

The Working women and Me Too movement in Indian perspective: A Legal Analysis

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ABSTRACT

#Me Too Movement is against sexual harassment and sexual assault usually at workplaces and also creates a negative impact in the society. The term sexual harassment had not been defined in any Act in India before POSH Act 2013. Until the mid 1990s the concept of sexual harassment at workplace was not recognized by Indian Courts as such In Rupan Deol Bajaj vs. Kanwar Pal Singh Gill (1995) the Court recognized sexual harassment as a crime falling squarely under Section 354 of the Indian Penal Code. The Supreme Court of India laid down various guidelines for prevention of sexual harassment at workplace in the Vishakha & Ors. v. State of Rajasthan. (AIR 1997 SUPREME COURT 3011) which later led to the establishment of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. There are a number of steps that you can take to reduce the risk of sexual harassment occurring at workplace.

Keywords: Metoo, POSH Act, sexual harassment, employee, employer, work place, CEDAW, unorganized sector, sexual assault

Introduction

The sexual harassment of women at their workplaces is a rampant and distressing issue. It not only undermines the confidence of women to work freely, but also leads to a corresponding negative impact on the performance and reputation of the organization. As women's fight against sexual misconduct gains momentum in India with the viral #Me Too movement in recent year. #Me Too Movement is against sexual harassment and sexual assault usually at workplaces and also creates a negative impact in the society.

The “#Me Too” term was coined by Tarana Burke, an American social activist and community organiser, in 2006 on Myspace social network which received wide recognition on social media in October, 2017 when Alyssa Milano, an American actress, used the hash tag in her tweet against Harvey Weinstein¹. The movement was started by Tarana Burke with the primary purpose of empowering women, especially young and vulnerable with empathy against sexual harassment and sexual assault. However, Alyssa used the term with the intent of revealing the extent of sexual harassment problem in the world. She tweeted “if all the women who have been sexually harassed or assaulted wrote ‘Me too’ as a status, we might give people a sense of the magnitude of the problem” and they did. .

Definition of sexual harassment at work place

The term sexual harassment had not been defined in any Act in India before POSH Act 2013. Until the mid 1990s the concept of sexual harassment at workplace was not recognized by Indian Courts as such In Rupan Deol Bajaj vs. Kanwar Pal Singh Gill (1995) the Court recognized sexual harassment as a crime falling squarely under Section 354 of the Indian Penal Code, by interpreting—outraging the modesty of a woman to include outraging the dignity of a woman. Before 1997, a person facing sexual harassment at workplace had to lodge a complaint under Section 354 of the Indian Penal Code 1860 that deals with the 'criminal assault of women to outrage women's modesty', and Section 509 that punishes an individual/individuals for using a 'word, gesture or act intended to insult the modesty of a woman. Later in 1997, a landmark judgment in Vishaka vs State of Rajasthan and Ors case², Supreme Court for the first time defined sexual harassment at workplace. Sexual harassment was defined as that which includes such unwelcome sexually determined behavior (whether directly or by implication) as:

- physical contact and advances
- a demand or request for sexual favours
- sexually colored remarks
- showing pornography
- any other unwelcome physical verbal or non - verbal conduct of sexual nature.

In this epic judgment, the Supreme Court also recognized it as a Human Rights issue and pointed out the legal vacuum to address the concern of the sexually harassed women.

¹ [https://en.wikipedia.org/wiki/Me_Too_movement_\(India\)](https://en.wikipedia.org/wiki/Me_Too_movement_(India))

² . AIR 1997 SUPREME COURT 3011

AN ANALYSIS OF SECTION 498- A OF INDIAN PENAL CODE

Rakhi Dubey * & Prof. (Dr.) Acharya Rishi Ranjan**

Abstract

Many people in India are still not aware of section 498 A of the Indian penal code 1860, or what is to be done when a case related to section 498 A is registered. This section was introduced in the year 1983 and it was brought in order to protect women from being subjected to cruelty. But, on the other hand any such law which is made to protect woman against any cruelty being faced by them becomes a easy tool for woman to misuse it and take revenge from husband on to file a false case. This section is one of the most controversial sections of Indian penal code. Section 498 A of the Indian penal code, 1860 deals with violence done one women after her marriage. This section covers any violence done violence done by husband on her in-laws or any relative of the husband. The section prescribes punishment for three years and a fine.

Keywords: Marital Home, Women, Cruelty, IPC, Maintenance

Introduction

Arguments against Making Section 498A IPC Bailable

The basic spirit underlying Section 498A is that domestic violence should be non- negotiable and should be unacceptable in all circumstances. In this sense Section 498A must not make the offence bailable. If it makes it bailable, it would reduce the gravity of offence and it would remove any fear in the mind of the violator. So making it bailable would not only dilute the gravity of the offence, but it would defeat the very purpose of the law. If the offence is made bailable, the perpetrators of crime need not appear before a magistrate to obtain bail. Making the offence bailable would open the floodgates of corruption, thereby blocking any access for harassed woman to get justice.

Arguments against Making Section 498A IPC Compoundable

Making any offence compoundable involves withdrawal of police complaints at any point of time. This is all the more serious if the complaint is regarding marital violence. By removing compoundability of the offence, the gravity of marital offence will come down, and as a result would be at par with gravity of other offences. In addition to this, harassed women would be under pressure to withdraw their police complaints and enter into an unequal compromise which is unfavorable to women. All this would make a harassed woman more vulnerable to cruelty and family violence, defeating thereby the very purpose of law. All this points to the necessity that the law must continue to remain non- compoundable both in letter and spirit

Arguments against Making Section 498A IPC Cognizable

At present offence under Section 498A of IPC is a cognizable offence, but a section of population insists that the offence under this Section be made noncognizable. If the Section is made non-cognizable, the police will have to obtain search warrant from the courts before arresting the accused. It will take a long time before arrest is made. A harassed wife will also have to go through the time-consuming judicial process to file an initial complaint against her husband/ in-laws. In other words, non- cognizability of law would rob the harassed wife of all the benefits already available to her under the existing Section 498A.

Rights of a married woman in India

Right to reside in Marital home

According to "The Hindu Adoptions and Maintenance Act, 1956 wives have a basic right to reside in the marital/ matrimonial household. Matrimonial household is a house that a woman shares with her husband. Such a house may be owned by the parents of her husband or it can be a rented property or a property which is officially provided to him. Even if such a house is a joint family house or an ancestral one, a daughter-in law has the right to reside in such a house. in addition, she has a right to reside in such a house after the death of her husband.

There have been many reports about such cases where the husband leaves the rented house once his relation with his wife becomes critical. However, doing this does not free the husband from maintaining his wife and children. The husband will still be liable to maintain his wife and children.

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Right of woman with regard to streedhan

Streedhan refers to the gifts received by a woman during pre marriage or marriage ceremonies and during childbirth. This may include any jewelry, gifts, money, property of any movable or immovable nature and many more (e.g. god bhara, baraat, moo dikhai). The objective of streedhan is to provide some monetary safeguards to the woman after her marriage.

The apex court has given unchallengeable rights to a married woman over streedhan. This right of a woman is not lost even after her separation from her husband, the wife has complete ownership over all her streedhan, the gifts and money she gets pre or post marriage. And any denial in such context by the husband, any relative or her in-laws makes them liable for criminal charges. If in case the mother-in law has possession over the streedhan of woman and she dies without giving it to her or dies without any will with regard to the same, the woman has a legal right over it.

Right to be maintained by her husband

A woman has the right to claim honest livelihood standards and basic comforts of life from her husband. And such maintenance will be according to the income and property owned by the husband. In case of souring ties between husband and wife, the husband has to provide basic maintenance to his wife and children if any. The basic maintenance includes food, clothing, shelter education, and medical treatment. This right is recognized by section 125 of The Code of Criminal Procedure, 1973. The Indian legal system provides a provision to women that states that a woman can claim up to 25 % of her husband's net income as alimony.

Maintenance of the children

A minor child has the right to required facilities, and the same is the duty of her husband and wife to provide the same. In a situation where the wife is not capable of earning a living, it is the duty of her husband to fulfill the required financial assistance. And in case both of them are not capable enough to take care of the child then they can take help from their parents to take care of the child. Also, the child has the right in the any ancestral property.

Rights given to women with regard to her parental home

In Indian society we have observed that people believed that a daughter is a liability to the family but with the passage of time or say due to the influence of education the mindset of the society has changed. Nowadays, daughters have equal status as their brothers have and this situation is even after the daughter is married.

1) Inheritance

According to the Hindu Succession Act, 1956 daughters did not have equal right as the sons had in their father's property. According to the previous Act the daughter had the right over the property of her father only till the time she was unmarried. But this Act has been amended in 2005 and according to this amendment of 2005 it was introduced that every daughter whether she is married or unmarried, has the equal right as her male sibling to inherit the property after the death of her father. Every daughter has the right and liability over the property of her father similar to the right and liability of her brother. Not only this, daughter has a right in the property of her mother. And in case the father does not Sign any will before his death, the daughter has the right to court proceedings regarding the same.

