

Sexual harassment against children- an analysis

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Abstract

This paper looks into the deeply concerning issue of sexual harassment and abuse against children, focusing on their vulnerability and the need for stronger protection. Children are often seen as the future of a nation, but their physical and emotional dependence makes them especially susceptible to exploitation. The study explores different forms of abuse, both physical and non-physical, and points out that such harm often comes from people or spaces children are expected to trust. It also examines the legal protections available for children and how effectively they are implemented. By looking at laws, social attitudes, and existing gaps in the system, the paper highlights the challenges in preventing abuse and ensuring justice. It ultimately stresses the importance of awareness, accountability, and collective responsibility in creating a safer environment where children can grow with dignity and security.

Key words: Child Protection, Sexual Abuse, Vulnerability, Legal Safeguards, Child Rights

Introduction

Children are said to be the future of a nation which a country is known to develop in many aspects. The larger the diversity of their personalities, the more it will have to be put at the service of the same. It will determine the destiny that will befall the nation. Some of their qualities such as Goodwill, Wisdom, Zeal and Enthusiasm are numerous. It cannot develop politically, economically, intellectually, and even socially without reaping the benefits of this great store of energy and most of them will develop to become towering personalities, the ones who will make everyone around proud as long as someone takes the initiative to train them on the right track. However, the more we talk about how crucial kids are then the more we should be pointing out that they are delicate, vulnerable and a group that needs to be shielded against exploitation. Anything under the age of 18 but even those who are married, those who have kids or are widowed are kids. They cannot make any legal commitment, could not vote (by the universal adult franchise) or get a legal driver licence in India, nor even by international standards. In India, children rights were recognised at the beginning of 20th century.

Sexual Abuse-A Major Threat to Child Safety

we have already indicated how helpless children are, there comes a question of their safety, but what? Or from whom? Among the more important features about it, there is the trap of sexual abuse that they[children] fall into. Google has given a medical meaning to sexual abuse which includes fondling of the child genitals, sex, incest, rape, sodomy and exhibitionism and commercial exploitation of the child in

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the form of prostitution or making of pornographic material. It can start in a very cozy and homely home delivery location like their home to their schools and even to the point of sex trafficking and, at this point, they end up in an unfamiliar place that is synonymous to hell. ²“The child is a good, caring human being and would tend to believe anything that occurs in his/her/their proximity and thus it is hard to believe what evil actions are being done especially when it involves a family member or even an immediate family member. They develop severe mental trauma due to this paedophilia¹. Children are also sold at a very cheap price besides being traded into prostitution and child pornography. The few movies that present such incidents, whether real or fictional, make the society very informed. One such film, which is the Alia Bhatt starred GANGUBAI KATHIAWADI, is founded on the life story of the revolutionary Gangu, a sex worker, and an activist who is fighting to secure the basic rights of his people. The film shows how the prostitution of 10,15-year-old girls is done and they are literally being entangled in the dark streets of Bombay called the Kamathipura.

Impact of child sexual abuse

Sex abuse among the children has consequences that they cannot even imagine at the early age when they can even think of a good touch and bad touch. The fact that they reach age of maturity and grow up mature enough to differentiate it may lead to serious mental health problems like post-traumatic stress disorder (PTSD), Depression, Anxiety etc which leads to psychological traumas in the long term or even Suicidal tendencies. The inability of the parent to help the children emotionally leads to the child regretting what has gone on and acquires a feeling of worthlessness in case the parents do nothing to help him/her. The damage caused is proportional to such issues as Penetration Duration and Frequency of abuse and the use of force.

Studies have shown that severe cases of child maltreatment may cause a malicious impact on the progress of the brain that leads to such ailments as [1] Reversed Hemisphere Asymmetry [2] Greater Left Hemisphere Coherence [3] Octal Temporal Lobe Epilepsy like symptoms. Sexual abuse is also associated with the reduction in the number of the left hippocampus and the increase in the electrophysiological pathology. This is one more problem with this; most of the abuse is not even reported. The molested children fear the perpetrator and the repetition of such an incidence. The children are forced to endure even more psychological problems because they are subjected to the same individual on numerous occasions.

