

## DOMESTIC VIOLENCE – AN INSIGHT INTO INCEST

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### **Abstract**

*Gender-based violence has emerged as a global issue extending across regional, social, cultural and economic boundaries. Domestic violence is a universal phenomenon and one of the most vicious methods adopted by a patriarchal social system to keep women subordinated. However, domestic violence largely remains invisible since whatever is happening within the four walls of the house is regarded as a 'private issue.' It is a manifestation of unequal power relation signified by men's domination over and discrimination against women. Of all the forms of violence against women, domestic violence remains the least reported and largely suppressed. In this paper while covering the wider subject of domestic violence, I would specifically deal with the issue of incest. Incest is a grave crime which is highly detrimental to the victim, leaving a long-term deleterious impact upon the victim. Incest unfortunately will persist as long as the collective conspiracy of silence within the family, the state and the society allows it to go on. This paper will argue that, the problem of incest needs to be tackled in a comprehensive manner at all levels - personal, societal and state.*

**Keywords** – Domestic Violence, Incest, Social Change, Social Issue.

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As a near universal phenomenon, gender-based violence threatens the well-being, rights and dignity of women. However, the perception of domestic violence has undergone a change with international agencies like the UN and the State coming to the forefront to grapple with this problem, and it is now being viewed as a serious violation of gender and human rights.

Documents like the Beijing Platform of Action have taken note of domestic violence against women, though it is placed under the broader concept of violence against women. “Violence against women is an obstacle to the achievement of the objectives of equality, development and peace”, declares the Beijing Platform for Action. It also states that “In all societies, to a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture. The low social and economic status of women can be both a cause and consequence of violence against women.” The UN Declaration on The Elimination of Violence against Women (1993) defines violence against women as “any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.” The U.N. Declaration on Violence emphasizes violence as “the essential and ultimate social mechanism by which women are forced into a subordinate position as compared to men.” It is not only an impediment to development but it also perpetrates inequalities and gender-based violence.

In India, the attempt at legally defining domestic violence reached a milestone with the passing of the Domestic Violence Against Women (Prevention and Protection) Act of 2005. This Act was the outcome of the Government’s initiative as well as years of concerted efforts by the women’s movement in India.

The debate on the issue of domestic violence in India has emerged as a result of the consistent struggle spearheaded by the women's movement against the dichotomy of public and private sphere. The women's movement posed a challenge to the patriarchal society by stating that whatever takes place within the four walls of the house is not invariably a private/personal issue, but may rather also have a broader societal/public dimension, as it may have repercussions for the society as a whole.

Domestic violence affects the entire psyche and personality of the women and girls besides inflicting physical pain and trauma on the victim. However, violence against women is not limited to beating, rape or murder as newer forms of victimization are coming to the forefront. Domestic violence could be both verbal and physical but it usually involves physical brutality. Rape and sexual abuse including incest are also associated with violence. It is worth noting that in India marital rape is not recognized as an offence, though it comes under the purview of violence against women. Besides the physical assault inflicted in crimes such as rape and sexual abuse, the mental agony is more disturbing. It may be identified as psychological violence, suffered by the victim. In fact, the covert aspect of violence though being more widespread is rather difficult to identify as it remains largely invisible.

There could be various forms of domestic violence -

- Physical Violence (causing serious harm to the victim by various means like punching, hitting, hair- pulling and use of weapon)
- Psychological and Emotional Violence which has a deep impact on the victim's psyche.
- Sexual Violence is one of the most invisible forms of domestic violence. Sexual violence could be in the form of marital relationships like marital rape or could be incest.

- Economic Violence which means denying the available resources to women, having adverse impact on their health and economic status. It also consists of exclusion of women from financial decision-making, unequal pay, and denial of property rights.

### **INCEST**

“The prohibition of incest can be found at the dawn of culture....[It] is culture itself.” (Levi-Strauss, 1969, p. 41).

