

Incest As Sexual Crime in Indian Legal and Social Framework: A Violence Within Family

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Abstract

Incest, as a form of sexual crime which remains one of the most under-reported and non-acknowledged crime within India's legal and social framework, as it takes place within four walls of a house. Indian society has been under delusion and denial for a very long period as to the existence of such crime; reason being strong belief in societal culture. It was Covid-19 that acted as evidence for existence and mirror to such incestuous cases. While criminal law addresses several forms of sexual violence, incest is dealt silently under such recognized provisions. Present research critically examines incest within India's legal and social framework by addressing associated taboo. Furthermore, this study advocates for special Act to be enforced for criminalizing incest as an offence with separate recognition. Adding to it, recommends gender neutral, victim-centered legal approach and apt intervention at every stage of life; which can only be achieved by addressing real incestuous standing in Indian society. This paper has empirically collected data from 38 school teachers to understand whether educational institutions can help in early detection of incest.

Keywords: Incest, Rape, IPC, POCSO, India, law.

1. Introduction to Societal Taboo

Crime is a wrong not just against one individual but against a society as a whole. Every act of single mankind holds separate yet unique impact on society. It is strongly believed that a crime is committed by a person who has not develop strong sense of wrong and right or who may have evil desires. Indian society holds strong belief and cultural values which are deeply engraved in its structure making it the possible reason for denial and delusion of non-existence of such libidinous and lustful crime.

Incest typically means sexual engagement with a person who falls under the prohibited degree of marriage. It has been derived from the Latin word incestum "in" means "not" and "cestum" means "chaste" (Chandra, 2021). It is an act that violates law and norms of society (Gusti Ayu Kade Komalasari, 2020). When the definitions given by various eminent researchers and legislatures are bifurcated there are two key terms or concepts that require understanding to define it as a crime in any society, i.e., sexual engagement and relation. As each society has their own customs, culture and beliefs the ambit of incest as a crime can be molded, which is why it becomes important for researchers to take up comparative analysis to curb incest as silent human right violator. (Chandra, 2021), Though no religion permits to have sexual relation with their parents or siblings. Sexual relations beyond the norms in a family are known as incestuous relationship which is illegal and offensive in the society and in religious world it is a heinous sin that leads to worst outcomes. Due to secrecy and threats involved in the abuse, often there is no other source to counteract these messages, or way to escape the abusive relationship (Lawson & Sullivan, 2020).

In general incest can be categorized into three heads which are:

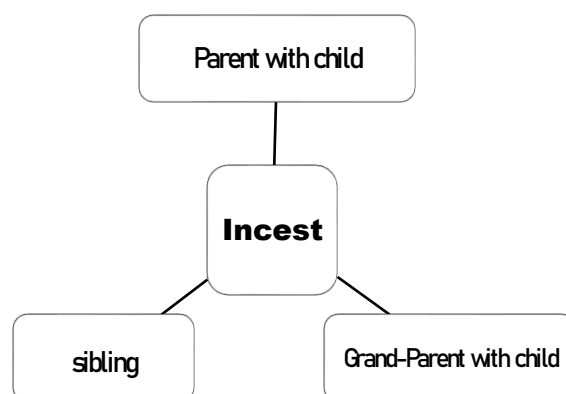


Figure 1: Broad Category of Incest

(Rosenfeld, Nadelson, Krieger, & Backman, 1977) Highlighted that most of the problems in the definition of incest center around two issues:

- 1) The specific acts to be included, and
- 2) Which persons can be considered too closely related to marry.

(Choate & Sharan, 2021), it is important to acknowledge that incest has a variety of definitions, some legal, some based on cultural tradition, some drawn from religion and some drawn from social restrictions. In India there are issues like:

- 1) Strong belief as to non-existence
- 2) If exists – treated under the shadow of rape (Gender Specific)
- 3) If a child is involved dealt under POCSO
- 4) Under-reporting due to cultural barriers
- 5) Ignorant towards the gravity of crime.
- 6) More of culprit centric than victim centric


