

ARTICLE

UNDERREPORTING OF CHILD ABUSE: A CRIMINOLOGICAL INQUIRY INTO CRIMINAL JUSTICE BARRIERS



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Abstract

In criminology, official statistics on child abuse are typically considered to represent only a portion of the true prevalence of child abuse. The difference has been explained in terms of the dark figure of crime. This article analyses the obstacles to this disparity in trial outcomes, including mandatory reporting standards, evidentiary rules about competency and corroboration of child witnesses, and institutional structures for investigating and prosecuting child abuse, that discourage or obstruct reporting and proof of child abuse. Drawing on the findings of studies on crime victimisation and disclosure behaviour, the article examines law in India, USA and UK to suggest that aspects of the criminal procedure that burden disproportionately on the child complainant and adult relatives who may report are identifiable as factors contributing to underreporting, rather than just discomfort and familial pressure on children. The article considers scope and boundaries of mandatory reporting regimes and the evidentiary architecture of child testimony. The paper also looks at the powers of law enforcement and prosecutors to determine which reports move to formal investigation. Lastly, it examines the attempts to minimise the trauma of involvement in criminal proceedings by systems. It takes a whole-of-system change, not just one thing at a time, to make a difference in the dark figure of child abuse, the paper said.

Keywords – Child abuse; Underreporting; Dark figure of crime; Mandatory reporting; Child witness testimony; Criminal justice barriers; Victimisation; Criminology.

I. INTRODUCTION

It is one of the oldest and most established insights of criminology that crime statistics understate the incidence of criminal victimisation. It is generally understood through the notion of the dark figure of crime, a concept linked to the early victimisation research work of Biderman and Reiss. Across a range of jurisdictions for which comparable data are available, the substantial gap between the number of children estimated by prevalence research to have experienced abuse, and the lesser number of cases that come to the attention of child protection or criminal justice authorities, is illustrated most starkly by few categories of offence than child abuse.

An extensive amount of existing research has focused on the psychological, developmental and familial factors that inhibit a child's disclosure of abuse; for instance, shame, fears of disbelief, loyalty to/dependence on the abuser, and so on, were among unique factors identified. The developmental

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psychology literature has also documented the often gradual, ambivalent and non-linear character of disclosure. While these aspects may indeed be true, this paper argues that they are only part of the explanation for underreporting. A thorough criminological investigation of the criminal justice system itself reveals a different but complementary set of barriers, stemming from the structure of mandatory reporting law, the evidential or reception and weight rules governing child testimony, and the discretionary practices of the law enforcement and prosecutors who decide which reports advance to formal investigation and prosecution.

This paper one by one looks at these barriers. Part II of the review embeds the examination in the criminological literature about the dark figure of crime and reviews what evidence there is on the scale of the gap between estimated prevalence and official reporting. Part III reviews the extent as well as the limits of mandatory reporting statutes. Part IV examines institutional and procedural obstacles in the investigation and prosecution process. In Part V, you will see how courts examine child witnesses and what kind of evidence will be necessary. Section VI examines the familial, cultural and systemic barriers that intersect with formal law. Section VII looks into the discretionary practice of law enforcement and prosecutors. The comparative analysis between India the USA and the UK is provided in Part VIII and Part IX suggests reforms.

The core argument of the paper claims that the dark figure of child abuse is not some remnant, private or extra-legal reluctance to disclose. Rather, it is itself the issue of the design of the criminal justice system. To minimize that dark number, we must focus not only on public awareness and support for disclosure, but on specific features of reporting law, evidentiary procedure, and institutional practice that are reformable.

An important finding of criminology is that the rates of criminal victimisation are lower than the rates of crime victimisation as revealed from statistics. One of the most well-established insights of criminology is that the rates of criminal victimisation are lower than the rates of crime victimisation as revealed from statistics. The concept of the dark figure of crime is generally understood, and is related to the early victimisation research efforts of Biderman and Reiss. Child abuse comes with fewer categories of offence than many others that illustrate this wide chasm between the number of children estimated by prevalence studies to be victims of abuse and the number of children the child protection or criminal justice system are aware of.