Incest is one of the most ghastly crimes of all, and yet more common than imagined'. The word incest is derived from the Latin term “incestus” which means impure.<sup>2</sup> The dictionary meaning of incest is sexual intercourse within the prohibited degree of relationship defined by law, like daughter and father, sister and brother, son and mother and relations by affinity or consanguinity.<sup>3</sup> The relationships not based on blood but are culturally sanctioned like step-parents, *rakhi*-sisters and the like are also included in the definition.<sup>4</sup> A definition by Bronson (1989) states that any definition of incest necessitates some attention to the ‘imputed trust and power imbalance’ that are integral aspects of incest (p.21).<sup>5</sup>

Rape and incest are the severest form of barbarity inflicted on women and girls. Hilberman, a psychiatrist, has termed rape as the ‘ultimate violation of self.’<sup>6</sup> The gravity of offence is even greater in the case of incest where even trust is violated.

If we go back in history, we find the prevalence of incest from the ancient times. The Egyptian Pharaohs had the practice of marrying their sisters,

<sup>1</sup> Gupta Shrinivas, *Incestuous Relations and Sexual Abuse of the children in India and Abroad*, 3 AMITY L. REV. 79 (2002).

<sup>2</sup> SANFORD KADISH, ENCYCLOPAEDIA OF CRIME AND JUSTICE 880 (1983).

<sup>3</sup> JOHN MCDONALD, RAPE-OFFENDERS AND THEIR VICTIMS 192.

<sup>4</sup> OC SHARMA, CRIME AGAINST WOMEN 161 (1994).

<sup>5</sup> Joan D. Atwood, *When Love Hurts; Preadolescent Girls' Reports of Incest*, 35 AM. J. FAM. THERAPY 287-313 (2007).

<sup>6</sup> 133 AMERICAN JOURNAL OF PSYCHIATRY 436-37 (1976).

purportedly to maintain the purity of blood. Incest was also committed by Oedipus and his mother Jocasta as referred to in Oedipus Rex by Homer.<sup>7</sup> Cleopatra also provides a classic example of incest. In the instances mentioned above, incest was confined to noble families only. We come across incest in Indian mythology as well. In the *Mahabharata*, Arjuna married Subhadra, the daughter of his aunt Rohini. There are other instances too such as the union between Yama with his twin sister Yami; Prajapati and his daughter Ushas; Pushan and his sister Surya etc.

However, the practice of incest was condemned and prohibited by most civilized societies. The Code of Hammurabi prohibited it in 1750 BC. There exists a universal taboo on the issue of incest. “The taboo on incest within the family is one of the few known cultural universals.”(Peacock & Kirsch, 1970, p. 100).

However, a domain where there is very little information is that of abuse of girls/women within the home. It is a highly sensitive issue which has the potential to destroy the essence of a family; hence it is very often kept hidden in the dark corners of the family. The fact that strikes us on reviewing research and writings on incest is the silence around its prevalence and its denial. It is the recent awareness of women to say ‘no’ to all forms of abuse against them that has opened up the Pandora’s Box of incest and has acted as an eye-opener to the horror.

A shocking fact and stark reality is that the incidents of incest are widely prevalent in society. We usually do not talk about the sexual abuse of children and the incidents of incest, but it is no secret that they exist in society. It is prevalent not only in slums and among the deprived segments of the society, but also in educated, well-to-do families. The actual statistics for this horrific crime is rather difficult to find due to the stigma and trauma

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<sup>7</sup> Preeti Misra, *Growing Menace of Incestuous Behavior in India calls for Legislation*, Cr. L.J. 1999 (May).

associated with it. The eminent sociologist M.N. Srinivas has stated that the sexual abuse of children is rampant yet it has escaped the researcher as the fear of stigma is a major hurdle, especially among the middle and upper class families.<sup>8</sup>

The magnitude of the problem is indeed shocking and mind boggling. RAHI (Recovering and Healing from Incest), a Delhi based organization, working on the issue of child sexual abuse titled *Voices from the Silent Zone* has revealed that 76% of respondents to its survey had been abused when they were children - 40% of those by a family member. The findings of a study undertaken by the BBC point to the fact that one out of ten women covered by the study reported some kind of sexual abuse during childhood by known persons, ranging from father and uncles, to doctors and counselors.<sup>9</sup>

