The Problem of Child Sexual Abuse in India
Laws, Legal Lacuna and the Bill – PCSOB-2011

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Abstract
Child abuse is the physical or psychological maltreatment of a child, can be differentiated into four major categories, physical abuse, emotional abuse, neglect and worst of all, the sexual abuse. Child Sexual Abuse (CSA) is a kind of physical or mental violation of a child with sexual intent, usually by a person who is in a position of trust or power vis-à-vis the child. India is the second largest child population in the world, 42% of India’s total population is below eighteen years. In a shocking revelation, a Government commissioned survey has found that more than 53% of Indian children are subjected to sexual abuse / assault. Majority of these cases were perpetrated by someone known to the child or in a position of trust and responsibility, Not surprisingly, most children did not report the abuse to anyone.

There is not a single law aimed at safeguarding children and protecting them against sexual abuse & assault, which is a serious lacuna against this background and is needed urgently. This paper will focus on child sexual abuse, the laws, legal loopholes, and The Protection of Children against Sexual Offences Bill, 2011.

Key Words: Sexual abuse of children, Laws, Legal Lacuna

Introduction:
India is second most populous country in the world and latest Census 2011 reveals that it’s a home to 17% of the world's population. Nearly nineteen percent of the world’s children live in India, which constitutes 42 percent (more than one third) of India’s total population [1] and around 50 percent of these children are in need of care and protection.

Signing up to the United Nations Convention on the Rights of the Child, India promised to protect its children from all forms of sexual exploitation and sexual abuse. Article 34 (a) enjoins state machinery to prevent the inducement or coercion of a child to engage in any unlawful sexual activity.

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Yet, despite having the dubious distinction of having the highest number of sexually abused children in the world, there is no special law in India.

Child Sexual Abuse (CSA) is a form of child abuse in which an adult or older adolescent who is in a relationship of responsibility, trust or power, uses a child for sexual stimulation. [2]

CSA means contacts or interactions between a child and an older or more knowledgeable child or adult (stranger, sibling, parent, or caretaker), when the child is being used as an object of gratification for the older child’s or adult’s needs. Such contacts or interactions are carried out against the child using force, trickery, bribes, threats or pressure. [UNICEF, 2001]

Ironically, a majority of such cases occur in the home, school or the neighbourhood next door. In India, many gruesome incidents of CSA have been recorded in the past ranging from incest, rapes, sexual abuse, digital rape, sodomy, inappropriate touch to sexual assaults. The worst part is that such abuse is inflicted upon a child by a person in his immediate circle and a stunning majority of these cases go unnoticed. Also, reasons like shame, plain depravity and family honour contribute towards shunning and covering the cases of child abuse. Sexual abuse has immediate as well as long-term effects on the child, from emotional and behavioural problems to abnormal sexual
behaviour and psychiatric disorders. Studies have established a causal relationship between CSA and certain specific areas of adult psychopathology, including suicidal, antisocial behaviour, Post Traumatic Stress Disorder, anxiety and alcoholism. [3]

Sexually abused children suffer from more psychological symptoms than normal children. The risk of harm is greater if the abuser is a relative, if the abuse involves intercourse or attempted intercourse, or if threats or force are used. [4] Most importantly, these psychological effects prevent the normal developmental processes and positively correlated with mental health problems in later life.

A minor faces severe traumas after sexual assault. In court, cases become weak for several reasons, including inadequate investigation and insufficient medical evidence. The laws too are very weak & do not address the increasingly visible offence of CSA and contains serious contradictions that inhibit victims from reporting such crimes. The existing definitions of 'rape' and 'molestation' do not adequately address the various types of sexual assaults in terms of women's experience nor do they sufficiently recognize the gender specific nature of such crime. [5]

Some Common but Shocking Facts:

