

Rising Crime against Children in India: Urgent Need for Retrospection and Moral Evaluation

Abstract

I am the child, all world wait for my coming, all earth watches with interest to see what I shall become, civilization hangs in the balance, for what I am, the world of tomorrow will be. I am the child, you hold in your hand my destiny, you determine largely, whether I shall succeed or fail, Give me, I pray you, these things that make for happiness, Train me, I beg you, that I may be a blessing to the world.

-Maine Gene Gole

Keywords: Retrospection, Moral Evaluation, Crime.

Introduction

Unfortunately, we are living in the worst of times. We as a nation are unable to provide a safe environment to millions of children across our country. Why did seven year old Praduman Thakur loose his life in a reputed international school? Why was a five year old girl raped by a peon in a Delhi school? Why are young boys and girls sexually abused in the school and colleges? Even after paying exorbitant fees to the school, parents are still unsure about the safety of their ward in the school premises. Every now and then there are saddening news about the rising crime against school going children in the country. We as a nation are falling miserably in ensuring the safety and well being of the children.

Millions of children throughout the world are victims of violence. They continue to be abused, exploited and trafficked. International publicity and scrutiny have compelled greater awareness of different categories of violence to children, from abuse in the family and in institutions, to organized sexual abuse, including child prostitution, sex tourism and child pornography.¹

The crimes against children are not only diversified in nature but also in enormity. The family, the social system, poverty, anti-social elements, sex hunger, craze for the male child, superstitious beliefs etc. are vital factors for crime against children.²

Different Categories of Crimes against Children

In the recent years crime against children is increasing. According the National Crime Record Bureau Report 2015, a total of 94,172 cases of crime against children were registered in the country during 2015, as compared to 89,423 cases during 2014, showing an increase of 5.3%. Maharashtra accounted for 14.8% of total crimes committed against children registered in the country. The next in order was Madhya Pradesh (13.7 %), Uttar Pradesh (12.1%) and Delhi (10.1%).

Kidnapping

The NHRC, in a report published on missing children says that on an average 44000 children go missing in the country every year. Of these children, 11,000 remain untraced. It cannot be ignored that there are cases where children run away from their homes. However, it also cannot be ignored that many are taken away against their volition.³

According to the NCRB Report 2015, a total of 41, 893 cases of kidnapping and abduction of children were registered during the year 2015 as compared to 37,854 cases in the previous year showing an increase of 10.7%)

Lalitha Kumari v. Union of India,⁴ dealt with the kidnapping of a minor girl named Lalitha Kumari, and non registration of FIR at the first instance by the police.

Child Trafficking and Prostitution

Trafficking in women and children has become an increasingly lucrative business especially since the risk of being prosecuted is very low.

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Women and children do not usually come to the brothels on their own will, but are brought through highly systematic organized and illegal trafficking networks run by experienced individuals who buy, transport and sell children into prostitution. Traffickers tend to work in groups and children being trafficked often change hands to ensure that neither the trafficker nor the child gets caught during transit. Different groups of traffickers include gang members, police, pimps and even politicians, all working as a nexus. Trafficking networks are well organized and have linkages both within the country and in the neighbouring countries. Most traffickers are men. The role of women in this business is restricted to recruitment at the brothels.⁵

Trafficking in women and children is the gravest form of abuse and exploitation of human beings. Thousands of Indians are trafficked everyday to some destination or the other and are forced to lead lives of slavery. They are forced to survive in brothels, factories, guesthouses, dance bars, farms and even in the homes of well-off Indians, with no control over their bodies and lives.⁶

According to the NCRB Report 2015, 11 cases of 'buying of minor for prostitution' (sec. 373 IPC) and 111 cases of 'selling of minor for prostitution' (sec. 372 IPC) were registered in the country. A total of 58 cases under the Immoral Traffic (Prevention) Act, 1956, were registered during 2015.

According to the Global Report on Trafficking in Persons 2016, over the last ten years, the profile of detected trafficking victims have changed. Although most detected victims are still women, children and men now make up larger shares of the total number of victims than they did a decade ago. In 2014, children comprised 28 percent of detected victims, and men 21 percent.⁷

Aim of the Study

The incidence of child sexual abuse is rising steadily in India. The National Crimes Records Bureau data of the recent years reflect an upward trend with regard to sexual offences against children. Children are trafficked, raped, sexually abused or even killed under superstitious beliefs. Child pornography is also on the rise in the country. Urgent need of the hour is moral introspection in order to save the tender childhood from crime.