An extensive amount of existing research has focused on the psychological, developmental and familial factors that inhibit a child's disclosure of abuse; for instance, shame, fears of disbelief, loyalty to/dependence on the abuser, and so on, were among unique factors identified. The developmental psychology literature has also documented the often gradual, ambivalent and non-linear character of disclosure. Though such points can be true, this paper will focus on the fact that they only constitute a part of the explanation for underreporting. A comprehensive examination of the actual processes of the criminal justice system uncovers a different, but complementary set of obstacles related to the nature of the mandatory reporting law, evidence/reception and weight rules affecting child testimony, and the discretion of law enforcement and prosecutors in determining which reports progress to formal investigation and prosecution.

This paper one by one looks at these barriers. Part II of the review embeds the examination in the criminological literature about the dark figure of crime and reviews what evidence there is on the scale of the gap between estimated prevalence and official reporting. In Part III, the authors discuss the scope and limits of the mandatory reporting laws. Institutional and procedural problems in the investigation and prosecution process are discussed in Part IV. You will learn how courts view child witnesses and the type of evidence that will be required in Part V. In Section VI, the family, cultural and systemic barriers are explored in relation to formal law. Section VII looks into the discretionary practice of law enforcement and prosecutors. A comparative analysis of India the USA and the UK is given in Part VIII and reforms suggested in Part IX.

The underlying premise of the paper is that the "dark figure of child abuse" is not an echo of the static, private, or even extra-legal unwillingness to report. Rather, it is itself the issue of the design of the criminal justice system. Reducing that black figure requires more than simply raising awareness of disclosure and providing support, it requires thinking about specific elements of the reporting law, evidentiary procedure and practice of institutions that are amenable to reform.

II. THEORETICAL FRAMEWORK: THE DARK FIGURE OF CRIME AND CHILD ABUSE VICTIMIZATION

The dark figure of crime is a concept used in criminology that refers to the difference between the true rate of crime and the rate in official statistics. The concept has the awareness that it is only those offences which are reported to and recorded by relevant authorities which are captured in the idea of the idea of the offence. The difference between reported crime and actual crime is high in most reported offence types, as revealed by victimisation surveys over the years. Furthermore, research on child sexual and physical victimisation reveals that this gap is even greater than for many other criminal victimisations. This larger gap is because disclosure may be hindered in this context, due to the factors involved when the victim is a child and the perpetrator a family member or other trusted adult.

David Finkelhor's and his colleagues' prevalence studies are among the most often cited research in this area. In each of their studies, they have found that only a minority of children who report sexual abuse in retrospect have actually told an adult about the abuse, and even fewer of them have reported to child protective or law enforcement services during the time of the abuse. Engages with research about disclosure process. London, Bruck, Ceci and Shuman conducted one of the many reviews of the literature found in the literature. The results showed that disclosure is frequently delayed, incomplete and non-linear. Children may as a consequence reveal several years later, if ever. Furthermore, the disclosure is frequently made in response to asking direct questions not as an act of spontaneous reporting. Over the past few decades, the methodology of Roland Summit's account of what he referred to as the child sexual abuse accommodation syndrome has been challenged. However, this theory is still generally accepted to explain why many cases of child abuse are often not reported, the initial disclosure is retracted or the child's actions are interpreted as inconsistent with abuse.

The psychological and developmental results referred to thus set the standard to which one must compare the specifically criminal-justice related barriers discussed in this paper. A disclosure by a child to a parent, teacher or another trusted adult (caring adult) is just one moment in a process of filtering that must take place before a legally substantiated case of child abuse is made. The disclosure from a child to a parent, teacher or another trusted adult (caring adult) is only one moment in a process of filtering which must occur before a legally substantiated case of child abuse is achieved.