2) Coparceners

A coparcener is formed with four generations of the family, earlier daughters were not a part of it. However, The Hindu Succession Act 2005 gave equal rights to daughters to be coparceners. And also enables the right of a woman over coparcener property. It also implies that the daughter of the family has the equal right to inherent the undivided property since her birth. All daughters have similar rights and liabilities as the son.

Right of a woman to live dignity and respect

Any human being, be it a man, a woman or a child has the right to live his life with dignity. A woman has the legal right to live with dignity and self-respect with her in-laws. A woman has the right to live her life in the same manner as her in-laws live. Independence of a woman is a legal right given to her, also she has the right to shout out against any physical or mental torture faced by her at her matrimonial home.

As stated by the hon'ble Supreme Court of India "A daughter-in-law is to be treated as a member of the family with the warmth and affection and not as a stranger with respect able and ignorable indifference. She should not be treated as a house maid. No impression should be given that she can be thrown out of her matrimonial home t any time. The matter in which sometimes the bride is treated in many a home by husband, in-laws and the relatives create a feeling f emotional numbness in society."

Section 498 A

According to the Indian penal code, 1860 section 498 A is “husband or relative of a husband of a women subjecting her to cruelty- whoever, being the husband or the relative of the husband of a women, subjects such women to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. “

Explanation- for the purpose of this section, “cruelty” means-

- A) Any willful conduct which is of such a nature as is likely to drive the women to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman ; or
- B) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand”

Evidence act, 1872

Section 113 A- presumption as to abetment of suicide by a married woman-

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation for the purpose of this section, “cruelty” shall have the same meaning as in section 498 A of Indian penal code (45 of 1860).

Section 498 A of Indian penal code is cognizable offence if the information related to the commission of any such offence is given to the police, by the aggrieved or by any person related to her by blood, marriage or adoption and if no such person is there then by any public servant who belongs to such class or category as may be notified by the state government. Also, such offence is a non-bailable offence.

Section 498A Indian penal code was introduced with the allowed object to combat to menace of dowry deaths and harassment to a woman at the hands of her husband or his relatives. Nevertheless, the provision should not be used as a device to achieve oblique motives as stated in the case of *Onkar Nath Mishra v. state (NCT of Delhi)*, (2008)2 SCC 561.

A complaint may be filed by:

- A) The complaint under section 498 A may be filed by the woman aggrieved by the offence by the offence or by any person related to her by blood, marriage or adaptation.

And if there is no such person, then any public servant as notified by the state government in this context.

Period of limitation of complaint under section 498 A:

According to section 468 code of criminal procedure a complaint claiming commission of an offence. Under section 498 A can be filed within 3 years from the commission of the offence.

Section 473 Code of criminal procedure enables the court from taking cognizance in the matter after the period of limitation if the court is satisfied that it is necessary to do so in the interest of justice. Cruelty is the essence of section 498 A it is continuing offence and on each occasion on which the woman was subjected to cruelty, she would have a new starting point of limitation, *Arun Vyas V. Anita Vyas*.

Meaning of cruelty

Cruelty as stated in case of *Haliyaperumal V. state of Tamil nadu*¹ Cruelty is a common essential in offence under both the sections 304 B and 498 A of Indian penal code. The two sections are not mutually inclusive but both are distinct offences and persons acquitted under section 304 B for the offence of dowry death can be convicted for an offence under section 498 A of Indian penal code. The word cruelty is explained under section 498 A.

Section 304 B does not talk about the word cruelty but the meaning of cruelty as stated under section 498 A applies to section 304 B as well.

In case of *Inder Raj Malik V. Sunita Malik*² cruelty is defined in the explanation which inter alia says, harassment of a woman with a view to coerce her or any related persons to meet any unlawful demand for any property or any valuable security is cruelty. Every harassment does not amount to cruelty within the meaning of section 498 A.

Cognizance by court?

¹ 2004 (9) SCC 157; 2004 SCC (cr) 1417; 2003 AIR (SC) 3828.

² 1986(2) crimes 435; 1986 (92) CRLJ 151; 1986 RLR 220.

Any court may not take cognizance on an offence which is punishable under section 498 A. except upon a police report of facts which constitute such offence or upon a complaint made by the person aggrieved by the offence or by her father, mother's brother or sister. The court can also take cognizance if the complaint is made by blood marriage or adaption with courts permission- section 198 A code of criminal procedure.

Essentials of the offence:

For the commission of such offence the following essentials are required to be satisfied.

- 1) The woman must be married.
- 2) She must be subjected to some kind of cruelty or harassment, or
- 3) Such cruelty or harassment must be shown either by husband or relative of the husband of the woman.

Stated under *suvetha v. state* (2009) 6 SCC 757.

But the Act does not state that a woman can blindly make her husband, in-laws and relatives liable for any offence she states against them. Anything stated by the woman must be proved by her and this has been held in the following case:-

Shobha rani v. medhukar reddy

In this case it was held by the hon'ble court that, evidence is required to prove cruelty and if the act is done to harass women or any other person related to her to meet unlawful demands.

Use of section 498 A by Indian courts.

This provision is being used by the Indian courts in order to safeguard the women facing the cruelty at their matrimonial homes. Mostly such cases are related to dowry, wherein the woman is threatened for the want of money and property and in case if it remains unfulfilled, the woman is tortured, threatened, abused both physically and verbally and harassed.

In case of *Ram krishan Jain and ors v. state of Madhya Pradesh*³

Due to insufficiency of dowry demands the woman was administered calmpose tablets and thereafter she even cut the arteries of both her hands. Sometimes, dowry may not be the cause but the woman for several reasons like completion or family status is tortured to death.

***Surajmal Banthia and Anr V. State of west Bengal*⁴**

The deceased was ill-treated and tortured for several days and even not given food several times. Her father in law misbehaved with her quiet often.

And such problems are faced are faced with many young brides once they move out of their parents home into the house of their in-laws.

View of National Commission for Women

The view point of National Commission for Women represented by Member-Secretary placed before the Parliamentary Committee on Petitions (Rajya Sabha) (report presented on 07.09.2011) has been summarized in the report of the Committee as follows: (i) Section 498A, IPC, provisions of the Dowry Prohibition Act 1961 and the Protection of Women from Domestic Violence Act 2005 have an element of commonality and need to be harmonized and uniformly implemented; (ii) Police should in the interest of the protection of the constitutional rights of a citizen ensure that no arrest should be made without a reasonable satisfaction after some investigation as to the genuineness and bonafide of a complaint and the need to effect arrest; (iii) Creation of Mahila Desks at police station and Crime Against Women (CAW) Cell, at least at the district level which would specifically deal the complaints made by women. When a wife moves to file a complaint to a women cell, a lot of persuasion and conciliation is required. The Legal Service Authorities of the States / UTs, National Commission for Women, NGO and social workers should set up a desk in CAW Cell to provide conciliation services to the women so that before the state machinery is set in motion the matter is amicably settled at that every stage; (iv) In case of matrimonial disputes, the first recourse should be effective conciliation and mediation between the warring spouses and their families and recourse of filing charges under Section 498A, IPC may be resorted to in cases where such conciliation fails and there appears a prima facie case of Section 498A of IPC and other related laws; and (v) Counseling mechanism envisaged under the PWDVA should be implemented by State Governments and counseling of parties should be done only by professionally qualified counselors and not by the police. The police may consider empanelling professional counselors with CAW Cells.

STATISTICAL INFORMATION

According to the statistics published by National Crime Records Bureau for the year 2011, 3, 39,902 cases under S-498A were pending trial in various courts at the end of the year and 29,669 cases under S-304-B of IPC.

³ II (200) DMC 628.

⁴State of Maharashtra v. Jaiprakash Krishna Mangaonkar And ors II (2003) DMC 384.

The conviction rate in S-498A cases is 21.2% and in S-304-B cases, it is 35.8%. The number of cases reported under S-498A in the year 2011 is 99,135 and during the two previous years, they were 94,041 and 89,546. Thus, there is a slight increase (about 5%) in the reported cases every year.

As regard to compound ability, the Law Commission has given a comprehensive report (237th Report) under the title of “Compounding of IPC Offences”. The Commission recommended that the offence under Section 498A should be made a compoundable offence with the permission of Court.

In the 154th Report of the Law Commission, there was a recommendation to make the offence compoundable. Justice Mallimath Committee on Criminal Justice Reform also recommended that it should be made compoundable as well as bailable.

View of former Justice KT Thomas –

In his article titled “women and law” he expressed

“whenever a law is made very stringent under the pressure of emotionally surcharged social reaction, there is the danger of its misuse.”

