

Mental health research of “Children in Conflict with the Law”: A Conceptual Analysis of some Ethical Issues in the Context of Child Sexual Abuse

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Abstract:

While the broad ethical principles guiding researchers conducting research with human or animal subjects can still be applied to research with children, some additional safeguards may be required to ensure that the rights and vulnerability of children, and especially those of ‘particularly vulnerable’ children like those in conflict with the law are respected. There is very little research on the mental health issues, including child sexual abuse of children in conflict with the law in India. There are also no clearly defined set of guidelines for conducting any mental health research with children in conflict with the law. Research exploring any aspect of mental health of children in conflict with the law is very likely to explore or reveal a history of child sexual abuse in this vulnerable population. An attempt has been made to discuss the need for specific guidelines to be followed by a researcher in the face of disclosure of sexual abuse by a research participant (i.e a child in conflict with the law) during any mental health research study. The paper also examines the challenges before the mental health researcher thrown up by the legal obligations of mandatory reporting (mandated under Section 19, Chapter V of the Protection of Children from Sexual Offences Act, 2012).

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I. INTRODUCTION

The British Psychological Society, (2010), defined ‘Research Ethics’ as the moral principles guiding research from its inception to completion and publication of results [3]. In the context of research ethics involving children, it means while conducting research one has to consider the special needs and psycho-physical conditions of the participants, their age and developmental status, their ability to comprehend and effectively; and, participate in the research processes. Children’s vulnerability on account of their impressionable age, possible risks posed by the research subject or process, means that special measures and procedures are required to ensure that their rights and interests need to be protected [1]. Furthermore, in the context of children in conflict with the law, who are a ‘particularly vulnerable’ population even within the already vulnerable group of children, research ethics have to be carefully planned and implemented keeping in mind legal boundaries and best interests of the child as well as strictly following the ethical standards, principles and guidelines of ethical research at every stage of the research [12].

“The Juvenile Justice (Care and Protection of Children) Act, 2015 defines ‘child in conflict with law’ as a child who is alleged or found to have committed an offence and who has not completed eighteen years of age on the date of commission of such offence”[6].

Research with children in conflict with the law across the world demonstrate that children in conflict with the law are more likely to have also undergone or be exposed to the risks of child sexual abuse. While there are no official statistics or research data on the prevalence of child sexual abuse among children in conflict with the law, in India, it would be reasonable to assume that this may be true for children in the

juvenile justice system in India, as well. Hence, research on any aspect of mental health on children in conflict with the law in India, is also very likely to reveal a history of child sexual abuse.

The World Health Organization (WHO) defines Child Sexual Abuse as : *The involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violate the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person. This may include but is not limited to: the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of child in prostitution or other unlawful sexual practices; the exploitative use of children in pornographic performances and materials.* [7]

II. ETHICAL ISSUES IN CONDUCTING MENTAL HEALTH RESEARCH ON “CHILDREN IN CONFLICT WITH THE LAW”

While the broad ethical principles guiding researchers conducting research with human or animal subjects can still be applied to researches on children, some additional legal and ethical safeguards may be required to be adopted by mental health professionals and researchers, in order to

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ensure and protect their rights, given the inherent vulnerability of children, and more specifically, the additional vulnerabilities of “children in conflict with the law”.

Some of the challenges arise on account of the children in conflict with the law being adolescents who are going through a period of rapid and significant changes, other challenges are due to inherent vulnerability of children to be exploited or manipulated and the unequal power dynamic between the researcher and the child as research participant, yet other challenges arise on account of legal implications of disclosures by the child. [9]

III. INTELLECTUAL CAPACITY OF THE RESEARCH PARTICIPANT

The intellectual capacity of the “children in conflict with the law”, is an evolving capacity, like any other adolescents in the general age group of 13-18 years. Adolescence is a time of significant neuro-developmental, intellectual and psychological growth and changes. This means that some of the research participants may have a diminished capacity about the understanding of the consequences or nuances of their disclosures during the research. Some of the research participants may also have an inability or limited ability to give information or voluntary consent to participate in the research study due to a developmental disorder or physical or mental disability. Since, there is no mandatory provision of *mental health status* screening or evaluation for children in conflict with the law that is either prescribed by Indian laws or carried out, in practice, there is no data available on the intellectual capacity or the prevalence of mental illness or intellectual disabilities of children in conflict with the law.

IV. RESEARCHER AND CHILD IN CONFLICT WITH THE LAW: PERSPECTIVES OF POWER DIFFERENTIALS

Research with this ‘particularly vulnerable’ group of children (namely children in conflict with the law) is additionally challenging due to the power differential that operates between the researcher and the research participant on account of the researcher being an adult and in a position of power and authority (on account of his/her knowledge, education) and the research participant being a child and in a custodial/ institutional setting. (The use of the word research ‘participant’ instead of research ‘subject’ to refer to children in conflict with the law is a conscious choice by the authors to describe children (in this context) as persons capable of participation and not merely ‘passive recipients or objects of experiment and research.)

