

# CHILDREN: THE MOST VULNERABLE SECT IN THE SOCIETY AND THE PRECEDENTS

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**Abstract:** Sexual abuse of children can occur in a number of different settings. Children can be sexually abused by family members (interfamilial) or by strangers (extra familial).

Sub-section (2) of Section 376 enumerates certain aggravated forms of rape like rape by a police officer, a public servant, a member of the management or staff of a jail, remand home or a hospital etc. on a person in custody or care, rape on a pregnant woman, gang rape or rape on a woman below 12 years. The punishment for these aggravated forms is severe. The minimum sentence is 10 years' rigorous imprisonment and maximum is imprisonment for life. Again, the proviso to sub-section (2) says that the court may for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than 10 years.

A more precise categorization of the term for Indian context is made under the Prevention of Offences Against the Child Bill, 2009 where it sexual abuse of children has been classified under various heads, but the bill is yet to be passed.

**Keywords:** Child, Sexual abuse, Rape, Women, Imprisonment.

## Sexual Abuse of Children

The sexual abuse of children is one of the most heinous crimes. It is an appalling violation of their trust, an ugly breach of our commitment to protect the innocent. Against this background, the lack of specific provisions for child sexual abuse in our criminal law is a serious lacuna. Rape of a girl child of an immature age has a greater traumatic effect which often persists throughout her life leading to various disorders, both physical and psychological. The effects of rape on the victim are multidimensional. She would be looked down upon by the society including her own family, relatives, friends and neighbours. It would almost be impossible for her to secure a suitable match from a respectable family. Family honour would be at stake leading to uncertainty in respect of the future of her brothers and sisters, if any. Thus rape would almost inevitably and invariably result in mental torture and suffering to the victim. The younger the victim, the greater the repercussions of the offence.

Sexual abuse of children can occur in a number of different settings. Children can be sexually abused by family members (interfamilial) or by strangers (extra familial). A more precise categorization of the term for Indian context is made under the Prevention of Offences against the Child Bill, 2009 where it sexual abuse of children has been classified under various heads, but the bill is yet to be passed.

The Indian Penal Code defines the child as being 12 years of age. Section 376 of IPC, which punishes the perpetrators of the crime of rape, defines the age of consent to be below 16 years of age. A minimum of 7 years' imprisonment has been imposed as punishment for rape as defined under Section 375, the maximum being imprisonment for life or imprisonment for a term which may extend to 10 years. Imposition of fine is made compulsory. The proviso to sub-section (1) of Section 376 says that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term less than 7 years.

Sub-section (2) of Section 376 enumerates certain aggravated forms of rape like rape by a police officer, a public servant, a member of the management or staff of a jail, remand home or a hospital etc. on a person in custody or care, rape on a pregnant woman, gang rape or rape on a woman below 12 years. The punishment for these aggravated forms is severe. The minimum sentence is 10 years' rigorous imprisonment and maximum is imprisonment for life. Again, the proviso to sub-section (2) says that the court may for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than 10 years.

Section 327 of the Code of Criminal Procedure, 1973 has been amended directing the inquiry into and trial of rape to be conducted in camera. In the Indian Evidence Act, Section 114-A has been inserted after Section 114 according to which, in a prosecution for rape under Section 376 (2) of the Indian Penal Code, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the court that she did not consent, the court may presume that she did not consent.

However, these changes are proving to be inadequate and the social aspects of the matter are not taken care of. In recent times, there has been an increase in violence against women. The conviction rates for rape are still lower than any other major crimes. A rape victim who knocks at the doors of administration of justice is completely broken down by the humiliation she suffers during the investigation and trial of the crime. Court atmosphere and piercing cross-examination by the counsel often cause confusion and nervousness. The provisions of the Evidence Act regarding relevancy of facts and examination of witnesses (especially Sections 148-152) notwithstanding, some defense counsel adopt the strategy of persistent questioning of the prosecutrix regarding the details of rape. She is required to repeat the details again and again to test her story.

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. If the abuse is repeated several times it affects children more severely, however as yet there is no law for repeated offences against the one child. Section 509, dealing with Word, gesture or act intended to insult the modesty of a woman, extends to minor girls also. 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.

A crime victim is devastated by serious crime and is abused by the police and prosecution system. During the trial and after sentencing, the offender has legal aid; he is fed and housed, given physical and psychiatric treatment, job training, education, support for his family and counsel for appeal. In other words, it is the victim, who being a taxpayer, pays for all these benefits for the criminal, and in addition, and by himself has to try to repair all that the crime has destroyed and endure that which cannot be repaired.