Sexual Abuse of Children

The incidence of child sex abuse is quite high in India. The child sex abuse does not mean rape only. It involves dependent and developmentally immature children in sexual activities they do not truly comprehend. Unfortunately, the research on child sex abuse in India is at the nascent stage with reported incidents only. However, it is found that most of the child rapes are by the family members. Thus the girl children suffer from severe traumas. The most severe trauma is in the case where the adult abuser is a close relative, even a parent. To be raped by someone whom the girl trusts not to abuse her and thinks him as a natural protector, is the most traumatic event for the girl child.⁸

Beware the dark underbelly of a nation in transition. Coming out of the woodwork is a shadow

figure, a predator who weaves perverse sexual fantasies on easy prey, children. He is not just any criminal. Nor is he yet another rapist. He is more of a next door neighbour, a relative or a family friend, who looks perfectly normal until the day he decides to strike.

An independent report based on the National Crime Records Bureau figures, shows that India is certainly not a country for children. The report says, a total of 48,338 child rape cases were recorded between 2001 and 2011. The report of the Asian Centre for Human Rights, warns that this is only the "tip of the iceberg" as a majority of the child rape cases are not reported to the police while children regularly become victims of many other forms of sexual assaults too. The report, "India's Hell Holes: Child Sexual Assaults in Juvenile Justice Homes," which has been submitted to the UN Special Rapporteur on Violence against Women, says that many of these cases actually take place in juvenile homes.¹⁰

A total of 10,854 cases of child rape under section 376 IPC were registered in the country during the year 2015 in comparison to 13,766 cases in 2014. A total of 14,913 cases under the Protection of Children from Sexual Offences Act, 2012 were also registered in 2015.

An ECPAT regional situational analysis on the prostitution of boys demonstrated that this is not a new issue in many countries in South Asia, including India, where recognition of the problem is slowly emerging. Such exploitation occurs in locales such as streets, markets, bus terminals, hotels, restaurants and religious establishments. A large number of boys living on the streets are victims of sexual exploitation, and the average age of boys being forced into exploitation, and the average age of boys being forced into exploitation is approximately 12.5 years or younger. The majority of sexually exploited boys have experienced sexual abuse prior to their entrapment into prostitution. The magnitude of the problem is not known since many of the cases are unreported or misreported due to the stigma and shame attached to this type of crime.¹¹

In case of sexual abuse, the lead role of the doctor is less clear, but is certainly maintained in acute sexual injury, that is child rape or child buggery discovered within seventy two hours of the occurrence. In these events, child protection is as much an issue as is physical abuse; there may be acute ano-genital injury in need of medical or surgical treatment, and, if emission has occurred, there is a possibility of obtaining forensic evidence by use of the appropriate swabs that would assist in the identification of the perpetrator by blood grouping and DNA typing. The management of a child once admitted to hospital should be by cooperation between the paediatrician and the forensic physician.¹²

In the case of child rapes across the country it is often witnessed that there is some delay in the registration of cases and very often they are unreported due to the fear of social stigma.

Unnatural Offences against Children

814 cases of Unnatural offences against children were registered in the country according to NCRB, 2015 report. Most of the times the children are easy targets of pedophiles who sexually abuse children of tender age and commit unnatural offences with them.

Killing of Children under Superstitious Beliefs

In a country like India killing of vulnerable children for superstition is quite common particularly in the interior parts of the country. There are reports about the killing of young children in remote areas of the country under superstition or for appeasing a deity.

Child Pornography

During child pornography small children of impressionable minds are subjected to exploitation, sexual abuse, molestation, wrongful restraint, wrongful confinement, hurt etc. thus child pornography may comprise a host of criminal acts against innocent children. Sex tourism aggravates the problem of child pornography. Children are abused for pornographic purposes for sex tourists.

A study by the NHRC found that traffickers are using women and children for pornography and prefer teenage girls for this purpose. The report further found that trafficking for the production of pornography takes place in Kerala, Karnataka, Tamil Nadu, Andhra Pradesh, Maharashtra and Bihar. Children from Karnataka, Andhra Pradesh and Madhya Pradesh are also trafficked to other countries, such as the United Kingdom, Korea and the Philippines, and to the Gulf States for pornographic purposes.¹³

Role of Judiciary in Protecting Children from Crime

India on 11th December 1992, acceded to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be followed by all State parties in securing the best interests of the Child.

Article 15 of the Constitution confers upon the state powers to make special provisions for children. Article 39 provides that the state in particular direct its policy towards securing that the tender age of children are not abused and their childhood and youth are protected against exploitation and they are given facilities to develop in a healthy manner and in conditions of freedom and dignity. The Constitution provides a protective umbrella for the rights of women and children. There are certain fundamental rights especially for care, welfare and development of women and children. Article 23 of the Constitution prohibits the trafficking in human being and beggar and other similar forms of forced labour.

