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# **THE JURISPRUDENCE OF SILENCE: CRIMINAL LAW'S INADEQUATE ENGAGEMENT WITH INCESTUOUS ABUSE IN INDIA**

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## **ABSTRACT**

Incestuous abuse remains one of the most concealed and under-theorized forms of sexual violence in India. Although Indian criminal law penalizes rape, penetrative sexual assault, and aggravated child abuse under the Bharatiya Nyaya Sanhita, 2023 and the Protection of Children from Sexual Offences Act, 2012, the legal framework continues to avoid explicit recognition of incest as an independent criminal offence. This silence reflects a deeper jurisprudential failure to acknowledge violence occurring within family structures, where relations of trust, authority, dependency, and patriarchy intensify coercion and obstruct justice. The paper critically evaluates the inadequate engagement of Indian criminal jurisprudence with incestuous abuse and argues that the absence of specific statutory recognition weakens survivor-centric justice.

The research adopts a doctrinal and socio-legal methodology through an analysis of statutes, judicial decisions, feminist legal scholarship, constitutional jurisprudence, criminological theories, and comparative legal frameworks from the United Kingdom, Australia, and the United States. The paper demonstrates that incestuous abuse cannot be examined merely as a generic sexual offence because familial violence produces unique psychological trauma, social stigma, and evidentiary complications. The study further analyses how patriarchal family structures, cultural notions of honour, economic dependency, and institutional insensitivity contribute to underreporting and legal invisibility.

The paper argues that India's current criminal justice approach inadequately addresses the structural realities of incestuous abuse and often prioritizes preservation of family reputation over the dignity and autonomy of survivors. It proposes legal reforms including explicit criminalization of incestuous abuse, trauma-informed judicial procedures, enhanced survivor rehabilitation frameworks, specialized investigative mechanisms, and greater constitutional recognition of bodily autonomy and sexual justice. The paper ultimately contends that transforming the legal response to incest

requires both statutory reform and a broader social challenge to patriarchal notions of familial immunity.

**Keywords:** Incestuous Abuse; Criminal Jurisprudence; Familial Sexual Violence; Patriarchy; Survivor-Centric Justice.

## I. Introduction

Incest remains one of the most socially stigmatized and legally neglected forms of sexual violence in contemporary society.<sup>1</sup> Although sexual abuse within familial structures has existed across civilizations and historical periods, legal systems have frequently struggled to conceptualize incestuous abuse as a distinct category of violence.<sup>2</sup> In India, incest occupies a paradoxical legal position. While rape, penetrative sexual assault, and aggravated child abuse are punishable under criminal statutes, incest itself is not recognized as an independent offence under the Bharatiya Nyaya Sanhita, 2023 (“BNS”).<sup>3</sup> The absence of explicit statutory recognition reflects a broader jurisprudential silence concerning violence occurring within domestic and familial spaces.

Incestuous abuse differs significantly from other forms of sexual violence because it emerges within relationships characterized by emotional dependency, trust, authority, and kinship.<sup>4</sup> The family, conventionally imagined as a site of emotional security and moral protection, may simultaneously function as a space of domination, coercion, and silence.<sup>5</sup> Survivors of incestuous abuse often face psychological manipulation, threats, emotional blackmail, and social isolation aimed at preserving family honour and secrecy.<sup>6</sup> Consequently, incest produces unique implications for reporting, prosecution, evidence collection, and survivor rehabilitation.

The Indian legal system has historically privileged preservation of family integrity and social morality over the autonomy and dignity of survivors.<sup>7</sup> This orientation becomes particularly problematic in incest cases because disclosure frequently threatens familial structures and

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<sup>1</sup> CLAUDE LÉVI-STRAUSS, *THE ELEMENTARY STRUCTURES OF KINSHIP* 32–40 (Beacon Press 1969).

<sup>2</sup> SIGMUND FREUD, *TOTEM AND TABOO* 17–23 (Routledge 2001).

<sup>3</sup> Bharatiya Nyaya Sanhita, 2023, §§ 63–71, No. 45, Acts of Parliament, 2023 (India).

<sup>4</sup> CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 191–94 (Harvard Univ. Press 1989).

<sup>5</sup> UMA CHAKRAVARTI, *GENDERING CASTE THROUGH A FEMINIST LENS* 102–10 (Stree 2003).

