

## VIOLENCE AGAINST MINOR GIRLS - LEGAL ISSUES AND CHALLENGES

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This article speaks about the violence against girl child. The focus is on the physical and sexual violence of a minor girl and violence against an unborn child. This includes female foeticide, rape of minors in schools, child exploitation and child marriages.

Right from the stage of foetus in the womb of the mother up to the age of majority, number of offences and acts of cruelty are committed against women. All offences those are committed against minor girls including violence against unborn girl child. Violence against minor girl child discussed in this particular article.

### *Violence against unborn child*

Every human being has a right to live, from the mother's womb. Unfortunately the discrimination starts from this stage itself. Person includes even an unborn child in the womb of his/her mother, whose body has sufficiently developed. [According to Section 10 of IPC 1860]

The word woman denotes a female human being of any age. [According to Section 11 of IPC 1860]. It is not confined to any particular age, it includes females of all ages, right from one-day baby to the age of 100 years.

According to Hindu Law and also the Transfer of Property Act, 1882, an unborn child has equal share in the property, he/she are entitled to have equal share with that of the other shareholders. When the unborn child has a right to the property, it is difficult to understand as to why do parents destroy

the girl child in the womb, when they had the knowledge of her growth. This unfortunately is the beginning of the gender-based violence practices, like son preference and discrimination against women. The result is the destruction of the girl child. The determination of sex of the child in the womb of mother is prohibited under the provisions of Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Amendment Act 2002. "An act to provide for the prohibition of sex selection, before or after conception, and for regulation of Pre-Natal Diagnostic Techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse of sex determination leading to female foeticide and for matters connected therewith or incidental thereto".

Under the Indian Penal Code 1860 there are provisions relating to the punishment for the destruction of girl child in the womb of mother and the penalties prescribe therefor.

- \* Causing Miscarriage with the knowledge of the woman or without consent of the woman. The punishment is 7 to 10 years.
- \* Miscarriage is the premature expulsion of the child or foetus from the mother's womb at any period of the pregnancy before term is completed.
- \* Intentionally prevent the child being born alive or to cause to die after birth. Imprisonment 10 years.

- \* Causing death of the quick born child by an act amounting to culpable homicide. Imprisonment for 10 years<sup>1</sup>. According to the convention on the Elimination of All Forms of Discrimination Against Women, 1979 which enjoins by Article 1, prohibition of discrimination of women. Not only India, in USA also many State legislations came into force for protection of the foetus. So regarding unborn children there are many provisions, but unfortunately there is no effective implementation. The very basic right that is right to life, guaranteed under Article 21 of the Indian Constitution is being violated in all these cases. Who had given the right to destruct the girl child in the womb?

#### *Violence against minor girl*

##### *Discrimination by parents*

According to the Constitution of India, all are equal before law<sup>2</sup>, without any discrimination on grounds of religion, race, caste, sex or place of birth<sup>3</sup>, but fortunately or unfortunately the discrimination starts from the childhood itself. If she is a girl child since childhood the discrimination starts and they give preference to the boy over girl. Her own parents and their relatives show this discrimination. This discrimination starts in the family itself. According to Article 21 of the Indian Constitution, no person shall be deprived of his life or personal liberty.

##### *Exploitation of a minor girl*

While going to school the girl child is neglected. In case of education also, the girl child is neglected and degraded compared to the boy. In India 80% of the children

discontinued their education at primary school only. Out of which most of them are girls. The reasons for such dropouts include poverty, insufficient schools in the villages, insufficient teachers in the schools and long distance from residence. So not only the parents are responsible for the educational backwardness of the girl child, also the Government is responsible for the backwardness.

Only 10% of the girl children are being educated in the rural areas, the Government made the compulsory education for children below 14 years as Fundamental Right, recently by the 86th Constitutional Amendment Act of 2002 under Article 21-A. However, it is just on the paper, and requires implementation.

After being stopped from going for the school, in most of the middle class families is the girl child is compelled to go for the work<sup>4</sup>. The child to going to work in the hazardous places. Estimates from various non-governmental sources as to the actual number-working children range from 44 to 100 million. The live examples of this practice are found in almost all the industries. Neither the Government nor the authorities take any action against the industrialists in many cases. The children are appointed in matchstick factories, tea gardens, beedi works, soap manufacturing work, and in many more industries, most of which did not come to the notice of the Government nor the social organizations. Apart from factories, industries, the girls are also sent to cities and urban areas from villages to work as housemaids to look after small children in the houses.

