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## A Legal and Psychological Analysis of Childhood Sexual Assault

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*Our childhoods are supposed to be a time where you feel the most protected and care-free, living in a world which you believe only has good people and trusting the people you love the most but what happens when those same people you trust or any adult who you thought was going to protect you from all evil becomes the evil himself? What if the world you thought was so perfect comes shattering down and you are left not trusting anyone, blaming yourself for what happened to you, and traumatized forever because someone took advantage of your innocence and took your dignity and destroyed it. The heinous crime of Childhood Sexual Assault leaves a huge impact on the survivor, making their way through their adulthood and affecting their lives forever. With thousands of cases every year, it's high time we discuss the psychological impact this crime leaves on the mind of the victim as well as cover the legal aspect by shedding light on acts enacted for the protection of children against sexual offenses. This journal article will help in meticulously highlighting the issue, the impact, the challenges, the provisions given, the punishments, and how it has been implemented.*

**Keywords:** *sexual offenses, children, trauma, protection.*

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### INTRODUCTION

Sexual offenses against anyone are heinous crimes but it goes to another level when the perpetrator takes advantage of the vulnerability of a child and traumatizes them forever. With the ever-increasing rate of sexual crimes against children, it is important to talk about it even

though children are often told to keep it to themselves and not talk about it by their relatives or parents since it sheds a bad light on the guardians that they weren't able to protect their children as well as the stigma surrounding sexual offenses often makes victim not report these cases. Sexual assault is a crime that makes a lasting impression, and it is carried all the way to adulthood and affects the victim's mental health, relationship with others, ability to trust people, feeling guilty and disgusted with themselves, affects their sex lives, the way they view the world and the way they view themselves. The increase of such crimes in India led to the enactment of the Protection of Children from Sexual Offences Act, 2012 which set the guidelines for what is covered in the ambit of sexual offenses and the punishments for the perpetrators of the crime. This ambit was increased with the amendment of the POCSO Act in 2019 and it increased the punishment for certain crimes as well as increased the scope of the act. In theory, the act fulfills the purpose of protecting children well but in the society which we live in, the topic of sexual harassment is still a big taboo and usually, when children are targeted, they are done by family members or adults who are very close to them who hence manipulate the child into not telling anyone and the child in fear never reveals this crime to anyone, fearing they'll be shamed for it. Hence even if we see the shocking statistics of the huge number of sexual offenses against children, we must keep in mind that there will be many other cases that just don't come out and are hushed. Hence it is important to take about both the legal aspect and the psychological impact of this grave crime.

## **THE PSYCHOLOGICAL IMPACT ON THE VICTIM**

Trauma can be defined as a normal but emotionally overwhelming reaction to an abnormal event. With the prevalence of childhood sexual assault, there can be a number of psychological impacts which carry on with victims to their adulthood.<sup>1</sup> The first dynamic that comes with the trauma of childhood sexual assault is the traumatic sexualization of the victim. This means that the experience of sexual abuse can have a sexual impact on children. On one hand, you can have children who become very sexualized as a result of the sexual experience and they

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<sup>1</sup> Finkler, and Brownie, 'Traumagenic Dynamics Model' (MOSAC, 1988)  
<<https://www.mosac.net/TraumagenicDynamicsModel.aspx>> accessed 28 November 2021

can grow up and become very promiscuous and often get confused about the meaning of their sexual relationships with others and what it means in engaging in sexual activities. They perhaps even sometimes feel that the only way they can get affection or feel loved is through engaging with people in terms of sexual activity. On the other end you can have people who develop a lot of difficulties engaging in intimacy and they actually really struggle with becoming close to people at an intimate level and perhaps feel anxious or fearful or avoid that kind of intimate contact. The idea is that the normal sexual development that one experiences while going through puberty is somehow distorted in people who were preys of sexual harassment during their childhood in one form or the other.

The second dynamic is the betrayal victims face and of course, any form of child abuse is a betrayal because most child abuse is perpetrated by someone close to the child or someone known to the child and even if it isn't someone personally known to the child, the kind of default reflex for children is to trust adults who are supposed to be there to protect them and they think they'll be safe with them and what happens when they are abused is that the trust is betrayed and that can impact on children and growing into adults it can impact on their ability to trust other people and hence can impact on the relationships in their lives whether that be relationships with friends, with authority figures or even within families. This creates a lot of trust issues in such individuals which heavily affects the relationship dynamic in their life very well into adulthood.

