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Sexual Assault: A Bane to the Childhood

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ABSTRACT

One of the major fact that sexual assault took place in all socio-economic society. Sexual Assault is a major public issue and social problem in the developing country like India and worldwide. It can be defined as unwanted sexual contact with any person of any kind. In India sexual assault is prompting against the teenagers, pushing them in the world of darkness. The victim of sexual assault is not limited to the girl child but it also occupied the male children in a large picture. other forms of sexual coercion directed against boys take place in a variety of settings. There were few data where sexual assault victim came forward and speak up for themselves but in most of the cases they have been guided to shut their mouth up for the sake of family's reputation, or fear of boycott from the society. Violence against children has increased exponentially, requiring greater intervention to meet the challenges. It violates the rights and the dignity of the child and robs the joys of childhood, result into a bane. It reflects, how collectively we people has failed to take action against this scourge and also failed to create a safe place for the children to flourish and thrive. In this research paper I have discussed how the sexual assault turns a bane to the children by discussing the several topics like the legal definition of sexual assault, types of sexual assault, Data of sexual assault in India, who all are the offenders, Reasons behind the growth of sexual assault in India, Reactions of parents after the disclosure, consequences of sexual assault, Existing provisions, and loopholes of the existing provisions and the conclusion.

Keywords- *Sexual assault, Sexual Violence, Victims, Offenders, Sexual Offence, Societies behaviour, Socio-Economic Society, Infectious, Domination, Loopholes, Laws, challenges, childhood-sufferings, reactions, parents, data.*

I. INTRODUCTION

“Children are our most valuable resource”.

[Herbert Hoover, 31st President of the United States]

Violence can be considered "infectious" in this culture, that celebrate violence and domination. India is home to 440 million children, more than the entire population of USA, Canada and Mexico put together. In 2007, India carried out one of the world's most extensive and

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sophisticated reports on child abuse, which carried a size of 13 States and over 12,000 children² and even more shocking fact was that boys outnumber girls in facing such abuse.³ Similarly, the 172nd Law Commission Report had sought to address the rampant abuse of the penile penetration rule, by replacing the offence of rape with that of Sexual Assault.⁴

Sexual assault is a class of sexual conduct prohibited by the law that includes the forcible sex offences and it is a problem across the World. It affects men and women of all races, ethnic groups, classes and nationalities. It is a life-threatening problem for an individual and a serious problem for all socio-economic and educational classes. It cuts across cultural and religious barriers, impeding the right to participate fully in society. Deep impact of the trauma remains in their minds even after post-violence corrective measures and rehabilitation.

Sexual abuse of children has not been a new phenomenon, but has prevailed in the society from a very long time⁵. Child sexual abuse lives in a world of its own - a world of vulnerability and exclusion, where the excruciating pain felt by the victims is often ignored or neglected. “sexual assault”, which covers sexual touching with the use of any body part or object, voyeurism, exhibitionism, showing pornographic pictures of films to minors, making children watch others engaged in sexual activity, issuing of threats to sexually abuse a minor, verbally abusing a minor using vulgar and obscene language; and “incest”, which is the commission of a sexual offence by an adult or a child who is a relative through ties of adoption.⁶

II. DEFINITION OF SEXUAL ASSAULT

The term “sexual assault” is defined as whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.⁷

Provided that where such penetrative sexual assault is committed against a child between sixteen to eighteen years of age, it shall be considered whether the consent for such act has been obtained against the will of the child or the consent has been obtained by use of violence, force, threat to use force, intoxicants, drugs, impersonation, fraud, deceit, coercion, undue

² Institutional Child Sexual Abuse: The Injustice that Thrives on Secrecy, Silence and Shame, by Advika M. and R. Nandhitha.

³12 RMLNLUJ (2020) 75, Presumptions Under the Protection of Children from Sexual Offences Act, 2012: A Jurisprudential Analysis.

⁴ 3(Monsoon) JILS (2011-12) 233, Proposals to Reform the Law Pertaining to Sexual Offences in India.

⁵ Sexual abuse of children in India and the Protection of Children from Sexual Offences Act, 2012.

⁶ Section 2(y)(ii), Goa Children's Act, 2003.

