



## A SOCIO-LEGAL ANALYSIS OF CHILD SEXUAL ABUSE IN INDIA

**Sonam,**

Research Scholar, School of law & jurisprudence,  
Glocal University Mirzapur Pole, Saharanpur (Uttar Pradesh) India.

**Dr. Dharm Pal Khatri,**

Research Supervisor, School of law & jurisprudence,  
Glocal University Mirzapur Pole, Saharanpur (Uttar Pradesh) India.

### **Abstract:**

In order to grow up to be contributing members of society, children must receive the proper nurturing during their formative years. Children are the most vulnerable population in society, making them more susceptible to maltreatment in general and sexual assault in particular. Child sexual abuse is defined as the use of a child for sexual gratification and is a blatant violation of human rights. When kids don't notify adults about a problem, it swiftly gets worse and spreads all over the world, harming the kids physically, emotionally, and psychologically.

The first law the Indian government passed to address child sexual abuse and exploitation was the Protection of Children from Sexual Offences Act, 2012, which carried severe penalties. However, as seen by recent gang rape incidents in Unnao and Kathua, the Act is not being implemented well, and law enforcement officers are not interested in bringing charges against those who committed this terrible crime. In order to improve the Act's effectiveness, the government was compelled to make changes.

The current study explores the issues of child sexual abuse in India, from the contributing causes to the crime's effects. It critically evaluates the current legal system, highlighting the most recent amendments to the POCSO Act, assessing their efficacy, and offering further strategies for effectively combating this horrible crime. In this study, child sexual abuse in India from the 1970s to the 1990s is also examined.

**Keywords:** *Child, Sexual, POCSO, Abuse, Crime*

### **1. INTRODUCTION:**

The most important time in a person's life is when they are a youngster. They will be the country's future designers. Therefore, in order to defend their rights and ensure their well-being, a safe and secure environment must be established. Despite their vulnerability, children are unfortunately easy pickings for abuse and exploitation by wrongdoers. When we speak of "child abuse," we mean situations in which kids have been

abused or neglected. According to the WHO, 40 million children between the ages of 0 and 14 are victims of abuse or neglect and require medical or social care.

Child sex abuse is one of the forms of child abuse that has an impact on all of humanity. India is also affected by this worldwide pandemic. According to the World Health Organization, abuse is the use of a kid for a sexual act they do not fully comprehend, cannot consent to, or for which they are not developmentally ready. Due to shame or concern over social stigma, it is a taboo crime that is rarely reported. Family members are frequently the offenders. The psychological, physical, intellectual, and emotional development of children is seriously hampered.

The Prevention of Children from Sexual Offences Act, 2012 has increased the reporting of child sexual abuse cases in India despite being a landmark piece of law. The law nevertheless has a number of shortcomings that make it difficult to put into practice. The Act has a huge number of cases, with a very low conviction rate, which demonstrates its inefficiency due to its lack of execution. An change to the POCSO Act was brought about by the significant media coverage of two horrifying child rape instances (the Kathua and Unnao rape cases) and other comparable incidents. As a strong deterrent to criminals, it now imposes stiffer and more severe sanctions, including the death penalty. The new Act still has several flaws, though, as it doesn't address many pressing issues that the government must take into account right away. Trials and investigations cannot be accelerated under a revised version of the law, making proper implementation of the Act impossible.

Therefore, in order to effectively combat the crime of child abuse, it is now necessary to educate law enforcement, legal, and medical institutions about the nuances of the law's implementation.

### **CHILD SEXUAL ABUSE IN INDIA; A GROWING MENACE**

Since child sexual abuse involves the exploitation of the child by the perpetrator for sexual enjoyment, it is one of the most dangerous risks that can impact a child at any time before they reach adulthood. Sexual favors such as oral sex, touching intimate areas, child pornography, voyeurism, and others may be performed.

Children, who make up a sizeable portion of the population overall, make up about one-third of India's population. Half of the children in the nation have experienced some sexual abuse, while 11% of them have had serious sexual abuse. Nearly half of all victims of child abuse are female, compared to around half of all victims being boys. In India, during the past six months, more than 24,000 cases of child abuse have been documented, according to a new study from the National Crime Records Bureau. These crimes need to be swiftly addressed because it is thought that they are becoming more common in our country.

