

Protecting our children: A look at current Indian laws on child abuse

Priyanka Deogam

Student

Amity University Jharkhand

Introduction

Is there anything that can make a crime worse? When the victim is an innocent, a person without any knowledge of good or bad morals. Children. Child abuse is one of the most severe crimes one could commit. Only a person with a really twisted and darkened mind could ever think of such a devious sin. Child abuse cannot simply be confined to a single meaning or deed but it can consist of a long string of serious physical and mental abuse to the child. Everyday many children are sold, kidnapped, raped and beaten up and since they are too innocent to understand anything they fail to express what they are feeling and end up spoiling their childhood. The psychic of a child is very fragile, even the subtlest abuse can break and twist it, which makes it one of the most delicate and complex cases to understand.

“- Is the most frequently reported form of child abuse and the most lethal. This form of abuse is defined as the failure to provide for the shelter, safety, supervision and nutritional needs of the child. Child neglect can be physical emotional or educational.” (Yohanna J A, Muhammad A M)

Child abuse is recognised as a universal problem, but it varies from society to society. This has resulted in poor academic achievement of primary school children, truancy, perpetual absenteeism, delinquency, and subsequent drop-out, resulting in the production of disobedient and criminal children in society, primarily teenagers. As the younger generation forms the foundation for the country's future leadership, it is therefore necessary to address the situation. Child abuse's causes, behaviours, and effects on primary education are major concerns for the government, school administrators, teachers, parents, and society.

For a long time, child protection was thought to be the domain of professionals specialising in social service, health, mental health, and justice systems. However, this problem remains a duty to all, and especially a concern for other social scientists such as anthropologists, economists, historians, planners, political scientists, sociologists, and humanists (e.g., ethicists, legal scholars, political theorists, and theologians) who contribute to the understanding of child protection concepts and strategies, as well as the responsibility for adults and institutions with roles in ensuring the safety and humane care of children. Child abuse occurs when a child is harmed or threatened by someone acting in the capacity of caretaker. Physical abuse, in which the child suffers bodily harm as a result of a deliberate attempt to harm the child, or severe discipline or physical punishment that is inappropriate for the child's age, are examples of child abuse. It can be sexual abuse if the child is subjected to inappropriate sexual acts or materials, or it can be passive use of the child as sexual stimuli and/or actual sexual contacts. Emotional abuse can also include coercive, constant belittling, shaming, humiliating a child, making negative comparisons to others, frequent yelling, threatening, or bullying of the child, rejecting and ignoring the child as punishment, having limited physical contact with the child (e.g., no hugs, kisses, or other signs of affection), exposing the child to violence or abuse of others, or any other demeaning acts. All of these factors can interfere with a child's normal social or psychological development, leaving the child with psychological scars for life.

Concerning India.

“In India the most accurate scientific studies, based on lengthy interviews, report that 30 percent of men and 40 percent of women remember having been sexually molested during childhood-defining "molestation" as actual genital contact, not just exposure.” (panwar)

Approximately half of these are directly incestuous, with family members, and the other half are usually with others, but with the complicity of carers in at least 80% of the cases. These seduction experiences are not pieced together from fragmentary memories, but are remembered in detail, usually over a long period of time, and have been confirmed by follow-up reliability studies in 83 percent of the cases, indicating that they were not fantasies. The seductions occurred at much younger ages than previously thought, with 81 percent occurring before puberty and an astounding 42 percent occurring before the age of seven. However, as high as these rates appear, they represent only a portion of the true rates, not only because those interviewed do not include populations that have been shown to have extremely high rates, such as criminals, prostitutes, juveniles in shelters, psychotics, and so on.

India is home to 19% of the world's children. According to the 2001 Census, approximately 44 million people in the country are under the age of eighteen and account for 42 percent of India's total population, or four out of every ten people. This is a massive number of children that the country must care for. While articulating its vision of progress, development, and equity, India has acknowledged that when its children are educated, healthy, happy, and have access to opportunities, they are the country's most valuable human resource.

The Indian Laws

The Indian Constitution recognises children's vulnerability and their right to protection. In accordance with the doctrine of protective discrimination, it guarantees special attention to children in Article 15 through necessary and special laws and policies that protect their rights. Articles 14, 15, 15(3), 19(1) (a), 21, 21(A), 23, 24, 39(e) 39(f) enshrine India's commitment to the protection, safety, security, and well-being of all its people, including children.

Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India;

Article 15: The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them;

Article 15 (3): Nothing in this article shall prevent the State from making any special provision for women and children;

Article 19(1) (a): All citizens shall have the right (a) to freedom of speech and expression;

Article 21: Protection of life and personal liberty-No person shall be deprived of his life or personal liberty except according to procedure established by law;

Article 21A: Free and compulsory education for all children of the age of 6 to 14 years;

Article 23: Prohibition of traffic in human beings and forced labour-(1) Traffic in human beings and beggars and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law;

The following national laws protect children's rights in the country:

- a) Guardian and Wards Act, 1890
- b) Factories Act ,1954
- c) Hindu Adoption and Maintenance Act, 1956
- d) Probation of offenders Act, 1958
- e) Bombay Prevention of Begging Act, 1959
- f) orphanages and other Charitable Homes (Supervision and Control) Act, 1960
- g) Bonded Labour System (Abolition) Act, 1976
- h) Immoral Traffic Prevention Act, 1986

THE INDIAN PENAL Code

- a) Foeticide (Sections 315 and 316)
- b) Infanticide (Section 315)
- c) Abetment of Suicide: Abetment to commit suicide of minor (Section 305)
- d) Exposure and Abandonment: Crime against children by parents or others to expose or to leave them with the intention of abandonment (Section 317)
- e) Kidnapping and Abduction: Kidnapping for extortion (Section 360) Kidnapping from lawful guardianship (Section 361) Kidnapping for ransom (Section 363 read with Section 384),
- f) Selling of girls for prostitution (Section 372)
- g) Buying of girls for prostitution (Section 373)
- h) Rape (Section 376)
- i) Unnatural Sex (Section 377).

Cases and Judgements (Aarambh India)

Ghanashyam Misra vs The State on 27 November, 1956

In 1956, the Orissa High Court increased the sentence of Ghanashyam Misra, a schoolteacher who raped a 10-year-old girl on school grounds, recognising that the offence was committed by a person in a position of trust or authority over the child. "The circumstances are all of an aggravating nature," the judge writes. The victim is a ten-year-old girl, and the perpetrator is a 39-year-old man... He took advantage of his position by inducing her to come inside the School room and committed such an atrocious act, the consequences of which could have completely destroyed the girl's future life.' The court not only increased the sentence to seven years, but also ordered the accused to pay compensation to the father and child.

Gurcharan Singh vs State Of Haryana on 13 September, 1972

A girl under the age of 16 was 'forcefully taken to the accused's fields outside the village, where he raped her. The court ruled that the victim's lack of physical evidence of violence is irrelevant because she was under the age of 16. More importantly, it determined that the victim could not be considered an accomplice to the crime.

Mathura Rape Case (Tuka Ram And Anr vs State Of Maharashtra on 15 September, 1978)

The Mathura rape case occurred on March 26, 1972, in India, when Mathura, a tribal girl who was a minor at the time, was allegedly raped by two policemen on the compound of the Desai Ganj Police Station in the Chandrapur district of Maharashtra. Following the acquittal of the accused by the Supreme Court, there was public outrage and protests, which eventually led to changes in Indian rape law via The Criminal Law (Second Amendment) Act 1983. (No. 46).

Gorakh Daji Ghadge v/s The State of Maharashtra on 6 March, 1980

The Bombay High Court held that seminal emission is not required to determine rape in a case where the father was accused of raping his 13-year-old daughter at home. It also called for harsh punishment because the victim was the accused's daughter. "Crimes in which women are victims must be severely dealt with, and in extreme cases such as this, where the accused, who is the victim girl's father, has thought it fit to deflower his own daughter of tender years to gratify his lust, only a deterrent sentence can meet the ends of justice," the verdict states.

Harpal Singh & Anr. V/S State of Himachal Pradesh on 14 November, 1980

The Supreme Court excused the delay in filing a FIR in the case of a 16-year-old girl's rape. The court stated that because the honour of the family was at stake, family members took their time deciding whether the matter needed to be taken to court or not. The court also emphasised that because the girl was under the age of 16, her consent to sexual activity was irrelevant. The court also ruled that a reasonable explanation for the delay in reporting the case will not affect the case.

In 2020, 1,28,531 cases of crime against children were reported, a 13.2% decrease from the previous year (1,48,090 cases). Kidnapping & Abduction (42.6%) and Protection of Children from Sexual Offences Act, 2012 (38.8%), including child rape, were the major crime heads under 'Crime Against Children' in 2020. In 2020, the crime rate per lakh children population is 28.9, down from 33.2 in 2019. (India 2020 Crime) Over 24 lakh cases of online child sexual abuse were reported in India between 2017 and 2018, with 80 percent of the victims being girls under the age of 14. (Vikaspedia)

Conclusion

Child abuse and neglect are defined as the intentional, non-accidental injury or malnutrition of children by their parents, carers, employers, or others, including those presenting Government/non-Government bodies, which can result in temporary or permanent impairment of their physical, mental, psycho-social development, disability, or death. Although child abuse is a widespread and complex issue with numerous causes, we must not give up hope in its prevention. Despite the lack of strong evidence to guide our preventive efforts, physicians can do a variety of things to help prevent abuse. At the very least, demonstrating increased concern for parents or carers, as well as increasing our efforts to improve their skills as parents or carers, may help save our most vulnerable patients from the nightmare of abuse and neglect. To summarise, rape and sexual abuse of children in India is a major issue with no simple solution. However, the situation could be improved by properly educating children and adults about sexual abuse, as well as training police officers and strengthening laws. Women's empowerment may result in healthy changes as well.

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