



CHILD SEXUAL ABUSE IN INDIA: INCREASE, EFFECT, LOOPHOLES AND CHANGES REQUIRED IN LAW

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INTRODUCTION

Child sexual abuse or in other words child molestation is a severe form of child abuse in which a child is abused by an adult or by an adolescent for sexual pleasure. There are many ways in which the modesty of a child is exploited. Some of the most heinous one are pressuring a child sexual stimulation, physical sexual contact or penetration, indecently exposing genitals of a child and child pornography. In India too the problem of child sexual abuse is not new and children are made victims of this form of child abuse. The condition of children both male and female is worst in city slums, footpath dwellings and Indian jails. They are sexually exploited by the slum, ruffians – even neighbors in the slums and on footpaths in metropolitan cities. Since there are not many juvenile jails in India most of the child convicts are kept in regular jails. Sexual abuse is a regular feature. Hard core convicts and jail staff satisfy their sexual lust on these children.

In recent years there has been a tremendous increase in the rate of child sexual abuse in India and its impact are quite visible. Ignorance by family members, family honor, lack of awareness, pressure by elderly family members, and loopholes in laws itself are some of the major cause of this rise. Since the laws are not properly implemented and conducted, these innocent

bodies are falling an easy prey .It's the time when government should look upon the issue seriously and take proper action in order to curb this problem as soon as possible.

OBJECTIVE OF RESEARCH STUDY:

The objective of this research paper is to:

- Find out why the problem of child sexual abuse is increasing day by day.
- Explain the impact of child sexual abuse and its severe effects.
- Loopholes in laws made on child sexual abuse.
- Changes needed in these laws.

CHILD SEXUAL ABUSE: WHAT STATISTIC SAYS

The problem of child sexual abuse is increasing day by day. Not a single day passes when we don't witness news on child sexual abuse. Rape, molestation, child pornography and incest are some of news which comes across newspaper or televisions daily. In a recent survey¹, it has been found that there is an increase of 336% in cases of child rape from last decade. This stats itself shows how this issue of child sexual abuse has reached to an alarming rate. Now let see some more data and numbers in order to find how this problem has spread its tentacles.

FACTS AND FIGURES²

An estimated 150 million girls and 73 million boys under 18 experienced forced

¹ Asian Centre for Human Rights (ACHR),

² RAHI, a N.G.O working for children rights and welfare.



sexual intercourse or other forms of sexual violence during 2002.

India has the world's largest number of sexually abused children; with a child below 16 years raped every 155th minute, a child below 10 every 13th hour and one in every 10 children sexually abused at any point of time.

Major findings on sexual abuse in India³:

- 53.22% children reported having faced one of more forms of sexual abuse.
- 21.90% child respondents facing severe forms of sexual abuse and 50.76% other forms of sexual abuse.
- 50% abuses are persons known to the child or in a position of trust and responsibility.
- Children on street, children at work and children in institutional care reported the highest incidence of sexual assault.
- Andhra Pradesh, Assam, Bihar and Delhi reported the highest percentage of sexual abuse among both boys and girls.
- Most Children did not report the matter to anyone.

ROOT CAUSE OF ITS RISE:

1. IGNORANCE

Ignorance is one of most important reason why this issue has reached an alarming rate. Most of the time a child is not believed or simply ignored when he/she complains about sexual harassment. Generally child is believed to be lacking in wisdom and knowledge and due to the very reason, there claims are not accepted at once. Moreover in Indian customs and traditions an elder person is always regarded as a father or mother figure and any allegations against them are treated as an insult for that person.

³ Child abuse. India . 2007

Children themselves not reporting the problem is another major issue related to ignorance.

2. INCEST AND FAMILY HONOR

Incest means sexual relationship between family members or relatives. It may be between the ones who are tied with blood relationship or by any other ways like belonging to same clan, tribe etc.

