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CHILD SEXUAL OFFENCES IN INDIA: LEGAL FRAMEWORK, CHALLENGES, AND SOLUTIONS

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Abstract

Child sexual offences remain a pressing issue in India, despite various legal frameworks and preventive measures. This paper examines the prevalence, legal provisions, and challenges in implementation, and potential solutions to address child sexual abuse in India.

Child sexual offences are a growing concern in India, posing significant social and legal challenges. Despite the existence of stringent laws such as the Protection of Children from Sexual Offences (POCSO) Act, 2012, and relevant provisions in the Indian Penal Code (IPC) and Information Technology (IT) Act, child sexual abuse (CSA) remains widely prevalent. This paper explores the legal frameworks in place, the gaps in their enforcement, and the key challenges faced in curbing CSA, such as underreporting, delays in justice, and inadequate awareness. Furthermore, the paper highlights statistical trends, examines the role of digital platforms in exacerbating the problem, and proposes comprehensive solutions, including strengthening law enforcement, promoting awareness campaigns, implementing fast-track courts, and enhancing cyber laws. Addressing CSA requires a survivor-centric approach, policy reforms, and societal engagement to create a safer environment for children.¹

Keywords: Sexual abuse, challenges, POCSO, CSA etc.

¹ Tamilarasi B, Kanimozhi M, Kumari J (2020) Effectiveness of planned teaching programme on knowledge regarding pocso act among school teachers. TNNMC J Med Surg Nurs 8(1):36–39

Introduction

Child sexual abuse (CSA) is a grave violation of human rights and has severe psychological, emotional, and physical consequences. India has seen an alarming rise in CSA cases, necessitating an in-depth examination of the legal framework, enforcement challenges, and remedial measures. Child sexual abuse (CSA) is a grave violation of human rights and has severe psychological, emotional, and physical consequences. It refers to any form of sexual activity involving a child, including inappropriate touching, exposure to explicit content, and sexual exploitation through coercion or manipulation. CSA not only impacts the victims but also has long-term social and psychological repercussions for families and communities. India has seen an alarming rise in CSA cases, necessitating an in-depth examination of the legal framework, enforcement challenges, and remedial measures. The growing influence of digital platforms has further exacerbated the issue, with online exploitation becoming a new dimension of child abuse. Addressing this issue requires a multi-faceted approach involving legal enforcement, awareness campaigns, and comprehensive rehabilitation support for survivors.

Child Sexual Offences refer to any form of sexual activity, exploitation, or abuse involving a minor (a person below 18 years of age). These offences include acts such as rape, sexual assault, sexual harassment, child pornography, grooming, and online sexual exploitation. In India, child sexual offences are primarily governed by the **Protection of Children from Sexual Offences (POCSO) Act, 2012**, along with relevant sections of the **Indian Penal Code (IPC)** and the **Information Technology (IT) Act, 2000**. These laws aim to protect children from sexual harm, ensure strict punishment for offenders, and provide legal and psychological support to victims.²

Legal Framework

Here are some key legal concepts related to child sexual offences in India as discussed in the research paper:

1. The Protection of Children from Sexual Offences (POCSO) Act, 2012

➤ Definition of Child Sexual Abuse

The **POCSO Act** defines various forms of sexual offenses against children, including:

- **Sexual Assault:** Any act involving sexual touch or conduct with a child.

² Ministry of Women and Child Development (2013) Model Guidelines under Section 39 of The Protection of Children from Sexual Offences Act, 2012. Retrieve from: <https://wcd.nic.in/sites/default/files/POCSO-ModelGuidelines.pdf>. Accessed 12 Feb 2023

