
CHAPTER II

CHILD SEXUAL ABUSE IN INDIA, ITS CAUSES AND EFFECTS

This chapter will mainly focus on the real meaning of child sexual abuse in southern Rajasthan, also focus on what causes the child sexual abuse is increasing even after the POSCO ACT 2012.

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2.1 Definition of Child

There is no consistent and globally acknowledged definition of kid since numerous international treaties and municipal ordinances in India have varied definitions of the word child depending on the goal for which the treaty or legislation was drafted.

Different legislation regards age to be the primary criterion for designating a kid. Among the key meanings of the word “child” in different international and local regulations are:

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- *The word 'Child' is defined in the 1989 Convention on the Rights of the Child as "[...] any human being under the age of eighteen years, unless majority is attained earlier under the law applicable to the child."*
 - *Article 2 of the 1999 International Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor defines child as "all persons under the age of 18."*
 - *Section 2(aa) of the Immoral Traffic (Prevention) Act, 1956 defines "child" as "any person under the age of sixteen."*
 - *Section 2(12) of the Juvenile Justice (Care and Protection of Children) Act, 2015 defines "child" as "any person under the age of eighteen."*
 - *Section 2(a) of the Prohibition of Child Marriage Act, 2006 defines "child" as "a person who has not completed twenty-one years of age, if a male, and eighteen years of age, if a female."*
 - *According to Section 2(c) of the Factories Act of 1948, "child" denotes "a person who has not completed his fifteenth year of age."*
 - *According to Section 2(d) of the Protection of Children from Sexual Offenses Act of 2012, "Child" implies "any person under the age of eighteen."*
 - However, it is worth noting that in most legislation, the age of 18 years is used as a criterion for classifying a person as a kid; hence, for the purposes of this research, the definition of child is based on the Protection of Children from Sexual Offenses Act, 2012.

2.2 Types of Child Sexual Abuse

The concept of 'Child Abuse' can vary in meaning across diverse cultural contexts and socio-economic circumstances. The establishment of a universally accepted definition of child abuse within the Indian context remains elusive and undefined. Nevertheless, prior to in order to comprehend the phenomenon of 'child abuse,' it is imperative to grasp the concept of abuse as delineated by the various definitions provided below. Black's law dictionary defines the word 'abuse' as "everything which is contrary to a good order established by usage, departure from reasonable use, improper use, physical or mental maltreatment, deception".

Oxford Advance Dictionary defines 'abuse' to mean "wrong or bad use or treatment,

exploit, unjust or corrupt practice, acts which are insulting, offensive.” (45)

Chambers dictionary defines ‘abuse’ as “to make a bad use of, to take undue advantage of, to betray, to misrepresent, to deceive, to revile, to maltreat, to violate, an evil or corrupt practice, deceit, hurt, betrayal, ill-usages, outrage etc.”(9)

The word “abuse” refers to a broad range of conduct, not just one particular kind of act. Differentiating between actions that are considered appropriate and those that could be considered abusive to children has proven to be challenging. The word “child” Abuse refers to a wide variety of behaviors and mistreatment of children. However, child abuse can be classified into the following types as per the Study on child abuse 2007:

- Physical abuse
- Emotional abuse
- Sexual abuse

2.2.1 Physical abuse

Is a prevalent occurrence within our society, particularly within families and institutions such as schools, orphanages, and shelter homes? It involves the act of inflicting physical injury upon a child. The term “physical abuse” refers to the act of inflicting significant bodily pain upon a child through actions such as beating, kicking, slapping, punching, burning, and poking, among others.

The justification for inflicting pain upon a child by family members or school teachers is frequently based on the notion of discipline, aiming to correct the child’s behavior, foster moral development, or rectify their mistakes. However, from a legal perspective, these activities are considered offenses and are subject to punishment under the Indian Penal Code (IPC) and other specific legislation such as The Right to Education Act, 2009.

Physical abuse of a child is classified into the following types:

2.2.1.1 Abuse by the guardian and other family members:

The term ‘guardian’ should be broadly defined to cover all forms of guardians, including natural guardians, testamentary guardians, and conservators. De-facto guardian, Court-appointed guardian, and Guardian through adoption are all options. Whereas a relative is someone who is linked to the kid via his or her father or mother,

regardless of whether they live in the same home or not. The guardian or relatives who are truly the kid's well-wishers may inflict reasonable pain on the youngster to teach or correct him/her when they make frequent faults. The same suffering, however, may constitute physical assault if the pain caused is significant and results in long-term or internal injuries.

Physical neglect is another kind of physical abuse by a guardian.

Physical neglect denotes a lack of concern for the kid's total development, such as a lack of sufficient medical treatment, a lack of suitable housing, malnourishment, not sending the child to school, not participating in employment, and so on.

2.2.1.2 Abuse by Employer:

Child labor is a kind of physical abuse in and of itself. Child labor is illegal in our nation, yet it has long been practiced time. Even some law has allowed youngsters above the age of 14 to work under specific conditions. Children who work in the organized sector, the unorganized sector, or even in private households are often subjected to physical abuse at the hands of their employers, whether by forcing them to work in dangerous conditions, forcing them to work overtime, or by direct physical attack.

2.2.1.3 Abuse of Rag Pickers and Street Children:

Rag pickers and street children are the most vulnerable groups of children, making them perfect targets for any sort of abuse.