² Paedophilia (alternatively spelt paedophilia) is a psychiatric disorder in which an adult or older adolescent experiences a primary or exclusive sexual attraction to prepubescent children. Although girls typically begin the process of puberty at age 10 or 11, and boys at age 11 or 12, criteria for paedophilia extend the cut-off point for prepubescence to age 13.(according to google)

Other problems with this are the sexual diseases like HIV-AIDS will be spread, and teen pregnancy. At this point their families emotional support will be long behind them and it could be a way of torturing themselves mentally. They will feel useless, dirty and shattered. They will end up being extremely lonely and frightening. They even engage in self-destructive behaviours like liquor or/and drug abuse, eating disorder, insomnia, unwanted pregnancy (this can even cause death of a mother) are also witnessed in sexually abused children.

Problem and its relevance

Children should be specially cared and protected from exploitation. We are about to look deep down into the constitutional and legal measures to check and avoid such malpractice and its different shades. It is felt logical to inquire into the essential issues of child abuse and inspect if the current legal system is successful in preventing the same.

• Hypothesis

“The existing legal regime in India is inadequate and incompetent to deal with sexual abuse”

Objectives of the study

- To study the problem of child abuse in the society
- To examine the nature of the same in Indian society.
- To look at the laws and regulations to prevent child abuse and bring its inadequacies to light.
- To make an assessment of the protection of children from Sexual Offences Act 2012
- To suggest measures for checking and protecting children from abuse.

Method of Study

The study is based on primary and secondary sources which include data from journals, articles, books, websites, parliamentary enactments, newspapers and so on. It is historical and also based on analysis.

Present Legal Regime in India

2.2.1. Contemporary legal provisions in India

As we all know, the children must have a special way of legal rights as they are the ones who will be misused because they have immature and innocent minds. In the first place The Constitution of India has given children the right to freedom, to grow up and live the safest and soundest way and did contain some articles connected with the same subject.

Protection of children from sexual offences act 2012

Before the signing of this Act, there was no special law that addressed the issue of child sexual abuse. Among the basic rights are, the Right to free and compulsory education of children between ages 6-14 years, the right to protection against hazardous child labour up to the age of 14 years among others, that have been suggested to protect children.

The Article 23 of the constitution also prohibits any human Trafficking.

Article 21(A)³ and Article 45⁴ deals with children's right to education between the age of 6-14.

The Supreme court also interpreted life and liberty under Article 21 just not includes liberty, but also livelihood, i.e, the right of human beings to live with dignity, also the right to education. The Indian constitution acts clearly against the working of children under the age of 14 in factories and mines or any other work that is risky by using the article 24 in the Indian Constitution. The Salal Hydro Project case allowed the Supreme Court to elaborate on its nature and meaning which deals with this Article scope and interpretation. The Court pointed out that, though construction work had not been included in the list of hazardous jobs under Employment of Children Act, 1938, the construction was still considered as a work that can put children into hazardous conditions. Consequently, the employment of children below the age of 14 in construction yet it had not been included in the Schedule of the Act was unconstitutional in Article 24.

M.C. Mehta v. A case in the State of Tamil Nadu on child labour in matchstick and fireworks industry in Sivakasi was handled by the Apex Court.

2.2.2. Indian Penal Code

The criminal is the one who is made to face at least ten years of rigid incarceration which may be a life imprisonment and fines. Where the survivor is particularly feeble, and unable to resist, the Court may impose the penalty of severe imprisonment upon the survivor on this ground. It has been understood then that rape under the current day definition in the IPC is a non-consensual act that must be perpetrated by a man on a woman- in this case, the person is the male, and the victim is a girl. This gender frame omits male victims and any kind of sexual violence. Unnatural sexual offences including acts against non-vaginal penetration of the male victim, acts involving male victim are categorized under Section 377 of the IPC, or

³ The state shall provide free and compulsory education to all children of the age of six to fourteen years in such a manner as the state may, by law determine.