According to Article 32 of the Declaration of the Right of the Child adopted by United Nation Organization on November 20, 1959,

1. According to Sections 312 to 318 of IPC 1860

2. Article 14 of Indian Constitution 1950

3. Article 15 of the Indian Constitution 1950

4. Articles 23 and 24 of the Indian Constitution 1950, where it prohibits the exploitation of children on labour and employment in factories.

the right of the child to be protected from economic exploitation and from performing any work at hazardous places, or which interferes with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development. Child labour is more in India compared to any other country. Majority of the child labour are girls.

According to Article 23 of the Constitution of India traffic in human beings and beggar and other forms of forced labour are prohibited and also under Article 39(a), (e) and (f) of the Constitution adequate means of livelihood, should be provided, children should not be forced by economic necessity and to have healthy, dignified life against exploitation. In spite of the Constitutional protection we find in many parts of our country, children who suffer from various diseases, which affect the child mentally and physically.

#### *Responsibility of parents*

The responsibility is generally upon the parents to look after their children. According to Section 125 Cr.PC, whether legitimate or illegitimate child father is bound to maintain until he/she attain the majority and if she is a daughter she has to be maintained until her marriage<sup>1</sup>. Whereas under the Muslim Law, the father is not bound to maintain his illegitimate child so unfortunately she is neglected completely. The result is child labour, street children and beggars.

#### *Sexual offences against a minor*

Apart from the child labour, another form of violence against girl child is rape. Now a days many incidents are reported from different parts of the country we come across the cases of rapes of the minor girls.

According to Supreme Court rape is not only a crime against a woman, it is crime against entire society and it destroys psychology of a woman and pushes her into deep emotional crisis. The basic fundamental right, right to life is damaged<sup>2</sup>.

According to Section 375 IPC, rape has been defined. If the man had intercourse with the woman without her concern, against her will or with concern out of fear or with/without concern when she is below 16 years or where she is intoxicated or insane, gave consent or a married girl of below 15 years it amounts to rape. Punishment is 7 years to imprisonment to life. According to Section 376 A, B, C, D of Indian Penal Code if any person is bound to safeguard a woman and same person commits such acts it amount to custodial rape. This is an act which had been repeatedly committed day by day. It is one of the worst sexual abuses, against a woman. The behaviour of the male person is worst than an animal. There is no age limit for this offence. This offence is unfortunately committed upon married woman, young girl or even upon months baby.

Now a days we come across rape by trusted persons. Most of the cases are against the persons who are entrusted with the custody of the children. These are some of the instances.

- \* In recent case, Schoolmaster has committed rape upon a child who was student of 8 years old.

He managed the child as well as her parents by giving Rs.3,000/- so that complaint may not be lodged against him, but fortunately it came to knowledge of District Educational Officer and complaint was lodged against the accused.

1. Section 20 of Hindu Adoption and Maintenance Act of 1956

2. Article 21 of the Indian Constitution 1950.

- \* In other incident, which is a shameless incident where a father has committed rape upon his own daughter. Her mother lodged a complaint.
- \* In other incident a girl of 6 years had been victim on 16th March 2003 a dead body was found after 1 day. The Allahabad High Court has acquitted the accused for want of evidence<sup>1</sup>.

Not only a minor, a disabled minor is also a victim of rape. She was a blind girl upon which such act has been committed<sup>2</sup>.

#### *Child marriage of minor*

Another offence against girl child is child marriage. These child marriages are prevailing in almost all parts of the country. A live incident that took place in Chittoor District at Sri Kalahasti on the auspicious day of Shivratri, 150 child marriages had been taken place on this day. Most of the girls are between 10 to 14 years and boys between 17 to 18 years, every year these marriages are performed on this auspicious day. A person who had authority to punish such wrongful acts is blessing the minor couples. Both the parents and the authorities are responsible for such illegal acts<sup>3</sup>. According to Sections 4, 5, and 6 of Child Marriage Restraint (Amendment) Act of 1978, whoever performs such child marriages are punishable with simple imprisonment of up to 3 months and fine of rupees of 1,000/- or both<sup>4</sup>.