<sup>6</sup> JENNIFER J. FREYD, *BETRAYAL TRAUMA: THE LOGIC OF FORGETTING CHILDHOOD ABUSE* 26–31 (Harvard Univ. Press 1996).

<sup>7</sup> FLAVIA AGNES, *LAW AND GENDER INEQUALITY: THE POLITICS OF WOMEN’S RIGHTS IN INDIA* 145–52 (Oxford Univ. Press 1999).

cultural expectations surrounding obedience, patriarchy, and honour.<sup>8</sup> Women and children are particularly vulnerable within such structures because age, gender hierarchy, and economic dependency reduce their capacity to resist abuse or seek legal protection.<sup>9</sup>

Despite the increasing visibility of sexual violence in public discourse, incestuous abuse continues to remain legally invisible and socially suppressed. Public conversations surrounding sexual violence often focus upon stranger assault or public harassment, while violence occurring within homes remains marginalized. This invisibility is reinforced by institutional reluctance, inadequate police investigation, social stigma, and limited judicial engagement with the dynamics of familial coercion.

This paper critically examines the inadequate engagement of Indian criminal law with incestuous abuse.<sup>10</sup> It argues that the absence of explicit legal recognition creates conceptual ambiguities and weakens survivor-centric justice. Through doctrinal analysis, comparative legal study, feminist critique, and constitutional examination, the paper evaluates existing criminal law mechanisms and proposes reforms necessary for addressing incestuous violence in India.

## II. Conceptualizing Incest: Historical and Jurisprudential Perspectives

Incest generally refers to sexual relations between individuals related by blood, marriage, or adoption within prohibited degrees of kinship. The concept has historically occupied a central position in moral, religious, anthropological, and legal discourse. Anthropologist Claude Lévi-Strauss regarded the incest taboo as a foundational principle underlying social organization and kinship exchange systems.<sup>11</sup> According to structural anthropology, prohibitions on incest enabled the development of exogamous social relations and collective identity formation.

Sigmund Freud, by contrast, approached incest through psychoanalytic theory, associating incest prohibitions with repression and the formation of civilization.<sup>12</sup> Although Freud's theories have faced substantial criticism, his work contributed to legal and psychological debates concerning sexuality, morality, and familial relationships.

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<sup>8</sup> STATE OF PUNJAB v. GURMIT SINGH, (1996) 2 SCC 384, 392.

<sup>9</sup> NIVEDITA MENON, SEEING LIKE A FEMINIST 115–21 (Zubaan 2012).

<sup>10</sup> Law Commission of India, 172nd Report on Review of Rape Laws 44–49 (2000).

<sup>11</sup> CLAUDE LÉVI-STRAUSS, *supra* note 1, at 45.

<sup>12</sup> SIGMUND FREUD, *supra* note 2, at 39.

Religious traditions across societies have historically condemned incest. Hindu law prohibited marriage within sapinda relationships and emphasized restrictions on prohibited degrees of kinship.<sup>13</sup> Islamic jurisprudence similarly identified close blood relations as permanently prohibited for marriage and sexual relations. Christian canon law treated incest as a moral offence against divine order and social morality.<sup>14</sup> These traditions influenced the evolution of criminal prohibitions across different jurisdictions.

Modern jurisprudence increasingly distinguishes between consensual adult incest and incestuous abuse involving coercion, minors, or abuse of authority. Liberal constitutional scholars argue that consensual adult relationships fall within domains of privacy and autonomy.<sup>15</sup> However, critics contend that family structures inherently involve unequal power dynamics, emotional dependency, and social pressure, making genuine consent difficult to ascertain.<sup>16</sup>

In India, incest remains more strongly regulated by social taboo than by criminal law. Indian criminal jurisprudence punishes rape, aggravated penetrative sexual assault, and child abuse but fails to recognize the familial relationship itself as a separate aggravating circumstance in adult cases. Consequently, the law often treats incestuous violence as an ordinary sexual offence despite its distinctive psychological and sociological dimensions.

The jurisprudential challenge surrounding incest lies in balancing constitutional values of autonomy and privacy against concerns regarding exploitation, abuse of trust, and structural coercion. Indian law has largely avoided engaging with this debate by maintaining silence regarding incest as an independent legal category. This silence has contributed to fragmented judicial responses and inadequate survivor protection.

