

Child Sexual Abuse- Abridging the Gap between Legislation and Reformal Needs

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ABSTRACT

Laws pertaining to child sexual abuse in India are very archaic and to some extent, the sensitivity of this issue is largely ignored. The deficiency of reported cases in the country is increasing alarmingly. Adequate legislation is largely observed in India that still lacks certain mandatory reporting procedures which is a hindrance upon law enforcement agencies.

Due to the absence of legal obligations, there was a significant absence of statistics concerning child sexual abuse in India. Child sexual abuse is a social reality that does not receive support from communities and public-spirited organizations which is a hindrance to criminal proceedings against the offenders because the justice system never plays a proactive role. Therefore, many NGOs and other organizations including social activists have played a pivotal role in accepting the pressure upon the government in formulating the laws concerning the protection of children and to collect various statistics about the extent to which children are subject to sexual abuse and also emphasize the need for enactment of various stringent laws.

Therefore, this research paper focuses on the progressives' efforts that have been taken upon by the Indian legislation to protect the rights of children. The lacuna in the legislation which leads to gaps in its implementation. And the reformatory measures that both the central and state government must adopt to strengthen the Criminal Justice System in India.

1. Introduction

Child sexual abuse is a very pervasive and serious issue in the country. Even in several parts of the world, it continues to be a hindrance to the overall growth and development of a nation. As it significantly impacts the psychological and emotional aspects of a child, which the children experiences it for the rest of life. Many intrafamily abuse cases even go unnoticed and unreported. As children require care and protection and they need to be dealt with caution and sympathy. Child sexual abuse is a very wide term that typically includes and provides a description of sexual offences happening against children in society. In a clear, lucid term child sexual abuse occurs, when children are engaged by a person in any sexual activities for, or, any sexual gratification.

2. Definitions

World Health Organization had defined child sexual abuse. It provides that - child sexual abuse involves a child in sexual activities, when a child is not able to comprehend, or has not consented or, for which the child is not fully prepared, or, is unable to give his consent that is a violation of the law and hence, a social taboo in the society.

World Health Organization has also published several guidelines about evidence-based and trauma-informed guidelines for the protection and care of adolescence that were sexually abused.

Child sexual abuse involves a wide range of those sexual activities that include-fondling, intercourse, touching, or, inviting to touch a child sexually, including -prostitution of child pornography, or, alluring a child online by cybercriminals.

The **Ministry of Women & Child Development Report 2007** has defined child sexual abuse as inappropriate sexual conduct that occurs with a child. It includes activities such as

fondling child genital organs, causing a child to fondle the adult's organs, sexual assault including incest, intercourse, rape and sodomy, pornography, and exhibitionism. For consideration of these abuses, these acts have been committed by those people who have been vested with the responsibility of care and protection of child for example – parents, neighbors, caretakers, guardians, relatives, baby sitters daycare providers.

3. Result

Prominent reasons and effects pertaining to child sexual abuse

Child Sexual Abuse is a matter of serious concern and it is not a new offence for the world. The number of unreported and unheard cases is increasing at an alarming rate. It is very shocking to see that most of the child abusers are known to the child and therefore, the child suffers more mental and emotional trauma because of difficulty in exposing such abuse in front of the public, with the fear of societal stigma.

Prominent Reasons

- Lack of psychological support from parents
- An Abusive relationship with parents
- Lack of open communication with the parents
- Disability
- Poverty
- Illiteracy (low education level)
- Semi-urban and rural area (Fewer avenues for earning particularly female)
- Peer pressure by neighbors and friends.
- Cultural believes and values over Children
- Sex and sexuality are a taboo
- Prevalence of Gender-based violence

Adverse Effects

Psychological Effect

- Depression, anger, and anxiety;
- Low self-esteem, feeling of hopelessness;
- Suicidal attempts;
- Panic and anxiety and post-traumatic disorders.

