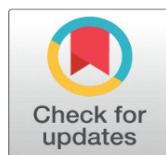
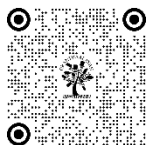


# BATTLING THE DARKNESS: COMBATING CHILD SEXUAL ABUSE IN INDIA

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## ABSTRACT

Child sexual abuse (CSA) continues to remain a widespread and deeply disturbing issue in India, masked by societal taboos, lack of awareness, and gaps in preventing and delivering justice systemically. This doctrinal study explores the legal, social, and policy frameworks addressing CSA in India, examining their efficacy in combating this silent epidemic. The present mechanism under the POCSO Act, 2012, along with traditional legal provisions, is critiqued with respect to both strengths and shortcomings. Their approach needs to be multi-faceted: legal reforms, victim support systems, education for the community, and strictness while enforcing all these measures to bring about a protective environment for children. Addressing cultural stigmas, enhanced reporting systems, and power to survivors are emphasized as the strong steps ahead in lighting the darkness of CSA and putting perpetrators in check for justice and rehabilitation.

**Keywords:** Child Sexual Abuse, Support, Legal Reform, Systemic Gaps, Cultural Stigma, Child Protection

## 1. INTRODUCTION

Child sexual abuse is one of the most serious offenses against human dignity, threatening children's body and soul well-being.<sup>1</sup> But the situation of CSA in India is astonishingly high, though hidden by various cultural taboos, social stigma, and flaws within its systems. They mostly remain silent out of fear, shame, and lack of information, and thus form an evil circle of silence over the victims who are never brought to justice nor supported.<sup>2</sup> The Protection of Children from Sexual Offences Act, enacted in 2012, was another significant step toward combating this crime-heinous by providing an all-round legal structure to protect the children.<sup>3</sup> Despite this legislative achievement, there are still loopholes in the system, societal understanding, and

<sup>1</sup> "Child Sexual Abuse Definition & Facts | Positive Childhood Alliance NC," *Positive Childhood Alliance North Carolina* available at: <https://preventchildabusenc.org/resource-hub/about-child-sexual-abuse/> (last visited August 17, 2023).

<sup>2</sup> Ranjana Singh, Vipin Koushal and Bhavneet Bharti, "A descriptive study on child sexual abuse act in India," 11 *Journal of Family Medicine and Primary Care* 2923 (2022).

<sup>3</sup> Seung-Joo Lee and Eun-Hyung Lee, "Case Study of POSCO - Analysis of its Growth Strategy and Key Success Factors" (Social Science Research Network, Rochester, NY, 2009).

availability of resources that hinder its effectiveness. Moreover, commonly employed mechanisms often ignore the survival of rehabilitation as well as empowerment to enhance their recovery pathway.<sup>4</sup>

This doctrinal study delves into the multifaceted dimensions of CSA in India, examining the interplay between legal frameworks, societal dynamics, and the lived realities of survivors. It aims to critically assess the effectiveness of current policies and legal measures, explore the role of social awareness in preventing abuse, and highlight the need for a more victim-centric approach. By addressing these challenges, this study seeks to contribute to the ongoing discourse on eradicating CSA and ensuring a safe, nurturing environment for every child.

## 2. SCOPE AND SIGNIFICANCE OF THE PROBLEM

India has millions of children in its population of nearly 40%. Studies and surveys, including the 2007<sup>5</sup> report of the Ministry of Women and Child Development, state that more than 50% of the children have faced some form of sexual abuse. These reports are, however, estimated to be underreported as majority suffer from stigma and fear of retaliation.<sup>6</sup> Cultural taboos, patriarchal structures, and socio-economic differences further worsen the problem by deterring the victim and his or her families from reaching for justice. Such systemic neglect not only empowers perpetrators but, more importantly, breeds a cycle of violence that undermines the safety and dignity of children.<sup>7</sup>

## 3. KEY DEFINITION

Child sexual abuse: Child sexual abuse is described as the exploitation of children through misuse of power, authority, force, or coercion of adults or significantly older persons who are stronger and in charge. The abuse enjoys sexual gratification by accessing children at a developing stage and fails to provide informed consent. Such forms of abuse may include penetrative sexual acts or intrusive inappropriate actions that do not necessarily involve body contact.<sup>8</sup>

- **Child sexual exploitation:** Child sexual exploitation may take several forms: child pornography, either in the form of the production, distribution, or possession of such; online grooming; child prostitution; child sex tourism; and children molested to commit acts of abuse.<sup>9</sup>
- **Trauma:** Trauma is defined as “the realization of one’s worst fears, the experiences that every human being would never want to have”<sup>10</sup>.
- **Re-victimization:** Victims of sexual abuse are at higher risk for re-victimization when they reach their younger ages as adults. This may involve unwanted sexual contact as well as physical or psychological abuse.

