

# CHILD SEXUAL ABUSE LAWS IN INDIA

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## Introduction

According to the World Health Organization (WHO), child maltreatment includes– physical abuse, sexual abuse, neglect and negligent treatment, emotional abuse; and exploitation.

WHO defines Child sexual abuse as “Child sexual abuse 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. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person. This may include but is not limited to:

- The inducement or coercion of a child to engage in any unlawful sexual activity;
- The exploitative use of a child in prostitution or other unlawful sexual practices;
- The exploitative use of children in pornographic performance and materials”.<sup>1</sup>

India is home to 430 million children, roughly one in five of all children (individuals Below the age of 18years) in the world.

The WHO estimates that 150 million girls and 73 million boys under 18 have experienced forced sexual intercourse or other forms of sexual violence involving physical contact.

**Immediate physical and behavioral signs which depict that the child is being sexually abused-**

- Bed wetting
- Continuous loose motions

<sup>1</sup>WHO, “Child Sexual Abuse”. Page 75.

[http://www.who.int/violence\\_injury\\_prevention/resources/publications/en/guidelines\\_chap7.pdf](http://www.who.int/violence_injury_prevention/resources/publications/en/guidelines_chap7.pdf) Accessed on 19th February, 2017.

- Anxiety, depression or withdrawal
- Hysterical reactions (begin playing telling games with its toys)
- Avoiding certain adults
- Nightmares and inability to eat certain foods that resemble the male organ or semen
- Recurrent abdominal pain
- Sexual exploration and the child becoming focussed on its own genitals
- Masturbation
- Irritation in the throat, anal or genital area

When a child is sexually abused, there is violation of its physical, mental and emotional well being. The child almost immediately goes into the “**survivors’ cycle**”<sup>2</sup>, that is:

- 1<sup>st</sup> the sexual abuses causes confusion. What is he or she doing to me? Is it normal and okay? How do I stop it? I cannot save myself.
- This lead to self-estrangement. The child feels that he or she is always wrong and that no cares about it. Feelings of self denial creep in.
- This leads to the wrong set of survival skills. The child feels that he or she has to hide inside themselves so that people do not see who he or she really is.
- Now the child feels trapped. The child feels that it is responsible for what has happened to it because the child did not stop it or tell it to anyone. The child blames itself for the abuse.
- All of this leads to a negative sense of self. The child feels that ‘If people really get to know me then they would dislike me and be disgusted by me. I deserve what has happened to me. I am a bad person, everyone else is better than me.’

This cycle continues and eventually leads to the long term effects of child sexual abuse. These effects can be seen in children who are sexually abused and adults who are survivors of child sexual abuse. The **long term effects of child sexual abuse** are:

- Posttraumatic stress disorder (PTSD) - It is a mental and psychological disorder that occurs due to traumatic experiences undergone by an individual such as sexual

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<sup>2</sup> Women’s Research Centre, “Recollecting Our Lives: Women’s Experience of Childhood Sexual Abuse”. Canada: Press Gang Publisher, 1993.

abuse. It is characterised by frequent re-experience of the traumatic event through nightmares, persistent symptoms of sleep disorder, poor concentration, anxiety, fear or avoidance of current events.

- Cognitive distortions- Child sexual abuse often leads to the child over estimating the amount of danger or adversity in the world and under estimating their self efficiency and self worth.<sup>3</sup> This leads to overreaction of real, potential or imagined threats. The child may make assumptions of his or her inherent weakness and at the same time attributes the cause of good events to external factors.
- Depression and anxiety- Sexual abuse survivors may also suffer from phobias, panic attacks and obsessive compulsive disorders.
- Sexual dysfunction- Child sexual abuse leads to confusion about sexual identity, aversion to sexual contact, confusion of sex with love, promiscuity and difficulty in arousal and orgasm.
- Physical problems- headaches, stomach ache, asthma, chronic pelvic pain and bladder infection.
- Anger- Child sexual abuse often leads to uncontrollable anger, irritability and difficulties associated with expression of anger. Such feelings can become internalized as self hatred and depression, or be externalized and result in the perpetration of abuse against others. This often leads to social isolation and unpopularity.
- Dissociative phenomena- “(1) the experience of self or the environment as suddenly strange or unreal; (2) daydreaming or zoning out; (3) alterations in bodily perception;(4) emotional numbing; (5) out-of-body experiences; (6) amnesia for painful abuse-related memories; and (7) multiple personality disorder.”<sup>4</sup> Such symptoms are apt to be prevalent among child and adult survivors because they reduce or circumvent the emotional pain associated with abuse-related experiences or recollections, permitting superficially higher levels of psychological functioning.
- Substance abuse and addiction- It seems likely that drug or alcohol abuse often helps the victim in blurring the vision of the abuse and helps in reducing pain.