Physical Effects-

- Bleeding vaginal infection, Menstrual irregularities ;
- Injury in Genital organs, Gastrointestinal problems ;
- Chances of early pregnancy

Behavioural Effects-

- Social conduct and violation of law
- Low academic performance
- Chances to grow as perpetrators increase

Failures pertaining to justice system in India

Whenever any case pertaining to sexual abuse is reported in the country then it is the need of the hour to handle the case with a very simple response. It needs to be handled with very care and caution by the concerned health service providers, by the police, and by the whole legal system. But it is not so in reality. There is a very tiny portion of cases that were ever reported for child sexual abuse to the policeman. The major reason behind this and reported cases are that relatives never choose to come forward and talk about it. As they are afraid of being treated sympathetically. As a result victims and the adult family members and even the children, face terrible trauma which experiences as a lifetime curse, which particularly includes- very intimidating interviews, conducted by the police officials, the degrading painful medical examination of the victims, and several intermediations by the perpetrators, which is done to drop the charges. Even the long Court proceedings, prolonged delay in orders, and deciding the dispute are even adding up to the unpleasant terrible experiences for a young child thereby contributing to lots of stress and trauma. Stress full cross-examination of the victims increases the chances of hatred disorders among female victims that makes them more hesitant to come forward. As a result, the chances of repeated attacks by the perpetrators as the crimes go and punished increases manifold. Therefore, the Indian protection of children from sexual offences Act, 2012 and many other legislations was one of the most crucial initiatives by the government to address these issues.

In our country there shall be a special police officer for juveniles to deal with the sensitivity of the crimes on children and they are adequately trained in order to ascertain the sensitivity of the issue.

In several times, it is widely noted that the criminal justice system in India is proving itself to be capable enough to respond very decisively in cases of child sexual abuse as it was observed in a case in which the person was arrested and convicted within 7 months for raping an infant who was six months old. After an examination of the child wound, the police examined and reported the case to the policeman. The person was convicted for ten years imprisonment and the presiding judge being a lady also emphasized that to curb the growing menace of the sexual abuse on children, it is the need of the hour to impose Stern sentence to set an example for the others.

The Police

The police have a very eminent and important role to play to combat child sexual abuse cases because they being the first authority that comes in contact with the victim's family. In order to report a case, they must carefully observe- the sensitivity of the issue, the care, and the question that they need to keep in mind that are adequately recognized under the J. J. Act Protection of an obligation upon every police station that it needs to have specially trained officers; that is – “**child welfare officers**” and there must be “**special Juvenile police units**” in every district and cities to co-ordinate and upgrade the treatment of policeman with juveniles and children.

The special Juvenile police units also work with certain Non-Profit Organizations in various parts of the country like in New Delhi and Karnataka that incorporate several efforts in order to educate and inform the police force concerning child safety issues. This is so as they recognize the need to protect the vulnerable section. But in other parts of the country, the existence of special Juvenile police units only lies in provisions.

The Court

Child Sexual Abuse victims and their families are dragged into judicial a process that lasts for many years. The court proceedings in India are not orderly and timely disposed of. The burden to testify for long periods in child sexual abuse cases falls upon those traumatized victims and their parents. Therefore, as a result, they end up feeling disheartened. This shattered the hopes as they often feel that the judicial processes lead to more distress. The trauma during the court processes is very terrible to note. Many people also fear to report the cases because of societal stigma. The conviction of the perpetrators is quite rare and families and children even after facing so much trauma are posed and dragged into hatred and regret because when they come out in public after long judicial processes, they are not given respect. They are seen as perpetrators, not as a victim.

4. Discussion

Indian Legislations Against Child Sexual Abuse – Efforts For Protection & Legal Lecunae

The Government of India adopted several measures in order to protect and improve the children's well-being in the country after it ratified the convention on the rights of the child. India has laid down several laws and launched various initiatives to protect vulnerable children to improve their education and health. But there is still a lag in its implementation.

THE POCSO ACT

The Indian Parliament for the very first time enacted the law that highlighted child sexual abuser's offence in the country, due to a lack of legal provisions in the earlier laws for the same.

Before the passing of the POCSO, Act, Several forms of certain abuses were covered by Indian laws inadequately. For example- as per section 354 of IPC -If a girl is a victim of any non-penetration sexual abuse then the offender was not charged for (assault with intention in order to outrage the modesty of women).

