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Pedophilia: Examining the Intersection of Mental Health and Criminal Law

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ABSTRACT

Pedophilia is a highly controversial and sensitive issue that has been the subject of intense debate in recent years. It is defined as a persistent sexual attraction to pre-pubescent children, and it is widely considered to be a serious problem that poses a significant risk to children's safety and well-being. However, there is disagreement about whether pedophilia should be classified as a crime or a disorder, and this has important implications for how society responds to this issue. Those who argue that pedophilia is a crime point to the fact that sexual contact with a child is illegal in most countries and can result in serious legal consequences. They argue that pedophilia is a moral and ethical problem that should be dealt with through the criminal justice system. However, this approach has been criticized for failing to address the underlying issues that contribute to pedophilic behaviour and for stigmatizing individuals who may need help and support.

On the other hand, those who argue that pedophilia is a disorder point to the growing body of research that suggests that pedophilia is a complex and multifaceted problem that is rooted in the brain's neurobiology. They argue that pedophilia is a medical and psychological problem that requires appropriate diagnosis and treatment, rather than punishment. This approach emphasizes the importance of early intervention and preventative measures to reduce the risk of harm to children and to support individuals who may be struggling with pedophilic tendencies. Pedophilia is a complex phenomenon that requires a comprehensive and compassionate approach. While pedophilia is classified as a disorder, sexual abuse of children is a criminal offense. It is important to distinguish between the two and to ensure that individuals with pedophilic tendencies receive appropriate medical and psychological treatment. The research proposes that a more comprehensive and compassionate approach is required to address the needs of individuals with pedophilic tendencies. This includes a focus on prevention, early intervention, and treatment, with a greater emphasis on community-based interventions.

I. INTRODUCTION

Pedophilia is a human trait known as characterized by the experience of an emotion of attraction

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to children as being so powerful that they have control over one's own life, especially in a physical sense. For as long as this attraction is significant to an adult, they are all pedophiles. The DSM-5 refers to pedophilia as pedophilic disorder and describes it as a paraphilia characterized by intense and recurrent sexual urges and fantasies involving prepubescent children that have either been acted upon or caused the person who experiences the urges distress or interpersonal difficulty. Paraphilia is a condition in which having sex with young children is the preferred way to get sexually excited on a regular basis. Typically, the youngsters are much younger than the pedophile (or pedophiliac). Even with extremely young toddlers, sexual behaviour sometimes includes intercourse in addition to looking and touching.²

Although the terms “pedophilia” and “sex offending against children” are frequently used interchangeably in public, political, and media contexts, they do not necessarily mean the same thing. Although this behaviour would not fit any of the previously outlined definitions, commentators frequently refer to people who have committed sexual offences against postpubertal adolescents as pedophiles (for example, a sexually maturing 15-year-old who is under the legally defined age of consent in a particular state). Some pedophiles are not known to have ever committed sexual offences against children, and many sex offenders against children conduct their crimes for motives other than pedophilia.³

(A) Statement of Problem

Pedophilia is a highly sensitive and complex topic. If left unaddressed, individuals with pedophilia may be more likely to act on their sexual interests and engage in child sexual abuse. This can have devastating and lifelong impacts on the victims. Individuals with pedophilia often face significant stigmatization and discrimination, which can lead to social isolation, mental health issues, and difficulties accessing treatment and support. Failure to address pedophilia can perpetuate these negative attitudes and contribute to the marginalization of individuals with pedophilia.

Without appropriate treatment and support, individuals with pedophilic disorder may be more likely to engage in illegal behaviour, such as possession or distribution of child pornography. This can lead to criminalization and punishment, without addressing the underlying mental health issues. Thus, not addressing pedophilia can have severe consequences for individuals with the disorder, their families, and society as a whole. Addressing the issue through appropriate treatment, support, and policies is crucial for protecting children and promoting the

² The APA Dictionary of Psychology 681 (American Psychological Association, 2007)

³ Michael C. Seto, *Pedophilia and Sexual Offending Against Children*, (Chapter 3) (American Psychological Association, 1st Edition, 2008)

well-being of individuals with pedophilic disorder.