At each of these filters, another place of generation of the dark figure of child abuse exists which occurs side by side with but is not identical to the child's refusal to report.

III. SCOPE AND LIMITATIONS OF MANDATORY REPORTING LAWS

Mandatory reporting laws are in place to make a certain category of professionals, and in some jurisdictions the public, report suspected child abuse to a designated authority. The laws are the key legal tools for informing the criminal justice system and child protection system of the abuse, which the child has not (yet) disclosed to them. The Child Abuse Prevention and Treatment Act in the United States require states to have mandatory reporting systems to receive a certain amount of federal funds. This led to a situation where each 50 states had reporting laws. But who has to report, how much suspicion is required to trigger the reporting requirement and what the consequences of failing to do so are are quite different from state to state. Section 19 of the Protection of Children from Sexual Offences Act, 2012 provides for reporting of known offences. It is an obligation under Section 19 of the Act for anyone to report an offence under the Act if he knows about it. Reporting should be done to the police or the Special Juvenile Police Unit. In the interim, section 20 makes it a criminal offence for a person who has a legal obligation to report not to report. There is penalty of imprisonment for non-reporting.

Although the scope of these statutory duties appears to be wide, there are several reasons for this that these are not necessarily comprehensive reporting duties. Mandatory reporting policies usually impose an obligation based upon actual or reasonable suspicion. This standard seems to provide a lot of room for discretion for the mandated reporter, and has been found to be inconsistently implemented. There have been some studies demonstrating differences in reporting rates based on professional background, previous training, and, in some cases, the racial or socioeconomic status of the family affected. This leads to concerns of under-reporting among some and over-reporting among others.

In most places, the imposition of penalties for non-reporting is rare. This reduces the effectiveness of the deterrent effect of the statutory duty in practice, and compliance is more likely to be based on the professional standards and training of those working in that capacity than on the actual likelihood of sanction. Third, the mandatory reporting laws focus only on once a suspicion is formed and that suspicion is conveyed; they do not address and cannot remedy the barriers that prevent a kid from reaching a mandated reporter's attention in the first place, or the barriers that come into the institutional system after a report is made, which will be discussed in the following sections.

Table 1: Comparative Overview of Mandatory Reporting Frameworks

Jurisdiction	Primary Legal Basis	Key Features and Limitations
India	Protection of Children from Sexual Offences Act, 2012, ss. 19, 21	Universal reporting duty with criminal penalty for non-reporting; enforcement of the penalty remains infrequent in practice
United States	Child Abuse Prevention and Treatment Act (federal funding condition); state-specific mandatory reporting statutes	Reporting duty generally limited to designated professional categories; suspicion threshold and penalties vary by state
United Kingdom	Children Act, 1989 (statutory child protection duties); no single universal mandatory reporting statute	Reliance on professional safeguarding duties and inter-agency guidance rather than a uniform criminal reporting offence

Source: Compiled by the author from the Protection of Children from Sexual Offences Act, 2012; the Child Abuse Prevention and Treatment Act, 42 U.S.C. 5101 et seq.; and the Children Act, 1989 (UK).

IV. IV. THE DIFFICULTIES OF INSTITUTIONS AND PROCEDURES OF CRIMINAL JUSTICE SYSTEM

Report will undergo an institutional process once it has been lodged. It typically includes a first screening/triage decision, a forensic interview with the child, a medical examination (when appropriate), and a decision regarding the referral for prosecution based on the evidence. It is well documented in criminological literature that at every step of this process attrition may occur, and has been demonstrated to be quite high for child complainants in the context of sexual offending prosecutions.