⁷ <https://wcd.nic.in/sites/default/files/POCSO%20Act%2C%202012.pdf>.

influence, threats, when the child is sleeping or unconscious, or where the child does not have the capacity to understand the nature of the act or to resist it.⁸

In Santosh V. State of Kerala⁹, it was held that sexual assaults will be beyond penile penetration into vagina, urethra, anus and mouth; the known orifices in the human body to which such penetration is imaginably possible.¹⁰

Consent of the child aged between sixteen to eighteen years would be another consideration in certain cases.¹¹

III. SEXUAL ASSAULT IS FURTHER DIVIDED INTO FOUR TYPES

(1) penetrative sexual assault, (2) aggravated penetrative sexual assault, (3) sexual assault, and (4) aggravated sexual assault.¹²

(A) Penetrative Sexual Assault

A person is said to commit "penetrative sexual assault" if—

(a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or

(b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or

(c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or

(d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.¹³

(B) Aggravated Penetrative Sexual Assault¹⁴

This sexual offence emphasises on the position of authority or trust misused by persons and thus, punishes those in power or who are in a position of trust from engaging in such acts. This offence is applicable to acts of a police officer, a member of armed forces or security forces, a public servant, a person on the management or on the staff of a jail, remand home, observation

⁸ (2013) PL March 68, The Protection of Children from Sexual Offences Act, 2012 — At a Glance.

⁹ crl. a no. 1311 of 2016.

¹⁰ https://www.livelaw.in/pdf_upload/santhosh-v-state-of-kerala-397813.pdf.

¹¹ Under section 2(d) of the protection of children from sexual offences act, 2012.

¹² (2013) PL February 75, Sexual abuse of children in India and the Protection of Children from Sexual Offences Act, 2012.

¹³ <https://bhubaneswarcuttackpolice.gov.in/wp-content/uploads/2020/08/POCSO-ACT.pdf>.

¹⁴ <https://bhubaneswarcuttackpolice.gov.in/wp-content/uploads/2020/08/POCSO-ACT.pdf>.

home, or other place of custody, on the management or staff of a hospital, whether private or government, management or staff of an educational institution, or sexual assault by committing gang penetrative sexual assault, using deadly weapons, fire, heated substance or Corrosive substance, or causing grievous hurt or causing injury to the sexual organs of the child. This provision also covers any such penetrative sexual assault which physically incapacitates the child, or makes the child mentally ill or unfit, makes a female pregnant, inflicts HIV on the child or any such life-threatening disease, takes advantage of a child's mental or physical disability.

(C) Sexual Assault¹⁵

The term “sexual assault” is defined as the act of a person who touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person with a sexual intent. This involves a physical contact between the child and the person, but without penetration. Thus the two essential elements to constitute this offence is the existence of a sexual intent and a physical contact not resulting in penetration.

(D) Aggrvated Sexual Assault¹⁶

The term aggravated sexual assault, is defined as the assault by persons in authority or power, similar to a person who would commit an aggravated penetrative sexual assault.¹⁷

IV. DATA OF SEXUAL ASSULT CASE IN INDIA

According to the 156th Report of the Law Commission of India, sexual offences against a child below twelve years of age may be committed in various forms such as sexual intercourse, carnal intercourse and sexual assault.¹⁸ Sexual abuse among children in India has grown rampantly over the years, and a recent report by the Ministry of Women and Child Development stating that more than 50% of children have been abused comes as an eye-opener.¹⁹ Some 109 children were sexually abused every day in India in 2018, a 22 per cent jump in such cases since 2017.²⁰ The crime rate per lakh children population is 31.8 in 2018 in comparison with 28.9 in 2017.²¹ Out of the total child respondents, 20.90% were subjected to severe forms of sexual abuse that included sexual assault, making the child fondle private parts,

¹⁵ <https://bhubaneswarcuttackpolice.gov.in/wp-content/uploads/2020/08/POCSO-ACT.pdf>.

¹⁶ <https://bhubaneswarcuttackpolice.gov.in/wp-content/uploads/2020/08/POCSO-ACT.pdf>.

¹⁷ (2013) PL February 75, Sexual abuse of children in India and the Protection of Children from Sexual Offences Act, 2012.

¹⁸ (Monsoon) JILS (2011-12) 233 Proposals to Reform the Law Pertaining to Sexual Offences in India.

¹⁹ Sexual abuse of children in India and the Protection of Children from Sexual Offences Act, 2012.

²⁰ <https://www.downtoearth.org.in/blog/health/sexual-assault-under-pocso-act-a-child-rights-perspective-76233>.

²¹ <https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf>.

making the child exhibit private body parts and being photographed in the nude. Out of these 57.30% were boys and 42.70% were girls. Over one fifth of these children faced more than three forms of sexual abuse.

