

**PERCEPTION REPORT  
ON SEXUAL  
OFFENCES AGAINST  
CHILDREN**

**For**

**HAQ: Centre for Child Rights**

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Mrs. Bharti Ali and Mr. Kumar Shailabh.
- **Research, Data Collection and Documentation:**
  - **Data Collection, Compilation, Analysis and Report writing:**  
Ms. Aastha Dayal
  - **Data Collection, Legal Research and Report writing:**  
Ms. Shivani Raheja
- **Data Collection:**  
Mr. Kritin Deb  
Ms. Meghna Singhal  
Ms. Neha Sharma  
Mr. Parikshit Khari  
Ms. Radhika Kheria  
Mr. Riyaz Ahmed

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## INTRODUCTION

Child sexual abuse has been a hidden problem in India. It has been ignored not only by the public but also by the criminal justice system. Till recent times, child sexual abuse was not acknowledged as a criminal offence. The only offence recognized, by law, was rape. This absence of legislation created a huge lacunae in the system creating a range of offences, like pornography, child sexual assault (not amounting to rape), harassment and exploitation, that were never legally sanctioned.

In India, sex is considered a taboo. Any sort of sexual activity is kept a hush-hush affair. It is worse when it comes to someone being a victim of unwanted sexual harassment. People consider the victim to be dirty and a black spot on their society. Many NGOs and the Ministry of Women and Child Development have been working really hard to tear the ‘conspiracy of silence’, however, the cloak of taboo blanketed with shields of illiteracy is tough to penetrate.

As per the last census of 2011, India is the second most populated country in the world<sup>1</sup> and 41% of its population are below the age of 18<sup>2</sup>. Different statistics show that a major number of these children have been a victim to sexual abuse but either didn’t understand that they had been victims, were too scared to report it or were threatened into not reporting. India signed the United Nations Convention on the Rights of the Child and promised to protect its children against any coercion to participate in sexual activity. Despite this, the number of cases occurring are on the rise, yet very few seek legal help.

Ironically, majority of the cases happen in the child’s immediate circle and a gigantic number of these go unnoticed due to shame, depravity, family honour, economic factors, fear of the police, lag in litigation system, etc. The most number of cases that are not reported are incest cases. Sexual abuse has long term effects on the child like psychological stress, emotional problems, behavioural issues, trauma and abnormal sexual behaviour.

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<sup>1</sup> Censusindia.gov.in. [online] Available at: [http://censusindia.gov.in/2011-prov-results/data\\_files/india/Final\\_PPT\\_2011\\_chapter3.pdf](http://censusindia.gov.in/2011-prov-results/data_files/india/Final_PPT_2011_chapter3.pdf)

<sup>2</sup> Censusindia.gov.in. [online] Available at: [http://censusindia.gov.in/Census\\_And\\_You/age\\_structure\\_and\\_marital\\_status.aspx](http://censusindia.gov.in/Census_And_You/age_structure_and_marital_status.aspx)

## HISTORY AND LAW IN INDIA

“A child is not a mere ‘statistic’, and the court a mere ‘instrument’ for disposal of cases – other key factors are pivotal to assess a child’s journey towards justice.”<sup>3</sup>

People in India focus on chastity, specially of women, however the laws in India are ambiguous and fail to define sexual abuse and each statute has a different definition as to who a child is. Sexual harassment, in India, occurs in many forms, however, people believe it is a western problem, thereby surrounding child sexual abuse with disbelief and denial. In spite of it being a rampant social problem, people in India are taught to ‘deal with it’ instead of reporting sexual abuse. The lack of legal framework further encourages sexual predators.

The Indian Penal Code, being archaic, fails to take into account child sexual abuse. In an attempt to protect children, the law extended the general provisions that shield women, to children. However these provisions only brought female child sexual abuse under the ambit of punishment, that too, limited to penis-vaginal intercourse. They completely disregarded the male child and other forms of sexual abuse like kissing, oral or anal intercourse, touching a child with sexual intentions, etc.

The Protection of Children from Sexual Offences Act (POCSO Act) was legislated as late as 2012 as a result of hard work done by the Ministry of Women and Child Development and a number of NGOs. The Ministry also looked after the framing of the Model Guidelines under Section 39 of the POCSO Act 2012.