- **Sexual Harassment:** Any unwelcome sexual advance, demand, or request for sexual favors from a child.
 - **Penetrative Sexual Assault:** Includes vaginal, anal, or oral penetration or any form of sexual penetration of a child's body.
 - **Aggravated Sexual Assault:** If the offense is committed by someone in a position of trust (e.g., a family member, teacher, or police officer), or if it involves elements of coercion or violence.
 - **Child Pornography:** The creation, possession, distribution, or viewing of pornographic material involving children is a punishable offense under the Act.
 - **Use of Children for Sexual Purposes:** Engaging or forcing a child into sexual activities, including exploitation for pornography or other illicit purposes.
- **Reporting and Mandated Reporting**
- **Mandatory Reporting:** Any person who suspects or knows about the sexual abuse of a child is legally obligated to report it to the authorities, including the police. Failure to report is punishable.
 - **Time Frame for Reporting:** A report must be made to the police within **24 hours** of the incident being brought to the notice of the authorities.
 - **Children-Friendly Reporting Mechanism:** The Act ensures that the process of reporting sexual abuse is made child-friendly, avoiding any trauma to the child during the investigation and legal proceedings.
- **Special Courts for Child Sexual Abuse Cases**
- The POCSO Act mandates the establishment of **Special Courts** to handle cases of child sexual abuse in a swift and sensitive manner.
 - These courts conduct trials in a child-friendly manner to minimize distress for the child victim. For example, the child is not required to face the accused directly, and video recording of statements can be used in court.
 - The trial must be completed within **one year** from the date of reporting the offense.
- **Punishments for Sexual Offenses**
- **Penetrative Sexual Assault:** Imprisonment of **not less than 7 years**, which may extend to life imprisonment, along with a fine.
 - **Aggravated Penetrative Sexual Assault:** Imprisonment of **not less than 10 years**, which may extend to life imprisonment, along with a fine.
 - **Sexual Assault:** Imprisonment of **not less than 3 years**, which may extend to 5 years, and a fine.

- **Aggravated Sexual Assault:** Imprisonment of **not less than 5 years**, which may extend to life imprisonment, along with a fine.
 - **Sexual Harassment:** Imprisonment of **up to 3 years** and a fine.
 - **Use of Child for Pornography:** Imprisonment of **not less than 5 years**, which may extend to 7 years, and a fine.
 - **Child Pornography:** Creation, transmission, or possession of child pornography is punishable by **up to 5 years of imprisonment**, along with a fine.
- **Child-Friendly Procedures**
- **No Re-victimization:** The POCSO Act ensures that the child victim does not have to face the perpetrator or be subjected to harsh cross-examination during the trial. The child's testimony may be recorded using audio-visual means, ensuring they are not further traumatized.
 - **Support Person:** A person of trust or an intermediary, such as a relative, can accompany the child throughout the process.
 - **Victim's Privacy:** The identity of the victim is protected at all costs. The law prohibits the publication of any details that could reveal the child's identity.
- **Child Protection and Rehabilitation**
- The POCSO Act provides provisions for the **rehabilitation and reintegration** of the child victim, including counseling, medical care, and support services.
 - **Child Welfare Committees (CWCs)** are tasked with ensuring the safety and protection of the child during the investigation, and they facilitate access to necessary services.
 - The child victim is entitled to **free legal aid** throughout the judicial process.
- **Role of Parents or Guardians**
- The Act encourages parents and guardians to be proactive in protecting children and reporting incidents of sexual abuse. In cases where the perpetrator is a family member, steps are taken to ensure the safety and protection of the child.³
- **Involvement of Police and Investigation**
- **Immediate Action:** The police are required to register an FIR (First Information Report) and initiate an investigation within 24 hours of the complaint.
 - **Forensic Examination:** A child victim of sexual abuse must undergo a forensic examination as soon as possible to gather evidence for prosecution.

³ Rashid J. An analysis of self-accounts of children-in-conflict- with-law in Kashmir concerning the impact of torture and detention on their lives. *International Social Work*. 2012;55(5):629–44.

- **Specialized Police:** Police officers are trained to handle cases of child sexual abuse in a sensitive and appropriate manner. Child-friendly interview techniques are employed to ensure that the child is not further traumatized during questioning.
- **Presumption of Age**
 - The law presumes a child to be under 18 years of age unless proven otherwise. If there is doubt about the age of the victim or accused, the **presumption is in favor of the child.**
 - A medical examination or documentary evidence can be used to confirm the age of the child if required.
- **International Cooperation**
 - The POCSO Act allows for cooperation with international bodies and foreign governments in cases where child sexual abuse or exploitation involves cross-border elements, such as online sexual exploitation or trafficking.