Voices from the Silent Zone: Women's Experiences of Incest and Childhood Sexual Abuse, the RAHI findings states that "incest" or "child sexual abuse" comprises of sexual exploitation between a child and another person, who by virtue of his power over the child on account of his age, position of strength or relationship exploits the child to meet his own sexual needs. The exploitative act also includes the betrayal of trust and abuse of power. A child's necessity for care, nurturing are not identical with an adult's sexual needs. The abusive act includes not only the exploitation of the child's body, but also of the trust associated with the relationship. The sexual abuse of the child within the family is generally not reported due to the associated stigma.

We find that incest transcends barriers of caste, community, sex, family, age and class. The only common factor remains power, which triggers incest to take place in families. The abuse mostly takes place within the confines of the family home. Indeed, the most disturbing aspect of the offence is that family

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<sup>8</sup> M.N. Srinivas, *Sexual Abuse of Children: Hidden Peril*, INDIA TODAY, October 31, 1992, at 101.

<sup>9</sup> Amarjit Kaur, *Socio-Cultural Norms About Girl-Child Must Change*, 37 KURUKSHETRA, September, 1990, at 8.

members or relatives themselves sexually abuse the woman/girl in the home itself, maybe even for a prolonged period of time. We find that about 85-95 per cent of all sexual crimes against children are committed by a known person and about 80-90 percent is intrafamilial. The abuser often builds up trust by giving gifts, money, and affection etc to lure the child and then violates the relationship. A child is usually warned to be cautious of strangers; hence the child is caught off-guard when advances are made by a family member, relative or neighbor.

The abuse usually goes on for a prolonged period of time and is not restricted to a one-time incident. The abuse and trauma is multiplied several times when the relationship between the abuser and abused is that of father and daughter. Denial, cover-up to maintain the family 'honour' are usually placed above the interests of the child and its abuse. The personal hell that the victims undergo, in many cases for months and years, is very traumatic for them since they usually suffer alone and are overcome with feelings of fear, helplessness, and sadness. A child abused by a stranger can take refuge in her home for help and comfort, whereas a victim of incest has nowhere to go.

Victims of incest are usually reluctant to reveal the crime since the abuser is a known person who is trusted and is usually in a position of authority to the victim. Sometimes the victim is threatened to maintain the "secret." Quite often the victims do not even confide in their parents. In cases where the victim is very young, she does not even realise that there is anything wrong with the incestuous behavior. Sometimes the victim could be hesitant to report it due to fear of being blamed and punished or not likely to be believed. The report, "Voices from the Silent Zone" based on the survey conducted by Delhi organisation RAHI suggests that disbelief, denial and cover-up to preserve the family reputation is often put before the individual child.<sup>10</sup>

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<sup>10</sup> BBC News, South Asia, *India's Hidden Incest* (1999).

The patriarchal family structure, the authoritarian position of the fathers and the other males, the submissiveness and passivity of women who remain mute witnesses to the gross injustice and the ideological mindset of not allowing the “family shame” to be exposed whatever the cost, are the contributory factors that help the abusers get away with the offence.

Violation of trust is an integral aspect of incest “Incest- unlike abuse by a stranger or an acquaintance- violates an ongoing bond of trust between a child and a caretaker.” (Blume, 1990, p.2). Hence, incest includes a violation of trust, love along with the bodies of the victims. The abuser has control and authority over the victim due to her dependency on him, which undermines her position. As the male is physically and mentally more powerful than the victim, he can easily take advantage of her. The physical power can be utilized to abuse the victim while the emotional power can be used to threaten the child not to reveal the abuse to anyone. Blume (1990) has observed that the real damage results from the fact that the child is taken advantage of by a person she relies on. Unlike as in adults, in children the use of force is not an essential part of the abuse. There are countless instances when elderly relatives make sexual advances on unsuspecting children especially girls, not sparing the disabled either. These advances could be in the form of caressing, or exhibitionism thinly disguised as play. Sita is a 7 year old girl. She is very attached to her grand-parents and spends a lot of time with them. Her grandfather holds her on his lap for long periods and strokes her inner thighs. She does not understand what is happening but feels uncomfortable. Is he sexually abusing her? Yes. (Excerpted from counseling centre Sakhi’s Booklet on Child Sexual Abuse Awareness).<sup>11</sup> Many such instances are not recognized let alone reported.

