

# Child Sexual Abuse: Emerging Trends towards the Effective Treatment and Prevention of Child Sexual Abuse



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## Abstract

Child sexual Abuse (CSA) presents typical definitional problems lacking mutual support and acceptance between the sociological analysts and the legal experts. The depraved acts of CSA present peculiar behaviour pattern which include the variety of devices such as sexual victimization of child, sexual exploitation of the child, sexual assault of the child, sexually misuse of child, child molestation, sexual maltreatment, child rape and the like acts. These behavioural patterns overlap and explain certain paradigms of depraved mind; the elements of behaviour are intricate, sensitive and complicated as the victim are cantabile child and still more difficult if the behaviour origins from the home situations of cruelty. Two groups have been instrumental in bringing the issue of Child Sexual Abuse to the attention of the public and in championing the efforts toward effective treatment and prevention: the child protection movement and the feminist movement. Judiciary has created more awareness among the people about sexual offences against children, leading to the increase in the number of people being charged.

**Keywords:** Child Sexual Abuse, Child Molestation, Child Pornography, Paedophilia, Rape.

## Introduction

The phrase sexual abuse of children does not designate a single nosologic entity. It refers to a disparate array of situations that share one characteristic: someone considered too young to give informed consent has been involved in a sexual act. For that reason, in all sexual abuse cases, the child is the aggrieved party, and the adult, from whom we expect self-control, is held legally culpable. Although incest is usually included among the sexual abuses of children, it is a term of a different sort. Incest is not defined by the victim's age or by the lack of consent. It is characterized by the familial relationship between the two people: they are too closely related to marry; thus sexual contact between them is prohibited. In cases of incest, unlike those of child molestation, the party considered to have been wronged is not always a child, since both people involved may be adults. Yet even in this situation, a legal standard has been violated: individuals related too closely to marry cannot be involved sexually. In the United States, the violation of this standard is punished by law. The degrees of punishment vary by state. The penalty in Virginia is a \$500 fine, 12 months in prison, or both; in California, the prison term may be as long as 50 years. Not all countries enforce incest taboos through their legal system. Although incest is considered a severe breach of ethical standards in Japan, it is not a crime.<sup>1</sup>

## Defining Child Sexual Abuse

Sexual abuse is sexual victimisation through s sexual encounter. Sexual encounter includes intercourse, anal-genital contact, fondling, or an encounter with an exhibitionist.

The Standing Committee on Sexually Abused Children (SCOSAC) 1984 has defined 'Child Sexual Abuse' as:

'When a sexually mature person, by strategy or by neglect of their societal or specific responsibilities in relation to the child, who is below the age of consent, permitted the engagement of a child in activity of sexual nature, is deemed to have sexually abused the child'

The Children's Act 1989 of Great Britain defines 'sexual abuse' as the involvement of dependant, developmentally immature children and

adolescents in sexual activity they do not truly comprehend, to which they are unable to give informed consent, or which violate social taboos concerning family roles.

'Any child below the age of consent may be deemed to have been sexually abused when a sexually mature person has, by design or by neglect of their usual societal or specific responsibilities in relation to the child, engaged or permitted the engagement of that child, engaged or permitted the engagement of that child in any activity of a sexual nature which is intended to lead to the sexual gratification of the sexually mature person. This definition pertains whether or not it involves genital contact or physical contact, and whether or not there is discernible harmful outcome in the short-term'.<sup>2</sup>

Child health and welfare professionals are now largely agreed that sexual abuse of children is a very serious form of abuse and that intervention to protect children from such abuse in whatever form is a very high priority. However, there are major problems in gathering evidence to prove suspicious. In what follows, it should be noted that the focus is on interfamilial abuse. This is largely because this form of abuse lies more squarely in the domain of social work. However, the importance of responding to the needs of children and families where the former have experienced abuse outside the family should not be underestimated.