The most child-related offenses were reported in Maharashtra, Uttar Pradesh, and Tamil Nadu. Children are more vulnerable to abuse due to poverty, a lack of sexual education, the proliferation of offensive posters and online content, as well as various damaging cultural practices like child labor, child marriage, and Devadasi. Although poverty is unquestionably a major factor, it may also be found in prosperous communities of

individuals from many cultures and religions. The breakdown of the nuclear family in modern society is a second factor contributing to this problem. Because such assaults are typically carried out in secret and kids hardly ever tell their parents about them, victims of child sexual abuse frequently fail to disclose their assaults. When they do, they are frequently advised to keep quiet out of concern for public embarrassment and shame, particularly when the offender is a relative.

Child sexual abuse can be identified by abnormal or seductive behavior, genital bruising or bleeding, trouble sitting or standing, and a refusal to be around kids or adults.

The psychological and physical ramifications of child sexual abuse are extensive. Fear, desperation, suicide attempts, hostility, disobedience, lack of confidence, and dangerous behavior are frequent signs of abuse in victims. The victims are left feeling helpless, afraid, remorseful, and worried.

## **LEGISLATIVE & JUDICIAL RESPONSE**

India ratified the U.N. Convention on the Rights of the Child in 1989. It was the first legally binding international agreement that specifically applied to the welfare of children. The Act also compels the governments to prevent children from suffering sexual abuse and exploitation in all forms. The Indian Constitution grants certain rights and opportunities to children to ensure their survival and growth. It is essential since children represent the future of the nation.

(i) The Indian Constitution allows the state to provide particular advantages to children for their development.

(ii) The Constitution of India provides for children to be afforded chances and facilities to grow in healthy ways in terms of freedom and dignity and for children and adolescents to be safeguarded from exploitation moral and material abandonment.

(iii) The Constitution protects the health of young children by preventing them from entering industries or entering into other dangerous jobs.

The Constitution also puts a responsibility on the state to ensure that all children under the age of fourteen receive free and obligatory education.

In addition, the Indian Constitution states that the state should provide early childhood education and care available to all children until they reach the age of six.

## **PRE-POCSO Laws**

Child sexual abuse has received little attention in India, and until recently, it was never classified as a crime. The only sexual offenses against minors that were officially recognized in India were rape, prostitution, and human trafficking. The Indian Penal Code, 1860, which dealt with all of them, did not distinguish between adult and juvenile victims of the crime. Sections 354 and 509 deal with outraging the modesty of women or

girls, as well as Section 509, which deals with insulting a woman or girl's modesty. Sections 361 and 363: kidnapping a minor from a legal guardian's care; Section 363A: kidnapping or maiming a minor to beg; Section 361: kidnapping a minor from a legal guardian's guardianship; Section 361A: kidnapping or maiming a minor for the purpose of begging; Section 366A prohibits the procurement of an underage female. Under Section 366B, a girl from another country may be brought into the nation. Section 372: It is forbidden to sell a minor for prostitution. Section 373 prohibits the purchasing of minors for prostitution. Raping is a crime under Penal Code Section 375. Different forms of rape are dealt with differently in Section 376. The many forms of rape that are penalized differently are listed in Sections 376 A, 376 B, 376 C, and 376 D. SECTION 377: This section, which dealt with unnatural sexual behavior, was frequently applied to situations involving the sex abuse of male juveniles. The publication and transmission of pornographic material was outlawed under the Information Technology Act of 2000. Prostitution and human trafficking are made illegal on the Indian subcontinent under the Immoral Traffic (Prevention) Act of 1956. A new comprehensive law known as the Protection of Children Against Sexual Offences (PCASO) was enacted as a result of the lack of specific legislation addressing a variety of other forms of sexual exploitation of children, such as Child Sexual Assault (not amounting to rape), Sexual Harassment, and Child Pornography, as well as growing concerns about the rising trend of sexual violence against children in India.

