

**THE EFFORTS OF INDIA IN IMPLEMENTING THE OPTIONAL PROTOCOL ON  
THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY  
(OPSC) TO COMBAT CHILD SEXUAL ABUSE (CSA) IN 2005 TO 2013**

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***Abstract***

India is home to 19% of the world's children. Thousands of children are raped and being abused sexually every year. The rights of children in India needs to be paid attention to. The ratification of India to the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) to combat Child Sexual Abuse (CSA) in 2005 should be a major step taken by India in combating Child Sexual Abuse (CSA). The primary aim of this research is to elaborate the efforts of India in implementing the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) to combat Child Sexual Abuse (CSA) in 2005 to 2013. The research method used is qualitative with descriptive analysis. The data collected in this research are secondary data obtained from books, journals, articles, news items, websites, and online-offline documents. The study becomes significant because issues about CSA are still lack of awareness from the society either it is to distribute efforts or to be aware that children in some cases are ironically seen as properties that has no human being's rights.

**Key Words**

*OPSC, CSA, Child Rights, India*

# **THE EFFORTS OF INDIA IN IMPLEMENTING THE OPTIONAL PROTOCOL ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY (OPSC) TO COMBAT CHILD SEXUAL ABUSE (CSA) IN 2005 TO 2013**

## **Introduction**

Children have the rights to education, health, and development. However, these basic rights of children often be violated because of a needs based approach rather than a rights based approach (Kacker, 2007). Such action violating children rights usually called child abuse. Ministry of Women and Child Development of India defined child abuse as a sexual, economic, physic until emotional mistreatment toward someone under the age of eighteen and is considered as a global phenomenon. It sometimes also called as a child maltreatment which represents any type of physical and or emotional mistreatment, sexual abuse, abandonment, triggering potential damage to the child's development, health, survival or self-esteem regarding a relationship of responsibility, confidence or potency (World

Health Center). There are many types of child abuse which can be vary such as being abandoned, abused sexually and or physically, exploited and abused emotionally.

World Health Organization defined child sexual abuse as a situation where a child involves in a sexual action where he or she does not fully understand, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that against the laws or social value of the community. It defined for a sexual case between a child with an adult or with another child who is still in a relationship of responsibility, trust or power, the activity tends to satisfy the needs of the other person (World Health Organization ). Child abuse is an action that put harm on a

child or young person and failing to create protection for them. A family member or a close person and strangers (from the internet) are the trends of people who would likely to abuse children sexually (National Institute for Health and Care Excellence , 2017).

In India, child rape, selling of girls for prostitution, and buying of girls for prostitution are some of CSA form that were recognized by the NCRB through its reports. Studies and data are still very minim about CSA. Thousands of children are reported being abused sexually every year. Within five years in 2000 to 2004, there were 14464 cases reported that children were raped, sold for prostitution, and bought for prostitution. The highest number of rape during the period of time was in 2004 as 3542 reported cases. Rape is known as the most used CSA form in India which reached 14268 cases during five years. The activity of buying of girls for prostitution is higher than the number of selling girls prostitution as 113 and 83 cases.

The selling of girls for prostitution in 2003 is 36 reported cases which is known as the highest number among the years while in 2002 there are 5 reported cases which is known as the lowest number among the years. The buying of girls for prostitution in 2000 is 53 reported cases which is known as the highest among all the years while in 2001 there are 8 reported cases which known as the lowest number among the years. The number of the cases keep increasing from year to year except from 2000 to 2001.

CSA occurs when a person under the age of 18 is made to participate in, or to help someone else participate in, any sexually explicit conduct, such as intercourse, sodomy, genitals fondling, and oral copulation. Molested and raped against children, involved in incest, or is exploited sexually, as in child prostitution and pornography is also known as CSA. When a child is developmentally not old enough to understand the consequences of being

enticed, bribed, threatened, or coerced by force to engage in sexual activity, this situation is also identified as a CSA case (U.S. National Library of Medicine, 1988).

Pedophile is also known as the perpetrator of CSA. Pedophile is an individual who rather to conduct a sexual contact with children than with adults. They are known skillful to pattern plans and strategies to get along with children. An evidence stated that pedophile is likely sharing their information about children at an international level, especially through the use of Internet.

Pedophile was firstly debated widely in twentieth century and was coined in 1880s when it was spread among the medical scholars invested in diagnosing sexual violation as well as crimes. Richard von Krafft-Ebing, an Austrian psychiatrist, through his famous sexology's first book, "*Psychopathia Sexualis*", introduced the expression of "paedophilia erotica" which

placing child sexual abuse in an emerging catalogue of sexual pathologies. He defined pedophilia erotica as the phenomenon of a sexually needy subject being drawn to children by a morbid disposition (Bauer, 2017).