(B) Hypothesis

Pedophilia is a psychiatric disorder characterized by persistent sexual attraction towards prepubescent children. It is considered a disorder because it causes significant distress to the individual experiencing it, and can also result in harm to children if acted upon.

It is important to note that the act of engaging in sexual behavior with a child is considered a crime and is rightly punished by law. So, we need to determine the nature of pedophilia and the presumptions dealing with the research are:

- There is a need for detailed analysis of the condition of pedophiles and provisions regarding the victims of the act of pedophiles.
- That the Bharatiya Nyaya Sanhita, 2023 and POCSO Act 2012 are insufficient to deal with the issue.

(C) Research Objectives

- To determine the nature of the act committed by pedophiles.
- To study about the categorization of pedophiles as offending and non-offending
- To study about the laws dealing with the issue.
- To determine the importance of introduction of the term.
- To provide suggestions to deal with the issue.

II. THEORIES DEALING WITH PEDOPHILIA

Criminology reviews are necessary to research crime, particularly pedophilia, which is defined as child sexual abuse of children under the age of 13, including nepiophilia or infantophilia, which is the sexual attraction to small children under the age of three. Pedophilia is a psychiatric disorder in which adults have a sexual attraction to prepubescent children. In order to determine the origins of crime or criminal acts, particularly pedophilia crimes, several criminological theories can be applied.

The ideas of psychogenesis and differential association could be applied in this situation. A psychological or psychiatric theory called psychogenesis focuses on the reasons of human misbehaviour, namely a person's personality, intelligence, fantasy, emotional conflict, and motivation. While Edwin Sutherland's theory of differential association contends that people pick up the attitudes, techniques, and motivations for criminal behaviour through their

interactions with others. Thus, adult behaviour acquired through interaction rather than heritable or genetic factors is what causes pedophilia to occur. As a result, society as a whole especially criminology experts and those who uphold the law must pay thoughtful consideration to the crime.

In broad terms, there are four categories into which theories related to pedophilia can be divided:

- A. **Emotional congruence**-Why an adult might be sexually aroused by a child?
- B. **Sexual arousal** -Why the adult has an urge to relate to a child sexually or get aroused by a child?
- C. **Blockage** -Why are there no suitable alternatives to sexual and emotional fulfillment?
- D. **Disinhibition**- Why is the adult not discouraged from such an interest by conventional prohibitions?

Emotional congruence

According to some of the most popular pedophilia theories, pedophiles seek children as their sexual partners because they hold emotionally powerful meaning for them. It is referred to as “emotional congruence” because it suggests a “fit” between the emotional needs of adults and characteristics of children, a fit that the theories are attempting to explain. According to one of these theories, pedophiles are emotionally immature and have “arrested psychosexual development.”

They choose to interact with kids because they can relate to the pedophile's mental state and can react to his or her childish obsessions. A similar theory is that pedophiles are not only immature, but also typically have low self-esteem and are ineffective in their social interactions. It makes sense to relate to kids because it provides them a sense of power, omnipotence, respect, and control. According to other theories, interacting with kids enables pedophiles to make efforts to overcome the effects of certain childhood trauma. Through “identification with the aggressor,” they overcome their own helplessness by taking on the role of the powerful victimizer. By victimizing a child, they are able to overcome the trauma by switching roles in the victimization they experienced. The idea of “narcissism” is used to explain pedophilia in yet another theory that falls under the category of emotional congruence. According to this theory, a pedophile continues to have emotional ties to himself as a child due to emotional neglect or even overprotection.

Finally, there is a startling similarity between contemporary feminist views on pedophilia. These theories contend that pedophilia develops from specific themes in typical male

socialisation that tend to make kids “appropriate” objects of sexual desire. These themes include the importance that male socialisation places on being the sexual relationship's leader and initiator, as well as the importance that partners who are young and submissive receive. Some of these values naturally lead to the practice of pedophilia.

