

# **Child Sexual Abuse in India: Constitutional Obligations, POCSO Enforcement, and Institutional Failures**

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## **Abstract:**

Child Sex Abuse (CSA) is a heinous crime that is spreading its tentacles far and wide in our society. Children are one of the most vulnerable sections of society, and being future citizens, it is imperative to provide them with adequate and appropriate health, education, and safety. To achieve the aim of becoming *Viksit Bharat* (Developed India), it is paramount that all necessary steps are undertaken to provide every child in India with a safe and healthy environment where they can flourish and thrive, imbibe education and skills, and metamorphose to contribute to the growth of the nation.

In my research paper, I would begin by defining CSA, its impacts on impressionable minds, which can hamper the growth of the survivors, and the urgent need to combat it. I would delve into the Constitutional provisions that direct and mandate the State to protect children's rights to safety and dignity. Next, I would discuss the primary legislation in this regard, i.e., the Protection of Children from Sexual Offenses (POCSO) Act - a crucial legal framework that safeguards children's rights and prescribes stringent measures against abuse. Finally I would suggest some changes that can be implemented to provide more teeth to the legislation as well as spruce up the effectiveness of responders i.e., police, healthcare professionals, judiciary, and the caregivers.

This paper is an extended version of my Master's dissertation on the topic 'Child Sex Abuse: A Never-Ending Trauma', at Dr.BR Ambedkar University, Delhi, India, in the year 2023 under the supervision of Professor Krishna Menon, and was presented at a conference in National Law University, Raipur, in the year 2025.

**Key Words:** Child Sexual Abuse (CSA), Protection of Children from Sexual Offences (POCSO), Constitutional Provisions, Impact on Children, Suggestions for Improvement.

## **INTRODUCTION**

Child Sexual Abuse (CSA) is a critical violation of children's rights and a substantial challenge to India's social and legal frameworks. I would first define CSA and delve into its impacts on the victims. Society and the State have an entrenched responsibility to protect children as they are one of the most vulnerable sections of society, and also because they will grow up to be future citizens of the nation- they will work and contribute to the GDP, bear children and raise families, hence they need to be nurtured and preserved. The legislature, in its wisdom, has enacted several provisions for the same emphasizing the vital need for protecting children's dignity and safety. I would outline the principles enshrined in the various provisions of the Constitution of India and how they have contributed to the efforts towards the eradication of the deadly menace of CSA. I would also discuss the provisions of the POCSO Act and would end with a few suggestions for achieving a society free from CSA, with all stakeholders working towards its prevention and redressal.

## 1. UNDERSTANDING CSA

Child Sexual Abuse (CSA) is 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 is a most cruel and tragic occurrence and a serious infringement of a child's rights to health and protection. In India, a child is sexually abused every 15 minutes [1].

CSA is not a one-time crime; the victim faces multiple traumas that block the path to recovery. Former Chief Justice of India, D.Y. Chandrachud had remarked that sexual abuse of children remains a hidden problem as there is a culture of silence, and therefore the state must encourage families to report abuse even where the perpetrator is a family member [2].

## 2. IMPACTS OF CSA

In 2017, the Kailash Satyarthi Children's Foundation (KSCF) undertook an exploratory pilot study aimed at examining the psychosocial ramifications of CSA. The findings indicated that CSA not only adversely affects the physical, mental, and psychological well-being of the victim but also leads to significant social repercussions, manifesting in altered behaviors from neighbors, relatives, family members and peers at school. The report highlighted that the consequences of CSA can profoundly influence a child's psychological health, autonomy, social interactions, and educational experiences, with effects that may persist throughout the survivor's life. The trauma inflicted by sexual abuse places the child's physical, mental, psychological, and social well-being at risk.

### 2.1 Emotional Impact

Survivors of CSA often face post-traumatic stress disorder (PTSD) which is indicated by the presence of recurring nightmares, tendencies to avoid reminders of the trauma and heightened levels of arousal. Childhood sexual abuse is associated with an increased prevalence of eating disorders, particularly bulimia and binge-eating tendencies. [7]

### 2.2 Impact on Physical Health

The repercussions of the crime significantly deteriorate the physical well-being of the victims. It can cause lower abdominal pain, weakness, anemia, reproductive tract infections, and in extreme cases also lead to epilepsy and seizures [8].

