

CHILD AT RISK IN INDIA: SEXUAL CRIMES SOURCE OF EVIL

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“Strength of India lies amongst the 600 million youth, ignited mind of the youth is the most powerful resource on the earth, above the earth and under the earth.”

-Dr. A. P. J Abdul Kalam

The legal conception of child is no new but it has varied accordingly depending upon the purpose. The word ‘Child’ has been used in various legislation as a term denoting relationship which indicates capacity in terms of special protection, underlying the various concept about child. Acceptance of Child Right as primary inviolable rights has been recently understood.²

The article takes into consideration and focuses on the aspect of child sexual abuse and its cause or root to other crimes, which also forms child abuse like child trafficking, child pushed into prostitution, kidnapping for organised crimes etc, and attempt has been made to define such offences and scenarios in Indian context under relevant legislation. Children are victimized or subjected to such offences.

Some children are different and special concerning the normal children, they are even more prone to a damage of the Societal Harm. They are not even safe at their homes at times. I am talking about disabled children and children who have gender non-conforming behavior (who might not be labeled as Transgender out-rightly). If they have a gender identity different from the sex assigned at birth and in adolescence they are conforming to the other gender. Children born or acquired physical or mental disability who are incapable to understand and decide the wrongful act done to them. Such children require an affirmative care approach³, for support of the social transition he/she going through. These children are considered as a burden which is

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² Study on Child Abuse, India 2007, Ministry of Child and Women Development, GOI (2007)

³ Hrc.org/resources/transgender-children.

even more prone and vulnerable compared to normal children in general. They can be dragged into sexual offences, human trafficking and number of offences rather they can be even be abused by their family, relatives and near or dear ones and secondly by the internet. These kind of children are needed to be protected from internet as children who are ready to explore and exploited their sexuality in an encounter with society.

It is to be sensitized that these children are silent victims of the offenses, their problem couldn't be addressed by any forum, as at times even their parents take them as a burden. They have a hard time accepting their child as they think child having gender non-conforming behavior will hamper their reputation and such child as burden and disgrace to their family, which is not the same in case of mentally disabled children, but they often think that they have mental disorder for showing such non-conforming behavior. To protect the interest of vulnerable children in times of distress and ensure their safety and dignity from the abuse.

India has the largest population of children in the world. According to the Child Dependency Ratio, it is 45.7%⁴. As per the 2011 Census, India has 158.7 million in the age group of 0-6 years comprising about 16% of the total population⁵. India ranked at the 112th position in 2012 in the child development index⁶. When we compare sexual offenses/ assault against children there has been a significant rise in the number of offences which is approximately 350 crimes per day. There has been an increased in 3.6% compared to 2016-2017.

A study made with a total number of reported rape cases in 2015, it was found that in 94.8% of rape cases rape was committed by known, the acquaintance's neighbor who were the biggest abuser i.e. 35.8%. In 10% of cases, children were being raped by their direct family members and relatives. It was also deduced that if elders completely control children and render them incapable of escaping from the closed environment children are less compelled to report abuse to authorities. In a step towards preventing such offenses child pornography has been banned,

⁴ Source United Nations Department of Economics and Social Affairs Population Division. (As on 15.11.2019)

⁵ Law Commission of India, Report No. 259, August 2015

⁶Law Commission of India, Early childhood Development.

criminal amendments have been made and a strong act had been made, which not only is gender-neutral but also satisfies the rights and objectives of the Constitution.

The legislation is one of the most important tools for empowering children. It reflects through the commitment and implementation of the policy and laws related to Child Rights. It is also to appreciate the intervention and strategies employed by the NGOs in recommending Legislative reforms in support of children to maintain social-fabric. But the question here is that whether the efforts made are sufficient, where the crime committed is such high against children, in general, how can these special children be addressed and protected?

These children are also subject to bullying and sexual harassment not only at school or workplaces but also at their homes. Therefore, the treatment and welfare of not only these children in society is the want of the time. Hence, Social and Moral reflection about the treatment of the Child in society is preached by an additional effort by family, society, and community. The laws should be such which falls within the square of social, biological, morality and humanitarian ground.

In India, the Child Right activist have drawn attention to number of cases which might go unaddressed and unreported, still the matters are hushed by the police and resultantly the data does not mirror the true social condition. The reported cases and figures of NCRB are reported by the police, which obviously is misleading, as per NCRB data of 2013-14, the case of trafficking (buying and selling of minor girls) has pegged to 106⁷ (6 and 100). The report reveals that crimes against children rose by 20 per cent –higher than overall number of crimes which rose by 3.6 per cent. The CRY analysis is based on the latest National Crime Records Bureau for 2016-2017 data released on October 21, 2019 after a gap of two years.⁸ During the year 2018, a total of 71,176 children (22,239 male, 48,787 female and 150 transgender) were traced, the NCRB data said *“The report also showed that cases of sexual harassment in shelter homes against women and children reportedly increased by 30 per cent, from 544 cases recorded in*

⁷ Ambica Pandit, Delhi Records Highest Number of Crimes Against Kids, Times of India.

