

REVIEW PAPER

Shaken baby syndrome- an unnoticed child abuse

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Received on April 20, 2019; editorial approval on June 05, 2019

ABSTRACT

Shaken baby syndrome or abusive head trauma is an injury to the baby's brain due to child abuse. It is known by different names such as Battered Child Syndrome and Abusive Head Trauma. It is an unnoticed crime. There is a law and clear guidelines in the developed countries such as USA, UK etc. But there is absence of law and specific guidelines regarding shaken baby syndrome in India. There is no way to detect this child abuse which is frequently taken place at the household as it is done by caretaker, parents themselves knowingly or unknowingly. This paper outlines about introduction of this specific type of child abuse, position in international perspective and Indian perspective with some judicial cases and suggesting of a necessity of proper law and guidelines in India regarding shaken baby syndrome.

Keywords: *Infant abuse; international perspective; Indian perspective.*

INTRODUCTION

Shaken baby syndrome or Abusive Head Trauma is injury to the baby's brain due to child abuse. Cause of this injury is due to direct blows to the head, dropping or throwing a child or shaking a child. Shaken baby syndrome is known by different names such as Battered Child Syndrome and Abusive Head Trauma. It has been called as a silent child abuse as the victim is not able to complain about its problem. In the past physical abuse has been taken out of picture, but the recent studies depict that there is infant abuse under 1 year of age is head trauma.¹ It has been observed that Shaken baby syndrome is the leading cause of death in child abuse cases in the United States. The reason for this is the anatomy of the infants which puts them in the higher risk in particular action. It is tragic that the parents don't intend to harm the infant but because of their fragile constitution, even a brief shaking may result into the irreversible injury and even death.² The beaten child syndrome was described by Ambrose

Tardieu in 1860, but shaken baby syndrome (SBS) is clearly described in the medical literature only a century later by Caffey in 1972.³ He formulated the term "whiplash shaken baby syndrome", based on 27 cases of child abuse with hematoma injuries. Caffey first noticed non-accidental injury of childhood or child abuse syndrome in 1946, who reported multiple fractures of long bones in six infants suffering from chronic subdural hematoma. The long bone fractures appeared to be traumatic origin, but, the traumatic episode and actual causative factors or mechanism remained obscure.⁴ It was remained unnoticed until early 1960 when Henry Kempe and his colleagues give a new terminology "Battered Child Syndrome".⁵ In shaken baby syndrome what happens is when the infant is grabbed around the torso and shaken, or by grabbing of their limbs and swinging them. The shaking motion typically occurs for 5 and 20 second results in quieting the baby- the most common intended effect. The perpetrators, however does not realize that the infant has stopped crying not because he was soothed but by brain damaged was occurred. In many states of USA, abuse is defined as the infliction of injury on a child by parent or guardian. Abuse is differentiated from neglect, which usually refers to failure of parents or caretaker to provide the child with adequate physical care and supervision. Abandonment of child also means neglect.

Shaken Baby Syndrome Diagnosis

Sometimes and often situation occurs where shaken baby syndrome is alleged, the history of shaking is not diagnosed, in reality, there may be complete absence of any history of

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Cite this article as: Chakraborty Abhijay, Sharma Rituja. Shaken baby syndrome- an unnoticed child abuse. Int J Health Res Medico Leg Prae 2019 July;5(2):94-96. DOI 10.31741/ijhrmlp.v5.i2.2019.22

trauma or otherwise very slight trauma which is not associated with the symptoms experienced by the victim. In some cases parents and caretakers admit the shaking of the baby. If we study the medical literature, most texts referring to diagnostic triad for diagnosing shaken baby syndrome requires the following triad of injuries: Subdural Haemorrhage (SDH), Encephalopathy and Retinal Haemorrhage (RH).

The traditional conception is that these injuries are the result of serious injuries or trauma such as motor vehicle accident or fall from a multi-storey buildings or violent shaking. However, this opinion is currently being challenged by evidence to the contrary.

Shaken Baby Syndrome in International Perspective

Shaken Baby syndrome is growing concern across the world. In United States, shaken baby syndrome gained notoriety during the period mid 1990s as a result of Louise Woodward trial. The Supreme Court of United States held that the Due Process clause of the Fourteenth amendments provides parents a fundamental right to custody of their children, stating “a natural parent’s desire for and right to the companionship, care, custody and management of his or her children is an interest far more precious than any property right”. It is to be noted that this right is not absolute as government holds *parens patriae* in protecting citizen. *Parens patriae* is a doctrine by which a government has standing to prosecute a lawsuit on behalf of a citizen, especially on behalf of someone who is under a legal disability to prosecute the suit.⁶ But after Dr. Kempe’s Classification of Shaken Baby Syndrome in 1962, gave great heed to child abuse. He had also proposed the child abuse cases should be reported by the practitioners. In France, the study shows 30000 children are abused each year and 400 children die. Most unlikely and unlike the most other criminal matters, once SBS is diagnosed the burden of proof effectively shifts to the parents or to the caregiver to disapprove a medical diagnosis- classic *res ipsa loquitur*.⁷ The news article titled “tough time for Jaipur couple as US slaps ‘shaken baby syndrome’ on infants” was distributed featuring that couple from Jaipur is confronting extreme time in America as the administration forced Shaken Baby Syndrome (SBS) when their youngster allegedly unintentionally fell on the floor and got head damage. Since the administration forced SBS on the infant, the biological guardians lost his authority and he has been given over to temporary parents.⁸ In New York, According to the study of New York Department of Health, there are estimated 1000-3000 infants shaken every year. One in four shaken infants will die, and 80% of those that don’t die suffer permanent injury.⁹ In Romania, no statistical data exists as the shaken baby syndrome is not recognised. United Nations Conventions on the rights of the child declares basic rights and standards for the maltreatment. In United States of America if any paediatricians have suspicion as to the maltreatment of the infant, it is his mandatory duty to report the such incident to the local child welfare agency. In some countries like Belgium and Holland the cases of maltreatment are dealt with