Abuser could be an adult of any age or an older child (adolescent), more commonly males and are often known to the child and his/her family. In most cases the abuser is a direct family member. He may be a relative, neighbour, member of household or a stranger. History of being abused as a child, record of sexual offence, and alcoholism are risk factors to be an abuser. A large number of children (40.4%) have been abused /assaulted in the offender’s house. The most vulnerable age is between 3-7 years and then between 11-15 years. In 35% of the cases, the child was sexually assaulted or abused in public places like urinals, buses, local trains, etc. unfortunately only serious cases are reported to the police and more than 50% of the accused arrested are granted bail. [6]

Different forms of sexual abuse are:

A - Severe forms:
  a) Assault, including rape and sodomy
  b) Touching or fondling a child
  c) Exhibitionism- Forcing a child to exhibit his/her private body parts
  d) Photographing a child in nude

B - Other forms:
  a) Forcible kissing
  b) Sexual advances towards a child during travel
  c) Sexual advances towards a child during marriage situations
  d) Exhibitionism- exhibiting before a child
  e) Exposing a child to pornographic materials

Child Sexual Abuse in India:

CSA remains a taboo but it's a very real problem in India, and the situation is aided by the absence of effective legislation and the silence that surrounds the offence. Majority of people feel this is a largely western problem and does not happen in India. The definition of child Sexual abuse varies from country to country. Abusive acts against children fall under the purview of law in almost all developed nations. In India, it exists in many forms, but the laws are still ambiguous and most children suffer in silence. In India, which places a high premium on chastity of women and yet has the largest number of child sex workers in the world, there is no single, specific definition of child abuse. Disbelief, denial and cover-up to preserve family reputation has made child sexual abuse an invisible crime in India. In fact, in India it is as old as the joint family system and patriarchy. [7]

Statistics:

According to WHO, one in every four girls and one in every seven boys in the world are sexually abused. Virani (2000) states, the WHO found that at any given time, one of ten Indian children is the victim of sexual abuse. [8] But Lois J. Engel Recht, a researcher quotes studies showing that over 50 per cent of children in India are sexually abused, a rate that is higher than in any other country. [7]

Extent of the Problem:

Reliable estimates are hard to come since this is a furtive form of abuse, often causing victims to suffer in dark and claustrophobic silence.

To find out the extent of child abuse in India, The first ever National Study on Child Abuse was conducted by the Ministry of Women and Child Development, covering 12447 children, 2324 young adults and 2449 stakeholders across 13 states. In 2007 it published the report as “Study on Child Abuse: India 2007.” [1] The survey, covered different forms of child abuse i.e. physical, sexual and emotional as well as female child neglect, in five evidence groups, namely, children in a family environment, children in school, children at work, children on the street and children in institutions.

This study brought out some shocking facts, [1] and its main findings in relation with sexual abuse are:
“Sexual abuse was reported by 53.22% children. Among them 52.94% were boys and 47.06% girls 21.90% of child respondents faced severe forms of sexual abuse, 5.69% had been sexually assaulted and 50.76% reported other forms of sexual abuse”.

- AP, Assam, Bihar and Delhi reported the highest percentage of sexual abuse among both sexes, as well as the highest incidence of sexual assaults.
- The highest incidence of sexual assault was reported in children on street, at work and in institutional care.
- 50% abusers were known to the child or in a position of trust and responsibility.
- Most Children did not report the matter to anyone.
- More than 53% children report facing one or more forms of sexual abuse and boys were equally at risk as girls.
- Almost 22% faced severe sexual abuse, 6% sexually assaulted.
- 50% of sexual offenders were known to the victim or were in positions of trust (family member, close relative, friend or neighbour).
- 5-12 year’s group faced higher levels of abuse, largely unreported.
- Severest sexual abuse in age group of 11-16 years, 73% of sexual abuse victims were in age groups of 11-18 years. [9]
- The age wise distribution showed that though the abuse started at the age of 5 years, it gained momentum 10 years onward, peaking at 12 to 15 years and then starting to decline.
- Another study on child abuse in Kolkata, Elaan, an NGO, found that four out of 10 boys faced sexual harassment in school. Generally the age of maximum abuse is between 9 to 12 years. The national study found that the abuse gained momentum at the age of 10 and peaked between 12 to 15. [7]
- This shows that the teenagers are most vulnerable.

