



In Who's Best Interest? Child Sexuality and Child Sexual Abuse in India

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Abstract

In the light of the two judgements by Bombay High Court on child sexual abuse this article explores how these stem from an instrumental and patriarchal approach towards the law. The article goes on to argue how the idea of childhood in India stems from a socio-cultural and political understanding of children being 'frail', 'weak' and 'vulnerable' and thereby the need to protect them from knowing about their bodies, sexuality and sexual behaviors. Yet sexual behaviors and expressions continue to be part and parcel of children's lives. They gather such information from a variety of sources and it manifests in abusive and violent behaviors which they learn from the adult world around them. The failure of institutions like family, community, state and schools to create spaces for healthy discussions on sexual behaviors and sexual health stems from the hegemonic adultism prevalent in the society. Socio-cultural norms dictate rules of behavior which are used to control children's agency and knowledge. These norms also govern the ways in which legal redress providers interpret a progressive law which is meant to be creating an enabling environment for children. The article concludes by reiterating the need for creating a conducive environment for discussions and information sharing with children on sexuality, sexual health and behavior in an age appropriate manner.

Keywords: Law; Child Sexual abuse; Childhood

Introduction

Childhood sexuality and information regarding sexual and reproductive health is considered an inappropriate and taboo topic in most countries, more specifically in India. There are no services available to young people with regard to information on their changing bodies, health issues arising from these changes. The growing awareness to their sexuality and information related to it is limited to one or two sessions in biology classes for only school going children. In most cultures sexual expressions and behaviours are legitimate only within marital relationships and therefore all services are directed towards marital partners in a deeply gendered manner where women are supposed to be responsible for all decisions linked to their sexual and reproductive health. Societies and cultures are however gender unequal and many studies have shown how women and girls do not have any control over such decisions and health seeking behaviours.

The recent judgements by the Bombay High Court on two cases of child sexual abuse highlights the vulnerability of children and lack of voice in the formal legal spaces. The fact that the judgement states "groping a child's breasts without 'skin to skin' contact does not amount to sexual abuse under the Protection of Children from Sexual Offences (POCSO) Act (in Satish vs State of Maharashtra) speaks volumes of the approach of the judge towards children and their experiences. The judge instead of relying on Section 7 of the POCSO Act relied on Section 354 of the Indian Penal Code which criminalises the act as outraging the modesty of a woman [1]. In an earlier judgement of 15th Jan 2020 in another case (Libnus vs State of Maharashtra) of child sexual abuse the same judge of the Nagpur bench of the High Court set free a 50-year old man pronouncing that 'holding the hand of the 12-year old girl and unzipping his pants' did not fit into the description of 'sexual assault' [2]. In both the cases Section 7 of the POCSO Act, 2012 was entirely overlooked and the children's version of the incidents were not taken into cognisance. Section 7 clearly mentions that "whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person or does any other act of sexual intent which involves physical contact without penetration is said to commit sexual assault." For such an act the minimum punishment is three years extendable to 5 years and may include a fine (Sec 8 POCSO Act, 2012). Despite the clear prescription in the law this was overlooked by the judge who preferred

to use Section 354 of the IPC.

This judgement stems from the general understanding that children are to be 'seen not heard', without a 'voice' and agency and hence such abuse is not possible as they are not 'adults'. The contentious issues of child sexuality and creating an enabling environment for children to understand their bodies has always been brushed under the carpet as a taboo topic in India. In an interesting analysis Kumar (2016) has shown how the colonial process in India has influenced the Indian understanding of childhoods. Eurocentric notions of schooling children and the need to protect them from sexual knowledge, rather focus more on the good and bad based on social mores and norms. Schools were seen as arenas to protect children from hard and arduous labour. So a modern state is required to ban all forms of labour and also knowledge sharing of sexualities as children are framed as 'innocent' and yet to learn and grow to become 'adult'. But as we explore the status of child labour we find a continued prevalence of child labour and also the new amendments of the Child Labour (Prohibition and Regulation) Act 1986 ensures that children within certain home-based and familial occupations are no more doing hazardous work. There are two major aspects that requires attention, the fact that the state is still struggling to provide quality and equitable education to all children and at the same time the ideology of the state dictates policy and law making, where different regimes frame children as 'citizens' in different ways. Where does this leave the children? The lack of knowledge and information, growing up in a patriarchal, socially stratified and institutionally child blind environment. It is this ecology that renders children vulnerable to exploitation and abuse and denies them the appropriate skills of self-protection and be effective, inquiring and democratic citizens.

The macro processes of globalization are impacting socio-economic and political contexts within which families find themselves and have

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a direct implication on the lives of children. Children continue to lose spaces for holistic and creative learning. They are increasingly being viewed as objects to be controlled, trained and skilled as well as exploited and abused, be it as child labour, sex workers or child performers. With increased access to technology, children are vulnerable to cybercrime and abuse [3]. Similarly as children of migrant families the recent pandemic has exposed and deepened their precarity and vulnerable to different forms of abuse and exploitation. Migration of people though an age-old reality, has become fraught with challenges and when entire families move into new unknown destinations, children become even more vulnerable as they are removed from the social and community networks which provided them with physical and emotional security. It is well documented that families are becoming spatially diverse and fragmented due to migration both forced and voluntary. Children struggle to find space and articulate meanings from their life-worlds as also cope with demands from their families and communities.

