

# Legislative and Judicial Response to Child Sexual Abuse

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## ABSTRACT

Citizens of tomorrow are today's children. They are the country's future. Child abuse is a terrible problem in India since it is a rising and recurring problem; too many youngsters die or get mistreated later in life. Abuse happens when someone mistreats or exploits another person, with no regard for their integrity or inherent value as persons, and in a way that jeopardizes their well-being. Kid abuse is defined as an adult inflicting significant physical or mental harm on a child. Physical, sexual, neglect, and abandonment are all examples of child abuse, as are emotional and psychic abuse. Youngster abuse may be a lifelong problem and burden for the victimized child. Pregnancy, or a new experience with sexual assault, might reopen the survivor's traumas. The arousal of early abuse-related trauma can also be triggered by approaching or having attained middle age. As the survivor faces the challenges of adulthood, the childhood legacy becomes increasingly onerous. A shift in the balance of a close connection is frequently the catalyst. The facade can no longer withstand the pressure, and the underlying disintegration emerges. When and if a breakdown happens, it might present with symptoms that are similar to those of almost any mental condition. Survivors are afraid of becoming mad or having to die.

## KEYWORDS

Abuse, Child, Judicial, Legislative Sexual, Sexual Abuse.

## 1. INTRODUCTION

All psychologically dissatisfied people who want to satisfy sexual need and lust prey on children. Traditional practices that harm children, Kid weddings, casteism, and gender inequality, as well as child labor and devdasi, have a negative impact on children, making them more prone to cruelty and abuse. Inadequate nutrition, restricted accessibility to health and education facilities, and movement from rural to metropolitan areas have all contributed to a rise in urban squalor, street kids, and juvenile labor [1]. Children are more vulnerable as a result of these factors, and they are more likely to be subjected to abuse and exploitation[2].

Child sexual abuse is not a new phenomenon. Adults in wealthy families Kids were regularly exploited as sexual playmates in fifteen and 16th France, according to family historians. Louis XIII, the future King of France, is an excellent example. Per a journal kept by the royal physician, officials of the France royal court diddled his genital area and ladies in waiting played sensual games with his little fists[3]. Americans in the nineteenth century were well aware of the sexual abuse of children[4]. Between 1790 and 1876, a third to half of rape victims in New York City were under the age of 19; during the 1820s, the ratio was 76 percent. Between 1817 and 1899, researcher Lynn Sacco discovered over 500 newspaper records of father-daughter incest[5].

Child rape is the most common type of sexual crime," according to an 1894 treatise, *A System of Legal Medicine*[6]. Alfred Kinsey claimed in his seminal study on a third of all

females below the age of 14 had experienced any kind of sexually assault, like eroticism, fondling, or incest, according to feminine sex, released in 1953[7]. These findings, on the other hand, received absolutely little public attention when they were revealed, while Kinsey's numbers on adolescent sexually conduct and adultery generated a tremendous public uproar[8]. Almost all industrialized countries have laws prohibiting acts of violence against children. It occurs in various forms in India, but the rules are still vague, and the majority of youngsters are silenced. In the last several decades, child abuse has garnered widespread notice and has become one of the greatest high-outline corruptions. Because the 1970s, child sexual abuse and child molestation have become widely recognized as harmful to children and hence undesirable to society as a whole[9].

## 2. DISCUSSION

### 2.1 Children and Constitutional Provisions

The Indian Constitution acknowledges children's vulnerability and their right to protection. Children's rights and aspirations are critical in our efforts to create a more inclusive and equal society. The Indian Constitution includes provisions for children's survival, development, and protection. Protective discrimination is a philosophy that ensures that required and specific laws and policies are in place to defend their rights.

- The Indian Constitution enables state governments to create specific measures for children's progress.
- The Indian Constitution stipulates that children have the chance and resources to grow up in a happy, independent, and dignified manner, and that youth and youths are protected from manipulation and spiritual and economic abandon.
- The Constitution prohibits children from working in industries. It specifies that no child below the aged of 14 may work in whatsoever business, mine, or other dangerous occupation.
- The state is required by the Constitution to provide all kids with free and obligatory schooling till they attain the aged of 14.