Some of the landmark pre-POCSO cases which left the country wide-eyed in shock are discussed below :

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<sup>3</sup> Ali, B., Adenwalla, M. and Punekar, S.. Implementation of the POCSO Act: Goals, Gaps and Challenges - Study of cases in Special Courts in Delhi & Mumbai (2012 - 2015). p.vii. (2017). HAQ: Centre for Child Rights & Forum Against Sexual Exploitation of Children (FACSE) Available at [online]: <http://haqcrc.org/wp-content/uploads/2018/02/implementation-of-the-pocso-act-delhi-mumbai-study-final.pdf>

- The Mathura rape case (1972)<sup>4</sup> : A case of custodial rape in Mathura where a minor tribal girl alleged that two police officers had raped her in the building of the Desai Ganj Police Station in Maharashtra. The acquittal of the accused brought about unrest in the public who vehemently protested. These protests brought about changes in the law via The Criminal Law (Second Amendment) Act 1983.
- State of Punjab Vs. Gurmit Singh (1996)<sup>5</sup> : The Supreme Court had criticized the acquittal of the accused who had allegedly gang-raped a 16 year old girl. The trial court had judged the character of the girl and had disregarded her statement by implying that she had lied about being raped to cover up a night out of home. The Supreme Court had said that the disregard of the victim’s statement by the trial court was not only unreasonable but perverse”. It held that: *“The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.”*
- Sakshi Vs. Union of India (2004)<sup>6</sup> : The NGO Sakshi filed a writ to plead the Supreme Court to broaden the definition of rape, in public interest. The Supreme Court rejected the plea and dismissed the PIL but issued certain guidelines for trial in rape cases concerning children and cases of child sexual abuse. These are known as the Sakshi guidelines:
  - To have a screen in the courtrooms to prevent victim and witnesses from seeing the accused. This prevents further trauma to the victim.
  - A procedure was established to make sure that the questions asked to the victim are in a simple language, not embarrassing and do not question the character of the victim.

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<sup>4</sup> Tuka Ram And Anr vs State Of Maharashtra [1979 AIR 185]. Available at [online]: <https://www.sci.gov.in/jonew/judis/4992.pdf>

<sup>5</sup> State of Punjab Vs. Gurmit Singh [1996 AIR 1393]. Available at [online]: <https://www.sci.gov.in/jonew/judis/16186.pdf>

<sup>6</sup> Sakshi Vs. Union of India [AIR 2004 SC 3566]. Available at [online]: <https://www.sci.gov.in/jonew/judis/21003.pdf>

- The victim (child) should be allowed to have as many breaks they desire during the testimony.

The first legislation for the protection of children against abuse came in the form of the Goa Children's Act of 2003. It adhered to the United Nations Conventions on the Rights of the Child. The Act criminalized child abuse and meted out punishments for sexual assault and incest.

Due to gradual but steady rise in cases of child sexual abuse, the Protection of Children from Sexual Offences Act (POCSO Act) was drafted and notified. The act does not rely on the term 'rape', as commonly used, and broadens the term 'penetrative sexual assault'. POCSO criminalizes a range of behaviours, ranging from sexual harassment, sexual assault, penetrative sexual assault, aggravated penetrative sexual assault to use of child for pornographic purposes, etc. The Act is gender neutral in nature and is of a progressive nature. All acts under POCSO are considered to be criminal offences if the victim is under 18 years of age and the punishments provided are stringent. The Act provides for immense psycho-social support for the child throughout the legal process and beyond.

The POCSO act has undoubtedly made a noteworthy contribution to tackling the problem of Child Sexual abuse in India. The number of cases reported is increasing at a rapid pace. However, the accessibility of organs of the State to the general public is still a concern. The police needs to be given sensitivity training. The judiciary needs to give the judgements within the stipulated time limit to prevent unnecessary trauma to the victim and the family. There are certain lacunas in the Act too:

- It doesn't provide for prevention of child sexual abuse.
- It also is silent on the issue of marital rape. No relief is provided to a wife above 15 years of age even though she is a child under the Act.
- No period of limitation is mentioned in the Act.

