

Child abuse in India

Arushi panwar

Student, Law, Law College Dehradun (UttaranchalUniversity),
Uttarakhand (India)

Received: February 12, 2019

Accepted: March 23, 2019

ABSTRACT: *Child abuse is harm to, or neglect of, a child by another person, whether adult or child. Child abuse happens in all cultural, ethnic, and income groups. Child abuse can be physical, emotional - verbal, sexual or through neglect. Abuse may cause serious injury to the child and may even result in death. A problem that is only beginning to come into light in India rape, sexual abuse, and sexual harassment are worldwide issues of gender violence. There is very little research done in this area in India and only a few books have been written, keeping the subject even further from the consciousness of the country. However, the problem persists with staggering incidence, and Indians unique profile adds to the complexity of an already difficult subject. Fortunately, the issue of child sexual abuse is slowly becoming a more recognized issue, and for this reason, this paper will focus much on sexual abuse against minor children: the laws, victims, and perpetrators. Finally, an analysis of the aspects of Indian culture that make this issue particularly difficult to understand and cope with will be presented.*

Key Words: *Social problems, Child welfare, Victimized, Poverty, Verbal abuse*

INTRODUCTION

The Indian subcontinent, in fact, still has many groups, such as the Baiga, where actual incestuous marriage is practiced, between fathers and daughters, between mothers and sons, between siblings and even between grandparents and their grandchildren--thus disproving the oft-repeated anthropological truism that "no known tribe has ever permitted incest" because if it were allowed society would surely cease functioning. In many of these villages, the children move at the age of 5 or 6 from the incestuous activities of the family bed to spend the rest of their childhood in sex dormitories, where they are initiated by older youth and men into intercourse with a succession of other children, none for longer than three days at a time, under threat of gang rape.

In India the most accurate scientific studies, based on lengthy interviews, report that 30 percent of men and 40 percent of women remember having been sexually molested during childhood--defining "molestation" as actual genital contact, not just exposure. About half of these are directly incestuous, with the family members, the other half usually being with others, but with the complicity of caretakers in at least 80 percent of the cases. These experiences of seduction are not just pieced together from fragmentary memories, but are remembered in detail, are usually for an extended period of time and have been confirmed by follow-up reliability studies in 83 percent of the cases, so they are unlikely to have been fantasies. The seductions occurred at much earlier ages than had been previously assumed, with 81 percent occurring before puberty and an astonishing 42 percent under age 7. As high as these molestation rates seem, however, they represent only a portion of the true rates, not only because those interviewed do not include populations that have been shown to have extremely high rates, such as criminals, prostitutes, juveniles in shelters, psychotics, etc.--but also because only conscious memories were counted, and the earliest seductions of children are almost never remembered except during psychotherapy.

BACKGROUND

Child abuse is a state of emotional, physical, economic and sexual maltreatment meted out to a person below the age of eighteen and is a globally prevalent phenomenon. However, in India, as in many other countries, there has been no understanding of the extent, magnitude and trends of the problem. The growing complexities of life and the dramatic changes brought about by socio-economic transitions in India have played a major role in increasing the vulnerability of children to various and newer forms of abuse. Child abuse has serious physical and psycho-social consequences which adversely affect the health and overall well-being of a child. According to WHO: "Child abuse or maltreatment constitutes all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other

exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power." ¹

CHILD ABUSE SCENARIO

Child abuse across the globe

- The UN Secretary General's Study on Violence against Children³ has given the following overview of the situation of abuse and violence against children across the globe. WHO estimates that almost 53,000 child deaths in 2002 were due to child homicide.
- In the Global School-Based Student Health Survey carried out in a wide range of developing countries, between 20% and 65% of school going children reported having been verbally or physically bullied in school in the previous 30 days.
- An estimated 150 million girls and 73 million boys under 18 have experienced forced sexual intercourse or other forms of sexual violence involving physical contact.
- UNICEF estimates that in sub-Saharan Africa, Egypt and Sudan, 3 million girls and women are subjected to FGM every year. \

NEED FOR A STUDY ON CHILD ABUSE

As discussed above, there is a large child population in India and a large percentage of this population is vulnerable to abuse, exploitation and neglect. There is also inadequate information about the extent of child abuse in the country. The only information available annually is the crime data maintained by NCRB. A look at the data maintained by NCRB shows that:

1. There is a record of only those crimes which can be registered under the IPC or other criminal Acts. Corporal punishment, use of children for creation of pornography, exposure etc. are not reflected in NCRB data as they are not offences under the IPC.

2. There is a gross under-reporting of crimes against children, which in itself is indicative of the low priority accorded to children by parents, caregivers and the police. Recently reported cases, in which the police did not even lodge First Information Reports (FIR) of missing children is indicative of this.