Sexual abuse by father, brother, uncles or by any other relative is very common in child sexual abuse. Majority of child sexual abuse is committed by a family person or relative in one or more ways. These persons are usually in position of trust and responsibility and they take advantage of this in a heinous manner.

Most of the time such crimes never comes out publicly as incest cases are generally not reported or filed in order to safeguard the family pride and honor.

3. LACK OF AWARENESS

Stigma around talking about private parts often leads to inability among children to communicate to their parents regarding sexual abuse they are facing. When there is freedom and awareness coming from parents, a child will know the limits of intimacy and beyond which the child will respond or report. There should be open interaction between parents on matters of sexuality. Unless the child feels free to tell her parents about what she/he is going through, these matters will never come out.

According to Shekar Shehadri⁴, children are intelligent and they have the ability to understand when someone is 'making a

⁴ Professor, department of adolescent and child psychiatry, NIMHANS



move'. "If they children are given the awareness and confidence,

they will oppose the abuse when the first the signs are visible. To oppose an abuse at the beginning is the best way to stop it and parents should give the child the confidence where the child would push the abusers aside and say 'that's it, back off," he said.

4. PORNOGRAPHY

Changing lifestyles and the rising trend of internet pornography and obscene scenes on television also keeps the passions high of such culprits. Now access to internet is much easier than earlier and as a result of which online pornography has reached to each and every individual. From a very early age adolescent are familiar with such videos and clips and it leaves a very deep impact on these innocent minds. Adults and adolescent gets sexually violent and such materials instigate to commit such crimes.

5. SLOW JUDICIAL PROCEDURE

Judicial procedure in India often takes much time and due to this tiresome court procedure, cases drag for years together and the accused usually gets out on bail. Sometimes, the cases repeatedly get postponed and due to tampered evidences, the accused ends being acquitted. Such long proceedings also effects financially and due to inability to afford the finance victims generally withdrew cases.

Due to slow judicial procedure accused gets enough time to tamper evidences. Use of coercion is also reported time to time where victims are threatened and harassed mentally and physically in order to withdraw the case.

6. LOOPHOLES IN LAW

There are not many laws regarding the matter of child sexual abuse. The parliament of India passed the 'protection of children

against sexual offence bill,2011'⁵ regarding child sexual abuse on may 22,2012 into act. But again the law is not sufficient enough to cure the issue of child sexual abuse .it comes with a lot of loopholes and flaws. The demand of stronger laws and severe punishment for such crimes is increasing and government seriously needs to reforms these laws in order to make the provisions much stronger.

EFFECT OF CHILD SEXUAL ABUSE

Child sexual assault can have a number of effects, both physical and psychological, that last both in the short and longer term. Early identification and effective intervention can ameliorate the initial effects and long term consequences of child sexual abuse and promote the recovery of victims.

Outlined below are some common effects which can occur as a result of childhood sexual assault.

Psychological effects

Fear. The offender may swear the child to secrecy and say something bad will happen if they tell. Coercion, bribery or threats usually accompany sexual abuse. Overwhelmingly, the child is afraid to tell because of what the consequences might be. E.g. punishment, blame, not being

⁵ The Protection of Children from Sexual Offences Act, 2012 defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography. These offences have been clearly defined for the first time in law. The Act provides for stringent punishments, which have been graded as per the gravity of the offence. The punishments range from simple to rigorous imprisonment of varying periods. There is also provision for fine, which is to be decided by the Court.



believed and ultimate rejection or abandonment.