Abuse or Crime

These children are the most often abused since they lack a guardian or well-wisher to safeguard them from any unanticipated event. If they engage in any activity that others do not approve of, they are often attacked or beaten up by police, municipal officials, security guards, businesses, or even by passers-by. Again, the Rag pickers are at risk of contracting serious infections as a result of their unsanitary living conditions.

2.2.1.4 Abuse during trafficking:

Child trafficking is a well-organized crime with several objectives. Kidnapping is a widespread method of human trafficking. Intoxicating and euphoric. Whatever the reason or form of trafficking, one thing is constant: the victim suffers from major

bodily ailments and agony due to a lack of food, and they often endure threats or beatings during or after the trafficking process.

2.2.2 Emotional Abuse:

Emotional abuse is also known as verbal abuse, mental abuse, and psychological maltreatment. It comprises behaviors or omissions to respond by parents or caregivers that have caused or potentially cause substantial behavioral, cognitive, emotional, or mental trauma. Every kid has the right to live his or her life freely, free of prejudice, neglect, ill treatment, or any other behavior that might expose him to emotional abuse. Although emotional abuse is not defined as a crime in any legislation to this day, from a psychiatric standpoint, such abuse has long-term negative effects on the child's psyche, resulting in abnormal mental health. Among the most prevalent types of emotional abuse are restrictions on the enjoyment of rights, discrimination on the basis of race and gender, comparison with other children, forcibly sending them to boarding school dormitories, and so on?

2.2.3 Sexual Abuse:

Child Sexual Abuse (CSA) encompasses instances of sexual victimization involving individuals in the age range of infancy to adolescence. The behaviors encompass a range of actions, including instances of incestuous abuse, rape, and various degrees of sexual assault, ranging from minimal physical contact such as caressing to more explicit actions such as fondling.

The child's intimate areas are causing disruptions to their overall welfare. Additionally, it may encompass the dissemination of child pornography, the act of exposing one's genitals to a minor, and engaging in inappropriate advances towards a child. Several definitions of CSA exist:

P.D. Mathews defines child sexual abuse as-

“CSA includes implying, using, inducing or coercing, any child to engage in illicit sexual conduct. It also includes the use of children in assisting with other persons to engage in explicit sex”.

Sakshi defined CSA as-

“Child sexual abuse includes an adult exposing his /her genitals or persuading the child to do the same; and adult touching the child's genitals or making the child touch

the adults genitalia an adult involving a child in pornography; an adult having oral, vaginal, or anal intercourse with a child; any verbal or sexual or other suggestion made to a child by an adult and so on. Sexual abuse of children can take place in the family, in the neighbourhood in school, in institutions and on the street. The abuser, generally a male, usually violates a relationship of trust with the child, taking advantage of his power and position.”

Asha Bajpai in her article, “CSA; Need for Law reforms” stated that-

“Child Sexual abuse is an activity relating to sex organs, engaged in for sexual gratification, which takes advantage of and violates or deceives young children”

The National Centre on Child Abuse and Neglect (NCCAN) defines ‘sexual abuse’ as –

“Any childhood sexual experience that interferes with or has the potential for interfering with a child’s healthy development”.

The United Nation has defined child sexual abuse as-

“Contacts or interactions between a child and an older or more knowledgeable child or adult (a stranger, sibling or person in a position of authority, such as a parent or caretaker) when the child is being used as an object of gratification for an older child or adults sexual needs. These contacts or interactions are carried out against the child using force, trickery, bribes, threats or pressure”

Prof. Finkelhor an eminent Psychiatrist in the year 1987 stated that-

“Child Sexual Abuse is most commonly used in reference to sexual activity involving a child that has at least one or two characteristics; i.e. it occurs, within a relationship where it is deemed exploitative by virtue of an age difference or caretaking relationship that exist with the child; it occurs as a result of threat, coercion or force”.

The Supreme Court in a case observed that –

“Sexual abuse can be in any form like, sexual molestation or assaulted or encouraging, inducing or forcing the child to be used for the sexual gratification of another person, using a child or deliberately exposing a child to sexual activities or pornography or procuring or allowing a child to be procured for commercial exploitation and so on”

The latest addition to Indian law on child protection from abuse namely the POCSO Act although does not define the term Child Sexual Abuse but it defines sexual harassment of a child, as:

“A person is said to commit sexual harassment upon a child when such person with sexual intent,-

1. Utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of the body shall be seen by the child; or
2. Makes a child exhibit his body or any part of his body so as it is seen by such person or any other person;
3. Shows any object to a child in any form or media for pornographic purposes;
4. Repeatedly or constantly follows or watches or contacts a child either directly or through electronic, digital or any other means;
5. Threatens to use in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act;
6. Entices a child for pornographic purposes or gives gratification there for.”(POCSO Act 5)

2.2.4 Different Forms of Child Sexual Abuse

- **Exploitation** refers to the act of utilizing a minor for sexual purposes, typically involving activities such as engaging in prostitution, producing or distributing child pornography, or subjecting the child to sex trafficking.
- **Grooming** refers to the systematic approach employed by an individual who intends to exploit and exert dominance over a child through the establishment of trust, ultimately leading to instances of sexual abuse. This may encompass the act of presenting gifts, displaying affection, or employing alternative strategies to establish a sense of trust with the child.
- **Child sexual exploitation** online (CSEO) refers to the occurrence of abuse within the digital domain, wherein an adult employs coercion or manipulation to induce a child into participating in sexual activities or sharing explicit

material via online platforms.