Child sexual abuse includes paedophilia, incest, exhibitionism, molestation, rape, sexual intercourse, sexual sadism, child pornography, child prostitution. Children become victims of sexual abuse as a result of their age, naiveté and relationship with the abusive adult. Physical violence is not always an ingredient of child sexual abuse. Child Sexual Abuse is not exclusive to any particular religion, class, age, educational background, etc., it runs through all strata of the society. The abuser is often a person the child trusts, and is therefore not in a position to voice his/her protest, the child is a helpless victim. Children are dependent upon adults, thus any sexual activity between them denotes an exploitation of power. A young child who does not resist an advance by an adult is regarded as having been abused because of the child's lack of knowledge of the meaning of sexual encounters.

As defined by World Health Organisation, Child Sexual Abuse is broadly defined as any sexual activity perpetrated against a minor by threat, force, intimidation, or manipulation. The array of sexual activities, thus, include fondling, inviting a child to touch or to be touched sexually, sexual intercourse, rape, involving a child in prostitution or pornography, or online child luring by cyber predators. CSA experiences vary greatly over multiple dimensions including, but not limited to: duration, frequency, intrusiveness of acts perpetrated, and relationship with perpetrator.

#### **Approaches to Child Sexual Abuse**

Today, CSA is a major problem. The concern is heightened when adult survivors report its impact on their lives. Two groups have been instrumental in bringing this issue to the attention of the public and in

championing the efforts toward effective treatment and prevention: the child protection movement and the feminist movement. Although currently the two groups show evidence of combining their efforts in the interest of children and adult survivors, their fundamental difference must be understood.<sup>3</sup>

#### **Child Protection Movement**

The child protection movement sees sexual abuse as the third form of child maltreatment in addition to physical abuse and neglect.<sup>4</sup> Protective agencies deal primarily with in family abuse or incest, which is perpetrated by family members, surrogate parents, or caregivers. The etiology of this problem is believed to be in the family pathology, a problem to which all family members contribute in some way.<sup>5</sup> Theorists describe family patterns that may repeat themselves if no intervention takes place. Although extra familial abuse is of concern, most protective agencies are legally bound to report this exploitation to law enforcement or judicial institutions. Protective agencies become involved in the treatment of parents of children abused outside the home. Alleviating parental guilt and strengthening the family unit provides protection for the child in the future. Thus child protection advocates place emphasis on the family as the seat of pathology as well as the medium responsible for the child's protection.

#### **Feminist Movement**

Feminists, on the other hand, espouse the sociological view that considers the assault of children as representative of social values. Because of the patriarchal social structure, women and children have inferior status and are subjected to male dominance.<sup>6</sup> Patriarchy has not only set up boys to be sexually abused but has caused abused boys to keep silent, because they fear that disclosure or their victimization will prevent them from being seen as "man enough" to eventually assume the role of patriarch.<sup>7</sup> Further, advertisements in the media and the prevalence of child pornography suggest that children are exploitable. Thus feminists see child sexual abuse as more of a societal than a familial issue.

By virtue of their particular perspectives, each group portends a different approach to treatment. The child protective philosophy sees protection of the child as paramount and the family as the unit responsible for this protection. Towards this end, the whole family is seen in treatment, with emphasis on redefining generational boundaries and role definitions and enhancing communication. The ultimate goal is reuniting the family if the perpetrator is able to take responsibility for his actions and the mother is able to protect her child in the future. Some agencies use the threat of prosecution of the perpetrator to engage him in treatment. Only when his cooperation is not forthcoming or when required by state law do most agencies favour incarceration.

Feminists favour a rape crisis model with an emphasis on victim advocacy. Use of the criminal justice system to punish the perpetrator is seen as a deterrent to future abuse. The victim is helped through this process by a concerned advocate who also strives toward the establishment of protection for the child in the future. Family reconciliation is viewed with

some reservation and favoured only if protection of the child can be ensured.

It is not always easy to discern the orientation of a helper in the area of child sexual abuse. Although some workers concentrate on family dynamics, they may feel that separation and even incarceration of the perpetrator is better for all involved. Many also see the victim in need of a strong advocate. Whatever the position, both perspectives agree that protection of the child in the future is vital.

#### **Judicial Response**

The judiciary has played a major part in the interpretation of the provisions of the Section 376, Section 377 of IPC and POCSO Act and in many leading cases the Supreme Court has laid down guidelines for strictly implementing this law. The Court has created more awareness among the people about sexual offences against children, leading to the increase in the number of people being charged.