Says Delhi-based senior consulting psychiatrist Dr. Sanjay Chugh, “child sexual abuse often comes to light when childhood histories are explored and

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<sup>11</sup> PREETI MISRA, DOMESTIC VIOLENCE AGAINST WOMEN (2007).



in most cases the perpetrator is a known person who is close to the family or inside the family.”

The dominant patriarchal set-up generally does not confront or punish men who are the abusers. Patriarchal domination characterizes the incest family and perpetuates sexual abuse across generations. Male dominance may be manifested by force or threat of force and maybe maternal powerlessness (could be due to absence or any other incapacity).<sup>12</sup>

Telling the secret’ or ‘breaking the silence’ could provide a challenge to incest, but even when the information leaks out of the family, communities often maintain silence. Perpetrators of incest are usually not identified and punished. Taking into consideration the wide prevalence of the crime, very few abusers are prosecuted and convicted. Thus even though public awareness regarding the nature and extent of the problem has increased, which in turn has led to increased reporting, nevertheless, incest remains an extremely unreported crime. Not surprisingly, only a fraction of the cases are reported and there is continuous sexual abuse of women/girls within families.

If we try to identify the factors responsible for the offence there could be many as-poverty, helplessness, despair, socio-economic handicaps, personal incapacities, and frustration.<sup>13</sup> However, the genesis of incest could be traced to the socio-cultural ethos emanating from the patriarchal set-up. The gendered power equation between men and women is based on the ideology of male superiority and female inferiority. This patriarchal ideology perpetuates women’s dependence and reflects itself through violence in the private domain, where men try to control girls and women in the public and private sphere. Since the girl or woman is dependent and vulnerable in her position in relation to men, fear is also a factor leading to their silence on

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<sup>12</sup> Lucy M. Candib, *Incest and other Harms to Daughters Across Cultures: Material Complicity and Patriarchal Power*, 22 *WOMEN’S STUD. INT’L F.* 197 (1999).

<sup>13</sup> Henry H Foster Jr, *Violence Towards Children: Medico Legal Aspect*, *J. AM. ACAD. OF PSYCHIATRY*.

incest. The economic dependency of girls and women due to men's control over means of resources is a factor contributing to her being treated as commodity or property by men and for her tolerance of incest.

The scenario in India is more serious and grave owing to the process of socialization which girls and women are subjected to. They have been conditioned to be submissive and obedient to men. The feeling of inferiority is so internalized in women that they often fail to question it. Similarly, men have been socialized to consider themselves to be superior to women and have a right to even control women's behavior. The sense of male superiority is deeply engrained in our cultural ethos and widely put into practice though it has no legal sanction. In this way, the process of socialization makes both men and women define their roles in relation to the other sex and internalize their individual status as assigned to them.

The consequences of incest could be physical-mental pain and suffering, with long-term implications affecting the psyche and personality of the victim. Incest perpetuates the economic, social and psychological dependency of the hapless victim, which, in turn, makes her even more vulnerable to such abuse. Incest results in the victims feeling insecure at home; simultaneously it also endangers their self-development and human rights.

RAHI has studied the experiences of the survivors of incest. Their findings reveal that the victims suffer from depression, frustration, low self-esteem, isolation, anxiety etc. In some cases it has also led to PTSD (Post Traumatic Stress Disorder).

'Voices from the Silent Zone' also highlight another problem confronting the victims of abuse in India - the complete absence of any support system outside the family to help the victims. According to psychiatrist Achal Bhagat, 'The juvenile homes, the social support system is so lacking and so insensitive to the children, that I wouldn't be sure what is worse - to stay with an abusive family, or the environment the system would put them in.'<sup>14</sup>

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<sup>14</sup> BBC News, *South Asia, India's Hidden Incest* (1999).