He stated various points in the article I have stated a few of them below-

- After the constitution came into force, Parliament of India introduced various legislative measures to correct gender imbalance. One of the important measures was towards liberating women from the scourge of the dowry system by introducing dowry prohibition law that was enacted in 1961.
- It is a law in which the burden of proof is on husband and his family to prove he did not commit the offence which means that if there is any accusation of having received or demanded dowry, it was for the accused to prove that he did not do so.

Conclusion

A suitable amendment to Sec 498-A is the imperative need of the hour. The number of false cases is not a material consideration, as even an accused person is harassed, it is sufficient to protect his rights. After all human rights of persons, whether of husband or wife or the relatives of the wife have to be protected. Section 498 A can prove to be a weapon as well as a shield to a woman. It is necessary for the government to ensure that no false cases are filed and rove it to be a balanced act-both for husband and wife. Women’s emancipation is the need if the hour and every measure should be taken to stop harassment and dowry deaths. Also, helpline number for women- 1091. The number can be called by the woman in case of emergency and there is a need for urgent help. Therefore this section is much needed for the society through with certain amendments.

“All the strength and succor you what is within you. Do not be afraid.”

SUGGESTIONS

First of all the victims should know the guidelines issued by the Supreme Court of India for their protection. The guidelines given by the apex court on 2/7/2014 needs to be adhered to strictly. These guidelines may be summarized thus:-

- i) Sec 41 Cr Pc may be circulated with a list of items to be satisfied before the power of arrest is exercised;
- ii) The power of arrest should not be automatically exercised, merely because of FIR being registered;
- iii) The police officers affecting the arrest should furnish all the details as required under Sec 41 to the magistrate explaining the expediency to arrest and the need for further detention to be ordered by the magistrate. The material should satisfy the criteria laid down under Sec 41 Cr Pc.
- iv) The magistrate must apply his mind to the police report before authorizing further detention of the accused persons and record his reasons in writing in support of his order.

The victim (man or his family) can file the case under women under the different section listed below

- Sec 191 of IPC – Giving false evidence
- Sec 192 of IPC – Fabricating false evidence
- Sec 193 of IPC – Punishment for false evidence
- Sec 209 of IPC – Dishonestly making false claim in court
- Sec 211 of IPC – False charge of offence made with intent to injure
- Sec 499 of IPC – Defamation
- Sec 500 of IPC – Punishment for defamation

There should be a body formed that protects and counsels victims and protect their right to livelihood, right to child custody, right to prove their innocence and right to terminate the injurious martial relationship.

NGO’S like 498A.org should be a given governmental support and recognition so that they do their work more effectively and fast.

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- Report of the Committee on Amendments to Criminal Law- headed by of Justice J.S Verma



IMPACT OF 'RERA ACT' ON INDIAN REAL ESTATE DEVELOPERS: A STUDY**Abdul Asif Khan* & Prof. (Dr.) Acharya Rishi Ranjan*****Abstract**

Real Estate Regulatory Act(RERA) came into force across India on 1ST July 2017. Various state level regulatory authorities were established to regulate the real estate sector of their respective states. RERA covers both existing and new projects under its ambit. The Real Estate Regulatory Authority (RERA) was formed to bring transparency, accountability and efficiency into this sector with the rights and duties of both buyers and developers being clearly defined. This paper envisages to explore the economic impact of RERA on profitability of real estate developers. Income statements from January 2017 to December 2018 are used to gauge the impact of RERA on profit margins of real estate developers. The top 10 real estate developers by market capitalization are considered as the sample for this analysis. After using paired t test for analysis we conclude that thus disruption caused by introduction of regulation in the real estate industry has impacted the profitability of Indian Real Estate developers significantly in the short term.

Keywords: Financial Performance, Real Estate Developers, Real Estate, RERA, Real Estate (Regulation and Development) Act 2016, Profitability, RERA Act 2016

Review of Literature

(Singh, 2009): In her paper titled "Problems and Prospects of Real Estate in India", she states that the different types of real estate are: Agricultural, Residential and Commercial. She also states that features of real estate market are: Immobility, Heterogeneous, Durability, Bothan investment good and consumption good, long time delays, High transaction costs.

(Jadoun, 2014): In his thesis titled "Financial Analysis of Selected Real Estate Companies", Jadoun, Sarika found that "In sample Real Estate companies during study period Current Ratio was very high, Quick ratio was high while Cash Ratio was very low. It means overall liquidity position of the sample companies was very sound. He also found that the Difference between current ratio and Quick Ratio was marginal. It means companies were not having much stock at a time. In comparison to current and Quick Ratio Cash Ratio was very low which shows the Cash liquidity was comparatively very low and dues to customers(debtors) was very huge in amount. Except India Bulls Real Gross Profit Margin of all the companies was increasing continuously but Net Profit was decreasing it means revenue of companies is declining continuously due to huge indirect expenses. In few financial years of a few companies Net Profit was higher than Gross Profit Margin due to high volume of non-operating incomes. It means companies have used their additional funds to invest outside business to earn additional income. It seems this policy has been implemented to maintain the soundness of Balance Sheet to raise funds from financial Institutions. Earnings Per share was declining continuously of all the companies as Profit after Interest and Tax is reducing continuously while there was no further issue of Equity share Capital during the study period. Return on Equity Capital was declining continuously of all the companies as Profit after Interest and Tax is reducing while there was no further issue of Equity share Capital during the study period. It is found that the main cause of decreasing Net Profit was that maximum companies are working on high debt Equity Ratio.

It was found that Dividend Pay-out Ratio of maximum companies was very low. It shows companies have retained their earnings for the growth of business during study period. It is a healthy sign for the further growth of the companies. Cash Flow Statement analysis shows very fluctuating net cash inflow from operating activities. The reason is that in the years of launching project companies were receiving huge cash from customers and in subsequent years which are the project completing years using huge amount of cash to complete the projects. Net Cash Inflows from investing activities of all companies in all the years were found negative. It shows all companies have used a huge amount of cash in purchasing fixed assets. Two companies DLF and India Bulls Real are on top in investing huge cash in purchasing fixed assets. Net Cash Inflow from financing Activities were positive in general. It shows maximum companies has raised borrowing more than payment made by them during study period. It results more dependency of companies on debt. In year 2009 and 2012 DLF, 2012 HDIL, 2012 India Bulls Real and 2009

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and 2011 SunTek realty were showing negative cash inflow from financing activities which indicates the above companies paid borrowings in concerning years, resulting less dependency on debt capital.”

(CRISIL, 2017): In their research report titled “RERA is all about effective implementation “ they state that “CRISIL Research believes with effective implementation of RERA, the sector is expected to see improved transparency, timely delivery, and organized operations. While the ongoing projects have been given a timeline of three months (May-July 2017) to comply with RERA regulations, the Act does not permit developers to launch new projects before registering them with the RERA authority. This will be a major shift from practices followed currently by developers wherein they manage to sell part of the project through soft-launch/ pre-launch activities. RERA is also expected to put an end to fund diversion, and transform the realty sector into a more organized and trustworthy one, re-instilling the confidence of the end-users towards the market.” CRISIL research also states that “During the procedures, documentation and quarterly disclosures. They may also have to opt for joint ventures with big players to survive in the market, which will eventually remove all the unorganized players in the real estate sector. This, along with the registration and approval costs, are expected to increase the compliance cost for realtors.”

(Das, 2017): In his research report titled “RERA through a magnifying glass “he states that “The implementation of the Act, in its entirety, will have a far-reaching impact on the real estate sector. The Act will be a game changer for the entire sector and will transform the entire paradigm in which the sector operates and the manner in which different stakeholders interact with each other. Implementation of the provisions of the Act will cause some teething troubles in the short term but in the long run, the sector will stand to gain. The Act will require developers to recalibrate their business model so that it complies with the various provisions of the Act. Participation from homebuyers will galvanise the fortunes of the sector and help the cash-strapped developers. The confidence flowing into the sector, from the provisions of the Act, will also rub off on institutional funds and banks, thus enabling them to lend to the sector. The access to funds at competitive rates, which in the present day are pretty high, could lead to rationalisation of prices within the sector thereby making it a win-win situation for all the stakeholders. Most importantly, the Act will ensure that only serious and strong players remain within the sector. Therefore, going forward, a consolidation among players within the sector cannot be ruled out. The success of the new rules of the game will however, lie in having the necessary systems and processes across states so that the act can be implemented in full letter and spirit without causing much distress among the relevant stakeholders.”

(Housing News Desk, 2017): In their article titled “Real estate sentiments turn negative on RERA, GST implementation: FICCI-NAREDCO-Knight Frank India’s sentiment index” they state that “The short-term uncertainty over new policies such as RERA and the GST, have turned real estate sentiments negative for the first time since Q4 2015, according to FICCI-NAREDCO-Knight Frank India’s sentiment index”

(Sharma N. , 2018): In his article titled: “Developers to focus on ramping up systems for RERA compliance” he states that “Over the years, real estate sector has been characterised by myriad unstructured practices, which has given a very different perception of the sector to the larger stakeholders of the economy. These practices have led to increase in the number of litigations, marked with worsening customer sentiments as seen in the recent times.”