- **Incest** refers to the occurrence of sexual abuse within the familial context, whereby a child is subjected to sexual acts perpetrated by a family member, including but not limited to a parent, sibling, or extended family member.
- **Child sexual assault** refers to any type of sexual contact or activity with a child that occurs without their consent. This encompasses a range of acts, such as rape, attempted rape, or other forms of sexual assault.
- **Child sexual harassment** refers to the sustained and unwelcome sexual advances or remarks specifically targeted at a child, thereby establishing an environment that is hostile or uncomfortable for the child.
- **Child marriage** remains a prevalent practice in certain cultures and regions, wherein minors, particularly young girls, are compelled to enter into marital unions with significantly older individuals. This phenomenon frequently results in the initiation of premature sexual relationships and instances of abuse, as the child lacks the capacity to provide informed consent.
- **Child sex tourism** refers to the phenomenon where individuals travel to foreign countries with the intention of engaging in sexual activities with children. This exploitative behavior takes advantage of the comparatively lax legal frameworks and prevalent poverty in these destinations.
- **Child Sexual Abuse Material (CSAM)** refers to the creation, dissemination, or possession of explicit content that depicts minors participating in sexual activities. The aforementioned encompasses child pornography, an illicit and detrimental activity.
- **Child-on-Child Sexual Abuse:** On certain occasions, children or adolescents may exhibit sexually abusive behaviors directed towards their peers or younger individuals. This phenomenon may arise as a consequence of individuals being exposed to inappropriate content or having previously experienced victimization.

2.3 The Causes of Child Sexual Abuse

Child sexual abuse is a multifaceted and profoundly disconcerting phenomenon that can stem from a range of underlying factors. To comprehend the precise

determinants within a specific locale such as Southern Rajasthan, it becomes necessary to analyze a confluence of cultural, social, economic, and individual factors.

- **The presence of poverty and limited educational opportunities** in certain regions may contribute to an increased prevalence of child sexual abuse. The condition of poverty can give rise to feelings of desperation and vulnerability, leading individuals to be more susceptible to exploitation. Similarly, a lack of access to education can contribute to a diminished understanding of child rights and the necessary measures for their protection.
- **Cultural Norms and Practices:** Certain cultural norms and practices within specific communities have the potential to perpetuate detrimental attitudes towards children, thereby increasing their susceptibility to abuse. Child sexual abuse can be further exacerbated by the occurrence of early marriages and the presence of gender-based discrimination.
- **The concealment of child** sexual abuse can be attributed to a dearth of knowledge regarding the matter and the absence of a conducive atmosphere that encourages reporting. The potential for stigma or reprisals may act as a deterrent for individuals who have experienced harm or have witnessed it from reporting their experiences.
- **Insufficient Child Protection Systems:** Child protection systems that are weak or lack adequate resources may exhibit shortcomings in their ability to effectively prevent and address instances of child sexual abuse. These factors encompass insufficient implementation of legal measures, restricted availability of support services, and the lack of specialized training for professionals involved in addressing such instances.
- The region of Southern Rajasthan has been identified as a potential transit point or final destination for both migration and trafficking activities. Consequently, this situation poses an increased vulnerability for children, who are at a heightened risk of exploitation, including instances of child sexual abuse.
- The occurrence of substance abuse within a community has the potential to contribute to instances of child sexual abuse. Individuals who engage in

substance abuse may exhibit a higher propensity for engaging in abusive behaviors, thereby increasing the vulnerability of children within such environments.

- The presence of power imbalances within familial or institutional settings can give rise to circumstances conducive to the occurrence of corrupt practices. Moreover, the presence of corruption within the system has the potential to impede the thorough investigation and successful prosecution of cases involving child sexual abuse.
- **The proliferation of internet usage and technological advancements** has given rise to a pressing issue of online exploitation and grooming of minors, which poses a significant concern in various geographical areas, including Southern Rajasthan.

2.3.1 Traditional Beliefs and Myths: The presence of traditional beliefs and myths within certain communities has the potential to influence and contribute to instances of child sexual abuse. Abusive behaviors may be justified or obscured by employing misconceptions related to masculinity, chastity, or supernatural ideologies.

- The increased probability of child sexual abuse can be attributed to the existence of family dysfunction and dysfunctional relationships, which are characterized by detrimental dynamics such as domestic violence and substance abuse occurring within the household. Children living in such environments may exhibit a heightened degree of vulnerability.
- Regions characterized by conflict, political instability, or humanitarian crises may witness an increase in the prevalence of child sexual abuse. Factors such as displacement, poverty, and insufficient provision of protective services in such circumstances can exacerbate the risks faced by children.
- The lack of gender equality within societies can give rise to heightened vulnerabilities among girls, thereby increasing their susceptibility to sexual abuse and exploitation. The existence of gender inequality has the capacity to perpetuate harmful attitudes and behaviors, leading to the disadvantaged position of girls.

