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INCEST RAPE: HIDDEN SLUR IN INDIAN FAMILIES AND THE ROLE OF CRIMINAL LAW IN ITS PREVENTION

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ABSTRACT

Home is known as the safest place in the world for children and people in a shared household are regarded as the most trusted people. But with the increase in the crimes against women the crime against children in the form of incest rape has come light. Children are falling victims to sexual offences done by their family member, relative, teacher, acquaintance, etc. Being innocent of their age; both boys and girls are abused. Every now and then we hear news of incest which is heinous in itself. Therefore, to curb this menace of sexual offences against children POCSO Act, 2012 has been introduced in which sexual act against children (whether girl or boy) is a cognizable and non-bailable crime. In the present paper we have come across various crimes of incest and the reason for its prevalence has been explained. The various ways to prevent incest has also discussed which every parent (natural and adopting) should follow to save their children. Besides POCSO, incest rape has also been criminalized under IPC and CrPC. Moreover, to address the grievances of incest victims POCSO Act has been playing a pivotal role by enhancing the term of punishment and making them more stricter.

Keywords: Incest, Shared Household, POCSO Act'2012.

“Unfortunately, though, there are parents who bring children into the World, and become their biological parents, but do not care to look after them and their basic needs. Instead, they exploit them, particularly girls, for their selfish, immediate sexual gratification. (I have used the words ‘particularly for girls’, because there are cases of some men sodomising their sons too by force, which I think is, or should also be regarded as a form of rape)”.

Usha Padiyar¹

INTRODUCTION

It is true to say that home is the safest place for children and women and parents and their siblings are the most trusted people in their lives. But over the time, the ice of trust has been broken in the Indian families. Children and young women are falling prey to the web of incest rapes. Several cases of incest rapes are coming into picture. Every now and then we can find the news of incestuous relations and sexual abuse of children, young girls, women and girls out of fear and shame does not reveal the misdeed done by their father, brother, uncle, grandfather etc. Though no religion permits to have sexual relation with their parents or siblings. The sexual relations beyond the norms in a family are known as incestuous relationship which is illegal and offensive in the society and in religious world it is a heinous sin that leads to

worst outcome.² S. 376(2)(f)³, IPC (Amendment) Act, 2013, incest rape has been covered with special provision of punishment and the rape (in case of women being major) has been made punishable under S.376, Indian Penal Code 1860 which has been amended in 2013.⁴ But under Protection of Children from Sexual Offences Act 2012 (POCSO), the crimes of incest are being punished under S.6.

DEFINITION

According to the Merriam Webster dictionary the word “incest” means, sexual intercourse between persons so closely related that they are forbidden by law to marry; also, the crime of engaging in such sexual intercourse.⁵ It has been derived from the Latin word incestum “in” means “not” and “cestum” means “chaste”.⁶ The definition of incest/rape is open ended and include any behavior defined by victim or rape survivor. It’s a rape by person known to victim and its practice has been ignored.

Incest includes any sexual violation or violence (i.e., unwanted touching or sexual behaviours) perpetrated on a child or young person by a person who is in a position of trust

² Surya Prakash, “Incestuous Relations in Silence! The Court is in Session and Thirty Days has September: A Comparative Study”, Language in India, p.299, Vol. 15:7 July 2015. available at <http://www.languageinindia.com/july2015/suryaprakashthirtydaysfinal.pdf>

³ S. 376(2)(f), Indian Penal Code (Amendment) Act, 2013.

⁴ S. 376, Indian Penal Code (Amendment) Act, 2013.

⁵ Source: Merriam-Webster’s Learner’s Dictionary.