### **III. Incestuous Abuse under the Indian Criminal Justice Framework**

#### **A. Bharatiya Nyaya Sanhita, 2023**

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<sup>13</sup> PARAS DIWAN, *FAMILY LAW: LAW OF MARRIAGE AND DIVORCE IN INDIA* 67–69 (11th ed. 2018).

<sup>14</sup> JOHN WITTE JR., *THE WESTERN CASE FOR MONOGAMY OVER POLYGAMY* 84–87 (Cambridge Univ. Press 2015).

<sup>15</sup> Melissa Hamilton, *Incest Statutes and the Fundamental Right of Sexual Privacy*, 22 *WM. & MARY BILL RTS. J.* 537, 542–46 (2013).

<sup>16</sup> Martha Albertson Fineman, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* 176–80 (Routledge 1995).

The Bharatiya Nyaya Sanhita, 2023 replaced the Indian Penal Code, 1860 as India's principal criminal legislation.<sup>17</sup> Although the BNS criminalizes rape and sexual assault, it does not specifically recognize incestuous abuse as an independent offence. Sexual offences involving family members are therefore prosecuted under general rape provisions rather than a distinct statutory framework.

This legislative silence creates significant legal and conceptual limitations. First, it prevents courts from consistently recognizing the abuse of familial trust and authority as aggravating factors in adult incest cases. Second, it inadequately captures the psychological trauma associated with betrayal within kinship structures. Third, the absence of explicit statutory recognition discourages development of specialized investigative mechanisms tailored to incest cases.

The BNS primarily conceptualizes rape through lack of consent, coercion, deception, or statutory incapacity.<sup>18</sup> While these principles remain essential, incestuous abuse often involves subtle forms of emotional dependency, manipulation, and long-term coercion that conventional consent frameworks inadequately address.

Moreover, the legal framework continues to reflect broader societal discomfort regarding regulation of private family spaces. Criminal law has historically been reluctant to intervene within domestic structures unless violence becomes publicly visible. This reluctance reinforces the invisibility of incestuous abuse.

## **B. Protection of Children from Sexual Offences Act, 2012**

The Protection of Children from Sexual Offences Act, 2012 ("POCSO Act") constitutes India's most comprehensive legislation addressing child sexual abuse.<sup>19</sup> The statute recognizes aggravated penetrative sexual assault where offences are committed by persons in positions of trust or authority, including relatives and family members.<sup>20</sup> In this respect, the POCSO Act partially addresses incestuous abuse involving minors.

The POCSO framework incorporates child-friendly reporting procedures, in-camera trials,

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<sup>17</sup> Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India).

<sup>18</sup> *Id.* §§ 63–71.

<sup>19</sup> Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India).

<sup>20</sup> *Id.* § 5.

confidentiality protections, and safeguards against secondary victimization.<sup>21</sup> These procedural innovations represent important developments in survivor-sensitive criminal justice.

Nevertheless, implementation challenges remain severe. Many incest cases continue to remain unreported because perpetrators exercise authority within the household. Survivors frequently depend economically and emotionally upon abusive family members. Social stigma and fear of familial disintegration further discourage reporting.

In many cases, family members pressure survivors into withdrawing complaints or settling disputes privately. Police authorities may also discourage formal registration of cases to preserve family unity. Delayed disclosure frequently weakens evidentiary collection because medical evidence may no longer be available.

### **C. Evidentiary Challenges and Judicial Processes**

Incestuous abuse poses distinctive evidentiary difficulties. Unlike stranger assault cases, incest frequently occurs within private domestic spaces without independent witnesses.<sup>22</sup> Survivors may disclose abuse only after several years because of fear, trauma, emotional manipulation, or threats.

Indian courts have recognized that delayed reporting in sexual offence cases does not necessarily undermine survivor credibility.<sup>23</sup> However, judicial practices often continue to reflect skepticism regarding victim testimony. Survivors may face intrusive cross-examination, character assassination, and social humiliation during trial proceedings.

Traditional evidentiary expectations emphasizing physical resistance or immediate reporting fail to account for the realities of incestuous coercion. Familial abuse frequently involves psychological domination rather than overt physical violence. Survivors may comply due to fear, emotional dependency, or normalization of abuse.

