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PARENTS LIABILITY FOR NEGLIGENCE TOWARDS SEXUAL ABUSE OF A CHILD IN INDIA

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Abstract

“Sarvatirathmayi mata, sarva devmaya pita, matram pitram tastmat sarvayatnen pujyate.”¹³ It means all pilgrimages resides in the mother and father is the form of all the gods, therefore one should worship the parents with utmost efforts and care in every way. One who circumambulates the parents, the earth consisting of the seven islands is circumambulated by him. Even if the sun serves the parents for 100 years in return for the hardships the parents' bear for their children, he cannot be indebted to them.

Here the question arises Is it still justified when parents negligently ignore their child or left him/her in a horde of demons? What are their responsibilities when their child faces sexual abuse what if they choose to neglect it? Will they be considered as best parents still? Will their others efforts can heal the suffering of a child? This article will discuss about the liabilities of parents when they neglect their child's sexual abuse even after complaint by child to them or remain silent despite of having knowledge of offence. Here we will discuss the psychological impact of parents' ignorance on a child and provisions of law against parents/guardians for protecting the interests of children.

KEYWORDS: POCSO Act, child sexual abuse, parent's negligence, juvenile justice, parent's liabilities

GRASP - EDUCATE - EVOLVE

¹³ Padma Purana (Sanskrit text) verse1.50.11



I. INTRODUCTION

India is home to over more than 430 million children which is one of the world's largest child and adolescent populations. Children are future assets for a nation's development. If the asset on which nation's development relies, is broken, how that country will be able to survive in future becomes a challenge. Both judiciary and parliament has worked a lot for safeguarding the interests, fundamental rights and human rights of children. Despite that incidents of sexual offences against children are increasing day by day. As per The Ministry of women and child development Nationwide survey on child abuse, 2007 in which 12,500 children had participated the across 13 states 53% of them had been subjected to one or more forms of sexual abuse among them, the number of boys abused was 52.94%.¹⁴ It is a myth in Indian society that boys cannot be sexually abused, but in reality, sexual abuse and crimes have no gender. It means one in every two children has been victim of sexual abuse. Many of sexual abuses remains unreported due to social taboo and shame thus actual magnitude of such offences is not known. As per the National Family Health Survey (2019-21), 1.5% of young women in age group 18-29 reported having experience of sexual abuse before the age of 18.¹⁵ A child victim is not a statistical number – we are talking of a life that is going to be there for many many years – **Justice Madan B Lokur.**

II. WHAT IS SEXUAL ABUSE?

When a minor is sexually abused, they are forced or tricked into sexual activities. They might not understand the nature of event or even if they are consenting to it, will be considered as sexual abuse to a child. As per the World Health Organisation (WHO) Child Sexual Abuse is defined as the involvement of a child in sexual activity that he or she does not fully understand, is unable to give consent, or for which child is not developmentally prepared

and cannot give consent, or that violates the laws or social taboos of the society.¹⁶

It can happen both online and offline. India reported over 24 lakhs instances of online child sexual abuse between 2017 and 2020. 80% victims were girls below age of 14 years as per the Interpol¹⁷. In most of the cases abusers are the nearest relative, known person, person having trust authority to the child. 94.8% of rape case saw children being raped by someone they knew neighbours were the biggest abusers i.e., 35.8% among them and 10% of the child raped by direct family members and relatives. According to Ministry of Women and Child Development, study conducted in 2007, 488 cases in which victim was raped by grandfathers, brothers, fathers and even sons.¹⁸

Sexual abuse can be of two types –

a) Contact abuse- it includes physical contact with a child

For example- touching private parts of a child or make him/her to do the same, kissing, oral sex etc.

b) Contact-less abuse – child is abused without physical touch

For example – showing pornography, online sexual abuse etc.

Impact on child –

Sexual abuse impacts growth of a child. It can lead to several psychological disorders, sexually transmitted diseases, physical affect. It may be short term, long term or may be lifelong problem. These consequences can create a domino effect moving outward to affect a victim's personal relationships, health, educational success and quality of life.

- Psychological effects- anxiety, post-traumatic stress syndrome, loneliness and prolong depression etc.

¹⁴ Study on Child Abuse: India 2007, Ministry of Women and Child Development available at <https://resourcecentre.savethechildren.net/pdf/4978.pdf/>

¹⁵ Protecting India's children from violence, abuse and exploitation <https://www.unicef.org/india/what-we-do/child-protection>

¹⁶ Child Sexual Abuse: a silent health emergency, WHO available at <https://apps.who.int/iris/bitstream/handle/10665/1878/AFR.RC54.15%20Rev.1.pdf?sequence=1&isAllowed=y>

¹⁷ India reported over 24L online child abuse cases in 2017-20: Interpol published on Nov 17, 2021, Business Standard

¹⁸ Child and Women Abuse Statics in India published on September 8,2016 available at <https://www.savethechildren.in/blog/child-protection/recent-statistics-of-child-abuse>



- Behavioural effects- eating disorders, drug addiction or alcohol etc.
- Interpersonal effects- relationship issues such as trust issues, fear of intimacy, unstable relationships and sexual dysfunction etc.
- Physical effects- health issues such as heart diseases, cancer, teen pregnancy, HIV, STIs, hormonal imbalance etc.

The level of support a survivor receives directly impacts the outcome of sexual abuse. Early treatment and counselling can reduce the after impact. At the same time if parents choose to neglect the suffering of their child, it makes him/her more prone towards sexual abuse. It is only them who can prevent their child's sexual abuse as earliest as possible. Non trusting, listening or ignoring negligently children complain empowers the abuser to be more abusive and this may lead repeated offence over the long time period. It may lead to suicidal thoughts to a victim.