Across the country, every second child was being subjected to other forms of sexual abuse and every fifth child was facing severe forms of sexual abuse. The Study also acknowledges that child sex abuse takes place in schools. One out of two children in schools has faced sexual abuse. And overall, more boys than girls face various forms of sexual abuse ranging from inappropriate touch, exposure to pornography or violent sexual assault. The abuser could be from the peer group or an older student. Senior students often bring pornographic material to school and may force a younger boy to look at it to titillate them.

Tulir- CPHCSA’s study in 2006, conducted among 2211 school going children in Chennai, indicates CSA prevalence rate of 42%. Children of all socio economic groups were found to be equally vulnerable. While 48% of boys reported having been abused, the prevalence rate among girls was 39%. 15% of both boys and girls had been severely abused. [9]

WIN News (1999) reports that in Mumbai, 60% of rape victims are between the ages of three and sixteen, with 50% below the age of ten. Unfortunately, these numbers represent only the most serious of cases. Most never get reported to the police in the first place. [10]

In a survey by Sakshi (1997) in New Delhi with 350 school girls, 63% had experienced CSA at the hands of family members; and 25% of the girls had either been raped, made to masturbate the perpetrator or engage in oral sex. [11]

Another study by RAHI (1997) on middle and upper class women from Chennai, Mumbai, Delhi, Kolkata and Goa revealed that 76% of respondents had been sexually abused as children, with 71% been abused either by relatives or by someone they knew and trusted. [11]

In 1996, Samvada in Bangalore found that 83% if girls had been subject to eve-teasing, with 13% of these under age ten. 47% had been molested, and 15% had been seriously sexually abused as children. Nearly a third was under age ten, and had been raped, forced into oral sex, or penetrated with foreign objects. [8] This study also states that 47% of the respondents had been sexually abused; 62% of whom had been raped once and 38% of whom had suffered repeated violations. [11]

Though often considered an act against lower-classes, CSA affects the upper classes as well. A study by RAHI in five major cities in India looked at the experiences of English-speaking middle- and upper-class adults. A whopping 76% reported sexual abuse as children. 35% of the attacks took place between the ages of twelve and sixteen, while 19% took place under age eight. [8]

RAHI conducted a case study entitled “Voices from the Silent Zone”. This study indicated that out of 76% of women who admitted they were sexually abused as children, 40% were survivors of incest. Some of the respondents stated that until the questionnaire was administered to them they had no idea that
they had been abused. They buried the abuse as a painful and shameful memory never to be told to anyone. Incest is by far the most common but least discussed form of sexual abuse that young girls suffer in India today. [11] (Rahi, 1997). In a study of a 1000 girls from 5 different states in India, 50% of the girls had been abused when under 12 years of age, 35% between the ages of 12-16 years of age. One million children are trafficked into prostitution, in Asia every year. [7]

Further adding to these startling numbers are the reported “disappearances” of rape victims in Delhi found that almost 70% of Delhi’s rape victims (those who reported the crime to the police), 51% of which were minors, simply disappeared. It has been suggested that “rebuke from parents, relatives, and friends; insecurity and threats from the rapist; a lengthy trial and little hope of conviction, and the fear of harassment if the rapist goes free” may be some of the reasons that girls simply leave home, or are even thrown out by parents when news of the rape comes out in the open. In the case of children, this may also be because the abuse is occurring in the home, and he or she leaves to escape the abuse when the police are inactive. [12]

According to the federal police in India around 1.2 million girls are believed to be involved in prostitution.[13] A CBI statement said that studies and surveys sponsored by the ministry of women and child development estimated that about 40% of all India’s prostitutes are children. [13]

According to Brown, (2000) there are an estimated 2 million child prostitutes (under the age of fifteen) at work in India. [14] Over 15 million children are working as bonded labour, in India. Twice as many girls than boys engaged in child labour. Child labourers and young domestic workers are most often abused sexually by the employers or other adults. Increased risk of HIV/AIDS from adult prostitutes, leads to an increased demand for younger child prostitutes. Sex tourism and Child marriages. [15]