But this was possible only if the police were of the view that the law covers up the non-penetration sexual activities and

that was not a rare case. India is a country with several paradoxes and contradictions and one such contradiction was relating to the legal age to have sex or to marry. As per Indian laws, boys were allowed to marry once they have reached 21 years of their age but the age for sexual consent was not adequately defined.

Earlier girls were allowed to marry at the age of 18 years, the age for consent as set out as per IPC was 16, and unless the girl is married and this created a lot of confusion. Many experts have welcomed the POCSO, Act as a major step that highlighted certain serious concerns. While others were of the view that the government needs to bring amendment in order to improve the structure of law and initiate the steps for adequate implementation. Once the Ministry of child development and ministry of women have adequate time to assess implementation.

The law was meant to strengthen the procedural aspect like -the punishment is required to follow a certain procedure and must treat the case with sensitivity, while he interviews any victim. It lays down the procedure for the setup of special courts that deal with child sexual abuse cases exclusively. This law incorporates the steps and prohibits aggressive questioning during a trial of a child. It incorporates certain measures to protect the identity of the child and also orders that the work must be completed within the year by the court.

But certain experts have also criticized this new law. One such criticism is that- the new age of consent that is 18 is very unrealistic, as it will criminalize adolescent sex.

Another criticism is that of mandatory reporting. As per the law if any person is aware of any child sexual abuse incident, or, and risk associated with it, then that person shall inform the police, the failure of which will render six-month imprisonment and a fine, which is very unrealistic. When it is enforced, as a result, many child rights groups had various campaigns against the mandatory reporting and emphasize that it must be confined to only those professionals, who are in contact with the children like- teachers, doctors, and other rehabilitators, though it is hard to implement. But there is a need for improvement.

Another criticism is that if a victim is a child who is below the age of 16 years the court must presume that the offences committed by the accused unless and until the contract are proved.

Therefore it is emphasized that if a new law increases the number of prosecution's then there are chances that victims will report their cases and it will be a lesson for all those potential attackers that are involved in using children. It will be an example for the rest.

National And The State Commission For Child Right's Protection

The National Commission for the protection of child rights is a very new institution in the country. It has played a pivotal role in improving children's status across the country. It has the potential to do a lot more because of sufficient fund and support and better qualified trained staff provided by the central government Set up in 2007, it is vested with the power to investigate on its own how to follow the cases referred by an individual to it who considers that their complaints are not adequately addressed by the government officers. It is a Quasi-

judicial body that passes up Orders and can examine any person on both dresses like a Civil Court.

Every state government is required and expected to have it's on commission to be set up in India it was only seen in 15 States and union territories they are only vested with the power to recommend but they have no implementation power hence they are ignored.

Another criticism is that they are not a truly autonomous body as provided under the law the state Commission is controlled by the state government. The state government has a part to control the funds and even the appointment to these commissions is not transparent. But they have an important role to play as an independent monitor of any government action they were vested with a job to monitor the implementation of the right to education.

Integrated Child Protection Scheme

In 2019, the ministry of child development and women had launched and initiated in order to improve measures relating to child protection. As a result, the Integrated Child Protection Scheme was launched that aimed at strengthening the existing programs and Institutions. Introducing several new programs. The scheme also plans for appointing several social workers and also aims at establishing several committees in every district of India to look after the protection of the rights of children.

It was observed that these difficulties arise due to the diversification of India. India being a welfare state is not administered by the central government in New Delhi, rather it is a Union of 28 states and 9 union territories. The allocation of funds by the Ministry of women and child development is designed at the Central level but the implementation of this is entirely upon the individual States. Therefore, Regional governments shall not be blamed for the central government shall not be blamed all alone.

