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## Laws Relating to Child Abuse in India

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**ABSTRACT:** *Our country is fighting hard against the problem of Child abuse in the one form or the other. India is among the top five countries in the ranking related to crime against children. Though we have lots of national legislations on this subject and being signatory to various international covenants and declarations are also there but still nothing works out. This paper aims at discussion over the problem of Child abuse. This paper also talks about various provisions relating to child abuse in India. There is a need to look into this matter on the priority basis and channelize the things accordingly to deal with the problem effectively.*

**Keywords:** POCSO, India, Child Abuse

### INTRODUCTION:

A child is considered to be the most important part of the family. But our country is battling hard against the problem of child abuse. It is not new to the society but historically it was hidden and nowadays has turned into a rampant problem. One the one hand people are trying hard to beget children

in order to complete their families and on the other hand parents are worried about the safety of their child. Earlier this problem was more persistent in case of the girl child but nowadays both male and female child are becoming victims at the hands of the offenders.

53% of children in India face some form of child sexual abuse. According to the National Crime Records Bureau, the cases of rape and murder of children increase every year. The growing complexities of life and the changed social economic conditions have exposed the children to new and different forms of abuse. But the sad state of the affairs is that such heinous acts are reported less. It has such a psychological impact on the mind of the child that he seldom gathers the courage to speak about the act being committed against him. If even if he confides the fact with someone, the social factors let the fact being dumped under the fear of family reputation and other related issues. In fact child abuse is a

violation of the basic human rights of a child<sup>1</sup>.

**What is Child Abuse:** The term child abuse is very wide and its dictionary meaning of child abuse is “Physical maltreatment or sexual exploitation of child.” The World Health Organization (WHO) defines child abuse and child maltreatment as "all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship of responsibility, trust or power."<sup>2</sup>

**Types of child Abuse:** It is of many types like as follows:

- Physical: Physical abuse means any non-accidental act or behavior causing injury, trauma, or other physical suffering or bodily harm. Abusive acts toward children can often result from parents'

attempts at child discipline through excessive corporal punishment<sup>3</sup>.

- Psychological: psychological abuse of a child is a pattern of intentional verbal or behavioral actions or lack of actions that convey to a child the message that he or she is worthless, flawed, unloved, unwanted, endangered, or only of value to meet someone else's needs. Withholding emotional support, isolation, or terrorizing a child are forms of psychological abuse. Domestic violence that is witnessed by a child is also considered a form of psychological abuse<sup>4</sup>.
- Sexual: Child sexual abuse, also called child molestation, is a form of child abuse in which an adult or older adolescent uses a child for sexual stimulation.[1][2] Forms of child sexual abuse include engaging in sexual activities with a child (whether by asking or pressuring, or by other means), indecent exposure (of the genitals, female nipples, etc.), child grooming, or

<sup>1</sup> Child Abuse in India available at <http://www.helpline.law.com/family-law/CAII/child-abuse-in-india.html>

<sup>2</sup> Child Abuse available at [https://en.wikipedia.org/wiki/Child\\_abuse](https://en.wikipedia.org/wiki/Child_abuse)

<sup>3</sup> Meaning of Physical Abuse available at [https://en.wikipedia.org/wiki/Physical\\_abuse](https://en.wikipedia.org/wiki/Physical_abuse)

<sup>4</sup> What is psychological abuse of child available at <https://www.healthyplace.com/abuse/child-psychological-abuse/what-is-psychological-abuse-of-a-child/>

using a child to produce child pornography<sup>5</sup>.

- Neglect: It is the failure to provide for the child's basic needs. Neglect can be physical, educational, or emotional. Physical neglect can include not providing adequate food or clothing, appropriate medical care, supervision, or proper weather protection (heat or cold). It may include abandonment. Educational neglect includes failure to provide appropriate schooling or special educational needs, allowing excessive ancestries. Psychological neglect includes the lack of any emotional support and love, never attending to the child, substance abuse including allowing the child to participate in drug and alcohol use<sup>6</sup>.

