

Child as a Victim of Sexual Abuse

*** MANJUGUDA R PATIL ** Dr.C.F.MULIMANI**

*Research scholar, Department of Criminology and Forensic science, Karnatak Science College, Dharwad, Karnataka.

**Research supervisor, Associate professor, Department of Criminology and Forensic science, Karnatak Science College, Dharwad, Karnataka.

ABSTRACT

In recent years there has been a dramatic increase in the number of criminal cases involving sexual abuse of children. The expanding caseload stems from a growing awareness within our society of child molestation. With society's encouragement and recognition of the problem, children are starting to speak out and parents, social service agencies, teachers, health care professionals, law enforcement personnel, and prosecutors are beginning to listen. The factor that makes child sexual abuse dramatically different from other criminal cases is that the victims are children. They find it difficult to understand and to communicate their experiences. Testifying by a witness is considered as key evidence in any court proceeding, helping the court to decide the final matter. The Indian judicial system has laid down some rules to determine the competence of a testimony of a child witness, which has also been provided by the Indian Evidence act and other relevant judgements.

KEYWORDS: Child, Sexual Abuse, Parents, Court, Justice.

1. INTRODUCTION

An adult belief that children tell lies (i.e, not tell the truth) may easily be countered by the fact that adults tell lies too. In most instances, children lie to hide things, out of a fear of something or someone they are afraid, that if they tell the truth, they will not be believed and/or they will be admonished and punished. This is exactly what happens in the context of child sexual abuse also. Children hide the abuse and do not report it because they are afraid & they will be disbelieved and/or punished for it. In fact, for those children who report sexual abuse, they start to retract

their original statement because of pressure from disbelieving adults, which results in fear and anxiety in the child. Hence, retraction of the child's statement is not only because of the child's fear of the perpetrator, it is the so-called caregivers and protectors of the child, who are responsible for the child's failure to disclose.

2. WHAT CHILDREN (DO NOT) LIE ABOUT

Children's lies are usually regarding, complaints about other people's aggressive or violent behaviour toward them. Children also tend to lie when they have been victims of sexual abuse, because they have a sense that sexual behaviours (by anyone) are not socially appropriate or acceptable. Therefore, ironically, children are more likely to lie that they have NOT been abused when they have been abused. Indeed, many children simply deny that they have been abused even when there is evidence to the contrary.

3. CHILD SEXUAL ABUSE

The impact of child sexual abuse is devastating not only to victims but also affects the people around them. Some of these impacts are given below:

- **Development:** It severely affects the physical and mental development of the child.
- **Mental health issues:** such as depression, confusion, anger, anxiety, eating disorders, post-traumatic stress disorder (PTSD), self-harm, low self-esteem, suicidal thoughts, etc. are common long-term impacts of child sexual abuse.
- **Obesity:** Obesity and eating disorders are more common in women who have a history of child sexual abuse.
- **Unusual sexual behaviour:** Sexual behaviour issues and over-sexualized behaviour are a very common result of child sexual abuse.
- **Teen pregnancy:** The risk of teen pregnancy is much higher for girls with a history of child sexual abuse.
- **Criminal activities:** Adult survivors of child sexual abuse are more likely to become involved in crime, both as a perpetrator and as a victim.

4. CHILDREN'S ABILITIES TO "MAKE UP STORIES" ON SEXUAL ABUSE

If viewed through the child development lens, younger children (under the age of 12), physiologically, cognitively, and emotionally are not ready for sexual activity, in that they also have little knowledge and awareness about sex and sexuality. It is therefore absurd to say that children are “making up stories” about sexual abuse. How can a child concoct stories about an issue he/she knows nothing about? And for this reason, when young children are observed to be engaging in behaviours that appear sexual, it is likely that they have witnessed sexual behaviour or that someone has performed these behaviours with them or someone doing them to another person, which is when we suspect that a child has been sexually abused versus blaming the child for engaging in socially inappropriate behaviours.

5. TABOOS ABOUT SEXUALITY

In addition to not being at the developmental stage to be able to know about sex and sexuality issues, children most often do not recognize the abuse experience as being (sexually) abusive. They are just reporting what was done to them, i.e there is no awareness that what was done to them was abusive or exploitative, especially where abuse processes entail lure and grooming. At best, they feel ‘dirty’ or uncomfortable, that too because of the taboos and shame socio-culturally associated with touching or talking about the human body, private parts, and sexual issues. Interestingly, when children report hurt and injury caused by means other than sexual abuse, adults readily believe them and are sympathetic and helpful. Surprisingly and disappointingly, when this hurt and injury is caused by sexual abuse, adults tend to be less sympathetic and helpful they do not want to believe or even know more about how it happened. Adults disbelief and denial may be attributed to their fears, confusions, and discomforts around the issue and how to respond to child sexual abuse, especially when it is by a known person or family member/caregiver. Furthermore, children who report sexual abuse cannot be said to be lying and accused of having a vendetta, as there is no motive, and there is no motive because there is no awareness of the consequences of the abuse to the perpetrator, let alone knowing what POCSO says or that it even exists. In the context of child sexual abuse, adults must suspend the adult-centric, critical faculties that decide that children would lie about or makeup stuff about sexual abuse and that an alleged perpetrator is “incapable” of abusing a child, only then will adults be able to enter the world of children, perceive, and understand their experiences and appreciate and believe what adults otherwise find unbelievable or implausible. There is medical, legal, and psychosocial

