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Father & daughter: Law is silent on a bitter shame

Every week seems to bring fresh revelations of incest in India. It shocks us greatly, so why is it not punishable by law?

Meenakshi Kumar | TNN

If and when the Mumbai businessman, accused of raping his daughter for nine years, is convicted, it will be for rape. So too the fathers accused in Amritsar and Nagpur. Indian law does not regard incest as a separate crime. The businessman would face charges under Section 376 of the Indian Penal Code, which covers rape. This is how India deals with the shameful reality of incest. A man accused of raping a child younger than 12 can expect a minimum sentence of 10 years; the highest punishment is life imprisonment. But an Indian father accused of forcing himself upon his minor daughter cannot be convicted for incest per se.

In contrast, many developed countries recognize incest as a serious offence. Britain, which has punished it since 1908, sets a prison term of 14 years. In the US, punishment varies from state to state. If it's 20 years in prison in Massachusetts, it can be up to five years in Hawaii. In Germany, sex with a close relative is punished with three years in prison. Two years ago, a brother and sister famously challenged Germany's law on incest. The siblings grew up separately and argued that the law against incest was out of date and they were within their rights to continue their relationship free from the threat of imprisonment. They lost the case and incest continues to be illegal in Germany.

Not so in India, where children's rights activists have long demanded a more defined law to prosecute perpetrators. In 1983, the law against rape was amended to include policemen, hospital and prison staff who abused women in their custody. But it overlooked activists' pleas to include sexually abusive fathers in the category of people who violated responsibility. "In most cases of sexual abuse, it's the father who is responsible for the heinous crime. He is the custodian of the child. So, a custodial rape should al-



THE SCARLETT LETTER: The 17th century American novel explored the theme of adultery and a capital 'A' represented the heroine's act of shame for which she was ostracised

INCEST IS NOT A CRIME IN:

● **France** | The law against incest was abolished by Napoleon in 1810

● **Japan** | The law was abolished in 1881 though incest is considered immoral
● **The Netherlands** | Incest is legal though it's illegal for an adult to engage in sexual

acts with a minor family member
● **Sweden** | Allows marriage between siblings who share a parent
And Brazil, Spain, Turkey

so look at father as a suspect," says Mumbai-based women's rights activist and lawyer Flavia Agnes.

But a Mumbai court last year let off a father who raped his daughter for years in the suburbs. His alleged crime—incest—was not recognized as a punishable offence.

Why is a social taboo like incest not punished by law? Social workers and law-

makers believe it is a reflection of society's refusal to acknowledge that incest exists. Anuja Gupta, founder and executive director of an NGO called Recovering and Healing from Incest or RAHI, "By not legislating a strict punishment, the law is simply reiterating that it's not a serious issue. If stringent punishment were made legal, then it has to be accepted that incest exists. But we don't even want to admit

that. It's treated more like an aberration and so there is no harsh punishment. And this is true across the world. It's a terrible truth to own up to."

Countries that punish incest harshly have done so only after years of ground work by social workers and institutes that worked with incest victims, she says.

Agnes adds that somewhere we "don't want to interfere with our family values and as such keep quiet about it." Most often, the interest of the child is sacrificed for the greater interest of the family.

There are no statistics on incest here but a 2007 study by the Ministry of Women and Child Development on the sexual abuse of children found that 54% had been violated at some point in their lives; 50% knew the offenders. The sexual abuse of children, of which incest is a major part, is a growing menace but little is done to address the issue. Interestingly, the sexual assault of a minor boy is covered by the very law—article 377—that criminalizes homosexuality.

Nishit Kumar, who heads Communication and Strategic Initiatives at Mumbai's Childline India Foundation, says it is appalling that India, which has 450 million children below 18, allocated just 0.7%

to protect children in its last Budget. He says "it's a question of overall priority" and Indian lawmakers are yet to realize the enormity—and spread—of the crime against our children.

Every society has its own definition of incest. When the Romans ruled Egypt, sibling incest was common. It's even believed that Cleopatra was the product of an incestuous relationship. Closer home, particularly south of the Vindhyas, it's common for a girl to marry her mother's older brother.

Mohammad Abdul Kalam, professor of Anthropology at the University of Madras argues that what may be right for one particular society may not work for another. "While among most South Indians, an uncle-niece marriage may not amount to incest, in north India it is frowned upon. But that doesn't mean that incest is not taking place in the north. All the abusive words mentioning mother-sister are an indicator that there is an awareness of this so-called taboo but nobody wants to talk about it". He says cases of incest should be seen as individual perversions. Stricter laws, he believes, would not cause the incidence of incest to decline.