<sup>3</sup> John N. Briere and Diana M. Elliott, “Immediate and Long-Term Impacts of Child Sexual Abuse” *The Future of Children*, 4(2), 56. <http://doi.org/10.2307/1602523> Accessed on 16th February, 2017.

<sup>4</sup> John N. Briere and Diana M. Elliott. Page 59.

- Suicide- Suicide seems the way out for most child sexual abuse victims to escape from the severe psychological stress, anxiety and fear.
- Indiscriminate sexual behaviour- It is often observed by clinicians that sexually abused children are prone to episodes of frequent short term sexual activity, often with different sexual partners. Thus survivors of sexual abuse are at a greater risk of unintended pregnancies and contracting sexually transmitted diseases. Such behaviour may lead to stigmatisation by the society and punishments under law when it leads to victimisation of other children.
- Self mutilation- It usually involves cutting of body, burning skin with cigarettes and hitting of the head or body with or against objects.
- Interpersonal difficulties- Child sexual abuse often leads to trust issues of the child and anger or fear of people in power. It has been observed that sexually abused children often isolate themselves from the society and are more aggressive. They have fewer friends due to the trust issues and also have less satisfaction in their relationships.
- Other long term effects include eating and sleeping disorders, vulnerability to subsequent victimisation and becoming a sexual abuser too.

Prevention is better than cure and this prevention of child sexual abuse is the responsibility of each and every parent, school and the society as a whole. A few **measures which the parents should take to prevent child sexual abuse<sup>5</sup>** are:

- Teach your child to speak up and ask adults several questions if it is not comfortable with what is being done to it or around it.
- Establish a comfortable and friendly atmosphere at home so that the child does not hesitate to confront the parents if he or she is scared or uncomfortable with anything. This is very essential as the child's silence is what the abuser has been trading on.
- Explain child sexual abuse to your child in simple terms and ensure that the child has an understanding of its own body.
- Teach the child the difference between a good touch and a bad touch.

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<sup>5</sup> Pinki Virani, "Bitter Chocolate: Child Sexual Abuse in India". New Delhi: Penguin Books, 2000. Page 160.

- Let the child know that it is not the child's fault if someone does a 'bad touch' and that they should be free to confront the parents about the same.
- Do not force your children to hug or kiss others as this becomes a critical pattern for abuse later.
- Be familiar with your child's friends and daily routine.
- Ensure that the child informs the parents each time it has go out as to where it is going, with whom and for how long.
- Be alert to the behavioural changes in the child.
- Observe an adult is who is paying an unusual amount of attention to your child.
- Ask the child to not go near strangers even if they offer them gifts or chocolates.
- Observe your child if it is suddenly being over affectionate to an adult.
- Give your child emergency phone numbers where he or she can call if they sense danger.
- Request and ensure that your child's school runs non graded sex education courses which include child sexual abuse for children in junior classes and information about AIDS and nurturing respectful relationships in senior classes. Also ensure that your child's school has child counsellors.

There have been cases of children sexually abusing other children. For example-

- In Chandigarh, a 14 year old boy bit his cousin sister's nipples so hard in a 'mummy-daddy-get-married' game, that she needed extensive medical attention
- On 12 February, 2000, 3 pre-teen boys raped a 7 year old girl in Calcutta. They lured the girl to a secluded place through her 9 year old male neighbour, tempted her with chocolate and then gang raped her.