III. PROVISIONS OF LAW THAT CAN MAKE PARENTS LIABLE FOR NEGLECTING CHILD'S SEXUAL ABUSE-

There is no explicit law available in India to sue parents for negligent behaviour towards sexual abuse of a child but below some provision which can make them liable-

A. Section 21 of Protection of Children from Sexual Offences Act, 2012: Punishment for failure to report or record a case-

(1) Any person, who fails to report the commission of an offence under sub-section (1) of section 19 or section 20 or who fails to record such offence under sub-section (2) of section 19 shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

(2) Any person, being in-charge of any company or an institution (by whatever name called) who fails to report the commission of an offence under sub-section (1) of section 19 in respect of a subordinate under his control, shall be punished with imprisonment for a term which may extend to one year and with fine.

(3) The provisions of sub-section (1) shall not apply to a child under this Act.

Section 21 imposes mandatory obligation on everyone to report sexual abuse of children and does not accord any exception even if the information was acquired while performing professional duties or with in confidential relationship. As the main intention behind the enactment of the act is to prevent sexual abuse of a child and to provide him/her proper psychological and medical treatment regarding the same. The words 'any person' does not specify the persons who will be liable for not reporting the case but as matter of practice it applies to everyone including parents.¹⁹

In the case of **Shankar Kisanrao Khade vs State of Maharashtra**²⁰ the Supreme court held that non-reporting of crime in accordance with the provisions of the POCSO Act is a serious offence.

In the case of **State (GOVT. of NCT Delhi) vs Sandeep Madaan**²¹ the High Court observed that mother of the victim did not report the matter to the police, technically liable under section 21 of the POCSO Act.

Thus, it is clear that parents can also be made liable under section 21 of the POCSO for unreported sexual offences despite having knowledge or choose to neglect the same.

B. Section 75 of the juvenile justice act -

Punishment for cruelty to child- **Whoever**, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or **wilfully neglects the child** or causes or procures the child to be assaulted, abandoned, abused, exposed or **neglected** in a manner **likely to cause such child unnecessary mental or physical suffering**, shall be punishable with imprisonment for a term which may be extend

¹⁹ Ministry of Women and Child Development, Model Guidelines under Section 39 of the POCSO Act, 2012 page 73 (2013) available at <https://wcd.nic.in/sites/default/files/POCSO-ModelGuidelines.pdf>

²⁰ (2009) 6 SCC 498

²¹ Delhi High Court, CRL.L.P. 353/2019, para 9



to three years or with fine of one lakh rupees or with both:

Sc Narang vs State (Nct of Delhi) & Anr²² – the Delhi High Court observed the Section 75 JJ Act itself shows that the person to be responsible should be either in actual charge of or control over the child, followed by the said person assaulting, abandoning, abusing or exposing or wilfully neglecting the child or causing or procuring the child to be assaulted, abandoned, abused, exposed or neglected in any manner, likely to cause such child unnecessary mental and physical suffering.

Thus, parents can be made liable under this section for wilfully neglecting the child's sufferings.

Analysis:

By applying the same principle parents can be made liable for not reporting the crime or taking necessary steps to protect the child, as their non action can lead to series of the sexual offences which can seriously hamper the mental and physical growth of a child. Parents are the primary protector of the child, whenever a child feel threatened, he relies on parents for their support but if parents choose to ignore, it disheartened the child. Ignorance of sexual abuse may create the belief that 'nothing will happen' in the mind of an offender. It may also boost the confidence of offender to commit more such offences.

If the parent in such a situation had taken some action or even scold the wrongdoer, then child may be safe. Therefore, it is true that parents are also liable for abusing the child as they failed to fulfil their duty as a parent to protect the child.

IV. CHALLENGES FOR MAKING PARENTS LIABLE –

➤ It is not possible to put parents in jail, it will jeopardise the child's care.

- It is against the integrity of the family structure.
- It may make the child more vulnerable if that offence is committed by family members.
- If the guardian is himself abuser makes it difficult for spouse to report the case and maintain harmony in personal life.
- Parents maybe revengeful towards for punishment served upon them.

V. SUGGESTIONS

There can be two ways to reduce such neglect-

- a) Public engagement and educational programs: by using social media sites, awareness programs, community-based efforts to change the way people thinks, or to create awareness among parents/guardian to make them understand the emotional breakdown of a child in such cases and awareness program via mass level broadcasting prevention methods for parents against child sexual abuse or what should one do after knowing such incidences.
- b) By legislation enactment: Parliament by making explicit guidelines or law for guardians/parents to act in accordance when sexual abuse of their child is known to them. Imprisonment is not a good option to penalise parents because it will jeopardise the safety of children.

Financial punishment by imposing fines, community service, serving written last warning by the authority and to check over them again and again by NGOs can also reduce the negligent attitude of parents. Imprisonment of parents must be the last resort in extremely grievous offences.

VI. CONCLUSION

Children are future assets of any nation they must be protected at any cost. Despite the challenges, agony of a child cannot be put at

²²Delhi High Court Order, dated 23 February 2021



stake in the name of a family integrity. If the parents do not listen to their child to whom he/she will go. It's like a feeling of abandonment by parents and soul deadening for a child being a victim of sexual abuse along with ignorance from parents in such a critical condition. A child kept yelling ma/papa do listen me once I'm not lying and parents keep ignoring the facts. It kills the inner belief system of child for lifelong. Parents are duty bound to take care of a child in each and every perspective.

Every time it is not necessary to water the plant, put pesticides/insecticides in them but it is necessary to look why the leaves are drying, why flower never blooms on it.

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