The criminal justice process itself may become retraumatizing. Long trial delays, repeated testimony, and hostile courtroom environments discourage survivors from pursuing justice.

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<sup>21</sup> *Id.* §§ 24–37.

<sup>22</sup> JUDITH HERMAN, *TRAUMA AND RECOVERY* 95–103 (Basic Books 1992).

<sup>23</sup> *STATE OF PUNJAB v. GURMIT SINGH*, (1996) 2 SCC 384, 392.

Consequently, conviction rates remain low and underreporting pervasive.

#### **IV. Patriarchy, Family Structures, and the Politics of Silence**

Incestuous abuse cannot be understood merely as an isolated criminal act committed by deviant individuals. It must be situated within broader structures of patriarchy, familial hierarchy, and gendered power relations. Feminist legal scholars have long argued that the family functions not only as a private sphere of emotional intimacy but also as a site of structural domination.<sup>24</sup>

Patriarchal family systems often prioritize obedience, control, and preservation of honour over individual autonomy. Within such systems, women and children possess limited authority and may remain economically dependent upon male family members.<sup>25</sup> This dependency intensifies vulnerability to abuse.

Incestuous violence is frequently concealed through what scholars describe as the “politics of silence.” Families may suppress disclosure to protect social reputation, avoid scandal, or preserve marriage prospects.<sup>26</sup> Survivors who speak publicly about abuse may be accused of dishonouring the family or fabricating allegations.

Cultural narratives idealizing the family as inherently protective further contribute to denial and minimization. Violence occurring within domestic spaces is often treated as private or exceptional rather than structural. Law enforcement authorities may hesitate to intervene because incest is perceived as a “family matter.”

Children remain particularly vulnerable because obedience toward elders is culturally valorized. Perpetrators exploit emotional trust, authority, and dependency to maintain secrecy. Many survivors experience confusion because abuse is committed by caregivers whom they simultaneously depend upon for emotional and economic support.

Feminist scholars argue that incestuous abuse reflects broader intersections between patriarchy, sexuality, and social control.<sup>27</sup> The regulation of female sexuality within family structures often creates conditions where abuse can remain concealed. Women who resist abuse may face

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<sup>24</sup> CATHARINE A. MACKINNON, *supra* note 4, at 193.

<sup>25</sup> UMA CHAKRAVARTI, *supra* note 5, at 118.

<sup>26</sup> NIVEDITA MENON, *supra* note 9, at 121.

<sup>27</sup> FLAVIA AGNES, *supra* note 7, at 167.

ostracization, economic abandonment, or physical violence.

The silence surrounding incest also reveals limitations within public discourse on sexual violence. While urban feminist movements have increasingly challenged public harassment and workplace discrimination, violence occurring within homes continues to receive comparatively limited institutional attention.

## V. Psychological and Sociological Dimensions of Incestuous Abuse

Incestuous abuse produces profound psychological consequences distinct from other forms of sexual violence. Survivors frequently experience betrayal trauma because the perpetrator occupies a position of emotional trust or caregiving authority. Jennifer Freyd's theory of betrayal trauma emphasizes that abuse perpetrated by trusted individuals intensifies psychological harm and may contribute to memory suppression or dissociation.<sup>28</sup>

The psychological impact of incest often includes anxiety disorders, depression, post-traumatic stress disorder, self-harm, substance dependency, suicidal ideation, and difficulties in forming intimate relationships.<sup>29</sup> Survivors may internalize guilt and shame because perpetrators manipulate them into believing they participated voluntarily or caused family conflict.

Perpetrators frequently normalize abuse through emotional coercion. Children may lack the cognitive capacity to understand abuse or resist authority figures. In adult incest cases, emotional dependency and financial vulnerability may undermine the possibility of genuine consent.

Sociologically, incest reflects broader inequalities within family structures. Gender hierarchy, age-based authority, caste relations, and economic dependency contribute to vulnerability.<sup>30</sup> Survivors from marginalized communities often face compounded barriers in accessing legal remedies and psychological support.

Stigma surrounding incest also discourages public conversation. Survivors fear social rejection, victim-blaming, and ostracization. Communities frequently prioritize preservation of family

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<sup>28</sup> JENNIFER J. FREYD, *supra* note 6, at 31.