⁶ Dictionary .com, available at: <http://www.dictionary.com/browse/incest>

¹ Usha Padiyar, Ramblings and musings of a retired doctor, available at: <https://ushapadiyar.wordpress.com/2013/06/30/incest-and-incestuous-rape-in-india-causes-and-repercussions/>



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in relation to the child or younger person. In this definition, incest is rape.⁷

“Incest means sexual relations between persons who, because of the nature of their ‘kinship’ ties, are prohibited by law or custom from intermarrying, for instance: - Father, uncle, brother et al”.⁸ Paedophilia or Child Sexual abuse (CSA) is the physical or mental violation of a child with sexual intent, usually by an older person who is in some position of trust and/or power vis-à-vis the child.⁹ The term pedophile refers to any adult who habitually seeks the company of a child or children for the gratification of his/her sexual needs.¹⁰

FREQUENT REPORTS OF INCEST RAPES IN THE COUNTRY

Prof. Abdul Kalam asserts that what may be right for one particular society may not be appropriate for another and the incest cases should be seen as individual perversions.¹¹ For instance while amongst most South Indians, a marriage between uncle and niece may not amount to incest, in North India it may grimace the society. But it doesn't mean that incest is not taking place. It is taking place widely inside the four walls where girls are forced to keep their mouth shut if this incident happens to them.

“She is my fruit after all. So, what if I tasted her?” “The justification given by father to the gynecologist for impregnating his daughter. Reported by Bina Jain running ‘Bapu Ghar’, a women’s shelter in Central Delhi from three decades. She also rattled cases where the rapist is the father, brother, uncle, tutor, neighbor, i.e. men known to the victim.¹² According to the National crime records bureau (NCRB) data, 90 percent of the rape cases recorded across country, the perpetrators are men known to the victim.¹³ According to the NCRB 2011 Report, Maharashtra had topped in the number of incest rape cases which accounted for 15.3%.¹⁴ The maximum number of incest-rape victims in Maharashtra are in the age

group of 14-18 years (14 cases), followed by 18-30 years (10 cases) and 10-14 years (nine cases) and the remaining six victims are 10 years and below.¹⁵ Victims between 10-14 years has shown a sharp increase from 99 in 2012 to 135 in 2013. Another incident of incestuous rape widely known as Mira Road Tragedy where father raped his daughter to improve the financial status of the family as advised by a tantrik/astrologer/numerologist. Victim bore the torture in silence because her mother persuaded her that this would rescue the family from financial ruin.¹⁶

Figures submitted by the police to the Delhi high court revealed that of the 1,704 cases of rape registered in the Capital in 2014, 215 were instances of incestuous rape. In 43 of these cases, it was the father who committed the crime and in 27 cases it was the brother.¹⁷ In one case the accused turn out to be the victim’s grandfather and in another 23 rape cases the stepfather was the accused. Fathers-in-law were found involved in eight cases, son-in-law in three cases, and brother-in-law in 74 cases, Tutors or instructors were involved in 24 cases.¹⁸

A shocking story came into picture where two teenagers got raped and abused for four years by their brothers in Mumbai, and were beaten up by their mother when complained for the misdeed¹⁹. The brothers had their mother consent for raping sisters.²⁰ The girls were tortured and had burnt injuries for complaining by their mother.²¹ They were silenced by the mother she also threatened girls of dire consequences.²² Another report from U.P. came where father and brother raped the victim for nine years.²³

PREVALENCE OF INCEST IN INDIAN FAMILIES

Family is the best zone of comfort for children, young girls and women and it is hard to believe that family can be a place of worst betrayal where the most trusted people do heinous crime of sexual abuse upon innocents. “It is a myth in Indian families that children are in safe hands in the company

⁷ Understanding Incest, BRISSC, available at: <http://www.brissc.org.au/understanding-incest.html>

⁸ suchita.shah, Incest Rape cases... Necessitate a serious Introspection, social and legislative augmentation, Experts & Views, 30 January 2011

⁹ Surya Prakash, supra at 300.

¹⁰ Id.

¹¹ Surya Prakash, supra at 300.

¹² Danish, “Rapist in the Family: The Great Indian cover-up”, Jan 10, 2013, available at: <http://www.firstpost.com/india/rapist-in-the-family-the-great-indian-cover-up-583534.html>

¹³ Id.