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- The underreporting of incidents of child sexual abuse can be attributed to the existence of social stigma and shame, which serve as obstacles for victims in their efforts to seek assistance or disclose their experiences.
 - The presence of child labor and exploitative practices has been recognized as contributing factors that may increase the susceptibility of children to abuse and exploitation, including cases of sexual abuse.
 - The occurrence of urbanization and its corresponding concentration of population can lead to situations where children are more vulnerable to exploitation and abuse.

2.3.2 Effects of Child Sexual Abuse

Child sexual abuse can have profound and enduring consequences for its victims, regardless of its occurrence in various locations, such as Southern Rajasthan. The various impacts of these factors can give rise to significant challenges in the lives of individuals, encompassing physical, emotional, psychological, and social manifestations. The subsequent outcomes of child sexual abuse within this region are as follows:

- ❖ Child sexual abuse can result in a range of physical consequences, including sexually transmitted infections (STIs), gynecological or urological conditions, and injuries resulting from the abuse. Victims may experience chronic pain, digestive disturbances, and sleep disorders as a result of the stress and trauma they have endured.
- ❖ The experience of child sexual abuse can lead to profound emotional and psychological consequences for its victims. Individuals may experience a range of emotions such as dread, rage, guilt, humiliation, and guilt. Frequent adverse outcomes include suicidal ideation and post-traumatic stress disorder (PTSD). Individuals who have experienced victimization may potentially exhibit challenges with self-esteem and engage in self-harming behaviors.
- ❖ Behavioral Modifications: Children who have experienced the trauma of sexual abuse may exhibit significant alterations in their behavior. Individuals may exhibit excessive attachment, withdrawal from social interactions, or a tendency to isolate themselves. Conversely, certain individuals who have experienced victimization may

exhibit behaviors characterized by aggression or sexually inappropriate conduct, mirroring the actions they have witnessed.

❖ The occurrence of child sexual abuse can significantly impair a child's ability to concentrate, acquire knowledge, and achieve academic accomplishments. Consequently, individuals who have experienced victimization may encounter difficulties in their academic pursuits, leading to a decline in their scholastic performance.

2.3.3 Dissociation and Memory Impairment: Certain individuals who have experienced trauma may exhibit memory deficits or fragmented recollections of the abusive events due to their coping mechanisms in response to the traumatic experiences. The adolescent may perceive this as a perplexing and distressing experience.

❖ **Drug Abuse:** Individuals who have experienced abuse may engage in drug misuse as a means of coping with the psychological distress and trauma resulting from the abusive experiences.

❖ The phenomenon of victimization poses a potential risk for individuals who have experienced sexual abuse during childhood, as it may render them more susceptible to future victimization. Victims, owing to their vulnerability, may develop recurring tendencies of engaging in abusive relationships or becoming targets of predatory individuals.

2.4 Impact on Relationships: The repercussions of child sexual abuse can have an influence on the victims' interpersonal bonds with their family members, friends, and romantic partners. Trust issues, challenges related to attachment, and the struggle to maintain healthy relationships are commonly observed phenomena.

❖ Individuals who have experienced victimization may exhibit a tendency to withdraw from social engagements due to a lack of trust in others or concerns regarding potential judgment and rejection.

2.5 Economic Implications: The enduring consequences of child sexual abuse can potentially impede an individual's ability to secure and maintain employment, pursue educational opportunities, and sustain consistent work, thereby potentially compromising their earning potential. It is imperative to bear in mind that the

ramifications of child sexual abuse can be intricate and diverse. There exists variability in the level of resilience among victims, leading to differential responses among individuals. The prompt and appropriate intervention, along with access to expert counseling and support services, can significantly contribute to the healing and rehabilitation process of child sexual abuse victims in Southern Rajasthan.

2.6 Why do Child sexual abuse cases go unreported in India?

- Due to the prevailing social stigma surrounding instances of such maltreatment, the criminal justice system consistently falls short in adequately addressing the requirements of children who have experienced sexual abuse.
- Due to the presence of shame and associated social stigma, it is not surprising that the underreporting of child sexual abuse (CSA) is prevalent, particularly when the abuse occurs within the familial setting.

The issue at hand is not limited to India alone; rather, it is prevalent in collectivist societies throughout Asia, where the well-being of the family takes precedence over acknowledging an individual's personal experience in order to shield them from the shame associated with instances of sexual assault.

2.7 Landmark Case: Tuka Ram and Anr V State of Maharashtra, 1979

This case is also known as the Mathura case.

A minor from an indigenous community was subjected to sexual assault while in custody, perpetrated by two law enforcement officers. The presiding judge in the case determined that the woman had provided her consent, thereby bringing attention to the legal framework surrounding rape in India. Subsequently, the Bombay High Court rendered a decision highlighting the failure of session court judges to distinguish between rape and consensual sexual intercourse, particularly in their interpretation of consent and passive submission.

The aforementioned findings led to the defendants being convicted of rape. Subsequently, the Supreme Court determined that the female individual potentially instigated the male individuals, as there was an absence of evidence regarding an assault on the female's person or any discernible attempt to counteract the situation. The alteration of our rape laws has been a significant outcome resulting from the aforementioned judgmental justification. Several examples are listed below:

The Criminal Law (Second Amendment) Act of 1983 introduced an amendment to the Indian Evidence Act, specifically in the form of section 114(A). This provision pertains to cases involving rape prosecutions, wherein it has been previously established that the accused party participated in sexual activity. In such instances, if the victim asserts that she did not provide consent, the court is mandated to presume, as a rebuttable presumption of law, that she indeed did not give her consent.

