

Protection of Child Rights in India with Special Reference to Sexual Abuse

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Child is a nation's asset and future resource of manpower of a nation. Its development with dignity is a matter of great concern throughout the world. But the phenomenon of sexual abuse of children cuts across all countries and different levels of the societies. The phenomenon can be defined as the sexual exploitation of a child by an older person; the possible modes and forms being manual, oral or genital sexual contact or exposure, and sexually- motivated nudity or actual sexual intercourse. Although the Goa Children's Act, 2003 contains provisions relating to prevention of sexual abuse of children in general and tourism related *paedophilia* in particular, a national law on grave sexual offence wanting.¹

Who is Child?

The definition of child has been given in various local and special laws, keeping in view the object and purpose behind the particular law. Some of these definitions of child are as under-

1. UN Convention of Rights of the Child		Person below 18 years
2. The Beedi and Cigar Workers Act, 1966		Person below 14 years
3. Prohibition of Child Marriage Act, 2006	Female	Person below 18 years

1 N.V. Paranjape, *Criminology and Penology* 182 (Central Law Publications, Allahabad, 2007).

	Male	Person below 21 years
4. Juvenile Justice Act 2000		Person below 18 years
5. Age of Consent for sex (IPC)		Person below 16 years
6. Age of Consent Sex		Person below 18 years
7. (Prevention of Children from Sexual Offences Act 2012)		

In Indian Laws, no definition of child victims is available. In various courts judgements, however, the definition given in Juvenile Justice Act 2000 is adopted. As per section 2 of the Juvenile Justice Act, a person below 18 years of age is a juvenile or a child. Therefore all persons below 18 years, who are the victims of crime or who are sufferer in the process of criminal justice administration, may be treated as victims of crime.²

Exploitation of Children

Any exploitation of children in any form which has a tendency to exploit them either physically, mentally or otherwise is objectionable. Any attempt in this direction so as to exploit children should be put an end to, to achieve the goal enshrined by Indian Constitution makers, which are reflected in various provisions of the

2 Deipa Singh and K. P. Singh, *Criminology, Penology and Victimology* 228-29 (The Bright Law House, New Delhi, 2013).

Constitution, particularly Articles 21, 39, 41, 45 and 46 of the Constitution.³

Reasons for Sexual Abuse of Children

The vulnerability of a child to the abuse is not only because of physical defencelessness but also due to the trust and dependency relationships with older persons. Obedience and authority are also significant factors since most of the offenders happen to be the person closely known to the child; in many instances the abuse being of incestuous nature. Once commenced, the abuse generally continues for long durations of time. It may begin with a seemingly innocuous “affectionate” touching which may eventually rise in the course of time to a much more serious level. The continuation of the abuse is primarily due to the fear of the offender; it could be even due to the emotional bond the child may have with the offender. The perception that no one might give any credence to her story if the matter was reported to the parents or others also acts as a strong deterrent from disclosing the truth.⁴

Effects of the Abuse

Some of the usual effects on the child victim, which have been identified, are as follows:

- “Keeping the secret” proves to be too heavy a burden affecting the healthy emotional, mental and physical development of the child.
- A deep sense of loneliness and isolation giving rise to a feeling of “being different” from other children manifesting symptoms of depression, anxiety and withdrawal.
- The child suffers from maladjustment and difficulties in studies in school.

- The effects on teenagers may include drug abuse, eating disorders, suicidal feelings or suicidal attempts and running away from home.
- Low self-esteem and problems with various relationships including parenting the children may be some of the long-term negative effects.

Each child being a unique entity, the effects may be different not only in terms of the child’s personal traits and circumstances; they may also vary with the nature and quality of the abuse itself.⁵

International Response

The United Nations “Convention on the Rights of the Child”, which has been adopted by the General Assembly of the United Nations on 20th November, 1989, and also acceded by the Government of India in the convention dated the 11th December, 1992, also provides for the provision for the welfare and procedure of punishment of the child. The provisions envisage that child should not be subjected to torture or other cruel, inhuman, provide for a special procedure for dealing with the trials of offences committed by the child.⁶

The provision of Probation of Offenders Act has a provision for releasing of youths below the age of 21 years, on probation to give an opportunity to reform themselves. Thus, in India, suitable provisions have been made for trial and punishment etc. of children and youth offenders. But the Probation of Offenders Act has not been made applicable for certain crimes which a child has committed sometimes, like murder, homicide, rape, dacoity, etc. There is a need of extension of these provisions, of course with certain safeguards, and the advantage of these provisions should be given to the children, if it is

3 Sathyavan Kottarakkara v. State, AIR 1997 Ker 133 at 137; (1997) 1 Ker LT 130; (1996) 2 Ker LJ 576.

4 S.M. Afzal Qadri, Ahmad Siddique’s Criminology, Penology and Victimology 130 -31 (Eastern Book Company, Lucknow, 2016).

