CHILD SEXUAL ABUSE AND THE LAW IN INDIA

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ABSTRACT

This paper talks about the Sexual abuse where the victims of the same are children. The paper lays down the various acts that constitute the umbrella term of Child Sexual Abuse (CSA). The sensitive nature of such acts has been talked about due to the sensitive age of the victims and due to their vulnerability and susceptibility towards further harm. The paper further discusses the need of adequate medical care to be provided to the victims and gives pointers on the things to be considered by the medical examiner while caring for a victim of child sexual abuse. The need of proper forensic investigation in order to get hold of evidences has also been talked about in the paper. Special emphasis has been given to the need of the mental care of the victims because of the nature of the offence as well as the age of the victim which have a long lasting effect on the mind of the victim.

KEYWORDS: Children, Mental Health, Sexual Abuse, Trauma

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INTRODUCTION

The sexual abuse of children is an umbrella term for numerous acts that are abusive and exploitative to children in a sexual manner. It includes acts such as sexual intercourse, whether penetrative or not penetrative, pornography, sexual harassment, sex tourism or online exploitation. Child sexual abuse has been attributed with developed countries more but studies have found the acts to be common in developing countries as well. "A recent epidemiological study mentions that the prevalence rates of CSA in Europe, America and Asia were 9.2%, 10.1% and 23.9%, respectively."¹

Years of observation shows that the acts constituting child sexual abuse can often be carried on anywhere in the community such as houses, schools, places of work, etc. in a study undertaken by the Ministry of Women and Child Welfare, 1,25,000 children were interviewed from 13 of the Indian states. It was found through the study that sexual abuse had taken place in above half of them and boys and girls were affected alike. The National Crime Bureau has observed that the most common abusers include neighbours, friends, close relatives, and acquaintances and employers at workplaces. "Acts of CSA are usually repeated over varying periods and may cause serious short- and long- term adverse effects."²

One of the very concerning things is that most of the existing health care professionals are not well aware of the procedure for examining and managing a case of child sexual abuse which is of crucial importance for the physical as well as mental wellbeing of the victim.

¹Wihbey J. Global Prevalence of Child Sexual Abuse, 2013

² Cashmore J, Shackel R. The Long Term Effects of Child Sexual Abuse. Child Family Community Australia, 2013

Each and every case of sexual assault is a case of medical emergency and is to be treated for free at a government or private hospital and the treatment does not require any document or pre-condition. A victim is entitled to reach a health facility directly for treatment with a police requisition or a court directive. At this, it is the hospital's duty to undertake a medical examination after the grant of the permission of the same from the parent or guardian of the child. Irrespective of whether the child files a complaint, medical treatment is necessary.

When such a case arrives to the doctor, he has the responsibility to inform the police but no force can be put on the victim for the filing of an FIR. In the occurrence of the child not want to lodge an FIR, a medico legal case has to be formed and if the victim wants to file an FIR in the future, the MLC number as well as the police station is to be recorded.

MEDICAL CARE

The doctors being approached by the victim have the duty to examine the victims and provide them with required medical treatment. It is of immense importance that reporting is done within time and the evidence is gathered accordingly. The presence of a police officer at the time of the examination is not allowed. The medical examiner, in the case of the victim being a girl, has to be a woman. Additionally, the examination is to be conducted in the presence of the parent of the child or someone in whom the child has faith and confidence. If such a situation arises that such a person in whom the child instils faith cannot be present due to some reason, the examination has to be taken place in presence of a person who is nominated by the head of the medical institution. The medical examiner, during the examination, has to keep in mind the following while conducting the examination of the victim:

- The first and foremost task is to see that the child is calm and not in a highly anxious and disturbed state. The examiner has to make sure that the child is composed while the examination takes place. Composure of the child is very important.
- The examiner has to ensure that the positioning of the organs of the child is proper and that no organ is dislocated. He has to ensure the positioning for optimal exposure of prepubertal genital structures: frog-leg supine position, knee-chest or left lateral decubitus position.
- The examiner has to observe and inspect the victim of the sexual abuse for any probable signs of physical injury while also keeping in mind, any likely mental trauma that the child might have suffered or the child might have been suffering while the examination is going on.
- There has to be a proper inspection of the organs which are most likely to have gotten affected while the abuse took place, such as mons pubis, labia majora and minora, clitoris, urethral meatus, hymen, posterior fourchette, and fossa navicularis.
- For a proper inspection, the examiner must use tools that ensure no stone is left unturned in the examination. The examiner must use tools such as handheld magnifiers that would let him or her examine the organs with utmost precision.
- Any likelihood of transference of any sexually transmitted diseases must also not be ignored. The examiner must gather the specimens for sexually transmitted diseases and then screening must be done to ensure that in fact no sexually transmittable disease was transmitted to the victim from the abuser.

