

# Child Sexual Abuse and its Legal Perspectives in India

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## ABSTRACT

Child sexual abuse is a global public problem. It affects children of all social and cultural strata. The majority of the children belong to early childhood or early adolescence, and more increase with the onset of puberty. It is estimated that every second child is exposed to sexual abuse and violence in India. Parents and elderly family members are responsible for providing a safe and free environment for children. Under the Protection of children against sexual offences bill (POCSO) Act, 2012, it is a punishable offense. In India, the law presumes all sexual acts with children under 18 years old are a sexual offense. Therefore, this law will also punish two adolescents who engage in consensual sexual activity.

**Keywords:** Child pornography, Penetrative sexual act, POCSO Act, Sexual abuse.

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## INTRODUCTION

Child sexual abuse may be defined as a form of child abuse where an adult or older adolescent uses a child for his sexual stimulation and gratification. The World Health Organization (WHO) defines child sexual abuse as “the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society”. It may be of two types touching and non-touching. Touching sexual abuse includes fondling of genitalia, putting an object or a body part into genitalia, making a child touch someone’s genitalia, playing sexual games, etc. Non-touching includes showing pornographic materials to a child, exposing genitalia to a child, photographing a child in sexual poses, etc.<sup>1</sup> In India, it is governed under the POCSO Act, 2012,<sup>2</sup> and a child means any human being, male or female, whose age is less than 18 yrs of age. However, this definition is a purely biological one and doesn’t take into account people who live with intellectual and psycho-social disabilities.

In India, the law presumes all sexual acts with children under 18 years are sexual offenses. Therefore, this law will also punish two adolescents who engage in consensual sexual activity. This is especially a concern when an adolescent is in a relationship with someone from a different caste, or religion. Parents have filed cases under this act to 'punish' relationships they do not approve of.

## INCIDENCE RATE AND PROBLEM MAGNITUDE

Child abuse is a global problem prevalent in all strata of society and culture. It is estimated that every second child is exposed to sexual abuse and violence in India.<sup>3</sup> In 2018 approximately 109 children were sexually exploited every day, according to the data by the National Crime Record Bureau (NCRB), which showed a 22% jump in such cases from the previous year. Out of 21,605 child rape cases recorded in 2018, there were 21,401 rapes on girls and 204 on boys. In 2018 the highest numbers

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of child rapes were recorded in Maharashtra at 2,832, followed by Uttar Pradesh in 2023 and Tamil Nadu at 1457. Overall, crimes against children have increased steeply over six times in the decade from 2008–2018, from 22,500 cases recorded in 2008 to 1, 41,764 cases in 2018, according to the NCRB data from 2008–2018. However, this figure is regarded as an underestimate as many cases are not reported due to many social and cultural factors.<sup>4-6</sup>

## WHAT CONSTITUTES CHILD SEXUAL ABUSE

According to the POCSO Act, 2012 followings are included:-

- Penetrative sexual assault such as insertion of penis/object/another body part in child's vagina/urethra/anus/mouth, or asking the child to do so with them or some other person.
- Sexual assault in the form of touching the child or making the child touch them or someone else.
- Sexual harassment in the form of passing sexually colored remarks, sexual gestures/noise, repeatedly following, flashing (exposing genitalia to someone), etc.
- Child pornography
- Aggravated penetrative sexual assault/aggravated sexual assault

The act is gender-neutral for both children and the accused. Concerning pornography, the act criminalizes even watching or collecting pornographic content involving children.

## VULNERABILITY AND RISK FACTORS

- *Age*: No age is safe, but vulnerability increases with the onset of puberty.
- *Sex*: Incidence is high in girls, especially after the onset of menarche.
- *Physical Disability*: Physical debilities like deafness, blindness, and mental retardation are associated with an increased risk of being sexually abused.
- *Family and Social Background*: Children belonging to the lower socio-economic status are at higher risk. The absence of one or both biological parents, marital conflicts of parents, etc., is well-known risk factors. Lack of education and overpopulation also increases the incidence.
- *Drug or Substance Abuse*: Parental substance abuse increases vulnerability. Children under the influence of alcohol/drugs are more susceptible.
- *Social and Cultural Practice*: Customs such as child marriages and the devadasi system (the religious practice whereby parents marry a daughter to a deity or a temple) make some children more prone to be victims of child sexual abuse. Lesbian, gay, bisexual, and transgender are more prone to child sexual abuse.

## WARNING SIGNALS OF CHILD SEXUAL ABUSE<sup>7-9</sup>

### Behavioral Signs

- Inappropriate sexual behavior for the child's age.
- Bedwetting or soiling the bed.
- Hesitant to be left with certain people.
- Avoid removing clothing to change or bathe.
- Wearing many layers of clothing regardless of the weather.
- Exaggerated irritability or temper tantrums.