CSA is somehow different in several parts of adult sexual abuse. In CSA, violation against the victim is rarely used. The perpetrator usually manipulates the child's trust and tends to avoid violation. A known and trusted caregiver is mostly known as the perpetrator of CSA. The most prominent dynamics of CSA is that the victim typically is not eager to disclose to other people. Therefore, the perpetrator is tent to conduct CSA periodically and repeatedly.

Convention on the Rights of the Child (CRC) is the first international tools to encounter a comprehensive legitimate obligation for State Parties to protect children from all forms of sexual exploitation and abuse. The previous draft of the article 35

prohibited “neglect, cruelty and exploitation and traffic”. It didn’t mention sexual exploitation of children specifically even though it indirectly recognized the existing of sexual exploitation around the world (UNICEF, 2009).

On 25 May 2000, the Optional Protocol on the sale of children, child prostitution and child pornography was established. It is a further commitment for the Convention on the Rights of the Child to reach the goals of the further implementation about the convention especially articles 1, 11, 21, 32, 33, 34, 35 and 36 as the further measures to the States Parties in guaranteeing the protection of the children from the sale of children, child prostitution and child pornography.

The key factors of the establishment of the optional protocol is considering the rights of children regarding to the Convention on the Rights of Child such as the combat in economic exploitation that would

affect the effectiveness of the child’s education, health, physical, mental, spiritual, moral and social development. The significant increasing of international children trafficking purposing the sale of children, child prostitution and child pornography (Office of the High Commissioner of United Nations Human Rights, 2000).

Optional Protocol is an independent treaty that is open for signatory, accession or ratification by state who are participate to the main existing treaty it complements and adds to. It provides for procedures or addresses a substantive are related to the treaty. They are optional because states independently choose whether or not to be bound by them (ECPAT).

States Party are expected to ensure the compatibility of existing and new legislation and judicial practice with the convention. Independent national children’s rights institutions must be developed.

According to the Protocol in Article 2 (United Nations Human Rights, 2000):

- a. Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- b. Child prostitution is an intent to use a child for sexual purpose to get remuneration or any other form of consideration
- c. Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes

India, as the home to 19% of world's children must do a significant efforts to protect the children. With such big issue on child sexual abuse, it is expected that India

could implement the OPSC in order to combat child sexual abuse in India. On 15 November 2004, India had signed the OPSC and ratified it in 16 August 2005.

### **Discussion**

In complying the OPSC that had been ratified by India in 2005, a few of decisions are implemented in India including the establishment of related institutions, policies making, cooperation establishment and resources making. These efforts are known as preventive, prohibitive, and protective efforts by India to combat CSA. The implementations below covered the efforts among 2005-2013 since the ratification of the OPSC by India.

### ***The Preventive, Prohibitive, and Protective Institutions Establishment***

#### ***Ministry of Women and Child Development (MWCD), 2006***

The MWCD was established in 30 January 2006 which was initially formed in 1985 as the Department of Women and Child

Development under the Ministry of Human Resource Development. The separation of the MWCD from the Ministry of Human Resource Development had brought two significant child rights issues; early childhood care and child protection. However, other Ministries also contribute in dealing with specific programmes such as the abolishment of child labour, programmes and schemes for disabled children, children with HIV/AIDS, scheme for protection of children belonging to Scheduled tribes and Scheduled Castes and other minority communities (Thukral & Thukral, 2011).

***National Commission for Protection of Child Rights (NCPCR), 2007***

Under the Ministry of Women and Child Development (MWCD), National Commission for Protection of Child Rights was established in March 2007. It was formulated under an Act of Parliament in December 2005, Commission for Protection of Child Rights. This statutory body under

the MWCD was assigned as written under the Constitution of India as well as the UN Convention on the Rights of the Child, all forms of administrative mechanisms, programmes, policies until laws must be consistent with the child rights perspective as written according to the two principles. The person who is from 0 to 19 years of age is considered as the child (National Commission for Protection of Child Rights (NCPCR), 2018).

***The Preventive, Prohibitive, and Protective Policies Making***

***National Plan of Action for Children (NPAC), 2005***

The NPAC, 2005 is an extension of the NPAC 1992 and was initiated in 2002. Together with many inputs from the related Ministries, Departments at the Central Level, State/UTs Governments and Administrations, from the Institutions of the Government in welfare and development children, NGOs, Social Workers, Experts,

and Public Opinion, the Plan was finally came to a comprehensive draft (UN Office of Drugs and Crime and Fovernment of India, 2007).