### 2.2 On Sexual Offenses Against Children, the Judiciary

The courts was instrumental in bringing this horrific crime against children to fruition. The judiciary has often issued numerous instructions aimed at protecting the safety and rehabilitation of children who have been sexually assaulted.

#### 2.2.1. *Union of India vs. I Shakshiv*

The Supreme Court established the following rules for holding a kid sex abuse trial:

- A screening or another contrivance should be placed up so that the suspect's physique or face are hidden from the victim or eyewitnesses.

- Insofar as If the accused's bridge inquiries are directly relevant to the incident, they will be submitted in advance to the court's supervising person, who might pose questions of the complainant or witnesses in a straightforward and non-embarrassing manner.
- During his or her testimony in court, the target of kid misuse or rape should be given adequate breaks as needed.

### 2.2.2. *Maharashtra's Shankar Kisanraokhadev*

The court found that most of the time, children are molested by someone they know or who have control over them. Sexual mistreatment can take numerous forms, according to the court, including sexual molestation or assault, inspiring, causing, or pressuring a kid to be utilized for other person's erotic satisfaction, utilizing or purposefully revealing a kid to erotic actions or child porn, acquiring or enabling a kid to be obtained for advertising enslavement, and so on [10].

### 2.2.3. *Gaurav Jain v Amalgamation of India*

The Highest Court gave the following instructions to the state of the United States, state administrations, and non-profit organisations:

- a. The court determined that it is the government's and all volunteers non-governmental organisations' way to safeguard them from prostitutes and rehab them so they may live a decent life.
- a. The judge ruled that the abused kids be provided with educational, economic, and developmental opportunities, and promotion of their products. If at all feasible, their weddings should be arranged in order to eliminate the problem of child prostitution. Marriage would elevate them to a higher social standing. They should be provided with accommodation, legal support, free counseling, and other such amenities and solutions so that individuals did not fall prey to the red light zone lure once more.
- b. According the tribunal, one of the most essential reasons in avoiding the practice of enslaving young females as Information to the proper, Jogins, or Consolidating is financial empowerment. The court directed that the human security ministry develop equivalent rehab programmes for the female females, citing the various actions taken by other states, so that the whole practice is totally removed and they are not involved in prostitutes anymore.
- The court ordered that the rescue and rehabilitation b. According the tribunal, one of the most essential reasons in avoiding the practice of enslaving young females as Information to the proper, Jogins, or Consolidating is financial independence. The judge directed that the human security ministry develop equivalent rehab programmes for the female females, citing the various actions taken by other jurisdictions, so that the whole activity is totally removed and they are never involved in prostitutes anymore.

### 2.2.4. *Union Of India's Vishal Jeetv*

The Supreme Court determined that this is a significant issue that requires a thorough investigation and From a variety of views, a humanitarian instead than a purely technical strategy is preferred. The court noted that this ailment is not just a communal but also a socio-economic issue, and that, as a result, preventative rather than punitive measures should be adopted[11].

The Supreme Court gave the following instructions to state governments and union territories, among others:

- Instruct concerned law enforcement agencies to take necessary and prompt measures to eliminate child prostitution in accordance with current legislation.

- Take measures to ensure that suitable and rehabilitative housing is available.
- Create a separate Advisory Committee comprised of pertinent govt authorities, academics, experts in the field, and representatives of female/child social assistance social ngos to start making suggestions for deciding to end child prostitution and the devdasi and jogin customs, as well as victim care, protection, treatment, advancement, and recovery metrics.

## 2.2. The Children's Protection From Sexual Offenses Act of 2012

The Protection of Children from Sexual Offenses Bill 2011 was passed by the parliament on May 22, 2012. The legislation pertaining to sexual offenses against minors was spread in different parts of the Indian Penal Code, 1860, until this Act was passed. We now have a distinct legislation pertaining to sexual offenses against children, thanks to the passage of this Act. The current Act is based on Article 15 (3) of the Indian Constitution. From a global viewpoint, India has met its obligations as a signatory to the United Nations Convention on the Rights of the Child, which established a set of criteria for all States parties to follow in ensuring the best interests of children. This Act not only defines the many types of sexual offenses against minors, but it also specifies the severity of the penalties[12].