Child Welfare Committees

It is one of the most important mechanisms in India in order to protect the children. It is vested with several parts being a quasi-judicial body. It supervises the government's officers the policeman and even oversees the inspection of residential care facilities that are provided to the children. It is one of the important Integrated Child Protection Program scheme that has immensely increased the protection of children. It is one of the committees that work for several other mechanisms. It is established under the Juvenile justice care and protection of children Act, the Act provides that there shall be at least one such committee in every district, which is to be funded by the state government of the concerned district. The funds are available in order to increase their number in the country. The final authority concerning the disposal of cases of care, protection, development, treatment, and rehabilitation of a child and also provide the basic safeguard to their human rights vests with the child welfare committee. As per section 29 (5) of the Juvenile justice act, the child welfare committee functions like that of a bench of magistrates. They are vested with powers which is equivalent to that of the parts of a metropolitan magistrate or a Judicial Magistrate of the first class. As given under the code of criminal procedure, the child welfare committee consists of a chairperson, along with four other members. The chairperson shall be a person, who must be well

acquainted and trained in child welfare matters. One of four of the members of the child welfare committee must be a woman. The child welfare committee has a responsibility to tackle the reports of progress during any inquiry before it and it shall deliver the report in the best interest of a child. The child welfare committee is also fitted with the power to remove a child from his place. If the need arises, for its care and protection, it is the responsibility of the authority that tends to monitor those institutions which relate to the protection and care of a child. They are within the jurisdiction of the department of women and child development.

As per Child line India Foundation, a survey was conducted by it that depicted that around half of 640 districts in India have their child welfare committee.

In many of the developed and well organized cities, is observing that the child welfare committee is properly staffed and well equipped. However, the situation is not the same in the other parts of the country, For example -In Bengaluru, the members and staff are well equipped with computers, and the rooms are air-conditioned, whereas, in Allahabad, Uttar Pradesh. The committee sits in a very tiny room that also shares its workers from other government departments and it is also observed that the privacy of the abused victim is not adequately protected. By the interviewers, therefore, it is emphasized that the child welfare committee should be child friendly in order to implement the protected policies. The relationship of the local government officials with the committee officers is carefully observed and respected and to implement the policies. It is also observed that sometimes their Independence shall be compromised when they are closely working with the authorities. There are chances of misuse of power or that the committee doesn't exercise its power unbiased as certain sensitive cases involving residential facilities, related to children are often run by some state government departments which often find the committee and appoint the members of the search committee. Therefore, there are chances of misuse of power or the e-justice is not adequately serve to live with them.

It is also observed that child welfare committee members are often the political appointees sometimes they are supposed to fight with the state government in order to do what is right for the children that hinder their Independence. It is also observed that certain district's administrations offer to intend to cover up the cases due to fear of candles to be published in the media. It is also observed that sometimes the members of the committee, are retired servants of the state who cannot give much time to the victim. It is also observed that sometimes the members are not qualified for the job because they are not well trained. After all, it is often observed that around 44% of the members received training for child protection under the Juvenile justice system because they are not well versed with the law rules or the shreds of evidence.

Juvenile Justice Act

The JJ Act is one of the key laws that govern in India the protection of children. Under this, the Central government has drawn up several model rules in order to implement the Act which has been adopted as it is, by certain individual States. Many others have adopted it with alterations in the act. The act bifurcates the children into two categories- That is **–a child in conflict with law** and other relates **to a child in need of care**

and protection. This was created in order to establish certain rules for monitoring the children in residential care facilities and also provides a certain minimum standard of care that every such institution must keep in mind. The law also provides for the creation of **special Juvenile police units** and **the child welfare committee.** However, many experts who work in the field of child protection, they have highlighted various ambiguities in the JJ act that calls for certain amendments. For example -the act imposes no penalties when institutional facilities are not registered.

Reformal Needs To Abridge The Legislation Gaps

It is the need of the hour in the country, to ensure and provide justice to the victim with suitable assistance and support both, physically and psychologically Which show that children and victims of sexual abuses are brought to justice and reintegrating them into the social environment.