The crisis gets exacerbated in our country by the fact that the concept of family is considered to be almost sacred and abuse, if it happens, is met with disbelief.

### **References to some of the cases reported in newspapers**

Shocking figures submitted by the Delhi Police to the Delhi High Court have revealed that of the 1704 rape cases registered in the capital in the first 10 months of 2014, 215 were cases of incestuous rapes. More disturbingly, in 43 cases it was the father who committed the crime and in 27 cases it was the brother. The figures demonstrate that in most rape cases, the offender was a known person to the victim. The gravity of the situation, as emerges from the said report of the Delhi police, is illustrated in the table given below.

### **MONSTERS AT HOME**

#### **RAPES - Total cases reported in 2014 (till 15<sup>th</sup> October) - 1704**

<b>NO. OF CASES</b>	<b>ACCUSED</b>
43	Father
23	Step-Father
27	Brother
27	Husband/ex-husband
32	Uncle/maternal uncle
4	Cousin
8	Father-in-law
3	Son-in-law
74	Brother-in-law
352	Neighbour
83	Family friend
642	Friend
72	Stranger

A few widely reported cases of incestuous rape are mentioned below –

April 27, 1995—A case was reported where an Under-Secretary in the Union Home Ministry, Karamchand Thakur, was charged, along with his colleagues of sexually abusing his eight year old daughter.

July 24, 1995— A resident of Noida was arrested by the police for raping and murdering his 8 year old daughter.

A farmer in his early 50s developed a sexual relation with his 30-year-old daughter-in-law in a village in Kaithal district of Haryana. Their liaison continued for almost a year. The matter even reached the village panchayat, which ordered separation of the two unlikely partners so that the woman could go back to her husband.<sup>15</sup> Experts believe that such relationships have existed behind closed doors for many years. But given the modern means of communication and the spread of the media, the skeletons are now tumbling out of family cupboards.

Interestingly, the youth believe that incest is a traditional practice and not a novel feature.” *Yeh to hame virasat mein mili hai* (incest is part of our tradition),” says Naresh Kumar, a villager in Rohera in Kaithal district. Sociologists, in turn, say that the ethnic history of the region is full of such instances.<sup>16</sup>

“In the pre-Independence era, in some parts of north India, the father-in-law almost had the right to physical relations with a daughter-in-law, and in most cases the female was not in a position to resist much. The very young husband also had no say in the matter. Widows would be married to a brother of the dead husband. Sharing of wife by brothers was also not uncommon,” says Ravinder Kaur, a professor at IIT-Delhi.<sup>17</sup>

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<sup>15</sup> Sukhbir Siwach, *Incest: Haryana's Shameful Social Heritage*, THE TIMES OF INDIA August 28, 2010.

<sup>16</sup> *Id.*

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Certain factors specific to a region may also accentuate the problem. For instance, as Ravinder Kaur has observed, “Adding to the problem in Haryana is the adverse sex-ratio caused by the practice of female foeticide. Its effects are now being felt on intimate relationships within and without the family. The shortage of marriageable women can have many unintended consequences, especially when only one out of four men find a bride (as in the case of Haryana) in their own community”.<sup>18</sup>

Chilling reports of incest and abuse can be heard from various parts of India. In some instances, even a woman’s physical relations with a husband’s brother is not considered unusual. “Such relations are not objected to. They are considered a family’s ‘internal affair”, says Prem Singh, a farmer-leader from Kaithal.<sup>19</sup>

The recent controversy over the Indrani Mukherjee case in 2015 has rocked the entire country, in which she is accused of murdering her daughter Sheena Bora. This case is also believed to have the incest angle besides property as a possible factor and it is even said to be a case of honour killing. However, the true facts will be revealed only after the investigation is over.