### **POCSO Act, 2012; Salient Features**

A gender-neutral law protects children against sexual assault, harassment, and pornography by having harsh punishments, child-friendly reporting, evidence-gathering, and investigation processes, and by moving cases quickly and via a special court. The legal age limit for children is 18 years old. It addresses several forms of sexual assault, including as penetrative and non-penetrative assault, sexual harassment, and pornography. When a sexual assault is performed by someone in a position of trust or authority, if the victim has a mental illness, or if the victim is under a specific age, it is classified as "aggravated" behavior.

Although it was prohibited by several laws, the pornographic crime's precise definition was never made clear. A picture, video, digital, or computer-generated image that resembles a child as well as an image that has been edited or altered to appear as though it were a child are now all considered to be sexually exploiting children. It also outlaws child sexual exploitation and stipulates the same punishment for those who assist in the crime as for those who do it.

The child-friendly techniques for gathering testimony include having the child testify in his or her own home, not letting kids spend the night being held at the police station, and verbatim transcribing the child's statement. The young person requires an interpreter or other specialist's help. In the presence of a guardian or other family member whom the child trusts, a female doctor will examine a girl. To prevent a hard interrogation or character assassination throughout the trial proceedings, the kid needed frequent breaks. To stop the media from

disclosing the child's name without the Special Court's consent, the child's identity was safeguarded.

The legislation also mandates that infractions must be reported, and there are consequences for failing to do so. The Act limits the amount of time that can be spent gathering evidence to 30 days and mandates that, to the greatest extent possible, trials must be concluded within a year.

### **POCSO Act: Recent Developments**

To deter potential sexual predators from committing the heinous acts seen in recent tragedies like Unnao, Kathua, and Muzaffarpur Shelter Home, the law has been further updated to increase the severity of punishments for various crimes, including the possibility of capital punishment for sexual assault and aggravated penetrative sexual assault.

The new Act doubles the minimum sentence for penetrative sexual assault from seven to ten years in jail. The modified section also includes a subpart that states the minimum sentence for sexual assault on a victim under the age of 16 is 20 years in prison, with the maximum sentence being life in prison and a fine.

Two new types of severe penetrative sexual assault are added by the Revised Act. Penalties for this offense range from ten to twenty years in jail to the death penalty, equivalent to when a kid is attacked till death and when a sexual assault occurs during a natural disaster or other time of extreme violence.

The concept of "aggravated sexual assault" has also been broadened to cover situations in which the assault took place during a natural disaster or in which youngsters were given or assisted in receiving hormones or other chemicals to help them develop their sexuality earlier.

The penalties for keeping pornographic materials for commercial use were also strengthened by this legislation. The transmission, display, and distribution of pornographic material involving children as well as two more grounds that are not subject to reporting, erasure, or destruction were also included.

The legal system has made it a priority to offer suggestions on security and rehabilitation as a result of its increased awareness of crime and the sexual exploitation of kids.

Through a PIL submitted to the Supreme Court, the NGO Sakshi v. Union of India (AIR 2004 SC 3566) demonstrated that the criminal laws in place were insufficient to address cases of child sex abuse in the first place. Sections 375 and 376(2) of the IPC were used to prosecute sexual exploitation of a female victim, whereas Section 377 of the IPC was used to prosecute sexual exploitation of a male victim. Sections 354 and 509 of the IPC dealt with non-penetrative sexual offenses against female children, but there was no equivalent law for male children who were victims.

The Supreme Court published instructions on how to conduct appropriate child sex abuse trials, including hiding the accused's face from the victim or witnesses, permitting victims to take breaks throughout the trial, and limiting needless victim harassment during cross-examination. The POCSO Act incorporates these regulations. The court remarked in Shankar Kisanraokhade v. State of Maharashtra 5 SCC 546 (2013) that

sexual abuse can take many different forms, including sexual molestation, assault, or exploitation of a kid by a known individual.

In *Gaurav Jain v. Union of India*, AIR 1990 SC 292 (2004), the Supreme Court mandated that the federal, state, and non-profit organizations protect minors from prostitution and give them opportunities for rehabilitation and a better life.

In *Vishal Jeet v. Union of India* (AIR 1990 S.C. 1412(1990)), the Supreme Court declared that child sex abuse is a socioeconomic issue and commanded state governments to ensure that law enforcement agencies take action against this heinous crime.