### 2.3 Impact on Education and Career

Unfortunately, in India, there is a culture of victim-blaming, which is more pronounced in instances of sexual crimes. Victims are often shamed and accused of having invited the assault, tarnishing the name of the family and even of having loose moral values. Such victim shaming frequently results in them encountering derogatory remarks in educational settings due to which they may be compelled to change schools or drop out due to social exclusion. Further, the psychological and physical trauma experienced by survivors and the frequent Court visits can lead to distractions in their studies.

## 3. NEED TO PROTECT CHILDREN FROM ABUSE

Children are the future of the nation, and State needs to ensure not only their survival but also the availability of adequate nutrition, education, and a safe environment for them. In today's world, the necessity of maintaining health - not only physical but emotional and mental, cannot be overemphasized. CSA leaves a long-lasting impact on a child's psyche and severely hampers her ability to study and work, jeopardises her relationship with family and society, and mars her marital life. The impact of child sexual abuse is aggravated as it occurs at an age when their thought process and value systems are still growing, and a traumatic and violent act at that stage of growth leaves a mark on their psychological and physical health. Survivors typically need long-term health support and are unable to work to their potential thus

failing to contribute to the nation's development. An act of CSA not only destroys the child's but the entire nation's future.

#### **4. CONSTITUTIONAL PROVISIONS RELATED TO CHILDREN**

The Constitution of India presents a well-defined framework for the protection of children's rights, dealing with crimes such as child sexual abuse with varied provisions promoting their comprehensive welfare. I would briefly discuss them.

##### **4.1 Fundamental Rights**

Undoubtedly, Article 21 of the Indian Constitution, which enshrines the Right to Life and Personal Liberty, is the cornerstone for a dignified life for Indians [3]. In the case *Maneka Gandhi vs. UOI*, it was held that this Article does not envisage an animal existence but includes the right to live with dignity, and thus it plays a pivotal role in safeguarding children against sexual abuse [4]. It not only protects children's bodily autonomy but also serves to shield them from any action that infringes upon their inherent dignity. It obligates the state to take proactive measures to prevent harm and to uphold the fundamental right to a life characterized by respect, safety, and freedom from exploitation.

Acknowledging the inherent vulnerabilities of children, Article 21 emphasizes the necessity of establishing protective environments that unequivocally uphold their rights [5]. Article 14, which guarantees the Right to Equality, ensures that all children receive equal protection under the law, irrespective of socio-economic or gender differences [6]. Addressing child sexual abuse aligns with the overarching objective of fostering a just and equitable society.

Furthermore, Article 15(3) empowers the state to formulate special provisions for children, acknowledging their unique vulnerabilities and the necessity for targeted protections. This article serves as the Constitutional basis for child-specific legislation, such as the Protection of Children from Sexual Offences (POCSO) Act, 2012, which aims to protect children from abuse and exploitation through measures that prioritize their safety and well-being. The Article emphasizes the state's responsibility to uphold justice and equality for children, requiring proactive initiatives to create an environment conducive to their development and free from harm or neglect. By explicitly allowing for special provisions, Article 15(3) reinforces the Constitutional commitment to nurturing a society that prioritizes the rights and dignity of its youngest members.

##### **4.2 Directive Principles of State Policy**

Articles 39(e) and (f) direct the State to take action to protect children from exploitation and environments that may hinder their healthy development. These provisions highlight the state's obligation to shield children from sexual violence. Additionally, Article 45 promotes the significance of early childhood care and education as a mechanism for empowering children and safeguarding them from harm, aligning with the perspective that education and awareness play a critical role in preventing child sexual abuse.

##### **4.3 Preamble**

The Preamble's focus on justice, equality, and the dignity of all citizens is a beacon for the state to initiate steps for protecting children from sexual exploitation and abuse. These serve as a guiding light that demands that the safety and welfare of children be treated as a mandatory duty of the state.

#### **5. IMPLEMENTATION OF CONSTITUTIONAL LAWS**

The Protection of Children from Sexual Offences (POCSO) Act of 2012 serves as a prime illustration of the implementation of Constitutional principles into enforceable legislation. Grounded in Articles 21, 14, and 15(3) of the Constitution, the POCSO Act introduces rigorous provisions aimed at addressing child

sexual abuse. It defines a broad spectrum of sexual offences against children, mandates child-friendly approaches for reporting, investigation, and trial processes, emphasizes the importance of confidentiality and psychological support for victims, and provides for the establishment of Special Courts to ensure the swift and sensitive handling of CSA cases.

