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## THE SCENARIO OF CHILD SEXUAL ABUSE IN INDIA WITH SPECIAL REFERENCE TO THE POCSO ACT: AN OVERVIEW

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### ABSTRACT

*Children are considered the pillar of our society. The new growing generation is the future of the country and to let them develop and grow in a safe environment is the most basic instinct people have. However, they are the most vulnerable members of the society. Reports suggest that two out of three children have faced physical abuse in their life. In a report published by Statista Research Department, in 2021 in Delhi, the crime rate against children was found to be 128.5 per 100,000 children<sup>26</sup>. In India, crimes against children are widespread. Sexual abuse of children is one of the most frequently existing problems that is observed in India and globally respectively. The lifelong trauma that continues in the life of the victims is too severe, taking a toll on their physical and mental health. Sexual abuse often goes unnoticed and unreported, leading to the continuous exploitation of children. This paper will discuss the condition and stand of child sexual abuse persisting in India, the societal aspects that revolve around it, and the legal advancement in the field of CSA with a special reference to the POCSO Act.*

**KEYWORDS** – Child Sexual Abuse, Crimes against minors, POCSO Act, Minors, Sexual Offenses



<sup>26</sup> Rate of crime against children reported in India in 2021, by state, available at, <https://www.statista.com/statistics/633798/reported-crime-rate-against-children-by-state-india/#:~:text=In%20India%20in%202021%2C%20the,cases%20per%20100%2C000%20child%20population> (last visited June 8, 2023).

## INTRODUCTION

A society is built with various institutions, and most of those institutions are necessary for the development and sustenance of the society, however, to think that there shall only be beneficial institutions is a utopian vision. Crime is an act that threatens the backbone of the society. It's a problem persisting since the establishment of civilizations. Children being the most vital members of society are also the most vulnerable. Crimes against minors are not uncommon, in fact, they are easily the most targeted by criminals and criminal organizations. Child trafficking, domestic violence, sexual abuse, child pornography, neglect, exploitation, etc. are some of India's most commonly dealt with crimes. Such trauma leads to emotional and mental disturbance in minors and is responsible for their slow and unsteady development. In a country like India with a huge minor population, the risks and exploitation that surround them are disturbingly high and cannot be neglected. Sexual abuse has been a leading problem in the society around the world. More so, with respect to children, sexual crimes are very frequent and continuously on the rise. With the advent increase of technology, the crime rate has also increased.

Child sexual abuse always results in children having various physical and mental issues; if neglected the effects can manifest into trauma causing them severe physical reactions if left to traumatic memories or situations; the victims become dissociated from society, unable to trust anyone or live a normal healthy life.

## RESEARCH OBJECTIVES

- 1) To Understand the current problem of CSA in India
- 2) To check the earlier loopholes in the Indian justice system regarding CSA.
- 3) How the social stigma affects the victims of CSA.
- 4) To analyse and understand the scope of the POCSO Act, 2012.
- 5)

## RESEARCH METHODOLOGY

The researcher has done a preliminary analysis of the legislature and sociological background of the discussed problems first. Further, analytical and interdisciplinary method of research has been adopted in pursuit to gain basic knowledge of the legislature and societal background on the issue. The socio-legal approach has also been adopted to deal with the issues of understanding the impact of societal traditions and beliefs in the incorporation of crime. The data has all been collected from secondary sources and compiled to give shape to the following research paper.

## LITERATURE REVIEW

The Indian Justice System has not been efficient in dealing with child sexual predators. Prior to 2012, there was no specific legislature specifically curated to deal with the problem of sexual abuse in children. The author has reviewed multiple online articles and research papers available online, along with various statutes and acts in the Indian Legislature pertaining to sexual crimes in India.

**Belur, Jyoti & Singh, Brijesh. (2015).** has talked about the current statistics of CSA in India along with its wide ongoing scope. According to the literature, the problem of CSA in India had been overlooked and ignored by the justice system until the enactment of the POCSO Act. Further mentioning the various features that come under POCSO including the age of consent, obligatory reporting, etc, it has dealt with the issue of child marriage.