21.90% child respondents reported facing severe forms of sexual abuse and 50.76% other forms of sexual abuse and out of the child respondents, 5.69% reported being sexually assaulted. Children in Assam, Andhra Pradesh, Bihar and Delhi reported the highest incidence of sexual assault. Children on street, children at work and children in institutional care reported the highest incidence of sexual assault. 50% abuses are persons known to the child or in a position of trust and responsibility.²²

Out of the 12,447 child respondents, 5.69% reported being sexually assaulted. The study conducted by RAHI has also reported a 6% figure for severe sexual abuse (4% penetrating anus or vagina and 2% oral sex). Of all the children reporting sexual assault, 54.4% were boys and 45.6% were girls. Within the age groups, the highest percentage of sexual assault (7.72%) was reported by children in the age group of 15-18 years followed by 5.57% in the age group of 13-14 years and 4.52% in the age group of 5-12 years. Majority of children subjected to sexual assault kept quiet (72.1%) and did not report the matter to anyone. Among those who reported, the majority of children shared the incident with their parents followed by brother and sister (6.7%). Only 3.4% children reported the matter to police.²³

V. SEX OFFENDERS AGAINST THE CHILDREN

The term “sex offender” refers to a person who is involved in or has committed a crime of a sexual nature. Crimes of a sexual nature include acts such as sexual assault, sexual exploitation, trafficking in persons for sexual purposes, and any other criminal offence, including those committed online, whose intent and primary purpose is to engage in or facilitate activities or conduct of a sexual nature.²⁴ Some of the sex offender discussed below.

(A) Preferential offenders

Individuals with a predisposition or motivation to sexually engage with children and who seek out children for sexual interaction have been described as “preferential offenders”. They have identifiable behavioural traits and their offending tends to lie within the spectrum of sexually deviant paraphilia.²⁵

²² <https://resourcecentre.savethechildren.net/node/4978/pdf/4978.pdf>.

²³ <https://resourcecentre.savethechildren.net/node/4978/pdf/4978.pdf>.

²⁴ https://www.ilo.org/wcmsp5/groups/public/---ed_norm/--ipec/documents/instructionalmaterial/wcms_490167.pdf.

²⁵ “Paraphilia” or “paraphilic disorder” describes a condition of sexual desires or behaviours that involves another

(B) Situational offenders

This category refers to individuals who do not display any distinguishable sexual preference for children or adolescents but who will engage in the sexual exploitation of children if and when they find themselves in situations where a child is readily available for sexual use. “Situational sex offenders” frequently molest readily available children to whom they have easy access, such as their own or those they may live with or have control over.²⁶

(C) Transnational child sex offenders

This term describes a modality of perpetrators of child sexual exploitation: those who sexually engage with children outside of their country of nationality or habitual residence.²⁷

(D) Juvenile sex offender

The term “juvenile sex offender” is used for persons under the age of 18 years who under their national law are considered criminally responsible for sexual offences and have been convicted.²⁸

Children usually know the perpetrators, and a large proportion of sexual violence against adolescents is perpetrated by romantic or intimate partners.²⁹ Majority of children (31%) were subjected to sexual assault by their uncles or neighbours followed by 29% by friends and class fellows, 10% by their cousins and 9% by their employers. Remaining 21% children reported sexual assault by others that included strangers, persons they were faintly acquainted with, teachers, care givers, etc. The study conducted by RAHI also reported high percentage of sexual abuse by maternal/paternal uncles and male cousins. 50% of the abusers were cousins, uncles and friends and class fellows.³⁰

In India, there are terms such as aggravated penetrative sexual assault or penetrative sexual assault, wherein the person in positions of trust, such as police officer, member of armed forces or security forces, a public servant, a person who manages a hospital or educational institution, when commits a sexual act.³¹

person’s psychological distress, injury, or death, or a desire for sexual behaviours involving unwilling persons or persons unable to give legal consent. American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, DSM-5, 2014.

²⁶ A. Altamura, “Understanding Demand for CSEC”, supra 396, p. 4.

²⁷ CEOP uses it with the reference “overseas”, which is not suitable in many places other than the UK (for having mostly other than sea borders).

²⁸ https://www.ilo.org/wcmsp5/groups/public/---ed_norm/ipcc/documents/instructionalmaterial/wcms_490167.pdf

²⁹ <https://www.unicef.org/media/83206/file/Violence-Against-Children-ToC.pdf>

³⁰ Study of child abuse in India (2007), Ministry of Women and Child Development Government of India.

³¹ sexual abuse of children in India and the protection of children from sexual offences act, 2012 by Akshay Amritanshu.