## **6. POCO ACT AND ITS PROVISIONS**

The POCO Act came into force in the year 2012 and is a landmark legislation for protecting children from sexual assault. Even though it has been criticized on a few counts, like the provision of mandatory reporting by any person aware of the commission of any offence - a failure making him liable for punishment, which has been held to be draconian, criminalizing consensual sex, it is still a step in the right direction. I will briefly elucidate the key provisions of the Act.

### **6.1 Penetrative Sexual Assault**

Penetrative sexual assault refers to acts where a person penetrates any body parts of a child with any object or part of the body, or manipulates the body of a child to cause penetration. The punishment for this offense is a minimum imprisonment of 10 years or 20 years, if the child is below 16, which can extend up to life imprisonment, along with a fine.

### **6.2 Aggravated Penetrative Sexual Assault**

Aggravated penetrative sexual assault includes cases where the act is committed by a person in a position of trust or authority, like police, an army official, a healthcare worker, or results in the child's physical or mental impairment, among other aggravating factors. The punishment for aggravated penetrative sexual assault is a minimum of 20 years imprisonment, which can extend to life imprisonment or death, along with a fine.

### **6.3 Sexual Assault**

Sexual assault means touching the private part of the child or any physical act with sexual intent. The punishment for sexual assault is a minimum of 3 years of imprisonment, which can extend up to 5 years imprisonment as well as payment of fine.

### **6.4 Aggravated Sexual Assault**

Aggravated sexual assault includes sexual assault committed by a person in a position of trust or authority over the child, such as a family member, police officer, teacher, or doctor. The punishment for aggravated sexual assault is a minimum of 5 years imprisonment, which can extend up to 7 years, along with a fine.

### **6.5 Sexual Harassment**

Sexual harassment includes actions such as showing obscene material, making sexual gestures, or making sexually explicit remarks directed at a child. The punishment for sexual harassment is up to 3 years imprisonment, along with a fine.

### **6.6 Use of a Child for Pornographic Purposes**

Using a child for pornographic purposes includes involving a child in any form of sexual act or conduct with the intent to produce visual or audio representations for pornography. The punishment ranges from 5 to 7 years imprisonment, depending on the severity and nature of the act, along with a fine. Storage of pornographic material involving a child is also punishable.

## **6.7 Reporting and Punishment for Failure to Report**

All cases of CSA are to be reported to the Special Juvenile Police. The Act provides for mandatory reporting of sexual offenses against children, and failure to report or record such offenses is punishable with imprisonment of up to 6 months or a fine, or both.

## **6.8 Medical Examination**

The medical examination of the victim has to be carried out by a woman doctor in the presence of the parent or a female member nominated by the hospital.

## **6.9 False Cases**

Filing false complaints or providing false evidence with malicious intent is punishable with imprisonment of 6 months, a fine, or both, to ensure the misuse of the Act is minimized and to protect the integrity of genuine cases.

## **6.10 Recording of Statement of Child**

The Act mandates that the statement of the victim is to be taken at either her home or a comfortable place of her choice, by a woman police officer who should not be in uniform, while also ensuring that the accused does not get access to the victim during such recording. The help of a translator or special educator can be taken, depending on need. Further, the child should not be detained at the police station at night.

## **6.11 Confidentiality of the Victim's Identity**

The POCSO Act mandates strict confidentiality regarding the identity of the child victim. Publishing or disclosing the child's name, address, photographs, or any other information that may reveal the identity of the child in media or public forums is punishable by imprisonment of up to 1 year, fine, or both. This provision ensures that the child's dignity and privacy are protected.

## **6.12 Special Court and Child-Friendly Procedures**

The POCSO Act mandates the establishment of Special Court for such offences and child-friendly procedures during investigation and trial- such as not exposing the child to the accused, conducting trials in-camera, and ensuring speedy trial within a stipulated time frame.

# **7. SUGGESTIONS**

The menace of CSA is multifaceted and needs concerted efforts at all levels for its prevention and redressal. The legislature has enacted an exemplary Act, however for the offence to be totally eradicated, there is a need for effective implementation by all stakeholders, coupled with a sustained awareness campaign, which can play a pivotal role in prevention and reporting. I will elucidate a few proactive measures which can be undertaken at various levels.