**Singh, M. M., Parsekar, S. S., & Nair, S. N. (2014)**'s paper focuses more on the sociocultural aspect of the CSA. According to the authors, the CSA has a social stigma that causes it to be unreported in most parts of India. It further sheds light on how children are the most vulnerable members of society and the statistics that indicate the 2001s statistics of the problem in the country.



## CRIMES AGAINST MINORS- AN INTRODUCTORY BRIEF

A minor is defined as a person who has not yet attained the age of majority. In India, the age of majority is set to be 18. Therefore, according to the Indian Majority Act, 1875, and the Juvenile Justice (Care and Protection of Children) Act, 2000; a person under the age of 18 is a minor. The age of 0-18 has been divided into different phases: infant, toddler, middle childhood, and adolescent. All of these are different stages of development and are very crucial stages for a child's physical, mental, and social development. However, there are widespread instances where children are affected in several ways which harms their growth, development, and well-being. Minors being physically and mentally vulnerable, are very prone to get influenced and exploited.

### A. Definitions

Any offence which inflicts mental and physical turmoil, as well as leads to the exploitation of a child is Child Abuse<sup>27</sup>. Any kind of maltreatment that a child suffers from an adult is considered abuse. This includes physical punishment, in the form of disciplining as domestic violence; psychological or emotional maltreatment, in the form of neglect and abuse; and sexual exploitation.

The World Health Organization (WHO) defines Child abuse as the violation of the basic human rights of a child, constituting all forms of physical, emotional, or sexual ill-treatment, which results in actual or potential risk or harm to the child's health, survival, or dignity.

Crimes against children include cruelty; neglect; employing a child as a beggar; abduction; sexual exploitation in the form of molestation, sexual abuse, child prostitution, and sex trafficking; etc. Crimes against minors are a very serious increasing problem for policymakers worldwide. With the advancement of technology and societal development, the

ways and methods of committing crimes are increasing as well.

Child Abuse has existed for centuries. In most cultures, physical abuse is seen as a normal method of disciplining a child. Children are often neglected and left to starve, in order to be disciplined. Sexual abuse towards children could be considered as the worst form of abuse.

### B. Child Abuse Statistics in India

The National Crime Records Bureau released a report in 2021 according to which over 1.95 Lacs reports pertaining to crimes against children were registered in 2021. During 2020, the number of crimes was reported at 1.28 Lacs in numbers, reflecting a sharp increase of 16.2% in 2021<sup>28</sup>. The reports suggested that cases of abduction totalled 45% of the total reports, while crimes related to sexual offences were a total of 38.1% causing a worrisome figure to arrive.

During the period of 2017-20, India saw an alarming rate of increase in crimes against children on online platforms. With the advancement of Technology, children on the Internet are more prone to online sexual offenders and paedophiles. The Interpol data suggested that over 24 Lacs instances were reported related to online child sexual abuse, in which 80% of the victims were under the age of 14 years<sup>29</sup>.

### CHILD SEXUAL ABUSE: An overview

The WHO (World Health Organization) defines Child Sexual Abuse as the involvement of any child in a sexual activity that they don't fully understand, are unable to give their consent to, and that violates societal taboo. A child sexual offence is defined as any sexually stimulating act which is performed by an adult towards any child. Children are unable to consent, and as such aren't mentally ready and knowledgeable to consent to sexual relations with an adult. Any

<sup>27</sup> Crime against children, available at, [https://ncrb.gov.in/sites/default/files/crime\\_in\\_india\\_table\\_additional\\_table\\_chapter\\_reports/Chapter%206-15.11.16\\_2015.pdf](https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Chapter%206-15.11.16_2015.pdf) (last visited June 9, 2023).