Progressive Legal Reforms By Central Government

- Ensuring that the National Commission constituted for protecting the rights of children. They are provided adequate funds and resources in order to monitor and supervise and to check the effectiveness and implementation of the POCSO, Act.
- They should take certain steps in order to ensure effective investigating units by appointing experts in order to ensure protection and this Commission shall work independently for investigating in cases under POCSO, Act.
- The cases under POCSO, Act. should be effectively viewed within the prescribed time, and where there is a need for amending the rights of women and children they must address all the limitations, and
- Hindrances in the implementation of the law or and must inculcate presumption of guilt in favor of the victim.
- While drafting any law there must be a legislative approach that typically includes the existence of consensual sexual activities for children under age 18. After considering several recommendations made from several activists in order to lower the minimum age for the consent of any sexual activity, in order to reflect the evolution capacity and the maturity of children is for protecting the children under 18 years who are involved in such activities.
- There should be an amendment in the Juvenile justice act in order to meet the registration requirement and adequate standards should be set up for the caretakers in the orphanages and other residential care. The Centre in order to penetrate and observe the obedience to the laws subject to regular inspections with periodic monitoring and registration in order to ensure proper regulations.
- There is a need to prioritize the Child Protection Scheme in order to ensure effective implementation so that States can judiciously utilize their funds and resources in order to ensure optimum allocation, and
- Facilitate the effectiveness of the child welfare committee the members of such a committee. They must be adequately trained in order to protect the

children and to strengthen the Indian Juvenile justice system.

- The central government should implement and adopt certain protocols about medical examination and treatment of victims, in order to ensure the effective implementation of guidelines issued by WHO, the physicians, and medical staff should sensitively handle the case and must ensure adequate Health Care facilities. Doctors and other medical practitioners must be adequately trained for public health facilities while implementing such protocols.

filed for child sexual abuse so that victims are not traumatized by repeated questioning and family members are not subject to any threats. In order to implement this, all the junior rank policemen should be adequately trained in public dealings because they are the first response units in the country. There should be an effective policy in order to strengthen this mechanism and

There should be a penal provision in order to safeguard the sensitivity of this issue and ensure that Police shall not dissuade the complainants in any manner.

Progressive Legal Reforms by State Government

The State government also has a certain Responsibility in order to ensure proper implementation of the policies which are issued by the central government. Therefore, the state government should-

- Ensure effective implementation of pocso, act and must prioritize and conduct effective training mechanisms for the policeman, the doctors, CWC members, social workers in government departments, medical practitioners, and all those people who are in contact with children.
- They must establish accommodation at the state level in order to protect children rights if they are not available in the state
- Every state must ensure that the members of that Commission are provided sufficient resources in order to carry out their functions effectively and independently. They must follow mandatory provisions, must be answerable to the central government, and their state government and independent qualified expert must be appointed in order to ensure transparency in the functioning.
- Adequate number of service must be conducted in all child care institutions state right Commission child welfare committee and national commission for protecting the rights of children there should be an effective monitoring system so that children are under independent supervision and live in a safe environment all those housing institutions should be periodically inspected at regular intervals
- They should provide adequate training to the policeman in order to handle the sensitive complaints

5. Conclusion

In light of the above discussion, it can be easily concluded that child sexual abuse is a very reprehensible criminalizing act. This offence is prevalent globally and has affected all sections of societies in several dreadful ways. Many pediatricians and several professionals have often recognized that it is a need of the hour to protect the victims of child sexual abuse. Several experts have suggested and examined the issue. The Critical evaluation of the same and the legal aspects associated with child sexual abuse also require due care and attention.

Therefore, a multidisciplinary approach towards comprehensive and preventive management of child sexual abuse cases is very necessary that typically involves paying safeguard and attention towards the sensitivity of this matter, provide financial and psychological support to the families of the victim and the victim itself. Therefore, the government both at the Central and state level must incorporate certain legal reforms in order to legislate and amend, or, make stringent laws in order to protect the children from sexual abuses. The government must lay stress upon proper management and implementation of the due procedures. The parents, teachers, society institutions, and even schools have a very pivotal role to play in order to overcome the traditional paradoxes of shame that result in a huge number of cases being unreported.

Hence, it is the need of the hour to recognize that it is not the time to be silent and let the victims face a life of regret and shame. Rather, they must be encouraged to voice their sufferings to punish the perpetrators so that no other child becomes a victim.

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