(Sharma A. , 2018): In his article titled “Over 40% developers have no formal process in place to comply with RERA: Survey” he states that “About 45 per cent developers across India have no formal process in place to manage compliance mechanism of RERA while 44 per cent have made some modifications to their MIS (Management Information System), a recent survey by FICCI and Grant Thornton Advisory has revealed.”

(Dash, 2018): In his article titled “20,000 projects under Rera so far” he states that “Around 20,000 real estate projects have been registered across India under the Real Estate Regulation Act (Rera), according to the housing and urban affairs ministry.” (Housing News Desk, 2018): In their article titled “What is RERA and how will it impact the real estate industry and home buyers?” they state that “Impact of RERA on real estate industry will be Initial backlog, Increased project cost, Tight liquidity, Rise in cost of capital, Consolidation, Increase in project launch time.”

(Shenoy, 2018): In his article titled “RERA’s conciliation tool brings hope to common man”, he states “Before the Real Estate (Regulation And Development) Act, 2016 (RERA) came into effect the affected buyers of real estates could only approach the civil courts, criminal courts or consumer forums under the provisions of the Maharashtra Ownership of Flats Act (MOFA) or the Consumer Protection Act, 1986.”

Limitations of Study

This study is able to gauge only the short term impact of RERA on real estate developers due to nonavailability of data. Also, data shall be collected from listed public real estate developers since their accounting methods are

most transparent and they will comply to the maximum extent with the provisions of RERA. Impact of inflation on income statements has been ignored.

Introduction

Real estate can be defined generally as space delineated by man, relative to a fixed geography, intended to contain an activity for a specific period of time. 1 Real estate can be classified as: Residential new houses and existing houses for resale, Commercial shopping centres and offices, Industrial and manufacturing buildings and property and vacant land and farms. In simple words we can say that a person having any one of the above property is called a Real estate owner. Real estate is a property consisting of land and the buildings on it, along with its natural resources such as crops, minerals, or water; immovable property of this nature; an interest vested in this; (also) an item of real property; (more generally) buildings or housing in general.² Real estate sector, which has forward and backward linkages with more than 250 different sectors, is the second largest employment generator in India after agriculture. The sector correlation with GDP is high at 0.78x (every INR1 invested in the sector directly adds INR0.78 to the GDP) and there is significant room for improvement, as real estate sector correlation in other large economies (such as China, the U.S., the U.K., Germany, Spain) is at least 0.9x. According to the Economic Survey 2015-16, the real estate sector constituted 7.4 per cent of India's GDP in 2014-15.³ Before the introduction of The Real Estate (Regulation and Development) Act, 2016⁴, Indian real estate customers had little legal recourse and consumer protection was offered to them under various acts such as: The Indian Contract Act, 1872; The Consumer Protection Act, 1986. Indian consumers had to approach various authorities such as, Consumer Courts and Civil courts, to get their grievances addressed.

Before the passage of the act, no single regulatory authority existed for regulation of real estate sector and buyers were facing problems like timely delivery of projects, possession not being handed over by the developer, high rate of interest being charged on late payments, multiple bookings for the same property, misselling of projects etc. The developers were facing issues like delay in construction permits, late payments by homeowners and operations in a non-transparent environment. The Real Estate Regulatory Authority (RERA) was formed to bring transparency, accountability and efficiency into this sector with the rights and duties of both buyers and developers being clearly defined. This research aims to evaluate the short term impact of Real Estate (Regulation and Development) Act, 2016 on the real estate developers.

Study of RERA Act

No promoter is allowed to advertise, market, book, sell or offer for sale, or invite persons to purchase in any manner any plot, apartment or building in any real estate project or part of it, in any planning area, without registering the project with the RERA. The advertisement or prospectus issued or published by the promoter shall mention prominently the website address of the Authority and the registration number obtained from the Authority. Where any allottee sustains any loss or damage by reason of any incorrect, false statement included therein, he shall be compensated by the promoter in the manner as provided under this Act. The entire investment along with interest and compensation shall be returned to allottee if he intends to withdraw from project.

The promoter shall make an application to the Authority for registration of the project within a period of three months from the date of commencement of this Act for ongoing projects and whose completion certificate is not issued. No registration of the real estate project required where; a. The area of land proposed to be developed does not exceed 500 square meters or the number of apartments proposed does not exceed eight inclusive of all phases. b. The promoter has received completion certificate for a real estate project prior to commencement of this Act; c. For the purpose of renovation or repair or redevelopment which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, under the real estate project. Act specifies the list of documents and drawings which the promoter has to submit for Registration.

The promoter shall create his web page on the RERA website and enter all details of the proposed project in all the fields as provided, for public viewing, including—

1. details of the registration granted by the Authority
2. quarterly up-to-date the list of number and types of apartments or plots booked, garages booked, approvals taken and pending subsequent to commencement certificate and status of the project;
3. such other information and documents as may be specified. It is the right of Allottee to get all the above information from time to time. He is responsible for all obligations, responsibilities and functions till the conveyance of all the apartments, plots or buildings. With respect to the structural defect or any other defect continue even after the conveyance deed, its promoter's responsibility to execute. Responsibility of promoter-
 1. To obtain the completion certificate or the occupancy certificate, or both.
 2. To obtain the lease certificate, where project is developed on a leasehold land.

3. For providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees.

4. Enable the formation of an association or society or co-operative society or federation of the allottees, under the laws applicable.

5. Execute a registered conveyance deed in favour of the allottee.

6. Pay all outgoings until he transfers the physical possession of the project to the allottee or the associations of allottees. Revised carpet area definition Carpet area means net usable floor area of an apartment, excluding the area covered by the external walls, area under services shafts, exclusive balcony or verandah area and exclusive open terrace area but including the area covered by the internal partitions walls of the apartment.

Advantages:

1. This act is beneficial for the builders with a high budget.
2. It is also beneficial for the middle class people. Due to this act builders are mandatorily bound to include the technical and professional people. All the possible ways of corruption are totally altered.
3. Corruption between the agents and the builders could be stopped to a greater extent. The Stamp duty in form of taxes could be recovered. This process is highly transparent.
4. Transparency: It brings total clarity in favour of customers, Promoters, dealers, agents, builders it must provide accurate disclosures, registration number on the website also on the advertisement along with the allotment letters, payment modes and amount to be paid through electronic medium. It is a possible way to alter the corruption between agents and builders. Buyers can obtain the taxes with stamp duty on the form.
5. Mandatory registration: Builders must register with the housing regulatory projects and submit all the details of project to the state government authority. Any development of apartment or building can be judged through the mentioned details in future.
6. Should not have any misleading claims: A written affidavit should be given mentioning the time frame of the projects to be delivered. In case of delay in possession, return of amount and compensation, no deposit in advance any such obligation took care by this act.
7. Money handling: Builders have to deposit 70% of the buyer's amount in an escrow A/c to avoid diversion of money. This process is highly transparent to retain the benefits to the buyers.
8. Warranty: RERA will provide 5 year warranty for structural defects such as electric fittings, tap leakage etc. It helps to maintain the interiors for a time period. It reduces the ambiguity from the buyers to pay extra expenses on such issues.

Disadvantages:

1. The timelines of approvals by regulatory authorities have not been defined. Any delay in approvals from regulatory authorities could impact buyers as well.
2. The Bill may lead to slightly higher prices of properties due to the reduced competition.
3. New project launches might be limited as developers may not be able to launch without obtaining approvals, which could take two to three years.
4. Hike in property price: Due to various extrinsic and intrinsic factors in the sector it leads to lack of cash, builders have to look for other sources for money thus, leading to rise in the price of the property. This variation affects to demand and supply condition in this sector.
5. Stagnant growth: Due to 70% investment in escrow account there will be cash flow hindrances leading to delay in projects. This step is taken to stop the developer from diverting their mind repeatedly to new projects and complete the running project.
6. Supply-demand imbalance: Compliance to all the aspects will delay the project and as there won't be preselling of the property. Big builders can develop two to three project within 2 years it will lack economies imbalance due to the project duration and small builders cannot able to earn money with lack of techniques and resources.
7. Strong penalty: If a builder fails to fulfil any provision, he will be liable for imprisonment up to 3 years or 10% of the total cost of the project. This situation put the buyer in trouble and keep them away from their houses till the matter get solved. This creates stress in their lives and badly effect on their financial crisis.
8. No cover on rental: RERA doesn't include any rental agreements it totally depends upon the buyer to maintain the rental agreement which denotes the agreed and disagreed part clearly to save the property and make a proper use of it.

Future Scope:

Few sections of this act should be revised in future considering customer's as well as builder's or developer's convenience.