<sup>28</sup> Ambika Pandit, "At 1.5L cases, 16.2% rise in crimes against kids: Report", The Times of India, Aug 30, 2022, <https://timesofindia.indiatimes.com/india/at-1-5l-cases-16-2-rise-in-crimes-against-kids-report/articleshow/93864978.cms>.

<sup>29</sup> "India reported over 24 lakh online child abuse cases in 2017-20; 80 percent girls below 14: Interpol", The New Indian Express, Nov 17, 2021, <https://www.newindianexpress.com/nation/2021/nov/17/india-reported-over-24-lakhonline-child-abuse-cases-in-2017-20-80-per-cent-girls-below-14-interpo-2384844.html>.



such case where an adult is taking advantage of a child's vulnerability is a sexual crime.

There are different recognized acts that come under the direct umbrella of CSA, such as<sup>30</sup>:

- Exhibitionism: allowing a child to see your genitals, as well as making a child show their genitals;
- Fondling: Touching a child's genital or body inappropriately, as well as making a child touch your body or genitals;
- Rape: Any form of sexual penetration, i.e., oral, vaginal, or anal with a child by an adult;
- Forcing a child into sex services, or forcing them to indulge in any inappropriate services;
- Persuading and forcing a child to consume any pornographic content, such as magazines, movies, etc.
- Online predation of minors: Any adult forcing and threatening a child over the Internet for pornographic pictures;
- Abduction of minors and sex trafficking; Making vulgar remarks and gestures to a child, etc.

Child sexual abuse can take place in any situation. In most common scenarios, it's observed that the abuse and molestation have occurred in domestic and familiar situations by the child, with the perpetrator being someone they knew. It could take place in schools, homes, public settings such as parks and gardens, etc. In most scenarios, the perpetrator is an adult who is close to the family of the victim or a family member. Most commonly seen offenders of CSA are men, according to the statistics by the US Department of Justice, approximately 30% of the offenders were close family relatives, while 60% of the perpetrators were not family members but known to the victims, such as neighbours, family friends, etc.<sup>31</sup>

<sup>30</sup> What Are the Laws Related to Child Sexual Abuse in India, *available at*, <https://blog.ipleaders.in/laws-related-child-sexual-abuse-india/> (last visited June 10, 2023).

<sup>31</sup> Raising awareness about sexual abuse: facts and statistics, *available at*, <https://web.archive.org/web/20190310222140/https://www.nsopw.gov/en-US/Education/FactsStatistics> (last visited June 10, 2023).

## A. Forms

Child sexual abuse is a grave offence that not only scars a child's life with trauma but also prevents them from living a normal life in the future. It is a concerning topic to understand the different ways sexual exploitation and harassment of a child may occur. Here are the following widely classified areas Sexual abuse can be categorized in:

1. **Physical Sexual Abuse:** This most commonly includes any physical sexual act that occurs between the perpetrator and the child victim, such as any form of penetrative sex, i.e., vaginal, anal, or oral. It also includes Fondling, forceful kissing, or hugging. The offender harasses and exploits the victim in a physical manner for achieving sexual gratification.
2. **Non-physical sexual offences:** Unlike physical abuse, the offences under this also come under 'Child Grooming'. This includes showing a child any explicit sexual material, forcing them to show their naked body or genitals, forcing them to see the genitals of the offender, etc. In most cases of grooming, an adult perpetrator traps a teenager into a relationship to sexually exploit them.
3. **Commercial Sexual Exploitation of Children:** To indulge a child in sexual services for profits and remuneration is termed as the commercial sexual exploitation of children. Children are viewed as sexual objects and are forced to perform sexual acts to gain monetary profits by the perpetrator. Examples of such include, sex trafficking, child pornography, online live streaming of sexual pornographic content by minors, child prostitution, child sex tourism, etc.
4. **Online Sexual Exploitation and Abuse of Children (OSEAC):** In the current technologically advanced era where the Internet has taken the world by storm and has become a basic requirement of people's life, it's indisputable that the dangers that lurk behind it would rise too. According to the National Crime Records Bureau (NCRB), approximately 21,500 cases were registered in India under the POCSO Act.



