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CHILD ABUSE IN REFERENCE TO DOMESTIC VIOLENCE AND INCEST VIOLENCE

By - VIDUSHI AGARWAL & ANJU ANIL

“There can be no keener revelation of a society’s soul than the way in which it treats its children.”

- Nelson Mandela

The correlation between the sexual abuse of children and physical abuse in the home sheds light on the underlying problem that indicates the presence of both types of violence in intra-familial space. Domestic violence and child sexual abuse have, historically speaking, been the subject of a significant amount of research; however, this research has been carried out in distinct fields, and the two topics have, for the most part, been considered to be unrelated phenomena. In this article, we will examine how and why both forms of violence are prevalent in families and impact children.

Domestic Violence

Domestic abuse breaches the basic rights to life and liberty enshrined in the Indian Constitution in addition to being illegal. Hon. Justice A.K. Patnaik of the Supreme Court of India *in Lalita Kumari v. Govt. of U.P.*¹.

The legal definition of domestic violence includes a variety of actions that harm or damage a woman, including physical assault, sexual abuse, verbal and emotional abuse, economic abuse, and other actions. Women who live with their spouses in domestic relationships but are not legally married are likewise protected by the PWDVA²

Children suffer injury, making them both the victims of the crime and those least able to defend themselves. The fundamental rights of children are acknowledged and safeguarded by the Convention on the Rights of the Child, 1990.³ Along with immediate effects like worry, anxiety, and panic, there may also be long-term ones like PTSD (Post Traumatic Disorder). As an alternative, parents could make them violate the law as kids in order to keep them alive. Furthermore, childhood exposure to domestic violence might make them aggressive adults who abuse their partners.

¹ Lalita Kumari v. Govt. of U.P., (2014) 2 SCC 1.

² Section 3 in The Protection of Women from Domestic Violence Act, 2005

³ Convention on the Rights of the Child, 1990.

Incest

According to the Oxford Dictionary of Public Health- “sexual intimacy between close blood relations; i.e., siblings, parent and child, uncle-niece, aunt-nephew”.⁴ The exploitation of a child sexually by a person within the legally defined prohibited degrees of relationship, or the relations by affinity and consanguinity, is considered child sexual abuse.⁵ It is a subcategory of child sexual abuse which is a broader category including both intra- and extra-familial offenders.⁶

Sexual abuse of children can be a form of domestic violence in which mothers are victimised through the use of their own children. (*Kelly, 1994*).

Sexual and physical abuse of children may be more common in households where there is domestic violence. Multiple studies have found that sexual abuse of children and domestic violence frequently co-occur in the same homes.

The abuse of power, whether intergenerational or sex-based, is at the heart of the dynamics of both types of family violence. Feminist analyses of family violence consider the dynamics of power relationships within the home and contend that patriarchal dominance is a key feature of abusive households.

Intimate partner violence can manifest in a variety of ways, including but not limited to physical, sexual, verbal, financial, and emotional abuse. Male abusers use these abusive and manipulative tactics to keep the power and control they have over their female victims. Sexual abuse of children is also a matter of authority and dominance. Gender bias is not limited to sexual assault on minors. The vast majority of victims are women and children, while the vast majority of offenders are men.

⁴ Miquel Porta and John M. Last, *The Oxford Dictionary of Public Health* (Oxford University Press, 2nd edn., 2018)

⁵ John M. Macdonald, “Rape: Offenders and their victims”, p. 192.

⁶ Yildirim, Ali, Erdal Ozer, Hasan Bozkurt, Sait Ozsoy, Ozgur Enginyurt, Durmus Evcuman, Riza Yilmaz, and Yunus E. Kuyucu. 2014. Evaluation of social and demographic characteristics of incest cases in a university hospital in Turkey. *Medical Science Monitor: International Medical Journal of Experimental and Clinical Research* 20: 693–97.

TYPES OF CHILD ABUSE:

Child abuse may manifest itself in a variety of ways, so it's critical for children to grow up in a secure, orderly household with clear norms and the confidence that their parents' priorities keeping them safe

Physical abuse, verbal abuse, neglect, and emotional desertion are all examples of abuse. A slap, a harsh remark, deafening silence, or not knowing if there will be food on the table are all instances of how anger may be expressed. Children who have been abused may also feel abandoned and alone.

According to one research, the primary reasons for physical abuse were children defying their parents, parent-child conflicts, poor academic achievement, time spent away from home, unwillingness to pay parents money, and participating in deviant activities such as shoplifting and smoking and sexual incestual exploitation.⁷

CHILD NEGLECT

When there is a pattern of disregarding a kid's fundamental requirements, such as food, clothes, cleanliness, and supervision, it is considered child abuse. It may be difficult to notice since parents may have physical or mental health difficulties that prohibit them from giving sufficient care and often such children are subjected to sexual incestual abuse.