The condition is worsening day by day. There is no such day where the news report of a child rape is not there. Violence against children is increasing tremendously. Earlier schools were considered to be the safest place for the children but now even that are not safe. A study conducted by the UNICEF after the 2012 Delhi gang rape revealed that

one in every three rape cases, the victim is a child and these incidences are increasing at an alarming rate. Approximately 7200 children including infants are raped every year which is an issue of serious concern<sup>7</sup>. One of such incidence was reported from Hisar in this case, a 3-year-old victim was raped by a 15-year-old minor who stayed in the neighboring house. The crime took place when the girl's parents had gone out to work. The girl's father works in a private firm while her mother worked as a maid. The boy entered the girl's house and raped her and was violent with her<sup>8</sup>. Two three days prior to the above mentioned incident similar incidence was reported from Panipat District if Haryana that An 11-year-old girl was allegedly raped and murdered by two of her neighbours in Panipat, Haryana and also allegedly committed necrophilia after murdering her<sup>9</sup>. We fail to understand that

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<sup>7</sup> Analysis of Indian Legal System on Child Sexual Abuse available at <https://knallp.com/files/3.pdf> also available at UNICEF, "UN in India condemns the gang rape of a student in New Delhi," December 31, 2012,

[http://www.unicef.org/media/media\\_67097.html](http://www.unicef.org/media/media_67097.html)

<sup>8</sup> 'Haryana horror continues' published online on webpage available at <https://www.indiatoday.in/india/story/haryana-horror-continues-3-year-girl-raped-by-minor-5th-rape-in-5-days-1147615-2018-01-17>

<sup>9</sup> New reported in The Quint updated on 15.1.18 available at

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<sup>5</sup> What is child sexual abuse available at [https://en.wikipedia.org/wiki/Child\\_sexual\\_abuse](https://en.wikipedia.org/wiki/Child_sexual_abuse)

<sup>6</sup> Supra refer to footnote no. 1

where society is going. Who is responsible for all such type of incidences. The answer is easy access of such things on internet, improper parenting, lack of moral values in children nowadays and of course the slow trial of such cases in courts.

It is not so that rape is the only crime against children. But the thing is that such incidences are more throughout India. And, the survey conducted by various organizations makes it very clear that in maximum of such cases family members or near and dear one's are involved. So the fear is more in within families.

Though we have various legislations to deal with this problem like the provisions of Indian Penal Code 1860, Criminal Procedure Code, 1973, Constitutional provisions and International covenants etc. But as this problem has turned into a grave problem in the past few years activists, Non-Governmental Organisations (NGOs) and the central government's Ministry of Women and Child Development have actively engaged in helping break 'the conspiracy of silence' (HRW 2013) and

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<https://www.thequint.com/news/india/two-arrested-in-the-rape-and-murder-of-11-year-old-in-panipat>

have generated substantial political and popular momentum to address the issue. The movement, spearheaded by the Ministry of Women and Child Development, led to the enactment of new legislation called the Protection of Children from Sexual Offences (POCSO) 2012<sup>10</sup>.

### **LEGAL PROVISIONS FOR REGULATING CHILD ABUSE:**

**Constitutional Provisions:** The Constitution of India contains a number of provisions for the protection and welfare of the children. It has empowered the legislature to make special laws and policies to safeguard the rights of the children. Articles 14, 15, 15(3), 19(1) (a), 21, 21(A), 23, 24, 39(e) 39(f) of the Constitution of India contain provisions for the protection, safety, security and well-being of all it's people, including children<sup>11</sup>.

#### **Indian Penal Code 1860:**

- Section 315 and 316 for dealing with the problem of Female infanticide and feticide

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<sup>10</sup> Article by Jyoti Belur and Brijesh Bahadur Singh titled as 'Child sexual abuse and law in India: A commentary' available at

<https://link.springer.com/article/10.1186/s40163-015-0037-2>

<sup>11</sup> Supra refer to Footnote no 1

- Section 376 provides punishment for rape
- Section 305 deals with abatement of suicide by minor
- Section 360 and 369 provides punishment for Kidnapping and Abduction respectively
- Section 377 provides punishment for unnatural sex
- Section 366-A talks about Procurement of minor girls by inducement or by force to seduce or have illicit intercourse
- Section 372 and 373 provides punishment for selling and buying of girls for prostitution.
- Section 317 talks about Exposure and Abandonment: Crime against children by parents or others to expose or to leave them with the intention of abandonment.

**The Pre Conception and Pre Natal Diagnostic Test (Regulation and Prevention of Misuse) Act, 1994:** This Act has been passed by the legislature with an intention to put a full stop over the problem of female feticide in India. But unfortunately

due to many reasons like not proper implementation this Act has failed to fulfill its objective and female feticide is still going on.

**The Immoral Traffic (Prevention) Act, 1956:** This Act talks about punishment for offences related to sexual exploitation of children for commercial purposes and to provide enhanced penalties for offences involving children and minor.

**Child Labour (Prohibition and Regulation) Act, 1986:** The main objective of this act was to reduce child labour in India and strictly imposes restriction over the working of children below the age of 14 years in industries or other institutions carrying on work of hazardous nature. Again this Act has reduced child labour to some an extent but India is still coping with this problem.