⁴ The state shall endeavor to provide, within a period of ten years from the commencement of the constitution, for free and compulsory education for all children until they complete the age of fourteen years.

those that are against the order of nature.

Child Labour and Constitutional Safeguards

Article 24 of Indian constitution strictly forbids children under 14 years of age to be used in factories or mines or any other risky job. This is one of the provisions that were touched upon in the case of Salal Hydel Project where the Supreme Court explained the scope of this provision. The Court noted that the Employment of Children Act, 1938 did not include construction work in its hazardous occupations schedule but as such, construction is a hazardous occupation and accordingly, the use of children below 14 in construction business is unconstitutional. Similarly, in *M.C. Mehta v. The Court* was dealing with the issue of child exploitation in match and fireworks factories in Sivakasi, the State of Tamil Nadu, and ordered that children would be taken care of and protected.⁵

Eradication of child labour is yet to be completely realised, but some historic judgements have been used as stepping stones in this respect. This list is offered to people committed to eradicating child labour and enforcing children welfare legislation.

Directive Principles of State Policy further strengthen these safeguards:

- Article 39(e): Protects workers' health and strength, ensuring children are not forced into unsuitable work due to economic hardship.
- Article 41: Obligates the State to assist the sick and disabled.
- Article 42: Mandates protection of maternal and child health through maternity benefits.
- Article 47: Places the duty on the State to improve public health, secure justice, and enhance working conditions.
- Article 48A: Requires the State to protect and preserve the environment for public health.

The Supreme Court has played a major role in making sure that the children are not subjected to exploitation. However, implementation may fail because the government agencies may not be effective in enforcing the directions no matter the directions being issued. The judicial action, which the judiciary has been actively involved in, is also an essential factor when it comes to the formation of child rights.

Provisions under the Indian Penal Code (IPC)

Although Indian Penal Code, 1860, is a general criminal law, it also has some provisions that are related to the child sexual crimes. These include rape, attempted rape, unnatural offenses, wrongful restraint, kidnapping, forcing someone to marry, and also acquiring minors to prostitution and even trafficking girls to other nations so that they can use them to have sex. The unwanted sexual behaviour could be defined

⁵ A.I.R 1984

as sexual abuse. Under the concept of rape as stipulated in section 375 IPC, the penile penetration of the vagina is envisaged but incidence of other forms like digital or oral penetration or sexual intercourse with boys, are not given. Stricter punishments are prescribed in section 376 IPC, which entails rape of minor, gang rape, or even an offense in an institution, then, one is sentenced to at least ten years of imprisonment along with fines. The punishments are stricter in the event of a victim under the age of 12. Section 377 IPC deals with so-called unnatural crimes, including non-consent acts with men, women or animals.

Child Marriage as Sexual Abuse of Children

Child marriage is a situation in which one marries below the age of marriage. Such practice is widely practiced in these states in Rajasthan, Madhya Pradesh, Gujarat and Karnataka. An example is hundreds of such marriages that are performed open air in Rajasthan in the Akshaya Tritiya day since it is considered a highly auspicious day. In other cases, children at infancy and toddlers are also married.

The mean age of girls who are getting married has increased to 13.2 years in 1981 at the year 1994 its 15.4 years but that does not comprise of the marriage between children who are below the age of 10 years. Part of the reasons why this was practiced include the need to preserve the purity of a girl by marrying girls off at the young age coupled with illiteracy, superstitious and ignorance of the dangers of early sexual pregnancies and sexual abuse. In Rajasthan (1997), surveys have shown shocking statistics with most girls married off (60 percent under the age of 14 and 77 percent under the age of 18) and in one of the slums in Delhi 77 percent of women were married off under the age of 15. In rural areas, girls marry at a young age of 12-14 a condition that is linked to property ownership in the family and chastity. Delhi High Court has noted that, though the minor's appearance may be that they consented to be married, they lack emotional and mental maturity to comprehend the meaning of marriage hence, their consent is not valid.