Plethora of laws have been enacted to protect the rights of the children. Different issues concerning the well being, growth (physical, mental and emotional) have been taken into account while drafting suitable legislation for children. For instance, the Protection of Children from Sexual Offences Act, 2012 is a comprehensive piece of legislation which is meant to protect children from offences of sexual

assault, sexual harassment and pornography and it also provides for the establishment of special courts for the trial of such offences and for the matters connected therewith or incidental thereto.

The judiciary has been playing a positive role in ensuring that the fundamental rights of the children are protected and uplifted. It is felt that the children by reason of their physical and mental status need special safeguards and care and the child victims of sexual abuse needs to be treated with compassion and dignity. Justice R.S. Sodhi and B.Chaturvedi, through the Delhi High Court has held in a *suo motu* case¹⁴ on the ground that the communication revealed instance of insensitivity on the part of various authorities while dealing with the case of a child subjected to sexual abuse. The court had requested the Human Rights Commission and also the metropolitan magistrate dealing with the concerned case to assist the High Court to enable it to lay down certain guidelines which would facilitate the concerned authorities to take appropriate measures.¹⁵

In *Childline India Foundation v. Allan Johut Waters*,¹⁶ the accused persons two in number used to sexually abuse children living in the shelter house and also used to have fellatio with them. They were convicted and sentenced under section 377 of the IPC. The Supreme Court referred to Articles 15(3), 21, 21A, 23 and 45 of the Constitution and observed :

Article 45 is supplementary to article 24 on the ground that when the child is not to be employed before the age of 14 years, he is to be kept occupied in some educational institutions. It is suggested that Article 24 in turn supplements the clauses (e) and (f) of Article 39, thus ensuring distributive justice in the matter of education. Virtually, Article 45 recognizes the importance of dignity and personality of the child and directs the state to provide free and compulsory education for the children up to the age of 14 years.

In the case of *Vishal Jeet v. Union of India*,¹⁷ a writ petition was filed in the Apex Court under Article 32 of the Constitution of India seeking directions for : (i) inquiry against police officials under whose jurisdiction the malady of forced prostitution, Devdasi system and jogin traditions were flourishing, and (ii) rehabilitation of the victims of the malady.

In *State of Rajasthan v. Om Prakash*,¹⁸ the Apex Court stressed upon the importance of the need of adopting sensitive approach by the court while dealing with the cases of child rapes which seriously affects the mind of the child throughout her life and violates the constitutional rights of the child under article 39 of the Constitution. The S.C held that –

Child rape cases are cases of perverse lust for sex where even innocent children are not spared in pursuit of sexual pleasure. There cannot be anything more obscene than this. It is a crime against humanity. Many such cases are not even brought to light because of the social stigma attached thereto. According to some surveys, there has been a steep rise in child rape cases. Children need special care and protection. In such cases responsibility on the shoulders of the courts is more onerous so as to

provide proper legal protection to their children. Their physical and mental immobility call for such protection. Children are the natural resource of our country. They are the country's future. Hope of tomorrow rests on them. In our country a girl child is in a very vulnerable position and one of the modes of her exploitation is rape besides other modes of sexual abuse.

In *Mojjullah v. State of Rajasthan*,¹⁹ where there was a conspiracy regarding enticing young girls from schools and colleges and sexually exploit them under threat and pressure. The victim girls were photographed in compromising positions and these photographs were used as a tool to keep them quiet. Four accused named by several witnesses were examined on behalf of the prosecution. It was disclosed by the evidence on record that accused had acted in according to a very well organized plan and they were convicted under section 376/ 120B of the IPC.

In *Sakshi v. Union of India*,²⁰ the Supreme Court issued directions that is holding trial of child sexual abuse or rape:

1. A screen or some arrangements may be made where the victim or witnesses (who may be equally vulnerable like the victim) do not see the body or face of the accused.
2. The question put in cross examination on behalf of the accused in so far as they relate directly to the incident should be given in writing to the Presiding officer of the court who may put them to the victim or witnesses in a language which is clear and is not embarrassing and
3. The victim of child abuse while giving testimony in court, should be allowed sufficient breaks as and when required.

The main suggestion made by the petitioner with regard to child sexual abuse were –

1. Permitting use of a video taped interview of the child's statement by the judge (in presence of the child support person).
2. Allow a child to testify via closed circuit television or from behind a screen to obtain a full and candid account of the acts complained of.
3. The cross examination of a minor should only be carried out by the judge based on written question submitted by the defense upon perusal of the testimony of the minor.
4. Whenever a child is required to give testimony, sufficient breaks should be given as and when required by the child.

At a time when the Centre wants to reduce the age of juvenility the Delhi High Court has extended protection under the JJ Act to minors rescued during anti-trafficking raids. The Court has ruled that minors are victims, not offenders to be prosecuted under the Immoral Traffic Prevention Act. They should be governed by the welfare provisions of the JJ Act and treated as a "child" defined under it, instead of being punished as juveniles in conflict with law.²¹

In *Kakoo v. State of Himachal Pradesh*,²² the apex court noted that a rapist is an unusual type of sex offender as he prefers actual sex relations with a

person of opposite sex, although unfortunately he may choose a child as the preferred object. There have been a number of cases in our country in which the persons were committing rape upon innocent children.

