

Issues and Preventive Measures of Child Sexual Abuse

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In India, even in the 21st century, family is a closed knit, compact unit, a sort of fortress where any intervention of outsiders is almost resented and rejected. The culture of silence surrounds it so tightly that any third person has no means to know what is happening therein. There is refusal and reluctance to talk about the intra-family violence, particularly towards children. Child sexual abuse is one such issue, which is the most closely guarded secret of the family. Irony of it is that of all the forms of violation of human rights, child sexual abuse is the most blatant, heinous and worst form of violation of human rights because it is perpetrated on the most helpless, vulnerable and defenceless class of society. Abuse of any person in any form is always bad. If such abuse is sexual in nature, it is worse and if it is of a small child, particularly girl child, it becomes the worst. There are, therefore, no words to condemn it. This paper describes about various issues related to child sexual abuse and its preventive measures in India.

[**Keywords** : Child sexual abuse, Legal provisions, Exploitation, Rights of child]

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1. Introduction

Child sexual abuse cuts across class, caste, cultural and economic backgrounds. It is a disease which is affecting all strata of society the world over, irrespective of caste, creed, sex, religion etc. It is shocking but true that abuse of children, whether male or female, has become now a widespread phenomenon, in both developing and developed countries. But there is no specific law to make it an offence in India. Sexual exploitation of children has gained attention through crack downs on and revelations of the use of children in pornographic films and magazines, and the victimization of children through incest. The present paper is an attempt to analyze the problem of child sexual abuse in global and Indian perspective. Secondary sources of data have been used for explaining the meaning of child sexual abuse, magnitude, causes, indications and types of child sexual abuse.

2. Meaning of Child Sexual Abuse

Child sexual abuse is sexual exploitation or sexual activities with a child under circumstances which indicate that the child's health or welfare is harmed or threatened. It may be intra familial or extra familial. Intra familial sexual abuse includes incest and refers to any type of exploitative sexual contact occurring between relatives. Extra familial sexual abuse refers to exploitative sexual contact with perpetrators who may be known or unknown to the child. Child sexual abuse is considered to be verbal or physical behavior by one person (perpetrator) towards another person (victim), which is upsetting, demeaning, harmful and /or traumatic. Acts of child sexual abuse cover a whole range of misbehavior from touching of private parts to sexual intercourse.

Child sexual abuse has been defined as the involvement of dependent and immature children in sexual activities they do not fully comprehend, to which they are unable to give informed consent. The Juvenile Justice (Care and Protection) Act, 1986, defines child sexual abuse as interaction between a child (under the age of 18 for girls and 16 for boys) and an adult (who is significantly older than the victim and is in a position of power or control over the child, or may be even be an acquaintance or an unknown person) in which the child is being used for the sexual stimulation of the perpetrators or another person. It is usually a silent, hidden, invisible crime that both boys and girls face at home or outside, often at the hands of trusted adults.

As defined by the World Health Organization, child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or that violates the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person. This may include but is not limited to :

1. The inducement or coercion of a child to engage in any unlawful activity.
2. The exploitative use of a child in prostitution or other unlawful sexual practices.
3. The exploitative use of children in pornographic performances and material.

3. Magnitude of the Problem of Child Sexual Abuse

The WHO estimates that 150 million girls and 73 million boys under 18 have experienced forced sexual intercourse or other forms of sexual violence involving physical contact, though this is certainly an underestimate. Much of this sexual violence is inflicted by family members or other people residing in or visiting a child's family home people normally trusted by children and often responsible for their care. A review of epidemiological surveys from 21 countries, mainly high- and middle-income countries, found that at least 7% of females (ranging up to 36%) and 3% of males (ranging up to 29%) reported sexual victimization during their childhood. According to these studies, between 14% and 56% of the sexual abuse of girls, and up to 25% of the sexual abuse of boys, was perpetrated by relatives or step parents. The global prevalence of child sexual abuse has been estimated at 19.7% for females and 7.9% for males, according to a 2009 study published in *Clinical Psychology Review* that examined 65 studies from 22 countries. Using the available data, the highest prevalence rate of child sexual abuse geographically was found in Africa (34.4%), primarily because of high rates in South Africa; Europe showed the lowest prevalence rate (9.2%); America and Asia had prevalence rates between 10.1% and 23.9%.' One in every two children is subjected to child sexual abuse in India while 80% of the cases go unreported.