VI. REASON BEHIND THE GROWTH OF SEXUAL ASSAULT

There are several factors behind the growth of sexual Assault against the children: -

- Vulnerability to sexual abuse
- Early childhood environment
- Child in the online environment
- Trafficking of children
- Child marriage
- Child slavery
- Family honour and sexual purity
- laws and policies
- previous victimization

(A) Vulnerability To Sexual Abuse

1. Age

Young women are usually found to be more at risk of rape than older women. According to data from the United States Department of Justice, two thirds of all victims of sexual assault are aged 15 years or less.³² Certain forms of sexual violence, for instance, are very closely associated with a young age, in particular violence taking place in schools and colleges, and trafficking in women for sexual exploitation. In India, of the total rape victims of 18,239 in 2004, 8.9% (1,622) were girls below 15 years of age.³³

2. Alcohol And Drug Consumption

Increased vulnerability to sexual violence also stems from the use of alcohol and other drugs. Consuming alcohol or drugs makes it more difficult for women to protect themselves by interpreting and effectively acting on warning signs. Drinking alcohol may also place women in settings where their chances of encountering a potential offender are greater.³⁴ While victims may be sexually assaulted after knowingly ingesting illegal drugs, such as marijuana, heroin, and cocaine, they may also be unknowingly drugged by so called “date rape drugs” (Drug Enforcement Agency, 2001).³⁵

3. Poverty

³² https://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf

³³ https://www.unafei.or.jp/publications/pdf/RS_No72/No72_13VE_Chattoraj.pdf

³⁴ https://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf

³⁵ https://vawnet.org/sites/default/files/materials/files/2016-09/AR_Adolescent.pdf

Poor women and girls may be more at risk of rape in the course of their daily tasks than those who are better off, for example when they walk home on their own from work late at night, or work in the fields or collect firewood alone. Children of poor women may have less parental supervision when not in school, since their mothers may be at work and unable to afford child care. The children themselves may, in fact, be working and thus vulnerable to sexual exploitation. Poverty forces many women and girls into occupations that carry a relatively high risk of sexual violence, particularly sex work.³⁶

4. Isolation

Isolation greatly facilitates the conditions for the commission of rape. Isolation may be of many types, physical, social, psychological, religious and even cultural. Most of the rape cases in India have taken place when the victims were found alone in isolated places like lonely and insufficiently lit parks, streets, lanes, etc. or any such places. Social isolation refers to individual's social status in society. At the time of communal riot, it has been observed that mainly women and girls from the minority religious community have become victims of rape.³⁷

(B) Early Childhood Environments

There is evidence to suggest that sexual violence is also a learnt behaviour in some men, particularly as regards child sexual abuse. Studies on sexually abused boys have shown that around one in five continue in later life to molest children themselves. Such experiences may lead to a pattern of behaviour where the man regularly justifies being violent, denies doing wrong, and has false and unhealthy notions about sexuality. Childhood environments that are physically violent, emotionally unsupportive and characterized by competition for scarce resources have been associated with sexual violence. Sexually aggressive behaviour in young men, for instance, has been linked to witnessing family violence, and having emotionally distant and uncaring fathers and mothers.³⁸

(C) Child In The Online Environment

A child acting in the online environment is not different from a child offline, even if her/his right to access certain online services without parental consent may well be allowed before the child turns 18.³⁹

(D) Trafficking Of Children

³⁶ https://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf

³⁷ https://www.unafei.or.jp/publications/pdf/RS_No72/No72_13VE_Chattoraj.pdf.

³⁸ https://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf.

³⁹ Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse Adopted by the Interagency Working Group in Luxembourg, 28 January 2016.

Child trafficking is one of the reason behind the sexual assault of children. Child Trafficking is the recruitment and/or transport, transfer, harbouring, and receipt of a child by others with the intent of exploiting the child through various means, like prostitution, begging, child labour, etc. Trafficking for sexual purposes, also called “sex trafficking”, is a particular form of trafficking in which “the human rights of women and children are violated as women and children”, and it represents a form of gender-based act. While children can be trafficked for a variety of reasons and purposes, most children are trafficked for sexual purposes.⁴⁰

(E) Child Marriage

Child marriage is a marriage in which at least one of the parties is a child. It also refers to the act of marrying of children, usually young girls, with or without their consent. Because of the lack of a universal legal definition of “child marriage” establishing an age limit, and the divergent national legal definitions of what is a child, persons under the age of 18 years but who have attained majority under the national law applicable to them still risk falling outside the scope of this term. It has been observed that families sometimes marry off their children (in particular their daughters) with the aim of protecting them or granting their security. However, although the purpose of the marriage may indeed be to protect the child, and not to make any gain or cause any harm, the reality is more complex and the risk that the marriage will result in harm to the child is extremely high. Often the child is married very young, and in many cases obliged to marry a person who is decades older. Sexual abuse may thus occur in the act of consummating the marriage.⁴¹

(F) Child Slavery

“The condition of being legally owned by someone else, or the system in which some people are owned by others”, but also as “a condition of having to work very hard without proper remuneration or appreciation”, which indicates the possibility of a more informal system or situation. A broad range of child sexual abuse have been labelled “slavery” and constitute a violation of the international legal framework on slavery, it must be recalled that the notion of slavery is much wider and encompasses human rights violations against both children and adults.⁴²

(G) Physical And Social Environment

⁴⁰Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse Adopted by the Interagency Working Group in Luxembourg, 28 January 2016, pg.no (59).