V. VULNERABILITY TO BEING MANIPULATED OR EXPLOITED

In the absence of clearly laid down and widely practiced guidelines based on research-based information and safeguards, as well as clearly specified penalties for violation of the same, it is also possible that children in such settings

may probably be manipulated, easily, exploited, abused or misrepresented by an adult researcher.

VI. SELF INCRIMINATION: RISK AND DANGERS

Given the legal context of their presence in the institution where the research study is being conducted, the research participant also runs the risk of self-incrimination by disclosing details about the circumstances that have brought him/her in conflict with the law. Hence, the researcher is faced with the challenge of being very careful and mindful about the boundaries of research and the law.

VII. ETHICAL AND LEGAL CHALLENGES IN THE CONTEXT OF CHILD SEXUAL ABUSE : MANDATORY REPORTING OF SEXUAL ABUSE OF CHILDREN IN CONFLICT WITH THE LAW

The Protection of Children from Sexual Offences Act, 2012, Chapter V: Procedure for Reporting of cases, Section 19, makes it legally binding on the researcher to report any information regarding the sexual abuse of any child participant brought to her/his notice during the course of the research study to law enforcement agencies. Therefore, legally, the process of reporting on child sexual abuse is very clear. However, there are no clear guidelines on how exactly the researcher is to respond, professionally and ethically, to disclosure of sexual abuse by a child in conflict with the law – whether at the child care institution, at his home or any other place before he/she came into conflict with the law or in custodial settings and in a situation where the alleged abuser may be a functionary, wherein there is a reasonable risk of reprisal by the functionary or the adults in charge to protect the abuser.

There are also no clear protocols on responding to disclosure about child-on-child sexual abuse while in institutional care. Reporting would result in the child with sexually abusive behavior being charged of sexual offence(s) under the POCSO Act. While the law is clear that this is an *offence*, mental health professionals and researchers often struggle with this because they are aware that sexual contact between children, especially in institutional care, could be consensual or exploratory in nature. The absence of guidelines on a legally, professionally and ethically correct response for a researcher in the event of the alleged abuser being another child exacerbates this dilemma of the mental health researcher.

It has been often argued by mental health professionals and researchers that reporting the disclosure of child sexual abuse to the police, even when done after obtaining consent, may inhibit or prevent children in conflict with the law from revealing the abuse - which would then defeat the very purpose of the research [10]. As professionals working with child victims and survivors of child sexual abuse know, it is not easy for children, including children in conflict with the law, to disclose sexual abuse. Many of these children may not have found the safe spaces or the safe adults in whom they

can confide their experience of child sexual abuse. It is possible that the research study itself may provide that safe space and that the mental health researcher might be the safe adult whom they can confide in. The research study may then become an opportunity for some of these children to share the burden of abuse which they may have been carrying for years within them.

Research shows that how adults react to disclosure can make all the difference to how a victim of child sexual abuse interprets and copes with sexual abuse and its impact [11]. Hence, the researcher has an additional professional and ethical responsibility that goes beyond the research study. The researcher has the ethical responsibility to ensure (through her responses and behavior after disclosure), that the child feels reassured about having revealed the abuse, regains a sense of trust in the goodness of human beings and experiences the world as a safe and nurturing place. If not, there is a danger of the researcher becoming another adult who 'betrays' and violates the trust of the child by 'reporting' what the child has shared in the strictest confidence, if legal reporting is done without also ensuring psychological, familial and social support for the child in conflict with the law.

The purpose of mandatory reporting is a creditable and very much needed one in the Indian socio-cultural context. To break the 'conspiracy of silence' around child sexual abuse, to encourage as many individuals as possible to speak up and report sexual abuse and to ensure that the victim gets treatment and justice – these are the aims of mandatory reporting. However, in the case of children in conflict with the law, one has to remember that the very act of coming into contact and conflict with the law, (the police) in itself, is often, a traumatic and horrific experience for most children.

Mandatory legal reporting of child sexual abuse is the first step in a long process of healing and recovery, for most victims of child sexual abuse. However, reporting of sexual abuse of children in conflict with the law has to be backed up by a host of other support services including treatment, counseling, child friendly and child-rights friendly legal procedures, trained and sensitive professionals who are able to help children in conflict with the law and their families cope with the immediate and as well as long term effects of child sexual abuse.