Dr. Shekhar Sheshadri, the 1<sup>st</sup> doctor in the country to specifically study child sexual abuse and a psychiatrist for both children who have been sexually abused and adults who have been sexually abused in their childhood, working at National Institute Of Mental Health and Neuro Science says that the increasing cases of child sexual abuse among children tend to be for 3 reasons-substance abuse which reduces restraint, if they

children have themselves been sexually abused by their elders or when they model themselves on adults.<sup>6</sup>

This is a doctrinal research, the main purpose of which is **to bring to light the statistics, laws and legislations prevalent in India and international agreements with regard to Child Sexual Abuse, particularly the Protection Of Children from Sexual Offences Act, 2012.**

### **STATISTICS OF CHILD SEXUAL ABUSE IN INDIA<sup>7</sup>**

One in three rape victims is a child. More than 7,200 children, including infants are raped every year. In 2007, the Ministry of Women and Child Development of the government of India published its 1<sup>st</sup> ever survey on the issue of child sexual abuse in India titled “Study on Child Abuse: India 2007”.

For the purpose of this study, sexual abuse is defined as severe forms of sexual abuse and other forms of sexual abuse.

Severe forms of sexual abuse include:

- a) Assault, including rape and sodomy
- b) Touching or Fondling a child
- c) Exhibitionism- Forcing a child to exhibit his/her private body parts
- d) Photographing a child in nude

Other forms of sexual abuse include:

- a) Forcible kissing
- b) Sexual advances towards a child during travel
- c) Sexual advances towards a child during marriage situations
- d) Exhibitionism- exhibiting before a child
- e) Exposing a child to pornographic materials

The questionnaire was administered to 12,447 children belonging to the five different categories of children in family environment, children in schools, children in institutions,

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<sup>6</sup> Pinki Virani. Page 27.

<sup>7</sup> Ministry Of Women and Child Development, “Study of Child Abuse- India 2007”. Chapter 6- Sexual Abuse Page 73-102. <http://resourcecentre.savethechildren.se/sites/default/files/documents/4978.pdf> Accessed on 19th February, 2017.



children at work and street children in 13 different states. The major findings of this survey were:

- Out of the total child respondents, 53.22% reported having faced one or more forms of sexual abuse. Among them 52.94% were boys and 47.06% girls.
- The age wise distribution of children reporting sexual abuse in one or more forms showed that though the abuse started at the age of 5 years, it gained momentum 10 years onward, peaking at 12 to 15 years and then starting to decline. This means that children in the teenage years are most vulnerable.
- The significant finding was that contrary to the general perception, the overall percentage of boys was much higher than that of girls.
- In fact 9 out of 13 States reported higher percentage of sexual abuse among boys as compared to girls, with states like Delhi reporting a figure of 65.64%.
- Out of the total child respondents, 20.90% were subjected to severe forms of sexual abuse. Out of these 57.30% were boys and 42.70% were girls.
- 50.76% children were subjected to other forms of sexual abuse. Out of these 53.07% were boys and 46.93% were girls.
- Assam reported the highest incidence of sexual abuse among both boys and girls. 62.55% boys and 51.19% girls from Assam reported facing one or more forms of sexual abuse, which was highest amongst all the 13 sample states. This was followed by Delhi with 54.66% boys and 22.54% girls and Bihar with 35.89% boys and 30.40% girls reporting high incidence of sexual abuse. The Goa figures of 2.55% boys and 2.17% girls do not seem to be in line with the general perception.
- Across the country, every second child was being subjected to other forms of sexual abuse and every fifth child was facing severe forms of sexual abuse.
- Children on streets, children at work and children in institutional care reported the highest incidents of sexual abuse.
- 77% children did not report the matter to anyone.
- 50% abuses are persons known to the child or in a position of trust and responsibility.