## INTERNATIONAL PERSPECTIVE

As per Article 1 of the United Nations Convention on the Rights of the Child<sup>7</sup>, “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”

In *Prosecutor v. Akayesu* (1998)<sup>8</sup>, the International Criminal Tribunal for Rwanda (ICTR) defined sexual violence (abuse) as “... any act of a sexual nature which is committed on a person under circumstances which are coercive. Sexual violence is not limited to physical invasion of the human body and may include acts which do not involve penetration or even physical contact.”

The 1999 WHO Consultation on Child Abuse Prevention<sup>9</sup> stated that: “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”

Sexual abuse can be classified into contact abuse and non-contact abuse:

- Contact abuse includes activities where the abuser physically touches the child. This includes but is not limited to kissing, touching/ fondling a clothed/unclothed child in his or her sexual areas, forcing a child to touch someone’s sexual areas, forced oral sex i.e. the child’s mouth is brought in

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<sup>7</sup> UN General Assembly. Convention on the Rights of the Child. p.2. 1989. United Nations, Treaty Series, vol. 1577, p. 3. Available at [online]: <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

<sup>8</sup> ICTR, *The Prosecutor v. Jean-Paul Akayesu*, ICTR-96-4-T. Available at [online]: <http://unictr.unmict.org/sites/unictr.org/files/case-documents/ict96-4/trial-judgements/en/980902.pdf>

<sup>9</sup> World Health Organisation. Report of the Consultation on Child Abuse Prevention, 29-31 March 1999, WHO, Geneva. (pg.15-6). WHO/HSC/PVI/99.1 Available at [online]: <http://apps.who.int/iris/handle/10665/65900>



contact with a penis, vagina or anus , making a child take their clothes off, forcing a child to masturbate and/or forceful penetration of any object, fingers or penis(rape) .

- Non-contact abuse includes showing pornography, flashing sexual parts of the body, cat-calling, stalking or showing lewd gestures to a child.

Sexual abuse often happens online. In cyber sexual abuse, a child may be coerced to view and/or send sexually explicit images, videos and/or audios. Children may also be lured into participating in sexual conversations via text or camera.

Sexual violence is a global problem. The act of encroaching on another's private space is uncivilised, unethical and immoral. Sexual violence was brought to light, in India, by two judgements of the Supreme court : Vishakha vs State of Rajasthan<sup>10</sup> and A.K. Chopra vs. Apparel Export Promotion Council<sup>11</sup>. Earlier, courts treated sexual violence/ harassment as a criminal violation like assault or a civil violation like violation of privacy but later they started granting relief to the victim.

In 2014, the Committee on the Rights of the Child<sup>12</sup> released a committee report which reiterated concerns of the spreading violence, abuse (including sexual abuse) and neglect of children in India. The report specifically pointed at growing concerns of maltreatment of children in family, alternate care institutions and schools. The report highlighted:

- Apprehensions over the Criminal Law (Amendment) Act, 2013 which excluded sexual abuse of married girls over 15 years of age from being a criminal offence. This was a direct violation of the POCSO act.
- The perturbing fact that 1 in 3 of victims of rape were children and 50% of them are abused by persons in their family or other known persons.
- That maximum cases of child sexual abuse are not reported out of fear of social stigma. Also, the State doesn't keep a check on the rate at which cases of abuse against children are prosecuted.

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<sup>10</sup> Vishaka vs State of Rajasthan [AIR 1997 Supreme Court 3011]. Available at [online]: <https://www.sci.gov.in/jonew/judis/13856.pdf>

<sup>11</sup> A.K. Chopra vs. Apparel Export Promotion Council [66 (1997) DLT 327].

<sup>12</sup> UN Committee on the Rights of the Child (CRC), Concluding observations on the consolidated third and fourth periodic reports of India, 13 June 2014, CRC/C/IND/CO/3-4, available at: <https://www.refworld.org/docid/541bee3e4.html>

- That India lacks child-sensitive treatments and professionals trained to help children who are victims of such abuse.

In light of above points, the committee urged India to:

- Criminalize all forms of sexual abuse against girls under the age of 18 (including marital rape).
- Promote awareness and conduct education programmes and campaigns aimed at preventing and combatting child abuse (inclusive of all physical, sexual and psychological abuse) along with gender discrimination.
- Create a national database which contains all cases of violence against children, especially sexual abuse and corporal punishment and determine the reason, extent and nature of such violence.
- Establish a procedure to ensure that all cases of child sexual abuse are mandatorily reported. The Report also suggested that the State set up requisite measures to ensure formal investigation and punishment to abusers.
- Conduct programmes to raise awareness regarding child sexual abuse and to make sure that the reporting process is child-friendly and easily accessible. It was also suggested that the State try and remove stigma around child sexual abuse.