⁸ Crime against children rise by 20 %: CRY Report, November 26, 2019. The Hindu Business.

2017 to 707 cases in 2018.”⁹ As many as 21,605 child rapes were recorded in 2018 which included 21,401 rapes of girls and 204 of boys, the NCRB data showed.

There are certain provision which explicitly deals with the sexual crimes and specifically protects their rights. Under Indian Penal Code, Sections like 292 & 293, 361, 363A, 366A, 366B, 369, 372 & 373, 375, 376C which deals with selling, distributing, publishing, circulation of obscene material under Section 292 to any person who is below the age of twenty years is punishable under Section 293, deals with punishing offender who kidnaps a child (male if below 16 years and female if below 18 years), kidnapping or maiming a child for the purpose of begging, inducing of a minor girl under the age of 18 years to do any act that may force or to seduce her to illicit intercourse with another person is punishable under Section 366, kidnapping a child under the age of 10 years with the intention to steal from such child, buying selling or hiring a person under 18 years of age for the purpose of prostitution or illicit intercourse with any person or for any unlawful or immoral purpose is punishable under Section 372 & 373, ‘rape’ sexual intercourse with a women with or without her consent when she is under the age of 18, and when the Superintendent or manager of a remand home or any other place establish under law of ‘children’s institution induces or seduces a women into sexual intercourse by taking advantage of his official position, he is entitled to stringent under the Section 376C respectively.

Under Immoral trafficking (Prevention) Act, 1956, which was amended in 1986. This act deals with respect to the children deals with person who procures or attempts to procure any child for prostitution or persons who are found with a child in brothel (it is presumed that the child has detained for the purpose of the prostitution) and punishes them. The object and purpose of the act was to protect women and children from being exploited and inhuman activities going in institutions. It also mandates that the institutions for women and children to get a license from the concerned and appropriate authority before establishing or maintaining institutions.

Under Juvenile Justice (Care and Protection) Act, 2015 child friendly approach is used in the adjudication and disposition of matters involving children, the importance of this Act in India is to extend the need of Care and Protection to the children and also to the children who are in

⁹ Press Trust of India, 109 children sexually abused every day in India in 2018: NCRB, January 12, 2020
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conflict with law. It requires that the state to provide shelter homes, rehabilitation and free legal support to the Juveniles. Proper care and Protection is provided for those who are in need.

When we examine the intent of the other Acts like Child and Adolescent labour (Prohibition and Regulation), 1986 and Bounded Labour System (Abolition) Act, 1976, which are concerning the interest of the children, it puts forward that children are more prone to such offences and can be easily exploited and vulnerable as they are one of the weaker section of the society which hardly acknowledges their identity as a person. One of the important act dealing with the sexual exploitation and offences towards the children is the Protection of Children from sexual offences Act, 2012, the aim of the Act is to punish the offenders who are guilty of sexual offences against children below the age of 18 years of age. It also lays down the procedure which is fast-track, and the identity of the victim is not disclosed. Proceeding of the case are to be conducted in court with camera recording of the trail, accused is not to be kept in-front of the child victim during examination or cross-examination. One of the important developments in child's Rights has been passing of the POSCO Act, 2012 (Protection of Children from Sexual Offences) which contains the detailed analysis of Act and subject matter. In Jayakumar Nat v. State of NCT Delhi¹⁰ the judiciary observed and revealed that the fact how poor is the functioning of the Labour department, the Delhi Police and Child Welfare Committee constituted under Section 29 of The JJ Act, 2000¹¹, in order to keep pace with Judiciary.

Children were recipients of welfare measures. Childhood in our country is not homogenous. It differs on economical, physical and mental status of child. India takes pride in being one of country with the youngest population in worldwide but collectively as a nation, we have turned our faces away from millions of children who are being subjected to pornography, prostitution, trafficking and many other forms of sexual harassment. Jurists have given different definitions of the phrase "child sexual abuse". It could be defined as an act which relates to sex organs of children being engaged for satisfying sexual gratification. Sexual abuse and exploitation include: fondling, touching, kissing, exhibitionism and voyeurism, oral, anal or vaginal sexual intercourse, photography/filming children for sexual purposes, persuading a child to touch or

¹⁰ Delhi High Court, Judgement Dated 4th September, 2015.