(Barry, 1984), Unlike rape or molestation, incest is initiated by a loved and trusted adult upon whom the child is dependent. Therefore, the child may allow it to continue for years without reporting it. In fact, there may be times when someone who hold power might involve an adult to engage in activities which might be involved in incestuous category. Incest as an offence requires special amount of attention due to the gravity involved. It is a heinous crime that is rarest of rare. (Sepaha), tried drawing attention to different concepts based on the essentials which are: rape, incest and incestuous rape. It has various forms in different legislation but can be broadly categorized under two heads:

- 1) Penetrative incestuous offence
- 2) Non-Penetrative incestuous offence

The most common type of sexual act is fondling and touching of genitals (Tidefors, Arvidsson, Ingevaldson, & Laesson, 2010). Other types of sexual acts include oral intercourse, genital exposure and digital vaginal penetration (Tidefors, Arvidsson, Ingevaldson, & Laesson, 2010). The causes of incestuous behaviour can be categorized into three types: family causes, social causes and personal causes (Adegboyega, Ajiboye, & Abdulkareem, 2023). It can be committed within two patterns, the first is violence or the threat of violence against the victim so that the victim wants to have the sexual relations desired by the offender (Gusti Ayu Kade Komalasari, 2020). Offender will also use violence and threats of violence so that victims do not disclose violence that has happened to victims and the second is manipulation and false affection (Gusti Ayu Kade Komalasari, 2020). It is a serious societal problem that will continue in a vicious cycle from one generation to the next if steps are not taken to alleviate the problem (Barry, 1984). Incestuous activity includes all kinds of inappropriate sexual behaviour varying from touching to intercourse (Sancak, Tasdemir, & Karamustafalioglu, 2021). It is

difficult to determine the actual prevalence of incest, as victims and family members choose not to disclose the activity in many case (*Sancak, Tasdemir, & Karamustafalioglu, 2021*). Victims not only undergo physical abuse but suffer psychological trauma also (*Sepaha*). Academically there are numerous researchers who have taken up psychological empirical research to indicate the gravity and impact of incest as an offence. In the case of (*Lokesh Mishra V. NCT of Delhi, 2014*), Hon'ble Justice Kailash Gambhir opined that, 'In such a case the offence assumes a greater degree of vulnerability which shall not go unpunished. There can never be a graver heinous crime than the father being charged of raping his daughter. It is the gravest sin, where the most platonic relationship is shattered by an extreme pervert and shameful act of nonetheless but one's own father'. In the same case gravity of incest was highlighted. (*Choate & Sharan, 2021*), pointed out to three major reasons as to why incest is still considered to be a taboo. One of them that can be considered in Indian society is the negative impact that incest has on the safe foundation of the family unit and its capacity to stay and function together. This is also related to the power dynamics that emerge in the family when incest occurs. The offender holds a position of power over the victim as well as on family to mold behaviour around such a circumstance. It is often pretended that it does not exist or it is a fabrication of a child's active imagination and others believe that incest is rare, occurring only when the participants are mentally or emotionally abnormal (*Barry, 1984*).

During covid-19 when people were forced to stay indoors that's the time when real evil desires came to light. One such case post covid-19 take got my attention was reported on online forum of Times of India titled "*14-year-old girl pregnant after father rapes multiple times in Hyderabad*".¹ As per the report a 45-year-old man was arrested by police of Shadnagar for allegedly sexually abusing 14-year-old for multiple times for the past few months, resulting pregnancy of girl. The incident saw light when one of the teachers at the school, where the girl was studying, noticed the change in her behaviour and spoke to her privately.

MOM, STEPMOM PASSED AWAY		
<ul style="list-style-type: none"> ● 45-year-old man rapes minor daughter for months ● Survivor is 4 months pregnant now ● Girl's mother passed away in 2013 due to ill health ● Accused warned the girl not to reveal about ordeal 		<ul style="list-style-type: none"> ● The survivor is the daughter of the man's second wife, said police ● Cops hand over minor girl to her maternal family ● He committed the offense under the influence of alcohol ● Pregnancy to be terminated with consent of kin

Source: Times of India online portal

Such victims rarely get justice due to the complexities involved in our society. Incest might be considered rare of the rarest but the impact of a sexual offence on its victim is graver in nature. Victims have to live with the scares given by their close members. A daughter always looks up to her father as a shield of her dignity and honor which is an intrinsic facet of a family especially of a father-daughter relationship. It shocks human conscience when the sanctity of the father and daughter relationship is ravaged in such a sordid manner and the protector becomes the violator. In such a case the offence

¹ 14-year-old girl pregnant after father rapes multiple times in Hyderabad | Hyderabad News - Times of India

assumes a greater degree of vulnerability which shall not go unpunished (*Lokesh Mishra V. NCT of Delhi, 2014*).