⁴¹ Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse Adopted by the Interagency Working Group in Luxembourg, 28 January 2016, pg.no (62).

⁴² Terminology Guidelines for the Protection of Children from Sexual Exploitation and Sexual Abuse Adopted by the Interagency Working Group in Luxembourg, 28 January 2016, pg.no.(59).

The great majority of sexual violence actually occurs in the home of the victim or the abuser. Nonetheless, abduction by a stranger is quite often the prelude to a rape and the opportunities for such abduction are influenced by the physical environment. The social environment within a community is, however, usually more important than the physical surroundings. For instance, in some places, rape can even occur in public, with passers by refusing to intervene. The police may also treat complaints of rape leniently, particularly if the assault is committed during a date or by the victim's husband or very close relatives. Where police investigations and court cases do proceed, the procedures may well be either extremely lax or else corrupt – for instance, with legal papers being “lost” in return for a bribe.⁴³

(H) Family Honour And Sexual Purity

Another factor involving social relationships is a family response to sexual Assault that blames women without punishing men, concentrating instead on restoring “lost” family honour. Such a response creates an environment in which rape can occur with impunity. While families will often try to protect their women from rape and may also put their daughters on contraception to prevent visible signs should it occur, there is rarely much social pressure to control young men or persuade them that coercing sex is wrong. Instead, in some countries, there is frequently support for family members to do whatever is necessary – including murder – to alleviate the “shame” associated with a rape or other sexual transgression. In cases where the victim was a single pregnant female, the offender was either acquitted of murder or received a reduced sentence.⁴⁴

(I) Laws And Policies

There are considerable variations between countries in their approach to sexual violence. Some countries have far-reaching legislation and legal procedures, with a broad definition of rape that includes marital rape, and with heavy penalties for those convicted and a strong response in supporting victims. Commitment to preventing or controlling sexual violence is also reflected in an emphasis on police training and an appropriate allocation of police resources to the problem, in the priority given to investigating cases of sexual assault, and in the resources made available to support victims and provide medico-legal services. At the other end of the scale, there are countries with much weaker approaches to the issue – where conviction of an alleged perpetrator on the evidence of the women alone is not allowed, where certain forms or settings of sexual violence are specifically excluded from the legal definition, and where rape

⁴³ https://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf.

⁴⁴ https://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf.

victims are strongly deterred from bringing the matter to court through the fear of being punished for filing an “unproven” rape suit.⁴⁵

(J) Previous Victimization

The correlation between earlier victimization and later perpetration of physically and sexually violent crimes cannot be ignored. It has been postulated that males who have been exposed to early victimization, including experiencing child physical and or sexual abuse as well as witnessing domestic violence within the family, may be more prone to adapting to these negative experiences by using externalizing behaviours. These behaviours may include increased acceptance and utilization of aggression, violence, and control within future relationships as well as other maladaptive behaviours. Additionally, early association with the aggressor stance may serve to provide a sense of protection from experiencing repeated victimization, regardless of the actual threat.⁴⁶

VII. CONSEQUENCES OF SEXUAL ASSAULT

Evidence suggests that male and female survivors of sexual violence may experience similar mental health, behavioural and social consequences. However, girls and women bear the overwhelming burden of injury and disease from sexual violence and coercion, not only because they comprise the vast majority of victims but also because they are vulnerable to sexual and reproductive health consequences such as unwanted pregnancy, Gynaecological complications and a higher risk of sexually transmitted infections, including from HIV, during vaginal intercourse.⁴⁷ Let's discuss some of the consequences of sexual assault.

Consequences of Sexual Assault are: -

- Self harm
- Sexually transmitted infection
- Dissociation
- Mental health
- Suicidal behaviour
- Social ostracization
- Pregnancy and gynaecological complications

(A) Self Harm

⁴⁵ https://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf.

⁴⁶ https://vawnet.org/sites/default/files/materials/files/2016-09/AR_Adolescent.pdf.

⁴⁷ https://apps.who.int/iris/bitstream/handle/10665/77434/WHO_RHR_12.37_eng.pdf;jsessionid=45283A7F1EC8FE847D2BCF7ED3EDAB14?sequence=1.

Deliberate self-harm, also called self-injury, is when people inflict physical harm on themselves, usually in private and without suicidal intentions. Some survivors of sexual assault may use self-harm to cope with difficult or painful feelings.