In *Nipun Saxena & Anr v. Union of India WP (civil) 565/2012*, the Supreme Court stressed the necessity for additional care and protection for child sexual assault victims by keeping their identities and names secret due to their young age.

### **Challenges Ahead**

Because of increasing concerns about the escalating trend of sexual assault against minors, the POCSO (Amendment) Serve, 2019, has increased penalties to deter offenders. Unfortunately, its poor execution has meant no significant improvement or decrease in the sexual crime rate. According to the NCRB's conclusions, the present Act's conviction rate is meager, but the number of pending cases continues to grow. As following are the primary causes of weak implementation of the law:

Delays in court proceedings are caused by the shortage of judges qualified to handle criminal cases under the statute.

Law enforcement agencies' apathetic attitude is another significant issue. Another problem is the inexperience of medical, judicial, and law enforcement agencies in addressing instances of child sex abuse. Police sub-inspector, who record underage female victims' testimonies, are in short supply in different police stations. Expertise and credibility of kid witnesses in courtroom battles that are frequently prolonged.

### **The Act's vulnerabilities:**

Although the updated Act carries harsh penalties, it still contains numerous flaws that require immediate rectification. Increased executions could lead to a decline in the number of recorded homicides and victims. In most cases, the victim knows the perpetrator, which deters them from reporting the crime. Additionally, there is a substantially higher chance that a victim will be murdered and raped. The modified Act does not shield the victim and their family in situations when the accused is in a position of power. The Unnao Rape case demonstrates that more needs to be done despite the enhanced penalty for violent sexual assault. The

updated legislation lacks a strategy for victim compensation, a guarantee of a thorough police investigation, or a productive way to reduce the number of cases pending trial. Since the existing law considers 16 to 18-year-olds to be too young to have sex, which families frequently abuse to conceal elopement and inter-caste weddings, it disregards concerns about young adults having consensual sex.

### **The situation during Covid-19 Pandemic:**

The COVID-19 outbreak faced unique challenges that included medical, social, and financial issues. Children are feeling the most severe forms of pain in one particular way. Children make up a lesser percentage of COVID-19's population, but their access to a safe and healthy learning environment has been significantly impacted by the global epidemic. National lockdowns have prevented about one billion children from attending school for at least three to four months in every country on earth. As a result, sexual predators are now able to damage children through online platforms.

The volume of calls from distressed children to CHILDLINE 1098, an excellent service that responds to emergency pleas for aid from women and children experiencing abuse and violence, increased by 50% during India's shutdown in April 2020. The Indian Supreme Court acknowledged the gravity of the situation and noted the high risk that children in state-funded institutions faced.

A new threat to their safety has arisen as a result of children and teenagers in India using internet communication tools more frequently. According to the most recent investigation by the National Center for Missing & Exploited Children (NCMEC) and the National Crime Records Bureau (NCRB), at least 25,000 images of child sexual abuse were posted to Indian social media platforms between September 2019 and January 2020. Child pornography searches significantly increased after the closure was announced, according to data from the India Child Protection Fund. During the government shutdown, there was a 95% increase in the availability of content and images containing child sexual abuse.

The true problems with these figures are concerning, especially in light of the fact that education is a completely online industry and that "having continuous parental supervision is not a realistic choice in households with two working parents." Additionally, to lessen the probability of helicopter parenting, schools frequently advise parents to refrain from following their kids about the classroom. It might increase children's susceptibility to online sex abuse.

The prevention of sexual assault on kids is essential for upholding the right to dignity guaranteed by Article 21 of the Indian Constitution. Spending more time online could result in online and offline exploitation and grooming. Children might be rapidly coerced into engaging in illegal or dangerous behavior. For instance,

young people may be persuaded to create and distribute sexually graphic images of themselves, which others may then use against them to harass and abuse.