Sexual arousal

Another set of pedophilia theories simply explains how someone begins to find children sexually enticing. This conditioning may take place as a result of a process that has been proposed, in which early arousal experiences are combined into a fantasy that is repeatedly performed and amplified by masturbatory repetitions. Such fantasies could be sparked by unpleasant childhood experiences or possibly even by pleasing ones. Biological aspects like hormone levels or chromosomal make-up have been the focus of several interpretations of the origin of sexual arousal to children. A final explanation concerning sexual arousal is based on the idea that some people may catch up on becoming sexually aroused to children through exposure to child pornography or other media that portrays children in an erotic way.

Blockage

Some of the more appreciated pedophilia theories centre on the idea that people turn to children because adult heterosexual relationships are unable to satisfy their emotional and sexual requirements. Those who lean more towards psychoanalysis believe that this blockage is caused by oedipal dynamics or “castration anxiety.” Others claim that the obstacle is caused by social awkwardness, timidity, moralism or a lack of confidence. In addition to these, what might be referred to as “developmental,” barriers, there are also less persistent or “situational” obstructions that have been shown to contribute to pedophilia. For instance, in the family dynamics model of incest, the breakdown of the marital connection is typically cited as the driving force behind the father's desire for emotional and sexual fulfilment from the daughter.

Numerous studies have shown that pedophiles may encounter many difficulties with adult females. A prevalent result in a study of 200 sex offenders was “fear of heterosexual contact.” In a study there was a comparison made between a group of rapists and pedophiles wherein the majority of pedophiles were anxious, inadequate people who felt uneasy around other people and anticipated rejection when making adult heterosexual advances on them. The other part of the family dynamics of this theme is related to the adult family life of the pedophile: that adult heterosexual relationships can lead to disappointment or trauma for child molesters and incest offenders, which can then lead to pedophilic behaviour. The idea that oppressive standards or attitudes towards behaviours like masturbation and extramarital sex may be connected to

pedophilia is a final blockage-type theory. It appears that certain pedophiles might have repressive sexual attitudes that might make them more likely to engage in sexual activity with children.

In conclusion, one blockage-type theory—that pedophiles have issues with adult females in particular and perhaps even adults in general—does get support. As previously said, there is some evidence that they have extraordinary sexual anxiety and that they could experience love connection frustration. However, a sizable portion of the populace struggles with romantic or marital issues.

Disinhibition

A last group of pedophilia theories simply explains why the usual inhibitions against having sex with children are disregarded or nonexistent. These ideas suggest that pedophiles are made more open to engaging in sexual activity with minors due to some mechanism, process, or circumstance. This lack of inhibition may occasionally be attributed to a personality disorder. Some descriptions of pedophiles include psychopathic tendencies, senility, brain damage, retardation, or psychosis. People with alcoholism issues are frequently referred to as pedophiles. Disinhibition can occasionally be attributed to environmental influences.

Many stressors are mentioned as lowering the barriers to allow sexual abuse, including unemployment, loss of love, the death of a relative, and other stressful situations. Theories of incestuous fathers frequently mention marital issues and work stress as potential disinhibitors as well as blockers.

The idea that some males, because they were away from the family while the child was very small, do not develop the customary inhibitions against sex with a close family member is known as a disinhibition-type theory and only applies to incestuous fathers. Being a stepfather as opposed to a biological father lessens the taboo against incest, which is a related concept. Lack of impulse control is one disinhibition-type notion that receives some support wherein a person is unable to defer gratification and tolerate frustration until a socially acceptable situation occurs. Therefore, a minimum number of pedophiles suffer from lack of impulse control which eradicates it as a characteristic feature of pedophiles.

Some pedophile groups involve alcohol in the commission of crimes. Alcohol may directly disinhibit the body or it may have some other social significance that makes it acceptable to flout social restrictions on child molesting. In the area of alcohol abuse, this issue is still not entirely clear.