2. Legal Standing in India

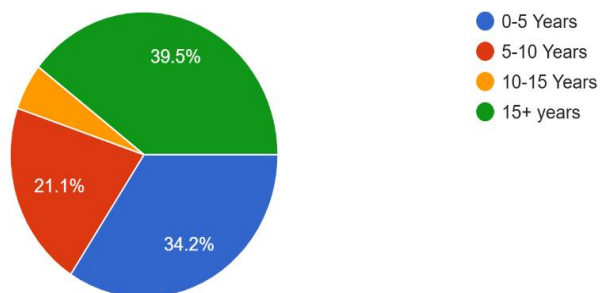
(*Choate & Sharan, 2021*), Indian legal system has no laws which mention incest specifically as an offence. This absence has been recognized before, which is the reason why the legislature tried to pass Incest Offender Bills of 2009, 2010 and 2012 respectively. In 2020 the legislation tried to bring Incest bill once again but due to uncertain reasons 2020 bill also lapsed. The only difference between them was that 2009, 2010 and 2012 bill was gender neutral whereas, 2020 bill was gender specific. Evidently, as recorded judicially incest case till date are covered under the shadow of other recognized sexual offences. In the year 2012 POCSO was enacted to protect children from heinous sexual offences, which was gender neutral. In 2023 IPC, 1860 was replaced with BNS, 2023 which is again gender specific in regard to sexual offences. For Indian society bring a law in for is not a great trouble but enforcement and prevention mechanism is definitely a problem. There is no effective child protection system that exists across India that would protect the child from the offender (*Choate & Sharan, 2021*). Now, on top of that there is an increase in number of such cases which can be backed up by NCRB data. I'll like to highlight here that incest is not a separate category in NCRB data yet incidents can be drawn from sub categories under other sexual offences.

Section 376(f) IPC, 1860 states that if a relative commits the rape of woman, they shall be punished with rigorous imprisonment for not less than 10 years, but which may be extended to imprisonment for life, and shall also be liable for a fine. Here, the problem arises. As advocated prior that incest can be categorized under two heads, i.e., penetrative incestuous offence and non-penetrative offence. As per the section no doubt the ambit has been increased by adding the word 'relative' yet it fails to justify incestuous offences. Reason being the term relative no doubt increases the ambit and to a limit helps in serving justice, but the underlying issue is the gravity, recognition and adequate punishment. It is just brushing the crime under the name of other crime. Infact Justice Verma committee also suggested gender neutral law but the government did not act upon this recommendation (*Choate & Sharan, 2021*). (*Mohindra, 2023*), pointed that section 376(f) is incomplete as it does not define who a 'relative' is in the eyes of law, which makes it vague. The same paper also highlighted strongest notion revolving around incest which is obsession with penetration. Infact the deficiencies in laws was also pointed out by (*Mehta, 2013*).

In some jurisdictions, incest has a solid foundation. Every nation has different laws, with penalties varying from simple to rigorous and to death. For instance, incest is only prohibited in Italy if it causes a public uproar, in which case it is punishable by two to eight years in prison. Incest is not illegal in twenty-two nations worldwide. Additionally, no laws prohibit consenting relatives from having sexual relationships in India, Brazil, South Korea, Thailand, Turkey and Luxembourg. In the United States, laws about incest vary from state to state. All states have laws that make incest illegal but with a wide assortment of exceptions or punishments. For example, Rhode Island prohibits incestuous marriages but has no laws against incest in general. New Jersey tolerates incest provided the participants are at least 12 years of age. Whereas in the United Kingdom, it is incest as a whole is an offence. It is punishable by up to two years imprisonment for sex between adult relatives (penetration) and up to 14 years imprisonment for sexual activity with a child family member. Then there are countries like: United Arab Emirates, Sudan (If relations are same sex), Somalia, Saudi Arabia and Nigeria – who punish incest by death.