## 4. CHILD SEX ABUSE IN INDIA

India has a huge child population and, hence a common problem of abuse, negligence, and exploitation. Child sexual abuse (CSA)<sup>11</sup> is an age-old problem and a deep-rooted social issue which is increasing due to the concern of children being trafficked for commercial sexual exploitation-the concern that Deb (2002, 2009) raised very seriously. About 44.4% of India's population comprises children and adolescents below 18 years of age and are vulnerable in this regard. It is reported that from the National Family Health Survey of 2005–2006, one out of every two children lacks the basic rights to receive pre-schooling education, adequate nutrition, and medical services.<sup>12</sup>

There is scant available literature regarding the prevalence of child sexual abuse (CSA) in India. Recently, but only a few studies have unveiled this problem. Crimes against children, including CSA, are known to be generally underreported. In many

<sup>4</sup> Ibid.

<sup>5</sup> Swace Digital, “Study on Child abuse: India 2007” *Save the Children's Resource Centre* available at: <https://resourcecentre.savethechildren.net/pdf/4978.pdf/> (last visited August 17, 2023).

<sup>6</sup> Ibid.

<sup>7</sup> Forum on Global Violence Prevention, Board on Global Health and Institute of Medicine, “Papers on Research in Preventing Violence Against Women and Children” *Preventing Violence Against Women and Children: Workshop Summary* (National Academies Press (US), 2011).

<sup>8</sup> Bobbi J. Miller, Jose Ruben Parra Cardona and Michael Hardin, “The Use of Narrative Therapy and Internal Family Systems with Survivors of Childhood Sexual Abuse: Examining Issues Related to Loss and Oppression,” 18 *Journal of Feminist Family Therapy* 1–27 (2007).

<sup>9</sup> David K. Carson, Jennifer M. Foster and Nishi Tripathi, “Child Sexual Abuse in India: Current Issues and Research,” 58 *Psychological Studies* 318–25 (2013).

<sup>10</sup> Mark Klemper, “Navigating Life Review Interviews with Survivors of Trauma” *The Oral History Review* (2000).

<sup>11</sup> Kathleen Malley-Morrison, *International Perspectives on Family Violence and Abuse: A Cognitive Ecological Approach* (Taylor & Francis, 2012).

<sup>12</sup> “Background and Adjustment Capacity of Sexually Abused Girls and their Perceptions of Intervention - Deb - 2011 - Child Abuse Review - Wiley Online Library,” available at: [https://onlinelibrary.wiley.com/doi/full/10.1002/car.1153?casa\\_token=a3GxDKji2OgAAAAA%3AM1y65b8sGj9S-SmNKPfcVZTj72U2PjwaG09GqLTP7vo13mB-nIP1L2y1h0946zMPjZJlxc9VYWDK6NU](https://onlinelibrary.wiley.com/doi/full/10.1002/car.1153?casa_token=a3GxDKji2OgAAAAA%3AM1y65b8sGj9S-SmNKPfcVZTj72U2PjwaG09GqLTP7vo13mB-nIP1L2y1h0946zMPjZJlxc9VYWDK6NU) (last visited August 17, 2023).

countries, crimes against children are not reported. Even CSA committed in the United States remains widely underreported. General consensus has that CSA is prevalent to much greater extents than commonly perceived or acknowledged.<sup>13</sup>

According to Iravani (2011), in her analysis of studies on CSA among Indian children, based on large interviews with adults, almost 30 percent of men and 40 percent of women reported experiencing sexual molestation during childhood. Molestation involved actual genital contact, rather than exposure only. Another revealed that around half of the perpetrators were family members, and other caregivers knew or had been party to approximately 80% of these incestuous cases. In the remaining half, perpetrators were outside either the immediate or extended family. Additional research included in this paper confirmed these high rates of CSA.<sup>14</sup> According to Iravani,

*"These seduction experiences are not only a reconstruction of fragmented memories but are also vividly recalled in detail, often covering a protracted period. Follow-up reliability studies have validated the accuracy of these accounts in 83% of cases, thus making it improbable that they are fantasies. Notably, the seductions took place at much younger ages than hitherto assumed; in 81%, the child was under the age of puberty, and alarmingly, in 42%, the victims were under six years of age."*<sup>15</sup>