Current RERA Issues in India:**Mumbai:**

The government is planning to bring tenanted or cessed buildings and tenants of such buildings under the Real Estate (Regulation & Development) Act, 2016 (RERA), providing for the first time the same protection to these consumers as those available to other home buyers. The tenanted or cessed buildings that dot the landscape of many cities, especially Mumbai, house people who have been living for several decades and paying cheap and artificially depressed prices. Known as the Pagdi system in Mumbai, tenants are not covered under the authority. MUMBAI: The appellate tribunal of MahaRERA has asked the secretary of the regulatory body to initiate action against an architect for issuing factually incorrect certificate to a project. While hearing an appeal, the tribunal found out that a builder during a hearing in MahaRERA had said that building has occupation certificate. However, it was found by the tribunal that the amenities, lift, staircases and other Facilities were yet to be completed. The Maharashtra Real Estate Regulatory Authority (MahaRERA) has asked various planning authorities in the state to act against 293 real-estate projects that are being developed without requisite permissions, said a top official of the authority. Interestingly, the regulator has gathered information about these projects through emails sent by various people on a specific email id floated to find out about projects that need registration but have not been registered.

New Delhi:

Magic bricks reports says Around 74 per cent home buyers in India are unaware about the online process to check a realty about the project's status under the Real Estate Regulatory Act, also respondent does not know whether the projects are registered or not on the website. Respondents lack with all the necessary information with regards to carpet area, payment modes, registration number of the builder etc. Many projects were due to register on websites also to mention flyers to Showcase the exact details of the builders.

Conclusions

Though the act is very new, it is accepted very easily by the seller and buyers. A very positive impact is expected in the future as the act becomes more intact. Amendments are still going on. It is very early to study the results of this act in terms of both the parties. Single window system plays an important role in the success of the RERA Act.

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A STUDY ON CHILD SEX ABUSE IN INDIA

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Abstract

India is home to 430 million children, roughly one in five of all children (individuals under age 18) in the world. From the moment they are born, the challenges many of them face are staggering.⁴ At least 1.7 million children die before the age of five every year in India.⁵ Malnutrition means that almost half of those that survive are stunted, and 43 percent are underweight.⁶ The right to education is enshrined in the Indian constitution,⁷ but, though the situation is improving, there were still 8.1 million out-of-school children in mid-2009.⁸ The government estimates that 40 percent of India's children are vulnerable to threats such as trafficking, homelessness, forced labor, drug abuse, and crime, and are in need of protection.⁹ More than half of the country's married women were wed before the legal age of 18.¹⁰ Currently, only about 60 percent of births in India are even registered.¹¹ In 2007 the government published its first ever survey to address what the then minister of women and child development, Renuka Chowdhury, described as the "conspiracy of silence" surrounding child sexual abuse.¹² The report uncovered some alarming statistics, though, as explained below, the report methodology was limited and the numbers should be taken more as an indication of the seriousness of the problem than a reflection of the actual incidence of abuse.¹³ Of the children interviewed, more than half (53 percent) said that they had been subjected to one or more forms of sexual abuse. Over 20 percent of those interviewed said they were subjected to severe forms of abuse, defined in the report as "sexual assault, making the child fondle private parts, making the child exhibit private body parts and being photographed in the nude." Of those who said they were sexually abused, 57 percent were boys.

Keywords: Child Abuse, Human Rights, Sexual Abuse, Fundamental Rights, Fundamental Duty.

Introduction

Child abuse is a state of emotional, physical, economic and sexual maltreatment meted out to a person below the age of eighteen and is a globally prevalent phenomenon. However, in India, as in many other countries, there has been no understanding of the extent, magnitude and trends of the problem. The growing complexities of life and the dramatic changes brought about by socio-economic transitions in India have played a major role in increasing the vulnerability of children to various and newer forms of abuse. Child abuse has serious physical and psycho-social consequences which adversely affect the health and overall well-being of a child. According to WHO: "Child abuse or maltreatment constitutes all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power."¹

Child abuse is a violation of the basic human rights of a child and is an outcome of a set of inter-related familial, social, psychological and economic factors. The problem of child abuse and human rights violations is one of the most critical matters on the international human rights agenda. In the Indian context, acceptance of child rights as primary inviolable rights is fairly recent, as is the universal understanding of it. The National Study on Child Abuse undertaken by the Ministry of Women and Child Development, Government of India, in 2005, attempts to understand the extent of the problem, its dimensions as well as

Its intensity in addition, it examines two aspects:

- (a) Strategies to address the problem of child abuse
- (b) Identification of areas of further research, based on the findings of the study.

Definition of child abuse

The term 'Child Abuse' may have different connotations in different cultural milieu and socio-economic situations. A universal definition of child abuse in the Indian context does not exist and has yet to be defined. According to WHO²:

Physical Abuse: Physical abuse is the inflicting of physical injury upon a child. This may include burning, hitting, punching, shaking, kicking, beating or otherwise harming a child. The parent or caretaker may not have

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intended to hurt the child. It may, however, be the result of over-discipline or physical punishment that is inappropriate to the child's age.

Sexual Abuse: Sexual abuse is inappropriate sexual behavior with a child. It includes fondling a child's genitals, making the child fondle the adult's genitals, intercourse, incest, rape, sodomy, exhibitionism and sexual exploitation. To be considered 'child abuse', these acts have to be committed by a person responsible for the care of a child (for example a baby-sitter, a parent, or a daycare provider), or related to the child. If a stranger commits these acts, it would be considered sexual assault and handled solely by the police and criminal courts.

Emotional Abuse: Emotional abuse is also known as verbal abuse, mental abuse, and psychological maltreatment. It includes acts or the failures to act by parents or caretakers that have caused or could cause, serious behavioral, cognitive, emotional, or mental trauma. This can include parents/caretakers using extreme and/or bizarre forms of punishment, such as confinement in a closet or dark room or being tied to a chair for long periods of time or threatening or terrorizing a child. Less severe acts, but no less damaging, are belittling or rejecting treatment, using derogatory terms to describe the child, habitual tendency to blame the child or make him/her a scapegoat.

Neglect: It is the failure to provide for the child's basic needs. Neglect can be physical, educational, or emotional. Physical neglect can include not providing adequate food or clothing, appropriate medical care, supervision, or proper weather protection (heat or cold). It may include abandonment. Educational neglect includes failure to provide appropriate schooling or special educational needs, allowing excessive truancies. Psychological neglect includes the lack of any emotional support and love, never attending to the child, substance abuse including allowing the child to participate in drug and alcohol use. Adolescence is one of the most fascinating periods of human life that makes the transition from being a dependent child to an independently functioning adult. The expression of sexuality becomes a point of grave concern during adolescence because it is a period of transition as well as personal development, during which an adolescent must establish a sense of individual identity and feeling of self worth (Erikson, 1963).

Major internal and external changes like changes in the body size and proportions maturity of sex organs and appearance of secondary sexual characteristics develop during adolescence. This change will lead doubts, confusions and curiosities. Now a day's adolescent girl faces many problems in India. One of them is sexual abuse. Sexual abuse is the forcing of undesired sexual behavior one person upon another. When that force is immediate, of short duration, or frequent, is called sexual assault. The offender is referred to as a sexual abuser or (often pejoratively) molester. The term also covers any behavior by any adult towards a child to stimulate either the adult or child or child sexually. When the victim is younger than the age of consent, is referred to as child sexual abuse.

Sexual abuse is unwanted sexual activity, with perpetrators using force, making threats or taking advantage of victims not able to give consent. Most victims and perpetrators know each other. Immediate reactions to sexual abuse include shock, fear or disbelief. Long-term symptoms include anxiety, fear or post-traumatic stress disorder. While efforts to treat sex offenders remain unpromising, psychological interventions for survivors — especially group therapy — appears effective.

Sexual abuse, also referred to as **molestation**, is forcing undesired sexual behavior by one person upon another. When that force is immediate, of short duration, or infrequent, it is called sexual assault. The offender is referred to as a sexual abuser or (often pejoratively) molester. The term also covers *any* behavior by *any* adult towards a child to stimulate either the adult or child sexually. When the victim is younger than the age of consent, it is referred to as child sexual abuse. **sexual abuse** (also referred to as **molestation**) is a general term used defined as the forcing of undesired sexual acts by one person to another.

People with developmental disabilities are often victims of sexual abuse. According to research, people with disabilities are at a greater risk for victimization of sexual assault or sexual abuse because of lack of understanding (Sobsey & Varnhagen, 1989). The rate of sexual abuse happening to people with disabilities is shocking, yet most of these cases will go unnoticed.

Sexual abuse is a big issue in some minority communities. In 2007, a number of Hispanic victims were included in the settlement of a massive sexual abuse case involving the Los Angeles archdiocese of the Catholic Church. To address the issue of sexual abuse in the African-American community, the prestigious Leeway Foundation¹ sponsored a grant to develop www.blacksurvivors.org, a national online support group and resource center for African-American sexual abuse survivors. The non-profit group was founded in 2008 by Sylvia Coleman, an African-American sexual abuse survivor and national sexual abuse prevention expert.