Ghanshyam Misra vs The State,<sup>8</sup> in this case the victim was a young girl of 10 years and the offender was an adult of 39 years, he was the victim's school teacher. Taking advantage of his position by inducing her to come inside the school room he committed rape. The High court in this case has enhanced the sentence as perpetrator of the offence had taken advantage of the teacher student relationship he shared with the victim. While maintaining the conviction of the prosecutrix under Section 376 IPC, the Appellate Court found no mitigating factor in favour of the offender and ordered for enhanced punishment from three years to seven years rigorous imprisonment.

Gorakh Daji Ghadge vs The State of Maharashtra,<sup>9</sup> this is a case where a father has raped his 13-year-old daughter in their home. The Bombay High Court has held that seminal emission is not necessary to establish rape, what is necessary is that there must be penetration. The High court in the present case said that.

'We have a sordid episode of a father, whose sacred duty is to ensure the welfare of his child, subjecting his own daughter, who is of the tender age of 13 years to the heinous offence of rape. Crimes in which women are victims need to be severely dealt with and in extreme cases such as this when the accused, who is the father of the victim girl has thought it fit to deflower his own daughter of tender years to gratify his lust, then only a deterrent sentence can meet the ends of justice.'

Sheela Barse vs Union of India,<sup>10</sup> in this petition the Supreme Court held that the investigation by the police and the trial of the children accused of an offence should be expedited. The Court held that the trial of children should take place in juvenile Courts and not in regular Courts and the investigation into offences alleged to have been committed by children be completed speedily and within a reasonable time after the filing of the charge sheet.

It was directed by the Court that this Children's Act should contain not only provisions for investigation and trial of offences against children, but should also contain mandatory provisions for ensuring social, economic and psychological rehabilitation of

children who are either accused of offences or are abandoned or destitute or lost. This Judgement also endorsed the enactment of Children's Act by the Central Government to bring about uniformity in regard to the various provisions relating to children.

Imratlal vs State of Madhya Pradesh,<sup>11</sup> this case involved the rape of a girl aged 12 years and the question before the Court was whether corroboration was essential for conviction. 'The law on the point is settled that a conviction of an accused can be based solely on the evidence of the prosecutrix if her evidence is worthy of credence. The rule of corroboration is not a rule of prudence. Insistence on corroboration is advisable but it is not compulsory in the eye of law. The nature and degree of corroboration too varies from case to case and if the evidence of the prosecutrix inspires confidence in the mind of the Judge and if the circumstantial and other evidence even slightly supports the case of the prosecutrix, then there arises no necessity of any corroboration of her statement. There seems to be no reason to reject the testimony of the prosecutrix, which stands well corroborated by the first information report and the medical evidence.'

The judgement also deals with the absence of sperm on the vaginal slides and states that for proving an offence, it is not necessary that the accused, who commits rape, must discharge semen inside the vagina after penetration, and spermatozoa cannot be discovered unless and until there is discharge of that nature and the judgement further states that when an offence of rape is proved, that too on girls of very tender age and innocent behaviour, the sentence of imprisonment should be imposed with severity.

Sheela Barse vs The Secretary, Children Aid Society & Ors,<sup>12</sup> this petition was filed in respect of improper functioning of child care institutions maintained and managed by the Children Aid Society. Whilst passing directions and disposing of the petition, the Supreme court observed as follows,

'In recent years, children and their problems have been receiving attention both of the Government as also of the society but we must say that the problems are of such enormous magnitude that all that has been done till now is not sufficient. If there be no proper growth of children of today, the future of the country will be dark. It is the obligation of every generation to bring up children who will be citizens of tomorrow in a proper way. Today's children will be the leaders of tomorrow who will hold the countries banner high and maintain the prestige of the nation. If a child goes wrong for want of proper attention, training and guidance, it will indeed be a deficiency of the society and of the Government of the day. A problem child is indeed a negative factor. Every society must, therefore devote full attention to ensure that children are properly cared for and brought up in a proper atmosphere where they could receive adequate training, education and guidance in order that they may be able to have their rightful place in the society when they grow up.'