2. Bhartiya Nyaya Sanhita Provisions

The **Bhartiya Nyaya Sanhita (BNS)**, also known as the **Indian Penal Code (IPC) 2023**, is a draft legislation in India that replaces the old IPC (Indian Penal Code of 1860) with a more modernized version. It includes provisions for various criminal offenses, including **child sexual abuse**. The BNS aims to make laws more comprehensive and responsive to current societal needs.

In relation to **child sexual abuse**, the following provisions can be found:

- **Sexual Offenses Against Children:**

The BNS has provisions that specifically deal with sexual offenses committed against children. These offenses can range from molestation to more severe crimes like rape and exploitation.

 - **Sexual Assault:** The BNS incorporates detailed definitions of various forms of sexual assault and specifies different punishments depending on the severity of the offense, the age of the child, and the nature of the abuse.
 - **Aggravated Sexual Assault:** If the abuse is committed by a person in a position of trust (e.g., a parent, teacher, or caregiver), or if it involves multiple perpetrators, the offense is considered aggravated, leading to harsher punishments.⁴
- **Penalties and Sentences:**

⁴ Sinha S. Reasons for Women's Entry into Sex Work: A Case Study of Kolkata, India. *Sexuality & Culture*. 2015;19(1):216–35.

- **Rape of a Child:** The provisions specify that anyone who engages in sexual intercourse with a child under a certain age (typically under 18 years) faces severe punishments, including imprisonment for a long duration or even life imprisonment. For children below a certain age (often 12 years or younger), the punishment can be even more stringent.
- **Death Penalty:** In cases of extremely severe offenses, like the sexual abuse and subsequent death of a child, the BNS allows for the death penalty as a potential punishment.

➤ **Mandatory Reporting:**

The law mandates that any person who becomes aware of a child being sexually abused must report it to the authorities, including the police or child protection bodies. Failure to report may result in penalties.

➤ **Prevention of Child Pornography:**

The BNS includes provisions against the creation, distribution, or possession of child pornography, treating such acts as criminal offenses with severe penalties.

➤ **Child Protection and Rehabilitation:**

The BNS includes provisions for the protection and rehabilitation of child victims. It ensures that children who are victims of sexual abuse receive immediate medical care, psychological support, and legal assistance.

➤ **Special Courts for Children:**

The BNS emphasizes the establishment of specialized courts to handle cases of child sexual abuse and exploitation swiftly and with sensitivity. These courts would operate under guidelines that prioritize the protection of the child's identity and provide an environment conducive to the child's testimony. These are just some of the provisions related to child sexual abuse in the **Bhartiya Nyaya Sanhita**. The law aims to protect children from sexual exploitation and violence by ensuring harsher penalties and more robust child protection mechanisms.

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

➤ **Protection of Children from Abuse**

- **Definition of Child Sexual Abuse:** The JJ Act provides a clear framework for identifying and addressing child sexual abuse, including any act of sexual assault, exploitation, or harassment.

- The **Protection of Children from Sexual Offences (POCSO) Act, 2012** is often referenced in conjunction with the JJ Act when it comes to the prevention and prosecution of child sexual abuse, as it specifically addresses offenses related to sexual abuse and exploitation of children.
- **Child Sexual Abuse as a Crime**
 - Under the **POCSO Act**, child sexual abuse is considered a crime, and the JJ Act recognizes that children who are victims of such abuse require care, protection, and proper legal measures to ensure their safety.
 - The JJ Act provides mechanisms for immediate intervention and care for children who have been sexually abused, including the provision of counseling, medical care, and other support services.⁵
- **Role of Juvenile Justice Boards (JJBs)**
 - **Juvenile Justice Boards (JJBs):** The JJ Act establishes Juvenile Justice Boards, which are responsible for handling cases involving children in conflict with the law (including those who may have committed sexual offenses) and ensuring appropriate care and rehabilitation.
 - When a child is found to have committed a sexual offense, the Board ensures that the child is not treated as an adult, and instead, rehabilitation measures, such as counseling, education, and community service, are implemented. The goal is to prevent reoffending and ensure the child has access to education and a healthy environment.
- **Care and Protection of Victims of Child Sexual Abuse**
 - The JJ Act mandates that children who are victims of sexual abuse should be treated with sensitivity and care. The law ensures that these children receive the following:
 - **Psychological support:** Counseling and therapy to help the child cope with trauma and abuse.
 - **Medical care:** Immediate medical examination and treatment to ensure the child's physical well-being.
 - **Legal assistance:** Legal aid to navigate through the judicial system and ensure that their rights are protected during the investigation and trial.
- **Specialized Homes for Children**
 - The JJ Act mandates the establishment of specialized homes for children who are