- **Helplessness/powerlessness.** Children in this situation often feel that they have no control over their own lives or even over their own bodies. They feel that they have no choices available to them.
- **Guilt and Shame.** The child knows something is wrong, but blames him or herself not others. The offender will often encourage the child to feel that the abuse is his or her fault and as a consequence is a "bad" person.
- **Responsibility.** The offender coerces the child to feel responsible for concealing the abuse. The child then believes they are responsible for preserving the secret in order to keep their family together and to maintain appearances at all costs. The burden of this responsibility, however, interferes with all normal childhood development and experiences.
- **Isolation.** Incest victims feel different from other children. They must usually be secretive. This further isolates them from non-offending parents and brothers and sisters. This isolation often leads to the child being labeled as 'different', 'a problem', or in some way different from their siblings.
- **Betrayal.** Children feel betrayed because they are dependent upon adults for nurturing and protection and the offender is someone who they should be able to love and trust. They may also feel betrayed by a non-offending parent who they believe has failed to protect them.
- **Anger.** Children most often direct their feelings of anger in several ways.
 1. They may direct it outward at perceived 'little things'.

2. They may more often direct it inward affirming their feelings of low self worth or value; and

3. Almost never direct their anger towards the abuser whilst still in close relationship with them. The issue of anger is most often dealt with in the longer term, as an adult.

4. Children may feel anger towards others whom they believe have failed to protect them.

- **Sadness.** Children may feel grief due to a sense of loss, especially if the perpetrator was loved and trusted by the child.

- **Flashbacks.** These can be like nightmares which happen while the child is awake. They are a re-experience of the sexual assault as it occurred at that time. As an adult, a survivor may experience the same type of omnipotent fear that they experienced as a child. Flashbacks can be triggered by many things. By a smell, a mannerism, a phrase, a place or a wealth of other environmental factors that may have significance.

Other short term impacts may include:

- Medical problems, such as Sexually Transmitted Infections, pregnancy or physical injuries;
- Behavioral problems such as aggression, clinginess, phobias, eating and sleeping disorders, school problems and school refusal.

In the long term the child may also experience a number of effects as an adult

These may include:

- (a) Depression, anxiety, trouble sleeping;
- (b) Low self esteem;
- (c) Vulnerability to subsequent abuse and exploitation;



- (d) Dissociation from feeling;
- (e) Social isolation;
- (f) Relationship problems such as an inability to trust, poor social skills or a reluctance to disclose details about themselves;
- (g) Self destructive behavior such as suicide attempts;
- (h) Parenting problems such as fear of being a bad parent, or fear of abusing the child or being overprotective;
- (i) An underlying sense of guilt, anger or loss;
- (j) Post Traumatic Stress Disorder.

- I.P.C. (1860) 375⁶- Rape
- I.P.C. (1860) 354⁷- Outraging the modesty of a woman
- I.P.C. (1860) 377⁸- Unnatural offences
- I.P.C. (1860) 511⁹- Attempt

ROLE OF GOVERNMENT, LAWS AND LOOPHOLES

The issue of child sexual abuse is not new in india. but it in the recent times it has reached to an alarming rate. Indian media is reporting this tremendous increase as an ‘epidemic’. The demand for stronger laws is increasing and the role of government has often been questioned. Though all possibilities are made my government to minimize the rate of child sexual abuse but the Indian government has failed to curb the rampant sexual abuse of children, especially in schools, state-run child care facilities, and in the matter of insect. Government responses are falling short in protecting children and in treating victims. Earlier there was only one act, goad children’s act, 2003 which dealt with the laws regarding child sexual abuse. While the government in 2012 passed a comprehensive law to protect children from sexual offences, its efforts to implement the law remained poor or nonexistent.

According to Goa children’s act, 2003, Child sexual abuse might be prosecuted as:

⁶⁶ 375. Rape.-- A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:- First.- Against her will. Secondly.- Without her consent. Thirdly.- With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt. Fourthly.- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. Fifthly.- With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent. Sixthly.- With or without her consent, when she is under sixteen years of age. Explanation.- Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Exception.- Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

⁷⁷⁷ 354. Assault or criminal force to woman with intent to outrage her modesty.-- Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

⁸ 377. Unnatural offences.-- Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation.- Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section. CHAPTER XVII OF OFFENCES AGAINST PROPERTY CHAPTER XVII OF OFFENCES AGAINST PROPERTY Of theft