### 2.3 *Sexual Assault with a Sharp Edge:*

The Act specifically defines sexual assault, criminal abuse, and pornography as distinct crimes. When a general populace slave, policeman, representative of the armed powers, safety staff, jailor, and any individual in the planning of any healthcare or educational institution, or a custodian who is accountable for the safeguard and care of the child, commits an agitated form of penetrative erotic attack.

### 2.3. Assault on a woman

Whoever with sexual intent touches the vagina, penis, anus, or breast of the child, or causes the child to touch the vagina, penis, anus, or breast of such person or any other person, or does any other act with sexual intent involving physical contact without penetration is said to commit sexual assault," according to the Act. An aggravated form of sexual assault occurs when a public servant, police officer, member of the armed forces, security personnel, jailor, or any person in the management of a medical or educational institution or a guardian who is responsible for the child's protection and care commits such assault [13].

### 2.4. Harassment of a sexual nature

When a person with sexual intension: I makes a child display his skin or any part of his skin so that it is been seeing by the child; or (ii) makes a kid display his skin or any portion of his skin so that it is noticed by the kid; or (ii) creates a kid display his skin or any portion of his skin so that it is noticed by the kid; or (ii) allows a kid display his torso or any portion of his bloodstream so that it is spotted by the kid.

### 2.5. Using a kid for pornographic drives is unethical

Using a kid for sexually enjoyment in any kind of media, include broadcast programmes or ads, the internet, or any other digital or print medium, whether or whether like programs or advertising are designed for private use or for dissemination is illegal under this Act.

## 2.6. The Act's Procedures

In dealing with the situations under this Act, The penal code has been broadened in scope. Any young criminal must be dealt with under the Juvenile Courts (Service and Safety of Children) Act 2000. Any complaint filed under this Act should be heard by special courts, which have all the powers of a judge [14].

## 2.7. Supplies for Raising Awareness And Observation

The central administration and state administrations have a responsibility to educate the general public, children, and their parents and guardians about at regular periods, the contents of this Act via the medium, particularly tv, radio, and print media. The federal council for the preservation of kids 's right and the committee for the welfare of kids are the authorised organizations to supervise the implementation of this Act.

## 2.8. Procedure that is child-friendly

The following is how the Act provides for a child-friendly procedure:

- A female forensic officer with at least the rank of sub-inspector taking down the kid's testimony in the children's diary house or at a location of his choice.
- For any reason, no kid shall be held in a police position at night.
- The police officer recording the child's declaration must not be in unchanging.
- The child's remark must be recorded exactly as it was stated.
- Assist from an interpreter, translator, or specialist, depending on the child's needs.
- Medical examination of the kid in the company of the kid's parents or any another individual the child has confidence in or trusts.
- A female doctor must perform the medical examination if the victim is a girl child.
- During the experiment, the kid is given frequent breaks.
- The child will not be summoned to testify more than once.
- There will be no hostile questioning or character assassination of the youngster[15].

## 3. CONCLUSION

The Defense of Kids from Sexual Offenses Act of 2012 is a big step forward for children's future security. With the passage of this Act, we now have a distinct piece of legislation that deals solely with child abuse offenses. The current Act not only clearly defines sexual offenses in detail, which were previously unclear, but it also provides for specific harsh penalties for anyone found guilty of violating the Act. The Act establishes a child-friendly procedure to be followed in situations of child sexual abuse, while also requiring the Federal Council for the Preservation of Children 's Right (NCPCR) and the States Council for the Preservation of Children 's Rights (SCPCR) to take responsibilities (SCPCR). The Dominant Administration and State Governments are also obligated to educate the general public, including children and their parents, about the requirements of this Act through media such as television, radio, and print at regular intervals. In India, child abuse is considered a societal taboo. The majority of families opt to keep such occurrences hidden. In Shankar kisanraokhad state of Maharashtra, "Many older representatives of the family,

like as the grandparents, opt not to disclose like crimes to the police on the basis that it will shield the kid from social shame and would also do additional damage to the victims," the High Council voiced worry." If the children's future in our country is to be safeguarded, such limited thinking must be eliminated from the ground up.