III. LEGISLATIONS DEALING WITH PEDOPHILIA

When it comes to pedophilia, penology plays a crucial role in addressing the issue. Criminal justice systems around the world have laws that specifically address the sexual abuse of children, and pedophilia is generally considered a very serious offense that can result in lengthy prison sentences and other penalties. The legal framework for dealing with pedophiles varies depending on the country and jurisdiction. In general, most countries consider sexual offences against children to be among the most serious crimes, and have laws in place to punish those who engage in such behaviour. Legal frameworks for dealing with pedophiles may focus more on prevention and treatment, rather than punishment. For example, some countries have established mandatory counselling and treatment programs for those who have been convicted of sexual offences against minors, with the aim of reducing the risk of recidivism and promoting rehabilitation.

The *Sakshi v. Union of India*⁴ case serves as a dreadful example of pedophilic atrocities in India. The High Court ruled the accused guilty of lesser counts of upsetting the modesty of women and causing harm, highlighting the weaknesses in the Indian legal system that failed to classify the horrible act of lust as rape.

More than 53% of children in India were victims of sexual assault, according to a government-commissioned survey, even though the bulk of these incidents went unreported.

The age group of 5 to 12 year-olds reported higher levels of abuse, according to a report sponsored by the ministry of women and child development with a significant percentage of these instances reported in Andhra Pradesh, Bihar, Assam, and Delhi.

In an assassination at Nithari, a village outside the NCR where 38 children went missing and were allegedly raped before being killed. In his statement, Surender Koli, the prime suspect in the killings, explained how he had seduced the females before strangling them, having intercourse with their dead bodies, and eventually devouring parts of their bodies.

Being the rarest of the rare cases, the defendants received a death sentence in 2007 from a bench of Justices Markanday Katju and Gyan Sudha Mishra.⁵

It is crucial to anticipate that such child exploitation will occur as a result of authority being used over them. Another case in point would be Allan John Waters, who was found guilty in 2008 of sexually abusing young boys who were residents of the shelters he and his colleague

⁴. AIR 2004 SC 3566

⁵. *Surendra Koli vs State of U.P. Ors.*, (2010) SLP(Crl.) No. 608.

Duncan Alexander Grantthe operated.

When Childline India Foundation, a non-profit organisation, filed a petition in the High Court on the same in the year 2000, rumours about sexual and physical abuse at Anchorage Shelter in Mumbai began to spread among the city's social workers community.⁶

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

The Protection of Children from Sexual Offences (POCSO) Act, 2012, is a novel legislation that the Government of India has introduced to address incidences of child sexual abuse. The Act and the Rules created pursuant to it entered into force on November 14, 2012. Incorporating child-friendly mechanisms for reporting, recording evidence, investigating, and speedy trial of offences through designated Special Courts, the POCSO Act, 2012 is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment, and pornography while safeguarding the interests of the child at every stage of the judicial process.

The aforementioned Act designates practically all known types of sexual abuse against children as criminal crimes and appoints the police, judicial system, and child protection apparatus as partners in the effort to bring a child who has been sexually abused to justice. Additionally, by establishing a child-friendly legal system, the aforementioned Act encourages children who have experienced sexual abuse to come forward, seek compensation for their suffering, and get support for getting over their trauma. The aforementioned Act will eventually offer a way to not only report and punish those who abuse and prey on the innocence of children, but it will also serve as an effective deterrent in reducing the frequency of these offences.

Key features of the Act

- i. The POCSO Act is capable of encompassing both genders. The POCSO Act permits both boys and girls to emerge as victims or survivors of rape and/or sexual assault.
- ii. Sexual offences are broadly defined and do not just include rape, which is defined as the insertion of the penis into the vagina. minors are protected by the law from crimes including sexual assault, sexual harassment, and pornography, such as showing minors pornographic material or penetrating them with an object with a sexual motive.
- iii. Effective access to justice is guaranteed by the POCSO Act. The Act calls for the creation of special reporting processes, unique methods for recording the minor victim's statement, and special courts for the trial of such offences.

⁶. *Childline India Foundation v. Allan John Waters*, (2011) 6 SCC 261.

- iv. The Act also penalises the abetment or attempt of an offence.

(B) Bharatiya Nyaya Sanhita(BNS), 2023

The primary criminal law in India is known as the Bharatiya Nyaya Sanhita (BNS)/Indian Penal Code, 1860. It consists of clauses that cover a range of offences, particularly those that include child sexual abuse and offences against minors.