Common forms of self-harm include:

- Biting
- Burning
- Cutting
- Hitting the body
- Pulling out hair
- Scratching and picking skin

Self-harm isn't necessarily a warning sign for suicide, but it can be a sign that someone has survived a serious trauma. Unfortunately, this relief is often short-lived, and the urge to self-harm can return, encouraging a cycle of self-harm that may cause damage, infection, and sometimes life-threatening medical problems.⁴⁸

(B) Sexually Transmitted Infections

A sexually transmitted infection (STI) is a bacterial or viral infection passed from one person to another through vaginal, anal, or oral contact. STIs can be transmitted whether this contact was consensual or not. STIs can infect a person of any age or gender. Although the signs may vary, when an STI starts showing symptoms, it's called a sexually transmitted disease, or STD.⁴⁹ Violent or forced sex can increase the risk of transmitting HIV. In forced vaginal penetration, abrasions and cuts commonly occur, thus facilitating the entry of the virus when it is present through the vaginal mucosa. Adolescent girls are particularly susceptible to HIV infection through forced sex, and even through unforced sex, because their vaginal mucous membrane has not yet acquired the cellular density providing an effective barrier that develops in the later teenage years.

Those who suffer anal rape boys and men, as well as girls and women are also considerably more susceptible to HIV than would be the case if the sex were not forced, since anal tissues can be easily damaged, again allowing the virus an easier entry into the body. Sexual coercion among adolescents and adults is also associated with low self-esteem and depression factors that are associated with many of the risk behaviours for HIV infection. Being infected with HIV or having an HIV-positive family member can also increase the risk of suffering sexual

⁴⁸ <https://www.rainn.org/articles/self-harm>.

⁴⁹ <https://www.rainn.org/articles/sexually-transmitted-infections-stds>.

violence, particularly for women. Because of the stigma attached to HIV and AIDS in many countries, an infected woman may be evicted from her home. In addition, an AIDS-related illness or death in a poor household may make the economic situation desperate. Women may be forced into sex work and consequently be at increased risk for both HIV/AIDS and sexual violence. Children orphaned by AIDS, impoverished and with no one to care for them, may be forced to live on the streets, at considerable risk of sexual abuse.⁵⁰

(C) Dissociation

Dissociation is one of the many defence mechanisms the brain can use to cope with the trauma of sexual violence. It's often described as an "out of body" experience where someone feels detached from reality. It may be upsetting for someone to realize that they have dissociated, but it is a natural reaction to trauma.⁵¹

(D) Mental Health

Sexual violence has been associated with a number of mental health and behavioural problems in adolescence and adulthood. Abused women reporting experiences of forced sex are at significantly greater risk of depression and post-traumatic stress disorder than non-abused women. Post-traumatic stress disorder after rape is more likely if there is injury during the rape, or a history of depression or alcohol abuse. In the absence of trauma counselling, negative psychological effects have been known to persist for at least a year following a rape, while physical health problems and symptoms tend to decrease over such a period. Even with counselling, up to 50% of women retain symptoms of stress.⁵²

As is the case with female victims of sexual assault, research suggests that male victims are likely to suffer from a range of psychological consequences, both in the immediate period after the assault and over the longer term. These include guilt, anger, anxiety, depression, post-traumatic stress disorder, sexual dysfunction, somatic complaints, sleep disturbances, withdrawal from relationships and attempted suicide. In addition to these reactions, studies of adolescent males have also found an association between suffering rape and substance abuse, violent behaviour, stealing and absenteeism from school.⁵³

(E) Suicidal Behaviour

The experience of being raped or sexually assaulted can lead to suicidal behaviour as early

⁵⁰ https://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf.

⁵¹ <https://www.rainn.org/articles/dissociation>.

⁵² https://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf.

⁵³ https://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf.

as adolescence. Women or men who experience sexual assault in childhood are more likely to attempt or commit suicide than other women. The association remains, even after controlling for sex, age, education, symptoms of post-traumatic stress disorder and the presence of psychiatric disorders. A study of adolescents in Brazil found prior sexual abuse to be a leading factor predicting several health risk behaviours, including suicidal thoughts and attempts. Experiences of severe sexual harassment can also result in emotional disturbances and suicidal behaviour.⁵⁴

(F) Social Ostracization

In many cultural settings it is held that men are unable to control their sexual urges and that women are responsible for provoking sexual desire in men. In some societies, the cultural “solution” to rape is that the woman should marry the rapist, thereby preserving the integrity of the woman and her family by legitimizing the union. Such a “solution” is reflected in the laws of some countries, which allow a man who commits rape to be excused his crime if he marries the victim. Apart from marriage, families may put pressure on the woman not to report or pursue a case or else to concentrate on obtaining financial “damages” from the rapist’s family.⁵⁵

(G) Pregnancy And Gynaecological Complications

Pregnancy may result from rape, though the rate varies between settings and depends particularly on the extent to which non-barrier contraceptives are being used. In many countries, women who have been raped are forced to bear the child or else put their lives at risk with back-street abortions. Experience of coerced sex at an early age reduces a woman’s ability to see her sexuality as something over which she has control. As a result, it is less likely that an adolescent girl who has been forced into sex will use condoms or other forms of contraception, increasing the likelihood of her becoming pregnant.