systems set up to assist and protect sexually abused children as cynical as we may be about their workings and limitations, and as valid as our opinions may be, they do the function for the most part. The public is aware of child sexual abuse, today more than ever before and readily acknowledges that child sexual abuse happens though perhaps as long as it does not occur in their homes and immediate social surroundings. However, our failure to protect sexually abused children stems most fundamentally from our disbelief in children and childhood experiences. From a child's perspective, it is not a "man's world" as is commonly said but it is an adult's world, a world which is governed by power, hierarchy, and patriarchy and which consequently sets the rules for adult-child relationships. These rules are characterized by expectation, instruction, and obedience: adults have certain expectations that children must fulfill, adults will instruct, and children must obey.

6. CASES OF CHILD ABUSE

In recent years there has been a dramatic increase in the number of criminal cases involving sexual abuse of children. The expanding caseload stems from a growing awareness within our society of child molestation. With society's encouragement and recognition of the problem, children are starting to speak out and parents, social service agencies, teachers, health care professionals, law enforcement personnel, and prosecutors are beginning to listen. The factor that makes child sexual abuse dramatically different from other criminal cases is that the victims are children. They find it difficult to understand and to communicate their experiences. When thrust into the criminal justice system, the trauma they experience often becomes even more severe. A successful sexual abuse prosecution generally requires that the child victim testifies against the offender. Often in cases of this nature, there is very little, if any, evidence to corroborate the child's account of the offence, because of the secretive nature of the crime itself. Thus, the victim's testimony or testimony regarding the victim's statements about the incident is critical. Cases involving young victims often are complicated further by delayed reporting of the offence. It is not unusual for a child to keep the fact of the incident secret for weeks, or even months. Typically, the offender has threatened the child with physical harm and the threats are taken seriously. Moreover, children often feel ashamed of their involvement and will not immediately tell their parents or other adults what has happened to them. This is especially true if the offender is a member of the child's household. One unfortunate consequence of the child's silence is that a

physician's examination is not conducted until long after the incident. Thus medical reports and the results of laboratory tests often are not available to corroborate the statements of the victim. Under these circumstances, the child's testimony or statement is even more crucial. The extremely young child victim presents other Special problems as a witness.

7. THE VICTIM

The victim places herself in considerable jeopardy as a result of telling the truth. Her family may be torn apart, and she may see herself as responsible for its demise. She will have to tell the intimate details of her story to many people. Both the shame and guilt for having been involved in the sexual abuse, and the feeling of being responsible for any negative consequences to the family may inhibit her from telling. If the case goes to court, she may have to describe the intimate details of the abuse to strangers with the perpetrator facing her, and she may be subjected to harsh cross-examination by the perpetrator's attorney. Frequently the perpetrator will threaten the victim with some of these consequences and urge her not to tell. Children in such a situation feel helpless in the face of a powerful adult. Because of the anticipated consequences, victims may keep the secret for months and sometimes years. Delay in the report of sexual abuse, therefore, is to be expected and ought not to be seen as a reason for questioning the veracity of the allegation. It is especially likely when there is a close personal relationship between the victim and the perpetrator. Nor is it uncommon for a child to reveal that she has been sexually abused, and then retract her story as she experiences the negative consequences of telling for herself and her family.

8. THE PERPETRATOR

The perpetrator has everything to lose if the child's story is believed. Thus, in most cases he will deny that he has sexually abused the child when indeed he has. Many perpetrators are so ashamed of their behaviour that they cannot admit it. For some the shame is so great they will continue to deny in the face of overwhelming evidence. Furthermore, a substantial percentage of sexual abusers are to some extent character disordered. These men may lie, and lie convincingly and persistently over months and even years. In their endeavour to persuade the decision-maker of their innocence, they may enlist the help of family and friends.

9. EXAMINING THE CHILD'S STORY

For the reasons stated above, we know that children do not make up stories asserting they have been sexually molested. It is not in their interests to do so. Young children do not have the sexual knowledge necessary to fabricate an allegation. False allegations by children are extremely rare

10. DEVELOPMENT OF CHILD'S MEMORY

Short-term memory has low capacity and short duration, whereas long-term memory is a more permanent record of past events. The durability of memory depends upon the transfer of information from short-term to long-term storage and its consolidation, retention and ultimate retrieval. Memory is either episodic or semantic. Episodic memory refers to the automatic storage and reproduction of spatially located, temporally ordered, personal experience. In contrast, semantic memory, which is coextensive with cognition, involves the storage and utilization of words, symbols, rules and concepts. Ordinarily, the child must appreciate that the semantic material should be remembered ("meta-memory") before it is retained. With maturation, the child acquires more efficient strategies for recording, storing, recalling and reproducing episodic memories and as hierarchically organized cognitive structures develop, semantic memory becomes more complex. New experiences are assimilated according to the child's organized preconceptions of the world, or entrain the accommodation of preexisting structures. Recall, in turn, is influenced by preconception. Episodic and semantic memory interact. A child's capacity to store, recall and reproduce an event is influenced by the construction that was or can be placed on the event.