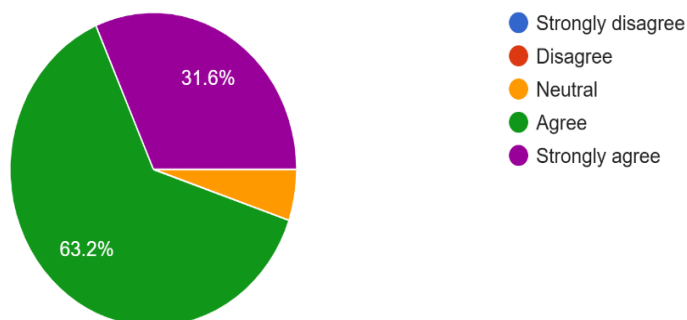
3. Empirical Data

Working Since
38 responses



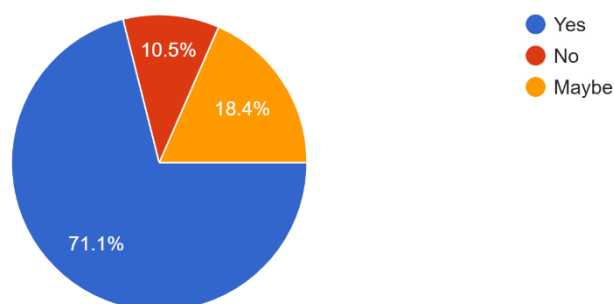
Pie-Chart 1

Do you believe that Incest is a serious criminal offence that needs legal attention in India.
38 responses



Pie-Chart 2

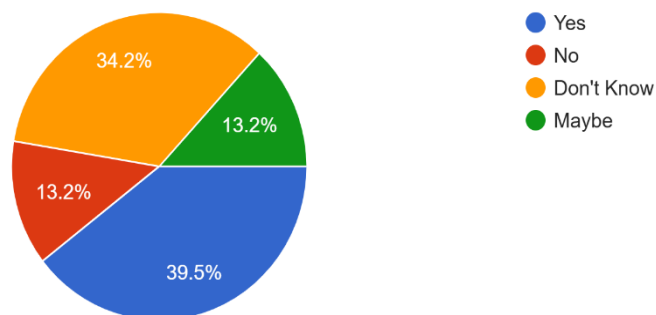
Does your school currently have a specific protocol or guideline for identifying and reporting suspected cases of child abuse or neglect?
38 responses



Pie-Chart 3

If yes, does this protocol explicitly mention indicators that might be associated with incestuous abuse?

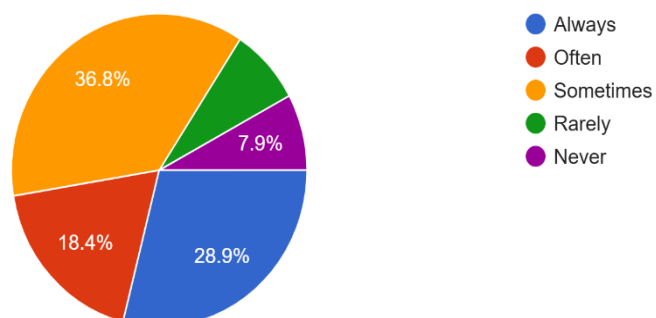
38 responses



Pie-Chart 4

How often do you receive training or information on child protection policies and procedures?

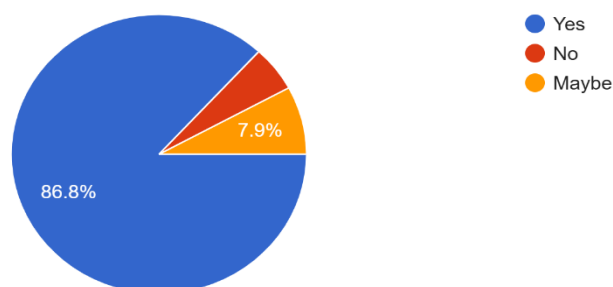
38 responses



Pie-Chart 5

Should the school curriculum include age-appropriate information about child safety, healthy relationships, and the nature of sexual offences like incest?