### Emotional Signs

- Excessive talk about or knowledge of sexual topics.
- Resuming behaviors that they had grown out of, such as thumb sucking.
- Nightmares or fear of being alone at night.
- Excessive worry or fearfulness.
- Loss of self-esteem and confidence.
- Feelings of guilt

### Physical Signs

- Signs of trauma to the genital area, such as unexplained bleeding, bruising, or blood on the sheets.
- Difficulty in sitting and walking.
- Pregnancy.
- The appearance of signs and symptoms of sexually transmitted diseases.

## PARENT'S RESPONSE IF CHILD DISCLOSES ABUSE

- Parents must develop a good rapport with the child. They must be encouraged by showing some supportive gestures.

Tell the child you believe him/her. Show some supporting gestures by saying words like – “I am glad you told me, thank you for trusting me. You are very brave and did the right thing.”

- Do not interrogate the child directly. It may hurt the child to repeat his/her story. Leave the questioning to the legal and police personnel.
- Parents must reassure the child that the abuse is not their fault. The child's greatest fear is that they are responsible for the abuse. Be sure to make it clear that what happened is not a result of anything he/she did or did not do.
- Don't be emotionally overwhelmed; remain calmed and composed while talking to the child.

## PROTECTION AND PREVENTION OF CHILD ABUSE<sup>2,10-13</sup>

### Be Involved in the Child's Life

- Show interest in their day-to-day lives. Ask them what they did during the day and who they did it with. Who did they sit with at lunchtime? What games did they play after school? Did they enjoy themselves?
- Try to know the people in your child's life, who your child is spending time with, including other children and adults, etc.
- Choose caregivers carefully. Parents must be careful while choosing a new babysitter, a new school, etc.
- Talk about the media. Incidents of sexual abuse or violence may be covered by new channels or in other television shows. Parents must ask their children about such coverage to start the conversation.

### Encourage Children to Speak Up

Parents must educate their children that no one has the right to touch them or make them feel uncomfortable. The child must know that their body is their own. What is ‘good touch’ and what ‘bad touch’ must be explained. Parents can tell that “good touch” is a way for people to show they care for each other and help each other i.e., hugging, holding hands, changing a baby's diaper, etc. On the contrary, “bad touch” is the kind you don't like and want to stop right away, such as hitting, kicking, touching private parts, etc. Tell your child that most touches are okay or acceptable, but that he or she must say “NO” and immediately tell you about any touches that are confusing or that scare him or her. This teaching must be from an early age, and children must be familiar with their body part names.

### Control Media Exposure

Parental controls are available through many internet, cable, and satellite providers. Be aware that children may witness adult sexual behaviors in person, or they may come across it on screens and may not tell you that this has occurred. Pornography may be shown to a child by peers/elder children in schools or during playdates. Your child should know that he or she must report this to you.

Parents, society, and government policies by and large play a vital role in preventing child abuse. Parents must educate their children about threats or sexual advances, and bad and good touch. There must be continuous communication with children, free and frank. Parents can seek help in the following ways:-

- Direct report to nearest police.
- Online report to National Commission for Protection of Child Rights.
- Reporting to Childline India – 1098.
- Reporting to local clubs or NGOs, etc.

## LEGAL PROVISIONS<sup>2,14,15</sup>

It is prescribed under the provision of the POCSO Act, 2012. It is mandatory to report to an appropriate authority about the incidence of child sexual abuse cases. Failure to do this would result in imprisonment of up to six months, with or without a fine. The following points may be noted:-

- There is a provision for the establishment of special courts for the trial of such offenses.
- The Investigating Police Officer must wear a civil dress while taking a statement from the child.
- Such recording of the statement must be at the child's residence or the place of his choice.
- Preferably statement must be recorded by a woman police officer, not below the rank of sub-inspector.
- The child's statement is to be recorded as spoken by the child. The assistance of an interpreter or translator or an expert as per the need of the child must be arranged.
- The medical examination is also to be conducted in the presence of the parent or any other person in whom the child has trust or confidence.
- If the victim is a girl child, the medical examination shall be done by a woman doctor only.
- As far as possible, repeated testimony must be avoided.
- There must not be any aggressive questioning or character assassination of the child in-camera trial cases.
- Strictly confidentially should be maintained.

## PUNISHMENT UNDER POCSO ACT 2012<sup>2,14</sup>

- For the penetrative type of sexual abuse, punishment should not be less than 7 years which may extend to imprisonment for life and a fine.
- For aggravated penetrative sexual abuse, punishment must not be less than 10 years which may extend to imprisonment for life and a fine.
- For non-penetrating sexual abuse, punishment must be not less than 3years, which may extend to five years, and a fine.
- For aggravated sexual abuse by a person in authority, punishment must not be less than 5years, which may extend to seven years, and a fine.
- For sexual harassment of the child, punishment must be not less than 3 years and a fine.

- For the use of a child for pornographic purposes, punishment may be for 5 years and a fine, and in the event of subsequent conviction, 7 years and a fine.

## CONCLUSION

It affects the child both physically and mentally, which may persist throughout the child's life. Though the magnitude is t is a preventable public health problem. Parents and family members need to be patient instead of frightening and stressed, and children must be encouraged to report any such experience immediately. It is the responsibility of adults and society to provide a better and safer environment for children.

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