### **CONCLUDING REMARKS & SUGGESTIONS**

A social tragedy that affects the entire human species is child sexual abuse. It is a hidden crime that frequently goes unnoticed because the perpetrators are people the victim knows, the victim feels embarrassed to report the abuse due to social shame, or for any other reason. As a result, the victim suffers in silence and without assistance. The frequency of reports of child sexual abuse in India has significantly increased after the POCSO Act was passed. Although it made an effort to halt the rise in child sex crimes, it was unable to do so because of serious operational flaws. To ensure a quick trial and prevent the re-victimization of individuals impacted, it requires committed and coordinated efforts from the implementing authorities as well as a strong multidimensional approach. After the horrific gang rape episodes in Kathua and Unnao and the worrisome rise in sexual crimes against children, the POCSO Act was revised to include harsher penalties that would serve as an effective deterrence. However, given the vast backlog of cases that have been registered under the Act and the fact that it doesn't address a number of additional major problems, this is insufficient. In order to increase youth knowledge of the prevalence of sexual crimes and to help them understand the various forms of sexual violence, moral and sexual education should be made mandatory in all schools and institutions. Since parents may create the safest atmosphere that is beneficial to their child's health and well-being, it is crucial to educate them on good parenting techniques.

Against this social evil, awareness is a potent weapon. As a result, the public should be informed about the potential risks and dangers facing children via the media and non-governmental organizations (NGOs).

Each agency is primarily accountable for one aspect of the problem that it is in charge of. Because of the enormous number of unusual cases filed under the POCSO Act and the low conviction rate, a coordinated effort from all implementing authorities is required to ensure a quick trial. According to the United Nations, there is a strong demand for judges, doctors, staff workers, police officers, and prosecutors who have received the training necessary to understand the complexity of these crimes and respond correctly.

The POCSO (Amendment) Act, 2019, is utterly quiet on a number of crucial matters that demand the government's quick attention and careful examination in order to fulfill the Act's objectives of ensuring children receive prompt justice and a safe environment for their better survival.

## **2. REFERENCES**

- [1] Prakash, A. (2021). Role of Prohibitory Legislation in Preventing Online Sexual Abuse of Children: A Critical

Socio-Legal Analysis. *United world Law Journal*, 2, 2457-0427. Prakash, A. (2021). Role of Prohibitory Legislation in Preventing Online Sexual Abuse of Children: A Critical Socio-Legal Analysis. *United world Law Journal*, 2, 2457-0427.

- [2] Babbar, S. K. (2014). Child Welfare: A critical analysis of some of the socio-legal legislations in India. *IOSR Journal Of Humanities And Social Science*, 54-60.
- [3] Seth, R. (2015). Child abuse and neglect in India. *The Indian Journal of Pediatrics*, 82(8), 707-714.
- [4] Choudhry, V., Dayal, R., Pillai, D., Kalokhe, A. S., Beier, K., & Patel, V. (2021). Child sexual abuse in India: A systematic review. *PloS one*, 13(10), e0205086.
- [5] Carson, D. K., Foster, J. M., & Tripathi, N. (2013). Child sexual abuse in India: Current issues and research. *Psychological Studies*, 58(3), 318-325.
- [6] Virani, P. (2000). *Bitter chocolate: Child sexual abuse in India*. Penguin U.K.
- [7] Moirangthem, S., Kumar, N. C., & Math, S. B. (2015). Child sexual abuse: Issues & concerns. *The Indian journal of medical research*, 142(1), 1.
- [8] Iravani, M. R. (2011). Child abuse in India. *Asian social science*, 7(3), 150-153.
- [9] Srivastava, K., Chaudhury, S., Bhat, P. S., & Patkar, P. (2017). Child sexual abuse: The suffering untold. *Industrial psychiatry journal*, 26(1), 1.
- [10] Seth, R. (2015). Child abuse and neglect in India. *The Indian Journal of Pediatrics*, 82(8), 707-714.
- [11] Deb, S. (2015). Legislation concerning reporting of child sexual abuse and child trafficking in India: A closer look. In *Mandatory reporting laws and the identification of severe child abuse and neglect* (pp. 541-564). Springer, Dordrecht.
- [12] Halder, D. (2021). *Child Sexual Abuse and Protection Laws in India*. SAGE Publishing India.
- [13] The Constitution of India, (1950)
- [14] The Immoral Traffic Prevention Act, (1956).
- [15] The Indian Penal Code, (1860).
- [16] The Protection of Children from Sexual Offences Act, (2012).