According to the BNS, having intercourse with a minor, including engaging in pedophilia (sexual actions involving children or acts of sexual desire), is illegal. Sections of the BNS that specifically address crimes against children include:

- i. Section 98 and Section 99 of the act penalises selling or buying minor girls for prostitution and illicit intercourse for any unlawful and immoral purpose, with imprisonment under, which may extend up to ten years and a fine.
- ii. The crime of rape, which includes nonconsensual sexual contact with a child, is defined under Section 63.
- iii. The offence of assaulting or using unlawful force against a woman with the aim to offend her modesty is covered in Section 74, which also applies to victims who are children.
- iv. Section 377 of the IPC, 1860 declares unnatural offences—including non-consensual acts of carnal contact that go beyond the laws of nature—criminal. The Supreme Court of India decriminalised this clause in 2018 for gay acts that took place consensually between adults; nevertheless, non-consensual acts, such as those that included children, are still punished.

IV. PEDOPHILIA - A CRIME OR DISORDER

(A) Pedophilia and exception under Section 22 BNS

As per the studies the people acting upon their actions are aware of the consequences of the act therefore at this point of time their disorder changes into a crime.

Considering the case studies and the testimonies of pedophiles it is observed that pedophilia fails to fall under the scope of general exceptions under Section 22 which deals with an "act of a person of unsound mind." Nothing that is done by a person who, at the time of doing it, due to mental incapacity, is unable to know the nature of the act, or that he is doing what is either wrong or against the law, constitutes a crime.

The Section 22 BNS can be broken down into two primary categories: major criteria (medical necessity of mental disease) and minor criteria (requirement of loss of reasoning), for ease of understanding. The main requirement (requirement for mental disease) states that the person

must have been experiencing mental illness at the time the act was committed. Minor requirements (the need for loss of thinking) indicate that the subject is incapable of understanding the nature of his behaviour or of realising that his behaviour is unlawful or illegal.

- **Mental disease**

A man who by reason of mental disease is prevented from controlling his own conduct, and a man who is deprived, by disease affecting mind, of the power of passing a rational judgment on the moral character of the act he meant to do, is entitled to the benefit of Section 22.

The accused must show that he was suffering from a disease of the mind when he did the prohibited act. Mere difficulty in exercising self-control due to psychopathy which is liable to be aggravated by the consumption of alcohol will not suffice.⁷

Secondly the accused must show that he was suffering from a defect of reason due to disease of the mind. It must be more than a momentary confusion and amount to a complete deprivation of the reasoning power.

Thirdly, the defect of reason so caused must affect legal responsibility. That is, it must affect the person's capacity to appreciate what he was doing and whether it was lawful. In other words it must affect his capacity to know the nature of the act or to distinguish between right and wrong.

Fourthly, the defect of reason from disease of mind must exist at the time of commission of the offence.

- **Irresistible impulse**

The irresistible impulse test was established by law in 1884. Out of the 51 states in the United States, 18 of them accepted this test by 1967. In some English cases, an uncontrollable impulse that can be attributed to a mental illness appears to have been accepted as a valid defence.

There can be no crime unless the act is voluntary. Therefore, sane or insane, an agent is not responsible for an act done by him against his own will. Criminal law recognizes only physical compulsion and not moral compulsion. Criminal law only punishes a man for his faults and not for his misfortunes. Therefore, if a state of mind exists where a man knows what he was doing and also that it was wrong, nonetheless he was so diseased in his volitional function as to be able to keep away from committing the harms. The irresistible impulse test is not whether the individual is conscious of right and wrong, not whether he had a knowledge of the consequences of his act, but whether he can properly control his action. The mere fact that an impulse is not

⁷. *Netherland for Northern Ireland v Gallagher*, (1963) A.C. 349.

resisted would not show that it is irresistible. In some cases medical experts have said that irresistible impulse itself is a disease. That is not true. In one sense everything abnormal is a disease, but courts of law would hardly be justified in accepting such a doctrine as it will have the effect of condoning crime to an extent that is dangerous to society at large.

