

WHETHER CHILD WHO IS TREATED AS GOD IS SAFE IN INDIA?

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“when you feel caught in the web of childhood abuse, find words to describe it. Write them, say them, express them in safe places with safe people -

“JEANNE MCELAVANEY”²

Introduction :

A **child** is a human between the stages of birth and puberty. The legal definition of *child* generally refers to a minor, otherwise known as a person younger than the age of majority.

Child sexual abuse or child molestation is a form child abuse in which an adult or older adolescent uses a child for sexual stimulation. Historically, child sexual abuse has been a hidden problem in India, largely ignored in public discourse and by the criminal justice system. Until recently, child sexual abuse was not acknowledged as a criminal offence, rape was the main, if not the only, specific sexual offence against children recognized by law in India. In the absence of specific legislation, a range of offensive behaviours such as child sexual assault (not amounting to rape), harassment, and exploitation for pornography were never legally sanctioned.

Child sexual abuse has recently been publicly acknowledged as a problem in India. A welcome development has been the enactment of a special law-Protection of Children against sexual offences (POSCO) 2012-criminalising a range of acts including child rape, harassment and exploitation for pornography. The law mandates setting up of special courts to facilitate speedy trials in child sexual abuse cases.

The paper highlights the intended benefits and the unintended consequences that might arise from the application of the law in the Indian context. Undoubtedly, the passing of POSCO has been a major step forward in securing children's right and furthering the cause of protecting children against sexual abuse in conjunction with a related legislation to clamp down on child marriages called the Prohibition of Child Marriage Act 2006. The letter and the spirit of law, which defines a child as anyone under 18 years of age, is to protect children from sexual abuse.

* **madan gopal v. Naral dubey**

Though all sexual assaults 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 the reasons that children are ignorant of the act of rape and are not able to offer resistance and become easy prey for lusty brutes who display the unscrupulous deceitful and insidious art of luring female children and young girl.

Definition :

Medem : Defines child sexual abuse as “any sexual act with a child performed by an adult or an older child”

Child sexual abuse could include a number of acts, included but not limited to:

- *Sexual touching of any part of the body, clothed or unclothed.
- *Penetrative sex, including penetration of the mouth.
- *Encouraging a child to engage in sexual activity, including masturbation.
- *Showing children pornography, or using children to create it
- *Encouraging a child to engage in prostitution

Forms :

1. Asking or pressuring a child to engage in sexual activities (regardless of the outcome).
2. Indecent exposure (of the genitals, females, nipples, etc).
3. Child sexual abuse with intent to gratify their own sexual desires.
4. To intimidate or groom the child.
5. Physical sexual contact with a child.
6. Using a child to produce child pornography.

Types:

1. **Sexual assault:** offences in which an adult uses a minor for the purpose of sexual gratification. For e.g. Rape (including sodomy), etc.
2. **Sexual exploitation:** Offences in which an adult victimizes a minor for advancement, sexual gratification, or profit for e.g. prostituting a child ,etc
3. **Sexual grooming:** - the social conduct of a potential child sex offender who seeks to make a minor more acceptance of their advances. For e.g. in an online chat room .

Laws in relation to protection of child sexual offence**Indian penal code : S.375**

Exception in rape is given that sexual offences or sexual acts done by a man even with his own wife who is under 15 years of age is raped.

- **The protection of children from sexual offenses act, 2012 and rule :**

- a. **Sexual assault :- S7**

whoever with sexual intend touches the vagina, penis ,anus or breast of the child or makes the child touch the above things of such persons or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault and punishment for this shall not be less than three years but may extend to 5 years and also liable to fine

- b. **Sexual harassment :-**

S.11 a person is said to commit sexual harassment when such person with sexual intent-

- I) utters any word or make any sound or gestures or exhibits part of the body or sound shall be heard and part of the body shall be seen by the child
- II) Makes a child to exhibit his body in any form or media for pornographic purposes .
- III) Shows any object to a child in any form of media for pornographic purposes.
- IV) Repeatedly or constantly follows child either directly or through electronic means.

The punishment for this shall be for three years and shall also be liable to fine

- c. **Using child for pornographic puposes :-**

Whoever uses a child in any form of media for the purpose of sexual gratification which includes –

- I) representation of the sexual organs of a child.
- II) Usage of a child engaged In real or simulated sexual acts (with or without penetration).
- II) The indecent or obscene representation of a child. Shall be guilty of the offence of using a child for pornographic purposes and shall be punished for five years which may extend to 7 years and also be liable to fine .

3) **Family law** :- the children should not get married in a prohibited degrees of relation i.e. they should not be sapindas .

“Childhood should be carefree playing in the sun not living a nightmare in the darkness of the soul” Dave Pelzer ³

Global prevalence of child sexual abuse:

It has being estimated that 19.7 % for females 7.9% for males. Most sexual abuse offenders are acquainted with their victims; approximately 30% are relatives of the child more of them fathers, brothers, uncles or cousins. Around 60% are other acquaintances such as friends of the family baby sitters or neighbours. Strangers are the offenders in approximately 10% of child sexual abuse.

Most child sexual abuse is committed by men .studies on female child molesters show that women commit 14 to 40% of offences reported against boys and 6% of offences reported against girls.

Growing concerns abot female

NOTE :

The person who makes use of child for gratifying his lust is known to be paedophile.