## 5. THE INTERSECTION OF TRADITION, SILENCE, AND CHILD ABUSE IN INDIAN FAMILIES

The greatest challenges India would face to its efforts at fighting child abuse and neglect are overpopulation, which results in poor service delivery for children and families, poverty and illiteracy, child abandonment, underreporting of CAN, and deeply rooted cultural beliefs and practices. Most parents regard a child as their property as the rights of parents and their authority take precedence over the rights and autonomy of the child. In addition, predominant abusers in CAN cases are parents and close family members and among them child sexual abuse, thus multi-layered nature of the problem.<sup>16</sup> Girls of the rural areas of India generally suffer from chronic discrimination towards education, nutrition, and health care and suffer from much greater risks of infanticide. Generally, girls are seen as a burden to the family, while boys, generally are accepted and preferred as they receive more access to parental resources and opportunities. These inequalities put girls at greater risk of child sexual abuse and exploitation. The culture of secrecy related to the family is another critical socio-cultural factor behind child sexual abuse. Matters considered taboo or inappropriate in Indian families are often kept strictly within the family. Such secrecy prevents accountability and promotes abuse.<sup>17</sup> Within the family systems of India, cultural norms of blame and shame often prevail, forcing families to seek protection over their reputation in the community.<sup>18</sup> Children are often blamed for abuse visited upon them because adults' rights and statements are usually stronger than those of children. Moreover, a child's identity is bonded with the social status of his family. Families hide private whatever could embarrass or damage their prestige and sometimes even from other close or extended family members.<sup>19</sup>

Kacker and Kumar point out that care and protection of children have always been adequately taken care of by families and communities in India. According to them, the patriarchal nature of the family structure has rarely, if at all, ever handled children as rights-bearing entities. The Fundamental Rights accorded to children under the Constitution of India are highly comprehensive.<sup>20</sup> However, these rights are mostly treated as need-based and not entitlement-based and hence prove difficult to implement.

The urgency for legislation and mass intervention in the rising incidence of child abuse is underlined by the authors as endorsed in the well-designed great context of public education on child sexual abuse and exploitation targeted at schools and families to ensure that all children are given protection from all forms and types of abuse and exploitation. This means not only the enforcement of existing laws but also prosecution to the fullest extent of the law. All these conditions, therefore, necessitate the implementation of all constitutional and statutory provisions for children to overcome these effectively.

## 6. LEGAL FRAME WORK OF CHILD SEX ABUSE

### 1) The Protection of Child from sexual offence Act, 2012

The POCSO Act is the main legislation under which CSA is addressed in India. It is a comprehensive law and specifically for safeguarding children against sexual offenses.

<sup>13</sup> Sibnath Deb and Aparna Mukherjee, *Impact of Sexual Abuse on Mental Health of Children* (Concept Publishing Company, 2009).

<sup>14</sup> Mohammad Reza Iravani, "Child Abuse in India," 7 *Asian Social Science* p150 (2011).

<sup>15</sup> *Ibid.*, at p. 171.

<sup>16</sup> Pinki Virani, *Bitter Chocolate: Child Sexual Abuse in India* (Penguin UK, 2000).

<sup>17</sup> Vikas Choudhry et al., "Child sexual abuse in India: A systematic review," 13 *PLoS ONE* e0205086 (2018).

<sup>18</sup> Nilufer P. Medora, "Strengths and Challenges in the Indian Family," 41 *Marriage & Family Review* 165-93 (2007).

<sup>19</sup> Roe Bubar and Marc Winokur, "Perceptions Of Methamphetamine Use In Three Western Tribal Communities: Implications For Child Abuse In Indian Country."

<sup>20</sup> David K. Carson, Jennifer M. Foster and Nishi Tripathi, "Child Sexual Abuse in India: Current Issues and Research," 58 *Psychological Studies* 318-25 (2013).

### Key Provisions:

- **Broad Definition of Offenses:** The Act addresses penetrative and non-penetrative sexual assault, sexual harassment, and pornography.
- **Gender-Neutral Law:** The law applies equally to all children below 18 years of age irrespective of gender.<sup>21</sup>
- **Mandatory Reporting:** Whoever gets information about CSA shall report it. Failure to report will attract penalties.<sup>22</sup>
- **Child-Friendly Judicial Process:**
  - 1) Statements could be recorded in the house or convenient place of the child.<sup>23</sup>
  - 2) A parent or other trusted adult could accompany the child during the proceedings.
  - 3) Cross-examinations must be conducted with sensitivity so that never once there will be a possibility of direct contact between the child and the accused.
- **Special Courts:** The Act deals with the creation of special courts while mandating quick disposal.<sup>24</sup>
- **Severe Punishments:** Severe punishments have also been offered, including life imprisonment for grave offenses.