The growing presence of children on social media has led them to be highly vulnerable to online sexual predators. Children, without understanding the risks and effects of social media and strangers online are exposing themselves to criminals who then lure them to exploit them further. Some of the most common methods sex offenders target children are through sexual grooming, forcing them to indulge in virtual sexual acts such as Sexting and sending nudes; threatening to expose their nudes for ransom; and sharing the nudes online, i.e., child pornography.

### THE SCENARIO IN INDIA

India surpassed China to be the most populous country in the world. According to the UNICEF report of 2022, with a total of 18.09% population of the world, India holds a demographic status of at least 40.71% of its citizens under the age of 19. With at least 444 million approximate children in India, it's vital that they should be protected and provided with opportunities and a safe environment. Sexual Offence against children is an alarming crime that is highly prevalent in India. In India, most sexual offences go unreported, pertaining to the strictly traditional view of Indian society regarding sexual status. The traditional overview on this field of concern causes many individuals to be unable to stop the abuses and have to deal with the outcome of PTSD and trauma in the future. India has a long issue of child sexual abuse embedded in its history. Until the development of the recent landmark legislatures in the history of India that deals with the issue of child sexual abuse, it wasn't a popular trend. Most of the child sexual abuse cases went unrecorded due to the fact that half of the currently recognized forms of sexual abuse were not considered so. Crimes such as non-penetrative harassment, exploitation, and grooming were not considered offences<sup>32</sup>.

#### A. Statistics

The report released by National Crime Records Bureau (NCRB) laid down the statistics which

could give a clearer picture of the current crime rate in India. According to the data, there was an increase of 16.2% in crimes against children between 2020 and 2021 as the data went up from 28.9% in 2020 to 33.6% in 2021<sup>33</sup>. Out of these 45.0% of reported cases were related to Kidnapping, and 38.1% of cases were registered under the POCSO Act, 2012.

Under the POCSO Act, a total of 53,847 cases were registered in 2021, out of which 33,348 cases were registered for aggravated penetrative sexual assault as defined under Sections 4 & 6 of the POCSO Act<sup>34</sup>.

In North India, states like Uttar Pradesh, Maharashtra, and Madhya Pradesh had the highest reported crime rates against sexual exploitation of children as a comparison to the South Indian states where Tamil Nadu, Karnataka, Telangana, and Kerala witnessed a spike and had the highest reported cases of CSA.

### TOP 5 INDIAN STATES WITH THE HIGHEST CHILD SEXUAL ABUSE CASES



(Source: NCRB, 2021)

#### B. Unreported Cases- The social stigma behind sexual abuse

India is a developing country with a long history of traditions and culture embedded deeply in its core. Traditions and cultural values have a

<sup>32</sup> Belur, Jyoti & Singh, Brijesh. (2015). Child Sexual Abuse and the Law in India: A commentary. *Crime Science*. 4. 10.1186/s40163-015-0037-2.

<sup>33</sup> Jameel, T. (2022, August 30). Crimes against children increases by 16.2%, child sexual abuse cases go up. *The News Minute*. <https://www.thenewsminute.com/article/crimes-against-children-increases-162-child-sexual-abuse-cases-go-167363>.

<sup>34</sup> The Protection of Children from Sexual Offences Act, 2012.



highly significant position in the daily socio-cultural structure of society. Child sexual abuse had been a largely ignored problem in India. Sex is taboo in Indian society and hence, any topic surrounding sex is rarely talked about. Various studies conducted on child sexual abuse in India claimed that most of the cases go unreported in India. The social stigma surrounding sexual assaults is huge and people, in an effort to avoid it fail to notice or accept the victim's suffering. Most of the time, such cases are not reported to the system in an effort to hide the 'immorality' or even save the preparator.