The first ever national level study by Ministry of Women and Child Development covered 19 states with a sample size of 12,447

children in the 5-12 years age group and 2,324 young adults. The survey did not have a margin error. Some disturbing data from the survey is as under :

1. 53.22% of children have faced sexual abuse. The report says that most children do not report the matter to anyone.
2. 41.17% of children in the 5-12 age group of have been forcibly kissed, the figure came down to 25.73% in the 13-14 age group. Around 25.86% of the teenagers reported being forced to exhibit their private parts, the relevant figure for those below 12 was 35.86%.
3. Around 37.25% of children in the younger age group and 27.61% of teenagers were sexually abused during travel.
4. Around 70% of abused children have never reported the matter to anyone.
5. Assam with 86.26% topped the list of states where children faced sexual abuse, Andhra Pradesh and Delhi followed closely at 72.83% and 72.26% respectively. Rajasthan reported lowest complaints at 29.36%.
6. The percentage of sexually abused young adults (13-14 age group) is high in Assam at 77.5% followed by Delhi at 69.11%. Goa reported the least complaints at 23.01%.

4. Causes of Child Sexual Abuse

The causes of sexual abuse are adjustment problem of the perpetrators, family disorganization, victim's characteristics and the psychological disorders of the abusers. One of the most important factors aggravating child sexual abuse is opportunity of being alone with the child. The third is the kind of relationship the child shares with the offender. If the offender is a relative or lives in the same house there is greater chance of prolonged and secret abuse. The open extra-marital relationships of parents due to which the child loses his/her internal resistance to abnormal gestures. The high alcohol and drug consumption by parents in which case children have no role model to look upto. The overcrowding and abandonment also leads to child sexual abuse on the streets. Further it is a common belief or myth that having sex with child can increase man's sexual powers or sex with a virgin can cure sexually transmitted diseases.

Children who have been abused sexually usually keep the abuse a secret. As the social stigma is attached to the sexual abuse,

the reaction of the family and society, in general, is of the denial of its existence. The various studies also show that, in the first place, children themselves do not find language, expression, capacity or ability to disclose such incidents. Secondly, the shame and secrecy surrounding sexual abuse is such that even if the child discloses about the incident, family is not ready to acknowledge it. They do not want to discuss openly about it. Further as abuser in such cases is mostly someone from the family itself, that too closely related to the child, the family becomes reluctant to discuss it, even if anonymity is assured. Thus the child is forced into silence given the culture of privacy, family prestige and family unity.

5. Indications of Child Sexual Abuse

There are several indications of sexual abuse. Early warnings of sexual abuse in children may take the form of indirect statements made by the child or acted out in play. Children may also make direct statements to their friends or to adults about being molested. Children sometimes say odd things in order to observe the adults reaction before proceeding any further. The indications may be behavioural, physical or medical. The behavioural indicators include inability to trust, anger and hostility, inappropriate sexual behaviour, depression, guilt or shame, somatic complaints (like stomach-ache/ headache) problems in school, sleep disturbances, eating disorders, phobic or avoidant behaviour, regressive behaviour, self destructive behaviour or accident prone ness, running away etc. The physical indicators include difficulty in sitting or walking, genital or anal itching, pain, swelling or burning, genital or anal bruises or bleeding, frequent urinary tract or yeast infections, pain on urination, poor sphincter control, venereal disease, pregnancy, chronic unexplained sore throats, frequent psychosomatic illness, loss of appetite. Although medical evidence may not be present in all cases, when such facts are present they provide strong evidence of abuse.