Generally when there is sufficient intelligence to distinguish between right and wrong, the mere existence of an irresistible impulse would not excuse liability. Where unsoundness of mind creates an uncontrollable impulse to act in a particular way, and the impulse is so powerful as to override the reason and judgment and to deprive the accused of the power to adhere to the right and avoid the wrong, the mere existence of an irresistible impulse would not excuse liability. According to Wharton, "irresistible impulse" is not a defence in a criminal prosecution, unless it exists to such an extent as to subjugate the intellect, control the will, and render it impossible for the person to do otherwise than yield. This irresponsibility will, however, not be extended to one with no mental disorder acts from overmastering anger, jealousy or revenge.

The law relating to irresistible impulse may be stated as follows:

- Existence of such an impulse is not to be presumed from mere absence of a motive for a criminal act.
- Where, however, the existence of a diseased mind is proved by other evidence, such evidence along with the evidence furnished by the act itself may suffice to prove the existence of an irresistible impulse, and when proved, is a good ground for exemption even though there may be sufficient understanding that the act is wrong or illegal.
- Where, however, the existence of such understanding is not negated, the mere irresistible impulse does not seem to be a ground of exemption in India.

On the basis of the Bharatiya Nyaya Sanhita it is concluded that the pedophiles do not fall under the exception of Section 22 as they are well aware of their acts and its consequences. They plan everything and act accordingly which clearly states that they are well versed with their actions. Therefore, acts of pedophiles constitute crime.

(B) Supporting case laws

***Ratan Lal v. State of Madhya Pradesh*⁸**

In this case when questioned why he did it, the appellant said, "I burned it, do whatever you want," after being discovered lighting grass on fire in an open area in Nemichand. A charge of

⁸ (2008) 16 SCC 109

mischievous by fire with the intent to cause harm was brought against the appellant under Section 435 of the Indian Penal Code. He was a lunatic in accordance with the Indian Lunacy Act of 1912, the psychiatrist claimed. According to the report, the defendant is:

- He continues to be depressed,
- Is a nonverbal suffers from psychosis and lunatic depression,
- And needs therapy.

According to the trial court, the defendant did not deserve any sort of punishment. The state filed an appeal, and after reviewing it, the High Court overturned the jury's verdict and declared the defendant guilty of the crime. After that, the conviction was overturned due to two key elements that the Supreme Court cited in its decision:

- the medical evidence offered
- the accused's actions on the day of the incident.

These facts suggested that the accused was insane in accordance with Section 84 of the IPC.

***Kamala Bhuniya v. State of West Bengal*⁹**

In this case the accused faced the following trial for the murder of her husband. The investigating officer initially noted the accused's mental insanity, and a lawsuit was launched against her since it was claimed she was insane at the time of the incident. It was decided that the prosecution's responsibility was to make arrangements for the accused's medical examination. The accused didn't try to run away or get rid of the weapon that could be used against them. The prosecution failed to fulfil its primary obligation to establish that the accused had mens rea at the time the offence was committed. The accused was eligible for Section 84 benefits. As a result, the accused was found to be crazy at the time the crime was committed and was found guilty of Culpable Homicide rather than Murder.

***Kannakunnummal Ammed Koya v. State of Kerala*¹⁰**

It was held that to claim an exemption under section 84, the insanity has to be proved, at the time of the commission of an act, mere losing of self-control due to excitement or irresistible impulse provides no defence under Indian law even if this is proved in a court of law.

***Jai Lal v. Delhi Administration*¹¹**

⁹ 2006 (1) CHN 439, 2006 CriLJ 998

¹⁰ 1967 CriLJ 494

¹¹ JT 2002 (7) SC 627

In this case, the appellant was found guilty under Section 302 of the Indian Penal Code of murdering a young girl with a knife and even stabbing two other individuals. The accused claimed that he met the criteria for insanity under Section 84 of the IPC.

After being apprehended, the accused was seen speaking to the investigating officials in a normal and intelligent manner. Nothing out of the ordinary in his behaviour was noted. In light of all of these conclusions, the Supreme Court determined that the appellant was not mad at the time of the act's commission and was fully aware of its repercussions. According to Section 302 of the IPC, he was found guilty of murder.