The amendment made to Section 376(2) of the Indian Penal Code, 1860 incorporated the offense of custodial rape, which pertains to instances where the perpetration of rape takes place while the victim is under the custody of the state.

Individuals who violate section 376(2) are subject to both monetary penalties and severe incarceration, ranging from a minimum of ten years to a potential life sentence. The Act modified the allocation of the burden of proof, which traditionally rests with the prosecution. In instances of rape where sexual intercourse has been established, the burden of proof will now shift to the accused party.

Consequently, the Mathura rape case held significant social and legal implications. The occurrence of widespread demonstrations and public outrage in response to large-scale rape cases in India marked a significant turning point. This event paved the way for substantial enhancements to Indian rape legislation through the enactment of the Criminal Legislation (Second Amendment) Act of 1983.

2.8 Review of Indian Data

India has 440 million children, accounting for 19% of the world's child population. According to a UNICEF study done between 2005 and 2013, CSA among Indian girls was 42%.

According to a 2007 study by the Ministry of Women and Child Development (MWCD) of the Government of India, the prevalence of all sorts of child abuse is very high (physical assault [66%], sexual abuse [50%], and emotional abuse [50%]). This large state-sponsored survey in India found that 53% of persons had CSA.

More over 20% of boys reported significant sexual abuse, such as sexual assault, being forced to touch or reveal their private parts, and being photographed in their underpants. In both big polls, the majority of the abusers were either known to the child or in positions of trust or authority. Coworkers, personal friends, neighbors,

relatives, and acquaintances are among the most common abusers, according to several data. The Honourable Delhi High Court remarked that child incestuous rape was recorded in 215 of the 1704 rape cases registered in the city's capital in 2014.

Child sexual abuse is a major topic all throughout the globe, including India. Several reasons lead to child sexual abuse instances being underreported in India:

Stigma and Shame: One of the key causes for underreporting is the societal stigma involved with disclosing sexual abuse. Victims and their families often fear humiliation, social isolation, and harm to their reputation, which may discourage them from reporting the abuse.

Fear of reprisal: Perpetrators, particularly if they are known to the victim or in a position of authority, may threaten reprisal against the victim or their family if they speak out.

Lack of Awareness: Many people, including parents and caregivers, may be uninformed about child sexual abuse, its symptoms, and its consequences. Lack of knowledge might make it difficult to recognize and report such situations.

Distrust of Authorities: Some victims and their families may lack confidence in the authorities or the court system to handle their cases properly and respectfully. This mistrust may hinder reporting.

Inadequate Reporting methods: In certain areas of the nation, reporting methods and support services for victims of child sexual abuse may be inadequate or difficult to obtain.

Social Power Dynamics: In certain circumstances, the offender may wield enormous social or economic power, making it difficult for victims to come forward owing to fear of victim-blaming and a lack of support.

Cultural and religious beliefs may impact the perception of child sexual abuse and alter the reporting procedure.

Legal complications: The legal procedure may be difficult and time-consuming, contributing to victims' and their families' reluctance to disclose abuse.

Dearth of Child-Friendly Reporting Spaces: There may be a dearth of child-friendly reporting spaces where victims may feel secure and comfortable discussing their experiences.

Poor Communication: In certain circumstances, children may be unable to explain their experiences adequately, and adults may fail to notice the indicators of abuse.

Gender Inequality: Gender inequality may play a key influence in underreporting in a patriarchal country like India. Due to highly established cultural standards, victim-blaming attitudes, and uneven power relations, female victims may encounter extra hurdles.

Lack of Trust in Institutions: There may be a lack of trust in child welfare institutions such as schools, daycare facilities, and social services. Victims and their families may be hesitant to disclose abuse inside these institutions for fear of penalties or a lack of responsibility.

Limited Support services: In many regions of India, there are few services devoted to assisting victims of child sexual abuse. A lack of access to counseling, therapy, and rehabilitation programs may discourage people from reporting.

Professionals Who Are Inadequately taught: Some professionals who come into contact with abused children, such as teachers, healthcare workers, and law enforcement officers, may be insufficiently taught to spot indicators of abuse and react effectively.

Abuse Normalization: In certain cases, child sexual abuse may be normalized or dismissed as a minor problem, particularly in specific communities or family circumstances, leading to the idea that reporting would not result in any significant impact.

In circumstances when the abuser is a **family member or close cousin,** disclosing the abuse may lead to severe family difficulties and pressure to keep quiet in order to maintain the family's image.

Concerns about privacy and secrecy often dissuade victims from reporting abuse, particularly in close-knit societies where news spreads rapidly.

2.9 Misuse of POCSO Act, 2012

The Protection of Children from Sexual Offences Act, 2012 (POCSO) was created in response to an urgent need from a community besieged by a growing number of heinous crimes against young children. Fear of such crimes, in which children are transformed into mere objects to satisfy the desires of perverted minds at a time when

kids should be learning and playing, was suffocating the country's future.

