, there were cases of exploitation and abuse of children, including child prostitution, which occurred in certain areas. The British colonial authorities did attempt to regulate prostitution in some regions, but the effectiveness of these regulations varied widely. It's essential to approach this topic with sensitivity and rely on historical records and scholarly research for a more nuanced understanding of the specific instances and regional variations of child sexual offenses during the British colonial period in India. Keep in mind that the available information might be limited, and specific details about individual cases may not be widely documented or publicly

accessible<sup>8</sup>.

## 1.4 PRESENT SCENARIO

### 1.4.1 Procurement of Minor Girls

The procurement of minor girls has become a matter of serious national and international concern. Children, both boys and girls, have been exposed to unprecedented vulnerabilities; commercial exploitation of these vulnerabilities has become a massive organized crime and a multimillion dollar business. Nations are attempting to combat this freak in human misery through legislative executive, judicial and social action. Trafficking and procurement of children is worldwide phenomenon affecting large numbers of children, especially the girls every day. Teenage girls and their families are often lured by the promise between employment and a more prosperous life far from their homes. Trafficking and procurement violates a child's right to grow up in a family environment and exposes him or her to a range of dangers, including violence and sexual abuse. Section 366-A of the Indian Penal Code deals with the offence of procurement of minor. The section is attracted when a minor girl under eighteen years of age is induced to go from any place or to do any act. The intention on the part of the offender must be that such girl may be forced or seduced to sexual intercourse with another person, or the offender must know that such girl is likely to be forced or seduced to illicit intercourse with another person. The inducement may be by whatever means<sup>9</sup>.

### 1.4.2 Child Pornography

Internet has proved to be one of the greatest technological inventions of the 20th century. Unfortunately the same advances in computer and telecommunication technology that allow our children to reach out to new sources of knowledge and cultural experiences are also leaving them vulnerable to exploitation and harm by computer-sex offenders. While on-line computer exploration opens a world of possibilities for children, expanding their horizons and exposing them to different cultures and ways of life, they can be exposed to dangers as they hit the road exploring the information highway. The beauty of the Internet lies in the fact that it has completely ignored geographical boundary. A person by sitting at any nook and corner of the world can communicate with other person without disclosing his identity. The Internet and its unprecedented rapid growth, has raised many challenges not only for the governments but also

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<sup>8</sup> Behere PB, Mulmule AN. "Sexual abuse in eight years old girl: where do we stand legally?"P. 35.(Indian J Psychol Med. 2013).

<sup>9</sup> Giriraj Shah and K.N. Gupta —Human Rights: Free and Equall(23, Anmol Publication, 2001)

for trade and commerce and individuals around the world. Statistics reveal that Paedophiles' have easy access to children through the means of Internet.

Child molesters are using the electronic superhighway to look for victims. The Internet is the paedophiles playground, because it affords them anonymity, and they can use newsgroups, chat rooms, and e-mail to exchange information about child pornography and interact with children. There are computer bulletin boards set up specifically for the seduction of children. They lure kids in with games and establish relationships with them on-line. Then they arrange to meet face to-face. Chat rooms and instant/private messages are two main tools which paedophiles use to contact children on-line. Paedophiles use the Internet to share trade secrets, i.e. how to change identities, forge passports, and smuggle children. Paedophiles use the Internet for virtual validation of their activities within their circles of fellow paedophiles, so they feel accepted and consider their sexual interest in children normal. There are individuals who attempt to sexually exploit children through the use of online services and the Internet<sup>10</sup>.