It is important to remember that these are general categories of sex crimes and may be defined in different ways and called by different terms varying by jurisdiction. Different types of sexual abuse involve:

- Non-consensual, forced physical sexual behavior such as rape or sexual assault

- Psychological forms of abuse, such as sexual harassment, stalking, human trafficking, and indecent exposure and the targets of exhibitionism, especially children.
- The use of a position of trust for sexual purposes, which includes some forms of pedophilia and pederasty, sexual assault, and incest

Sexual Abuses of women in workplace in India

About 40-60 per cent of women in the city face harassment at their work place. And it's none other than the Hyderabad police department itself that substantiates this claim.

Worse still, most of these cases end up being "internally closed" by managements concerned, authorities say, much like what Tehelka allegedly intended to do initially in the now burning sexual assault case against its founder-editor TarunTejpal.

To add insult to injury, several prominent government and corporate offices in Hyderabad still have no internal complaints committees, despite it being made mandatory under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

"It is true that most management, for the fear of their reputation taking a beating, attempt to resolve these matters internally," said city police commissioner Anurag Sharma, reiterating this worrisome trend that he claims, often deter his men from acting on such cases.

"But whenever we are alerted, we try and address it at the earliest," he added. Incidentally, things have remained the same in Hyderabad over the past two decades, or so it seems, from a closer look at some of the most widely reported sexual harassment cases that occurred between 1994 and 2012, womenactivistssay.

Take for instance the M SailajaSuman case. In 1994, this Doordarshan employee, as was reported across the media, filed a sexual harassment case against the organization's director PLChawla.Result? Suman was transferred to Lucknow. While she has now returned as director of Doordarshan Kendra, Hyderabad, and has even gone on record to say that she has no hard feelings anymore, the fact remains that the voice of the 'victim' went unheard then.

In a more gruesome repeat of sorts, a young practicing lawyer, Sangeeta Sharma, committed suicide in 2000. Newspaper reports suggested that her suicide note directly held three lawyers responsible for her death. It said, the trio, one among them a man of repute, had sexually harassed her that eventually forced her to take the extreme step.

Social groups, the National Commission for Women (NCW) and the public did all they could to seek justice for Sharma, but none yielded any result. The men went scot-free. Cut to 2012. A senior IAS officer, V S Bhaskar, faced similar charges -- of allegedly sexually abusing an IRS officer, S Padmaja, under the influence of alcohol. While his office immediately issued him a transfer order (no, he wasn't fired), Bhaskar challenged it in a court of law. Newspaper reports that appeared thereafter claimed that the lady officer was asked to proceed on a six-month leave by the department, while Bhaskar was repatriated to The Maharashtra cadre.

"Clearly, there has been no dip in the misdemeanor of men in all these years. There is still no difference between the man on the street and the man in the Supreme Court," said Kalpana Kannabiran, eminent sociologist and founder member of Asmita Resource Centre for Women. The group fought tooth and nail in the Sangeeta Sharma case.

On the brighter side, she added that women today have becoming very vocal and forthright. "Like in the Delhi case, women are now willing to go public with these cases. They are willing to testify. This is a welcome change," Kannabiran said.

But for those like Kondaveeti Satyavati, chief functionary of the Bhumika Women's Collective Organization, it is only the constitution of an internal complaints committee in all offices (public and private) that'll eventually make a difference.

Abusers and Victims

Perpetrators:

Contrary to the myth that most perpetrators are strangers, children typically know and trust their perpetrator. Male perpetrate the majority (80–95%) of sexual abuse, though there are certainly some cases in which female offenders victimize male or female children. Girls are more likely to be sexually abused by someone within their family.

Potential victims

Such as parent, stepparent, grandparent, uncle, cousin, or sibling, while boys are more likely to be sexually abused by someone outside of the family, such as a coach, teacher, neighbor, or babysitter. Adults, adolescents, and even prepubescent children may perpetrate sexual abuse. Unlike other forms of child maltreatment, sexual abuse by

definition does not have to involve a parent or caregiver. The Internet is the newest medium that offenders have begun using to reach vulnerable children. A recent study surveying youths 10–17 years old found that 20% of those participants who regularly used the Internet (at least once a month) had received unwanted sexual solicitations and approaches in the last year. In some instances, the solicitor to gain further access to the minor by phone, mail, or in-person meetings.

While there is no typical child victim, it is possible to make some assumptions about risk factors for being sexually abused. More girls than boys are sexually abused, although it is believed that boys are less likely to report their abuse than girls. Children who are emotionally needy because of family problems, poor parental supervision, and low self-esteem may be most vulnerable to sexual abuse because offenders deliberately target children who are responsive to their attention. Thus, force is frequently not needed. In some cases in which force, threats, or use of strength are involved, the offender is more commonly an adolescent.

Signs and Symptoms of Sexual Abuse

Sexual abuse often does not result in lasting physical injuries or produce clear observable evidence; however, it can be associated with various psychological and behavioral problems well into adulthood. There is no single child abuse syndrome or single response pattern for children who have been sexually abused.

Factors that influence a child's response include age, severity and duration, invasiveness of the acts, relationship to the perpetrator, and the support and reactions from others. Some of the signs and symptoms of sexual abuse may seem subtle and less likely to be related to sexual abuse. The following symptoms are indicators of possible abuse. The psychological and behavioral responses listed are not unique to victims of child maltreatment, but might also be indicative of Attention Deficit Hyperactivity Disorder, Oppositional Defiant Disorder, or Bipolar Mood Disorders. Parents and educators should use these indicators to prompt them to consider the possibility that a child has been sexually abused and remain open to additional confirming or disconfirming information. Sensitive parents and educators can pick up important clues by observing children, remembering that it is often a cluster of indicators or history of symptom presentation that make up an abuse composite. Some of the immediate and long-term consequences a child might experience as a result of being sexually abused include:

Health and Physical Consequences

- Pregnancy, especially in early adolescence
- Sexually transmitted diseases
- Difficulty walking, sitting, or standing
- Torn, stained, or bloody underclothing
- Vaginal/penile discharge
- Pain during urination or urinary tract infections
- Bruises on the child's mouth, to the hard or soft palate
- Sleep disturbances (difficulty sleeping, nightmares)
- Enuresis or encopresis
- Self-injurious behavior (cutting, burning oneself, suicide attempts)

Cognitive Development and Academic Achievement

- Age-inappropriate sexual knowledge
- Sexually explicit drawings (not open to interpretation)
- Sudden changes in academic performance
- Refusal to participate in certain activities (dressing for gym)
- Difficulty concentrating

Emotional, Psychosocial, and Behavioral Development

- Sexualized play (frequent sexual themes with toys or other children)
- Frequent touching of genitals or masturbation
- Inappropriate sexual expression with adults (frequent hugging of a female teacher that produces arousal)
- Aggressive sexual behavior with use of force or verbal threats
- Socially isolated or withdrawn
- Extreme fear reactions
- Dependent or clingy behavior
- Poor social skills
- Substance abuse or delinquency, especially in adolescents
- Difficulty trusting others

- Fire setting
- Cruelty to animals
- Running away

Preventing Sexual Abuse

- Know the signs and symptoms of sexual abuse so that you might recognize a child who is being harmed.
- Be willing to report suspicions. Remember, it is not your job to prove that sexual abuse has occurred, and your report might keep a child from further harm Offer ongoing communication about sexual touching and other topics to create trusting relationships with children.
- Teach children self-protection skills that they have the right to say no or stop and to tell an adult and keep telling the adult until they are believed.
- Support community and school programs to prevent abuse

Types of sexual abuse

There are many types of sexual abuse, including:

- Non –consensual, forced physical sexual behavior (rape and sexual assault).
- Unwanted touching, either of a child or an adult.
- Sexual kissing, fondling, exposure of genitalia, and voyeurism, exhibitionism and up to sexual assault.
- Exposing a child to pornography.
- Saying sexually suggestive statements towards a child (child molestation)
- Also applies to non –consensual verbal sexual demands towards an adult.
- The use of a position of trust to compel otherwise unwanted sexual activity without physical force (or can lead to attempted rape or sexual assault)
- Insect (sexual deviancy).

Statistics from the mid- 1990s indicate that although girl abuse is found at all levels income and educational achievements in the united states, children born into poor families are 12 times as like to be abused as the children of middle- class or wealthy families, without regard to race or ethnic background. About 25% of children who are abused or neglected are younger than two years of age. Both sexes are equally affected. As of 2000, between 1, 000 and 1,200 children die each year in United States as the result of physical abuse. Of those who survive, 20% suffer permanent physical injury. Girls who suffer from birth defects, developed delays, or chronic illness have a higher risk of being abused by parents or other caregivers.