## **7.1 Police**

As per various surveys, the response of the police encountered by victims of CSA ranges from refusing to believe the victim, insinuating the offence to be consensual, coercing to not register First Information Report (FIR), to downright torture if the offender is socio-economically powerful [9]. The disposal of cases of CSA is often prolonged, in spite of an explicit time line for the same prescribed in the Act, often due to delay in investigations and filing of charge sheet by the police. This acts as a severe deterrent to the survivors who dither from reporting the offence, being unsure of its redressal and hence it is imperative to plug all loopholes at this level, by ensuring proper recording of offence, time-bound investigation and sensitive handling of the case. Regular sensitization of the police force should be mandatory, and failure on any count while handling cases of CSA should invite immediate and strict penalty.

## 7.2 Doctors

The medical examination of survivors of CSA is traumatic, and any mishandling at this stage can have negative consequences. Even though the POCSO Act prescribes several explicit provisions to ensure that the victim is not further traumatized after having encountered such a heinous event, it is a sad reality that the care and comfort of the victim is often missing [10]. Several medical professionals are not trained on how to deal with CSA cases sensitively which needs to be addressed.

## 7.3 Judiciary

The judicial process is often excruciatingly long with low conviction rates. In child sexual abuse cases, where the burdens of testifying repeatedly and over long periods of time fall on already traumatized children as well as parents, the complainants end up feeling battered by the process, in some cases leading them to withdraw their complaints.

The POCSO Act mandates that a Special Court, which is child friendly with trained professionals who would only deal with the cases of POCSO must be provided so that the survivor's trauma is eased but this provision is far from being implemented [11]. Though the Act provides that a case should be disposed of within a year it takes an average of a year and five months. Further, 43.44% of cases end in acquittals and only 14.03% lead to convictions [12].

## 7.4 Support Person

A support person guides the child by interacting with her and keeping her updated with the whole legal process. But a study conducted in Maharashtra after four years of the implementation of the POCSO Act found that 94% of Child Welfare Committees were unaware of the provision of appointing a support person as per the POCSO Rule [13]. It further found that not a single District Child Protection Unit that was a part of the study was aware of the provisions under which they could be appointed as support persons under the POCSO Rules. This is a glaring loophole and an unfortunate failure to reap the benefits of salutary provisions of the POCSO Act, needing immediate implementation.

# 8 ROLE OF EDUCATION

It has been observed in various research that children, especially in India, are not provided with adequate, reliable, and age-appropriate information about matters regarding sexual health and safety, on the plea that children are innocent and do not need the same. This lapse has dangerous consequences- often, children, when they are being abused, due to their young age fail to recognize that it is a violation of their body, and more tragically, often due to the lethal concoction of hormones and half-baked knowledge, which fuels their curiosity, may not protest when they are being abused, unaware of the offence being committed.

# 9. CONCLUSION

CSA is one of the most horrendous crime but the fact that the authorities recognize it and are taking adequate steps to counter it, is the light at the end of the tunnel. There is a need to educate and sensitize Police and medical professionals dealing with CSA through regular training, helping them to unlearn outdated patriarchal beliefs, stressing the need for change while simultaneously maintaining a zero tolerance to failing to adhere to the provisions of the POCSO Act.

Legal reforms must focus on fortifying the judicial system to guarantee prompt and equitable trials for CSA cases, enhancing the training of law enforcers to manage CSA incidents with sensitivity, and imposing severe penalties on offenders, alongside holding institutions accountable for neglecting to report or address CSA.

Furthermore, establishing effective support systems is crucial - which includes developing rehabilitation programs for survivors, creating a collaborative network of parents, educators, healthcare professionals,

and law enforcers to cultivate a protective environment, introducing and effectively monitoring child helplines and accessible reporting channels to encourage victims to seek assistance.

Moreover, there is a need for establishment of monitoring and evaluation frameworks which involve regularly reviewing the effectiveness of CSA related laws and policies, conducting research to gain insights into the prevalence, patterns, and consequences of CSA for informed intervention and creating independent bodies to oversee child protection initiatives and ensure accountability.

Last but not the least, society, educators and care givers need to break free from the shackles of outdated thinking- report such crimes, assist in the redressal process, and offer love and support to the victims to enable them to seamlessly reintegrate into society and restart their life- study, work, and contribute to the nation's growth.

### **Acknowledgement**

I would like to thank Professor Krishna Menon for helping me write my Masters dissertation on this sensitive topic. I would like to thank National Law University, Raipur for allowing me to present the paper.

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