Mohd Mukhtar vs State through Public Prosecutor<sup>13</sup>, a minor girl of 16 years of age was

made to board a tata sumo and after that she was dragged out of the vehicle and was subjected to rape. In this case it was held that if a prosecutrix is below 18 years of age, it would be immaterial as to whether she was a consenting party to the sexual intercourse.

Parvez Ahmed Dar vs State of J&K<sup>14</sup>, in this case it was held that to constitute the offence of rape, it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda with or without emission of semen or even an attempt at penetration is quite sufficient for the purpose of the law. It is therefore, quite possible to commit legally, the offence of rape without producing any injury to the genitals or leaving any seminal stains.

Faisal Fayaz Malik vs State of J&K & Ors<sup>15</sup> petitioner along with three other minor boys was allegedly involved in commission of offences of offence punishable under Section 363, 376 and 109 RPC and were taken into custody in connection with case registered as FIR No. 01/2018 police station kulgam. On their production before the Board under the Juvenile Justice act, i.e. CJM, the learned CJM was convinced to release them on bail as could be done in terms of Section 13(1) therefore invoking powers under Section 13(2) of the Act, 2013 has directed them to be kept in observatory home.

Learned magistrate was convinced that all the accused are juveniles, while relying on the law down by the Hon'ble Apex Court Apex Court Om Prakash vs State of Rajasthan & Anr<sup>16</sup>, has rightly observed that the parents of the juveniles in conflict with the law have lost control over them that is why they have committed such a heinous crime. Such type of juveniles in conflict with the law needs proper counselling which can be provided to them in juvenile home. Given the magnitude of offence, the manner and method adopted as is clearly reflected in the order impugned four boys including the petitioner with matured brain have allegedly arranged a vehicle, forcibly put two young girls into it and took them to village Bolras where they kept them in an under construction them medicine and then allegedly raped them. Such juveniles require proper reformation and counselling. It was held that statutory protection of the Juvenile Justice Act, 2013 is meant for minors who are innocent law breakers and not accused of matured mind who use the plea of minority as a ploy or shield to protect himself from the sentence of the offence committed by him.

Ashwani Kumar vs State of J&K<sup>17</sup>, prosecution case as it was set out before the learned Trial Court is that on 29.11.2010 in the evening prosecutrix, a girl aged five years, ha gone with her mother, Pawna Kumari (PW2), to the house of Om BadyalaChak. The accused had also come there. The accused with criminal intention lured the victim with offer of giving her toffees from the nearby shop and saying that her father was also sitting there. The accused succeed in his design, he lifted the victim in his lap from the marriage function and took her to a dark and secluded area where he committed rape on her. The victim started crying but the accused scared

her by saying that ghost will come there and eat her. When the victim was about to turn unconscious, the accused got scared, brought her back to the village and left her near her house after threatening her with dire consequences, in case she will divulge the matter to any person.

The incident came to the knowledge of the mother of the victim on the next morning. She lodged written information at police station Akhnoor. On the same day, the Investigation Officer (IO) got the victim medically examined from Dr.Renu Gupta (PW-5) at Sub-District, Hospital, Akhnoor. The charge sheet after committal came up for trial before the Court of learned 2<sup>nd</sup> additional Judge, Jammu. Learned Trial Court after examination and according consideration to the record produced by the prosecution framed charges under Sections 363 and 376/511 RPC against the accused for having kidnapped the victim and attempted to commit rape on her. PW-5 Dr Renu Gupta, gynaecologist, has stated that she examined the victim on 13.11.2010 at 12.05 PM. She had proved the certificate issued by her. The certificate issued by her showed that the doctor had noticed dry blood stains on the private parts of the victim and superficial abrasion over the fourchette. No fresh bleeding, however, was noticed and the hymen was found intact. On chemical analysis of the slides taken by the doctor, presence of spermatozoa, however, was not noticed. The opinion given by the doctor in the certificate is that "it is possible that an attempt to rape could have been made but histopathologically, there is no evidence to support sexual intercourse".

