

Research Article

CHILD SEXUAL ABUSE IN INSTITUTIONALIZED SETTINGS

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ABSTRACT

The alarming prevalence of Child Sexual Abuse (CSA) across the globe demands scrutinization of the present mechanisms in place to protect children from abuse. The United Nations Convention on the Rights of the Child acknowledges that the family is the natural environment for the development and well-being of children. However, historically, children throughout South Asia have suffered homelessness, neglect and deprivation due to factors such as broken homes, lack of financial resources, physical and sexual abuse, and the age-old tradition of migrating parents in search of a better life, leaving children in the care of others often unable or unwilling to provide long-term care and attention. With such numbers, child care during the last decade has gained its due attention. A specific set of resolutions were placed by the United Nations and various Governments for alternative care, to address protection and shelter for children whose rights were being violated. Yet, disturbing malpractices and absence of monitoring and evaluation were discovered across child care institutions in South Asian nations including India, Nepal and Afghanistan, with reports confirming CSA. To ensure protection of children from institutional abuse, there is an urgent need to review the existing laws in terms of their efficacy to protect children and feasibility in implementation. The present study suggests possible solutions, by trying to understand standardized and effective models of care systems and mechanisms. This will further help us delve into areas where law and policies in South Asia can be compared with regards to alternative care; to understand gaps, strengths, weaknesses, opportunities and threats, and thereby generating policy suggestions for alternative care.

Keywords: Alternative care, Child sexual abuse, India, South Asia, Policy reforms, Institutional care, Monitoring

INTRODUCTION

The World Health Organization (2014) estimated that 73 million boys and 150 million girls under the age of 18 years experienced some form of sexual violence. Safety and protection of children are evidently of paramount importance. Given the alarming

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prevalence of Child Sexual Abuse (CSA), the present mechanisms in place to protect children from abuse must be reviewed. The United Nations Convention on the Rights of the Child (1989) acknowledges that the family is the natural environment for the development and well-being of children. However, historically, children throughout South Asia have suffered numerous adversities depriving them of familial care, leaving children in the care of others often unable or unwilling to provide long-term care and attention. How does the family environment measure against institutional environments; Does the latter provide better protective mechanisms against child abuse?

Research in Sri Lanka found that over 90% of victims reported that the perpetrators were individuals known to them (Colombage *et al.*, 2005). In several cases, it is seen that Courts hand over custody of abused victims to the parent or family even if the abuser was in the family, believing that familial care is the best available care. Some of the reasons for this decision are that no child should be deprived of familial care, should the same be available, notwithstanding that the abuser of that child resides in the same environment. Government homes which are homes solely funded by the State or Central Government are badly over crowded, lack sufficient funding and are at times, in a state of disrepair. Families can offer “better” care especially in respect of the individual attention given to a child.

Shifting focus to alternative care, with a population of 23.6 million Out-of-Home Care children in India (Government of India, 2018), a substantial population of children live in institutional care settings. Recently, the situation of institutional care in India was exposed, where a Government investigation revealed that out of 9,589 child care institutions across the country, 1,575 minors, were victims of sexual abuse, and 189 were victims of pornography (PTI, 2018).

TYPES OF ABUSE IN INSTITUTIONAL CARE

Abuse of children in institutions has been found to occur as follows:

1. Authorities in charge of the institution are directly responsible for the abuse. Most of the cases being highlighted in the media of late are examples of such abuse. Perpetrators are trusted adults who have been invested with the responsibility of protecting the children (Mohanty, 2018).
2. The second type is where the authorities in charge of the institution were indirectly involved in the abuse. In this kind of situation, either the children are taken out of the institution to be abused or outsiders are let into the institution, where they abuse children (Dua, 2018).

3. The third type of situation of institutionalized abuse is the kind where children are abused by other children. This type of abuse may be less reported (Boyd and Bromfield, 2006).

LEGAL PROVISIONS THAT PROTECT CHILDREN IN INSTITUTIONAL CARE

The immediate laws that address protection of children from abuse within institutions are the Juvenile Justice Act 2015 and the Juvenile Justice (Model) Rules 2016. A detailed review of these Rules shows that while there are some provisions in place to address living conditions in institutions, there are no specific provisions to address abuse or crimes of such sort within the institution.

The other law that seeks to address this is the Protection of Children from Sexual Offences Act (POCSO) 2012. This Act, for the first time recognized sexual assault, as being acts of a sexual nature not amounting to penetrative sexual assault (rape), as punishable offences. POCSO has a section on aggravated offences, where it recognizes the special role anyone in authority has on a child and severely criminalizes any offences perpetrated by such persons in authority on children. In March 2018, while addressing a petition, the Supreme Court had directed High Courts to collate data on POCSO cases. On reviewing the data collected, it became evident that not only was there severe pendency of such cases but there was a clear need to address several issues around POCSO cases. Hence, on May 01, 2018, the Supreme Court issued guidelines to the High Courts of India regarding the trials of sexual assault cases involving minors.