LOOPHOLES IN THE LAW

- They aren't specific to children's needs.
- Laws have no provisions for repeat offenders
- Didn't mention anything about teen who contently have intercourse with each other
- No provisions for bail-able and non bail-able offences and lots more.
- The age of Child varies in every law.
- IPC 375 doesn't protect male victims or anyone from sexual acts of penetration other than "traditional" peon-vaginal intercourse.
- IPC 354 lacks a statutory definition of "modesty". It carries a weak penalty and is a compoundable offence. Moreover, what about the outrage of the modesty of a male child?
- In IPC 377, the term "unnatural offences" is not defined. It only applies to victims penetrated by their attacker's sex act, and is not designed to criminalize sexual abuse of children.

Protection of children against sexual offence act 2011

⁹ 511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.-- Whoever attempts to commit an offence punishable by this Code with 1[imprisonment for life] or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with 2[imprisonment o f any description provided for the offence, for a term which may extend to one- half of the imprisonment for life or, as the case may be, one- half of the longest term of imprisonment provided for that offence], or with such fine as is provided for the offence, or with both.

The new Act provides for a variety of offenses under which an accused can be punished. It recognizes forms of penetration other than peon-vaginal penetration and criminalizes acts of immodesty against children too. With respect to pornography, the Act criminalizes even watching or collection of pornographic content involving children. The Act makes abetment of child sexual abuse an offense. It also provides for various procedural reforms, making the tiring process of trial in India considerably easier for children. The Act has been criticized as its provisions seem to criminalize consensual sexual intercourse between two people below the age of 18.

Some of the major upside and appreciation of the act was:

- Treating sexual assault as “aggravated offence” when a person in authority or position of trust commits the offence. It also considers the physical/mental disability and the long-term after-effects of the injury inflicted.
- Special provision preventing pornographic abuse or even possession of such material. It also places the media, studio and photographic facilities under obligation to report such matters.
- Designated special courts that will decide cases in a time-bound manner. It also spells out the various procedures of investigation, trial and sensitive dispensation of justice.
- Guidelines for media to sensitively and discreetly report cases without inflicting pain of identification of the victim.

Though these changes were welcomed by some section, again flaws were quite



visible and many social worker and legal bodies criticized the act.

Many activist like Amerada Sahasrabudhe¹⁰, Bharati Kotwal¹¹ and Ingrid Mendonca¹² point out its flaws:

- For the penetration sex the maximum offence was only 10 years.
- No mandatory counseling for victims and families.
- Nothing much written about child pornography.
- Consensual non-penetrative sex for twelve year olds.
- Giving green signal to consensual intercourse at 16 years of age and no provision for Punishment.
- No specification of accountability or compensation from those accountable, including the judiciary.

CHANGES REQUIRED

Though the new act has brought some new reforms and stricter laws have been implemented but still some changes are needed to both by law making bodies and by individuals too to make these more powerful and to bring this issue of child sexual abuse to minimal .some of the changes which should be welcomed are.

- Stricter provisions and punishment for crimes relating to child molestation and sexual abuse. Especially in the cases of penetrative sex punishment should be severe to deterrent the culprits and sending a message to the society. These cases should be brought under rare case and punishment be awarded according to that.

- Complete ban and filter on sexually explicit sites .awareness programmers should be organized and counseling should be done to aware people about the consequences of pornography and its effect. Punishment should be awarded to any vendor selling or acquiring such materials .complete cyber monitoring is needed.
- Families should be acknowledged and aware about incest sex. They should be inspired and counseled to report these problems in police.
- School authority and other educational institutions should authorize a committee to see that no such happenings take place in school premises and outside and if so happen it must be reported and informed to highest authority.
- More fast track courts should be made in order to get proper and fast justice. Long court procedure should not be the reason of acquittal of accused, this should be made clear.
- Child welfare homes should also be checked and monitored regularly.
- No child should face the mental trauma during hearing and excessive media coverage should also be banned.
- More counselor and psychiatrist should be appointed to provide better counseling for victims and families.
- Proper compensation should be provided to the victim.