Causes of sexual abuse

The causes of interpersonal abuses are complex and overlapping. Some of the most important factors are:

Substance abuse: Alcohol and mood-altering drugs do not cause abuse directly, but they weaken or remove a person’s inhibitions against violence toward others. In addition, the cost of a drug habit often gives a substance addict another reason for resenting the needs of the dependent person. Majority of workplace bullies are substance addicts.

Mental disorders: Depression, personality disorders, dissociative disorders, and anxiety disorders can all affect parent’s ability to care for their children appropriately. A small percentage of abusive parents or spouses are psychotic.

Ignorance of development timetables: some parents have unrealistic expectations of children in case of appropriate age for toilet training, feeding themselves, and similar milestones, and attack their children for not meeting these expectations.

Lack of social support or social resources: Caregivers who have the support of an extended family, religious group, or close friends and neighbors are less likely to lose their self control under stress.

Belief systems: many men still think that they have a “right” to a relationship with a woman; and many people regard parent’s rights over children as absolute.

Mass media influences: sexual abuse is reinforced by audio –visual images of gender relationship of mass media, especially cinema. Sexual abuse has got nothing to do with sexual attraction genuine expression of love, affection, or consensual flirting. Sexual compliments, touching, comments, etc are presented in Indian films as a mean of convince to a boy’s love.

Early learning experiences: This factor is sometime described as the “life cycle” of abuse. many abusive parents were themselves abused as children and have learned to see hurtful behavior abnormal child rearing. At the other end of the lifecycle, some adults who abuse their elderly parent are paying back the parent for abusing them in their early years.

There is not any single fact which causes sexual abuse; abuse usually occurs in families where there is a combination of risk factors. Abuse and neglect occur most often in families who are under pressure and lack support. Most abuse other than sexual abuse occurs in families to which some, or all, of the following apply:

- Poverty
- Lack of education
- Serious marital problems
- Frequent changes of addresses
- Violence between family members
- Lack of support from the extended family
- Loneliness and social isolation
- Unemployment
- Inadequate housing

In some cases the abuser may also display the following:

- Very high expectations of the child and what the child should achieve
- The parent may have been abused as a child
- A lack of knowledge and skills in bringing up children
- Low self esteem and self confidence
- Depression
- Alcohol and/or drug abuse
- Mental or physical ill health
- Work pressures

Certain community attitudes may encourage child abuse. These include:

- Acceptance of the use of violence and force
- Acceptance of physical punishment of children
- Acceptance of parents "ownership" of children and their right to treat children as they see fit
- Racism
- Inequality between men and women

AFTER EFFECTS

Sexual abuse affects all dimensions of human development and existence.

Physical and neurobiological:

In addition to such direct results of trauma a broken bones or ruptured internal organs, physically children often display retarded physical growth and poor coordination. malnutrition may slow the development of the brain as well as produce such dietary deficiency diseases as rickets in both children and adults ,repeated trauma produces change in the neurochemistry of the brain that effect the memory formation instead of memories being formed in the normal way, which allows them to be modified by later experiences and integrated into the person's ongoing life, traumatic memories are stored as chaotic fragments of emotions and sensation that are sealed off from ordinary consciousness. These traumatic memories may then erupt from time to time in the form of flashbacks.

Cognitive and emotional:

Abused children develop distorted patterns of cognition (knowing) because they are stressed emotionally by abuse. As adults, they may suffer from cognitive distortions that make it hard for them to distinguish between normal occurrences and abnormal ones, or between important matters and relatively trivial ones. They often misinterpret other people's behavior and refuse to trust them. Emotional distortions include such patterns as being unable to handle strong feelings, or being unusually tolerant of behavior from others that most people would protest.

Social and educational

The cognitive and emotional after effects of abuse have a powerful impact on adult educational, social, and occupational functioning. Children who are abused are often in physical and emotional pain at school; they cannot concentrate on school work, and consequently fall behind in their grades. They often find it hard to make or keep friends, and may be victimized by bullies themselves. In adult life, abuse survivors are at risk of repeating childhood patterns through forming relationships with abusive spouses, employers, or professionals. Even though a survivor may consciously want to avoid re-abuse, the individual is often unconsciously attracted to people who remind him or her of the family origin. Abused adults are also likely to fail to complete their education, or they accept employment that is significantly below their actual level of ability.

ADOLESCENCE AND THEIR ATTITUDE

Sexual abuse is not new phenomenon. It has been on for decades. It was only in the late 70s that unwanted attention of this kind named. There is no list of behavior gestures, words or literature that can be constituted as sexual abuse. Sexual abuse can be directed at one person or at a group of people, or it can have both a direct and indirect effect on a person or a group of people.

According to campus survey on sexual abuse (social welfare) some of the general myths on sexual abuse of adolescent girls are given below.

- No really doesn't mean no.
- Nice girls don't get raped.
- She asked for it.
- Children make up stories about rape.
- The victim is at fault for allowing sexual abuse to continue.
- Most assaults are by strangers.
- The best way to recover from the assault is not to talk about it and act like it never happened happen.
- Attractive women are provocative and / or promiscuous.
- All men can defend themselves.

Adolescent girl's reaction to the sexual abuse

Boys and girls are victims; although the exact numbers are unclear boys in particular are reluctant to disclose abuse. Indeed because of social stigma and shame attached to the victims, sexual offences remain one of the most misunderstood and under reported crime. Offenders of abuses are both men and women instead of that more are men. They come from very class, creed, race and profession. There are two group offenders those that abuse within family setting and those that molest of the cases offenders are known to and those that most of the cases offenders are known to and close to the victim. Therefore addressing the problem is a major challenge. Majority wanted to keep the incident as secret. There are various reasons for least reporting of sexual offences as:

- a) Fear being accused of participation
- b) The fear being accused of provocation (what were you or wearing that provoked him)
- c) The fear of being accused of irresponsibility (why were you not at home were you belong)
- d) The desire of parents to prevent publicity and further or deal or emotional injury to their child.
- e) The experience of shame or a desire to protect her reputation.
- f) Fear of retaliation by the offender or his friends .
- g) Fear of loved one's reactions.
- h) A style of life or set of circumstances which may render her story suspect.
- i) Sentimental ideological notion (such as no one should be prison)
- j) Fear of police procedure appearing in court etc

THE THEORIES RELATED TO SEXUAL ABUSE

Why men sexually abuse children has been one of the foremost questions guiding research on sexually deviant behavior in the twentieth century. As with most forms of deviant behavior, there are various explanations as to the etiology and maintenance of sexual offending. Within the specialist literature, biological, psychological and sociological theories have been designed to explain the onset of deviant sexual fantasies and behavior.

Biological theory Concerned with organic explanations of human behavior; psychological factors (e.g. hormone levels, chromosomal makeup) have an effect of sexual behavior; androgens promote sexual arousal, orgasm, and ejaculation, as was regulate sexuality, aggression, cognition, emotion and personality; abnormal levels of androgens lead to aggressive sexual behavior.

Psychodynamic theory sexual deviance is an expression of the unresolved problems experienced during the stages of development; the human psyche is composed of three primary elements: there, the ego and the superego; sexual deviancy occurs when the id (pleasure principle) is overactive.

Behavioral therapy Deviant sexual behavior is a learned condition, acquired and maintained through basic conditioning principles.

Attachment theory Human has a propensity to establish strong emotional bon with others, and when individuals have some loss or emotional distress, they act out as a result of their loneliness and isolation.

Cognitive behavioral theory addresses the way in which offenders thoughts affect their behavior; focuses on the way in which sex offenders diminish their feelings of guilt and shame by rationalizing it through excuses and justifications.

Integrated theory There are preconditions to child sexual abuse, which integrate the various theories about why individuals begin to participate in sexually deviant behavior; focus is on the inhibitions of the offenders (internal barriers) and how these barriers are diminished distorted thoughts can lead to deviant action.

In a culture, which places too much importance on female sanctity where girls are meant to portray sati Savitri and Lakshmi rolled in one the despaired and trauma of an abused girl is a harsh reality. But the problem is that the adolescent girls are not aware about the abuse. Majority of our girls thinks that 'rape' is the real abuse.

"Sexual abuse is the act/ behavior that is intended to hurt or embarrass the victim through various forms of verbal communication as a sexual attention that acts to pressurize or make the object of such attention comply with the aggressor's wishes "sexual abuse can be forced physical sexual behavior, rape, sexual kissing, fondling exposure of genital and voyeurism, exhibitionism and up to sexual assault, pornography, incest, sexual harassment. Adolescent girls have attitude like there is no one list of behavior gesture words or literature that can be constituted as sexual abuse. What is acceptable to one person may not be acceptable to another. everyone has different thresholds on matter of personal, touching, dirty jokes etc. and these have to be taken in to consideration women's dressing provocation can be sexually harassed and legally adolescent girls are unaware of the punishment under the section 354, section 375, section 376, section 377, section 228(a). Sexual abuse is not a problem of any particular country but it's a rapidly increasing problem.