In the case of *Om Prakesh v. State of Rajasthan*,²³ the accused a teacher was alleged to have restrained prosecutrix a minor student from going home and thereafter committed rape. Statement of prosecutrix was corroborated by medical evidence as well as by oral evidence of witnesses. Minor omission and contradictions found in statement of prosecutrix was immaterial. Therefore, conviction of the accused was proper.

In the case of *Ishwarbhai Ranchoddas Parmar v. State of Maharashtra*,²⁴ the court held that a person who has committed heinous act of committing of sexual intercourse with a budding girl of 5 years is not even morally entitled for any leniency. It is a blot on society. Such incidents are increasing, therefore, there should be a hammer hand treatment given to such accused.

In *State of Rajasthan v. Om Prakesh*,²⁵ held that it is necessary for the courts to have a sensitive approach when dealing with cases of child rape. The effect of such a crime on the mind of the child is likely to be lifelong. A special safeguard has been provided for children in the Constitution of India in Article 39 which stipulates that the State shall, in particular direct its policy towards securing that the tender age of the children is not abused and the children are given opportunities and facilities to develop in a health manner and conditions of freedom and dignity and that the childhood and youth are protected against exploitation and against moral and material abandonment.

In *Gaurav Jain v. Union of India*,²⁶ Justice K. Ramaswamy of the Apex Court observed – "The rescue and rehabilitation of the child prostitutes and children should be kept under the nodal Department, namely Department of Women and Child Development under the Ministry of Welfare and Human Resources, Government of India. It would devise suitable schemes for proper and effective implementation. The institutional care, thus, would function as an effective rehabilitation scheme in respect of the fallen women or the children of fallen women even if they have crossed the age prescribed under the Juvenile Justice Act. The juvenile homes should be used only for a short stay to relieve the child prostitution and neglected juveniles from the trauma they would have suffered; they need to be rehabilitated in the appropriate manner.

Role of Schools in Ensuring the Safety of School Children

Placing the onus on schools for the safety of students on their premises, the Central Board of Secondary Education has on 14th September 2017 issued new security related guidelines that include a psychometric test for the teaching and non-teaching staff. psychometric test are used to measure an individual's mental capabilities and behavioural style. The tests are designed to measure a candidate's suitability for a role based on the required personality

characteristics and aptitude. The evaluation is done by a professional psychologist. The Board has asked schools to complete the evaluation process within two months and implement the other guidelines, falling which they would face derecognizing.

It is a fundamental right of a child to engage and study in an environment where he/she feels safe and is free from any form of physical or emotional abuse or harassment. The directive provides that access to the school building by the outsiders should be controlled. The schools have been asked to constitute separate committees for redressal of the grievances of the public, staff, parents and students, an internal complaints committee to deal with sexual harassment, and committees under the POSCO Act, 2012. further, the hiring of support staff from authorized agencies is among the guidelines.²⁷

The safety and security of children is of paramount importance to the society. This means providing them with a safe environment at home, outside, while commuting, and in school. since education is a major part of a child's life and a fundamental building block of the individual's future, special emphasis must be laid on the child's safety in schools. This equally applies to all children, rich or poor, those in government schools or private. The shocking lack of infrastructure in government schools is often ignored. This must not happen. Security audits must include infrastructural assessments and an audit of the educational facilities being provided. It is our duty, as a society, to ensure good, safe education for our children.²⁸

Ghaziabad's Gulshan Sehgal's son Arman, 9, died under mysterious circumstances at GD Goenka School in August 2017, has also moved the Supreme Court seeking a CBI probe into his son's mysterious death.

Lessons on 'good touch, bad touch' to sensitize children about 'good touch, bad touch' the National Council of Educational Research and Training(NCERT) will introduce content on child abuse in text books. The books for the 2018 academic session will have cover images and graphics aimed at prevention of child abuse and spreading awareness.

Conclusion and Suggestions

As discussed in this research paper, the crime against children is not only diversified but it is also increasing with every passing day. Every day the newspaper depicts the sorry state of affairs with children bearing the brunt of crimes every day. The matter of ensuring the safety of children within and outside their homes needs to be addressed with utmost urgency. The children spent 7-8 hours in school everyday and hence the safety of the children during these hours lies with the school. Laws should be amended and the liability of schools should be fixed strictly if any untoward incident against the child happens in the school. The schools should not be

allowed to shirk their responsibility on one ground or the other. All the public spirited individuals needs to join hands for the protection of the most vulnerable section of the society i.e. our children.

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