confidentially through health and social workers. In North Carolina cases of shaken baby syndrome is dealt with efficiently. In Virginia, the study was made and it was estimated that during 2003-2007, the perpetrator in 54% of the cases were parent or guardian, it also states that period between 2003 and 2007, there were 26 deaths which are classified as Shaken Baby Syndrome. Of these 26 deaths, 4 were shaken as infants and died later as complications resulting from their injuries, there were older than 2 years of age and died of shaken baby syndrome. The crude 5 year death rate for all deaths during this duration was 0.35 per 100000 children younger than 15 years of age. It is alarming situation in Virginia. In South Africa, though there is no reported case law is available but now there is expansion of awareness of shaken baby syndrome. It must be noted that medical practitioners who on reasonable grounds believe that a child was abused or there is maltreatment of child, and in the event they report in such a bona fide belief are protected from civil liability in terms of sections 110(3) of Children’s Act 38 of 2005. Australian remedy for the shaken baby syndrome was simple- prosecution was based solely on the presence of one or more triad symptom would not be sufficient to prove a case of criminal abuse beyond a reasonable doubt on the absence of corroborating evidence. Australian interrogation was done on the basis of criminal appeal and has undergone a huge change in investigation and prosecution of alleged Shaken Baby Syndrome. In Australia through the judgment of Supreme Court in various cases, there is a development of law on Shaken Baby Syndrome. Though it was not a solution for past cases, Australia’s integration of the conservation on, and growing of shaken baby syndrome in 2003 was a solution to preserve the integrity of shaken baby syndrome cases prosecuted in years to come.

Shaken Baby Syndrome in Indian perspective

According to the United Conventions on the rights of the children in which India also ratified in the year 1992 all children are born with fundamental rights which are right to survival to health, life, nutrition, name, nationality. Right to Development to education, care, leisure, recreation, cultural activities. Right to Protection from abuse, neglect, and exploitation. Even though India’s one-third population is of children, there’s interest have never been given priority and these rights have been violated every day. If we see the constitution of India, Fundamental Rights under Part III has been guaranteed to the people of India. Under Part IV of the Constitution of India, Directive Principles of State Policy in Article 45 it is provided that “The state shall endeavour to provide early childhood care and education for all children until they complete the age of six years”.¹⁰ In India, child abuse is rampant, According to National Crime Record Bureau, In percentage terms, major crime heads under ‘Crime Against Children’ during 2016 were kidnapping & abduction (52.3%) and cases under the Protection of Children from Sexual Offences Act, 2012 (34.4%) including child rape.¹¹ These figures suggest that there is crime committed against children in other offences but there is no case of shaken

baby syndrome as it shows that there is no legal provision regarding shaken baby syndrome, no mechanism to track shaken baby syndrome. There is a need to think about a legislation regarding shaken baby syndrome as it exists in developed countries. Though cases of non-accidental head injuries are reported in India but lack of awareness about shaken baby syndrome it remains unnoticed. Literature search shows only few cases. There is a lack of data regarding the extent of child battering that takes place within households or institutions. As already stated there is no way to know how many cases of shaken baby syndrome has been reported in India. Over a decade, there are only few cases which were reported in some journals in India. What a pity, when there is a case of shaken baby syndrome and when such child is discharged from the hospital and to go back to the same household where they suffered abuse, at times they suffered even death.¹²

CONCLUSION

Shaken Baby Syndrome is a very controversial topic in medico-legal practice and it is evident from the discussion highlighted above that there is requirement of the law relating to shaken baby syndrome. Child abuse hampers the basic values of humanity. The time has come that both our medical and legal system should take immediate step to prevent this child abuse in the form of shaken baby. It is also evident that there is a law and guidelines about shaken baby syndrome in developed countries. India is land of villages and there may be many cases of shaken baby syndrome which remains unnoticed. Even medical practitioners working in villages have lack of knowledge about shaken baby syndrome so they can't detect them. India is a land of superstitions also. As there is no awareness about shaken baby syndrome, cases of abuse is dealt under the guise of superstitions. As already stated that time has come not only the medical and nursing practitioners should be aware but also the members of the legal field such as lawyers, investigating agencies, and the court should be enlightened about the child abuse. The policy makers in the legislature should also develop some laws relating to Shaken Baby Syndrome.

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