(C) Pedophilia as per propensity evidence

The contradiction between the two opposing ideas underlying the propensity evidence rule is sharply brought to light by its application in pedophile prosecutions. Only a small number of crimes expose the accused to such a high danger of prejudice. Propensity evidence, however, may play a key role in the successful prosecution of offenders due to the nature of crime itself. Pedophiles typically behave in ways that minimise the chance of being caught and are compulsive, systematic, and calculative in their actions. When the only accessible evidence is frequently the testimony of the complainant or complainants, the nature and consequences of the offending action pose severe obstacles to the effective prosecution of pedophiles.

Theories dealing with the commission of a pedophilic act

Several theories have been created to explain and help comprehend the actions of pedophiles. Finkelhor's "Four-Preconditions Model of Sexual Abuse" is one model that acknowledges and makes an effort to explain the variation in behaviour. According to this theory, Finkelhor specifies four prerequisites that must be met before sexual misconduct takes place as per which a potential offender must possess the following characteristics: they must be motivated to sexually abuse children, they must have overcome internal and external inhibitions to do so and they must have overcome the child's resistance to the abuse.

Four-Preconditions Model of Sexual Abuse with reference to Bharatiya Sakshya Adhiniyam, 2023

This theory in accordance of the Bharatiya Sakshya Adhiniyam, 2023 can be correlated in the following ways:

Seeking opportunity to overcome external inhibitions and Section 5 of Bharatiya Sakshya Adhiniyam

Creating opportunities to offend and removing environmental constraints are both necessary for

overcoming external restraints. Pedophiles frequently go to great efforts to find opportunities to offend, and it is typical for pedophiles to build their lives around children because, by definition, their sexual cravings and fantasies are powerful and repetitive. They regularly involve themselves in jobs, volunteer positions, and familial circumstances where they have access to kids. For instance, criminals may work as teachers, scoutmasters, priests, ministers, or church volunteers. They may also marry women who are already parents.

According to Section 5 of the Bharatiya Sakshya Adhiniyam, facts that are the occasion, cause, or effect, direct or indirect, of relevant facts or the facts in issue, or that define the context in which they occurred, or that provided a chance for their occurrence or transaction, are relevant. Under this provision the following are the relevant facts:

- i. Facts that are occasion, cause, effect of a fact in issue and relevant fact
- ii. Facts that constitute the circumstances under which a relevant fact or a fact in issue occurred.
- iii. Fact which gave an opportunity for happening of a fact in issue or relevant fact.

In case of pedophilia it is observed that there are a growing number of incidences of abuse committed by those who are entrusted with caring for the children in concern. Assuming such a role not only allows an offender to have control over and be alone with children, but it also helps to reduce suspicion and discovery as we typically view those in such roles as carers for children rather than abusers. One of the most crucial components in overcoming external obstacles is acknowledged to be a lack of parental monitoring. Such circumstances offer an opportunity to have unsupervised access to children, and they also contribute to creating the ideal victim—an emotionally neglected youngster who is especially defenceless and yearning for affection and attention.

Overcoming child resistance and motive of a pedophile in relation with Section 6 of the Bharatiya Sakshya Adhiniyam.

In their criminal activities, pedophiles frequently exhibit compulsive, calculating, and systematic traits. They frequently choose their victims with great patience and spend a lot of time 'grooming' the victims and their families before the offence is committed. When suspicions or allegations of abuse are raised, parents who have trusted the 'friendly' paedophile with their child frequently experience intense conflict: there is a propensity to deny the abuse when parents feel accountable for allowing or even encouraging their child to spend time alone with the offender.