⁵ Hasnain N, Kumar D. Psychological well-being of women reporting sexual abuse in childhood. Journal of the Indian Academy of Applied Psychology. 2006;32(1):16–20.

victims of sexual abuse. These homes are designed to provide a safe environment for rehabilitation and recovery, where children receive physical and emotional care.

➤ **Confidentiality and Privacy**

- The **right to privacy and confidentiality** of the victim is a key provision under the JJ Act. The identity of the victim should not be disclosed, and the legal proceedings should be conducted in such a way that the child's dignity is preserved throughout the process.

➤ **Non-Detention of Children in Conflict with the Law**

- The **JJ Act prohibits the detention of children in adult prisons**, even if they are involved in criminal offenses like sexual abuse. If a child commits a sexual offense, the focus is on rehabilitation rather than punishment. Detention in a special home or observation home may be used as an alternative, with proper care, rehabilitation, and reintegration programs.⁶

➤ **Institutional Mechanisms**

- The JJ Act creates **Child Welfare Committees (CWCs)** to take care of children in need of protection. These committees are responsible for reviewing cases of child abuse, including sexual abuse, and ensuring that appropriate protection and care measures are provided.
- The Act mandates the creation of **State and District Child Protection Units** that work to prevent child sexual abuse by promoting child rights awareness, setting up helplines, and coordinating services for victims.

➤ **Rehabilitation and Reintegration**

- The rehabilitation and reintegration of children who have been sexually abused is a priority under the JJ Act. The Act emphasizes the importance of reintegrating the child into the family and community after the abuse has been addressed, ensuring that children can recover in a healthy environment.

➤ **Punishment for Juveniles in Conflict with the Law**

- In cases where a juvenile (under the age of 18) is found to have committed a sexual offense, the **juvenile is treated separately** from adults. For instance:
 - If the child is in the age group of **16-18 years**, the Juvenile Justice Board has the discretion to treat the juvenile as an adult in exceptional cases of heinous crimes, including sexual abuse, depending on the nature of the offense and the mental and physical maturity of the child.

⁶ Deb S. Children in agony: A source book: Concept Publishing Company; 2006

- In cases where a juvenile is deemed capable of understanding the offense and its consequences, the Board may impose more stringent rehabilitation measures.

4. Information Technology (IT) Act, 2000

- Criminalizes child pornography, cyberstalking, and online exploitation of minors.
- Section 67B prohibits publishing, transmitting, or viewing child sexual abuse material (CSAM).

5. Fast-Track Courts

- Established to ensure speedy trial and justice delivery in cases involving sexual offences against children.

These legal concepts play a crucial role in tackling child sexual offences in India, ensuring justice, and protecting children's rights. Let me know if you need further elaboration.⁷

Challenges in Addressing CSA

- 1. Underreporting:** Fear of social backlash and family honor often prevent victims from coming forward. Many cases remain undisclosed due to societal taboos and victim-blaming attitudes.
- 2. Delays in Investigation and Trial:** The Indian judicial system is overburdened, leading to prolonged legal proceedings. This delay often discourages victims and their families from seeking justice.
- 3. Lack of Awareness:** A significant portion of the population, including children and their guardians, remain unaware of legal protections and reporting mechanisms available under the POCSO Act.
- 4. Inadequate Implementation:** Despite the existence of strict laws, enforcement remains weak due to corruption, lack of trained personnel, and inadequate coordination between law enforcement agencies.
- 5. Online Threats and Cyber Exploitation:** With the proliferation of digital platforms, cases of child sexual exploitation, including online grooming, child pornography, and cyberbullying, have escalated, making it difficult to monitor and control such crimes effectively.