After a child is sexually abused he experiences severe and long-term psychological consequences because they end up feeling depressed suicidal and experience self-injurious behaviors of anxiety and PTSD or post-traumatic stress disorder. They are at very high risk compared to somebody who hasn't been abused as a child and are thirty-five times more likely to be victimised again sexually and the reasons are mainly because of shame and self-blame. The child when who has been sexually abused thinks that they deserved what happened to them and then they feel that they don't deserve to be loved unconditionally and that's a problem in itself. Possible potential perpetrators sometimes look for these vulnerable traits which increase the risk manipulated again. Children who are abused sexually, later in life

experience that in order to cope with the abuse they need to engage in alcohol or substance abuse to deal with the pain. They self-medicate themselves and it becomes a vicious circle where they were sexually abused as a child and then end up abusing drugs in their adulthood and hence that puts you at a very high risk of being re-victimized again. Whether the abuser was a loved one or a person that the child used to trust or even an absolute stranger, sexual assault has very long-lasting consequences on the victim and they will be at a much higher risk of being victimised again in their life because of their vulnerable state.

### **OVERVIEW OF LAWS IN RELATION TO SEXUAL VIOLENCE COVERED BY IPC**

The crime of sexual violence against children has existed for a long time and the laws which were in place for the sexual crimes against adults were used for the trials against the perpetrators hurting children as well. The following sections of the Indian Penal Code, 1860 majorly deal with the crime of sexual offence in general, and crimes related to child sex abuse before the enactment of the POCSO Act<sup>2</sup> were dealt with under these sections:

- Sec 354 - Outraging the modesty of women<sup>3</sup>
- Section 375 - Rape
- Section 377 - Unnatural Offences

But these sections in the Indian Penal Code, 1860 were not enough to deal with the protection of children from the grave crime of sexual abuse and harassment and there were also several loopholes in the above laws with prevalence to child sexual abuse, like:

- Section 354 of IPC lacks a statutory definition of modesty and does not protect the modesty of a male child. Outraging the modesty of women is also a compoundable offence and hence carries a very weak penalty and therefore cannot be used for the heinous crime of child sex abuse.
- Section 375 of IPC<sup>4</sup> again does not protect male victims or anyone from sexual acts of penetration or other forms of abuse other than the traditional penis-vaginal intercourse.

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<sup>2</sup> Protection of Children from Sexual Offences Act, 2012

<sup>3</sup> Indian Penal Code, 1860, s 354

- Section 377 of IPC<sup>5</sup> is not defined by the law and is very vague in nature. It was high time for a law to be made to cater to the specific crime of sexual violence against children irrespective of their gender which would cover all forms of sexual exploitation including harassment, stalking, child pornography, and abuse.

## **PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012**

Finally, a specific law was made for the protection of children from the offences of sexual assault, sexual harassment, and being involved in child pornography. This law was enacted on 19<sup>th</sup> June 2012 and was finally enforced from Children’s Day, 14<sup>th</sup> November 2012. The main objective of the law was for the protection of children from sexual offences, as the name suggests, and for special courts to be made for trials that were connected to the offences which came under the ambit of this law. This law complied with Article 15 of the Constitution of India which implies that the state should protect and care for the well-being of the children of this nation irrespective of their gender.

This law was made applicable to the whole of India for children under the age of 18 years against sexual offences since this act defines a “child” as any person under the physical age of 18 years, making this law a gender-neutral one. This law raised the age of consensual sex from 16 years as per the Indian Penal Code, 1860 to 18 years to avoid manipulation and exploitation of teenagers into giving consent to adults taking advantage of them. Special provisions were made for children to be protected against child trafficking and child pornography – from storage to distribution, this act covers a huge ambit of sexual offences against children.

First, it’s important to discuss some definitions given by the act <sup>6</sup>–

A “**child**” is defined as any person under the age of 18 years.

“**Aggravated**” means that the perpetrator was a person of trust like a close relative or a person of authority or management (like education or medical), or it was a gang abuse or the victim

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<sup>4</sup> Indian Penal Code, 1860, s 375

<sup>5</sup> Indian Penal Code, 1860, s 377

<sup>6</sup> Protection of Children from Sexual Offences Act, 2012

was physically or mentally disabled or the abuse caused a physical/mental disorder for the victim or if the victim was already pregnant or got pregnant after the assault or the victim got any sexually-transmitted disease due to the assault, or the victim was taken advantage of because of their vulnerability due to a natural calamity or the abuse becomes the cause of the victim's death.

“**Penetrative**” is defined as the penetration of the penis, insertion of the object in the body part of a child, applying the mouth of the child to the private parts, etc.

**Let's discuss some important sections of this act<sup>7</sup>:**

- Section 3 defines Penetrative Sexual Assault and Section 4 gives the punishment for the same which was given to me 10 years to life imprisonment plus a fine. Also, a new provision was introduced after the 2019 amendment to the act that if the victim is under 16 years, the punishment will be 20 years to life in prison plus a fine. The fine will cover the medical cost, rehabilitation, and therapy provided to the victim as a result of this assault.
- Section 5 defines Aggravated Penetrative Sexual Assault and Section 6 gives the punishment for the same. The punishment earlier entailed 20 years to life imprisonment plus a fine but afterward, the Protection of Children from Sexual Offences (Amendment) Act, 2019 increased the punishment to include the death penalty because of its grave nature.
- Section 7 deals with Sexual Assault which also includes touch with a sexual intention. The punishment given in Section 8 is 3 to 5 years in jail plus compensation in terms of a fine to the victim.
- Aggravated Sexual Assault is defined in Section 9 and it also includes drugging the victim to cause early sexual maturity and so that they can be taken advantage of. The punishment in Section 10 mandates the perpetrator to spend 5 to 7 years inside bars plus a fine.