¹⁴ Little Yadav, “Maharashtra’s Shame: State Tops in Incest Rapes”, 3 Aug 2012, Mumbai, Daily News and Analysis, Mumbai, available at: <http://www.dnaindia.com/mumbai/report-maharashtra-s-shame-state-tops-in-incest-rapes-1723324>

¹⁵ Little Yadav, supra.

¹⁶ Shoma A. Chatterji, “Violated Innocence”, The Sunday Tribune Spectrum, April,12, 2009.

¹⁷ Kumkum Dasgupta, Incest and child abuse, our worst kept secrets, Hindustan Times, 2014

¹⁸ Soibam Rocky Singh, “Incest rapes in Delhi up, fathers among offenders”, Hindustan Times, New Delhi, Nov 19, 2014.

¹⁹ Anonymous, “Mumbai Police arrest two for raping their younger sisters, mother also held”, Express News Service, Mumbai, April 25, 2015.

²⁰ Id.

²¹ Id.

²² Id.

²³ Kamayani, #India – Woman Raped by father, brother for 9 yrs #Vaw #incest #WTFnews, Sep. 5, 2013



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of people they know”²⁴ (parents/close family members, relatives, neighbours, teacher and other known persons). The reports presented by MDCD in 2007, RAHI in 2013 and other government agencies as well as NGOs indicate that in Indian society the relations which were considered very pious and trust worthy are no longer secure now.²⁵ A study by the Family Planning Association of India stated that at least one out of six boys and two out of four girls in India are abused.²⁶ The trust of the victims are influenced by the people they know creating blind faith which devastates their childhood. The “shared household”²⁷, is the primary reason behind incest as India has a system of joint family which is an family arrangement prevalent throughout the Indian subcontinent, particularly in India, consisting of many generations living in the same household, all bound by the common relationship.^{28,29} The abusive parent/relative coerces the victim to participate by using threat, bribes, lies etc.³⁰ The case of 50 year old father in the Mira Road incident is just the tip of a massive iceberg called incestuous rape.³¹ Shoma A. Chatterji, (2009)³² has discussed about “In Bitter Chocolate-Child Sexual Abuse in India” written by journalist Pinki Virani in which the author has mentioned countless stories of boys and girls whose innocence was violated by members of their families. The foremost reason behind the abusers getting away from the mess of incest is that Indian families has tight-knit structure in which fathers and uncles has dominating role where women are submissive and mute witnesses to gross injustice imposing them to shut their mouth which could save the family from shame and it allows the abusers to repeat the crime fearlessly. “Those who blame the West or social media for such incidents are indirectly helping the predators”.³³ Moreover, in conservative societies, as ours, incest is less likely to be reported to the police, because of fear of social disgrace.³⁴ Ignoring to discuss the basic issue like menstruation with the adolescent girl by her mother keeps her secluded to complain about the person she knows who has made unusual sexual advances to her. According to a survey conducted by WHO, between 14% and 56% of the sexual abuse of girls, and up to 25% of the sexual abuse of boys, was

perpetrated by relatives or step parents.³⁵ Children going through incest are likely to suffer physical harm, mental harm or both as a result of such abuse.³⁶ According to one study about 30 percent children are suffered from various type of sexual abuse such as making a child rub private parts, making a child revelation private parts being photographed in the nude etc. (Derby, 2013).³⁷ Incest rape cases are radically increased last three years from 2011-2013 (Singh, 2014).³⁸ RAHI the first and only NGO during 1990s working with incest and child sex abuse titled “Voices from the Silent Zone,” suggests that nearly three quarters of upper and middle class Indian women are abused by a family member more than often an uncle, a cousin or an elder brother.³⁹ Shantanu Datta, 2009⁴⁰ reports as per statements addressed by women’s organizations and activists nearly 95% of the abused are girls and more than 95% abusers are males.