<sup>29</sup> Bessel van der Kolk, *THE BODY KEEPS THE SCORE* 141–50 (Penguin Books 2014).

<sup>30</sup> Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 *STAN. L. REV.* 1241, 1249–57 (1991).

reputation over accountability for violence.

Mental health support for survivors remains inadequate in India. Trauma counselling services are often inaccessible, underfunded, or concentrated in urban regions.<sup>31</sup> Survivors from economically marginalized backgrounds may lack access to legal representation, rehabilitation services, or safe housing.

The psychological consequences of incest therefore extend beyond immediate abuse and continue throughout adulthood. Survivors often struggle with trust, identity formation, emotional regulation, and interpersonal relationships. Criminal justice responses focusing solely upon punishment fail to adequately address these long-term consequences.

## **VI. Comparative Legal Perspectives**

### **A. United Kingdom**

The United Kingdom criminalizes incest under the Sexual Offences Act, 2003.<sup>32</sup> The statute specifically prohibits sexual activity between close relatives including parents, children, siblings, grandparents, and grandchildren. The law recognizes that familial relationships involve inherent imbalances of trust and authority.

The UK legal system integrates criminalization with safeguarding mechanisms and child protection frameworks. Multi-agency coordination among police, healthcare professionals, and social services strengthens survivor support and detection of abuse.

British courts have increasingly adopted trauma-informed approaches to sexual violence cases. Special measures such as video testimony, witness protection, and restrictions on aggressive cross-examination seek to minimize retraumatization.

### **B. United States**

In the United States, incest laws vary across states but generally prohibit sexual relations between close relatives.<sup>33</sup> Many states impose enhanced penalties where abuse involves minors,

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<sup>31</sup> World Health Organization, *Responding to Children and Adolescents Who Have Been Sexually Abused* 8–12 (2017).

<sup>32</sup> Sexual Offences Act 2003, c. 42, §§ 64–65 (UK).

<sup>33</sup> Melissa Hamilton, *supra* note 15, at 548.

coercion, or abuse of authority.

American jurisprudence frequently conceptualizes incest as both a sexual offence and a violation of family integrity. Mandatory reporting obligations for teachers, healthcare professionals, and counsellors strengthen detection mechanisms.<sup>34</sup>

At the same time, constitutional debates surrounding consensual adult incest remain contested. Some scholars argue that privacy jurisprudence following *Lawrence v. Texas*<sup>35</sup> may challenge criminalization of consensual adult incest. Others emphasize that family structures inherently involve coercive dynamics undermining meaningful consent.

### **C. Australia**

Australian states criminalize incest under separate statutory provisions.<sup>36</sup> Australian jurisprudence recognizes the abuse of trust inherent in incestuous relationships and increasingly incorporates survivor-sensitive investigative practices.

Trauma-informed procedures, specialized child protection units, and integrated rehabilitation services have strengthened institutional responses. Australian legal discourse also increasingly acknowledges the long-term psychological consequences of incestuous abuse.

### **D. Lessons for India**

Comparative analysis demonstrates that explicit criminalization provides clearer recognition of the harms associated with incestuous abuse. Dedicated statutory frameworks facilitate specialized investigation, sentencing consistency, and survivor rehabilitation.

India's reliance upon general sexual offence provisions fails to adequately conceptualize incest as a distinct category of violence involving betrayal, coercion, and structural dependency. Comparative jurisdictions illustrate the importance of integrating legal reform with psychosocial support systems.

However, legal reform alone remains insufficient. Effective responses require broader

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<sup>34</sup> Michelle Oberman, *Regulating Consensual Sex with Minors: Defining a Role for Statutory Rape*, 48 *BUFF. L. REV.* 703, 728–32 (2000).

<sup>35</sup> *Lawrence v. Texas*, 539 U.S. 558 (2003).

<sup>36</sup> *Crimes Act 1900 (NSW) ss 78A–78B (Austl.)*.

institutional transformation including police training, survivor rehabilitation, public awareness, and trauma-informed judicial practices.

## **VII. Constitutional Morality and Sexual Justice**

The Indian Constitution guarantees equality, dignity, and personal liberty under Articles 14, 15, and 21.<sup>37</sup> Judicial interpretations increasingly recognize bodily autonomy, privacy, and sexual agency as constitutional values.<sup>38</sup> Nevertheless, constitutional discourse surrounding incest remains underdeveloped.