The Criminal Law (Amendment) Act 2018 makes amendments to the Indian Penal Code 1860, the Criminal Procedure Code 1973, the Indian Evidence Act 1872 and the Protection of Children from Sexual Offences Act 2012, creating a deterrence to committing sexual offences against children in the first place. One of the biggest critiques of the amendment in the Indian Penal Code 1860 is that it makes the same the punishment for rape and aggravated form of rape – a minimum of 10 years. The other critique is that while the new provision regarding the rape of women below 16 years and 12 years of age enhances the minimum sentence, it removes the discretion. Third, the amendment has increased the quantum of punishment in cases of aggravated offences. The minimum punishment for penetrative sexual assault has been increased from 7 to 10 years and the minimum punishment for aggravated penetrative sexual assault has been increased from 10 years to life imprisonment to 20 years to imprisonment for the remainder of one's natural life or to death. One must appreciate that through these amendments the Government is attempting to address a gap in

the existing legal system. However, the other question to consider is whether such changes in punishment are, by themselves, sufficient solutions to address this social problem. An argument to be made here is regarding the enhancement of punishments. Experts in the law argue about the deterrent effect of enhanced punishments. Bangladesh is a case in point where despite enhanced punishments, there seem to be no convictions. In India, the Criminal Amendment Act 2018, which makes the punishment mandatory, then begs the question about the possible negative impact on convictions, as it will need a higher burden of proof.

The Indian Government on December 28, 2018, approved amendments to the POCSO Act, bringing about a few changes to address lacunae in the existing Act. This Bill, to be introduced in the Parliament during the winter session, even if not passed, will survive the present term of the Government. Some of the main features of this Bill include, for the first time, a special category of offences to address sexual abuse perpetuated by relatives or custodians of children and bringing offences perpetuated against boys on par with those against girls.

DOES THE CRIMINAL JUSTICE SYSTEM SUFFICIENTLY ADDRESS SEXUAL ABUSE IN INSTITUTIONS?

There is no research to suggest that the Criminal Justice System directly contributes to preventing or supporting sexual abuse in institutions. However, the rampant committing of sexual offences in institutions belies that perpetrators believe that they will get away with committing the crime. To understand this further, one needs to study the criminal justice system.

A discussion of this kind begins with the registering of an offence and investigation. Our present system requires the victim to narrate his or her ordeal several times to different individuals from the investigating officers to the Child Welfare Committee and then again at the time of testimony. Presently, little training in recording statements in a child friendly manner results in the repeated traumatization, ultimately resulting in the victim's distressful testimony.

Another factor is that there is almost no protection provided to children who are victims of such abuse. Children who have been abused in institutionalized settings have no faith in such settings and have been completely violated of their rights to care and protection in the system at large. No standard protocols exist to ensure proper care, support, protection and intervention for children who have experienced CSA in care institutes.

The Supreme Court of India advocates the creation of Child Friendly Courts and several states have begun to implement the same. Such courts are still taking time to

come into existence. It is believed that child friendly courts will better allow children to testify to the abuse they have experienced. Often, testimony of children is the only direct evidence in cases where offences have been committed in institutions, and better testimonies from children imply higher chances of convictions.

RECOMMENDATIONS

The reality is that there are millions of children growing up in non-family settings; from living on the streets to living in institutionalized care. These children are far more exposed to abuse and exploitation. When children are exposed to similar risks in institutions that are meant to protect them, then that is a matter of grave concern.

Child abuse in institutional settings could be addressed in the following manner:

- 1. Investment:** One possible solution is the infusion of investment into our institutional care. Children should feel that their situation is improved when they are placed into institutional care. While an infusion of finance into institutional care by itself is no guarantee against CSA, it does lend to the creation of better opportunities for awareness and better facilities that allow for increased safety mechanisms. It can also facilitate improved monitoring and evaluation practices.
- 2. Increased care mechanisms:** The experience of NGOs working with abused victims is that they undergo severe trauma and this leads to several different reactions and behavioural patterns. Victims need both the time and the space to recover from such trauma, before they can be rehabilitated and reintroduced to society. Victims, who have suffered abuse within institutionalized settings, need far more support, as their faith in the very institutions meant to protect them has first to be restored. Thus, there is an acute need for care mechanisms to address such situations, the least of which are certified mental health professionals, health-care workers and general support staff.
- 3. Involvement of community:** The community can provide support in terms of presence and understanding, and create a nurturing and wholesome environment to respond to and address the trauma of separation from family.
- 4. Involvement of children in decision making:** Any child-focused system must incorporate the involvement of children in decision making. Some examples include maintaining suggestion boxes or having children's councils. It is important to allow for spaces and forums for children to be able to express themselves. This empowers children to report and make suggestions, which could help in preventing institutional abuse.

- 5. Multi-stakeholder involvement:** A number of different stakeholders play an important role in institutional care. It is important that there is constant communication between these stakeholders. At the policy level, coordination and networking via technical working groups or peer networks (which include government agencies, child-focused NGOs, private sector and media) is a critical component for sharing, learning and encouraging scale up of innovative and new practices and policies, such as foster care. Experience in CEE/CIS (Central and Eastern European / Commonwealth of Independent States) countries (Georgia, Serbia, Croatia), Africa (Namibia), Latin America (Brazil) and Asia (Indonesia) illustrate the positive role that working groups and committees can play (Palayret *et al.*, 2012).

CONCLUSION

Institutional care needs constant monitoring and review. Monitoring mechanisms also play a part in eliminating child abuse in institutional care. While the Juvenile Justice Committees can play the part of monitoring, it is far more advisable to have existing institutional mechanisms like the National Commission for the Protection of Child Rights and the State Commissions for the Protection of Child Rights, to carry out effective monitoring.

Ridding institutional care of child abuse needs the protection of Law but to be effective it must be implemented in letter and spirit. Only too often, our system responds to incidents of abuse with knee-jerk reactions that turn out to be counter-productive. Measures taken need to be well thought out and need to be more preventive than reactive. This is done by equipping stakeholders with the right knowledge and skills, and helping them provide improved care services to children; involving children in their own protection and enabling grass-root efforts to inform Governments in shaping respective policies.

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