It has been observed that the result of the medical examination of the victim of child sexual abuse is not often very severe because the studies have often shown that the child sexual abuse is not, most of the times, coupled with physical violence or even the use of force, as is the case with sexual violence with adults, as children are easy to be tamed and are lured into giving in to the desires of the adults.

Moreover, acts such as fondling, oral, genital, or anal contacts, as well as genital-genital contact without the act of penetration are not likely to cause any physical injury which makes the detection of abuse highly unlikely. The other thing to note is that, if there are any physical injuries, the disclosure of the abuse is generally not immediate and thus there are hardly any traces of the injury left once the examiner gets to the testing for any injuries.

Any notable injuries, if any found are attributable to acute injury incurred during the recent episode or indicative of residual effects following repeated episodes of genital contact in the past.

COLLECTION OF EVIDENCE

For the purpose of collection of evidence, the forensic examination includes the collection of things such as semen, hair or fragments of skin that could be used to link to the culprit or the fragments of the fibre of a cloth or linen or carpet which could pin the act down to a specific location or a likely location. The forensic examination is conducted for the following reasons:

- To ascertain that a sexual act was indeed carried out with the victim as the absence of any injuries, in no way indicates that no sexual abuse has taken place as even the slightest of fondling or even a minimal genital or anal penetration counts as sexual abuse, as because of the age of the victim, the consent is not a defence.
- To see whether the abuse has been conducted recently and whether any injuries have been made to the body of the victim.
- To determine the age of the victim in order to gauge the mental effect that such sexual abuse might have had on the victim and to administer the treatment accordingly.
- To ensure that no intoxicating substances were given to the child in order to carry out such abuse.

The Ministry of Women & Child Development, Govt. of India is establishing One Stop Centers (OSC) to provide support and assistance to victims of gender violence.³

MENTAL HEALTH

As discussed above, because of the victims being children and easy to be convinced or lured, the use of force is not generally attributable to child sexual abuse like in the case of sexual abuse on adults. Although there might not be any physical injuries, sexual abuse on children puts a huge toll on their mental health and has a long lasting effect on them. Such acts get embedded in the child's memory and as soon as they attain the age of understanding what was done to them, that memory becomes a constant source of trauma for them and comes back to haunt them every once in a while. Such incidents scar the victims for life. Even if the victim is of a very tender age and does not consciously remember the incident, the memory isn't wiped off and is still stored in their sub conscious mind and affects their choices and behavioural patterns throughout their lives.

³ Ministry of Women and Child Development. One Stop Centres.

Because of the severity of the impact such sexual abuse has on the mental health of the victim, there is a necessity for such trauma to be resolved in order for the victim to be able to make peace with the occurrence and move forward in life without being severely affected with it throughout his or her life.

Thus, mental health professionals have a huge part to play when it comes to handling the child as well as the family of the victim. The victims need to be handled by the professionals with vigilance as they often end up having the tendencies of self-harm. It is very crucial that the victim be provided with counselling for him or her to be able to cope with the trauma that the incident brings upon them.

There cannot be enough emphasis put on the need of care for the mental health of the victims. The victims are very young and fragile and if nothing is done to address their distress, the incident ends up playing a huge part in the formation of their personalities and comes back to them in ugly ways. The future of such victims may range from them developing suicidal tendencies or themselves becoming perpetrators of such crimes in the future. Thus, the child, having undergone sexual abuse must be taken care of as regards to his or her mental health.

PREVENTION

Child sexual abuse is something which is preventable, if some measures are taken by the care takers of the children. The severity of the crimes related to child sexual abuse lies in the fact that such acts leaves a dent in the lives of the young ones and proves to be a source of trauma in the lives of the victims for a long time.

It is the responsibility of the parents or the guardians or whoever is taking care of the child to see that he or she is not exposed to an environment that may lead to sexual abuse. Children must not be entrusted with strangers and a proper background check must be done before a child is left in the care of an individual.

But a lot of times, it is observed that a relative or a close acquaintance of the parents turns out to be the abuser. The parents, in such cases, are often reluctant to take any action towards the perpetrator. It poses a difficult situation in front of the parents but it must be handled with bravely without thinking of the societal dogmas and embarrassments as a timely raise in voice might not just save their child but also save the children such perpetrator might go on to abuse if not stopped.

The children also need to be taught the difference between a good touch and a bad touch. They need to be taught about the areas of a body that shall not be touched by anyone except by the parents or trusted family members for cleaning purposes or by the doctor for medical purposes.

