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Arresting Child Abuse

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In the current regime of law and its application, victims of child sexual abuse stand very little chance of getting justice and moving on with their lives. There is an urgent need to change the environment—both legal and social to curb this evil

A society is judged by the way it treats its women and children. So is a judicial system. Nothing is more horrifying than the sexual abuse of a child. And nothing is more reprehensible than a judicial system that subsequently victimises the victim. The law itself as well as the methods of investigation and cross-examination needs to be overhauled if we are to take even one small step towards aiding an abused child's progress to recovery.

Child abusers come from all strata of society. It is the general belief that child abuse is blatantly rampant only in European countries. The reality is that all over South Asia this phenomenon exists. The magnitude of the problem in India is now assuming serious proportions. Indian law with respect to child abuse is still in its developing stage. Unlike other European countries, where laws exist for the crime, in the Indian context, besides some sections in IPC, Cr PC, the Evidence Act, there is hardly any strong mechanism to deal with this problem. Most surprisingly, even these meagre legal provisions do not specifically address the question of child abuse. As a general rule the courts insist on corroboration of the evidence of the victim. But sexual abuse usually occurs behind closed doors and hence it is practically impossible to get corroboration from an independent witness. Refusal to act on the sole testimony of the victim of

sexual assault in absence of any corroboration is nothing but adding insult to injury. In the tradition bound non-permissive society of India, a girl or a woman definitely would be extremely reluctant even to admit that any incident had ever occurred because of the fact that it is likely to reflect on her chastity. She would be conscious of the danger of being ostracised by society. It is also likely to ruin the prospect of her rehabilitation in society. Why children? Because they are pliable, easily subjugated and readily available. A huge number of children are subjected even to unspeakable torture to adopt a way of life from which there is no escape.

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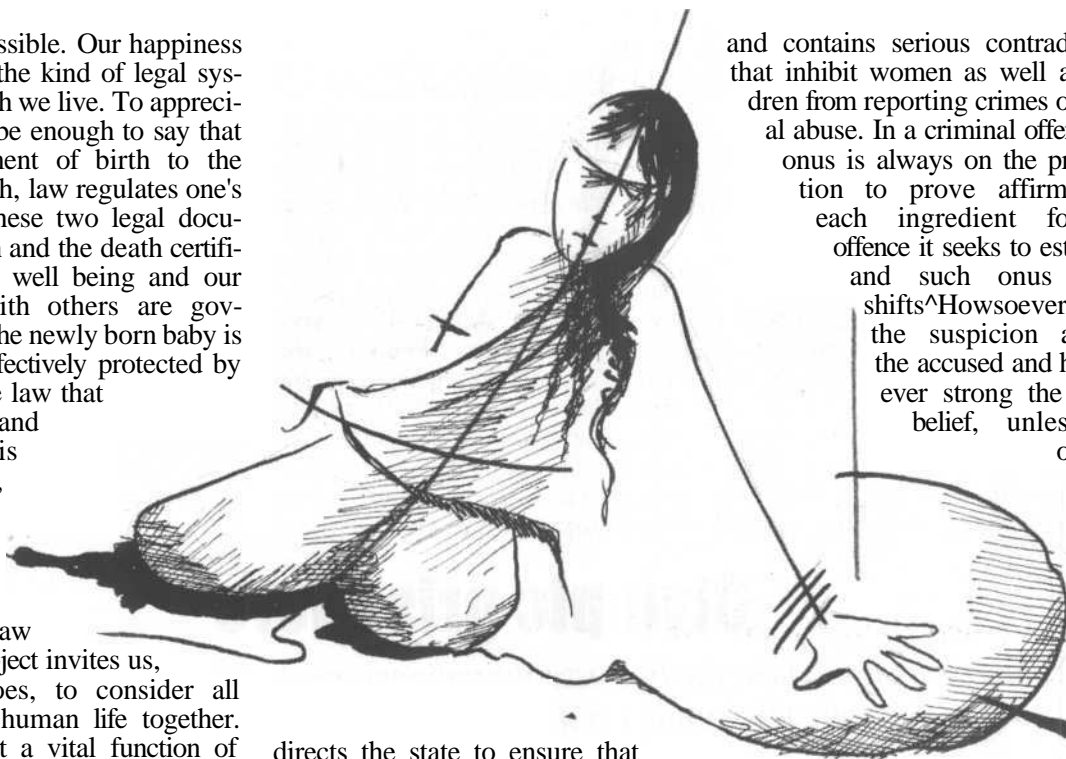
A majority of the sexual offences committed against children are not reported, let alone prosecuted. If any individual is brought to trial, conviction is unlikely as the cases are very difficult to prove. Moreover in a trial in criminal courts, basically the defence seeks adjournments or postponements on one plea or other, and the cross-examination techniques are designed to confuse and discredit the child. As a result, offences of such type go unreported and if they are reported, the lengthy and cumbersome court procedure gives enough time to the offender to pressurise the child in one way or other to retract the statement. According to a study conducted by International Statistics on child sexual abuse, at least two out of four girls and one out of six boys are victims of sexual abuse. The survey also reveals that the law does not really provide relief for a child who has been sexually abused because of its in-built problems of limited perspective and insensitive procedures. It also makes conviction very difficult and makes the child relive the experience over and over again.