ANALYSIS OF ASIA AND INDIA

Child abuse in Asia

While certain child abuse and neglect issues are common in almost all countries at the global level such as physical abuse, sexual abuse, emotional and psychological abuse, abandonment and, increasingly, problems of street children, there are also many issues which are prevalent only in certain regions of the world. For instance, in Asia where population density is high, the issues of child labour and child sexual exploitation are also high. Political instability and other internal disturbances, including conditions of insurgency in many countries in Asia are also creating major problems, with increasing number of child soldiers, refugee children, trafficked children and children on the streets.²

Child abuse in India

Nineteen percent of the world's children live in India. According to the 2001 Census, some 440 million people in the country today are aged below eighteen years and constitute 42 percent of India's total population i.e., four out of every ten persons. This is an enormous number of children that the country has to take care of. While articulating its vision of progress, development and equity, India has expressed its recognition of the fact that when its children are educated, healthy, happy and have access to opportunities, they are the country's greatest human resource.

LITERATURE REVIEW

Ketsela T and Kedebe D (1997), dealing with parental punishment, maintain that in Ethiopia, 21% of urban school children and 64% of rural school children reported bruises or swellings on their bodies, resulting from parental punishment.

¹ World Health Organization (1999): Report Of the Consultation On Child Abuse Prevention; Geneva, http://www.who.int/violence_injury_prevention/violence/neglect/en/

² International Society for Prevention Of Child Abuse and Neglect (2006): World Perspectives On Child Abuse, Sixth Edition, <http://www.ispcan.org>

Kim DH et al, (2000), compared the rates of violence against primary schoolaged children in China and the Republic of Korea, by using the Conflict Tactics Scales. But the questions were directed at the children rather than their parents.

Katherine E. Cox (2000), examines development issues, that are raised in a legal analysis of international human rights law, relating to child labour. In doing so, she highlighted some of the weaknesses of the present legal approach to the problem. In order to demonstrate the weaknesses of the system, India is used as an example of a developing country where some of the development issues raised in the legal analysis, arise. The Second Part of Cox's paper defines the concept of child labour.

Hahm&Guterman, (2001), deal with parental physical abuse towards their children. It reveals, in a recent study in the Republic of Korea, that parents were questioned about their behaviour towards their children. Two thirds of the parents reported whipping their children and 45% confirmed that they had hit, kicked or beaten them.

J. Goldman, M. K. Salus, D. Wolcott, and K. Y. Kennedy. (2003), have described that physical abuse is characterized by physical injury, such as bruises and fractures that result from punching, beating, kicking, biting, shaking, throwing, stabbing, choking, hitting with a hand, stick, strap, or other object and burning. Although an injury, resulting from physical abuse, is not accidental, the parent or caregiver may not have intended to hurt the child.

LIMITATIONS IN RESEARCH METHODOLOGY:

1. This study, being the largest study of its kind, had little existing information base to build upon. There was an absence of a universal definition of child abuse in the Indian context and little understanding of the extent of the different forms of abuse
2. The study attempted to represent the situation of child abuse in the country including its different forms, each of which is complex in itself. However, these complexities could not be addressed because of limitations of design
3. While the design identified the sample size to be collected in different evidence groups, during data collection the exact number of respondents within the specified evidence group was difficult to identify.

CONSTITUTION OF INDIA³

The Constitution of India recognizes the vulnerable position of children and their right to protection. Following the doctrine of protective discrimination, it guarantees in Article 15 special attention to children through necessary and special laws and policies that safeguard their rights. The right to equality, protection of life and personal liberty and the right against exploitation are enshrined in Articles 14, 15, 15(3), 19(1) (a), 21, 21(A), 23, 24, 39(e) 39(f) and reiterate India's commitment to the protection, safety, security and well-being of all it's people, including children.

Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India;

Article 15: The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them;

Article 15 (3): Nothing in this article shall prevent the State from making any special provision for women and children;

Article 19(1) (a): All citizens shall have the right (a) to freedom of speech and expression;

Article 21: Protection of life and personal liberty-No person shall be deprived of his life or personal liberty except according to procedure established by law;

Article 21A: Free and compulsory education for all children of the age of 6 to 14 years;

Article 23: Prohibition of traffic in human beings and forced labour-(1) Traffic in human beings and beggars and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law;

NATIONAL LEGISLATIONS OF CHILD ABUSE

National legislations for protection of child rights in the country are:

- a) Guardian and Wards Act, 1890
- b) Factories Act ,1954
- c) Hindu Adoption and Maintenance Act, 1956
- d) Probation of offenders Act, 1958

³Lewit EM. (1994). Reported child abuse and neglect. *Future Child*, 4(2):233-42.

- e) Bombay Prevention of Begging Act, 1959
- f) orphanages and other Charitable Homes (Supervision and Control) Act, 1960
- g) Bonded Labour System (Abolition) Act, 1976
- h) Immoral Traffic Prevention Act, 1986

THE INDIAN PENAL CODE

- a) Foeticide (Sections 315 and 316)
- b) Infanticide (Section 315)
- c) Abetment of Suicide: Abetment to commit suicide of minor (Section 305)
- d) Exposure and Abandonment: Crime against children by parents or others to expose or to leave them with the intention of abandonment (Section 317)
- e) Kidnapping and Abduction:
 - Kidnapping for extortion (Section 360)
 - Kidnapping from lawful guardianship (Section 361)
 - Kidnapping for ransom (Section 363 read with Section 384),
- g) Selling of girls for prostitution (Section 372)
- h) Buying of girls for prostitution (Section 373)
- i) Rape (Section 376)
- j) Unnatural Sex (Section 377).