### **1.4.3 Child Beggars**

Beggary is an accepted way of life for a large section of orphan, destitute and neglected children in our society. In urban areas we often come across children operating alone or in groups, soliciting money or food for privately run orphanages or homes. Apart from these a large number of children fend for their survival alone or in informal groups of two or three. These children can be seen making appeals for private charity in various ways in the railway stations, bus stands, religious places, busy markets and picnic spots. Such children are usually from poor families where the parents are unable to provide care, support or guidance for them. Sometimes child beggars may adopt the way of life of their parents. Such children often become part of organized gangs of beggars and are often the victims of the beggary evil. In India child beggars are handled in different manner and treated as a neglected child in terms of the children Act. Some children leave home and resort to begging due to disorganization in the family or death of parents, or loss of mother or father, maltreatment or neglect by parents. Sometimes even beggars kidnap children and mutilate them in order to use them as their pawns in beggary. In India, numbers of children are being forced to beg. Many of the children are trafficked into gangs, some are kidnapped, others may have been handed over by their family out of desperation or because they have been duped. As per an estimate every year some 44,000

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<sup>10</sup> Chris Jenks, —The Sociology of Childhood (Batsford Academic and Educational Ltd., 1st edition.1982).

children fall into the clutches of these gangs.

Children are trained to approach certain kinds of people and use certain mannerisms to extract even more money. The earnings of the children are handed over to the gang masters and if a child does not make their target that day they are beaten and tortured by them. Many child beggars are addicted to solvents, alcohol and charas. This helps the children to forget where they are, but it also helps the gang masters to keep them under control. Often children are maimed by the criminal gangs because disabled children get more money as compared to healthy ones and it increases the profit of criminal gangs. Often these maimed child beggars are terrified of speaking out and they say their limbs just disappeared or were damaged in an accident. In India the Central legislation which deals with child beggars is the Juvenile Justice (Care and Protection of Children) Act, 2000. The term child beggars' are covered within the definition of child in need of care and protection. This Act also defines the term Begging. Apart from this some State Governments are also having legislations which deals with child beggars such as the Bombay Prevention of Begging Act, 1959, the Bengal Vagrancy Act, 1943 and the Punjab Prevention of Beggary Act, 1971<sup>11</sup>.

#### **1.4.4 Child Delinquents**

From the inception of civilization people have appreciated that proper child development is the key to its perpetuation. Children are the most vulnerable group in any population and in need of greatest social care and protection. Due to their vulnerability and dependence, there is always a chance of them being exploited, ill treated and directed into undesirable channel by anti-social elements in the community. It is a fact that despite the utmost care and protection, children have from time immemorial indulged in deviant or anti-social behaviour. Such behaviour of children which is otherwise termed as juvenile delinquency' has been regarded as problem in every age. Etymologically, the term delinquency' has been derived from the Latin word delinquer' which means to omit.' The Romans used the term to refer to the failure of person to perform the assigned task or duty. It was William Coxson who in 1484, used the term delinquent' to describe a person found guilty of customary offence. The word also found place in Shakespeare's famous play Macbeth' in 1605. In simple words it may be said that delinquency is a form of behaviour or deviation from the generally accepted norms of conduct

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<sup>11</sup> AjitRaizada , " RefleXtion of Sexual exploitation and Abuse of Children in India"(2)Madhya Pradesh Journal of Social Science21 (2000)

in society. However, penologists have interpreted the word juvenile delinquency' differently. Generally speaking, the term refers to a large variety of disapproved behaviours of children and adolescents which the society does not approve of, and for which some kind of admonition, punishment or corrective measure is justified in the public interest. The following quotations by Edward H. Stullken in his article 'Misconception about Juvenile Delinquency' may be reproduced here in order to understand the historical fact of this problem in ancient period too. An Egyptian priest almost 6000 years old wrote on the walls of a tomb: Our earth is degenerate in these latter days. There are signs that the world is coming to an end because children no longer obey their parents. Similarly,

#### **1.4.5 Child Sex Tourism**

Child Sex Tourism (CST) is the sexual exploitation of children by a person or persons who travel from their home district, region or country in order to have sexual contact with children. Child sex tourists can be domestic travellers or they can be international tourists. Child sex tourism often involves the use of accommodation, transportation and other tourism-related services which facilitate the contact with children and enable the perpetrator to remain fairly inconspicuous in the surrounding population and environment. Commercial Sexual Exploitation of Children (CSEC) is a term that describes the sexual abuse of children in exchange for cash or compensation, given either directly to the child or to a third party. There are various forms of commercial sexual exploitation of children and one of the forms of commercial sexual exploitation of children is child sex tourism which is related to the travel and tourism industry.