The Supreme Court's jurisprudence on constitutional morality emphasizes that individual dignity must prevail over oppressive social norms.<sup>39</sup> This principle becomes particularly relevant in incest cases because survivors frequently confront societal pressure to remain silent for the sake of family honour.

At the same time, constitutional debates concerning consensual adult incest complicate legal analysis. Some scholars argue that criminalization of consensual adult incest may violate privacy rights recognized in *Justice K.S. Puttaswamy v. Union of India*.<sup>40</sup> Others contend that family relationships inherently involve unequal power structures, rendering genuine consent questionable.

The challenge lies in balancing constitutional protection of autonomy with protection against exploitation and coercion. Indian criminal law currently avoids this debate by refusing to explicitly engage with incest as a separate category.

A survivor-centric constitutional framework would prioritize dignity, bodily integrity, and freedom from coercion. Such a framework would recognize incestuous abuse as structural violence rather than merely an individual sexual act.

Constitutional morality also requires challenging patriarchal norms that normalize silence surrounding familial abuse. The Constitution cannot meaningfully protect dignity if violence within domestic spaces remains legally invisible.

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<sup>37</sup> INDIA CONST. arts. 14, 15 & 21.

<sup>38</sup> JUSTICE K.S. PUTTASWAMY v. UNION OF INDIA, (2017) 10 SCC 1, 497.

<sup>39</sup> NAVTEJ SINGH JOHAR v. UNION OF INDIA, (2018) 10 SCC 1, 81.

<sup>40</sup> JUSTICE K.S. PUTTASWAMY v. UNION OF INDIA, (2017) 10 SCC 1, 497.

## **VIII. Judicial Responses and Continuing Challenges**

Indian courts have addressed incestuous abuse primarily through rape and child sexual assault jurisprudence. Judicial responses, however, remain inconsistent and fragmented.

Certain judgments have demonstrated sensitivity toward delayed reporting and survivor trauma.<sup>41</sup> Courts have acknowledged that survivors of sexual violence may hesitate to disclose abuse because of stigma, fear, or psychological coercion.<sup>42</sup>

However, other judicial decisions continue to rely upon stereotypical assumptions regarding victim behaviour, morality, and family honour. Courts sometimes encourage compromise or reconciliation in cases involving familial abuse, thereby undermining the seriousness of incestuous violence.

The absence of explicit statutory recognition also contributes to sentencing inconsistency. Familial relationships are not uniformly treated as aggravating factors in adult sexual offence cases despite the profound breach of trust involved.

Judicial training on trauma-informed adjudication remains limited. Judges, prosecutors, and police personnel may inadequately understand psychological dynamics such as dissociation, delayed disclosure, emotional dependency, and coercive control.

Procedural delays further contribute to survivor retraumatization. Lengthy trials, repeated testimony, hostile cross-examination, and public stigma discourage continued participation in criminal proceedings.

Furthermore, survivors often encounter institutional insensitivity within police stations and medical examination procedures. Investigative authorities may prioritize preserving family unity over ensuring accountability. Such attitudes reinforce impunity and discourage reporting.

The criminal justice system therefore frequently reproduces the very silencing mechanisms that survivors seek to escape.

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<sup>41</sup> STATE OF HIMACHAL PRADESH v. SANJAY KUMAR, (2017) 2 SCC 51, 58.

<sup>42</sup> Sakshi v. Union of India, (2004) 5 SCC 518, 527.

## **IX. Need for Legal and Institutional Reform**

The inadequacies of the current framework necessitate comprehensive reform addressing both legal doctrine and institutional practice.

### **A. Explicit Criminalization**

India should enact a distinct statutory offence addressing incestuous abuse. Explicit recognition would acknowledge the unique harms associated with betrayal, dependency, and abuse of trust within family relationships.

Such legislation should distinguish between consensual adult relationships and exploitative incestuous abuse involving coercion, authority, dependency, or minors. Legislative clarity would strengthen prosecution and sentencing consistency.

### **B. Recognition of Familial Abuse as an Aggravating Circumstance**

Familial relationships should be expressly recognized as aggravating factors in sexual offence sentencing. Abuse committed by caregivers or relatives involves heightened betrayal and psychological trauma.