6. Types of Child Sexual Abuse

The forms of child sexual abuse vary from person to person and include :

1. An adult exposure of genitals to the child or to persuade the child to do the same.

2. The adult touching the child's genitals or making the child touch his own.
3. Involving the child in pornography both printed and visual which includes showing a child pornographic material.
4. Using the child for his own satisfaction even without touching, just by ejaculating on the private parts of the child.
5. Making verbal or other sexual suggestions or in decent overtures or gestures.
6. Fondling, fingering or touching the private parts of the child or any such attempt.
7. Inserting foreign objects in the private parts of the child for own sexual gratification.
8. An adult persuading child to engage in sexual activity.

7. Global Perspective of Child Sexual Abuse

Declaration of the Rights of the Child, 1959 mandates that the child shall be protected against all forms of neglect, cruelty and exploitation. The Convention on the Rights of the Child, 1989 mandates the countries under Article 19 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. The Vienna Declaration and Programme of Action, 1993 requires states to evolve effective measure against female infanticide, harmful child labour, sale of children and organ, child prostitution and other forms of sexual abuse. Hague Convention on the Protection of Children 1996 provides a mechanism to ensure that inter-country adoptions are made in the best interests of the child. It is an important instrument to prevent the international trafficking of children. ILO Convention Concerning the Prohibition and Immediate Action for the Elimination of Worst Forms of Child Labour, 1999 urges the states under Article 3 to take swift and effective measures to prevent the most damaging child exploitation practices which include child slavery, prostitution and pornography. United Nations Convention on Transnational Organized Crime, 2000 is applicable in relation to child sexual exploitation if the offence carries a penalty of four or more years of imprisonment or if it relates to the ancillary offence of obstruction of jurisdiction. The Convention strengthens the claim of child victims of sexual exploitation for compensation.

8. Indian Legal and Constitutional Provisions for Child Sexual Abuse

The Indian Penal Code does not recognize child sexual abuse as an offence. The child victim of sexual abuse is dealt with under other provisions of the IPC which are the offences of rape (Section 375), outraging the modesty of a woman (section 354) and unnatural offences (section 377). Further these sections covered rape, sexual molestation and unnatural sex which were not at all gender neutral. Additionally IPC failed to take into account the various forms of sexual violence committed on children and the range of sexual contacts according to the extent of coercion, injury, age and incapacitation of the child.

The 156th Report of the Law Commission recommended that penile/oral penetration and penile/anal penetration be covered by section 377 IPC and that finger penetration and object penetration into vagina or anus be adequately covered under section 354 with a more severe punishment. The 172nd Report of Law Commission of India also recommended changes in section 375-376, 376A-376E, 509 IPC, 1st schedule of Cr. P.C and section 114A and 155 Indian Evidence Act. The report also recommended that the term sexual assault be used in place of rape and should extend to both humans and objects.

The Protection of Children from Sexual Offences Act, 2002 came into force on 14 November 2012.²⁰ The Bill was passed by the Rajya Sabha on 10 May 2012 and Lok Sabha on 22 May 2012. It received the assent of the President on 20 June 2012. This Act has been drafted to strengthen the legal provisions for the protection of children from sexual abuse and exploitation.²¹ The main features of the Act are :

1. The Act defines child as any person below the age of 18 years and provides protection to all children from the offences of sexual assault, sexual harassment and pornography. This is the first time that an Act has listed aspects of touch as well as no touch behaviour under the ambit of sexual offences.
2. It makes crime gender neutral.
3. The Act incorporates child friendly procedures for reporting, recording of evidence, investigation and trial of offences. The attempt to commit offence has been made liable for up to half the punishment prescribed for the commission of the offence.