Indian society regards rape victims as impure, playing a huge role in demoralizing the victims by victim-blaming. Such social stigmas allow the perpetrators to remain unharmed and unreported, as the victims can't gather the courage to come out as the victim.

One another factor that contributes to the social stigma is the lack of awareness. In Indian society, boys are not believed to be victims of sexual abuse. People believe that only girls suffer sexual abuse. The NCRB report had suggested, that out of the 33,348 cases reported in 2021, 312 involved boys<sup>35</sup>. Such lower numbers indicate that male victims are often not given help as the concern is mostly ignored by the parents as well as the authorities.

### C. Earlier Legal Frameworks dealing with CSA

There was no official legislature in India that specifically dealt with crimes involving the sexual abuse of children. The criminal justice system of India had been overlooking the problem, and as such the only legislatures that remotely revolved around CSA were the sections mentioning sexual offences in the IPC<sup>36</sup>, not specifically related to the children. These sections were rape (sec 376<sup>37</sup>), Assaulting the modesty of a woman/girl child (Sec. 354<sup>38</sup>), sexual harassment (Sec. 354A<sup>39</sup>), Insult to the

modesty of women (Sec. 509<sup>40</sup>), Buying/selling of minors for prostitution (Sec. 373/372<sup>41</sup>), etc. Other forms of non-penetrative sexual behaviour were not recognised by the Justice System under any legislature and hence, went unnoticed. Such justice was often narrow in scope and didn't cover most of the problems of sexual offences.

However, after the enactment of the POCSO Act in 2012, the situation governing CSA took a positive turn where more and more offenders could be recognized and the victims could get justice. More discussed in the next sections.

Another legislature that dealt with CSA was *The Information Technology Act, 2000*. To tackle the problems of online sexual assault of children in India, the Cyber Laws in India need to be implemented and followed to safeguard children on the internet. Section 67B<sup>42</sup> of the Act defines that whoever shall engage in publishing, viewing, consuming, or sharing any child pornographic material in electronic form will be held liable by law.

### THE PROTECTION OF CHILDREN AGAINST SEXUAL OFFENSES (POCSO) ACT, 2012

Prior to 2012, no specific legislature governed sexual abuse against children. In 2012, the parliament enacted the Protection of Children against Sexual Offences Act, also known as the POCSO Act. The main objective of this act was to provide the framework for the protection of children against sexual offences such as sexual harassment, sexual assault, exploitation, child pornography, etc. It also provides to safeguard the child's interest at every step of the judicial process by means of employing child-friendly measures and mechanisms for reporting, investigation and efficient trial through the establishment of special courts<sup>43</sup>.

The POCSO Act defines a child as a person under the age of 18. One of the remarkable features of the act was that it was gender-

<sup>35</sup> *Supra* 7.

<sup>36</sup> *The Indian Penal Code, 1860*.

<sup>37</sup> *The Indian Penal Code 1860, s 376*.

<sup>38</sup> *The Indian Penal Code 1860, s 354*.

<sup>39</sup> *The Indian Penal Code 1860, s 354A*.

<sup>40</sup> *The Indian Penal Code 1860, s 509*.

<sup>41</sup> *The Indian Penal Code 1860, s 373&372*.

<sup>42</sup> *The Indian Technology Act, 2000*.

<sup>43</sup> Mohanty, Hitabhilash, and Devpriya Banerjee. "An Analysis of Protection of Children From Sexual Offences Act, 2012 (POCSO ACT)." *Social Science Research Network*, 1 Jan. 2021, doi.org/10.2139/ssrn.3768096.



neutral, recognizing both females as well as male victims and perpetrators.