According to the Globe Health Organization, Sexual assault affects one out of each 4 females and one out of each 7 males in the globe. The WHO determined that one out of each ten Hindu adolescents is sexual assaulted at any one time, as per Virani (2000). These numbers demonstrate how concerned we are about protecting children under the age of eight. To eradicate this problematic from civilization, each individual must join hands and recognize the gravity of this extremely sensitive subject, as well as give the current law a boost so that it can function effectively.

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## REFERENCES

- [1] P. Lewis, "Delayed Complaints in Childhood Sexual Abuse Prosecutions—A Comparative Evaluation of Admissibility Determinations and Judicial Warnings," *Int. J. Evid. Proof*, vol. 10, no. 2, pp. 104–127, 2006, doi: 10.1350/ijep.2006.10.2.104.
- [2] P. Yadav, V. Nageshwar, and J. Prabhu, "Reproductive and sexual health knowledge and utilization of services among adolescents: A review based on available literature," *Indian Journal of Public Health Research and Development*. 2019, doi: 10.5958/0976-5506.2019.02817.1.
- [3] N. Sharma, S. K. Jain, P. K. Singh, and R. Garg, "A morphometric study of predictors for sexual dimorphism of cervical part of vertebral column in human fetuses," *J. Anat. Soc. India*, 2017, doi: 10.1016/j.jasi.2017.12.004.
- [4] A. Rosenbaum, P. J. Gearan, and W. Warnken, "The Ecology of Domestic Aggression toward Adult Victims," in *Case Studies in Family Violence*, 2000, pp. 39–61.
- [5] D. Crosswhite and J. S. Kim, "Child sexual abuse," in *Solution-Focused Brief Therapy with Clients Managing Trauma*, 2018.
- [6] R. Gangal, A. haroon, M. Yadav, and V. K. Chavada, "Sex determination from sternal end of 4th rib in western U.P. population: An autopsy study," *J. Indian Acad. Forensic Med.*, 2012.
- [7] N. Garg, A. K. Jain, A. Ansari, A. Sharma, J. Singh, and T. Chugh, "Dimorphism of maxillary and mandibular canine teeth in establishing sex identity," *Indian J. Forensic Med. Toxicol.*, 2012.
- [8] A. Choube, S. P. Bahal, A. Srivastava, and M. Sharma, "Knowledge and child care practices regarding childhood diarrhoea- a cross sectional study," *Indian J. Community Heal.*, 2014.
- [9] L. K. Murray, A. Nguyen, and J. A. Cohen, "Child Sexual Abuse," *Child and Adolescent Psychiatric Clinics of North America*. 2014, doi: 10.1016/j.chc.2014.01.003.

- [10] T. Blakemore, J. L. Herbert, F. Arney, and S. Parkinson, "The impacts of institutional child sexual abuse: A rapid review of the evidence," *Child Abus. Negl.*, 2017, doi: 10.1016/j.chiabu.2017.08.006.
- [11] J. Rudolph, M. J. Zimmer-Gembeck, D. C. Shanley, and R. Hawkins, "Child Sexual Abuse Prevention Opportunities: Parenting, Programs, and the Reduction of Risk," *Child Maltreat.*, 2018, doi: 10.1177/1077559517729479.
- [12] B. Mathews and D. Collin-Vézina, "Child sexual abuse: Raising awareness and empathy is essential to promote new public health responses," *J. Public Health Policy*, 2016, doi: 10.1057/jphp.2016.21.
- [13] J. Sanjeevi, D. Houlihan, K. A. Bergstrom, M. M. Langley, and J. Judkins, "A Review of Child Sexual Abuse: Impact, Risk, and Resilience in the Context of Culture," *J. Child Sex. Abus.*, 2018, doi: 10.1080/10538712.2018.1486934.
- [14] F. M. Mlekwa, T. Nyamhanga, P. L. Chalya, and D. Urassa, "Knowledge, attitudes and practices of parents on child sexual abuse and its prevention in Shinyanga District, Tanzania," *Tanzan. J. Health Res.*, 2016, doi: 10.4314/thrb.v18i4.6.
- [15] N. Stavas et al., "Perceptions of caregivers and adolescents of the use of telemedicine for the child sexual abuse examination," *Child Abus. Negl.*, 2018, doi: 10.1016/j.chiabu.2018.08.009.