### Implementation Problems:

- **Underreporting:** Due to stigma attached and social pressure from the family, most survivors and their families do not report crimes.
- **Judicial Delay:** Organisational problems and lack of infrastructure beyond provisions for fast-track courts continue to keep cases pending.
- **Training Gaps:** Police and judiciary often lack adequate training to handle CSA cases sensitively.

### 2) The Indian Penal Code (IPC)

They were handled under the general provisions of the IPC itself before the POCSO Act. Those provisions remain supplementary to the POCSO Act:

- Section 354: Punishes acts of assault or criminal force with intent to outrage a woman's modesty.<sup>25</sup>
- Section 375 and 376: Define and penalize rape, with provisions relating to victim's age.<sup>26</sup>
- Section 377: It criminalises "unnatural offences", which include some forms of CSA not covered by rape laws before POCSO.<sup>27</sup>

### 3) Juvenile Justice (Care and Protection of Children) Act, 2015

This Act deals with the care, protection, and rehabilitation of children generally and the CSA survivors, in particular.

- **Provisions Exclusive to CSA Survivors:**

Child welfare committees oversee cases involving abused children.<sup>28</sup>

The survivors are entitled to counseling, shelter, and rehabilitation services.

- **The role of NGOs:** The Act provides for associating with nongovernmental organizations and obtaining special support.

### 4) Information Technology Act, 2000 Amended in 2008

This Act encompasses the online aspects of CSA, particularly child pornography and cyber grooming:

- **Section 67B:** This prohibits the publishing, transmitting, or possession of material depicting children in sexually explicit acts.<sup>29</sup>
- **Penalties:** Such penalties include fines and imprisonment for those responsible for online CSA activities.

### 5) The Criminal Law (Amendment) Act, 2018

This amendment heightened penalties against sexual crimes against children especially against girls below the age of 12 years.

- **Death Penalty:** Was introduced for the rape of children below 12 years in aggravating circumstances.
- **Reduced Timeframes:** Mandates investigation completion within two months and trial conclusion within six months.

<sup>21</sup> *The Protection of Children From Sexual Offences Act, 2012*, at sec. 2(d).

<sup>22</sup> *Ibid.*, at sec. 19.

<sup>23</sup> *Ibid.*, at sec. 33 (4).

<sup>24</sup> *Ibid.*, at sec. 28.

<sup>25</sup> *Indian Penal Code, 1860*, at sec. 354.

<sup>26</sup> *Ibid.*, at sec. 375.

<sup>27</sup> *Ibid.*, at sec. 377.

<sup>28</sup> *Juvenile Justice (Care and Protection of Children) Act, 2015*, at sec. 27.

<sup>29</sup> *Information Technology Act, 2000 Amended in 2008*, at sec. 67B.

## 7. CONCLUSION

Child sexual abuse is a serious and deep issue of silence with cultural, social taboo, and systemic problematic issues in India. Even though there are stronger and broader legislative frameworks of the Protection of Children from Sexual Offences Act, 2012, Juvenile Justice Act, 2015, and related sections under the Indian Penal Code, proper implementation remains a significant hurdle. Amendments also comprise several amendments brought about by Criminal Law (Amendment) Act, 2018, and provisions made under the Information Technology Act, 2000, indicating the surging understanding of online as well as aggravated offenses which implies that the threat is evolving.

Legal provisions, however, fall woefully short in addressing CSA, which constitutes a complex phenomenon. Patriarchal values and stigma encase abuse within families in a culture of silence, locking many survivors out of doors seeking justice. Trauma and re-victimization compound the suffering of survivors and require a holistic approach that goes beyond punitive measures toward rehabilitation and prevention.

To really fight child sexual abuse, India must focus on:

- 1) **Awareness and Education:** Public education campaigns targeting schools, families, and communities to break this cycle of silence and empower children to recognize and report abuse.
- 2) **Systemic Reforms:** Strengthening infrastructure to ensure speedy justice, training officers in dealing with abuse cases, and procedures friendly to children to ensure justice that is both accessible and sensitive towards the needs of survivors.
- 3) **Intersectoral Collaboration:** United Effort for CSA Addressing this problem requires an intersectoral effort, involving government agencies, NGOs, educators, and healthcare providers.
- 4) **Focus on Rehabilitation:** Survivors have to be rehabilitated psychologically, medically, and socially to rebuild their lives and retrieve their dignity.

The eradication of CSA in India is a combined effort that calls for commitment at every level-individual, familial, societal, and institutional commitment. India will gain ground towards the day when every child is safe, respected, and free to live without fear if it encourages awareness and enforces laws effectively and provides survivors with the care and support that they need. The road ahead is long, but with concerted efforts, the darkness of child sexual abuse can be overcome.