Law is expected to play a crucial role in curbing and eradicating offences against girls and women, and to question their subordinate status. The legal system is expected to play an instrumental role in delivering justice to the hapless victims of abuse, exploitation and injustice and to restore their dignity and identities as individuals and human beings with their sacrosanct rights. As Martin Luther King stated, ‘Law cannot change hearts, but can restrain the heartless.’

However, the existing legal apparatus largely seems to have failed in securing justice to the victims of incestuous rape. It is a disturbing and alarming scenario that the abusers are usually not even identified let alone punished

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

due to the lacunae in the law. Studies reveal the gravity of the situation when we realize that the reported cases of incest are only the tip of the iceberg.

In 2010, the trial court convicted Sant Ram, who raped his daughter for several years and even fathered her child, under 'rarest of rare' category and sentenced him to life imprisonment. Although the court awarded maximum punishment to the accused in the said case, it also pointed out the lacunae and inadequacy relating to the legal provisions in respect of incestuous rape. The court said that though many children are sexually violated, the existing laws in the country are 'highly inadequate' in dealing with cases of incest.<sup>20</sup> It is pertinent to mention that the rape laws in India still do not define incestuous rape despite the recent amendments in the Criminal laws in 2013.

In countries like the US, UK, and Germany incestuous rape is distinguished and classified in specific terms and there exist stringent laws to deal with the offence. In the UK, the Sexual Offences Act, 2003 made the offence of incest punishable with a punishment of 12 years. In the US, punishment varies from one state to another; in Massachusetts punishment for incest is 20 years imprisonment, while in Hawaii it is 5 years. In Australia it is treated as a Federal offence and the punishment could extend to 25 years.<sup>21</sup> The most shocking case of incest was that of Joesph Fritzl in Austria who imprisoned and raped his daughter in the basement of his house for 24 years and was the father of her seven children. Fritzl was tried and sentenced to life imprisonment.

On the other hand, besides the infirmities and inadequacies in the legal provisions relating to incest, the response of the society is also very often not only lackadaisical but even outrightly callous, inhuman and brutal. In this rather grim and vicious scenario, Additional Sessions Judge Kamini Lau has been constrained to observe: "Instances are not rare in India of people taking

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<sup>20</sup> Smriti Singh, *Need to define incestuous rape in India*, THE TIMES OF INDIA, April 1, 2010.

<sup>21</sup> *Id.*

law into their own hand. Incest offences in many cases often end up in honour killings in our society. It is time to wake up to this situation and acknowledge the existence of incest in our society before it is too late”.<sup>22</sup>

Anuja Gupta, founder-executive director of RAHI says, “Not legislating a strict punishment amounts to the law reiterating that it is 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 is treated more like an aberration so there is no harsh punishment. This is true across the world and it is a terrible truth to own up to.”

The broader and endemic problem of incest is a vexatious and very grave issue facing the women’s movement in India. In 1983 and 1986, by means of two Criminal Amendment Acts, the criminal laws were amended to bring within its ambit certain forms of violence within the home and make the offence punishable. Section 498A was inserted in the IPC so as to ensure that punishment could be meted out to a felonious husband and his relatives for perpetuating cruelty upon women. The 1986 Amendment added a provision in the IPC categorizing and penalizing dowry deaths separately under Section 304B. After a long struggle, the Act on Domestic Violence against Women (Prevention and Protection) was passed by the Parliament in 2005. The Criminal Law (Amendment) Act, 2013 was passed after the Delhi gang rape incident. It amended sections of the Indian Penal Code, Code of Criminal Procedure, Indian Evidence Act and Protection of Children from Sexual Offences Act. But incest still remains outside the purview of law in our country. Hence, there is an urgent need to legislate a strict law incorporating stringent and rigorous punishment against the offence relating to incest which will act as a deterrent for abusers.

However, it is obvious that law alone cannot be effective until the mindset of the society also changes. To check the menace of incest, it is imperative to

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<sup>22</sup> *Id.*

treat it as a societal rather than an issue affecting only a person or individual. This could be done by eliminating the personal/private domain dichotomy, which requires transformative action to transform the patriarchal society into a society free from gender inequalities. Accordingly, efforts have to be directed towards changing the family relations from a hierarchical to one based on gender equality.