A study on Child Sexual Abuse carried out by Save the Children and Tulir in 2006 looked at the prevalence of child sexual abuse among school going children in Chennai. The major findings of this study include:

1. Out of the total of 2211 respondents, 42% children faced at least one form of sexual abuse or the other.
2. Among respondents, 48% of boys and 39% of the girls faced sexual abuse.
3. The prevalence of sexual abuse in upper and middle class was found to be proportionately higher than in lower or in lower middle class.
4. Sexual abuse was found to be prevalent in both joint and nuclear families.
5. Majority of the abusers were people known to the child and strangers were a minority.
6. Sexual harassment in public places and exhibitionism was higher by strangers.
7. Sexual abuse of children was very often a pre-planned insidious abuse of a relationship by an abuser over the child.

In 1998 the Indian NGO Recovery and Healing from Incest (RAHI) conducted India's first study of child sexual abuse. It surveyed 600 English-speaking middle and upper-class women, 76 percent of whom said they had been abused in childhood or adolescence, 40 percent by at least one family member.

Contrary to common perceptions of child sexual abuse, the statistics reveal that a higher percentage of boys are subjected to sexual abuse and that most children are abused by their parents, relatives, people they know or people who are in a position of trust and authority over them; that is the cases of incest are high. Incest leads to a greater mental trauma to the child.

### **WHY ARE LESS CASES OF CHILD SEXUAL ABUSE REPORTED?**

The fear of social stigma, lack of faith in government institutions and cultural norms discourage children and their parents from reporting cases of sexual abuse against relatives or people in position of trust and authority. The victims are also hesitant to make a complaint because of the intimidating way in which they are questioned by the police officials which often leads to re-victimisation and also the insensitive way they are treated by doctors who examine them for evidence of rape. The judicial proceedings in India are a lengthy process and are a tiring ordeal. This requires repeated testimony by the already traumatised victims and their parents and thus many complainants often withdraw their complaint.



The **rights guaranteed to children under the Constitution of India** as fundamental rights and as Directive Principles of State Policy (DPSP) are-

- Article 21A-Right to free and compulsory elementary education for all children in the 6-14 year age group
- Article 23-Prohibition of traffic in human beings and forced labour
- Article 24-Right to be protected from any hazardous employment till the age of 14 years
- Article 39 (DPSP)- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength; (f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment

The atrocious gang rape of a student in New Delhi on 16<sup>th</sup> December, 2012 followed by massive public protests lead to the appointment of Justice Verma Committee to make recommendations in criminal law so as to provide stringent laws to deal with cases of sexual assault against women. The committee expressed particular concern over the plight of children in residential care institutions. This was subsequently followed by the passing of the Criminal Law Amendment Act, 2013 which made amendments to the provisions of rape in IPC.

Before the enactment of the POCSO Act, the following **provisions of the Indian Penal Code (IPC)** could be invoked in cases of child sexual abuse:

- 293-Sale, hire, distribution or circulation of obscene objects of literature to people below 20 years of age. Punishment- jail up to 3 years or fine up to Rs2000 or both. Jail up to 7 years or fine up to Rs5000 on subsequent conviction.
- 323- Voluntarily causing hurt. Up to 1 years imprisonment
- 324- Voluntarily causing hurt by dangerous weapons or means. Any substance which is dangerous to the human body to inhale, swallow or receive into the blood by any means. Imprisonment for up to 3 years or fine or both.
- 325- Causing grievous hurt. Up to 7 years.

- 354- Assault or criminal force to women with intent to outrage her modesty. Punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The following provisions to section 354 of IPC were added by the Criminal Law Amendment Act, 2013.

354A- Sexual harassment and punishment for sexual harassment

354B- Assault or use of criminal force to women with intent to disrobe

354C- Voyeurism

Section 375 and 376 were also amended by the Criminal Law Amendment Act, 2013.