Strengthening implementation of existing laws, improvement in mental health, inculcation of moral values, better education of children, improved policy with accountability (administration, police, judiciary and other departments of government) and awareness among parents are the need of the hour.⁴¹ Prakash, 2015⁴² suggested, the need to realize and accept the reality of incest as part of society happening in every socio-economic group. Spreading awareness at large level, braking silence and paying heed to children will help us to eradicate the evil of incest as it persists due to silence within the family. Parents should not stay strict to their children that they could not share their feelings, secrets and curiosity. Thinking the girl ‘dirty’, ‘untouchable’, lenient rape laws, pathetic policing, pressure upon victim from her family, unwanted girl child, not supporting her, are the various dynamics which as long as prevail, the victim will be expected to not only endure the crime but live-in proximity with the

³⁵ Surya Prakash, supra at 306

³⁶ Phyllis Coleman, Incest: A Proper Definition Reveals the Need for a Different Legal Response, Missouri Law Review, Volume 49, Article 2, 251-286 (1984)

³⁷ Derby, J. 2013. On rape, from silence to justice. The Hindu, 15 June 2013 available at: <http://www.thehindu.com/todays-paper/tpopinion/on-rape-from-silence-to-justice/article4815995.ece>.

³⁸ Singh, S. R. 2014. Incest rapes in Delhi up, fathers among offenders. Hindustan Times 19, Nov, 2014. New Delhi, available at: <http://www.hindustantimes.com/newdelhi/capital-shameincest-rapes-on-rise-in-delhi-fathersamongoffenders/article1-1287696.aspx>.

³⁹ Shantanu Datta, “India’s Hidden Incest Crisis”, 2009, available at: <http://www.efionline.org/thenews/efinews/52child/103indiashiddenincestcrisis>

⁴⁰ Shantanu Datta, supra.

⁴¹ Padhy G. Kumari, Mishra Abhishek, et.al, 2016, “Wake up call to halt the evolving epidemic of sexual offence in India: Urgent need to find out the solutions”, Panacea Journal of Medical Sciences, 6(1): 3-7, 2016

⁴² Surya Prakash, supra.

²⁴ Shoma A. Chatterji, supra.

²⁵ Surya Prakash, supra at 299.

²⁶ Id.

²⁷ Shared household, s.2(f), POCSO Act, 2012, “shared household means a household where the person charged with the offence lives or has lives at any time in a domestic relationship with the child”.

²⁸ Henry Orenstein and Michael Micklin. "The Hindu Joint Family: The Norms and the Numbers". *Pacific Affairs*. 39 (3/4): 314–325.

²⁹ Talwar of HUF (Hindu Undivided Family). Taxpaisa.com.

³⁰ Shoma A. Chatterji, supra.

³¹ Id.

³² Id.

³³ Kumkum Dasgupta, supra.

³⁴ Surya Prakash, supra at 300



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predator, (Danish, 2013).⁴³ The matter becomes a family secret. The truths spoken by women and girls are considered to be less legitimate than truths spoken by men.⁴⁴ Patriarchy has had a monopoly on truth, rationality and justice.⁴⁵ Women victims are stigmatized, rejected and blamed for bringing disgrace to their families. And the men in the garb of ‘family’ or ‘friend’ or ‘neighbour’ never feel guilty.⁴⁶ Victims of rape are outcasts in our society and members of the victims’ families, relatives, and neighbours always keep the victim socially degraded, Venkitakrishnan, Kurien.⁴⁷

ROLE OF IPC AND POCSO ACT IN ADDRESSING THE VICTIM OF INCEST

It is understood that IPC and POCSO are playing a pivotal role in curbing the offences of incest by introducing the rigorous punishment and death sentence. The word ‘rape’ is used under IPC for crime against women. However, children being the most vulnerable section of society, the sexual offence made against them is entitled as “penetrative sexual assault”, which means, penetration at any extent and incest is covered under S.5(n) considered as “aggravated penetrative sexual assault” punishable under S.6. The aim behind including offences of incest under IPC and POCSO Act was to report them which were not originally covered under IPC before 2013. POCSO Act was enforced on 14 November 2012 specifically formulated to deal with the offences of child sexual abuse and pornography. The “Kathua Rape case” in the year 2018 triggered the revolution in Indian Society against child sexual assault which led to POCSO Act amendment. And on 18 July 2019, the Minister of Women and Child Development, Ms. Smriti Irani in Rajya Sabha introduced POCSO (Amendment) Bill 2019. The POCSO (Amendment) Bill has played a key role in which the punishment for sexual assault has been enhanced and few provisions were added relating to child pornography, sexual assault and coercive administering of drug/hormone/chemical substances to child. The minimum punishment for penetrative sexual assault has been enhanced from seven years to ten years which may extend to life imprisonment {S.4(1)}. The addition of S. 4(2) has made the punishment stricter against offender if the offence was done to a child below sixteen years. The insertion of rigorous imprisonment for life or death under S.6(1) is an attempt to tighten the noose of prospective offenders. Moreover, the addition of sub-section 2 of S.6 favors the child victim in the form of compensation. In all,