The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 This is an Act for the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders, chromosomal abnormalities or certain congenital malformations or sexlinked disorders, and for the prevention of misuse of such techniques for the purpose of prenatal sex determination leading to female foeticide and for matters connected therewith or incidental thereto.⁴

The Juvenile Justice (Care and Protection of Children) Act, 2000 The Juvenile Justice (Care and Protection of Children) Act, 2000 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 in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under the Act.

Neglect

Child abuse and neglect can be defined as the intentional, non accidental injury, malnutrition of children by parents, caretaker, employers or others including those individuals presenting Government/non Government bodies which may lead to temporary or permanent impairment of their physical, mental, psycho-social development, disability or death (Uma, 1990).

Emotional abuse

Child emotional abuse can be referred to as a pattern of behavioral that impairs a child emotional development or sense of self worth. This may include constant criticism, threats or rejection as well as withholding love, support, or guidance. Emotional maltreatment is rarely manifested in physical signs. A few physical indicators of emotional maltreatment are speech disorders, lag in physical development and failure-to-thrive syndrome.

Emotional - Verbal Abuse

Aggressive or withdrawn behavior. Shying away from physical contact with parents or adults. Afraid to go home.

Physical abuse

Unexplained or repeated injuries such as welts, bruises, or burns. Injuries that are in the shape of an object (belt buckle, electric cord, etc.) Injuries not likely to happen given the age or ability of the child. For example, broken bones in a child too young to walk or climb. Disagreement between the child's and the parent's explanation of the injury. Unreasonable explanation of the injury. obvious neglect of the child, (dirty, undernourished, inappropriate clothes for the weather, lack of medical or dental care).

⁴ National Center for Health Statistics. Vital statistics of the United States. Vol. II. Mortality. Hyattsville, Md. (1994). Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention.

SECTION AMENDMENTS TO THE EARLIER ACT OF 2000

Section 2(a)(a) Inclusion of definition of Adoption: "Adoption" means the process through which the adopted child is permanently separated from his biological parents and becomes the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship

Section 2(d)(i) Child beggars to be included in the definition of children in need of care and protection

Section 10(1) In no case a juvenile in conflict with law shall be placed in a police lockup or lodged in jail

Section 14(2) Since the provision for enquiry to be completed within four months lacks proper implementation, as inquiries are pending before the Boards for a long period of time, it is proposed that the Chief Judicial Magistrate/Chief Metropolitan Magistrate shall review the pendency of cases of the Board every six months, and shall direct the Board to increase the frequency of its sittings or may cause constitution of additional Boards'

Section 15(1) (g) The Juvenile Justice Board can make an order directing the juvenile to be sent to a special home for a maximum period of three years only

Section 16(1) No Juvenile in conflict with law can be put under imprisonment for any term which may extend to imprisonment for life

Section 4 & 29 The State Governments to constitute Juvenile Justice Board and Child Welfare Committee for each district within one year of the Amendment Act coming in to force

Section 33(3) The State Governments may review pending of cases before the Child Welfare Committee in order to ensure speedy completion of enquiry process

Section 34(3) All State Government/voluntary organisations running institutions for a child/juvenile shall be registered under this Act within a period of six months from the date of commencement of the Amendment Act, 2006

Section 41(4) State Government shall recognize one or more of its institutions or voluntary organizations in each district as specialized adoption agencies for the placement of orphans, abandoned or surrendered children for adoption. Children's homes and the institutions run by the State Government or voluntary organizations for children who are orphans, abandoned or surrendered shall ensure that these children are declared free for adoption by the Child Welfare Committee and all such cases shall be referred to the adoption agency in that district for placement of such children in adoption in accordance with guidelines.

Section 62(A) Every State Government shall constitute a Child Protection Unit for the State and, such units for every district, consisting of such officers and other employees as may be appointed by that Government to take up matters relating to children /juveniles with a view to ensure the implementation of this Act.

CONCLUSION

Although child abuse is a pervasive and complex problem with many causes, we should not take a defeatist attitude toward its prevention. Despite the absence of strong evidence to guide our preventive efforts, physicians can do many things to try to prevent abuse. At the very least, showing increased concern for the parents or caregivers and increasing our attempts to enhance their skills as parents or caregivers may help save our most vulnerable patients from the nightmare of abuse and neglect. In sum, rape and sexual abuse of children in India is a large problem without an easy solution. Though the issue persists worldwide, India's culture which traditionally keeps women below men, makes talk of private matters such as such unallowable, and a corrupt and weak legal system when it comes to rape makes the problems even larger. However, the situation could be improved by appropriately educating children and adults on sexual abuse, and educating police and strengthening laws. Further women's empowerment may lead to healthy changes as well.