- 375- A man is said to commit rape if he penetrates, inserts, manipulates with the penis, any body part, or any object into the vagina, mouth, urethra or anus of a woman and applies his mouth to the vagina, mouth, urethra or anus of a woman under the following circumstances- 1. Against her will. 2. without her consent. 3. with her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt. 4. With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married. 5. With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent. 6. With or without her consent, when she is under eighteen years of age (Exception) —Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.] 7. When she is unable to communicate consent.
- 376 (1) 1. Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.  
376 (2)- Special circumstances  
376A- Injury which causes the death or persistent vegetative state  
376B- By husband upon his wife during separation  
376C- By a person in authority

376D- Gang rape

376E- Repeat offenders

- 377- Unnatural offences.— Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.
- 326- Causing grievous hurt by dangerous weapons. Up to imprisonment for life.
- 326A and 326B (Added by the Criminal Law Amendment Act, 2013)- Voluntarily causing grievous hurt by use of acid or disfiguring any part of the body.
- 452- House-trespass after preparation for hurt, assault or wrongful restraint. Punishment up to 7 years.
- 458- Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint. Punishment up to 14 years.
- 503- Criminal intimidation
- 506- Punishment for criminal intimidation.—Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc.—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 1[imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.
- 509- Word, gesture or act intended to insult the modesty of a woman or exhibiting any object that intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both. (Amended in 2013 as “term which may extend to 3 years, and also with fine”)
- 511- Attempt to rape. Half the punishment awarded for rape.

**International conventions and agreements** which can be invoked to deal with cases of child sexual abuse and to which India is a signatory, are:

- *Universal Declaration of Human Rights- was adopted by the United Nations General Assembly on 10<sup>th</sup> December, 1948. The following articles of UDHR promote the rights of children-*

Article 1-All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 3 -Everyone has the right to life, liberty and security of person.

Article 5 -No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 22 -Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

- Convention on the Rights of the Child- This convention provides for the basic rights of survival, development, protection and participation rights to children. The specific articles invoked in cases of child sexual abuse are:

Article 6- Right to life, survival and development; Article 4 - Governments have a responsibility to take all available measures (assessing social, legal, health and educational systems) to make sure children's rights are respected, protected and fulfilled. This may involve changing existing laws or creating new ones; Article 16- Right to privacy; Article 34-Governments should protect children from all forms of sexual exploitation and abuse; Article 19- Protection of children from all forms of violence.

- International Covenant on Civil and Political Rights- Article 6 states that every human being has an inherent right to life which should be protected by law. Article 17 - no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, or to unlawful attacks on his honour and reputation. Article 24 - Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- International covenant on economic, social and cultural rights
- Convention for the suppression of traffic in persons and of the exploitation of prostitution of others

The **Integrated Child Protection Scheme (ICPS)** is a comprehensive scheme introduced in 2009-10 by the Government of India to bring several existing child protection programmes under one umbrella. It is based on the cardinal principles of "protection of child rights" and the "best interest of the child".<sup>8</sup> Under this scheme funds are available for setting up and maintenance of Child Welfare Committee (CWC) (the committee has the same powers as a Metropolitan Magistrate) and Juvenile Justice Board (JJB). However, the officials in these committees are not well trained to monitor the conditions of the residential care facilities and orphanages. Child budget has decreased from Rs 81,075.26 crore in 2014-15 to Rs 57,918.51 crore in 2015-16. It has seen a "sharp decline" from 4.52 per cent in 2014-15 to 3.26 per cent in 2015-16.<sup>9</sup> Thus the officials of the ICPS are over worked and lack resources for the effective implementation of the scheme. Childline 1098 is a toll free number to help children in distress and it is run by the Ministry of Women and Child Development and the Childline India Foundation.<sup>10</sup> As a result of new funding that this project receives from the ICPS, the helpline operates in more than 200 cities and districts across India.

**JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) Act, 2000-** The Act provides for the establishment of Child Welfare Committees and special juvenile police units. It also establishes rules for monitoring children's residential care facilities.

**CHILD WELFARE COMMITTEES (CWC)-** The Juvenile Justice (Care and Protection of Children) Act, 2000 provides for the establishment of CWC in every district in India. CWC are

<sup>8</sup> Ministry Of Women and Child Development, Government of India, "Integrated Child Protection Scheme", 2009. [http://icds-wcd.nic.in/icpsmon/st\\_abouticps.aspx](http://icds-wcd.nic.in/icpsmon/st_abouticps.aspx) Accessed on 19th February, 2017.