The sale of children and all forms of child trafficking on any purposes such as sexual purposes, marriage, begging, drug peddling, adoption, labour, sports and entertainment, and organ trade. The strategies are made into several efforts such as; the establishment of comprehensive information system related to trafficking routes and networking NGOs and other concerned agents committed in prevention, rescue, and rehabilitation of victims; the creation of regional coordination in preventing cross-border trafficking; the establishment of Central and State Nodal Authorities to specialize the undertaking of trafficking issue; and the ratification of UN Protocol to Prevent, Supress, and Punish Trafficking in Persons, Especially Women and Children in 2007.

***Protocol on Inter State Rescue and Post Rescue Activities Relating to Persons Trafficked for Commercial Sexual Exploitation, 2007***

The protocol aims to address the gaps that found in rescuing trafficked person in India. Every state in India has its policy in undertaking trafficking issue. There is law called Code of Criminal Procedure 1973 (Cr. PC) that prescribes how a perpetrator of sexual abuse can be transferred from one state to another. However, there is no legal framework in framing how the victim of sexual abuse can be transferred interstate. Therefore, the Protocol has been especially made in order to address the gaps. There are four sections made in the Protocol; general principles/ guidelines, pre rescue protocol, protocol during rescue, and post rescue protocol.



***Protection of Children from Sexual Offences (POCSO) Act, 2012***

POCSO Act was aimed to address the crime of child sexual abuse and exploitation effectively through legal provisions under the Ministry of Women and Child Development in 2012. It is a comprehensive legislative framework to combat CSA in India. It is in line with Article 15(3) of the Constitution of India which allows the State to create a special provisions for children. The objectives of the OPSC 2012 is to provide protection of children from the offences of sexual assault, sexual harassment, and pornography. The establishment of Special Courts for speedy trial of such offences is also become the target of the Act (NCPCR, 2017).

***The Preventive, Prohibitive, and Protective Coordination Establishment***

***National Coordination Group on the Rights of the Child (NCG), 2004***

The NCG was firstly established in 2004 and was reconstituted in 2005 and again in 2007. It is assigned to coordinate and to monitor the implementation of CRC and other international instruments regarding to child rights. Besides CRC including its Optional Protocols, it also focuses on other concerned Ministries, Departments, State Governments, and NGOs.

***Ujjawala Scheme, 2007***

Ujjawala Scheme is a comprehensive scheme in preventing trafficking and Rescue, Rehabilitation, Re-integration, and Repatriation of victims of trafficking and Commercial Sexual Exploitation. Through community-based initiatives, trafficking of women and children for commercial sexual exploitation is expected to be prevented by facilitating their rescue and long-term

rehabilitation and their ultimate re-integration into society. It was established in 2007 under the MWCD. Repatriation for cross-border victims are also facilitated through the Scheme which provides transit camp, food, and other incidental expenses at the border check points. Rehabilitation is conducted by providing safe shelter, food, clothing, counselling, medical needs, legal aid, vocational training, and income-generation activities. Under the Scheme, setting up of Half-way home and returning the victim into their family/ community is also arranged.

### ***Integrated Child Protection Scheme (ICPS), 2009***

The ICPS was established in 2009 under the Ministry of Women and Child Development (MWCD). It aims to provide children in needs, and to decrease the possibilities and the vulnerabilities of children in many forms of abuse, neglect, separation of children, abandonment, and

exploitation. It is an integrated scheme created and is a legal framework in the State (Childline 1098, 2006).

### ***The Preventive, Prohibitive, and Protective Resources Making***

#### ***Children Budgeting***

The MWCD has been conducted child budgeting since 2003. It was the time when it becomes the community concern on budgeting on specific issues. Since then, in October 2005, the MWCD announced that it would be the concern of the MWCD in analysing in Centre and the states called regarding to the purpose. Children budgeting has also been recognized by the National Plan of Action 2005 and the Eleventh Five Year Plan documents as a further commitment in ensuring child's protection in the State.

### **Conclusion**

From the explanation above, there are several recommendation can be given. First, studies and researches about CSA in India should be conducted more especially from

those institutions that are concerned about the issue. The high number of studies and researches about CSA would help the Government of India in tackling the CSA issue as well as in evaluating the policies regarding to CSA which the Government of India had implemented.

Second, the provision of laws, shouldn't be gender bias. The Government of India should tackle the CSA problem without any distinguish of religion, caste, race, as well as gender. The Government of India is too focused on girl victim as written in many reports Crime in India by the NCRB. In fact,

the number of boy victims are not significantly less than the number of girl victims. However, even one single child should be protected without concerning his/her gender.

The last, it is very clear that the OPSC has demanded State Parties should be able to distinguish the sale of children and child trafficking. The Government of India should provide significant different laws between the sale of children and child trafficking. Because sale of children is more specific than the child trafficking and is most relevant to the OPSC.

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