4. The Act also prescribes for punishment for abetment of commission of offence. This would cover trafficking of children for sexual purposes.
5. For the more heinous offences of penetrative sexual assault, aggravated penetrative sexual assault, sexual assault and aggravated sexual assault. The burden of proof is shifted on the accused. The shift is in a very significant way with the introduction of the concept of “culpable mental state” which includes motive, knowledge or intention.
6. The media has been barred from disclosing the identity of the child without the permission of the Special Court.

Though the Act attempts to minimize the crime of sexual abuse of children, it suffers from various drawbacks like :

1. The Act only gives the action to be taken after the child has suffered sexual violence. There is nothing in the Act to prevent child sexual abuse.
2. It criminalizes all consensual sexual activity below the age of 18. However not every sexual act below the age of 18 is inappropriate. In fact many sociologists and psychiatrists have stressed that we cannot afford to ignore that many youngsters under the age of 18 do engage in sexual activity.
3. Earlier the Bill criminalized every sexual activity below the age of 16. Later this age was raised to 18. The legislature advanced a justification that it is bound by international obligation to raise the age of consent among the children. However this lacks merit.

9. Judicial Approach to Child Sexual Abuse

The court has taken a serious note of the problem of child sexual abuse. It said that child sexual abuse other than penile penetration is obviously unnatural. While admitting that child sexual abuse happens because the system of silence around the Act perpetuates it, the court made the following suggestions :

1. Immediate steps may be taken to prevent and rehabilitate the victims.
2. The police officer may be directed to take immediate action on the complaints of child abuse particularly.

3. The police officer may be directed to take the help of child welfare committee even in respect of interrogation of the child who has suffered sexual onslaught through 'in camera' proceedings as the child would be in tension and emotion to reveal sexual assault committed on her and women police may be entrusted the job of interrogating the abuse victim.
4. The victims of abuse may be examined by using the services of a gynaecologist and female doctors. Subjecting the victim to repeated medical examination should be avoided.
5. The victim of child sexual abuse and the complainant should be given adequate protection during investigation and trial.
6. Separate legal cell may be created for handling child sexual abuse.
7. Steps may be taken to create awareness among the public to seek the assistance and services of child welfare committee and Childline.
8. The trial court shall conduct child abuse cases as expeditiously as possible; if possible, through in camera proceedings and trial shall be conducted on day to day basis.in respect of examination of victim and material witnesses.

In another case the court opined that the absence of stringent law to deal with child sexual abuse can only have the pernicious effect of the crime continuing undeterred with impunity.

10. Conclusion and Suggestions

The child sexual abuse was in existence in the societies the world over since ancient times. Although there is no legal definition of the term it has been defined variously. The instances of child sexual abuse are alarming. And to add to it they are increasing day by day. The abusers are generally near and dear ones. Sexual abuse of children is not gender specific. It leaves a permanent scar on the mind of the child. The Protection of Children from Sexual Offences Act, 2002 has been formulated to deal with the problem. To help children affected by sexual abuse, the victim must be removed from the vicinity of the abuser at once. The child should be taught to assert himself. Sexual education should be encouraged in schools. In addition, every state should set up a State Commission for the Protection of Rights of the Child and formulate Plans of Action for Child Protection at the district and state levels. In order to enhance the standards of care and build a

protective environment for children in the country, there is a need to develop standard protocols on child protection mechanisms. Such protocols should also lay down standards and procedures for effective child protection service delivery including preventive, statutory, care and rehabilitation services for children. An effective community based monitoring mechanism needs to be put in place to ensure accountability at various levels. A child who has been abused or continues to be in an abusive situation, needs a variety of services, including professional help in the form of trauma counselling, medical treatment, police intervention and legal support. Such a system should be established under the scheme on child protection. Further, the existing Childline service providing emergency outreach services to children in difficult circumstances should be expanded. Children go missing for a number of different reasons. Such children are most vulnerable to all forms of abuse and exploitation. Not only should they be tracked but existing mechanisms for their rescue, rehabilitation, repatriation and reintegration should be reviewed and strengthened while keeping in view the best interests of the child.

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