According to a study conducted by U N population fund titled "international statistics on child sexual abuse, at least 2 out of 4 girls are victims of sexual abuse". A survey conducted by an NGO samavad among 348 girls student on this issue reveals that 83% of the respondents had experienced physical eve teasing 13% of them when they were less than 10 year old. 47% of the respondents have been molested experienced serious forms of sexual abuse including rape 31% then were less than 10 year old. Disclosure had been made by 86% of those who are teased 67% of those seriously abused increases with the tendency of self blame by the victim. Among them 22% of that eve teased, 37% of those molested and 50% of those seriously abused, felt self blame. Even the knowledge or awareness highly provided about the sexual abuse. Although the previous figures are alarming it does not present the actual gloomy pictures because many cases go unreported or sometime unregistered police. The social stigma and share attached to adolescent girls and their family member's causes the abuse offences to grow more and more. Here majority of the population keeping a negative attitude towards sexual abuse. A girl's dressing, body language, family background, socialization, education etc.. Many of us will agree with this statement. But the reality is very controversial. And attitude towards an offender is very different. offenders of the abuses are both men and women out of that more offenders are men. They come from every class, creed, race and profession. There are two group offenders are known to and those that most of the cases offenders are known to and close to the victim.

Historically, child sexual abuse (CSA) has been a hidden problem in India, largely ignored in public discourse and by the criminal justice system. Until recently, CSA was not acknowledged as a criminal offence; rape was the main, if not the only, specific sexual offence against children recognised by law in India. In the absence of specific legislation, a range of offensive behaviours such as child sexual assault (not amounting to rape), harassment, and exploitation for pornography were never legally sanctioned. In the past few years activists, Non-Governmental Organisations (NGOs) and the central government's Ministry of Women and Child Development have actively engaged in helping break 'the conspiracy of silence' (HRW 2013) and have generated substantial political and popular momentum to address the issue. The movement, spearheaded by the Ministry of Women and Child Development, led to the enactment of new legislation called the Protection of Children from Sexual Offences (POCSO) 2012. This commentary highlights the distinguishing features of POCSO and focuses on three issues that might have consequences for how the law operates in reality. In this reflexive piece, we begin by briefly discussing the prevalence of CSA in India and the legal response to it. We draw upon existing literature, legal documents, media reports, access to police sources and personal practitioner experience to inform the paper.

Growing concerns about female infanticide, child rapes and institutional abuse of children led to the commissioning of the first large scale government sponsored research study to assess the extent and nature of child abuse in India (Kacker et al. 2007). The study, based on a well-designed methodology, covered 13 states (two states from each of the six geographic zones in the country) including states with the highest through to the lowest crime ratesinci of offences against children. The sample was purposive and included 12,447 children, 2324 young adults and 2449 stakeholders representing five different evidence groups: children in the family, at the workplace, in schools, on the streets and in institutions. The study reported widespread emotional, physical, and sexual abuse prevalent in all the states surveyed. While every second child reported emotional abuse, 69% (n = 12,447) reported physical abuse, and 53% (n = 12,447) reportedly experienced some form of sexual abuse. Half of sexual abuses reported were committed by "persons known to the child or in a position of trust and responsibility" (Kacker et al. 2007: vii). Carson et al. (2013) survey of the current state of knowledge on CSA in India concluded that

empirical studies report a much higher incidence of CSA than previously acknowledged by authorities or by families. The paper summarises the findings of several studies and reports that 18–20 % of CSA occurs in the family and around 50 % in institutional settings. Further, there is regional and rural–urban variation in the rates and extent of CSA in the country. Girls are more vulnerable to sexual abuse, although boys too reported a high percentage of victimisation and are subject to greater social stigma. Finally, Carson et al. (2013) suggest that although sexual exploitation and abuse is strongly correlated to poverty, it occurs in families across the socioeconomic and religious spectrum. However, factors that facilitate CSA, such as poverty, overcrowding, extended family living arrangements, abundance of street children, and lack of recreational facilities in families (Carson et al. 2013) are by no means exclusive to India. Admittedly, their impact might be exaggerated or intensified given the population density and size in India. Thus, a complex mix of individual, ecological and situational factors that are said to facilitate CSA (Smallbone et al. 2014) might account for its prevalence in the Indian context. However, the absence of empirical research precludes definitive conclusions.

Sexually abused children are severely let down by systemic failure of the criminal justice system to redress their grievances and by social ostracism associated with such abuse (HRW 2013). Only 3 % of CSA offences uncovered by Kacker et al. (2007) study were reported to the police (HRW 2013). It is unsurprising that CSA is severely underreported given the shame and associated socio-cultural stigma, especially if the abuse is in the context of the family (Choudhury 2006). This phenomenon is not unique to India but common to collectivist cultures in other Asian countries where an individual's experience is ignored so as to protect the family from shame associated with sexual abuse (Back et al. 2003; Stoltenborgh et al. 2011).

CONCLUSION

However, the Indian government has yet to create an effective social services network to protect children and prevent crimes against them. This shortfall became news in 2012 when Falak, a two-year-old girl, was brought to the hospital with serious injuries, including cuts to her head and bite marks on her cheeks and leg. She died two months later. Falak had been left in the care of a 14-year-old, who herself had had a violent upbringing. Her father used to beat her, as did a warden in a children's residential care facility where she lived for three years. After being coerced into sex work, she was left taking care of Falak, an illegally adopted baby. She told investigators that she had slapped and bitten the infant to stop her from crying. At no time had the state social service system stepped in to assist the 14-year-old despite her history of domestic violence, abuse in a residential care facility, and sexual abuse. According to Raj Mangal Prasad, chairman of the Child Welfare Committee of South Delhi, which was responsible for looking after both girls once their plight became known, "the story is a grim reminder of failure of the government ... There are lakhs [hundreds of thousands] of Falaks in our country who are waiting for immediate help.

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RIGHT TO EDUCATION: A JUDICIAL APPROACH

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Abstract

*The importance of education as a means for emancipation of human beings and liberating them from ignorance has for long time been accepted in national and international legal systems. With this in focus efforts have also been made to educate people and thereby contribute to the development of society consistent with the dignity of society. Internationally, the importance of right to education received much appreciation in the UN Declaration of Human Rights, 1948 and later instruments like International Covenant on Economic, Social, and Cultural rights, the Convention against Discrimination in Education, 1962 etc.*¹

Indian Approach

Our constitutional makers to make the right to education a constitutional goal and placed it under Part IV directive principles of state policy. Accordingly article 41, 45 and 46 of the constitution dealt with various aspects of right to education. But the inability of the constitutional provisions to achieve the object of free and compulsory education often led to conflict with judicial policy in this respect. An exposition of this conflict requires a close look at the development of the legislative and corresponding judicial approach as addressed by the Supreme Court in this area.²

Relevant Case Laws-

Mohini Jain Vs. State of Karnataka³

The Supreme Court held that Right to education is fundamental right under Article 21 of the Constitution. The right to education springs from right to life. The right to life under Article 21 and the dignity of the individual cannot fully be appreciated without the enjoyment of right to education. The Court observed:

The Court held the fee to be an arbitrary and unequal action in violation of Article 21, and stated; “We think that the right to life includes the right to live with human dignity and all that goes along with it, namely the bare necessities of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself.” Note that the limiting clause in Article 21 is not applicable because the capitation fee was not established by law, rather by the policy of a medical school.”⁴

Unni Krishan Vs. State of Andhra Pradesh⁵

The Supreme Court struck down the Mohini Jain ruling and held that the right to education up to the age of 14 years was a fundamental right. The Court argued that this right flowed from Article 21, which guaranteed the fundamental right to life. In 1950, the Constitution had set a time limit of 10 years in which the right was to be given effect. But as this goal had not been met, „we think that the Court should step in“. That is what the Court did; they declared that every child had a right to free education till the age of 14 years.⁶

The Apex Court, however, limited the State obligation to provide educational facilities as follows:-

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¹. Available at http://lawatindia.com/index.php?option=com_content&view=article&id=16:only-right-to-education-in-india&catid=28:current-users&Itemid=44 last visited on 18.02.2010

². Available at http://lawatindia.com/index.php?option=com_content&view=article&id=16:only-right-to-education-in-india&catid=28:current-users&Itemid=44 last visited on 18.02.2010

³. AIR 1992 SC 1858, (1992)3 SCC 666

⁴. Available at http://www.legalserviceindia.com/articles/edu_pes.htm last visited on 03.05.2011, see also Vijay Pal Singh - Research Scholar, education: a fundamental right in India

⁵. AIR 1993 SC 2178, (1993)1 SCC 645

⁶. The crisis of elementary education in India; Ravi kumar; 1st edition; SAGE Publications New Delhi, thousand oaks, Londond; p. - 68