<sup>9</sup> "Government cuts spending on education, health of children: NGO", IBN Live. 2<sup>nd</sup> March, 2015. <http://www.ibnlive.com/news/business/government-cuts-spending-on-education-health-of-children-ngo-970334.html> Accessed on 20th February, 2017.

<sup>10</sup> <http://www.childlineindia.org.in/1098/1098.htm> Accessed on 20th February, 2016



quasi judicial bodies which overlook the government's welfare and police officers and inspect children's residential care facilities.<sup>11</sup> However, CWC officials are appointed by state government which often leads to lack of transparency in the work carried by it. While 83% members have training in child rights, only 44% have received training in Juvenile Justice System and child protection.<sup>12</sup>

There was a need for the enactment of a separate legislation to protect children from sexual offences because before POCSO most of the sexual offences were covered under Indian Penal Code, 1860. But IPC does not provide for all types of sexual offences against children and it is a general legislation which does not distinguish between adult and child victims. The provisions of IPC also do not treat child sexual abuse as a gender neutral crime and only men were regarded as the perpetrators. There were also no specific provisions for non penetrative sexual assault which could only be dealt with under Section 354 of the IPC. Hence **Protection of Children From Sexual Offences Act (POCSO)** was passed by the Parliament of India in 2012 to deal with the heinous crimes of sexual exploitation and sexual abuse of children. Section 2(d) of the Act defines "child" as 'any person below the age of 18 years'. According to this Act Child Sexual Abuse includes a variety of sexual offences such as:-

- Penetrative sexual assault (Section 3) - A person is said to commit penetrative sexual assault if he penetrates his penis to any extent into the urethra, anus, vagina or mouth of the child or makes the child to do so with him or any other person. It also includes penetration by any object or part of the body (not being the penis). Provision is also provided for sodomy.
- Aggravated penetrative sexual assault (Section 5)- Whoever being a police officer, member of the armed or security forces, public servant, staff and management of a remand home, etc. (a person in a position of trust or authority) Commits penetrative sexual assault on a child, is said to commit aggravated penetrative sexual assault.

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<sup>11</sup> Human Rights Watch, "Breaking the Silence- Child Sexual Abuse in India", 2013. <https://www.hrw.org/sites/default/files/reports/india0113ForUpload.pdf> Accessed on 18th February, 2017.

<sup>12</sup> Childline India Foundation, "Everywhere Child Project". 2011 <http://childlineindia.org.in/pdf/The-Everywhere-Child-Protect-Project.pdf> Accessed on 21st February, 2017.

- Sexual assault (Section 7)- “Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.”
- Aggravated sexual assault (Section 9)- This section includes commission of sexual assault by police officers, members of armed or security forces, (person in a position of trust and authority) etc. It provides provision for incest, taking advantage of a child’s physical or mental disability, inflicting the child with HIV or any other life threatening disease, causing mental illness or physically incapacitating the child to perform regular tasks, temporarily or permanently.
- Sexual harassment (Section 11)- It involves uttering a word or sound, or making any gesture with sexual intent. It also includes exhibiting any part of the body to the child or making the child exhibit any part of his body with sexual intent. The offence of enticing a child for pornographic purposes or showing such media to the child.
- Use of child for pornographic purposes (Section 13)- It includes representing the sexual organs of a child or using the child for real or simulated sexual acts and indecent or obscene representation of the child.

Thus the Act recognises cases of non penetrative sexual assault and also is gender neutral, that is, both male, female and children themselves can be the perpetrators.

The POCSO Act also provides that no reports in any media shall disclose the identity of the child until the special courts permits the disclosure if it is in the best interests of the child. The media cannot make any comments on the child which is not authentic and which may lead to lowering the reputation or invading the privacy of the child. This provision helps in ensuring that the media does not unnecessarily harass and re-victimise the child.

Section 24 of the Act provides for requisites in recording the statement of the child. The child’s statement shall be recorded in its residence or any place where the child is comfortable, as far as practicable by a woman police officer who is not in uniform and it should be ensured that the child does not come in contact with the accused in any way. This is an effective measure to help children as well as parents to come forward in reporting cases of child sexual abuse. The

medical examination of the child shall be conducted by a woman doctor, in the presence of the parent or any other person on whom the child has trust and confidence.