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<sup>7</sup> Protection of Children from Sexual Offences Act, 2012

- Section 11 deals with sexual harassment which includes showing pornography to a child and stalking and the jail time can be up to 3 years in this case.
- The specific problem of child pornography is dealt with in Section 13 and the intent of using the pornographic material for personal use or distributive purposes does not matter and the punishment for involving children in pornography and the storage of the same is given in Section 15 of this act.

This act was made for the benefit of children and was made to protect them, hence special provisions have been made to ensure that children are given the most comfortable and special treatment so that they feel safe and secure and not vulnerable anymore. Special Courts were made for the trials regarding sexual offences against children and the burden of proof always lies on the accused because it is believed that the innocent mind of a child can lead to lying about their abuse. It is also the legal duty of a person who knows or might have an apprehension that a child near him is being a prey of sexual abuse and it is mandated for them to go and report it to an officer. Punishments are also imposed on people for falsely testifying or giving false information with malicious intent and also reporting false complaints. The provision of having a person of trust or a guardian or a parent with the child during their medical examination is necessary so that the child is comfortable with the proceedings. Compensations are also to be given to the child in form of fees for the therapy, rehabilitation, and medical expenses the child had to endure because of this trauma.

### **IMPORTANT JUDGMENTS REGARDING THE POCSO ACT, 2012**

In the recent controversial judgement given by the Bombay High Court, in the case of *Satish v the State of Maharashtra*,<sup>8</sup> it was ruled that there was no offence of sexual assault because of lack of “skin-to-skin” contact, hence decreasing the ambit and scope of sexual assault and providing grave injustice to this heinous crime of harassment. All types of sexual assault must be recognized and not just the traditional penis-in-vagina penetration. The court stated that the conditions given under Section 7 which defines sexual assault were not met because there was no removal of the victim’s clothing and hence ruled out any possibility of assault done by the

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<sup>8</sup> *Satish v State of Maharashtra* 2021

defendant. The judiciary hence failed to provide justice to the victim in this judgment because of the unambiguity in the law and hence it should be specified that “skin-to-skin” contact is not required to establish that the victim has been assaulted

Thereafter, the Supreme Court came out with the landmark judgment that “skin-to-skin” contact is not at all essential to meet the standard of sexual assault as defined in Section 7 and the main ingredient of sexual assault should be sexual intent.<sup>9</sup> The supreme court called the Bombay high court judgment “very disturbing” and hence the controversial judgment was squashed. This landmark judgment opened the ambit to a lot of harassment issues children face and will hence help each one of them get justice, doesn’t matter whether they were touched or not.

In a horrific recent judgment related to POCSO given by the Allahabad High Court, it was ruled that the perpetrator putting his member in the mouth of the victim would not come under “aggravated” penetrative sexual assault and was a less serious offense.<sup>10</sup> The judgment lowered the sentence given by the trial court and the defendant now just has to serve a minimum of 7 years instead of 10 because the high court charged him with section 4 of the POCSO Act. The victim is a 10-year-old boy who went through a major traumatic incident and for the court to rule it as a less serious crime and to give the offender a lesser sentence was a matter of grave injustice and it shows that there is still a long way to go to fight for the injustices and the trauma caused because of the severity of this crime.

## CONCLUSION

Sexual Offences against children is a heinous crime that causes a lot of pain and trauma inside the mind of the victim which has long-term consequences which they often carry with

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<sup>9</sup> Abanti Bose, 'Recent Judgements Of The Bombay High Court On Protection Of Children From Sexual Offences (POCSO) Act, 2012' (*Ipleaders*, 26 July 2021) <<https://blog.ipleaders.in/recent-judgements-bombay-high-court-protection-children-sexual-offences-pocso-act-2012/>> accessed 26 November 2021

<sup>10</sup> 'POCSO Shocker: On Allahabad High Court Verdict On Child Sexual Assault' (*The Hindu*, 25 November 2021) <<https://www.thehindu.com/opinion/editorial/pocso-shocker-the-hindu-editorial-on-allahabad-high-court-verdict-on-child-sexual-assault/article37671776.ece>> accessed 26 November 2021

themselves to adulthood. Even though we have a law in place for the protection of children against these sexual crimes, there is a long way to come out of the taboo of survivors coming out with their stories and getting justice and for the judiciary to also provide justice to people and not get lost in the ambiguity of the law and to make sure that all the children who become the prey of this crime are given proper justice. It's still a long way to go but hopefully, the judiciary keeps moving in a forward direction with the prevalence of child sexual assault.