A rape victim needs support from all quarters - medical, financial and emotional. In western countries, in the last two-and-a-half decades, steps have been taken to provide medical support through National health services, financial support through Criminal injuries compensation Board and Victim support schemes and emotional support through Rape crisis centers. In India, however, the State has not initiated any steps towards providing medical and emotional support services to the child rape victims. So far as financial support is concerned, there is a provision in the Code of Criminal Procedure to provide compensation to the victims of crime from the fines payable by the offender.

The matter had come to the Supreme Court in the case of Sakshi v. Union of India<sup>1</sup>, where a PIL was filed with growing concern, the dramatic increase of violence, in particular, sexual violence against women and children as well as the implementation of the provisions of the Indian Penal Code, namely, Sections 377, 375/376 and 354.

The Supreme Court gave the following directions;

In holding trial of child sex abuse or rape:

- (i) a screen or some such 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;
- (ii) the questions put in cross-examination on behalf of the accused, insofar 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;
- (iii) the victim of child abuse or rape, while giving testimony in court, should be allowed sufficient breaks as and when required.

Child-trafficking, traditionally associated with only trafficking for commercial sex, is growing fast in India. There are no laws that specifically target child-trafficking. Commercial sex-trafficking offences are handled under the Immoral Traffic (Prevention) Act. Labour-trafficking offences are handled under the Child Labour Act for those hazardous industries in which child labour is considered an offence. There is no law prohibiting employment of children in work outside the definition of "hazardous".

Child Trafficking can be defined as: "Sale and purchase of children for gain, within the country (intra-country) and across borders (inter-country), by deceit, fraud or force, resulting in exploitation of the person trafficked". Trafficking of children is done for various reasons like Sexual Exploitation (Forced prostitution, Socially and religiously sanctified forms of prostitution, Sex tourism, Pornography), Illegal Activities (Begging, Organ trade, Drug peddling and smuggling), Labour (Bonded labour, Domestic work, Agricultural labour, Construction work, Carpet industry, garment industry, fish/shrimp export as well as other sites of work in the formal and informal economy), Entertainment and Sports, Adoption, Marriage.

**From the legal point of view** - India has been a front-runner in the battle against human trafficking. The criminalization of trafficking flows from Article 23 (1) of the Constitution.

To tackle human trafficking, we have had the necessary legislation in place, principally the Immoral Traffic (Prevention) Act, 1956, in addition to several provisions in labour laws and the Indian Penal Code. These form a composite legal code for the prosecution and punishment of traffickers. In addition to these legislative measures, the Supreme Court of India has touched on this issue in two prominent judgments, i.e. - Vishal Jeet v. Union of India (1990) and in Gaurav Jain v. Union of India (1997). These judgments directed the Government of India, among other things, to prepare a 'National Plan to Combat Trafficking and Commercial Sexual Exploitation of Women and Children'. As a result of this, a National Plan was drafted in 1998 which lays down suggested measures for prevention, rescue, rehabilitation and reintegration.

In the case of Vishal Jeet v. Union of India<sup>2</sup> Supreme Court gave the following directions:

“(1) All the State Governments and the Governments of Union Territories should direct their concerned law enforcing authorities to take appropriate and speedy action under the existing laws in eradicating child prostitution without giving room for any complaint of remissness or culpable indifference.

(2) The State Governments and the Governments of Union Territories should set up a separate Advisory Committee within their respective zones consisting of the Secretary of the Social Welfare Department or Board, the Secretary of the Law Department, sociologists, criminologists, members of the women's organisations, members of Indian Council of Child Welfare and Indian Council of Social Welfare as well the members of various voluntary social organisations and associations etc., the main objects of the Advisory Committee being to make suggestions of:

(a) the measures to be taken in eradicating the child prostitution, and

(b) the social welfare programmes to be implemented for the care, protection, treatment, development and rehabilitation of the young fallen victims namely the children and girls rescued either from the brothel houses or from the vices of prostitution.

(3) All the State Governments and the Governments of Union Territories should take steps in providing adequate and rehabilitative homes manned by well-qualified trained social workers, psychiatrists and doctors.

(4) The Union Government should set up a committee of its own in the line, we have suggested under direction No. (2) the main object of which is to evolve welfare programmes to be implemented on the national level for the care, protection, rehabilitation etc. etc. of the young fallen victims namely the children and girls and to make suggestions of amendments to the existing laws or for enactment of any new law, if so warranted for the prevention of sexual exploitation of children.

(5) The Central Government and the Governments of States and Union Territories should devise a machinery of its own for ensuring the proper implementation of the suggestions that would be made by the respective committees.

(6) The Advisory Committee can also go deep into Devadasi system and Jogin tradition and give their valuable advice and suggestions as to what best the government could do in that regard.”

In Gaurav Jain v. Union of India<sup>3</sup>, the Supreme Court held that juvenile homes should be used for rehabilitating child prostitutes and neglected children.