For the purposes of providing a speedy trial, the State Government shall in consultation with the Chief Justice of the High Court, by notification in the Official Gazette, designate for each district, a Court of Session to be a Special Court to try the offences under the Act. Section 33 of the Act provides the powers and procedures of the Special Court. The special court shall not permit character assassination of the child, it may permit frequent intervals as per the child's convenience and also allow a family member or a person in whom the child has trust or confidence to be present during the course of the trial. The court shall also not call the child repeatedly to testify in the court. These provisions help in ensuring a child friendly atmosphere and also help in reducing the traumatic experience of the child during the course of the trial.

Section 35 of the Act provides that "(1)The evidence of the child shall be recorded within a period of thirty days of the Special Court taking cognizance of the offence and reasons for delay, if any, shall be recorded by the Special Court.

(2) The Special Court shall complete the trial, as far as possible, within a period of one year from the date of taking cognizance of the offence." This helps in speedy trial and disposal of cases and encourages reporting of cases of child sexual abuse as previously many cases went unreported due to the lengthy and cumbersome judicial process. In many cases, the abused child would be a married adult by the time the case came up before the court for trial.

The main drawback of the POCSO Act is that it criminalises consensual sexual activities between teenage adolescents below 18 years of age from the previous age of 16 years. Section 20 of the Act says that all persons should mandatorily report a case of child sexual abuse if they are aware of it, notwithstanding which they will be sentenced to imprisonment for 6 months or fine or both. It is difficult to know how it is possible to actually implement his provision. Section 29 of the Act says that in certain offences under the Act (Section 3,5, 7 and 9), there will be presumption of guilt on part of the accused unless the contrary is proved in the court. This principle goes against the principle of 'presumption of innocence' in the Indian legal system. The Act also does not provide explicit provisions for medical examination of the victim and proper care, protection and rehabilitation the abused child.

According to Section 44 of POCSO, the **National Commission for the Protection of Child Rights (NCPCR)** which has been established under the Commission for Protection Of Child

Rights Act, 2005 is responsible for monitoring the implementation of the provisions of POCSO. The Commission's mandate is “to ensure that all Laws, Policies, Programmes and Administrative Mechanisms are in consonance with the Child Rights perspective as is enshrined in the Constitution of India and also the UN Convention on the Rights of the Child.”<sup>13</sup> The NCPCR also proposes new laws, analyses existing laws and can also initiate investigations in suspected cases where children’s rights are involved.<sup>14</sup> It is a quasi judicial body and can follow up cases referred by individuals who feel that their complaints are not being properly addressed by the police and government officials.

The POCSO is a comprehensive Act and is a progressive step taken by the parliament of India to deal with Child sexual Abuse in India. However, certain flaws in the Act need amendment and it is essential to ensure the proper implementation of this Act. For this purpose, the NCPCR which is entrusted with its implementation should be provided with more resources and manpower to carry on its functions effectively. It is also necessary to ensure that its officials and the officials of the CWC are trained in child protection laws and are backed by effective investigation units. Police and the doctors examining the victim must also be trained in sensitisation programmes to deal with the abused child so that the child is not re victimised by the hostile attitude of doctors and police officials. It must be ensured that all state governments and union territories establish their own CWC in every district and state commission for protection of child rights in furtherance of the objectives of the Act. Steps should also be taken to ensure the registration of all residential child care facilities, their adherence to adequate standards and regular checks on them.

Thus India does have laws, legislations and schemes in place to deal with the human rights problem of child sexual abuse but what is necessary is to ensure the proper implementation of these laws. Regular surveys should also be conducted by the government to know the efficiency of the POCSO Act and other schemes of the government in this regard. According to the analysis of the results of this survey, necessary amendments should be made to the existing laws.

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<sup>13</sup> Government Of India, National Commission For Protection Of Child Rights,2007.

<http://ncpcr.gov.in/index1.php?lang=1&level=1&&sublinkid=5&lid=600> Accessed on 21<sup>st</sup> February, 2017.

<sup>14</sup> Human Rights Watch. Page 68.