both IPC and POCSO Act are consolidated enough to report such offences committed against women and child.

HOW CAN THE BLOT OF INCEST BE EXPUNGED FROM INDIAN FAMILIES

Though there is no straight jacket formula to eradicate the incest and shake its roots but it can be curbed at greatest possible level and for we must have:

Strict Laws: The Parliament has already made strict laws relating to rape covering incest under **S. 376 (2) (f)⁴⁸ IPC and S. 6 POCSO Act**, but “with the abysmal conviction rate (about 16%), even strict legislations may not achieve the necessary deterrence”.⁴⁹ There should be fear of law and punishment in the eyes of perpetrator before committing crime of incest. Girls need to be secured and protected against such predators rather than coercing the victim to be silent to preserve the family reputation.⁵⁰

Better Parenting Skills and Moral Education plays vital role in the society. Today both parents are working in families and they don’t give enough time to their children and they compensate it with fulfilling undue desires which creates a communication gap between parents and their children. Children doesn’t get open up to their parents and complain about the incident happened to them. Therefore, proper parenting skills is the need of hour, parents are required to teach their son to respect women. It is essential for the girl children to be trained to differentiate mischievous touch from affectionate touch.⁵¹ Repeated instructions not to get lured by the accused have to be given.⁵²

Improved Education System: The reformation in education system can do wonders in improving the societal outlook. There has always been minimal emphasis given to spiritual, moral and intellectual development. The sex education plays a great role in understanding the curiosity of growing children. Campaigns, special classes, work-shops related to sex education, teaching to differentiate good-touch bad-touch etc. should be organized by schools and colleges at regular intervals. We need to take the responsibility of educating each other.⁵³

Minimization of Alcohol Sale and Consumption: By generating awareness and creating mass movement amongst

⁴³ Danish, supra.

⁴⁴ Suchita Shah, supra.

⁴⁵Danish, supra.

⁴⁶ Id.

⁴⁷ Usha Venkitakrishnan, Sunil George Kurien, Rape Victims in Kerala, Discussion Paper No. 52, Kerala Research Programme on Local Level Development, Centre for Development Studies, Thiruvananthapuram, 5-58

⁴⁸ S. 376(2) (f), Indian Penal Code (Amendment) Act, 2013.

⁴⁹ Himabindu BL, Arora Radhika, Prashanth NS, whose problem is it anyway? Crimes against women in India. Glob Health Action 2014; 7: 23718.

⁵⁰ Suchita Shah, supra.

⁵¹ Padhy G. Kumari, Mishra Abhishek, et.al, supra at 4

⁵² Id.

⁵³ Shoma A. Chatterji, Child Molestation and Rape: Incest and The Conspiracy of Silence, India Together, 2009



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the people against its sale and consumption will definitely help in curbing the problem as it drops “inhibitions and impairing judgment between right and wrong”.⁵⁴

Role of Media and Other Recreational Facilities: Due to rapid urbanization small family trend is increasing which again becomes a major factor in lack of bonding between parents and their children. Children because of loneliness find watching television and browsing internet more interesting which gives them ‘premature exposure to visual material having sexual overtones.’⁵⁵ Therefore to curb the menace of incest it is extremely crucial to restrict erotic scenes and item songs and ban pornographic websites by Censor Board. Because sometimes out of curiosity children and young girls fall into the web of incest with the person they know. However, there is consent by young girl or child but according to the provision given under S. 375, IPC it is an offence, if “it is done with or without her consent when she is under eighteen years of age”.⁵⁶ Educational advertisements from various concerned authorities and organizations in televisions can make both the rural and urban people aware about the evil of incest and will improve the family bonding and help the parents to understand their children.

