

Child Sexual Abuse In India: A Real Concern

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Abstract

India is home to 430 million children. Children are considered an essential pillar in the nation's development. The legislation of India and its judiciary has worked hard since the independence to provide fundamental rights to children from the prenatal stage until they are at the legal age of maturity. It is perceived that protecting these young minds is essential as this provides a healthier life for a human being and the development of the nation as a whole. A child is prone to mental, physical, sociological, and emotional abuse from within and outside of the family. It is the reason why the Universal Declaration of Human Rights adopted very back in 1948 had proclaimed that childhood was entitled to special care and assistance. The Indian Judiciary plays an active role in the enactment of existing laws and keeps on developing more for the growth of child rights in the subcontinent. It encourages both state and center government to provide essential facilities to children of every age group.

Keywords: Children, Human Rights, Sexual Abuse, Law, Development.

Background

The Father of Nation, Mohandas Karamchand Gandhi, once said, "India will be free when the women feel safe to walk in the streets of India at Midnight". However, this continues to remain a dream yet to be achieved and far away from reality.

The World Health Organization (WHO) defines Child Sexual Abuse (CSA) as, "the involvement of child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society."

Child Sexual Abuse is an old age problem in India that the public has only been recently acknowledged.

In India, the Protection of Children from Sexual Offences (POSCO) Act, 2012 (that regards any sexual activity with a child below 18 years a crime) describes various forms of sexual offences. Child Sexual Abuse includes an array of sexual activities like fondling, inviting a

child to touch or to be touched sexually, intercourse, exhibitionism, involving a child in prostitution or pornography, or online child luring by cyber-predators.

Before rape was the primary offence acknowledged by the public, other CSA acts were largely ignored by public discourse and the criminal justice system. Most of the time, children are not aware that they are being sexually abused or are scared to inform their parents about the incident. This was due to the deeply rooted cultural stigmas attached to the term “sex” and CSA and unawareness about the same. The children found it difficult to raise objections against the older adults who were in an authoritative position. Offences like non-penetrative sexual assault, harassment and exploitation were not explicitly recognized as a crime.

Addressing Paedophilia In India

Paedophilia is a mental defect where an individual seeks sexual gratification from children. According to the APA Dictionary of Psychology, paedophilia is “a paraphilia in which sexual acts or fantasies involving prepubertal children are persistently preferred or exclusive method of achieving sexual excitement.”

The World Health Organization terms Paedophilia as a mental disorder where patients suffer from a persistent sexual interest in children.

In India, not many psychologists treat paedophilia. People suffering from the disorder hesitate to take treatment due to stigmas attached to the issue. India lacks awareness regarding the disorder. Therefore, talks regarding the disorder are necessary so that those suffering from it can be provided with proper treatment resulting in a decrease in further unfortunate events.

Forms Of Sexual Abuse

Physical

It is noticed that in most cases there is clear physical contact between the offender and the victim. The contact includes penetrative sex, fondling of the victim's genitals, or making the child do it. Sexual intent in form of touching and kissing is considered a physical form.

Non-Physical

It is not necessary that there shall be any physical contact for the abuse to occur. Actions like showing pornographic pictures or videos to a child or using a child in such material accounts for the abuse. Any other gestures like being lewd, verbal abuse, playing sexualized games. Over time, things like, stalking and chatting with sexual content are also on the list.

Incest

The term incest means a forbidden sexual relationship between close relatives in a family, e.g. between brother and sister or parent and child. As per Section 5 (n) of the POCSO Act, whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of the child or who is living in the same or shared a household with the child, commits penetrative sexual assault on such child, is punishable for aggravated penetrative sexual assault with rigorous imprisonment, which shall not be less than ten years but which may extend to imprisonment for life and shall also be liable to a fine under the Section 6.

Online Sexual Abuse

This happens over the Internet mostly. It can be through social networking sites or playing online games or through mobile phones. Young people are prone to cyberbullying, grooming, sexual exploitation, and emotional abuse. Someone they know or strangers can do this. It is felt that often children find no escape from this as they are afraid of the fact that offenders can reach them any time of the day and could access their personal space.

Abuse In India

In 2007, The Ministry of Women and Child Development released the results of a nationwide survey on Child Abuse, in which 12,500 children had participated across 13 States. More than half, 53% said that they had been subjected to one or more forms of sexual abuse. If that can be extrapolated it would mean that one in every two children have been victims of sexual abuse. Over 20 percent of those interviewed said they were subjected to severe forms of sexual abuse.

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. This provision has been made keeping in view the greater vulnerability and innocence of children. At the same time, to prevent misuse of the law, punishment has been provided for making a false complaint or proving false information with malicious intent. Such punishment has been kept relatively light (six months) to encourage reporting. If the false complaint is made against a child, punishment is higher (one year). The media has been barred from disclosing the identity of the child without the permission of the Special Court. The punishment for breaching this provision by media may be from six months to one year. For speedy trial, the Act provides for the evidence of the child to be recorded within a period of 30 days. Also, the Special Court is to complete the trial within a period of one year, as far as possible. To provide for relief and rehabilitation of the child, as

soon as the complaint is made to the Special Juvenile Police Unit (SJPU) or local police, these will make immediate arrangements to give the child, care and protection such as admitting the child into a shelter home or to the nearest hospital within twenty-four hours of the report. The SJPU or the local police are also required to report the matter to the Child Welfare Committee within 24 hours of recording the complaint, for long term rehabilitation of the child.