The enactment was a success in many aspects. The Act was designed primarily to protect children from crimes like as sexual assault, sexual harassment, pornography, and other activities that jeopardize and harm the child's safety and well-being. The Act recognizes these actions as heinous and repulsive, and it aims to handle them effectively via the judicial system. It aims to establish Special Courts to try such offences in conformity with the law. While the Act has several issues, there is no doubt that it has recognized the depravity of such offenses and created a separate legal pathway for victims who are young children and may be intimidated and further traumatized by the tedious and lengthy judicial process that follows.

The Act includes a detailed and categorical classification of offenses, appropriate punishments, recognition of the threat of child pornography, the establishment of Special Courts for trying POCSO cases, other infrastructure, procedural safeguards to ensure justice and protect the interests of the child victim, and other features. These are really appreciated. Though we may want for a utopian society in which children are happy and free, with no such threats to their innocent smiles, reality is much harsher. Given this tragic reality, the Act sets a strong legal framework to deter crime and bring perpetrators to justice.

Regardless, there are times when the legislation is plainly being misused. This study focuses on one such violation of the POCSO Act. In many situations handled by POCSO, children have been compelled to make false charges, resulting in bogus complaints being made against innocent persons who are branded as horrific perpetrators and their identities dragged through the dirt. This is occasionally done to exact retribution or to sway other cases such as marital issues, property disputes, and so on. Such statements are, without a doubt, a misuse of fundamental justice notions. There is no disputing, however, that such events are growing increasingly regular. This is a major problem that jeopardizes the integrity of the Act.

It is worth mentioning that legislators acknowledged and included the potential of fake reports into the POCSO Act. Several sections of the Act require the public to report any suspicions or information they may have about the commission of such a

crime. It should be emphasized that no one will face civil or criminal liability for giving such information in good faith as indicated in S 19. S 22 does, however, provide for a punishment if false complaints or information are submitted. A child is exempt in this regard. A false complaint filed by anybody else with the intent to humiliate, extort, threaten, or slander is punishable by up to six months in jail or a fine, or both. False information or a false complaint filed against a child, if such allegation is known to him to be false, may result in up to a year in prison, a fine, or both, victimizing the child.

Following a careful analysis of POCSO cases before the Supreme Court of India¹ and the Kerala High Court, other comparable incidents were uncovered. The Court *in Samsher Singh Verma v State of Harvana* considered the possibility that the allegation was false and thus allowed the accused to present evidence in the form of a recorded conversation that could reveal that the complaint was brought up solely to subdue the accused in a property dispute.

We discovered that a continuous marital quarrel encouraged the parties to level false charges against one another in order to obtain an advantage in the matrimonial struggle in a number of cases.

Some examples include *Jaseer Aboobaker v State of Kerala*, in which it was claimed that fraudulent accusations were made in order to interfere with the father's visiting rights. The Court thinks that "serious allegations have been leveled for the purpose of obtaining a favorable order in the petition for custody pending before the Family Court and cannot be casually dismissed." *In Anu P. Kumar v State of Kerala*, the accused denied sexually assaulting his 15-year-old daughter, claiming the allegation was false and fabricated in a plot to exact revenge on his wife, with whom he had a strained relationship due to matrimonial disputes. In this case, the Court evaluates the excessive delay in filing the complaint, as well as a number of other factors, and determines that the 19-month delay in registering the action is especially notable. Following a review of prior SC rulings in this area, the HC decides that "often than not, result in embellishments and exaggerations, which are the creations of

¹ The Supreme Court of India (ISO: Bhārata kā Sarvōcca Nyāyālaya) is the supreme judicial authority and the highest court of the Republic of India. It is the final court of appeal for all civil and criminal cases in India. It also has the power of judicial review.

afterthoughts.” The delayed report not only misses the advantages of spontaneity, but it also runs the danger of incorporating coloured versions of inflated descriptions of happenings or a contrived tale as a consequence of considerations and consultation, casting major concerns on the validity of the prosecution case.’ *Suhara and Ors. v Muhammed Jalee* is another compelling case in which the Court addresses this issue directly, stating that “there is a growing tendency in recent years to foist false crimes against the biological father alleging sexual abuse of own child misusing the provisions of the POCSO Act when the serious fight for custody of the ward is pending resolution before the Family Courts.” As a consequence, it promotes great caution and a careful examination of the facts and circumstances in order to completely exclude the possibility of a false complaint.

Consider the case of *Varun Bansal v Vibha Bansal*, in which the parties divorced and the mother was granted custody of their daughter. The father had visitation privileges but chose to seek for nightly custody of his child. Throughout the case, the Court comes to the conclusion that the child was repeating what her mother told her. The mother seems intent to deny the father custody of the child by accusing him of abuse and harassment. It depicts the awful situation in which parental indoctrination causes young children to see their own parents as enemies. According to the Court, “the parents are only caregivers and have no statutory right to custody of the child.” The most crucial consideration is the child’s well-being. It is the Court’s job to protect the interests of the kid. Parents may not use their child to gain an advantage over others, especially while launching POCSO actions against the father. In our judgment, the Court must proceed with considerable care when examining the accusations filed against the child’s father.’ Similarly, in the case *of Swarup Mohan v State of Kerala*, where the alleged victim was the accused’s 13-year-old son and his parents’ relationship was strained, the facts and circumstances raised a high probability that this was a false allegation made by making the child a tool in the hands of his mother, who had her own ends to achieve as she wanted to live in peace with her current partner after the divorce. According to the Court, “the complaint is full of inconsistencies and embellishments.” The long delay in adopting the Act, as well as the events that happened in the meantime, bring me to the conclusion that

relying just on the victim's tale would be imprudent. It is possible that the applicant made a false conclusion.'