The term 'child sex tourism' refers to acts perpetrated by travelers or by those who use their status as a tourist in order to sexually exploit children. Child sex tourism can be said to be a sub-type of child prostitution having links with the tourism industry where child victims are treated as sexual and commercial objects to facilitate the generation of profit. There is one popular belief that poverty is the main cause of commercial sexual exploitation of children but this is not so. One factor which is responsible for sexual crimes against children is the demand for sexual contact with children. Opportunistic individuals and organized criminals take advantage of the demand for child sex by generating a constant supply of vulnerable children. They identify potential victims and bring the supply to the demand, creating a veritable child sex market. As a result, vulnerable and victimized children become a means of massive profit generation for these opportunists. Child sex tourists basically are of three types i.e. paedophiles, 'preferential

child sex tourist' and situational child sex tourists.' One misconception about child sex tourism is that all child sex tourists are paedophiles but in reality the majority of child sex tourists are situational child sex tourists<sup>12</sup> who abuse children as a means of experimentation. On the other hand the preferential child sex tourist displays an active sexual preference for children and he will generally search for pubescent or adolescent children<sup>12</sup>.

## 1.5 CONCLUSION

We were all children once. This is something we all have in common. Many of us have a child or are involved in the lives of children in some way. We want children to grow up, to be happy, healthy, strong and productive. We want them to thrive. Children are both the present and the future. They represent the next wave of parents, grandparents, caregivers, teachers, doctors, police officers, judges, community leaders, faith-based leaders, politicians and decision-makers. It is evident that violence against children is not an isolated event, the roots of which have a very deep permeability. Often these roots can be located in situations and conditions that helped the growth of such violence as well as nurtured such behaviour through inaction and passivity. It is within this context that some children become much more susceptible to violence, condoning it themselves, in comparison to other children. How we address the offence affecting children today will have a direct bearing on future families and societies.

Child sexual abuse exploits and degrades children and can cause serious damage to cognitive, social, and emotional development of a child. As a society, we have a collective responsibility to prevent child sexual abuse. To accomplish this, we must initiate and support services and policies that enhance children's development, health and safety and we must advocate for policies and programs to help meet the basic needs of children and families. We must also promote research, training, and public education to strengthen protective factors that buffer risk factors for sexual abuse while also directly addressing those risk factors. UNICEF works closely with the Indian government to strengthen systems that can respond to violence. They do by building the capacities of local governments, the police, child protection agencies and other stakeholders to ensure these groups can respond effectively to children's unique needs in situations of violence. Significantly, law is one of many responses to social change. In certain respects it is the most important since it represents the authority of the state and its sanctioning

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<sup>12</sup> Faizan Mustafa, "Sexual abuse of child in Family: An Emerging Trend" (IV Kashmir University Law Review 91 (1997)).

power. Through legislative or administrative responses to new social conditions and ideas, as well as through judicial reinterpretations of constitutions, statutes, or precedents, the law increasingly not only articulates but sets the course for major social changes. The legal response to a given social or technological problem is therefore in itself a major social action, which may aggravate a given problem or alleviate and help to solve it. Nonetheless, even when law cannot bring about change without social support, it still can create certain preconditions for social change. Clearly, the prospects for change led by law may be limited because children's status depends on altering the connections between the family, society, and the economy more broadly. In this sense, realizing children's rights remains contingent on other social changes<sup>13</sup>.

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<sup>13</sup> Child-abuse-has-an-ancient-history available from <https://www.independent.co.uk/voices/letter-child-abusehas-an-ancient-history-1433197.html>