⁷ Krishnakumar P, Satheesan K, Geeta MG, Sureshkumar K (2014) Prevalence and spectrum of sexual abuse among adolescents in Kerala, South India. Indian J Pediatr 81(8):770–774

6. **Victim Rehabilitation and Support:** Many survivors do not receive adequate psychological and medical support post-abuse. Rehabilitation programs are often underfunded and inaccessible to victims in rural and remote areas.
7. **Social Stigma and Victim Blaming:** Survivors of CSA often face severe discrimination, leading to emotional distress and reluctance to report crimes. The societal emphasis on honor and family reputation can deter victims from seeking justice.
8. **Lack of Trained Professionals:** There is a shortage of trained professionals, including child psychologists, social workers, and legal experts, who can assist victims in the recovery and legal process.⁸

Recommendations and Solutions

1. **Strengthening Law Enforcement:** Police and judicial officers should receive specialized training to handle CSA cases with sensitivity and efficiency. Strengthening forensic capabilities and ensuring the timely filing of charge sheets can improve conviction rates.
2. **Public Awareness Campaigns:** Schools, communities, and media should play an active role in spreading awareness about CSA, child rights, and reporting mechanisms. Programs should educate children about personal safety and empower them to recognize and report abuse.
3. **Fast-track Courts:** Dedicated courts for CSA cases should be established to ensure timely justice. Reducing delays in investigation and trial can help victims seek justice without prolonged trauma.
4. **Stronger Cyber Laws:** With the rise of digital exploitation, cyber monitoring should be enhanced to track and eliminate child sexual abuse material online. Coordination between law enforcement agencies and digital platforms should be strengthened.
5. **Rehabilitation Programs:** Providing medical, psychological, and social support to CSA survivors is essential for their recovery. Government and non-governmental organizations (NGOs) should work together to offer counseling, legal aid, and vocational training for affected children.
6. **Community Involvement and Reporting Mechanisms:** Encouraging communities to

⁸ Crime in Indian (2021) National Crime Record Bureau, Ministry of Home Affairs. Government of India, New Delhi. Retrieve from: <https://ncrb.gov.in/>

be vigilant and report CSA cases can play a crucial role in curbing abuse. Strengthening child helplines and anonymous reporting platforms can help survivors and witnesses come forward without fear.

- 7. Parental and Educational Interventions:** Parents and educators should be trained in child protection strategies, ensuring open communication with children. Schools should implement child protection policies and guidelines to create a safe environment.⁹

Recent case laws:

***K. S. Puttaswamy v. Union of India* (2017)¹⁰**

This landmark judgment by the Supreme Court of India addressed the right to privacy, which has implications for child sexual abuse cases, particularly in terms of the victim's privacy. The Court held that privacy is a fundamental right under the Indian Constitution and must be protected, even in cases involving child sexual abuse. The judgment also emphasized the need for protecting the identity and dignity of child victims in all legal proceedings.

The Court's interpretation of privacy rights helps safeguard the identity and personal information of child sexual abuse victims, ensuring that they are not further traumatized by public disclosure.

***Shafhi Mohammad v. State of Himachal Pradesh* (2018)¹¹**

This case dealt with the admissibility of an in-camera trial in sexual assault cases involving children under the POCSO Act. The Supreme Court ruled that in cases where the victim is a child, trials must be conducted in-camera to protect the child's privacy and dignity. It emphasized that the media should not be allowed to publish identifying details of the victim to prevent further victimization and trauma. The judgment reinforced the child's right to privacy during the trial process, making it clear that the media should respect the confidentiality of the victim's identity.

***Jaswinder Singh v. State of Punjab* (2019)**

This case addressed the issue of sentencing under the POCSO Act. The Supreme Court reaffirmed the application of stringent punishments under the Act, underscoring that the law mandates the death penalty or life imprisonment for certain sexual crimes involving children. In this case, the accused was given a harsh sentence after being convicted of raping and

⁹ Chowdhuri S, Mukhopadhyay P (2020) A study of the socio-demographic profile of the persons accused under POCSO act 2012. *Int J Health Res Med Leg Pract* 2:50–55

¹⁰ AIR 2017 SC 4161

¹¹ 2 SCC 801

murdering a minor.