Services Given by NGOs such as rehabilitation to the victims who have been abandoned by their parents and had been abused by their parents or relatives. The campaigning of various educational programs and awareness through visuals, advertisements, street plays etc. by various agencies and organizations can help in spreading the word against incest. It will also create a mass movement in preventing incest.

CONCLUSION

We cannot deny from the brief discussion that incest has several tragic consequences for the victim and family which also send a wrong message to the society. But it is sad to say that incest has been deeply rooted in some of the Indian families because of the sexual desires of perpetrators and helplessness of victim due to young age etc. According to a research run by Satvinder Kaur, 2014⁵⁷ the major proportion of rape victims belongs to the age group of 19-30 years and women are in more danger from their known persons as compared to unknown persons. Incest is a crime prevalent in India and there should be a separate legislation to handle the crime. However special provision i.e., The Protection of Children from Sexual Offences Act, 2012 has already been framed keeping the child sexual abuse in mind which covers

all kind of sexual abusers be it a stranger or the most trusted person. Child should be defined as minor who is either the natural, surrogate, step or adoptive. The damage is done because of the violation of trust between victim and perpetrator. While the law cannot eradicate this problem completely, but it can be far more responsive to such crimes through current working legislation. The statute covering incest should be made by keeping in mind the child, young girl, women and family.

Besides sex/rape, incest definition should also include bad touch to minor or fondling by adult to sexually arouse the minor or adult. Mandatory rehabilitation centers for victims should be provided by states in various village and cities. Better knowledge through various agencies, NGOs should be imparted by running intervention programs, campaigns, street-plays, nautankis, nukkad-nataks, poster presentation, documentaries, advertisements, radios/TV. Door to door service by concerned authority whenever they get the information of sexual assault. Awareness among children in schools to recognize good touch-bad touch, they should be encouraged to disclose and talk about such incident to their family, friends, neighbors, relatives, teacher or any concerned authority, NGO etc. police investigation and trial processes should be made victim friendly. We need to accept the reality and start believing our children when they complain about their first sexual abuse as not-believing own child shuts the door of openness for children and opens the doors to abusers of repeating the crime. A sophisticated environment absented non-discriminatory treatment with strong social support is required to be created at home, neighbor, workplace, education areas to support the rape victim and look forward. The more that government can do to overcome these problems to strictly implement the judicial and legislative reforms with harsh punishment to accused to set an example so that people afraid to do such crimes and this kind of menace may not be repeated. But only fear of punishment would not be sufficient to prevent the crime as it may also lead to murder of victim to destroy the evidence. Therefore, according to Padhy G. Kumari, Mishra Abhishek, et.al, 2016,⁵⁸ suggests the moral education, role of yoga, meditation in different stages of life to prevent sexual assault, etc. Infrastructure development such as better sewerage, toilet facilities and water supply in rural and squatter areas should be given priority as it is really dangerous to women to go out and seek for toilet in dark and women and young girls are vulnerable during that period. The victim should come forward to report the incidence happened to them and avail the compensation/fund that they are entitled from the State in co-ordination with the Central Government under s.357A, CrPC.⁵⁹

⁵⁴ Id.

⁵⁵ Padhy G. Kumari, Mishra Abhishek, et.al, supra at 5

⁵⁶ S. 375, Indian Penal Code (Amendment) Act, 2013.

⁵⁷ Satvinder Kaur, An Analysis of Lacking Security and Increasing Rape Crime in India, International Research Journal of Social Sciences, Vol. 3(1), 1-7 (2014).

⁵⁸ Padhy G. Kumari, Mishra Abhishek, et.al, supra at 6

⁵⁹ S.357A, Code of Criminal Procedure (Amendment) Act, 2008



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