

CHILD MOLESTATION AND RAPE

Incest and the conspiracy of silence

Social attitudes that put family 'honour' above the damage caused to children keep incest from being properly addressed. A recent surge in reports of incest is shedding more light on the difficulties in overcoming this. Shoma Chatterji reports.

30 MAYI 2009 - The Mira Road expose of a father's sexual abuse of his daughter for nine years has opened a Pandora's box of similar cases of incest across the country. Increasingly, this is also shedding light on the legal system's shortcomings in dealing with incest, as well as on social attitudes that hinder effective solutions.

The Indian legal statutes do not contain any specific provisions against incest. Many developed countries such as Britain, the US and Germany have strong laws against incest. UK, which made incest punishable in 1908, sets a prison term of 12 years for the offence. Punishment in the US varies from one state to another; extending to 20 years in the state of Massachusetts, while in Hawaii it is five years. Some countries have, however, abolished or diluted their laws against incest - this is invariably because many of them viewed sexual partnerships between closely related persons - even adults - as incestuous, and in recent years there has been some liberalisation of their views on this. Incest involving minors, on the other hand, is uniformly frowned upon in the developed world (and is also the specific focus of this article).

As everywhere else in the world, in India too incestuous conduct is almost never consensual. Instead, it is rooted in physical force as well as familiar and other power which the abuser uses to pressure his victim. Nor is child abuse by parents and other elders confined to a single political ideology or to one economic system. It transcends barriers of age, class, language, caste, community, sex and even family. The only commonality is power, which triggers and feeds incest in families. This power is multiplied several times over when the relationship between the abuser and the abused is of father and daughter. Disbelief, denial and cover-up to 'preserve the family reputation' are often then placed above the interests of the child and its abuse.

Some years ago, in a popular late-night legal-awareness television serial *Bhramar*, one episode explored the true case of a father impregnating his 14-year-old daughter after abusing her sexually for months together while the mother was forced to remain silent. For fear of a public scandal, the parents decided to poison the girl. The paternal grandfather, the sole witness to the murder, complained to the police. But the perpetrator went scot-free on the argument that he had other children to care for, and if he were to go to prison, they would be orphaned! When the criminal was set free, the older man left the home and was never seen again.

A report from RAHI, (Recovering and Healing from Incest), a Delhi-based NGO working with child sexual abuse titled *Voices from the Silent Zone* suggests that nearly three-quarters of upper and middle class Indian girls are abused by a family member - often by an uncle, a cousin or an elder brother. Anuja Gupta, founder-executive director of RAHI says, "Not legislating a strict punishment amounts to the law reiterating that it is not a serious issue. If stringent punishment were made legal, then it has to be accepted that incest exists. But we don't even want to admit that. It is treated more like an aberration so there is no harsh punishment. This is true across the world and it is a terrible truth to own up to."

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A 1985 study by the Tata Institute of Social Sciences revealed that one out of three girls and one out of 10 boys had been sexually abused as a child. Fifty per cent of child sexual abuse happens at home. In 1996, Samvada, a Bangalore-based NGO, conducted a study among 348 girls. 15 per cent were used for masturbation mostly by male relatives when they were less than 10 years old. Seventy-five per cent of the abusers were adult family members.

Vidya Reddy, who runs Tulir-CPHCSA (Centre for Prevention and Healing of Child Sexual Abuse) in Chennai, says, "Most people imagine abusers to be shadowy and frightening strangers with a psychiatric disorder. In fact, often an abuser is a 'regular' person who leads a 'routine' life and is known to the victim, but has no inhibition or qualms over having sex with children." This was proved to be true in the Mira Road case. Neighbours and local residents who know Chauhan well were shocked because he appeared to be a decent and well-behaved person.

Women's rights activist and lawyer Flavia Agnes opines, "In most cases of sexual abuse, it is the father who is responsible for the heinous crime. He is the custodian of the child. So a case of custodial rape should also look at the father as a suspect. Somewhere, we do not want to interfere with our family values and choose to keep quiet about such cases." The tight-knit family structure, the domineering role of the fathers and uncles, the submissiveness of women who are mute witnesses to gross injustice and the ingrained tendency not to allow "family shame" to be exposed whatever the cost, are factors that help the abusers get away with it all.