Legal Aspects in India:

In India, there is not a single law that covers child abuse in all its dimensions. The Indian Penal Code (IPC) neither spells out the definition of child abuse as a specific offence; nor it offer legal remedy and punishment for it. Under the law, “child sexual abuse” is an umbrella term describing criminal and civil offenses in which an adult engages in sexual activity with a minor or exploits a minor for the purpose of sexual gratification. [16, 17] Unlike many other countries, laws in India do not distinguish child sexual abuse from rape. Indeed, the laws against child sexual abuse are only in their developing stage. [5]

What is the Law?

By usual definition, sexual assault is defined as sexual actions or advances without the consent of one party. However, legal definitions tend to differ somewhat. Sections 375 and 376 of the IPC refer to rape. This defines rape as penile penetration of the vagina only. [8] Unfortunately, this law neglects sexual crimes that include digital, oral, or object penetration, as well as sexual crimes against men.

The IPC broadly lays out punishment for offences related to rape or sodomy or “unnatural sex.” These laws are too specific and do not apply to acts like fondling, kissing, filming children for pornographic purposes, etc. With boys, only proven sodomy is punishable offence but other than that, there is no clear definition of sexual abuse. The picture gets hazier when the act is committed by a child against a child. In that case, the Juvenile Justice Act comes into force that also does not specifically address the issue of child sexual abuse. [7]

Laws related with CSA in India and their shortcomings: [11]

At present CSA cases are handled under various sections of the IPC, which are laws meant for adults. There are very few sections under the IPC that deal with CSA. Some terrible home truths are:

1. The laws for women are extended to include children.
2. The major weakness of these laws is that only penile penetration is considered a grave sexual offence. Other offences are considered lesser.
3. Although Section 377, dealing with unnatural offences, prescribes seven to ten years of imprisonment, such cases can be tried in a magistrates court, which can impose maximum punishment of three years.
4. Children are more prone for repeated sexual abuse which affects them more severely, however as yet there is no law for repeated offenses against the one child.

Legal Loopholes:

Rape is an offence under the IPC, but lesser forms of sexual offences against children, are covered by grossly inadequate and inexact provisions such as “outraging the modesty of a woman.” How do we define modesty and apply Section 354, on outraging the modesty of women, with respect to children? The gravity of
the offence under Section 509, dealing with obscene gestures, is less. Yet even in such cases, the child’s psyche may be affected as severely as in a rape.

**Hazy Laws & Lacuna:**

In Indian legal system, the child has been defined differently in the various laws pertaining to children & the age of an individual in order to be determined as a “child” is NOT uniformly defined. Therefore it offers various gaps in the legal procedure which is used by the guilty to escape punishment. According to The Convention on the Rights of the Child, Article 1 defines “the child” as “every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier”.

The IPC defines the child as being 12 years of age, whereas the Indian Traffic Prevention Act, 1956 defines a ‘minor’ as a person who has completed the age of 16 years but not 18 years. Section 376 of IPC, (punishment for rape), defines the age of consent to be 16 years of age, whereas Section 82 & 83 of the IPC states that nothing is an offence done by a child under 7 years, and further under 12 years, till he has attained sufficient maturity of understanding the nature of the Act and the consequences of his conduct on that occasion.

There also exists a differential definition for “boys and girls” as seen in the Juvenile Justice Act, which defines a male minor as being below 16 years and a female minor as being below 18 years of age.

The problem is not only with the laws but with the law enforcing agencies. The process is long drawn and conviction rate negligible. While law takes its course, the child suffers four times over - when the act is committed, while narrating the incident, during medical examination and then, in court. [7]

Therefore, It is very difficult to apply the provisions of existing laws to any case of CSA as it is easy for a defence lawyer to make use of the legal loopholes to facilitate their client's escape from punishment.