It is said that every nation is duty-bound to protect and develop its biggest asset, the human being. The child is considered to be the citizen of tomorrow and the future of the nation is linked with the child's. Children therefore require special protection and attention and must be most carefully watched over. Society as well as state has obligations towards its children. It is the duty of everyone to see that the child is being brought up in an atmosphere which is conducive to his or her physical, mental and moral development. Some child psychologists consider children to be immature until they reach the age of 12, while to others it is 14, and they regard these years as the childhood years. Whereas a fish, from the very first day of birth becomes independent and does not need any help, such is not the case with human beings, who are helpless, powerless and dependent upon others for a long period of time. The law has a major role to play in this regard. If we reflect on the role that the law plays in everyone's life both, private and social, we realise that without a properly organised legal system, society as we recognise it

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would be impossible. Our happiness depends upon the kind of legal system under which we live. To appreciate this it may be enough to say that from the moment of birth to the moment of death, law regulates one's life. Between these two legal documents, the birth and the death certificates, our own well being and our relationship with others are governed by law. The newly born baby is invisibly but effectively protected by law, for it is the law that will establish and safeguard his rights. In fact, no other branch of social activity is as intensively human as the law is. No other subject invites us, as the law does, to consider all aspects of the human life together. Law is in effect a vital function of society; one may say even an indispensable one. It can be ascertained that no other single science or art can be as close to life as law is.

In civilised society the welfare of the child is considered to be of paramount importance and the state can never overlook the most valuable asset of the nation. The Indian Constitution, the law of the land, is a complete document containing specific provisions relating to children and their rights starting from the Preamble itself. The Preamble of the Indian Constitution assures social, economic and political justice to all its citizens, which unequivocally includes children. Article 15(3) of the Indian Constitution states: "Nothing in this Article shall prevent the state from making any special provision for woman and children". Article 23 speaks of the prohibition of all forms of traffick in human beings, which can very well be interpreted to include children in it. Article 24 also specifically prohibits employment of children below the age of 14 years in any hazardous employment. Similarly Article 36(e) and (f), Articles 41, 42, 45, 47 fix certain principles to be followed by the state for the welfare of children. Article 39 (e) clearly reveals that the health and strength of workers, men and woman and the tender age of children are not to be abused. And Article 39 (f)



directs the state to ensure that children are given opportunities and facilities to develop themselves in a healthy manner. Besides those constitutional mandates, we have also several legislations, which are meant to serve the child better. The function of the children relating to their health,, family life, combat exploitation and harassment, etc., are reflected in these legal measures.

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and contains serious contradictions that inhibit women as well as children from reporting crimes of sexual abuse. In a criminal offence the onus is always on the prosecution to prove affirmatively each ingredient for the offence it seeks to establish, and such onus never shifts. Howsoever great the suspicion against the accused and howsoever strong the moral belief, unless the offence

of the accused is established beyond reasonable doubt on the basis of legal evidence and material on record, the offender cannot be convicted. Now often the courts are taking a serious view of the matter and not seeking corroboration in every case. The courts have also started pronouncing judgments even on the basis of the sole testimony of the victim and even the apex court has convicted the accused even though the prosecutrix could not be examined as she did not understand the sanctity of oath and affirmation and she was not in a position to explain the sequence. Yet despite all this the situation has not improved to the required standard.

In the changed scenario when humanity and humanitarian values are gaining momentum, we have to change our outlook and consider the child to be the most fundamental and vital element of the nation; we should work together in accomplishing the objectives of child welfare and development. To put this is in the words of Justice Subha Rao "Social justice must begin with children". Unless a tender plant is properly nourished it has little chance to grow up into a strong useful tree. So the first priority in the scale of social justice should be given to the welfare of children.