Forensic interviewing practice has undergone tremendous changes in the past few decades. This is primarily because of research that shows that the accuracy of a child's account and the evidential value of that account can be undermined by non-structured or suggestive interviewing procedures. This resulted in the development of structured interview protocols which are structured to elicit an account using open-ended, non-leading questioning. These protocols are, in fact, an improvement in the evidence gained, in terms of the reliability of the evidence gained. However, their correct administration depends on specialized training and adequate staffing, which may not be available in many jurisdictions, especially in rural areas, and which can vary in quality in leading to various outcomes, including whether a case is prosecuted or dropped. If there is a limited number of

specialists available to conduct a forensic interview and the child is placed in the backlog then the risk that time will pass or processes could get in the way of the child's account becomes greater, making it more difficult to assess the child's statement at the evidential stage.

An effective evidentiary standard for civil substantiation abuse and a different evidentiary standard for criminal prosecution (both in statute and in practice) may create a disparity in outcomes, particularly when a finding by the child protective services that abuse is not substantiated is treated, in practice if not in statutory text, as a reduction in the likelihood of the subsequent criminal referral, even if these evidentiary standards are not identical and do not have to lead to the same result.

V. EVIDENTIARY IMPEDIMENTS: CORROBORATION, COMPETENCE AND THE CHILD WITNESS

There were significant additional evidentiary burdens imposed by the common law on the testimony of child witnesses. This encompassed formal competency examinations to ensure that children were aware of what they were swearing to when giving evidence, and, or the strong judicial practice in many jurisdictions, to seek corroboration of a child's uncorroborated evidence before conviction. The Supreme Court in 1983 gave the nod to the *Bharwada Bhoginbhai v. State of Gujarat*, which abolished the need to corroborate the victim's testimony in India. In such a case, the Bhoginbhai testimony was proved to be reliable and trustworthy, and it could be used to convict without corroboration. This is then applied to situations with child complainants. Furthermore, special rules of evidence are available in cases involving children under the Protection of Children from Sexual Offences Act, 2012. In some situations, it establishes a presumption that the child is telling the truth. Further, the Act dispenses with a formal inquiry into testimonial competency as a pre-condition to reception of testimony.

In the United States, the Confrontation Clause has had a profound effect on the practice of child hearsay statements, including statements made to parents, teachers, or medical professionals, which describe child abuse. In *Idaho v. Wright*, the Supreme Court held that for a child's hearsay statement admitted under the residual hearsay exception, the statement must have particularized guarantees of trustworthiness independent of corroborating evidence to satisfy the Confrontation Clause; in *White v. Illinois*, the Court ruled that statements made under a firmly rooted hearsay exception, such as the excited utterances exception or a medical diagnosis statement, may be admitted without making the declarant available for cross-examination.

Coy v. Iowa addressed in, the accused's confrontation right versus a child witness's fear of testifying case. The court ruled that a screen could not be used around a child witness to prevent the accused from seeing them without that violating the confrontation clause. But *Maryland v. Craig* qualified this decision. There, the court ruled in favor of the closed-circuit television testimony. This is on a case specific necessity of a child witness. The child was likely to be distressed seriously if he was to be further questioned in front of the accused.

It is clear that the procedures that are in place to protect a child witness from the trauma associated with testifying, or to take into account any developmental limitations that may affect how a child

communicates an account of abuse, are sometimes in conflict with the accused's constitutional right to confront the evidence against him/her. Different jurisdictions have taken different balances but none have been able to reduce the tension completely. When the rights of the parent to defend against prosecution for child abuse are balanced against natural justice, it can lead to more burdens being placed on the prosecution of child abuse cases. A way of levying such burdens is by setting up strict competency screening. Another might arise if, in practice, courts would require higher evidence of corroboration even though that's not the law. A third way may be by the operation of the hearsay doctrine, which is restrictive. In particular, these burdens can be imposed if courts merge the inquisitorial duties of courts with the rules of evidence. The effect of these court practices is that the chances of any one case disclosed and reported to the police being substantiated and prosecuted are reduced. In consequence, this affects the disincentives that exist for complainants, families and reporting professionals, and in turn can lead to the withdrawal of disclosure and reporting for future cases.