¹¹ Juvenile Justice (Care and Protection of Children) Act, 2000.

fondle the sexual parts of any person (child or adult), masturbating (using child as a sexual object).

A study on child sexual abuse carried out by save the child Sweden¹² and Tulir in 2006 looked at the extensiveness and dynamics of abuse of children who went to school in Chennai. It found that 42% children faced at least one form of sexual abuse or other. This was mainly found in lower middle class, the abusers were known to the child and very less proportion were strangers. 75.85% of sex crimes against children are committed by someone the child knows, loves or trusts. As per a report, data of victimized child show that 45% of the abusers are relatives, fathers, brothers, uncles, etc. and 30% to 40% of the abusers are people known to the child, such as babysitters, teachers, clergymen, doctors, etc¹³. Many a times when children are abused sexually by their own parents, they are scared of the whole world and it is rarest of rare cases. Sexual harassment at public places was higher by strangers. It was pre planned insidious abuse .young victims are easy prey to sex offences.as per the data on child abuse¹⁴, the incidence of sexual abuse amongst street children is high throughout the world. According to NHRC over 40,000 children are reported missing every year of which 11,000 remain untraced. With child sexual abuse and child rape growing at such alarming rate, it is important to make the children familiar with nuances of good touch and bad touch in a sensitive manner that draws their attention and keeps them alert when the situation occurs without any fear or guilt. Children should be trained to confide their fears to their or a trusted adult about any embarrassing experience that often leaves the young minds confused. A study conducted by WHO founded that in cases of child sexual harassment it accounts for 6% depression, 6% of alcohol and drug abuse, 8% suicide attempts, 10% panic disorders and 27% post-traumatic stress disorders. To prevent this it laid down seven strategies through INSPIRE package.

The sexual exploitation of children is a multi-billion dollar industry of international proportions. The sexual abuse has long term impact on the mind of the child, children feel powerless, angry, frightened and lonely. Depression, isolation and self-destructiveness are also some of the short

¹² non-governmental organisation

¹³ David Finkelhor, source book on child sexual abuse, sage publication (1986)

¹⁴ Study on child abuse in India, 2007, Ministry of women and child development, government of India, New Delhi

term and long term impacts. The Constitution of India throws light through various provisions on this aspect like art 15(3), Art 39(e) and (f), Art 21 for protection of children. The POCSO Act of 2012 is a special Act which provides protection to children below the age of 18 years from offences such as sexual assault, sexual harassment and pornography and provides a child friendly system for the trial of those offences. Through *Sakshi v. UOI and ors*¹⁵, a bedrock was provided for the subsequent Acts on Sexual Assault, Juvenile Justice and it also recommended procedures for cases related to child sexual abuse as collated in 172nd Law Reform.

The national plan of action for children is by far the most comprehensive planning document concerning children as its objectives are outlined to protect children from sexual abuse, root causes of vulnerability, sensitization of police as well as parents and guardians, to create mechanisms to track and investigate the traffickers. There are some networks like Sanlaap, Bachpan Bachao Andolan, Action Aid, etc which are working to curb the child sexual abuse.

We have a long way to further improve the status of child victims through law. And educating children to help them protect themselves from sexual abuse by using good touch and bad touch paradigm. Educators must teach them that they must resist anyone touching themselves their genitalia, chests or buttocks, and report attempts of such acts immediately to their parents or trusted guardians or authorities. The prevalence of sexual harassment in India is high, it is a substantial problem. We can very well understand the magnitude of the problem and its causes alarming, hence stringent measures must be taken for its prevention and control.

Several uncountable efforts by NGO's like Bachpan Bachao Andolan, CRY foundation and certain policies like Beti Bachao, Beti Padhao which is government initiated to encourage children and especially girl child to undergo basic education and emerge out of the web and darkness of illiteracy and discrimination. Public Interest Litigation has been filed by the NGOs to seek the atrocities against children by bringing the same in the light to public and the authorities concerned.

On an alarming note I'll conclude that more and more children who are not even in their teens are victim of such abuse, there is a need to have a stringent legislation to check abuse and a system where reporting and quick redressal of such cases concerning child abuse is to be

¹⁵ AIR 2004 SC 3566

encouraged so that the Child Right can be protected by Protection officers and Nodal officers, by expanding their role. Some other aspect in the laws requires to consider the victim protection and witness assistance. Legislation plays an important tool for empowering children. Realization of the child's right and its child friendly environment, which involves the society (including individual as well as masses, like family or community as a whole) to aware them about the need and role of child's right by sensitizing it and preaching that 'we all are under an obligation to give a first call for children and above all create and sustain an environment in which their rights can be realized and ascertained.' It is a persuasion on a journey of social, legal and moral reflection about the treatment of children in society including family relations, community development.