#### A. Offence and Punishment

The POCSO Act recognizes both penile as well non-penetrating sexual acts against a child, some of these are as follows:

1. **Penetrative sexual assault.** Section 3<sup>44</sup> of the Act defines Penetrative sexual assault in the following manner if a person commits-(a) he penetrates his penis to the mouth, vagina, urethra, or anus of a child; (b) he inserts any body part other than the penis into the mouth, anus, urethra, or vagina of a child or makes him do the same with any other person; (c) he applies his mouth to the penis, urethra, vagina, or anus of the child, or makes the child do so with any other person. Section 4 defines the punishment for the offences mentioned in Section 3. The offence committed to a child under the age of 10 shall receive a punishment of not less than 10 years, which would also be life in imprisonment along with fines; an offence committed to a child under the age of 16 shall be punishable up to not less than 20 years of age, to maximum life imprisonment along with fines.

2. **Aggravated Penetrative sexual assault.** Section 5<sup>45</sup> defines the former as follows: if a police officer, member of the armed forces, a public servant, management and staff of jail, remand homes, hospitals, or educational or religious institution, commits penetrative sexual assault on a child- within the limits of area they are appointed to, during the course of their duties, etc.; if anyone commits gang penetrative assault on a child; or forcing penetrative sexual assault on a child using a deadly weapon, fire, or inflicting any mental harm to the child shall be punished under Section 6 providing a rigorous imprisonment term of not less than 20 years, but which may extend to life imprisonment along with fine.

3. **Sexual Assault:** Sections 7 and 8<sup>46</sup> deal with sexual assault and its punishment. Whosoever commits sexual assault without

penetrative assault to a child shall be punishable with an imprisonment term of not less than 3 years and a fine.

4. **Using a child for pornographic purposes.** Section 13<sup>47</sup> mentions that whosoever uses a child in any form of media for the purpose of sexual gratification would be punishable by imprisonment of not less than 5 years and a fine according to Section 14.

5. **Storage of pornographic material.** Section 15<sup>48</sup> of the Act clarifies that if anyone stores or possesses any pornographic material involving a child, with the further intention of sharing the material, or for commercial purposes shall be punished with imprisonment ranging from 3 years to 7 years and more, along with fine.

#### B. Procedures for reporting

1. Any person in possession of knowledge of any offence that has been committed shall file the report to the local police or SJPU<sup>49</sup>;

2. Within 24 hours of the filing of the report, the police officer or SJPU shall report the matter to the Child Welfare Committee and Special Courts<sup>50</sup>.

3. The police officer dealing with investigating the case must be in civil clothes in the presence of the child so as to not scare or make him nervous;

4. The statement of the child shall be recorded in the presence of someone he/she trusts;

5. Any medical treatment or examination of the child shall be conducted by a lady doctor<sup>51</sup>;

6. Media is not allowed to disclose the names or information of the child unless given permission by the special courts<sup>52</sup>.

#### CONCLUSIONS

India is a vast country with a huge population. Most of the Indian population belongs to the young adult section of society, where almost

<sup>44</sup> The Protection of Children against sexual offences Act, 2012.

<sup>45</sup> *Ibid*.

<sup>46</sup> *Ibid*.

<sup>47</sup> *Ibid*.

<sup>48</sup> *Ibid*.

<sup>49</sup> The Protection of Children against sexual offences act 2012, s 19(1).

<sup>50</sup> The Protection of Children against sexual offences act 2012, s 19 (6).

<sup>51</sup> The Protection of Children against sexual offences act 2012, s 27.

<sup>52</sup> The Protection of Children against sexual offences act 2012, s 23.



half of the population is under 35 years of age. With so, the minor population of India is highly considerable. Children being the most vulnerable members of society are often targeted by sexual predators both online and in the physical world. Most of the sexual assaults committed against children are performed by family members or someone close to them. Sex being a taboo topic in India is always avoided and with so, most of the cases go unreported causing a continuous battle and suffering of the children in the hands of the perpetrators. The social stigma related to victim blaming and the notion that boys don't suffer sexual abuse is the main reason behind the growth of crimes. The Indian Legislature enacted the POCSO Act in 2012 which brought in a new change in the scenario of crimes against children in India. Prior to 2012, the legislation dealing with crimes against children was limited in scope as it didn't specifically cover all provisions related to sexual assaults on minors.

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