Gynaecological complications have been consistently found to be related to forced sex. These include vaginal bleeding or infection, fibroids, decreased sexual desire, genital irritation, pain during intercourse, chronic pelvic pain and urinary tract infections.⁵⁶

VIII. PARENTS REACTION AFTER THE DISCLOUSER OF THE ASSAULT

In India when any parents find out about their children being sexually abused, they may experience denial, anger, betrayal, confusion and disbelief. Some parents also feel conflicting

⁵⁴ https://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf.

⁵⁵ https://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf.

⁵⁶ https://www.who.int/violence_injury_prevention/violence/global_campaign/en/chap6.pdf.

emotions, especially if the accused perpetrator is someone they have trusted, a close friend or a family member. When offenders deny the abuse, the situation gets very complicated for the child.⁵⁷ Many children who are sexually abused never disclose what happened to them. If children are young or abused by a family member, the chances of telling someone what happened decrease even more.⁵⁸ In 2012, 88% of reported sexual offences against children were committed by a family member or someone else known to the child.⁵⁹ If a parent doesn't believe a child who has been abused and supports the offender, there can be severe damage to the child.

IX. EXISTING PROVISIONS

Earlier the case of child abuse was dealt under the provisions of IPC sections, 354, 375 and 377 respectively. These provision were designed to protect the female victims but they often failed to serve the child victim especially when the victims are male. Law and society are intertwined to inevitably influence each other. The common perception that usually the perpetrator is male and the victim is female, disregard the victimization of males and non-binary person.

Parliament exercising the power given under *Article 15(3)* of the Constitution of India, passed the Act to give effect to the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations, which has prescribed a set of standards to be followed by all states parties in securing the best interest of the child and finally, in May 2012 the parliament of India pass "The Protection of Children from Sexual offences Bill popularly known as POCSO Act and the *Protection of Children from Sexual Offences Act (POCSO)* came into force on November 14, 2012, and was specifically formulated to deal with offences including child sexual abuse and child pornography.

*In Era V. State of Delhi*⁶⁰, justice Deepak Mishra stated that, the protection of children from sexual offence Act, 2012 was enacted to protect the children from sexual assault, harassment and exploitation and to secure the best interest of child. It recognises the necessity of the right to privacy and confidentiality of a child to be protected and respected by every person and by all means. The policy of the act is directed towards securing that the tender age of children is not abused and their childhood is protected against exploitation.

⁵⁷ <https://wcd.nic.in/sites/default/files/POCSO-ModelGuidelines.pdf>.

⁵⁸ Mcelvaney, R. (2013). Disclosure of Child Sexual Abuse: Delays, Non-disclosure and Partial Disclosure. What the Research Tells Us and Implications for Practice. *Child Abuse Review*, 24(3), 159–169.

⁵⁹ https://endingviolence.org/wp-content/uploads/2016/05/EVA_PracticeTips_ChildProtection_vF.pdf.

⁶⁰ (2017) 15 SCC 133.

POCSO Act is gender neutral, meaning that crimes of this nature committed against children will be handled by this act regardless of the gender of the child. This law offers adequate and fair remedies for all sexual crimes committed against minor children⁶¹ and also sets a burden of proof of “guilty until proven innocent” rather than the general rule of “innocent until proven guilty.”⁶²

Under Section 8 of the POCSO act, whoever commits sexual assault shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine.⁶³

Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine. The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.”⁶⁴

Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life of that person, and shall also be liable to fine, or with death. The fine imposed under sub-section (1) shall be just and reasonable and paid to the victim to meet the medical expenses and rehabilitation of such victim.”⁶⁵

Under Section 10 of the POCSO act, whoever commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to fine.⁶⁶ However, for preventing the misuse of the law, there is also a punishment provided for making a false complaint or providing false evidence.⁶⁷

X. LOOPHOLES IN EXISTING PROVISIONS

In spite of careful considerations and recommendations being incorporated for the framing of

⁶¹3(Monsoon) JLS (2011-12) 233, Proposals to Reform the Law Pertaining to Sexual Offences in India.

⁶²(2020) 5 JRC 62, Institutional Child Sexual Abuse: The Injustice that Thrives on Secrecy, Silence and Shame.

⁶³ <https://wcd.nic.in/sites/default/files/POCSO%20Act%2C%202012.pdf>.

⁶⁴<https://wcd.nic.in/sites/default/files/Protection%20of%20Children%20From%20Sexual%20Offences%20%28Amendment%29%20Act%2C%202019.pdf> (Under Section 4 of the POCSO act).