Such act of pedophiles could be justified under Section 6 of the Bharatiya Sakshya Adhiniyam which states Any facts that demonstrates or serves as a justification or preparation for any significant information or fact at issue is relevant. The conduct of any party, or of any agent to a party, in any suit or proceeding, in relation to that suit or proceeding, or in relation to a fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous to or subsequent to that fact. This provision deals with:

- i. Any facts that demonstrate or contribute to the motivation behind any significant fact is relevant.
- ii. A fact that contributes to or demonstrates how a fact in issue was prepared is relevant.
- iii. Any prior or subsequent behaviour of a party or an agent of a party in a lawsuit or legal process, in connection with those lawsuit or legal proceedings, or in connection with any fact in controversy or relevant fact, is relevant if it impacts or is influenced by any fact in controversy or relevant fact.
- iv. Acts with statements accompanying and defending them
- v. Statements made while another person is present and listening, as long as the statement has an impact on that person's behaviour.

Although their methods may vary, many offenders invest a lot of time in dismantling the child's inhibitions and barriers to the sexual act. Some of the enticements include playing games, giving money or other presents, or even picking kids who have already been the victims of another criminal. Once the youngster has gained the offender's trust, the offender may start by making innuendo and subtle advances before moving on to more blatant types of abuse. The paedophile may halt the contact if the youngster refuses to be sexually touched, switch back to nonsexual grooming, and attempt again when they feel it is safe to do so.

Where the process is protracted and trust has been built, the youngster frequently won't even be aware that they are being sexually assaulted.

When interrogated a pedophile stated that, using play, conversation, extra care, and attention, he aimed to entice the youngster to approach me on their own. Make the kid feel comfortable talking to him. He would start other types of contact from here, such touching the child's head or back. The child was being tried to see how much would make her run away. Such instances states the motive of a pedophile behind all such grooming activities wherein motive is defined

as an emotion or desire that serves as the catalyst for such actions. The definition to motive is “a reason for doing something,” so we may say that the motive is the purpose for which an action is taken. The motivation alone cannot serve as proof because it is not an incriminating condition. It's important to keep in mind that motivation differs from intention in this situation since motive relates to the ultimate goal of an action, whereas intention refers to the immediate effects. So, even if an act may be performed with good intentions, it may not be. As a result, the proof indicating a motive for the alleged crime is admissible in court. Thus, the conduct of a pedophile clearly defines his motive to abuse a child.

V. CONCLUSION

Through a process of grooming designed to reduce the chance of detection, pedophiles often strive to create opportunity and overcome the child's resistance to the sexual actions in their habitual criminal activity. The prosecution of pedophilia offences is severely hampered by this same process or pattern of behaviour because the sexual abuse of children typically occurs in private and the victims commonly fail to report it when it does. When the complainant's testimony is the only other piece of evidence, evidence of comparable misconduct by the accused may be extremely helpful in proving this pattern of paedophilic behaviour. Propensity evidence is not accepted since child sexual abuse is not sufficiently specialised. However, it is acceptable for the courts to consider the entirety of the overall offending plan when establishing the probative value of the evidence. Evidence of acts committed against the same complainant (relationship evidence), whether or not the complainant has been charged, is highly probative in determining the sexual nature of the relationship between the accused and complainant and is generally regarded as sufficiently probative to justify admissibility on this basis. The objective improbability that the accused did not commit the crime can be established with evidence of sexual misconduct against other minor complainants. If the accused's identification is in question, the only thing linking them to the crimes is their technique of attack, and unless that manner is strikingly similar, the evidence does not serve its intended purpose and should not be allowed. When the complainant is acquainted with the criminal, the situation is different.

VI. SUGGESTIONS

Pedophilia is not explicitly defined under Indian law and is instead prosecuted through offences such as rape, indecent assault, incest, and sexual penetration of a child, it is imperative to introduce a proper legal definition of the term. To effectively combat child sexual abuse, comprehensive measures are needed: implementing sex education to teach children about consent and personal boundaries, providing parents and educators with tools to identify and

prevent abuse, offering early recognition and treatment through specialized mental health interventions, and ensuring victims have access to counselling, therapy, and legal aid. Stronger legislation and trained law enforcement, along with multidisciplinary cooperation among mental health professionals, child protection agencies, and police, are essential for effective response. Risk management strategies, continuous research on causes and prevention, and rehabilitation opportunities for offenders balanced with public safety should form an integrated framework for addressing pedophilia and safeguarding children.