## **RESEARCH METHODOLOGY**

We conducted semi-structured interviews and aimed at 80 respondents as our sample size. Conducting the research was a very difficult because sexual abuse in India is a taboo topic about which people would not easily talk about. Discerning between whether to ask close ended questions, so as to make the analysis and data visualization easier, or open ended questions, so as to give respondents the freedom to answer the questions as they please, was a tough decision to take. Asking close ended questions had a drawback as not only did it restrict the respondents from giving the answers they want to but also asking about sexual abuse, especially child sexual abuse, is very tough and framing questions, without leading the respondents and letting the researcher's bias not show was even more tough. Hence, we decided to ask the respondents open-ended questions to collect their true perception. This method avoided the researcher's bias from creeping in. The sample tried to include responses from people of all age groups, socio-economic backgrounds and educational qualifications. The authors relied on some secondary data to compile the report.

## PERCEPTION OF THE PEOPLE

The research that was conducted tried to garner the perception that people have about sexual offences that are committed against children. We asked them a whole range of questions, to understand what they think constitutes sexual offences against children, whether boys are also a victim of it, what punishment should be given to the offenders were some of the many questions that were asked.

When asked what constitutes as sexual abuse and harassment according to the respondents, we got a range of replies. Most of the respondents considered staring, whistling, winking, passing lewd comments, stalking, touching, molestation and rape as sexual abuse and harassment, with some exceptions who only believed rape and molestation being a sexual offence and even fewer saying rape as the only form of sexual offence. “Talking foul, physically engage hona, pornography dikhana, nude photos lena bacho ki, unhe khud ko touch karne ke liye kehna, marna pitna bhi ata hai”, “Physically, mentally, emotionally pareshan karna; extent ka farak aajata hai; unke genitals ke sath kuch kuch galat karna; bacho ko baat baat par discourage karna; kuch galat bolna”, “Eve teasing, molestation, rape. Eve teasing has happened when I was kid, a man kept on following us, we changed our route and hid in a house where an uncle helped us out.” “Rape, never faced any serious sexual abuse, there are times when men pass comments or stare, hota rehta hai aisa” are some of the replies we got when we started the conversation. Some of our respondents, 14%, also talked about consent and its importance in considering an action sexual harassment or abuse. “It is whatever makes the other person uncomfortable and despite knowing, seeing, showing this, a person does not stop. For me it is staring, inappropriate touches, rape.”, “It is anything that is uncalled for, that both the sides haven't agreed to and it makes one side uncomfortable.”

Moreover, 86% of the respondents, when asked whether boys are also victims of sexual offences, replied with a yes but the majority of these respondents said that they haven't ever heard it happening to someone they knew. Their only source of information about such incidents happening to boys was the media and the cases that were talked about through it. We also got some responses where even though the respondents said that sexual crimes against boys is pertinent, they gave responses like “Yes, paedophiles are not restricted to girl gender. There are

people who are naturally gay, so they make the boy child the victim.”, “Happens but percentage is less with boys”, “Definitely happens with boys but it’s the elder male doing it to a boy child, never a woman”, “yes, they don't report due to social stigma as if we tell someone they will make fun of it and it's a normal saying that you are a boy take the benefit of the situation”, “Yes but not of the same things as girls”. Even though they are admitting it that boys too are victims, there is an underlying assumption that it’s always the men doing these to the boys too, where lesser grave things happen with them and they can handle it. 14% of the respondents completely said No to this question, with us getting responses like “ladko se kaun karega”, “Aisa nahi hota hoga” from them.