FACTORS CONTRIBUTING TO DOMESTIC VIOLENCE AND INCEST AMONG CHILDREN

Since the beginning of time, women have been the most frequent victims of domestic violence, and violence against women is still a problem today. No of their age, religion, caste, or social standing, women from all socioeconomic backgrounds experience domestic violence.

However, domestic violence does not only affect women; it may also affect men, kids, and the elderly. Domestic abuse affects people of all ages and socioeconomic backgrounds

Perversion & Lust

The inability to control sexual impulses and the lust overwhelming the person to the point of losing the sense of right and wrong is the primary cause of such sexually abusive or incestuous behaviour, though there are other causes as well. Adults who are sexually hypersexualized have

⁷ American Psychological Association. (2019). Physical abuse

a sexual appetite for children and abuse them. As, discussed earlier the common element that binds both domestic violence and child sexual are - patriarchy, power, and penetration which have all been shown to play a significant role in fueling the desire to sexually and physically abuse children.⁸

Mental Retardation & Substance or Alcohol Addiction

Incestuous behaviour is fueled by a number of factors, including mental instability and substance abuse. Those who were sexually abused as children are more likely to perpetrate such acts themselves. The combination of perversion and an unconscious or repressed mental state drives such people to commit the heinous crime.

THE CHALLENGES FACED IN REPORTING CASES BY CHILD

Barriers to Disclosure

There are many disclosure barriers, which can make estimating the scale of the problem in any society extremely difficult even before we get to the difficulties of measurement. Indeed, there are more obstacles than facilitators when it comes to reporting. The true prevalence of CSA (and by extension, incest) and Child Abuse due to Domestic Violence, is likely much higher than reported because of the traumatic nature of its disclosure. The more typical scenario involves the secret being kept. limited support for the discloser, fear of negative consequences, and negative emotions like shame, guilt, and self-blame were identified in a systematic review as significant obstacles.

The second issue is the difficulty in sharing information. As mentioned above, this kind of thing happens in families where the secret may be kept even if told to just one member, the child has no safe place to testify about the occurrence of abuse when the parents are conflicted by the reoccurrence of domestic violence and at times when the families are in conflict and as a result Child rape is rampant in India, but precise statistics are unavailable. However, after reviewing one hundred reported cases, researchers discovered that the majority of victims were younger than fourteen.

IMPACT OF DOMESTIC VIOLENCE AND INCEST ON CHILD

Scholar Frank Putnam has stated that- incest has detrimental effects on mental and physical health as well as the capacity for healthy adult relationships that can last for the rest of a person's

⁸ Pinki Virani, "Bitter Chocolate", Penguin Books India, Mumbai, 2000, p.67.



life.⁹ Childhood trauma has long-lasting consequences, including altered health and behaviour patterns in adulthood. Those who suffered childhood trauma are more likely to have poor dietary habits, succumb to depression, and engage in risky behaviours that put their health at peril as adults.

Child abuse refers to the mistreatment and neglect of children. According to the World Health Organisation (WHO), "Childhood abuse and neglect are often classified into four kinds, including:¹⁰

- i. Physical abuse
- ii. Sexual abuse
- iii. Emotional/psychological abuse
- iv. Neglect

Domestic violence may have a considerable impact on child maltreatment, both directly and indirectly. According to one research, children who see domestic violence in their families are more likely to experience abuse or neglect themselves. According to studies, up to 50% of children who witness domestic violence also endure abuse or neglect.¹¹

Children who were severely abused (verbally, physically, emotionally, or sexually) or who lived with drug or alcohol abusers were found to have a 50% higher risk of developing cardiovascular disease than adults. Child abuse and domestic violence are two interconnected problems that have major consequences for individuals, families, and society as a whole. kid abuse is defined as any physical, emotional, or sexual maltreatment or neglect of a kid. Domestic violence, on the other hand, refers to any violent actions performed by intimate partners, such as physical assault, sexual assault, emotional abuse, and financial abuse.

In addition, incest frequently results in traumatic bonding, a type of relationship in which one partner mistreats the other by means of abuse, threats, intimidation, beatings, humiliations, and harassment, but also provides the other with attention, affection, and a sense of belonging. The abuser's mistreatment comes to be seen by the victim as a perverted expression of concern.

⁹ Putnam, Frank W. 2003. Ten-year research update review: Child sexual abuse. *Journal of the American Academy of Child & Adolescent Psychiatry* 42: 269–78.

¹⁰ Study on Child Abuse 2007, Ministry of Women and Child Development, Government of India, Volume 5, Issue 1, First published July 2007

¹¹ Edleson, J. L. (1999). Children's witnessing of adult domestic violence. *Journal of Interpersonal Violence*, 14(8), 839-870.

Incest, like other severe forms of childhood trauma, has the potential to set off a cascade of physiological, psychological, and social effects that can last a lifetime. The effects include both psychopathology and maladaptive coping strategies. Survival strategies that work within an incestuous family often backfire in other contexts.