5 See Supra note 4 at 131.

6 See 1998 Criminal Law Journal (Journal Section) at 56.

found that the child concerned has been misled in doing such offence by some adult.⁷

Legislative Measures for the Protection of Child

1. Child's Right Act, 2006

However, realising the gravity of the offences relating to sexual abuse of children, the Central Government has brought a comprehensive Legislation called The Commissions for Protection of Child Rights Act, 2006 which came into force on 20th January, 2006. The Act provides for the constitution of a National Commission and State Commissions for protection of child rights and Children's Courts for providing speedy trial for offences against children or of violation of child rights and for matters connected therewith or incidental thereto.

It would be seen that in the Child's Right Act of 2006, as the title itself suggests the focus is on constitution of National Commission and State Commissions for protection of rights of child in general and right of child against sexual abuse is only one of such rights. But, the Goa Children's Act, 2003 exclusively deals with sexual abuse of children and a wide range of related activities that an offender may commit. It not only recommends punishment against children's sexual abuse but also attempts to involve different sections of society to play an active role in protecting children and preventing their sexual abuse. It is in this sense that the Goa Children's Act may be treated as comprehensive as compared with the Central Act of 2006.

2. The Protection of Children from Sexual Offences Act, 2012

In a bid to provide extensive protection to the children against sexual offences, the Protection

⁷ Ibid at 60.

of Children from Sexual Offences, 2012 which was published in the Official Gazette dated 14th June, 2012. The Rules framed under the Act came into force with effect from 14th November, 2012. The Act recognizes penetration other than peno-vaginal penetration as an offence and criminalises act of immodesty against children. Process for various procedural compliances has been modified to make the law more effective. It has taken notice of the lacunae existing under the earlier Child's Rights Act, 2006.

It is significant to note that the Supreme Court had issued a series of directions to the State and Union Territories on January 3, 2013 to implement three laws; namely the Protection of Children from Sexual Offences Act, 2012, the Right of Children to Free and Compulsory Education Act, 2009, and the Commission for Protection of Child Rights Act, 2005 and asked them to set up necessary implementing agencies prescribed under these laws. But a two- Judge Bench of the Apex Court comprising Justice S.S. Nijjar and F.M. Kalifulla on 16th December, 2013 expressed dismay at the non-implementation of the said directions even after a lapse of almost one year now. The court gave the defaulting States and Union Territories to eight weeks' time to give details about the steps taken to implement the three laws. The court noted that in many States even the panel of Chairman and even members were not appointed.⁸

3. Legal Provisions under Indian Penal Code, 1860

To discuss about the legal control of child abuse in India we should first note the provisions of Indian Penal Code, 1860.

a. Regarding incestuous rape: There is no separate provision for incestuous rape but

⁸ See Supra note 1 at 236.

the definition of the offence of rape includes incestuous rape.

- b. **Section 317 IPC Exposure and abandonment of child under twelve years, by parent or person having care of it-** Whoever being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation- This section is not intended to prevent the trial of the offender for murder or culpable homicide, as the case may be, if the child dies in consequence of the exposure.

- c. **Section 372 Selling minor for purpose of prostitution, etc.-** Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall, at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will, at any age, be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation I- When a female under the age of eighteen years is sold, let for hire, or otherwise disposed of to a prostitute or to any person who keeps or manages a brothel, the person so disposing of such female, shall, until the contrary is proved, be presumed to have disposed of her

with the intent that she shall be used for the purpose of prostitution.

Explanation II- For the purpose of this section “illicit intercourse” means sexual intercourse between persons not united by marriage, or by any union or tie which, though not amounting to a marriage, is recognized by the personal law or custom of the community to which they belong or, where they belong to different communities, of both such communities, as constituting between them a quasi-marital relation.

4. Juvenile Justice (Care and Protection of Children) Act, 2000

Besides the Indian Penal Code, the Juvenile Justice Act also provides legal framework to apprehend child abusers. Section 23 says:

Punishment for cruelty to juvenile or child- Whoever, having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.

In addition to special offences in respect of juveniles, the Act also provides framework for judicial proceedings in respect of neglected juveniles, most of who on account of their condition of neglect and destitution can be presumed to be in a state of abuse. But despite such provisions in the Juvenile Justice Act and earlier State Children Acts, there have been very few cases of prosecution for child abuse so far. This is mainly because child abuse is hardly perceived as a social offence.

Conclusion

Children are national assets. Though children cannot demand the rights which only an adult can exercise like right to vote, yet there are rights which are inherent in a child like right to development, right to health, right to education and most important of all, the right to protection and security. So they should be protected at all costs. The Child victims of crime deserve special attention because of their vulnerability.

The jurisprudence of child victims of crime is a developing area. In this connection, the UN Convention on Rights of the Child, 1989, in Article 19 obligates the State to undertake necessary steps for protecting the child from forms of physical, mental violence, injury or abuse, neglect including child abuse. Government have taken a lot of steps. Still much desired is to be done to ensure welfare of the child victims of crime.