#### \* Rape of a Minor:

In Dhananjay Chatterjee v. State of W.B. which involved rape-cum-murder, the trial court, the High Court and the Supreme Court agreed it to be a fit case for imposition of death penalty. The Court pointed out that in recent years, rising crime rate, particularly against woman had made judicial sentencing a subject to concern. The object of sentencing should be to see that criminal does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done.

The sentence of death appears more appropriate where rape and murder is committed by an accused having criminal record. The emerging inference is that if a girl child is raped and murdered, the probability of death sentence is highest.

(a) In Ram Kishan Aggarwala v. State of Orissa<sup>4</sup> the accused, a sixty-five year-old businessman of Cuttack, was charged of committing rape on a girl, who was six years of age. The trial court convicted him of rape and sentenced him to 3 years' rigorous imprisonment and Rs 5000 fine. The Sessions Judge, on appeal, upheld the conviction but reduced the sentence to six months' rigorous imprisonment and Rs 500 fine taking into consideration the old age of the convict. The High Court of Orissa and the Supreme Court upheld the conviction and sentence.

(b) In *Satto v. State of U.P.*<sup>7</sup> three boys, between the ages of 10 to 14 years, were convicted of raping an eleven-year-old girl and were sentenced to 2 years' rigorous imprisonment by the trial court. The High Court of U.P. upheld the conviction and sentence of the accused. The Supreme Court ordered the release of the appellants on probation of good conduct and were committed to the care of their respective parents.

(c) In *Phul Singh v. State of Haryana*<sup>9</sup> the accused, a youth of 22 years of age, was charged of committing rape on a deaf and dumb girl of 12-13 years. The trial court convicted the accused of the offence of rape and sentenced him to 4 years' rigorous imprisonment. The High Court affirmed it in appeal. The Supreme Court however reduced the sentence to 2 years' rigorous imprisonment on the ground that the accused was a youth with no criminal antecedents and that he had a young wife and a farm to look after.

In *Delhi Domestic Working Women's Forum v. Union of India*<sup>10</sup> the Supreme Court recognised the right of the victim to compensation including interim compensation and directed the Government to formulate a scheme for setting up a Board for granting compensation to crime victims. But so far, no positive steps have been taken by the Government towards setting up such Boards. Thus, the response of the State to the needs of the rape victims in general and child rape victims in particular, is inadequate and the manner in which the agencies such as the police and the courts handle such victims further victimises them.

To combat the menace of child rape, the following steps are suggested:

1. Instead of dealing with rape of a child like the rape of an adult female, a separate section may be inserted in the Indian Penal Code punishing any type of sexual abuse of a female child below 14 years of age, whether it is rape, attempt to rape or sexual assault with an intent to outrage or insult the modesty of a female child. A minimum sentence may be prescribed without giving any discretion to the courts to award a lesser sentence below the minimum.
2. The rules of evidence and the procedure have to be simplified and a time-limit has to be set for deciding these cases at the trial and appellate stages.
3. These cases have to be investigated, inquired into and tried by victim-oriented female personnel and the trial has to be held in-camera. The victim has to be kept informed of the status of investigation and trial.
4. The impact of the crime on the victim has to be taken into consideration by the court while awarding compensation to the victims.
5. State-sponsored Victim Support Schemes have to be set up to play an active role as a representative, advocate or advisor of the victim. Centres manned with trained counsellors have to be set up to provide services for rape victims, the most important of which is to provide a place where these girls, who have been raped or sexually assaulted can talk with other women. In order to do this, these centres have to provide emotional support, accept the account given to them unquestioningly, give counselling and provide the girls with help in dealing with any official agencies such as police or medical services.
6. Last but not the least, the attitude of the society, especially of the women should undergo a radical change. Sexual assault including rape should be treated like any other bodily hurt and the social practice of stigmatising a victim of sexual offence should go. Systematic training in self-defence should be given to young girls so as to encourage them to resist attacks on them.

As the problem of sexual exploitation of a girl child is multidimensional, it has to be tackled from all directions so as to ensure a secure childhood to every female child.

#### \* Child Delinquency and Neglected Children of Juvenile

The Juvenile Justice Act, 1986 (for short, the 'JJ Act') was enacted to provide for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication for such matter relating to disposition of delinquent juveniles. The Act sought to achieve a uniform legal framework for juvenile justice in the country as a whole so as to ensure that no child, in any circumstance, is lodged in jail and police lock-up. This is being ensured by establishing Juvenile Welfare Boards and Juvenile Courts to deal adequately with the subject.