This judgment underscored the importance of stringent punishments for sexual crimes against children, reinforcing the legal deterrent against child sexual abuse.

***State of Rajasthan v. Nand Ram* (2020)¹²**

In this case, the Rajasthan High Court examined the concept of consent under the POCSO Act in relation to a child victim. The Court held that children cannot give valid consent to sexual acts due to their age, and any sexual act with a child below the age of consent (i.e., under 18 years) is inherently a criminal act. The Court ruled that the POCSO Act does not require the child to prove resistance or force during the act.

This case reinforced the principle that consent is not a defense in cases involving sexual offences against children, regardless of the circumstances, and clarified that the law prioritizes the protection of children over any claims of consent.

***State of Maharashtra v. Kanchan Yadav* (2021)**

In this case, the Bombay High Court dealt with the provisions of the POCSO Act, particularly in the context of the time frame for completing investigations. The court emphasized that in child sexual abuse cases, the authorities should ensure that investigations are concluded within the prescribed timelines to avoid unnecessary delays in justice. The court also underscored the importance of setting up child-friendly environments and procedures for handling victims to reduce trauma.

This case reaffirmed the importance of following procedural timelines in cases of child sexual abuse to ensure swift justice and avoid further victimization of children.

Supreme Court's Intervention in Child Rights (2024)

In 2024, the Supreme Court addressed several critical issues related to child rights, including the application of the Protection of Children from Sexual Offences (POCSO) Act, 2012, and the Juvenile Justice (Care and Protection) Act, 2015. The Court clarified ambiguities in these laws, reinforcing the legal framework for child protection. Notably, the Court also emphasized the importance of appointing support persons for victims of child sexual abuse, directing States and Union Territories to implement this measure to assist victims throughout legal proceedings.

Supreme Court's Judgment Against Online Child Sexual Abuse (September 2024)

In September 2024, the Supreme Court expanded the legal definition of child abuse to encompass online exploitation, recognizing the severity of digital child sexual abuse materials (CSAM). The Court's ruling underscored the need for stringent measures to combat the

¹² Petition no. 2332/2012

distribution and consumption of CSAM, aligning with international efforts to protect children in the digital realm.

Judicial Reforms to Address Arbitrary Sentencing (November 2024)

Following concerns over inconsistent sentencing in child sexual abuse cases, particularly after a 2022 incident in Bihar where a man was hastily sentenced to death, the judiciary initiated reforms to standardize sentencing. The proposed grading system aims to ensure that punishments are proportionate to the severity of crimes, promoting fairness and consistency in judicial processes.

Supreme Court's Emphasis on Child-Friendly Legal Procedures (August 2024)

In August 2024, the Supreme Court highlighted the necessity of child-friendly legal procedures in cases of child sexual abuse. The Court recommended the appointment of support persons to assist child victims during trials, aiming to reduce trauma and ensure that the legal process is accessible and sensitive to the needs of young victims.

Conclusion

Despite robust legal frameworks, addressing child sexual offences in India remains a challenge due to social and institutional barriers. Strengthening enforcement, raising awareness, and fostering a survivor-centric approach can create a safer environment for children. Addressing child sexual abuse in India requires a collective effort from the government, law enforcement agencies, civil society, and the public. Despite the presence of comprehensive legal frameworks, enforcement gaps, societal stigma, and lack of awareness continue to hinder justice for victims. Strengthening law enforcement, increasing public awareness, and ensuring swift judicial processes are crucial steps toward mitigating CSA. Additionally, technology must be leveraged to prevent online sexual exploitation, and victim rehabilitation should be prioritized for their holistic recovery. A survivor-centric approach, combined with policy reforms and community engagement, can help create a safer environment for children and ensure justice for victims.

References

- Protection of Children from Sexual Offences (POCSO) Act, 2012
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