The modern western conception of childhood is seen as a distinct and separate phase of life, characterised by innocence and frailty and where children were torn out of the real world of work, sexuality and politics and confined to the class-room [4]. Childhood is constructed as a period when the child is to be protected, and her/his growth processes is to be enhanced through schooling. It is this idea of childhood, which has originated in the specific historical context of western capitalism that has been offered as a model for the rest of the world. Raman (2000) and Nieuwenhuys (2009) are sceptical of this model as they explain how it has failed to explain many of the diverse dimensions of Indian childhoods. In an interesting analysis of Articles 32 and 28 of the United Nations Convention on the Rights of the Child (UNCRC) Raman (2000) brings out the lack of clarity in defining 'harmful and exploitative' work and the cultural implications of children and their work [5]. Definitions of what is 'harmful' for children and what kind of work is exploitative are relative across cultures. Often several societies encourage children to work especially in Asian countries as its considered as valuable education and learning of traditional skills. It is also felt that such work enables children to integrate better into the communitarian and kinship life of the societies. Raman (2000) goes on to argue that even education as it is transmitted through structure, content and curriculum and pedagogy in India does not take into account the diversities of cultures and location of children within them. Hence the educational process itself becomes violent and oppressive for children leading to higher rates of dropouts and low educational outcomes particularly for children from poor and marginalised communities. Raman (2000) goes on to cite the instance of the tribal Ghotul system among Muria Gonds was a cultural Adivasi practice for young persons to live together in a mixed group and it acted as a systematic knowledge and skill building arena for the youth in self-governance [6]. This cultural practice is gradually losing its significance due to inroads of modernisation and Hinduisation of such Adivasi communities.

Child Sexuality and Abuse

How does the socio-cultural understanding of childhoods have relevance for the abuse and violence that children face in their everyday contexts? It is the hegemonic mainstream adult world which continues to frame 'childhoods' as 'frail' and as 'recipients' of knowledge which decisively refuses to address the need for open conversations and dialogue with children. This is specially so when it comes to matters of body and sexuality. With children deprived of an environment of where they can openly ask and enquire about their own bodies, ideas of sexuality and the socio-political life-worlds, they become vulnerable to violence and sexual abuse. The use of power by adults over children in coercing them into heterosexual gender identities, conformation to

religious and caste boundaries and cultural norms plays a tremendous role in limiting their knowledge about their body and sexuality. A great deal of this socialisation involves the use of punishments and threats of harm both bodily and psychological. This power extends over the control of children's sexuality and sexual expression through institutional structures like families, schools, state children institutions and other such formal institutions. CSA is not a child protection issue, it is deeper malaise affecting the society. A significant study on child sexual abuse in India by Human Rights Watch (2013) highlights these issues point towards the need for a deeper understanding of power over children by institutions like families and state [7]. In each of the case studies done by the organisation shows the failure of judiciary, state affiliated and recognised children's institutions, families and the communities at large have been complicit in perpetuating abuse and violence against the children. Legal frameworks like POCSO and Juvenile Justice systems have time and again proven to be like band aid over this larger malaise and they are incapable of ensuring safety, protection and agency of children.

On May 5th 2020 the news (BBC 2020) of Bois Locker Room in the Instagram broke out and amidst the public outcry and moral questions that were raised regarding the graphic sexual images of underage girls and screenshots with lewd sexualised comments, the one question that remained buried in these discussions was why did the boys indulge in such activity? Could such actions and violent expressions of sexuality been prevented? Perhaps if sex and sexuality were not such a taboo topics, age specific discussions and sharing would have led to a healthier perspective towards one's own body and bodies of girls and women [8,9]. A moral outcry seemed a little fatuous once the news broke out and media took it up as one more event for a voyeuristic public. It was a mirroring the society's paternalistic and moral hypocrisy towards sex and sexuality. The warped understanding of sexual expressions, sexual behaviours are a result of these topics not being openly discussed with children from an early age. The 'fear' of sexual experimentation and exploration by children stems from the society's need to perpetuate patriarchal norms which encourage boys to think of girls' and women's bodies as objects to be violated at whim.

Abuse of children is perpetuated largely as an exercise of power, self-gratification and need to feel in control. Most often those abused are unable to express their feelings and experiences to their families because of the taboo and the stigma attached to abuse. This results in non-reportage and lack of psychological closure for the abuse survivors, with deep lifelong consequences.

Conclusion

Abuse of children manifests in several forms and it cuts across class, gender, caste, ethnicity, religion and ability. It occurs in all possible places like homes, communities, police stations and streets, places of work, entertainment places and schools. It is a known fact that perpetrators range from family members and relatives, teachers, neighbors, employers, law enforcement authorities and other children. The nature of such abuse is revealing as it depicts how violence is shaped by cultural and societal norms where children and childhood is seen as an arena for domination and exercise of power. Addressing abuse of children requires both immediate response and reach to traumatized children as well as working on the structural violence, which is located in the realm of adult world. While the law can only provide redress to some of the braver children who are able to report abuse, the judgments of the courts depend on the perceptions and attitudes of the redress providers. The lack of 'skin to skin' contact as an interpretative legal point of sexual abuse is an pointer in that direction. The Bombay High

Court judgments are a major setback to children's rights, their right for redress and their rights over their bodies. It is time the taboo topics of bodily integrity, respect, sex and sexuality, sexual health are included in public discourses with children and adults in every day and age-specific contexts to change the mindsets of those who are duty holders. Such judgments that deny the children justice and their rights to know, act and live in a abuse free world needs to be re-examined from the point of the 'best interest of the child'.

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