Scheming parents train their children to lie skillfully and to believe they are the victims of a heinous crime that never occurred. In *Ramlal N.R. v State of Kerala and Ors*, a false complaint was lodged against a school van driver, and the facts, together with eyewitness accounts, seemed to show the allegation's falsity. When questioned by the Court about the veracity of her accusation, the victim admits that a police official persuaded her to modify her evidence since her original claim (that the accused hit her hand with his shoulder) would not have resulted in any punishment. The Court observes that in cases when fraudulent accusations are made, the genuine victims are the alleged accused. The accused in *Periyadinesh v State of Kerala and Ors* claims that the allegations were false and baseless, and that they were "made out of misunderstandings in the mind of the young child," and that "the parents of the child have now sworn to affidavits stating that the allegations are made out of misunderstandings and that they have no objections to the grant of bail to the petitioner, etc." It is uncertain what the outcome would have been if there had been a bail petition.

It seems to be a gross breach of the law and of the innocence of young children, as well as an act designed to undermine the very purpose of this legislation. However, we can see that courts have taken a proactive approach to addressing this growing threat, seeking to reduce the possibility of false allegations without endangering justice for either the victim or the accused perpetrator. However, it is still critical to put a stop to this detrimental habit. Higher penalties, for example, may be levied for making false assertions with malicious intent. This must be done with caution, since it will almost definitely dissuade people from reporting such crimes aggressively. Furthermore, judges must delve carefully into the facts and circumstances surrounding the alleged crime, as well as any pertinent data regarding the people involved. This feature must be included in the appropriate authorities' training manuals and handbooks, as well as rigorous investigative or procedural safeguards to ensure that fraudulent claims do not escape through the legal sieve. Using psychiatrists and other such professionals to examine the child's conduct and establish whether or not the child is speaking the truth may be effective in this regard. Other

options include educating judges and other legal specialists about the psychological foundations of lying, frequent symptoms of lying, and successful tactics for questioning and obtaining the truth.

Misuse of even the most severe legislation for one's own, mostly negative, ends has long been a problem in our legal system. POCSO has not been an exception. However, the Act's primary goal is to provide a sound framework for dealing with the danger of child sexual abuse and bringing offenders to justice. As long as there is crime, the law must be enforced. Meanwhile, to ensure that the essential spirit and purpose of the Act are not undermined by evident misuse, processes must be devised and rigorously implemented to completely remove the plague of false allegations and the severe consequences that come from them.

The Protection of Children from Sexual Offenses (POCSO) Act of 2012 is an important legislative framework in India that strives to protect children from sexual abuse and exploitation. While the legislation serves an important function in protecting children, there have been concerns raised concerning its potential abuse. The following are some of the places where the POCSO Act has been reported or seen to be abused:

False complaints: The POCSO Act, like any legal measure, has the possibility of false complaints being made. Individuals with ill purpose may utilize the behavior in certain situations to settle personal scores, harass someone, or gain an edge in a disagreement.

Misinterpretation of harmless Behavior: The wide definition of crimes under the POCSO Act may occasionally lead to harmless conduct being misunderstood as sexual offenses, particularly when there is a lack of sufficient knowledge or context.

Fabricated or Exaggerated Claims: Some people may exaggerate or create situations in order to depict them as more serious than they were, resulting in unfair repercussions for the accused.

Excessive Policing and Prosecution: In certain situations, the police and prosecution may be excessive in their pursuit of charges under the POCSO Act, which may result in unjust targeting of persons without adequate proof.

Misuse in Custody fights: In contentious custody fights, one party may exploit false

claims made under the POCSO Act to gain an edge in court and acquire custody of a child.

Sensationalism in the Media: Sensationalist media reporting may occasionally lead to biased coverage of cases, impacting public opinion and interfering with fair trial procedures.

Lack of Child-Friendly Investigation: In certain circumstances, the investigation process may fail to fully reflect the child's viewpoint and rights, resulting to possible differences in case management.

2.10 Loopholes in POCSO Act, 2012

Despite being a strong Act, various flaws have been discovered by police officers and other parties involved in its execution.

Some of the loopholes are noted below:

- There is no remedy in the Act if there is no woman doctor on duty at the government or private hospital to evaluate the victim girl kid, since section 27 (2) of the POCSO Act requires a lady doctor to examine a female victim child.
- Sexual contact between two minors or between an adolescent and an adult is prohibited under the Act. The POCSO Act makes no provision for consent by people under the age of 18 and is also mute on the possibility of two children participating in any type of sexual conduct. As a result, it restricts the personal liberty of persons under the age of 18 by criminalizing consensual sex between them and making them victims of social persecution.
 - In the case of XYZ v. State of Maharashtra & Anr, the Bombay High Court stated that the majority of nations have placed the age of consent at 14-16 years. Children under the age of 14 are deemed capable of consenting to sex in nations such as Germany, Italy, Portugal, and Hungary. In London and Wales, the legal age of consent is 16. Japan has established the age of consent at 13. The age of consent in Bangladesh is 16, as it is in Sri Lanka. As a result, the court ruled that the age of consent for sex under the Protection of Children from Sexual Offences Act (POCSO Act) and the Indian Penal Code (IPC) should be reconsidered because a large number of cases coming to courts involve minor girls under the age of 18 who have had consensual sex in romantic relationships, and the courts were becoming overburdened as a result of such cases.