We asked the respondents whether they can classify the sexual offences according to serious and less serious crimes, 79% respondents classified sexual offences with 45% out of these 79% respondents classifying eve teasing (Whistling, winking, staring, stalking, passing lewd comments) as less serious, 28% classifying touching, groping, molestation as less serious with 15% respondents considering groping, fiddling and molestation and 6% respondents considering forced sexual contact like kissing and touching body parts apart from private/genital parts as less serious. The total 79% respondents who did the classification, considered Rape as a serious sexual offence. This also shows a normalization that has developed in people, even if it’s about children, where until it’s rape we don’t consider it a problem, not realizing that every small offence which is ignored can lead to a more serious offence being committed in the future. Out of the total respondents, 21% of the respondents did not classify sexual offences between serious and less serious. From them we got responses like “We can't different between serious and less serious, they are all serious as today these people are doing something which is considered small, tomorrow they will do something more heinous.”, “All of these actions are equally serious as one leads to another.”

When asked about the kind of punishment that should be given for sexual offences, 43% of the respondents replied that death penalty should be given to those who commit rape against children, with 45% asking for life imprisonment for people who molest, grope or eve tease a child. 12% of the respondents also talked about reformation, where it is important to make the perpetrator realize the mistake, so that they don’t commit the offence again. “Restorative of dignity to the victim and reformatory towards the accused.”, “less serious- 2-3 prison,

should be sent to a facility where they are taught that it is wrong. Serious- Life imprisonment, death penalty is too harsh, kisiko maarne se accha hai usse sikhao, jadh se ukhadna is not an answer.” We also asked them if two individuals, who are underage, have consensual sex so should that be punishable under the law and the majority of respondents replied that it shouldn't be punishable but a good number felt that those engaging in it should be given counselling so as to make sure it was consensual, they know what it means and they have a better idea for the future, which brought us to whether the age of consent be increased, decreased or stay the same. 23% respondents thought that it should be decreased with responses being divided between 15 and 16 years as the age of consent, 7% respondents feeling it should be increased to atleast 20 and the remaining 70% majority believing that the present age of consent, 18, is the right age.

## CONCLUSION

The report brings to focus some very major points. When we talked about child sexual abuse, all the respondents agreed that children too are abused in today's world but when we asked them, whether they had ever faced such abuse themselves, when they were younger or if they knew of someone who had faced it, most of them gave embarrassed smiles, looked away, completely denied ever knowing anyone facing it or tried to move ahead or away from the conversation. Some of them also said that they take good care of their children, hence something of this sort happening to them was not a possibility. These statements give us an indication that even though people are accepting that children are victims of sexual abuse, it is taboo to talk about it with other people or even with children. Some children that we talked to as part of this research, had never had the conversation with their parents where they told the child what is right and wrong, the concept of safe touch has not ever been discussed with the child.

Moreover, most of the respondents referred to the Kathua case, where an 8-year-old was abducted, raped and then murdered, as their source of information about such incidents happening with children. The few people who knew about such incidents happening, did not have any idea about the laws that protect children against such crimes, the actions to be taken if something of this sort happens to a child and what all constitutes as wrong and illegal according to the laws. The respondents mostly said that the child should report about sexual crimes to the parents, instead of going to the police because the parents can think of better ways to resolve the issue at hand, which will not cause embarrassment to the child and family. This finding works in conflict with the answer that the majority gave when asked who do they think commit sexual crimes against children, known or unknown people. Majority felt that the abusers would be known persons who have easy access to the child and could also be from the family/close to the family. Instead of reporting them, people would prefer having an outside or third party compromise.

Lastly, this research brought out a lot of conflicts people face when we talk about child sexual abuse. When asked about sexual crimes happening against children, the respondents were completely clear that it is wrong, with none of the respondents saying otherwise. But when further prodded as to what all they think is wrong and right in a sexual context towards children, the responses were

divided and ranging from some saying they can't differentiate, to some thinking physical contact is severe while other forms of contact are not so serious. We could sense that confusion arose when the respondents were asked such questions, which could be due to them feeling embarrassed talking about it, not having a genuine idea as to what all is actually considered wrong and right according to the law and trying to be politically correct. Another major point that could be noticed through this research was that people knew sexual crimes are wrong but they did not know how to handle the situation if something does happen. Should they approach the police? Or should the parents be notified so they can take an action that they think is just or go for an outside settlement. The most major point that we came across through this research is how sexual crimes is a very big taboo. People are slowly accepting that it exists, but are still more than happy to deny that they have ever known or witnessed it themselves. The society has moved forward in saying that it is wrong and things need to change, but not so much in being able to say that it happened to me or someone I know.



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