But there are those who disagree with this view. One expert with a contrary view is Mohammad Abdul Kalam, professor of Anthropology at the University of Madras who says that cases of incest should be seen as individual perversions and believes that stricter laws would not bring down incest in Indian society.

Legal lacuna

What Ramalingam does not say is that the same father cannot be held under the law for anything called 'incest.' Indian laws do not even recognize incest as a crime, though rape and sexual abuse, especially of minors, are serious crimes relating to incest. The Delhi High Court is considering framing guidelines for conducting investigation and prosecution in crimes relating to incest, in the wake of several incest cases surfacing at present. But Ramalingam believes that the existing laws would suffice to punish the perpetrators of crimes like incest and CSA (criminal sexual assault).

Child rights activists have long been demanding a more clearly defined law to prosecute perpetrators of incest. In 1983, the law against rape was amended to include policemen, hospital and prison staff who abused women in their custody which amounted to custodial rape. But it did not include sexually abusive fathers, whose sexual abuse of a daughter is the worst form of custodial rape.

Legal Loopholes

- There is no central law on child abuse.
- Laws dealing with sexual offences do not specifically address child sexual abuse.
- The India Penal Code 1860 does not recognise child abuse. Only rape and sodomy can lead to criminal conviction.
- Anything less than rape, as defined by the law, amounts to 'outraging the modesty.' These laws are already problematic when applied to adult women. They are even more difficult when applied to children.
- While sec. 376 IPC seeks to provide redress against rape to women, it rarely covers the broad range of sexual abuse (particularly of children), that actually takes place.
- Most of these forms of abuse are sought to be covered under sec. 354 of the Indian Penal Code as a violation of a woman's modesty. Though offences under Sec. 354 of the IPC are cognizable, they are also bailable, allowing the perpetrator to abscond before the case comes up in court.
- The Juvenile Justice Act, amended and rewritten in 2000, makes no attempt to identify sexual abuse on children. Sec. 23 of the Act deals with assault, exposes, willful neglect, mental and physical suffering, for which imprisonment prescribed, is only for 6 months.
- Section 5 of the Immoral Traffic Prevention Act 1956 prescribes punishment of not less than 7 years for inducing a child into prostitution, but does not directly address child abuse.
- The word 'rape' within law, is too specific because it does not include abuse on boys.
- 'Intercourse' is often interpreted to mean with an 'adult' and almost always implies 'consensual' sex.

Supporting the victim

Sudha Ramalingam, lawyer and activist with the People's Union for Civil Liberties points out that if a father perpetrates abuse on his daughter, he could be arrested for custodial offences. "But in a society like India, the family wants to protect both the perpetrator and the victim. That is why most of such crimes go unnoticed. They are anxious to protect the child's future and safeguard the reputation of the family. The psychological and physical impact it would have on a child is rarely taken into consideration." Says Delhi-based senior consulting psychiatrist Dr. Sanjay Chugh, "child sexual abuse often comes to light when childhood histories are explored and in most cases the perpetrator is a known person who is close to the family or inside the family." He is concerned about the effect of incest on the victim. "The psychological harm on the victim is massive as it evokes doubts, raises questions for which answers are not easy to get. The victim may suppress emotions or be filled with feelings of rage, guilt and shame. It is difficult for such victims to trust others later on in life. The victim needs to stand up for himself/herself and not to allow the trauma to make them psychologically and socially weak. Active social support from family, friends, guidance centres and counsellors can bring the victim's faith in the goodness of human beings back," he explains.

"People need to realize and accept incest as a part of our society that happens in every socio-economic group. Closing our eyes and getting into the denial mode will not make the problem go away. We need to spread the word at a mass level where people are made aware not only about its existence but also about the help available. Workshops in schools and colleges that highlight such problems should be conducted for children and teachers to become more sensitized. Parents need to be educated about how they can protect their children or help those who have suffered. We need to take the responsibility of educating each other, reaching out to each other and take active steps to stop this physical, psychological and social pain that gets inflicted upon innocent lives," Dr. Chugh sums up.

Incest, he says, will persist as long as the collective conspiracy of silence within the family, the state and the society allows it to go on.

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