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- Child marriage and marital consummation are banned under this Act, but are permitted under the personal laws of different groups in India. The POCSO Act of 2012 makes no mention of this.
 - The Act is more concerned with biological age than mental age. According to clinical psychologists, a young girl aged 22-23 years may have the mental ability of a four-year-old child, yet she will not get redress or justice under the POCSO Act if she is exposed to sexual offenses described by the Act.
 - It is well known that most cases are not reported due to shame, embarrassment, anger, and frustration, but family members will be punished if they do not report the case as mandated in section 21 (1) of the Act, which has made mandatory reporting of FIR in such cases by family members or the head of the office under whose jurisdiction the offence occurred. Family members of victims often do not want to disclose incidents for fear of re-victimization during medical examinations, court appearances, and the response of a poorly educated society.
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 - Contrary to the normal premise of ‘innocent until proven guilty,’ accused people are regarded guilty under this Act until they are proven innocent. Furthermore, the accused has the duty of proving their innocence, making the Act very punitive. The standards of natural justice are breached here.
 - According to Section 22 (2) of the POCSO Act, 2012, no penalty may be imposed on minors who make false complaints or submit misleading information. However, the same clause of the POCSO Act punishes anyone who submit a false complaint in order to humiliate, extort, threaten, or slander another person. Because the kid is protected from such penalty, many persons take advantage of this exemption and make fraudulent complaints via the underage child.
 - Because the POCSO Act is silent on the documentation necessary to prove the

victim's or accused's age, both the victim and the accused confront several challenges. In this respect, courts often rely on Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007. This regulation recognizes the child's birth certificate, school certificate, or matriculation certificate as evidence of age. In the absence of these papers, even a passport, which is a legal document, is not recognized, and the kid must take an ossification test to confirm his or her age. This test gives an approximate estimate of the child's age, giving the accused the benefit of the doubt. There is no specific provision in the Act regarding which papers should be evaluated for demonstrating the child's age and whether or not the benefit of the doubt should be awarded.

- However, a division bench of the Supreme Court comprised of Justices S. Ravindra Bhat and Aravind Kumar ruled that a School Transfer Certificate cannot be used to determine the age of a victim under the POCSO Act, 2012, and that whenever a dispute about a person's age arises in the context of her or him being a victim under the POCSO Act, the courts must follow the steps outlined in Section 94 of the Juvenile Justice Act (Care and Protection).

Due to the Act's harsh rules, under-trial offenders housed in prisons in POCSO Act cases must stay in jails for an extended length of time due to non-grant of bail and regular trial, resulting in congestion and constant problems for jail officials. Obtaining bail in such circumstances, especially if involved in a false charge, is very difficult.

- There is a provision for providing 'support people' to victim children, however support persons are seldom supplied, resulting in the acquittal of accused individuals in a vast majority of instances. According to Rule 4 (8) of the POCSO Rules, 2020, the Child Welfare Committee may provide a support person to assist the child during the investigation process and in dealing with the trauma of the case, but it is commonly seen that a support person is not provided to the victim, resulting in acquittal of most of the cases registered under this Act and psychological and mental pressure on the victim and her family throughout the entire investigation and judicial process. According to the Supreme Court of India, 'support people' were given to victims in just 4% of the cases registered under the POCSO Act, 2012. The 'support people' should be supplied to the victims in order to reduce the frequency of

acquittals under this Act, since they stand by the victims throughout the judicial process.

- Section 33 (8) allows for victim restitution. The Act is silent on the amount of compensation to be granted to the victim kid and who would receive the money on the child's behalf. The Act is prejudiced in favour of the victim and breaches natural justice principles by failing to act in line with justice, equity, and good conscience.
- Under the POCSO Act, naked contact is deemed sexual penetration. For example, if a parent pats his kid on the back, cheek, or head to express love or to bless him, he may be imprisoned. The law intended to have a deterrent effect by preserving the provisions of heavy punishments and penalties against accused individuals, but in fact, most cases end in acquittal, resulting in a failure to provide redress and justice to the victims.
- It is not specified in the Act how public workers or officers in positions of authority would be prosecuted if they conduct an aggravated assault against a young victim under this Act.
- The Act does not specify who is accountable for ensuring and reporting on whether POCSO cases were investigated in accordance with the terms of the POCSO Act.
- According to Section 29 of the POCSO Act, 2012, the Special Court must infer that the accused people committed or tried to commit the crime until the opposite is shown, if they are prosecuted for committing, abetting, or trying to commit the offence. While wealthy accused individuals may afford to hire skilled lawyers to defend them in court, a poor man would be unable to avoid the restrictions of the POCSO Act if he is implicated owing to his inability to afford a decent lawyer.
- According to section 35 of the POCSO Act, 2012, the evidence of the victim child shall be recorded within 30 days of the Special Court taking cognizance of the offence, and the Special Court shall complete the trial within a period of one year from the date of taking cognizance of the offence, but the number of pending cases under the POCSO Act continues to accumulate despite this provision, the Act makes no mention of compensating the accused if he is wrongfully charged.

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