GAPS IN LEGISLATIONS DEALING WITH DOMESTIC VIOLENCE & INCESTUOUS SEXUAL ABUSE OF CHILDREN

India's first comprehensive law addressing child sexual abuse is the Protection of Children from Sexual Offences (POCSO) Act, 2012. It's a strict law with new enhancements in 2019 including harsher minimum sentences and the possibility of the death penalty. The Act and subsequent Supreme Court rulings provide detailed instructions on how to examine victims and document evidence in a way that is as minimally distressing as possible.

It is suggested that courts adopt a more "child-friendly atmosphere," that children be protected from "aggressive questioning," that no contact be made between the child and the accused while evidence is being recorded, and that in-camera trials be made available. However, these standards are not always adhered to. Recent cases have shown that only in major cities like Delhi, Mumbai, and Bengaluru have any real improvements been made in terms of supporting survivors and placing them at the centre of the judicial process. Periodically, criminal laws are made stricter in order to punish offenders, but measures for victim welfare are implemented at a snail's pace.

All survivors of sexual violence face difficulties due to a lack of support systems, but the difficulties are compounded for child victims of incest or familial sex abuse and rape. As a result of the social stigma associated with a sexual assault case and the financial loss that may result if the accused is the family's breadwinner, children whose abusers engage in CSA often find themselves shunned by their own families.

Any further trauma caused by a legal system unprepared to deal with child victims of incest could be the final nail in the coffin.

However, prosecution is frequently abandoned because the minor victims become hostile.

The Procedural Mayhem

The National Crime Records Bureau (NCRB) reports that in 97% of POCSO cases, the perpetrators are already known to be victims. In 9% of all reported crimes, family members are the primary suspects.

An "aggravated" offence with harsher penalties is created by POCSO when a child is sexually assaulted by blood, adopted, or guardian relative or by someone living in the same domestic household as the victim. Aggravated penetrative sexual assault carries a mandatory minimum sentence of 20 years in prison and may result in life in prison or the death penalty. A person found guilty of aggravated sexual assault faces a minimum of five and a maximum of seven years in prison.

This isn't the only problem with prosecuting incest cases, though. Inconsistent access to services for child victims, especially those without a safe home life, has a negative impact on both the child and the legal system.

The issue of "re-victimization"

After receiving a POCSO complaint, the law mandates multiple parties to take action, beginning with the police. Within 24 hours of receiving such information, the police must bring the child before a CWC if they have a reasonable apprehension that the offender lives in the same or shared household as the victim. This is required by the POCSO Rules of 2020.

In incest cases, the CWC must decide within three days if the child should be removed from their family or shared household and placed in a children's home or shelter home. POCSO rules allow the CWC to provide a "support person" to help the child during the investigation and trial. A support person is a child rights or child protection worker, according to POCSO. An official of a children's home or shelter home with custody of the child or a DCPU personnel can also be a support person.

Up until the conclusion of the trial, the CWC has the authority to ask support persons for monthly reports concerning the child's well-being, care, and progress toward recovery from traumatic experiences, as well as the family situation and other related topics. Additionally, it is the responsibility of the CWC to ensure that the child's education is either restarted or carried on.

However, in accordance with Section 164 of the Code of Criminal Procedure, support persons are not permitted to be present until after the initial report of the crime, the victim's medical examination, and the recording of the victim's statement (CrPC). It is possible that the child

will be "re-victimized" if they do not receive this kind of support during the earlier stages of the process, such as when they are dealing with the police or getting medical examinations, etc.

There has been growing awareness in recent years of the impact and consequences of domestic abuse, especially the relationship between domestic abuse and mental health. To appreciate the nature of trauma caused by domestic abuse, professionals need to understand its complex nature and the psychobiological impact of repeated exposure to control and terror.¹²

CONCLUSION

Children are not just objects who belong to their parents and for whom decisions are made, or adults in training. Rather, they are human beings and individuals with their own rights. The Convention says childhood is separate from adulthood, and lasts until 18; it is a special, protected time, in which children must be allowed to grow, learn, play, develop and flourish with dignity.¹³ As a result, children who rely on their parents, guardians, or the state for safety are disproportionately subjected to acts of abuse that leave lasting psychological, social, and physiological scars.

Incest and Domestic Violence hamper the development of the child. There is a long history of minimization and denial of both child sexual abuse and domestic violence, particularly when it occurs within the family. This has been the case for a significant amount of time. The "invisibility" of family violence within both the legal and welfare systems is a direct result of this minimization, which occurs in both systems.

The impact on children of domestic violence and incestual abuse has received increasing attention, but awareness of the problem has not always translated into public action.¹⁴

As a direct consequence of this, the legal and welfare systems have failed to make the protection of children a top priority.

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