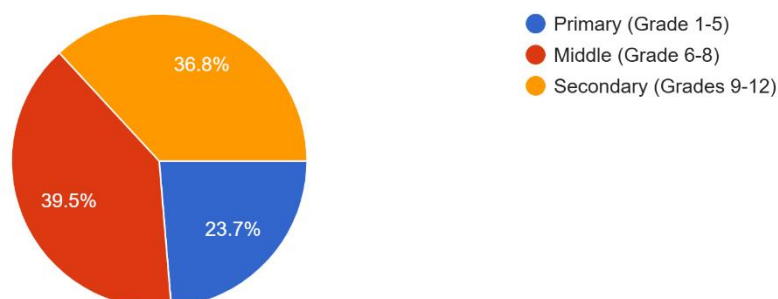
38 responses



Pie-Chart 6

If yes, at which grade level(s) do you think this information should be introduced?

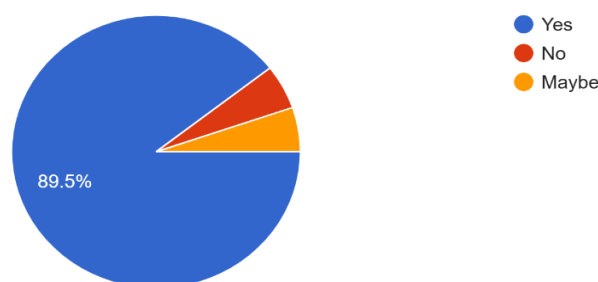
38 responses



Pie-Chart 7

Do you believe that schools should have designated counselors or social workers trained specifically in child protection and abuse intervention?

38 responses



Pie-chart 8

Explanation

Pie-chart 1 represent 1s year of experience that the participants hold. Based on which it can be said that more than half of them holds more than 5 years of experience. Pie-chart 2 holds strong representation that incest indeed is a serious criminal offence, where 31.6% strongly agreed and 63.2% agrees that the offence requires legal attention in India. 71.1% reported that in their schools there are specific protocols or guidelines for identifying and reporting suspected cases of child abuse or neglect. Pie chart 3 is to be understood with pie chart 4 which throws light that no doubt there are protocols but there is no explicit indicator that might be associated with incestuous abuse. Pie chart is more inclined towards negative side where teachers are not aware and 13.2% directly indicated that 'NO' for any such protocols. Again pie-chart 5 indicates to negative side for training and information on Child Protection Policies and Procedures.

Again Pie-chart 6 and 7 are to be understood together. Where pie-chart 6 indicates requirement of age-appropriate information about child safety, healthy relationship and nature of sexual offences like incest, pie-chart 7 indicates as to in which grade such information be included. Lastly, pie-chart 8 with total 89.5% indicates that schools should have designated counselors or social workers trained specifically in child protection and abuse intervention.

As this research holds limitation there is a great possibility that when it is conducted on large scale the inputs might vary with each entry.

Conclusion

This paper in clear terms advocate that incest, particularly in India is under-reported and under-researched domain as it takes place in home environment. It is suggested that Government of India should conduct intensive research by evaluating reasons for such dynamics and how effective can mechanism can be made so that victim betrayed by one own is protected by the State. Incest goes against everything family stands for, which includes protection, nurturing, relationships and a place that grounds people in society (Choate & Sharan, 2021). The offender may be someone who has superiority in his family, so he can pressure and threaten everyone in is family not to report (Gusti Ayu Kade Komalasari, 2020). As reporting can also cause family breakdown or divorce and loss of a breadwinner in the family (Gusti Ayu Kade Komalasari, 2020). It is advocated that an Act should be enforced which keeping in mind 1. Gender Neutrality, 2. Victim's rights in legal processes, 3. Medical and Psychological services, and, 4. Intervention by State and Proper regulatory measures. As incest is an offence which takes place in the most trusted chain it is also advocated to establish rehabilitation centers for victims and safe houses where proper counseling and therapeutic facilities are provided to restore. In cases where offender is soul breadwinner measures should be taken to protect the whole family as one.

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