### **C. Trauma-Informed Judicial Processes**

Judges, prosecutors, police officers, and medical professionals require specialized training regarding incest dynamics and survivor trauma. Trauma-informed procedures should minimize retraumatization during investigation and trial.

Measures such as video testimony, survivor counselling, closed hearings, and restrictions on humiliating cross-examination should be strengthened.

### **D. Strengthening Survivor Rehabilitation**

Survivor support frameworks must extend beyond criminal punishment. Psychological counselling, rehabilitation services, legal aid, shelter homes, and economic assistance remain essential.

State governments should establish specialized crisis centres providing integrated support for

survivors of familial abuse.

### **E. Public Awareness and Education**

Social stigma surrounding incest must be challenged through educational initiatives emphasizing bodily autonomy, consent, and child protection. Schools and community institutions should promote awareness regarding abuse within domestic spaces.

### **F. Mandatory Reporting and Institutional Accountability**

Teachers, healthcare professionals, and counsellors should receive training regarding detection of familial abuse. Mandatory reporting obligations may strengthen early intervention, particularly in cases involving minors.

However, such obligations must be balanced carefully against survivor autonomy and confidentiality concerns.

### **G. Intersectional Approaches**

Legal reform must account for intersectional vulnerabilities arising from caste, class, disability, sexuality, and economic dependency. Marginalized survivors frequently face compounded discrimination and reduced access to justice.

### **X. Conclusion**

Incestuous abuse constitutes one of the most silenced, normalized, and institutionally neglected forms of sexual violence in Indian society. The continued absence of explicit statutory recognition under Indian criminal law is not merely a legislative gap; it reflects a deeper patriarchal and jurisprudential failure to confront violence occurring within the sanctity of the family. While the Bharatiya Nyaya Sanhita, 2023 and the Protection of Children from Sexual Offences Act, 2012 criminalize certain sexual offences, they do not acknowledge incestuous abuse as a distinct and aggravated form of violence rooted in betrayal, domination, dependency, and abuse of familial trust. The law continues to treat incest merely as an act of sexual assault, thereby ignoring the structural realities that make such violence uniquely coercive and profoundly destructive. Incestuous abuse operates within unequal power structures embedded in the family itself. The perpetrator often exercises authority through emotional manipulation,

economic control, age hierarchy, fear, and social conditioning, rendering conventional notions of “consent” legally and morally inadequate. Survivors are compelled into silence not only by trauma, but also by the threat of familial collapse, social ostracization, victim-blaming, and institutional disbelief. In many cases, the family becomes the very site where violence is concealed, normalized, and perpetuated. The persistent underreporting of incest is therefore not accidental; it is a direct consequence of a social order that privileges family honour over bodily autonomy and individual dignity. Comparative legal frameworks across jurisdictions demonstrate that explicit criminalization of incest, coupled with survivor-centric procedures and trauma-informed adjudication, can strengthen both accountability and access to justice. However, legal reform alone is insufficient unless accompanied by a fundamental transformation in societal attitudes. A constitutional democracy founded upon dignity, equality, and personal liberty cannot continue to treat sexual violence within domestic spaces as a private or culturally sensitive matter beyond rigorous legal scrutiny. The refusal to explicitly recognize incestuous abuse effectively reinforces impunity and perpetuates systemic injustice against survivors. Indian criminal jurisprudence must therefore move beyond narrow and formalistic understandings of sexual offences and confront the structural coercion inherent in familial abuse. Survivor-centric justice requires explicit statutory recognition of incestuous abuse, specialized investigative mechanisms, psychological rehabilitation, witness protection, institutional accountability, and a judicial approach informed by the realities of trauma and power imbalance. More importantly, it requires dismantling the deeply entrenched cultural myth that families are inherently safe, moral, and inviolable spaces.

For generations, silence surrounding incestuous abuse has functioned not as protection for survivors, but as a shield for perpetrators. The continued invisibility of incest within legal discourse represents a failure of constitutional morality itself. The future legitimacy of Indian criminal law depends upon its willingness to unequivocally recognize incestuous abuse as a grave violation of bodily integrity, human dignity, and fundamental constitutional values rather than dismissing it as a private family matter unworthy of distinct legal condemnation.