⁶⁵<https://wcd.nic.in/sites/default/files/Protection%20of%20Children%20From%20Sexual%20Offences%20%28Amendment%29%20Act%2C%202019.pdf> (Under Section 6 of the POCSO act).

⁶⁶ <https://wcd.nic.in/sites/default/files/POCSO%20Act%2C%202012.pdf>.

⁶⁷ The Protection of Children from Sexual Offences Act, 2012 — At a Glance by Petikam Sailaja.

this legislation, there are some drawbacks and discrepancies that surround this act.

- **Age:** The POCSO act mandates that for a girl under the age of 18 seeking abortion, the service provider should register a complaint of sexual assault with the police. However, medical termination of pregnancy act does not mandate the reporting of the identity of the person who is abused. This makes the service providers hesitant to provide abortion service to the children under 18.
- **Consent:** The POCSO act doesn't give a clear indication with respect to the need for taking consent from abused children with regards to the medical examination.
- **Medical Examination:** Under Section 2 of the act, if a female child is abused, then the medical examination should be carried by a female doctor. Whereas in cases of emergencies, the available medical officer has to provide medical care as stated under Section 166-A of IPC. This leads to a conflict of legal positions when the female doctor is not available.
- **Consensual Sexual Act:** sexual intimacy between two consenting adolescents is considered as illegal because the act considers sexual act with or between children below 18 years to be deemed as illegal irrespective of whether consent is given or not.
- **Reporting:** Even after bringing such legislation, the cases are not usually reported. Institutional sexual abuse cases are very difficult to coax out of children and rarely reported, due to the helpless situation of the children. They are constantly under fear and are manipulated to believe that such an act is caused because of their own blunders. They are vulnerable because of the authority that these institutional caretakers have on them.⁶⁸
- **Gender bias:** provisions under the POCSO Act is a clear indication of the gender bias, similar to the law of rape under the IPC. The pronoun used for the accused is "he", thus, again, only a male can be booked for the offences under the relevant provisions of the POCSO Act. Though, unlike rape, the victim under the POCSO Act can be any child irrespective of the gender, the accused still can only be a male and females are again given a protective shield, for reasons unknown. Saying that females do not subject children to forceful sexual assault would be untrue. Incidents of such child sexual victimisation by females

⁶⁸ (2020) 5 JRC 62, Institutional Child Sexual Abuse: The Injustice that Thrives on Secrecy, Silence and Shame.

has been observed and witnessed.⁶⁹ A recent study on prevalence of sexual abuse among adolescents in Kerala, reported that 36 per cent of boys and 35 per cent of girls had experienced sexual abuse at some point of time.⁷⁰ A similar study conducted by the Government of India in 17,220 children and adolescents to estimate the burden of sexual abuse revealed shocking results and showed that every second child in the country was sexually abused; among them, 52.94 per cent were boys and 47.06 per cent were girls.⁷¹ Such male child sexual abuse cases are just not reported.⁷²

XI. CONCLUSION

India is committed to protecting the best interest of the child as enshrined in the Indian Constitution. By analysing the research paper, I strongly state Sexual Assault in children is a common and serious public health problem affecting millions of children every year, result a bane to the childhood. It is driven by many factors operating in a range of social, cultural and economic contexts. The POCSO Act, which are set up by the legislations to overcome from sexual assault remain underreported due to lacunas in the formulation and execution of the act. The laws should be formulating in a way where it should address the accused irrespective of their gender. There are various reasons why the victims are reluctant to show up, the main reason being a lack of awareness regarding the rights and remedies available to the injured. Moreover, it is surprising to note that media's being a fourth pillar of democracy have not put an excessive effort to spread the information relating to the laws that protects the child from the sexual assault.

Similarly, Parents play a vital role in supporting the victims of sexual assault. Unsupportive behavior by the family members led to the victim suffers. As a parent it's important to remain as calm and supportive as possible. It's the duty of the parents to give their children healthy and safe environment which will save the children from the perpetrators and give courage to speak up. Ultimately, the strong commitment and involvement of the governments, Judicial officers, civil society, and along with a coordinated response across a range of sectors, are required to end an assault.

⁶⁹ <http://www.legalservicesindia.com/article/2440/Loopholes-in-POCSO.html>.

⁷⁰ Prevalence and spectrum of sexual abuse among adolescents in Kerala, South India. Krishna Kumar P, Satheesan K, Geeta MG, Suresh Kumar K. *Indian J Pediatr.* 2014 Aug; 81(8):770-4.

⁷¹ Ministry of Women and Child Development; Government of India. Study on child abuse India 2007. <http://www.wcd.nic.in/childabuse.pdf>.

⁷² <http://www.legalservicesindia.com/article/2440/Loopholes-in-POCSO.html>.