11. IMPACT OF THE COURTROOM ON THE CHILD

The plight of the child sexual abuse victim is already psychologically disturbed as a result of emotional deprivation in a disturbed home, the trauma of sexual molestation, and guilt about his or her part in the offence. He or she may view him or herself as the agent of the exposure of an incestuous parent and the potential cause of the dissolution of the family. Before the trial, the child is expected to recount the details of the alleged offence, again and again, to strangers. Repeated court appearances may be required. In court, the child will eventually be confronted by the accused who is exercising his or her constitutional rights. His or her testimony is open to direct challenge on the grounds of incompetence, confabulation or fabrication. These considerations deter victims from reporting offences, lead to false retractions, and erode the

apparent credibility of honest witnesses. There has been no formal research into the effect upon the memory of extreme emotional arousal at the time of experiencing or recalling a psychologically traumatic event.

12. THE PURPOSE OF CHILD TESTIMONY

The purpose of child testimony in court is to provide trustworthy evidence. The qualifications for a child to provide testimony include the following.

- Sufficient intelligence, understanding, and ability to observe, recall, and communicate events.
- An ability to comprehend the seriousness of an oath.
- An appreciation of the necessity to tell the truth.

The ability of children to provide trustworthy testimony must be considered in terms of a developmental context as well as the circumstances of the event precipitating a court appearance, the ongoing influences in the current home, and the environment and processes leading up to and including an appearance in the courtroom. A child who claims to have been sexually abused may have convinced the police, the social worker and the prosecution involved in the case; but the same child may be treated as a fantasist or liar by one or both parents, and the counsel for the defence. From the evidence presented, and subject to various biases, judge or jury will ultimately determine the child's credibility. The testimonial capability of a witness is his capacity to provide reliable testimony. The reliability of a witness refers to the extent to which a judge or jury believes that the witness is providing honest and accurate testimony children as young as 5 years of age have been qualified as witnesses. The law is skeptical of the capacity of children to observe and recall events accurately, to appreciate the need to tell the truth, and to resist the influence of other people. Children are commonly thought to have great difficulty distinguishing fantasy from reality, and to be readily confused by an exaggerated curiosity about sexuality. Although it is often contended that false accusations of sexual molestation are prevalent, it is also thought that fact-finders tend to be biased against adult defendants in favor of female or child witnesses. For these reasons, the judge may assess the testimonial capability of the prospective child witness before the trial begins, the court must ascertain that the child has the capacity to register, recall and describe events reliably; to distinguish truth from falsehood; and to appreciate his or her obligation to tell the truth. Unless the child's capacity is patently defective,

expert consultation may be helpful to determine if the child could register an event and if he or she will be able to recall it accurately when examined in court. The ultimate determination of credibility then rests with the judge or jury

13. ADMISSIBILITY OF CHILD WITNESSES

The interpretation of Section 118 of the Evidence Act allows for a child to be a witness. The Supreme Court has repeatedly affirmed that the testimony of children can be admitted as evidence, but the standard of scrutiny is to be maintained whilst ascertaining how much importance must be placed on each testimony.

14. CORROBORATION OF CHILD WITNESS TESTIMONIES

Despite affirmations by the supreme court in various instances, the terms of Section 14 of the Indian Evidence Act demand certain amount of corroboration of witness testimonies. Given the challenges and concerns so deeply associated with child witness testimonies, the threshold for corroboration is slightly higher in this regard. This is larger part of how child witness testimonies must be scrutinized harder than other witness testimonies and extra caution must be used whilst basing convictions on such evidence. If in case a child is able to recall and explain the details of an occurrence without improvements or embellishments, the threshold for corroborating the said evidence is comparatively lower. This is still subject to the tests of rational understanding of questions and subsequent relevant, truthful and complete responses. Corroboration will lead to the acceptance of a child witnesses' testimony. If in case through further investigation it is found that the child has been tutored, the testimony may not be completely discarded. The part that has been tutored, as long as it is separable from the rest, may be the only part of the testimony not relied upon or discarded altogether.

15. CONCLUSION

A child witness is also a witness, just like any other witness. Indian legal systems have repeatedly reaffirmed that child witness testimonies are also valid evidence and the same is admissible. It is the discretion of the judge to see whether or not the child is disqualified from

being a witness. The competence of a child witness may be determined by using the “*Voir Dire*” test. The credibility of such evidence increases with corroboration and must otherwise also be relied upon with due caution. Substantial gaps exist in our knowledge of how to optimize the care of children in the courtroom. A limited number of long-term follow-up studies on the adverse consequences of child testimony have been conducted, and no prospective studies on the benefits of specific system improvements to benefit the child or the legal system have been performed. Finally, with advances in technology and changes in law, interventions should be developed and tested for their ability to reduce adverse consequences and improve outcomes for children interacting with the judicial system.

16. REFERENCES

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