Legal Provisions on Child Marriage

Child marriage has sad effects in the physical, emotional, and social welfare of young girls. It forces them to early motherhood that puts them at risk of early births, maternal death, gynaecological complications and reduced child development. It also deprives them of education, since it suffocates the intellectual and personal growth. To amend the situation, Child Marriage Restraint (Amendment) Act, 1978 raised the minimum legal age of marriage to 18 years of age of girls and 21 years of age of boys. However, it does not apply equally because many states fail to comply with its regulations. The marriages under the age lower than the legal age are considered as void under the corresponding acts which are: Hindu marriages Act, 1955; Parsi Marriages and divorces Act, 1936; Christian Marriages Act, 1872 and Special marriage Act, 1954 however in reality, nobody is following it. The biggest flaw of

the Act of 1978 is that the punishments may be imposed to the male participants only and the marriage as such has not been always invalidated. Child marriage is also hampered by social tolerance in relation to the practice as well as lack of proactive enforcement of the practice.

Judicial Observations

Such a law has been described as ineffective because of the loopholes in the legal system and laxity in the implementation of this law. In *Smt. Sushila Gohalva v. State of Rajasthan, A Public Interest Litigation*, had requested the government to halt child marriage in Rajasthan. The Court had already completely implemented the order according to which, in case the failure to appoint child marriage prevention officers, the government ought to consider modifying the law and making it stricter. It also noticed that the transformation of this nature would require an active resistance among societies where the practice is still being practiced.

Judiciary's approach to child rape: key principles and illustrative rulings

Child-sexual abuse is one of the most outrageous forms of violence. Courts on numerous occasions have stated that such individuals who cause such crimes pose a threat to civilised society and ought to be treated in the most severe manner. Judges should not be retrogressive to punish with the most extreme severity, where it is necessary by the facts, that they may taste all the marrow of the sword of justice.

Crimes against infants and very young children

The cases of such perversion in the courts have been reported where even the suckling babies were spared. In one *Siddik singh v. State of Maharashtra* was a victim of the sick pleasures of a visitor, a 4 months old baby. The suspect has stolen the baby, raped the girl and the child died due to the injuries. The courts pointed out that ideal punishment is the only thing that can counter such inhumanity of crime.⁶

Deception to gain entry; rape of a one-year-old

In *T.K. Gopal v. State of Karnataka*⁷, found himself in the house of the complainant on a pretext and raped her one-year-old child. His convictions and ten-year sentence were confirmed, and the Court also stressed that this act was very serious and required such a harsh punishment.

⁶ 1993 Cr.L.j 2919

⁷ A.I.R 2000 SC1669

Child witness and oath: competency over form

In *Rameshwar Kalyan Singh v. State of Rajasthan*⁸, the point which was not guilt but evidence: should the evidence of a child be sworn on oath to be trustworthy? The Supreme court clarified that the fact that no oath is taken did not always destroy the testimony of a child. Whether the child is aware of the duty to disclose the truth and make a coherent and credible account is whether. Then it is possible to use the evidence and prove it by conviction.

Very young victims; medical and circumstantial proof

In *Kakoo v. state of HP* ⁹ allow courts to approve convictions of very young children as young as three and a half years old were assaulted after a list of medical evidence was assembled, immediate complaint and events prior to the occurrence.

Cases have been sustained in which the child gave a consistent testimony, physical injury or other medical evidence was discovered, material evidence (blood stained clothing), had a chronological linkage with the account given by the prosecution.

