



GIRL CHILD: AN INNOCENT VICTIM OF SEXUAL HARASSMENT IN INDIA

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Introduction

“There are no two opinions that the convicted in minor rape cases should be given the harshest possible punishment so that it could act as a deterrent. It is high time that the state made it clear that society has no place for wolves on the prowl.”

-According to R.D Sharma¹

It is quite an embarrassment for Indian government when reports of child rape at different places in India made daily to the headlines in newspapers and television since from New Year 2018. This could be plight of every child that within a month of January 2018, a number of girl child rape cases have been reported. The two young sisters were strangled to brutal death after gang rape. A 10 year old girl was raped by her known. Many more offences of such nature are reported daily in India. In India, a child is sexually abused every 15 minutes, according to the latest government figures. Such frequent reports tell that the horrified story of the odds and average Indian child has to face to survive and grow in an environment that is not child friendly. Yet for every case that is highlighted, there are thousands which go unreported because of the silence and tolerance to such violation of human and fundamental rights of children. There is need to raise the curtain from the culture of silence that surrounds the treatment of children.

World on Child: International Mechanism

THE United Nations convention on the rights of child (CRC) is an international treaty that legally obligates nations to protect children's rights.

Articles 34 and 35 of CRC requires states to protect children from all form of sexual exploitation and sexual abuse.

This includes outlawing the coercion of a child to perform the sexual activity, the prostitution of children, and the exploitation of children in creating pornography. States are also requires to prevent the abduction, sale or trafficking of children. As of December 2014, 195 countries have rectified the convention, including every member of united nation except the United States and South Sudan.

Children Protection: A State's Duty

Internationally, what the states commit for the welfare and development of children and on child rights protection has been described below:

- Children must be respected as human being esteemed as members of society and raised in good environment- **Japan.**
- Children are one of the most important assets of any nation- **Philippines.**
- State must respect and depend the rights of children- **China.**
- Children is entitled to special care and assistance and the child is by reason of his physical and mental immaturity, needs special safeguards and care including appropriate legal protection before as well as death- **United Nations convention on Rights of Child.**



- Children are significant members of society. It is the states fundamental duty to protect and care for them- **India**
- The child for the full and harmonious development of his and her personality should grow up in the family environment, in atmosphere of happiness, love and understanding, thereby recognized the rights of child to live an individual life in society and brought up in the spirit of peace, dignity, tolerance, freedom, equality and solidarity- **Convention on the Rights of Child.**

Scale of Child Rape in India

The distressing case of sexual assault on an infant happened on Sunday, 28 January, 2018 has shocked India and made national headlines. The extent of her injuries has horrified many and prompted them to wonder whether we have reached a new low.¹

It is true that state of children is not as rosy as painted. As far as India is concerned the Indian report recently released by National Crime Records Bureau statistics for the year 2016 show crimes against girl child continue to rise. According to a 2007 study conducted by India's ministry of women and child development, 53% of children surveyed said they had been subjected to some form of sexual abuse.

As per the latest data by National Crime Records Bureau, 2016 shows that 19,765 cases of child rape being registered in India - a rise of 82% from 2015 where at that time 10,854 cases were recorded.¹

The following are the reports on child rape in India:

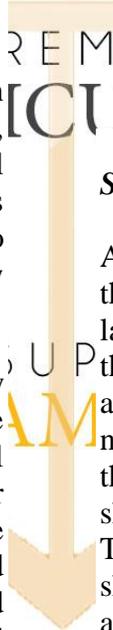
➤ <i>Recorded cases of child rape in the year {19765}</i>	<i>2016</i>
➤ <i>Girls married before 18 in India</i>	<i>240 million</i>
➤ <i>Children participants in government study reports sexual abuse</i>	<i>53.22% of total</i>
➤ <i>"Persons in trust and care-givers" of child</i>	<i>50% of total</i>
➤ <i>Cases recorded under Pocso, Act</i>	<i>{36,022}</i>

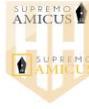
Sources: Indian government, Unicef¹

As per the above finding we can analysis that the crime against the girl child during last few years gone up rapidly in India. And the most extreme form of violence is rape of a minor girl child and worryingly, these numbers are rising daily. When we look at the statistics, compiled by the government, shows that such crimes are not uncommon. The National Crime Records Bureau report, shows a steady rise in incidents of offences against children.

Child and the Law in India

As everyone knows child is a national asset. They require proper care, love, affection and nourishment but reports say that children are subjected to maltreatment in some situations.¹ A child is treated with distinguished type of harassment and violence in India. In many compelling





circumstances and having no shelter for their protection a child gets associated with crimes and criminals. Girl child exploitation in India is an outcome of the macabre family circumstances, social environment, poverty, ignorance of family planning and unchecked population control, lack of care and attention, and lack of love and affection from parents.¹

Who is a child?

The child can only be determined solely on the basis of her age. In India, there are various legislations relating to the age of child such as following:¹

- A) The Children Act, 1960,
- B) The Child Labour (prohibition and regulation) Act, 1986
- C) The Juvenile Justice Act, 2000
- D) The Factories Act, 1948
- E) Prevention of Immoral Trafficking Act, 1956
- F) Section 27 of Criminal Procedure Code, 1973
- G) Convention on Rights of Child adopted by General Assembly of United Nations, 1989.

As provided under 2(a) of the Immoral Traffic Prevention Act, 1956, a minor means a person whose age lies between 16 and 18 years.