The baseline of the submissions advanced by the learned counsel appearing on behalf of the accused was the plea that the accused has been falsely implicated by the parents of the victim to take revenge and wreak vengeance against him for his having played role in the protests against the father of the victim (PW-1) and his brother, Ashok Kumar (PW-3) for their involvement in smuggling of cattle to Srinagar for sale and the arrest of PW-3 in this connection. Learned Counsel argued that the evidence of the victim, her parents (PW- 1& 3) and uncle (PW-3) cannot be relied upon as they had a motive to falsely implicate the accused for their prior enmity with him. Learned counsel relied upon an Allahabad High Court Judgement in Khalid and Anr vs State of U.P<sup>18</sup>. Another argument of the learned counsel was that undue weightage has been given by the Trial Court to the evidence of the victim, in utter disregard to the principles applicable to appreciation of a child witness. Contention raised on behalf of the accused, however, was that the parents of the victim were nourishing enmity towards the accused and his father and have falsely implicated the accused for the reason that he had been playing active role in the protests against smuggling of cattle to Srinagar by the father and the uncle of the victim, PWs, 1 and 3 and arrest of PW-3 on the basis of the report lodged by the father of the accused.

No dependable material was produced by the defence to anticipate that the accused or his father had played active role in any protest against smuggling of cattle by PWs 1 and 3. Though in his

cross-examination PW-3 has admitted that some three and a half years back he had been arrested by the police station, Akhnoor alleging that he takes cattle to Srinagar for sale but has clearly stated that neither the accused nor the other villagers had raised any protest in this regard.

The contention of false implication on the basis of previous enmity rather is liable to be rejected outrightly as it deserves no consideration in view of the evidence that there had been use of force against the private part of the victim inasmuch as there was abrasion over fourchette and bleeding. It is noticed that shockingly the defence has gone to the extent of making a suggestion to the mother of the victim that either she or the victim herself had inflicted scratches with nails to the private part of the victim and then framed a false case. Such a thought is reckless and renders the defence plea wholly worthless of credit. In no society one can think of a mother inflicting injury to the private part of her minor daughter with the intention of framing a false case of rape against a person to wreck vengeance with him.

Another contention raised on behalf of the accused was that undue weightage has been given to the evidence of the victim in disregard to the principles governing the appreciation of the evidence of a child witness.

It was noticed from the statement of the victim lying on the Trial Court file that the learned Trial judge at the time of recording her evidence was alive to the necessity of arriving at and recording satisfaction about her competence to testify as a witness, having regard to her tender age. On the basis of the replies of the victim given to the preliminary questions put to her, learned Trial Judge has recorded his satisfaction that she was in a position to understand the questions and has given rational answers thereto and therefore, found her capable of testifying as a witness. In *Rajinder vs State of Himachal Pradesh*<sup>18</sup>, It is now and since long well settled as a principle that if in a case of sexual offence, on consideration of the prosecution case in its entirety, the evidence of the victim inspires confidence in the mind of the Court and is found reliable, the same can be made sole basis of conviction of the accused and even necessity of collaboration can be excluded. In *Radheyshyam vs State of Rajasthan*<sup>19</sup> the Supreme Court has drawn following conclusion regarding evidence of a child witness in para 9 of the reporting:

"9..... The conclusion which can be deduced from the relevant pronouncements of this Court is that the evidence of a child witness must be subjected to close scrutiny to rule out the possibility of tutoring. It can be relied upon if the Court finds that the child witness has sufficient intelligence and understanding of the obligation of an oath. As a matter of caution, the Court must find adequate corroboration to the child witnesses' evidence. If found, reliable and truthful and corroborated by other evidence on record, it can be accepted without hesitation."

The Appellant Court held that the judgement rendered by the learned Trial court does not suffer from any error or infirmity. The Appellate Court, therefore dismissed the appeal.

#### **Conclusion**

Child Sexual Abuse is largely a hidden crime, which continues to affect every country, culture and community across the world with devastating physical,

emotional, social and economic consequences. The problem of child abuse and human rights violation is one of the most critical matters on the international human rights agenda. Child abuse is a state of emotional, physical, economic and sexual maltreatment meted out to a person below the age of eighteen years and is a globally prevalent phenomenon. The growing complexities of life and the dramatic changes brought about by socio-economic transitions have played a major role in increasing the vulnerability of children to various new forms of abuse. Children are our future, they deserve special protection, no violence against children is justifiable and all violence against children is preventable. Judiciary has created more awareness among the people about sexual offences against children, leading to the increase in the number of people being charged.

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