Table 2: Evidentiary and Procedural Accommodations for Child Witnesses

Jurisdiction	Key Doctrine or Provision	Effect on Child Witness Evidence
India	Bharwada Bhoginbhai Hirjibhai v. State of Gujarat; POCSO Act, 2012, ss. 29, 33	No corroboration requirement for reliable testimony; statutory presumption of truthfulness in specified circumstances; child-friendly examination procedure
United States (federal constitutional)	Idaho v. Wright; White v. Illinois	Hearsay admissible only under firmly rooted exceptions or with independent guarantees of trustworthiness
United States (federal constitutional)	Coy v. Iowa; Maryland v. Craig	Alternatives to face-to-face testimony (e.g., closed-circuit television) permitted only on an individualised finding of necessity

Source: Compiled by the author from Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, 1983 SCC (Cri) 728; the Protection of Children from Sexual Offences Act, 2012; Idaho v. Wright, 497 U.S. 805 (1990); White v. Illinois, 502 U.S. 346 (1992); Coy v. Iowa, 487 U.S. 1012 (1988); and Maryland v. Craig, 497 U.S. 836 (1990).

VI. FAMILY, CULTURAL AND SYSTEMIC BARRIERS TO DISCLOSURE

The barriers studied in Parts III-V are studied in relation (rather than in isolation) to the family and cultural context of the report of child abuse. In many cases where the accused is a family member (as in 12-20% of substantiated cases), the reporting adult (typically the child's other parent) may have many strong practical and emotional reasons not to report the abuse. In particular, there will likely be a considerable amount of economic dependency on the accused, disruption of family life and in some communities' fear of stigma or social consequences may be linked to the family (or the child). What differs between the various legal systems is how they will affect the reluctance of a reporting adult: a legal system that requires lengthy, adversarial and public processes, or a legal system that does not include adequate support services when an investigation is pending, may further increase the reluctance of a reporting adult, whereas a legal system that offers support services, expedient or confidential processes may have a lesser effect.

Another institutional barrier is distrust. This is particularly true for communities that have been discriminated against or punished by law enforcement or child protective agencies in the past. In these communities, there exists a rational calculation (although regrettable) whereby reporting is perceived as more likely to result in harm being done to the family. This harm is the loss of the child or negative repercussions for family members whose immigration status is unclear. Moreover, this outcome is more attainable than effective protective intervention. This reporting is suppressed no matter how big the underlying suspicion is, according to an institutional distrust analysis. This barrier must be dealt with, however, not only by attending to the legal framework already discussed in this paper, but by considering the relationship between communities of reporters and the institutions where reports are made. This is not just a doctrinal issue.

VII. IN CRIMINAL LAW, THE ROLE OF THE POLICE AND THE DISCRETION OF THE PROSECUTOR

A report passes through the barriers described above and gets to law enforcement, but it's up to law enforcement whether or not they investigate further, and in the end, whether or not they refer a case for prosecution. Research on case attrition in sexual offence investigations is generally agreed that cases which present a credibility problem for the investigating officer are more likely to be not referred for prosecution. "Credibility difficulties" occurs when, during the investigation, the officer believes, due to the age of the child or because there is no physical evidence, that there are credibility issues. It can also apply to situations where the officer believes the child's account is not consistent with what is suggested by the developmental research as a normal part of a true disclosure and not a fabrication. Charging choices are influenced by lots of other factors, such as whether evidence left out would have had a significant impact one way or the other, and anything that could reasonably affect the bottom line, whether in terms of likely success at trial or otherwise.

Studies have found that the existence of units and protocols with a multidisciplinary child advocacy centre that coordinates forensic interviewing, medical examination, victim advocacy and law enforcement investigation in a single institutional space that is child centered does help to maximise

the number of cases that get further in the system. Having a single institutional space that is child centered maximises child-friendly questioning, collates all information in a single space, helps to streamline evidence collection and institutional collaboration.