**The Juvenile Justice (Care and Protection of Children) Act, 2000:** The Juvenile Justice (Care and Protection of Children) Act, 2000 provides for proper care, protection and treatment of children in conflict with law and children in need of care and protection by catering to their development needs, and by adopting a child

friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under the Act. Sections 23, 24, 26 of the Act deal with the provisions of child abuse<sup>12</sup>.

**The Prohibition of Child Marriage Act, 2006:** In addition to Child Marriage Restraint Act another Act titled as The Prohibition of Child Marriage Act, 2006 was enacted to put a stop to the practice of child marriages in India, it says that every child marriage shall be voidable at the option of the contracting party who was a child at the time of the marriage. Any if any marriage is conducted of minor child is punishable.

**The Commissions for the Protection of Child Rights Act, 2005:** The Act provides for the Constitution of a National and State Commissions for protection of Child Rights in every State and Union Territory.

**Protection of Children Against Sexual Offences Act, 2012:**

The basic feature of this Act is that it is a gender neutral act. It also talks about all types of sexual offences against minors and

provides for the protection of minors during the judicial process.

### **Provisions of POCSO<sup>13</sup>**

Police officers must bring every case to the attention of the Child Welfare Committee within 24 hours of receiving a report.

1. They must also be in plain clothes while recording the minor's statement so as to not appear intimidating.
2. The statement must be recorded in a place chosen by the minor, in the presence of a person that he/she trusts.
3. The medico-legal examination for the collection of forensic evidence must be conducted only by a female doctor, in the presence of a person that the minor trusts.
4. Special courts have been set up to conduct speedy, in-camera trials. These courts must ensure that:  
» the minor is not exposed in any way to the accused during the recording of evidence.

<sup>12</sup> Supra refer to footnote no. 1

<sup>13</sup> Decoding POCSO available at <http://www.satyamevjayate.in/child-sexual-abuse/decoding-pocso.aspx>

» the minor's identity is not disclosed at any time during the investigation or trial.

» the minor is not made to repeat his/her testimony in court, and that he/she can give the testimony using a video link.

» the case is disposed within one year from the date of the offence being reported.

» the defence routes all questions through the judge and is not allowed to ask them in an aggressive manner.

» an interpreter, translator, special educator or any other expert is present in court for the minor's assistance.

» compensation for medical treatment and rehabilitation is given to a minor who has been sexually abused.

### **Punishments listed under POCSO**

#### **1. Penetrative sexual assault:**

Penetration that is peno-vaginal, peno-oral, peno-urethral or peno-anal, fingering or object penetration.

Punishment: Not less than 7 years; this may extend to life imprisonment, and a fine (Section 4).

#### **2. Aggravated penetrative sexual assault:**

Committed by a person of trust or authority such as a police officer.

Punishment: Not less than 10 years; this may extend to rigorous life imprisonment, and a fine (Section 6).

#### **3. Non-penetrative sexual assault:** Committed by whoever, with a sexual intent,

» touches the vagina, penis, anus or breast of the child

» makes the child touch the vagina, penis, anus or breast of such person or any other person

» does any other act with sexual intent which involves physical contact without penetration.

Punishment: Not less than 3 years; this may extend to 5 years, and a fine (Section 10).

#### **4. Aggravated non-penetrative sexual assault:** Committed by a person of trust or authority such as a police officer.



Punishment: Not less than 5 years; this may extend to 7 years, and a fine (Section 10).

5. Sexual harassment:

Unwelcome sexual remarks, emails or telephone calls; taunting, jeering, demands or requests for sexual favours.

Punishment: 3 years and a fine (Section 12).

6. Use of minor for pornographic purposes:

Involving a child in the preparation, production and/or distribution of pornography via print, electronic, computer or any other technology.

Punishment: 5 years and a fine, and in the event of second conviction, 7 years and a fine (Section 14 (1)).

7. Attempt of offence:

Punishment: 1 year and/or fine (Section 18).

8. Abetment of offence:

Instigating a person to commit an offence; conspiring to commit an offence; intentionally aiding an offence.

Punishment: Same as that of the offence (Section 17).

9. Failure to report an offence

Punishment: 6 months and/or a fine (Section 21)

**Conclusion and Suggestions:** Despite of having so many provisions to fight against the child abuse in India what is there that does not deter the dirty minds and intentions of such criminals who are indulged in such kind of offences. The answer is poor implementation of the laws. It is like whenever we talk about any social problem the no one has the absolute solution for it. But see only legislature or the poor implementation is not responsible. Except it other contributing factors are like declining moral values, no understanding of social relations and to some extent parenting is also there. If we really want to curb out this problem we all have to fight together against it. Basically the time has come to not to remain mere spectators to such incidences but to actively participate in fight against child abuse in India. One should start from their family itself. Definitely it will bring out some desired results.