**The Protection of Children against Sexual Offences Bill, 2011 (PCSOB 2011):**

The alarming results of "Study on Child Abuse: India 2007" and other statistical Figures are enough to convince that a special law is mandatory to effectively tackle the issue. [18] In an attempt to protect children against sexual abuse, sexual harassment and child pornography the Union Cabinet has passed a first-of-its-kind Bill in March 2011, dealing exclusively with sexual offences against children which threatens stringent action against the offenders and providing for

- Establishment of special courts for trial of such offences
- A jail term up to 7 yrs and a fine of Rs.50,000 for such crimes

The new law will cover all new aspects of sexual offences against children not covered elsewhere. For the first time, the draft Bill distinguishes a sexual offence committed against children by persons in position of trust and authority over children. [7] The Bill provides for treating sexual assault as “aggravated offence” when:

1. It is committed by a person in position of trust or authority including a member of the security forces, police officer, public servant, management or staff of a children’s home, hospital or educational institution.

2. The child victim is below 12 years or has mental or physical disability or the sexual offence causes grievous hurt or injury to the child with long term adverse effect on the child’s mind and body.

The punishment for such an offence would be imprisonment of up to seven years with fine. The punishment for penetrative sexual assault has been proposed to be at least five years in jail and a minimum fine of Rs. 50,000. Sexual assault also includes fondling the child in an inappropriate way which will invite a penalty of minimum three years in jail. There is a special provision in the Bill preventing abuse of children for pornographic purpose or possessing pornographic material involving children.

Crime against children has been classified into that of “penetrative” sexual assault, which could be of aggravated nature also, and that of non-penetrative kind, which could again be of aggravated nature. [7] The media has been barred from reporting the cases without having authentic information and from disclosing the identity of the child. [19]

**Discussion:**

Children are the greatest gift to humanity and their sexual abuse is one of the most heinous crimes imaginable. It is an appalling violation of their trust and an ugly breach of our commitment to protect the innocent. Reliable estimates are hard to come by since this is a secretive form of abuse, often causing victims to suffer in dark and claustrophobic silence.

The offence of CSA is highly grave in nature and leaves the child in a state of mental
turmoil and physical torture. The parliament of India has been long awaited to make the law against child abuse even stricter, since the present law and order has many loopholes and thus the criminal gets discharged at a minimal punishment. We urgently need legislation that specifically addresses child abuse with its all form. The necessity for such a law is underlined in government data which shows that more than half of India's children have been subjected to such abuses. [7]

Regarding CSA, two institutions play a very important role in a Child's life: there is protection and there is prosecution. Protection is the job of the parent. Prosecution is the job of the state. [7]

Different studies and their reports indicate that there is a traditional conservative family and community structure that does not talk about this topic. This silence encourages the abuser so that he is safe to sexually abuse. With no information being available about child sexual abuse, many children are growing up not knowing their rights have been violated. In this scenario the implementation of PCSOB 2011, Bill would be of great help in checking these cases of CSA. [20]

The comprehensive bill defines a range of sexual offences against children that have been ignored and proposes more stringent punishments for offenders. A law like this will ensure necessary legal provisions for victims and will make it easier for people to recognize the crime and to help police register a case under the appropriate legal provision that applies to such crimes.

Conclusion:

Child sexual abuse is a dark reality that routinely inflicts our daily lives but in a majority of cases it goes unnoticed and unreported on account of the innocence of the victim, stigma attached to the act, callousness and insensitivity of the investigating and the law enforcement agencies, etc. Merely enacting legislation will not be enough unless this is followed by strict enforcement of the law with accountability defined.

Also, parents, teachers and others in the community have a vital role to protect children from sexual exploitation and abuse. Children are the country's greatest human resource and a measure of the country's social progress lies in the well-being of its children: that they are healthy, educated, safe, and happy and have access to life opportunities.

It is our duty that Child Sexual Abuse should be combated as early as possible. This will help India shine bright and develop in a crime free way, as children are the leaders of tomorrow.

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