VIII. THE NEED FOR ETHICAL GUIDELINES FOR RESEARCHES ON CHILDREN IN CONFLICT WITH THE LAW

In the present scenario in India, the absence of adequate infrastructure, trained, experienced and sensitive personnel, robust child protection services which would enable and ensure that the child victim would receive treatment, healing, relief, rehabilitation, reconnection with family/ society / community *and* the lack of a child friendly justice system make it difficult for victims and their families to come forward and report child sexual abuse. It is even more difficult for children in conflict with the law to report or reveal sexual abuse [12] as they are already perceived to be 'offenders' rather than 'victims'. There is an urgent need for

clear and detailed guidelines for mental health researchers studying children in conflict with the law, which would help in an ethical response to the child's disclosure of sexual abuse [13]. Effective guidelines may also encourage more researchers to take up research on this sensitive subject which would provide real-time data, on the nature, prevalence and magnitude of child sexual abuse among children in conflict with the law. At present, there are no official statistics on number of children in custodial or JJ institutions in India who are facing or have undergone sexual abuse, despite instances of children being abused in JJ institutions (both children in need of care and protection and children in conflict with the law) that are reported in the media from time to time.

Research studies on child sexual abuse of children in conflict with the law would provide a great opportunity for the police, professionals in child protection services, mental health services, as well as for policy makers, child victim advocates, and implementers of the JJ Act and POCSO Act, to understand the nature and magnitude of the problem of child sexual abuse among children in conflict with the law, so that they can then work towards addressing the issue in these highly and particularly vulnerable group of children [14].

A guideline that addresses the issues of reprisals and law enforcement would also enable researchers to encourage free and uninhibited disclosure by children in conflict with the law [15]. Most importantly, a guideline would also enable the researcher to enable access of the child in conflict with the law to services and support that he is entitled to as a victim of child sexual abuse under the law. Services that may include counseling, medical and psychiatric services (if indicated), personal and sexual safety training, family support services.

A comprehensive guideline would enable the mental health researcher to also keep in mind the several mental health consequences when children in conflict with the law are not supported in understanding or coping with the sexual abuse that they have suffered as well as the risks of children other than the research participant being abused by the same abuser (especially in custodial and group settings) and therefore conduct research in an ethical, legal and developmentally appropriate manner that safeguards and ensures the best interests of the child [9].

The Technical Working Group on Data Collection on Violence against Children of the Child Protection Monitoring and Evaluation Reference Group brought out a document titled, Ethical principles, dilemmas and risks in collecting data on violence against children: A review of available literature, Statistics and Monitoring Section/Division of Policy and Strategy, UNICEF, New York, CP MERG (2012) which provides valuable information relating to ethics governing research with regard to children, especially in the context of violence, including sexual abuse [4].

The Indian Council for Medical Research prescribes Guidelines on Code of Conduct for Research Scientists engaged in field of Life Sciences [17]. No such guidelines exist for research by psychologists with children in conflict with the law by any professional body in India. There was an attempt by the Centre for Enquiry into Health and Allied Themes (CEHAT) [5], way back in 2000, to lay down some basic guidelines for social science researchers in the area of

health, through a multi-disciplinary national committee that formulated the ‘Ethical Guidelines for Social Science Research in Health’, through a process of consultations with researchers and academic institutions across the country.

There have been a few research studies and reports involving children in conflict with the law (by The Concerned for Working Children, Tata Institute for Social Sciences, The Supreme Court Committee on Juvenile Justice Report on the Effective Implementation of the Juvenile Justice Act, 2000) and others, which have highlighted some aspects of the juvenile justice system in India. However, research studies specifically relating to mental health issues including child sexual abuse found in this population in India have not been attempted so far.

IX. CONCLUSION

All these challenges and the lack of clear guidelines place a great responsibility on the mental health researcher to conduct the research in an ethical way while safeguarding the rights of the research participant during all stages of the research study [22]. Despite all these challenges, there is an urgent need for the voices of children in conflict with the law to be heard by all stakeholders [20]. Not to forget that it is the right of all children, including those in conflict with the law, to be treated ethically – whether in treatment, counseling, the justice system or in research [23].

There is an urgent need to focus on not just rights-based legislations but also rights-based mental health research – especially for children in conflict with the law. Rights-based research practices that seek to empower the child in conflict with the law to exercise agency, be an active participant in his decisions impacting his life, express his views, thoughts and aspirations, etc. – may still be seen as radical rather than fundamental, as a luxury and an obstruction to the legal process [19]. However, conventional models aimed at arriving more ‘beneficial’ legal outcomes would have to be re-imagined and expanded to include more beneficial psychosocial outcomes as well [21].

The fundamental principles of research ethics namely; protection from harm, respect as a person, free and informed consent and privacy and confidentiality along with insights from practice and socio-cultural realities in India, would have to be articulated specifically and clearly and laid down as a set of guidelines that would steer the conduct of ethical research for the research, mental health and child protection communities. That would be a step in the right direction beyond merely mandatory ethics to aspiration and positive ethics towards rights-based and ethics-based research practices for and with children in conflict with the law.

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