The American psychiatrist association⁴ :- States “children cannot consent to sexual activity with adults “,and condemns any such action by an adult. An adult who engages in sexual activity with the child is performing a criminal and immoral act which never can be considered normal or socially acceptable behaviour

Myths about child sexual abuse:-

- 1) Only strangers abuse children sexually.
- 2) Men who sexually abuse child are mentally sick or perverted
- 3) Child sexual abuse happens only in poor families
- 4) When children say they have being abused it is often a figmen of their imagination or fantasy.
- 5) Children enjoy being touched sexually that is the reason they do not report sexual abuse.
- 6) Child sexual abuse can never happen In one’s home
- 7) Boys cannot be abused

“A child deserves to be loved but never to be maltreated ”- Lailah Gifty Akita ⁵

EFFECTS

A) Psychological effect :-

I) Fear : the offender may swore the child to secrecy and say that if they tell something bad will happen . Child is afraid to tell because of what the consequences might be

II) Helplessness :-children in this situation often feel they have no control over their own lives or even their own bodies .

III) Guilt and shame :- the child knows something is wrong and blames himself or herself not others

IV) Isolation:-incest victims feel different from other children .They must be usually be secretive. This isolates them from non offending parents, brothers and sisters

V) Betrayal: - children fell betrayal by non offending parents who they feel has failed to protect them

VI) Anger:-children may feel anger against the perpetrator and also against others who they feel has failed to protect them.

VII) Sadness:-children may feel grief due to a sense of loss especially if the person who did sexually abuse was loved and trusted by him.

“People ask, how can a person abuse a child? I ask how so many good people can not do anything about it”.- Adrienne Simeone⁶

B) Long term effects :-

- i) Depression, anxiety, trouble sleeping.
- II) Low self esteem
- II) Dissociation from feeling
- IV) Social isolation
- V) Relationship problems such as inability to trust, poor social skill, etc.
- VI) Self destructive behaviour such as substance abuse or suicide attempts.
- VII) Sexual difficulties such as fear of sex or intimacy, etc.
- VIII) An underlying sense of guilt, anger or loss

Tukaram V. State Of Maharashtra⁷

The Supreme Court held that in the case of custodial rape of a minor girl if the girl says she did not give consent, the court shall presume that she did not consent

Vishaljeet V. Union Of India⁸

The court after understanding the plight of the victims of the prostitution especially children who are forced into it passed various directions to the government (STATE AND CENTRAL) to implement the law ,to setup the advisory committees to make suggestions for measures to be taken to eradicate prostitution and also introduce social welfare programmes .

C) The child sexual abuse accommodation syndrome :-

It is a logically model which can be used to help in understanding the ways in which many children's react to sexual abuse

Categories of syndrome:-

- I) secrecy
- II) Helplessness
- III) entrapment
- IV) Conflicted and unconvincing disclosure
- V) retraction

“To terrify children with the image of help, to consider women an inferior creation –is that good for the world”.

-Christopher Hitchens⁹

D) Post –traumatic stress disorder:-

It is a framework for the children who are sexually abuse and is used by psychologists and psychiatrists .It identifies the existence of specific behaviour of a sexually abuse child.

“Our children are our greatest treasure, they are our future. Those who abuse them tear at the fabric of our society and weaken our nation”

-NATIONAL MEN'S MARCH, 1997¹⁰

Recommendations :-**I) Protect your children :-**

Teach your children what inappropriate sexual behaviour is and ask them to say no when somebody tries to touch their sexual parts or body and observe them if they are uncomfortable or hesitant with any adult .

II) Support child abuse victims :-

Parents should calmly listen to their children and support them in every phase of their life so that in future if anything like sexual abuse happens with them they should not try to keep it as a secret , children should always be reassured that they are not responsible for what has happened to them

III) Teach others about child abuse :-

Universities, colleges and even schools should organize guest lectures and spread and teach everybody about child sexual abuse

IV) Report :-

As soon as you suspect that a child has been sexually abused and believed that his life is in danger should immediately report to the local child protective services agencies

Conclusion :-

Child sexual abuse has gained public attention in the past few decades and has become one of the most high profile crimes. Since the 1970s the sexual abuse of children and child molestation has increasingly been recognized as deeply damaging to children and thus unacceptable for society as a whole.

Childhood is the most precious stage of a person's life. Therefore, the guardians of the children including the Government must fulfil the constitutional of ensuring the right to life for them.

Supreme Court Judge Ruma pal, said while addressing a gathering of lawyers, jurists and judges that ensuring justice to children is the responsibility of every citizen, every institution and every limb of the government.

(Endnotes)

- 1 Student, Balaji Law College, Pune
- 2 By Jeanne Mcelvaney In His Book Named " Spirit Unbroken"
- 3 BY Dave Pelzer in his book named " A CHILD CALLED IT"
- 4 The American psychiatric association
- 5 Lailah gift yakita-in quoting q
- 6 Adrienne Simeone- Available at, <http://themamabeareffect.org/free-downloads.html>
- 7 TUKARAM V. STATE OF MAHARASHTRA ,1978 Cr LJ 1864 :AIR 1979 SC 185
- 8 VISHALJEET V. UNION OF INDIA 1990 (3) SCC 318
- 9 Christopher Hitchens-Available at, <https://twitter.com/Kontorovsky13>
- 10 NATIONAL MEN'S MARCH,1997 –Available at, <http://www.aboutchildren.net/quotes/aprofile/37-nelson-mandela.html>