In our country, the 'honour' of a family or community is considered to be something absolutely sacrosanct and inviolable. Unfortunately, it is girls and women who have to usually pay the price for maintaining the family 'honour'. Even when they are victims of injustice and cruelty, women and girls are made to restrain themselves from indulging in any action which would lead to bringing shame or dishonor to their families. This so-called 'honour' overlooks the damage caused to children and compels them to bear with the agony of incest and suffer in silence, often for many years.

A transformation in the mindset of the society is required towards achieving a fair, just and equitable approach regarding the equations between men and women. This would be facilitated only through an increasing level of literacy, greater general awareness and improvement in the economic well-being of the people. There is a need to propel the social institutions to adopt a more pro-active and humane approach, aimed at initiating a multi-pronged and concerted effort towards providing an impetus to preventive and ameliorative action while dealing with the instances of incest.

Above all, it is imperative that the families and society should not provide protection to the perpetrators in order to pander to their primordial and criminal belief of the need to safeguard the family name and reputation at any cost. The society must ensure that cases of incestuous rapes are invariably reported, the culprits are identified and cases are filed against them, as well as the family members, aiding or abetting in the commission of offence or attempting to torment the victim and force her into silence. Active



social support from family, friends, guidance centers and counselors can bring the victim's faith in the goodness of human beings back

A legal mechanism needs to be established wherein private households and parental behavior are manifested to surveillance, thereby making the family more visible to social regulation. In the cases of child sexual abuse the intervention of the state becomes imperative when the state should take over the responsibility of the child. Usually the state adopts an ambivalent attitude towards the family members who sexually exploit children and hesitates to take action against them, justifying this on the grounds of privacy of the family. The abused child could be placed in an institution or in the custody of a trustworthy person/relative entrusted with the care of the child. The child should be treated as a victim rather than as an offender and a sensitive and compassionate approach needs to be adopted towards the child. It is imperative to treat incest as an offence and make separate provisions to deal with the offence so that the abuse within the family is dealt with effectively.

Criminal and civil sanctions alone cannot provide an adequate solution to the abuse within the home. A comprehensive approach involving diverse agencies becomes imperative to effectively deal with the menace.

Hence, it is necessary to build up public pressure against the menace of incest through the mobilization of community protest in the form of demonstrations, *dharnas*, social boycott, and community patrolling etc. to prevent any occurrence of incest and to crystallize public opinion against it. Further, not only the police has to ensure swift punitive action against the culprits, there is also a need for a mechanism which can provide free and speedy legal aid to the victims of incest.

There is a need to set up more rehabilitation homes for the victims which will help the affected women and girls to rebuild their shattered lives and generate confidence and self-reliance among them. These homes should also

provide training and skill to the victims who have no means to earn their livelihood. These homes also need to be linked to government and non-governmental organizations, which are engaged in taking up education, self-employment or any other income-generating activities.

Incest is a grave crime which is highly detrimental to the victim, leaving a long-term deleterious impact upon the victim. The widespread prevalence of incest points to the inherent hypocrisy of our society as it shrugs off and overlooks or plays down the gravity of the crime of incest though the so called champions of the social equity and justice let go of no opportunity to disparage any societal behavior impinging on their vested interests or domineering and ascendant position in the society.

Obviously, patriarchy has no qualms in overlooking the most despicable instances of social injustice and sexual abuse where women are victims. This is rooted in a situation where the disempowered and devalued women 'enter into marriages with authoritarian men who regard it as their right to control and abuse the women and children in their families' (Candib, 1995, p.108). Thus, one can say that incest is a physically, sexually, and psychologically destructive practice victimizing and debasing girls, which is sometimes even sustained by their mothers, serving male sexual interest, that strengthens male patriarchal control and is passed across generations.<sup>23</sup>

The Convention on the Rights of the Child states the family as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children. The Convention grants children rights which can be used against exploitation in families, schools etc.<sup>24</sup> Even more significant is the fact that it segregates the rights of the child from that of the family. Children have rights vis-à-vis the family as well as the state. It is the responsibility of the family to provide for, nurture

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<sup>23</sup> Foster, *supra* note 13.