#### CONCLUSION

All offences relating minor are against the society, the main reasons for such type of acts are

- \* Parents

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1. SCC 2003  
 2. *Pratul Kumar Sinha v. State of Orissa*, AIR 1987 SC 1783.  
 3. IV9 Report on 12-3-2005  
 4. According to Sections 4, 5 and 6 of Child Marriage Restraint Amendment Act of 1978

- \* Economic status
- \* Ignorance/Illiteracy

#### Firstly:

In case of abortions of a minor, parents destroy the foetus of the girl child because of ignorance or knowingly due to some pressure or their wants, if act had been committed with knowledge he/she is punishable, if the act is of ignorance then also the person is liable, if everyone had destroyed girl child, we would not had the nightingale of India, the iron lady of India, the servant of the poor or the young tennis girl *Sania Mirza*. The determination of sex of the child in the womb of the mother is prohibited under the provisions of Pre-Natal Diagnostic Techniques (Regulation and Prevention of the Misuse) Amendment Act, 2002.

#### Secondly:

Because of the economic status many girl student are compelled to go for work in different fields. It is the duty of the parents to look after the well being of the children<sup>5</sup>, and at the same time, it is the duty of the State to educate the girl child. The Convention on the Elimination of All Form of Discrimination Against Women 1979 prohibits the discrimination of the women.

#### Thirdly:

Another serious violence against a minor is rape. It is a shameful act the heads of every person goes down if such act had been committed. No fault on part of a minor, she had to suffer life long. The society and parents had to give a hand to innocent child, who is a victim. If parents also discourage her there is no way for the poor girl. So first and foremost duty of victim parents is to give moral support, so that she can survive and face the struggles throughout

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5. According to Section 125 of Cr.PC 1973

her remaining life. So encourage her, educate her so that she can become an example for others.

There are many laws, which are meant for punishing wrongful act of rape *etc.* But these laws are not implemented effectively because

- \* The parents will not file a complaint because of the stigma. They do not want to be insulted in society. Most of the cases are not filed because of this reason.
- \* When parents come forward for justice, because of want of evidence the cases are dismissed.
- \* When there is sufficient evidence, there is big gap between complaint and judgment, number of humiliating questions are asked by the police, advocates in the Court at every stage of prosecution. The girl and her parents have to face humiliating and embarrassing situation. With our rigid procedures we are killing victim as well as her parents.

At each and every stage the accused will manage to go out from the case, he will manage the police, the advocate and in some cases doctors upon whose expert report case will be decided. Even the defective evidence and overall delay in deciding all makes the accused benefited.

In case of harassment dowry death, offences against State it is presumed that the accused had committed the offence.

In case of rape also the Court has to presume that the offence has being committed whether she had stated that the consent had been given or not.

There is no need of evidence for such heinous act. As our Ex-Deputy Prime Minister said the punishment for the rapist should be death. He is right it should become a law and it should be implemented strictly, so that violence against women to some extent can be reduced.

## VICTIMOLOGY - THE RIGHTS OF VICTIM UNDER CRIMINAL LAW

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This article is about the origin of victim and the role played by him/her in the Criminal Justice, while lodging a complaint, during proceedings, the rights relating to the victim under Criminal Law are been discussed.

### *Historical Background:*

Nowhere under the Criminal Law, the word victim had been defined. Victimology is a part of Criminology, The Criminal - Victim relationship is called Victimology. This theory is of recent origin. Three scholars from Europe first studied Victimology. *Hans Von Hentig*, according to him Victimology is

a part of criminology. He defines victim as doer-suffer. *Benjamin Mendelson*, according to him victimology is a social science and the third scholar is *Stephen Schafer*, according to him victim is a part of crime. This theory came into existence in 1940s.

The concept of victim includes any person, who suffers injury or loss due to any cause. The word victim is widely as accident victims, victims of injustice, crime victims and victims of calamities. Crime victim refers to, any person, group or entity, who has suffered injury or loss due to illegal activity. The injury