Causes

- **Taboo To Discuss Sex And Sexuality**

This happens to be the biggest reason why children are a victim of sexual abuse. There is reluctance to have the talk about sex and sexuality, particularly with children. As there is an absence over the knowledge and teaching and a healthy environment, both children and adults are in dark of the risks that follows through.

- **Tolerance To Gender Based Violence**

in India since the beginning of time the society has an ignorance and a level of accepting and tolerance towards gender based violence. We live on the saying; children and women are prone to such abuse if they cross their morality limits.

- **Believing Adults Over Children**

often the cases of violence and abuse are to put to rest by the families because they aren't ready to accept that an adult of the family could do such thing. A lot of times it is thought that the kid is lying or doesn't hold the sense about what he is reporting.

Reporting And Trial Of Sexual Abuse Cases

Under Section 19 of the POCSO Act, **reporting of offences** by any person including the child has been made mandatory. Section 21 of the Act provides punishment for failure to report or record a child sexual abuse case. However, a child cannot be punished for failure to report mentioned in Section 21 (2)}. It makes it the legal duty of a person who has knowledge that a child has been sexually abused to report the offence; if he/she fails to do so, he/she may be punished with six months' imprisonment and/or a fine. According to the act the evidence of the child should be recorded within a period of thirty days of the Special Court taking cognizance of the offence and the Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence.

It also provides that the Special Court shall try cases in camera and in the presence of the parents of the child or any other person in whom the child has trust or confidence.

Punishment Under POSCO, 2012

The POSCO act also provides provisions for punishment for false complaint or false information.

The Main Punishments Are Mentioned Below

1. For penetrative sexual assault, the sentence not less than seven years extended up to life imprisonment along with fine under section 4 of the POSCO Act.
2. Aggravated sexual assault committed by a person of trust or authority like police officer under section 6 would be punished with not less than ten years and extended up to rigorous life incarceration and fine.
3. For the non-penetrative sexual assault committed by a person with sexual intent must be punished with not less than three years and extended up to 5 years of imprisonment under section 10 of the POSCO Act.
4. Under section 10, if the aggravated sexual assault is done by the authority or by the person of trust, it would be punished with not less than five years and extended up to seven years of incarceration.
5. For sexual harassment under section 12 of the POSCO Act, prescribes a punishment of 3 years along with fine.

Compensation

The Special Court may pass an order for interim compensation to meet the immediate needs of the child for relief or rehabilitation at any stage of the FIR. Such interim compensation paid to the child shall be adjusted against the final compensation, if any. The Special Court may recommend award of compensation where the accused is convicted, or where the case ends in acquittal or discharge, or the accused is not traced or identified, and in the opinion of the Special Court the child has suffered loss or injury as a result of that offence as per the Rule 7 of POCSO Rules, 2012).

National Commission For Protection Of Child Rights

Under the Commission for Protection of Child Rights Act, 2005, a commission was set up which was known as The National Commission for the Protection of Child Rights (hereinafter referred as 'NCPCR'). The mandate of commission includes ensuring that all policies, laws, programs and administrative mechanisms are not in contravention with the child rights perspective as laid by the Constitution of India as well as the United Nations

Convention on the Rights of Child. A child is defined as any person in the age group of zero to eighteen years of age. The vision of this Commission is to channelize a rights-based perspective flowing into national policies and programs, as well as subtle responses at State, District and Block levels, looking after specifications and strength of every region. In order to touch every child, a high skilled penetration to the communities and households is required. Therefore, the Commission visualizes a role for the state that is indispensable in sound institution-building process at the community level as well as a societal concern for well-being of the children.

Long-Term Effects On Child

Preadolescent sexually abused children meet full criteria between 30% and 50% for a posttraumatic stress disorder diagnosis, 30–40% for depression, 27% for conduct disorders, 14.3% for attention deficit hyperactivity disorder, and 5–8% for obsessive-compulsive disorder.

Owing to various emotional, social, and cultural factors, CSA survivors may not be able to express their feelings and experiences. The main rationale for this is that children are traumatized and are unsure of the proper words to express their encounter. CSA has long-lasting negative effects on mental health. Effects can be immediate, intermediate, and long-term. Reference should be made to the psychologist and psychiatrist in all cases needed for the assessment and treatment of acute stress reactions and, consequently, to posttraumatic stress disorder. Also, another reference should be made to other specialists like District Child Protection Units, child developmental experts, medical social workers as needed for both medical care and legal aid.

Prevention Of CSA

CSA is a major public health concern and as such, needs public health initiatives. The preventive factors must be targeted at the population and must discuss the most common and significant factors affecting CSA. Knowledge on its prevalence, the incidence in all communities and in particular, the common perpetrators, the legal implications, and the means of its prevention should be widely publicized.

Parents should ask the child to report any suspicious behaviour by adults or older children. Children's accounts must not be neglected, and the child should be assured not to feel guilty. The child aged between 3 and 5 years can be told what is “good” touch or “okay touch,” and “bad touch,” and places over the body where nobody except the mother can touch or clean.

Children between 10 and 13 years age group should be informed about body parts, differences between boys and girls, what privacy and private parts mean.

To conclude, healthcare professionals are often the first contact for CSA victims and thus need to have the expertise for its adequate clinical evaluation and treatment and be knowledgeable of the legal aspects. A multidisciplinary response is required for comprehensive management that includes psychological support to the victim and the family. Parents, school teachers, and the civil society at large must overcome the traditional inimical attitudes of silence and shame and take appropriate educative measures to prevent CSA.

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