“Such communication may appear difficult, particularly when using expressions for body parts and ‘how babies are born’, but most parents find their own ways once they understand the importance of empowering the child. Brochures, graphic descriptions and parental guides are available to help them.”⁴

It must be noted that it is not only the parents which have the duty and the ability of preventing Child Sexual Abuse, the society also needs to be aware enough to be able to keep in check the probable incidents of sexual abuse around them. There are various places where children go such as schools, summer camps, sports academies, hobby classes etc. The staff at such places must be selected carefully and a vigilance must be maintained with respect to any probable occurrence of such act.

⁴ Guidelines and Protocols. Medicolegal Care of Survivors/ Victims of Sexual Violence, 2014

THE LAW

Child sexual abuse is a serious concern in the society as the victims of it are children, who are helpless creatures and it is the duty of the adults to take care of their wellbeing. Sexual abuse is of such a nature that it leads to unfathomable trauma in adults, let alone children who are not mature enough to understand what is happening to them. Thus, it is the duty of the state to form laws regarding the subject matter. The prevention of Children from Sexual Offences Act is India's answer to the need of such a legislation. The Act is "meant to provide for protection of children from the offences of sexual assault and safeguarding the interest and wellbeing of children."⁵

The Act unequivocally lays down the acts that are deemed as sexual offences. The Act includes actual or attempted sexual intercourse, oral sex, fondling sexual parts, pornography and inappropriately photographing. It is a comprehensive set of laws in the sense that it does not point the activities to be deemed as Child sexual abuse but also emphasises on compulsory reporting of the case. It also puts upon the medical personals, the responsibility of handling the cases of child sexual abuse with utmost care.

"The Act includes child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts. It deems a sexual assault to be 'aggravated' when abuse is committed by a person in a position of trust or authority vis-a-vis the child, such as a family member, police officer, teacher, or doctor."⁶

The Act makes it mandatory for the medical workers to report a case of child sexual abuse if they come across one, the Act also provides for legal action at the failure of the same.⁷ In the report, the personal is required to report the nature of the abuse as well as the parties that might have been involved.

"The POCSO Act envisages a multidisciplinary approach that will be conducive to medical care and justice delivery for a sexually abused child. This can be achieved through coordination and convergence between all key stakeholders such as Juvenile Police Units, Child Welfare Committees, District Child Protection Units, health professionals, mental health professionals including psychiatrist, psychologist and counsellors, child developmental experts, medical social workers, advocates, magistrates and members of legal profession. The components of comprehensive health care response to sexual violence, as per Guidelines & Protocols of the Ministry of Health and Family Welfare"⁸

The World Health Organization has also given guidelines on the dealing of matters regarding child sexual abuse. The guidelines mainly pertain to the conduct of the medical professionals who are caring for the victims of such abuse, particularly for the workers with inadequate resources with respect to the matter.

CONCLUSIONS

Children, because of their age, are highly sensitive and vulnerable beings. They are dependent on their parents or guardians for food, shelter and everything in between. The responsibility of the parents is not limited to giving birth to children but extends to taking care of them after the birth. This care includes making sure that there are no sexual priers, looking for the opportunity to make a move to sexually abuse their child.

⁵ The Protection of Children from Sexual Offences Act, 2012

⁶ Bhave S, Saxena A. Child sexual abuse in India, 2013.p.62-70.

⁷ Section 19, 20, The Protection of Children from Sexual Offences Act, 2012

⁸ Finkel MA. The Evaluation. In: Finkel MA, Giardino AP, editors. Medical Evaluation of Child Sexual Abuse: A Practical Guide. 3rd ed. Elk Grove Village, IL: American Academy of Pediatrics. 2009.p.19-52

The institutions such as the legislature, the executive and the doctors have a huge role to play, but the first and foremost protection from sexual abuse has to be given by the parents. Sexual abuse among children is not an uncommon occurrence and the studies have shown the abusers to often be people from within the family or someone close to the parents. Such facts call for the parents to be more vigilant and careful.

Child Sexual abuse, because of the sensitivity of its victims, is a major concern all over the world. The minds of children are like wet clay and will be moulded according the way they are treated and what they are taught. Children also need to be taught to be aware of the likelihood of the occurrence of any such incidence and what should be done during and after such an incidence takes place. Presence of a likely child sex offender around the child calls for the parents to be even more careful.

The schools can play a major part in spreading awareness regarding the same among the children as well as the parents. The children can even be taught through their curriculum, the difference between a good touch and a bad touch.

Such matters have to be dealt with highly delicately and with utmost care, especially by the agencies which come in direct contact with the victim, such as the doctors and the parents as the nature of the act makes the children all the more vulnerable.

The need of Psychological support the victims is a matter of very high concern. The victims, at any cost, must be provided with the counselling for them to be able to resolve the issues and overcome the trauma that sexual abuse imposes upon them. If not given the adequate psychological care, the incident(s) might be embedded in the mind of the victim and is highly likely to become a recurring source of trauma.

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