Apart from that some other changes which were recommended by different bodies¹³ were:

¹⁰ Juvenile justice board, India

¹¹ Muskaan (NGO)

¹² ARC

¹³ recommendations presented by CHILDLINE India Foundation



- Specifically address circumstances of sexual abuse and the special needs of children.
- Be gender neutral.
- Deter crime through appropriate penalties and keeping a track of sexual offenders so they are not in contact with children.
- Establish guidelines and basic protocol to protect child victims, guide them through legal process and address their needs.
- Increase reporting and disseminate knowledge of children's rights.
- Impose mandatory reporting on professions in contact with children.
- Protect children and reporters from harmful exposure through confidentiality guidelines.

CONCLUSION AND FINDING

Coming to end of this research work I find that child sexual abuse is an evil which is increasing rampantly and more and more number of children are proving to be a victim of this. Child rape, molestation, child pornography and other forms of child sexual abuse are much evident and visible in our society. But since no strong action is taken, culprits are roaming free and independent leaving the victims in a traumatic condition. Weaker role of government is the major reason of this increase and much stronger laws are needed in order to minimize this issue. But government alone can't be blamed for the same. Parents and family members also play an important role in this increase. Due to social stigma they don't file or report these issues and this encourages the wrong doers. In the matters of incest it has been found that children's are abused repeatedly due to ignorance and silence of parents. Long court procedure, improper

functioning of police authority, rise in pornography and lack of awareness among children are other contributing factors.

Laws implemented by government are with flaws and loopholes and these pits should be filled as soon as possible. Moreover awareness programs should be conducted to make children and their parents aware about child sexual abuse. Parental guidance is also needed. We need to talk about Child sexual abuse at home. We need to first start acknowledging that it exists and that it is increasing. To begin with, Child sexual abuse is rarely reported, perpetrators get away with it more often than not. In a society where boys and girls are not allowed to mingle socially, repression results in perpetrators selecting victims they can target easily, and who are easily accessible-children. From their own homes. We need to start talking to our kids about basics like good touch, bad touch in much the same matter of fact manner that we talk to them about traffic safety rules. Unless we stop brushing it under the carpet and putting family honour before the welfare of the child, unless we start gathering the courage to report any Child sexual abuse we come across and confront abusers, even in our own homes, Child sexual abuse in homes will continue, increase and generations of children will grow up scarred.

For the victims, proper counseling should be done and more number of counselors should be appointed. These children should not be isolated from society rather they should be treated with more care and affection in order to prevent them from long term effects. Proper compensation should also be provided and it should be made sure that no



cases should close due to insufficiency of a family.

At last I conclude that just like any other evil issue, this issue also can't be solved in a day or two. It is serious issue and the whole nation is suffering from it. We need to first start acknowledging that it exists and that it is increasing. To begin with, Child sexual abuse is rarely reportedly, perpetrators get away with it more often than not. In a society where boys and girls are not allowed to mingle socially, repression results in perpetrators selecting victims they can target easily, and who are easily accessible-children. From their own house. We need to start talking to our kids about basics like good touch, bad touch in much the same matter of fact manner that we talk to them about traffic safety rules. Unless we stop brushing it under the carpet and putting family honor before the welfare of the child, unless we start gathering the courage to report any Child sexual abuse we come across and confront abusers, even in our own homes, Child sexual abuse in homes will continue, increase and generations of children will grow up scarred. This increase is a wakeup call for the law making bodies at society at whole to come out from their house, discuss the matter and collectively cooperate each other to end this issue of child sexual abuse from its root. If the nation doesn't react now and the silence predominates, it can seriously damage those innocence bodies that are yet to blossom.