The object of the Act, therefore, is to provide specialist approach towards the delinquent or neglected juveniles to prevent recurrence of juvenile delinquency in its full range keeping in view the developmental needs of the child found in the situation of social maladjustment. That aim is secured by the establishing observation homes, juvenile houses, juvenile homes or neglected juvenile and special homes for delinquent or neglected juveniles.



As per Indian law, the **Juvenile Justice (Care and Protection of Children) Act, 2000** defines a juvenile as a person below the age of 18 years. The Act intends to provide care and protection to juveniles, who violate laws in India. The Act intends to settle the issues in the best interest of children and not with an intention to punish them under criminal law. This Act is a comprehensive legislation that provides for proper care, protection and treatment of children in conflict with law and children in need of care and protection by catering to their development needs, and by adopting a child friendly approach. It conforms to the UNCRC and other relevant national and international instruments.

A clear distinction has been made in this Act between the juvenile offender and the neglected child. It also aims to offer a child increased access to justice by establishing Juvenile Justice Boards, and Child Welfare Committees. The Act has laid special emphasis on rehabilitation and social integration of the children and has provided for institutional and non-institutional measures for care and protection of children. The non-institutional alternatives include adoption, foster care, sponsorship, and after care.

‘Neglected juvenile’ which is more relevant for the purpose of this case, has been defined in Section 2 (1) to mean a juvenile who (i) is found begging; or (ii) is found without having any home or settled place of abode and without any ostensible means of subsistence and is destitute; (iii) has a parent or guardian who is unfit or incapacitated to exercise control over the juvenile; or (iv) lives in a brothel or with a prostitute or frequently goes to any place used for the purpose of prostitution, or is found to associate with any prostitution or any other person who leads an immoral, drunken or depraved life; (v) who is being or is likely to be abused or exploited for immoral or illegal purposes or unconscionable gain.

In order to understand the Juvenile Justice Act and how juveniles have to be safeguarded, I request all of you to go through the recent decision of the Supreme Court in Hari Ram v. State of Rajasthan, 2009 (13) SCC 211 : 2010-2-L.W. 268.

One of the land mark judgments in the sphere of child and minor welfare is Sheela Barse v. Union of India<sup>4</sup>. In the case, the Supreme Court made an order issuing various directions in regard to physically and mentally retarded children as also abandoned or destitute children who are lodged in various jails in the country for ‘safe custody’. The Court directed the Director General of Doordarshan as also the Director General of All India Radio to give publicity seeking cooperation of non-governmental social service organizations in the task of rehabilitation of these children. The Court declared that it was ‘extremely pained and anguished that these children should be kept in jail instead be being properly looked after, given adequate medical treatment and imparted training in various skills which make them independent and self-reliant.’

### Child Labour

In India, the Child Labour (Regulation and Prohibition) Act, 1986 does not define the term ‘child labour’. It defines ‘child’ as a person who has not completed his fourteenth year of age<sup>5</sup>. Further it prohibits child labour in hazardous occupations and processes as listed in the schedule of the Act.

Poverty remains the root cause of child labour. All the other causes, though differentiated and made specific, in some way or the other emanates from poverty. People living below poverty line do not get sufficient to sustain themselves. In such situations, it becomes imperative for them to send their children to work. Child labour in turn hampers physical and mental growth of children and deprives them of education, Going to school, instead of betterment, proves to be waste of hard earned resources of the family and so parents are unwilling to send their children for education. This hampers their upward social movement and restricts them to the unorganized sector. This keeps them in poverty and they are unable to better their situation and thus the vicious circle of poverty and child labour continues.

This Act has provided certain specific provisions to tackle child labour and has given many concrete provisions for abolition of child labour. It prohibits employment of children below the age of 14 in all hazardous occupations and processes<sup>5</sup>.

\* **Child Marriage:** Child Marriage is the most unfortunate practices followed in India even today. Child Marriage is an abuse of children especially girls by their own parents in the form of celebration.

The Child Marriage Act, 2006, as it exists prohibits marriage for women younger than 18 and men under age 21.

\* **Feticide and Infanticide:** Feticide is punishable under Section 315 of IPC.”

### References:

- [1] Sakshi v. Union of India (2004) 5 SCC 518 at Page 548
- [2] (1990) 3 SCC 318
- [3] 1997 (8) SCC 114
- [4] AIR 1986 SC 1773

- [5] Section 2 (ii), The Child Labour (Regulation and Prohibition) Act, 1986
- [6] (1976) 2 SCC 177 : 1976 SCC (Cri) 244
- [7] (1979) 2 SCC 628 : 1979 SCC (Cri) 534
- [8] (1979) 4 SCC 413 : 1980 SCC (Cri) 1
- [9] (1995) 1 SCC 14 : 1995 SCC (Cri) 7
- [10] (1983) 3 SCC 217 : 1983 SCC (Cri) 728