Conclusion

The world has become concerned over the problems that are associated with child abuse and the abuse of child rights especially sexual crimes. Scholars, activists and courts have given a lot of attention to this topic, but little in-depth research has been conducted as it is the case in the Western world. According to the Convention on the Rights of the Child (adopted by the UN in 1989 and implemented in 1990), a child, in terms of physical and mental immaturity, requires some protection and safeguards both prior to birth and after birth, besides. Article 39 encourages the States to do everything possible to ensure that the child victims recover, rehabilitate, and integrate to an extent that fosters dignity and self-respect.

The court system has taken a greater interest in the meanings of the laws which address sexual offences on children in India. The truths behind, proven facts, have been researched by the courts and they have always indicated that sentencing in such cases should be a form of serving justice to both the victim and act as a deterrent to the society. The problem of the present research was whether the existing legal system of India would be effective in enabling children to be safeguarded against sexual abuse. Despite an improvement, there are still several gaps which are particularly noticed in the implementation of POCSO Act and its capability to tackle such a huge number of cases which are still to be solved.

⁸ A.I.R.1952 SC 54

⁹ A.I.R 1997 SC 1991

Validation of Hypotheses

The hypotheses that were used in this study were put to test about existing legal actions. It was revealed that the laws are not well enforced despite their existence. There are numerous types of child sexual abuse, but the most common thing is that the perpetrators tend to get away through loopholes or even delays in the system". Even at the time of introduction of the POCSO Act, 2012, the idea of justice has not been dispatched in a speedy manner, and the punitive measures are not necessarily implemented in the extreme letter of the law.

Realization of Objectives

The goals of the study, which included the knowledge of the nature, magnitude, and effect of child sexual abuse, and the contemplation of protective actions, and the appraisal of judicial and legislative activities were partially met. Although there are statutory protection, these have not been realized uniformly. The courts, despite their efforts and proactive approach in most instances, face the challenge of the massive backlog thus delaying justice to millions of the victims.

Specific Findings

- Sexual abuse and exploitation of children is a global phenomenon that has no boundaries based on class, community, or region.
- It is hard to have accurate data because of under-reporting, social stigma, and fear of repercussions.
- Sexual abuse cannot be fully covered by the Indian Penal Code, and the POCSO Act was needed to cover this omission.
- The courts have failed to be consistent in their decision and sentencing has at times proven to be not sufficient to serve as a deterrent.

Suggestions for Improvement

- Accept child sexual abuse as a community disease, which must be addressed through a medical and legal approach.
- Develop a national action plan that is comprehensive in nature and focuses primarily on prevention and rehabilitation as well as the therapeutic support of victims.
- Enhance government-directed awareness and education initiatives including schools, families, NGOs and media.

- Facilitate the involvement of multiple stakeholders on all levels- parents, teachers, health workers, police, judiciary and local bodies.
- Create special training facilities on the professionals dealing with child abuse cases.
- Establish legal processes that are child friendly and make sure that cases are disposed of fast to minimize trauma.

Bibliography

A. Indian Statutes

Constitution of India, 1950

Indian Penal Code, 1860

Code of Criminal Procedure, 1973

Indian Evidence Act, 1872

Juvenile Justice Act, 1986 (and subsequent amendments)

Immoral Traffic (Prevention) Act, 1956

Child Marriage Restraint Act, 1929

Prohibition of Child Marriage Act, 2006

Protection of Children from Sexual Offences Act, 2012 (and 2013 Amendment) (and other relevant laws as listed in your text)

B. Official Documents

- Ministry of Women and Child Development, Study on Child Abuse in India, 2007
- National Crime Records Bureau, Statistical Reports on Crimes Against Children
- Government of India, Annual Reports on Child Protection and Development
- UNICEF & Govt.of India, Report on the State of Children in 6 Regions

References

A.I.R 1984

1993 Cr.L.j 2919

A.I.R 2000 SC1669

A.I.R.1952 SC 54

A.I.R 1997 SC 1991