VIII. COMPARISON REVIEW

The Protection of Children from Sexual Offences Act, 2012 in India has an elaborate statutory framework which makes a comparatively comprehensive legislative response. It provides for the establishment of a universal mandatory reporting duty, relaxed evidential requirements in the case of child testimony and special procedural protections such as in-camera proceedings and provision for the child to testify through means that do not entail direct confrontation with the accused, wherever the court considers it necessary.

However, problems remain in the enforcement of the law. Most importantly, there is the lack of consistency in the duty to report. In addition, there is a delay in the special trial process that the Act envisages. Last but not least, there are social and family pressures against reporting that can only be addressed on a statutory basis.

The U.S. is more fractured with state-by-state statutes requiring mandatory reporting, and overlying federal constitutional confrontation doctrine. In spite of the possibility of some safeguards in favour of child witness, such a doctrine still continues to require a case-by-case evidence of necessity before departing from face-to-face testimony. That one-on-one demonstration may also entail another burden of procedure in cases where a dispute arises.

The model adopted in the United Kingdom is not based on a universal criminal offence (mandatory reporting) but instead on the professional safeguarding responsibilities of the child care system under the Children Act, 1989 and inter-agency guidance. This is a system where the main detection mechanism is in the child protection system, not in a criminal mandatory reporting law. This means that there are some different implications as to what happens, or does not happen, when a failure occurs (e.g. failure to report alleged abuse).

IX. SUGGESTIONS

Some changes to the criminal justice process, specifically the barriers discussed in this paper, could be made that would be likely to reduce the dark figure of child abuse. They would not in turn replace the continuing importance of public consciousness and promotion of denunciation, however.

Statutory reporting requirements should be reviewed regularly, and if necessary, updated to specify the level of suspicion required and to ensure that the requirements for reporting align with the provision of appropriate professional training, as a duty without appropriate training has been found to lead to inconsistent adherence to the duty.

Given this correlation between these institutional models and positive results, in particular, in terms of case retention through the investigative process, jurisdictions should consider investing in child

advocacy centres that have been designed to have a multidisciplinary approach and structured forensic interviewing.

The evidentiary doctrine relating to the competency of children as witnesses, hearsay, and corroboration should be continued to be balanced. This should be undertaken reflecting developmental research on disclosure patterns. This is a well-documented phenomenon of a true disclosure being delayed, fragmented or incomplete. Therefore, investigators, prosecutors, and fact-finders should not use these features to imply fabrication.

We need in principle a clear legal rule, consistently interpreted and applied, as to what substitutes for in-person testimony and other procedural adjustments will be provided for purposes of reducing the trauma of involvement in criminal proceedings. This helps reduce the workload for prosecutors and child witnesses of determining the need for an individual child in each instance. Concurrently, this case law would also uphold the accused's confrontation right by adequate calibration and protection such as those discussed in *Maryland v Craig*.

Fifth, law enforcement and prosecutorial agencies should implement and publicize consistent case-outcome statistics by phase of the process. This will enable researchers and regulators to pinpoint the stages in the process that present the greatest opportunity for attrition and make the necessary changes.

X. CONCLUSION

Probably the best understood aspect of child abuse, both psychologically and familiarly, has been the child's reluctance to report incidents of child abuse.

This article suggests that causes should also be interpreted as a result of identifiable features of the criminal justice system. More specifically, the scope and enforcement of mandatory reporting requirements; the institutional design of investigation and forensic interview; the evidentiary doctrine relating to the reception and weight of child testimony; and the discretionary practices of law enforcement and prosecutorial officials as to which reported cases are advanced (i.e., charged or referred to the prosecuting authority). Comparative materials from India, USA and UK are explored in this paper to better understand the fact that different legal systems have come up with different, partial solutions to these obstacles. However, no system has been able to bridge the big gap between the achieved and the formally legally recognised level of child abuse documented by criminalistic and public health research. But to make meaningful progress in closing the gap needs to be sustained and coordinated across the barriers discussed in this paper, not just one at a time.