<sup>24</sup> M ADENWALLA, CHILD SEXUAL ABUSE AND THE LAW (2000).

and protect children and it remains the state's responsibility to provide adequate services and means in order to enable the family to perform its role.

Laws and legal systems are major tools that could be used to promote justice as they play a vital role in securing and maintaining the well-being of a society. However, several lacunae and infirmities exist in the Indian legal system which does not provide adequate redress to victims of sexual abuse. Legal provisions dealing with incest are not clear; the law does not differentiate between sexual abuse by parents or relatives. Since the abuse is committed by the most trusted persons, it has the most adverse and damaging impact on the victim. Hence, such cases need to be looked at with a different perspective imbued with a sense of empathy, compassion and justice towards the victims. The most detrimental impact of incestuous relationships is that the victim is overcome with feelings of guilt, frigidity, depression and even suicidal tendencies. It must, therefore, be the duty and responsibility of the family and society to ensure that the victim is not blamed for the offence.

The victims of incest suffer possibly for months and years, going through a trauma which could be characterized as 'personal hell.' Even when a case is registered against the perpetrator of the crime in a few instances, which are miniscule in number, the victim would have suffered a lot. The cases drag on for many years which is a major impediment in the delivery of justice. The delay in ensuring justice virtually amounts to a denial of justice to the victims. Therefore, the entire legal process needs to be reformed and overhauled to ensure quick trial and deliverance of speedy justice. Audio or video recording of the victim's evidence should be regarded as adequate legal requirement. Making her repeat or recreate the obnoxious incidents *ad nauseam* before the police or the court makes the victim feel traumatized and it may even impair the evidence and most likely result in the travesty of

justice. The victims, especially children, are helpless before the perpetrators of crime; hence, they need to be provided solace and protection, keeping in mind that they have been subjected to sexual abuse of the worst possible nature.

We need to comprehend and accept incest as a part of our society and realize that closing our eyes and denying it will not provide a solution to the problem. We need to spread the word at the mass level regarding its existence and also about the help available. Workshops in schools and colleges that highlight such problems should be conducted for children and teachers to become more sensitized. Parents need to be educated and made aware about how they can protect their children or help those who have suffered. We need to take on the responsibility of reaching out to each other and take concrete steps to stop this physical, psychological abuse and pain that gets inflicted upon innocent lives.

Incest, unfortunately will persist as long as the collective conspiracy of silence within the family, the state and the society allows it to go on.

Hence, the problem of incest needs to be tackled in a comprehensive manner at all levels - personal, societal and state. The enlightened sections of the society as well as those at the cutting edge, holding the position of authority or capable of contributing to the process of female emancipation, such as the doctors, counselors, police, judges, media-persons and the social activists will have to come to the forefront and be the vanguard of the wider social movement in this sphere. Further, there is a need to bring about greater sensitization and awareness among the less educated and less progressive sections of the society about the issues relating to domestic violence and sexual abuse directed against the women and girls. There is a need to give impetus to generating awareness and the sensitivity of compassion among the general public so that the attitude of the society towards the victim could turn positive and more sympathetic. At the same time, there should also be

emphasis on the core area of education, by way of increasing the level of female literacy, making girls and women aware of their rights, instilling confidence in them to speak up and report about the incidents of incest. In short, we have to ensure their holistic empowerment and give a fillip to the fight for securing rights and justice for them. The media could also play a crucial role in this regard by reporting cases relating to injustice, exploitation and victimization of girls and women and by assisting in the task of bringing the culprits in the public domain. The basic and structural causes of incest throughout the world have many strands of similarities and commonality. Hence, it is essential to also build up an International collusion to combat the problem of domestic violence and incest. The course of action in this regard would require collaborative efforts by the government authorities, NGOs, women's organizations and the civil society, geared towards taking determined efforts, accompanied with resolute action at all levels, to ensure the advancement and safeguarding of the rights of women and girls.