

Mental Health Aspects of Victims of Crime with Special Reference to Children

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Every woman, man, youth and child has the human right to the highest attainable standard of physical and mental health, without discrimination of any kind. This is enshrined in our Indian Constitution and the Universal Declaration on Human Rights. Enjoyment of the human right to health is vital to all aspects of a person's life and well-being, and is crucial to the realization of many other fundamental human rights and freedoms. Furthermore, the social rights of victims of crime and their sensitive needs for mental health support is based on the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 (Resolution adopted by the UN General Assembly, non-binding principles upon member nations). Yet, everyday, disparity in health care takes place in our country.

Mental health care for victims of crime

Research and professional experience shows that secondary victimisation, generated either by institutions or individuals, is often experienced by victims in the aftermath of crime and leaves them in need of help. Secondary victimisation involves a lack of understanding of the suffering of victims which can leave them feeling both isolated and insecure, losing faith in the help available from their communities and the professional agencies. The experience of secondary victimisation intensifies the immediate consequences of crime by prolonging or aggravating the victim's trauma; attitudes, behaviour, acts or omissions can leave victims feeling alienated from society as a whole. Secondary victimisation in itself is not an unusual phenomenon in our society.

Indian case law is missing mental health and rehabilitation aspects

Remarkable developments have taken place both internationally and nationally when it comes to prioritising child rights, but the links between child abuse, child labour and the care for a child's mental health are still absent. In India there is no separate law with regards to sexual assault of children. The general law on rape contained in the Indian Penal Code covers child sexual abuse and assault. Similarly, the Juvenile Justice Act 1986 has an impressive preamble, but despite this, the Act scarcely touches upon the subject of child sexual abuse, and completely leaves aside therapy and mental health considerations.

Similarly, in *Vishal Jeet vs Union of India* (AIR 1990 SC 1412), the Supreme Court directed steps against child prostitution. One directive was on establishing advisory

committees with experts from all fields to make suggestions regarding measures for a number of matters including eradicating child prostitution, care and rehabilitation of rescued girls and setting up of rehabilitation homes. The judgement did indicate a good understanding of the sensitive situation of children coming out of prostitution. However again, the judiciary failed to understand the importance of defining 'rehabilitation' in its judgement. Experts may argue that defining such terminology is not within the mandate of the court. However, when directions concerning child rights are formulated it must be understood by law that either the inclusion of expert opinions is put in or that judges are sensitised towards issues such as child psychology. This should also be made applicable to the Juvenile Court, where a permanent position of a psychologist/mental health professional, is created alongside the judge to identify and precisely define directions on rehabilitation.

The role of mental health of rescued and victimised children is also absent in Indian case law. *M C Mehta vs State of Tamil Nadu* (AIR 1991 SC 417), is undoubtedly the most significant case on improving condition of children rescued from hazardous labour. Here it was argued that children below 14 years cannot be employed in any factory, mine or other hazardous work and they must be given education. The Supreme Court ruled that employers of children were made liable to pay Rs 20,000 in compensation for every child employed. The government was asked to provide job to an adult member of the family in lieu of the child or deposit Rs 5000 for each child. Thus there would be a corpus of Rs 25,000 for each child. The fund would be deposited in the "Child Labour Rehabilitation-cum-Welfare Fund". The payment made from the fund or the employment given would cease if the child is not sent to a school. The *M C Mehta* case is most relevant for the understanding of a child's right to education after rescue from hazardous employment. There is however, one aspect missing in this case between the rescuing from child labour to the right to education. The long hours of work and monotony, the constant abuse and oppression for children in employment require the child's thorough mental health rehabilitation as a step prior to education. This was completely left out in the *M C Mehta* judgement.

In cases of legislations concerning children and their rights, mental health considerations must become an inextricable component of law, and therapists must be included in the legal framework both as an appreciation of evidence and for the future benefit of the child as a long term remedy. Such an inclusion and institutionalisation would distant the risks attached to the common blunders committed by lawyers dealing with child victims in trauma. For instance, the daily scene in an Indian courtroom, where lawyers repeatedly would ask a child to narrate violent instances such as sexual assault, not realising the damaging effect such a legal methodology would have on a child.

In India, the most decisive evidence in child sexual abuse cases is the medical report, which has the core aim to trace the offence. The duty of the medical professional is to examine the child victim and gather information that will protect and/or validate the traumatised child. In the cases of refusal to undergo a medical examination the child is referred to a therapist, but only for issues that is making the child uncooperative.

Furthermore, in *Majlis Manch vs. State of Maharashtra & Ors*, a 9 year old deaf and mute girl institutionalized in an observation home, was raped and the medical examination indicated, "Skin injury mark. Bite mark on right cheek and multiple

abrasion marks over skin, buttocks and both legs”. Even in such a dreadful case, where the child is not able to express pain or explain even minimally what has happened to her, even in such cases there has been no realization or will to make mental health considerations an inextricable component of law.

An expertise oriented approach needed

When society does not demonstrate responsibility to victims, pain and suffering is prolonged. Child victims in particular may experience difficulties obtaining support, either from their family or from professionals. Specialist services should be made directly accessible to them, and professionals made available to provide individual support for each child. Collaboration between the professionals, governmental operations and society, with a more expertise oriented approach towards mental health has to be realised and implemented.

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