The Children Act, 1960 fix the age of child as 16 in case of boy and 18 in case of girl. According to the convention on rights of child, a child means a person male or female who is below 18 years of age.¹ Whereas, section 27 of criminal procedure code stated that a juvenile means a person who is under the age of 16 years.

This can be said that the various regulations prescribe various age of a child, but at max it is limited to the 18 year of age.¹

Child under Constitution of India

There is no doubt in saying that children are the future of nation and they need special care and protection because of their mental and physical faculties they possess. There are constitutional provisions relating to child. The state government under article 15(3) of the Indian constitution is empowered to make special provisions for children. Also provided under article 39(c) of constitution the children of tender should not be subjected to abuse and they should be given opportunities and facilities to development in a healthy manner. Freedom and dignity of children should be protected carefully.

Apart from above the constitution has in several provisions including clause (3) of article 15, article 39 (e) and (f), article 45 & 47, impose on the state a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected.

Whereas, at international level, on 29th Nov, 1989 the United Nations general assembly has adopted a convention on the rights of child. This convention does not emphasis on judicial proceedings but prescribes a set of standard to be followed by the all member nations. It insists on social reintegration of child victims on the part of state parties to secure the best interest of child.

Juvenile Justice (Care and Protection of Children) Act, 2000

This act aims to provide proper care, protection and treatment by catering to their



development needs, and by adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under this enactment.

Judiciary on “In cest” Children Sexuality

As per the reports of national crime records beurve, 2016 the almost half of the rape case were done by the known of the victim. A person “in trust and care-givers of child” usually found guilty of rape on minor girl. The term ‘in cest’ refers to a sexual relation between persons who are within certain degrees of consanguinity, or are so closely related to one another that such relationship is prohibited by law. For example, brother-sister and father-daughter, mother-son, uncle-niece and so on. Such relations are forbidden in many societies. The incestuous behavior with the children is child abuse hence it is a juvenile delinquency.¹

In India, there are no separate provisions for incest in the Indian penal code. It is however covered under the definition of sexual harassment under section 376 of the code. The punishment may be of life imprisonment for such crime or depends upon the facts and circumstances of each case.

The apex court in **M.H Kakkad v. Naval Dubey**¹ convicted the accused who had raped a girl and had also committed a similar sexual assault on his niece and other girls of that locality. The court while inflicted severe punishment and observed that-

“Though all sexual assault on female children are not reported and do not come to light yet there is an alarming and shocking increase of sexual offences committed on children. This is due to reason that children are ignorant of thee at of rape and are not able to offer resistance and unscrupulous, deceitful and insidious act of luring female children and young girls. Therefore, such offenders who are a menace to the civilized society should be mercilessly and inexorably punished in the severest terms.”

National Plan of Action for the Girl Child

National plan of action for the girl child for 1991-2000 AD has been drawn up by the government. The plan recognizes the rights of girl child to equal opportunity, to be from hunger, illiteracy, ignorance and exploitation.

Towards ensuring protection of girl child following are the objectives:

- Relief for those who are economically and socially deprived and belong to special groups;
- Intervention to sensitize various agencies on the need to protect the girl child and adolescent girls from exploitation, assault and physical abuse;
- Education and sensitization of male members of the family to the special needs of the girl child;
- Equal treatment, dignity and respect for girl children in the family and community as well as providing support and help in their day to day work, so that they get time to avail of the opportunities for self-development;
- Rehabilitation services to reduce the growing instances of exploitation of girl children and adolescent girl;



- Protection of girl children and adolescent girls from prevalent social evils such as dowry, child marriage, prostitution, rape, incest, molestation etc. through appropriate legislation and proper enforcement.

Way Forward-

It is necessary that political, religious cultural and administrative as well as community resources are to be mobilized to create methods of care and value for the girl child and adolescent girls and also involve them in planning, implementing and evaluating of such developmental activities. It is only such an ethos that can eventually eliminate deep rooted gender inequalities.

This has been endorsed at a recent SAARC Workshop on girl child at Delhi:

The approach includes the following:

- To raise consciousness levels of parents who are decision makers within the family units;
- To provides inputs for personality development of the girl child so as to enhance herself image and enable her to take her own decision, specially major ones relating to education and marriage;
- To provide child care facilities in school to help those girls who are preoccupied in the nurturing of their younger siblings;
- To eliminate all form of violence, overt and covert, perpetuated against the girl child within the family unit and communities;
- To enact stringent laws on offence against girl child;
- To strive to end such socio-cultural practices those are discriminatory to the girl child.

Conclusion

Children are the precious gift of human culture. They are one of the most important assets of any nation. Present laws against rape in India suffer from numbers of flaws. Primarily, it makes no distinction between rape of a minor and adult as a criminal offence. Hence, the same judicial investigative and evidentiary procedures are followed for both, in which the child is further traumatized and the accused finds many loophole to escape. Children should not be victimized for any kind of criminal act or evil. Any brutal or heinous crime to a child gives mental agony which lasts for long time in the minds of children. It's a need of hour to put a halt on crime against a girl child. It could only be possible through stringent laws and punishment provisions. The Parliament and our Indian government must fix deterrent punishment for such crimes. Also, the courts must pass such an order which convict the accused of rape until death. And most importantly, the trail of girl child victim of rape should be accomplished within the period of six months. Moreover, in our sovereign, democratic, republic India, one should not forget that even an infant or minor girl also possess the fundamental right to life and liberty.
