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# The Rise of False Child Abuse Cases

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## ABSTRACT

*This research paper is focused on False Allegations of child abuse cases which is a challenge to Indian legal system. False allegations are a new upcoming trend in the Indian society to gain leverage over others and to settle a personal vendetta. Laws which are meant for the protection of society are themselves used as weapons. The paper discusses how false allegations can be made and used against others. The POCSO Act 2012, is one of the stringent statutes in the Indian legal system. A false allegation under this act could deprive and damage an innocent man's reputation and status in society. Indian society has been seeing a lot of scenarios where these statutes and the threat of lodging these false allegations as a new mechanism to extort money and coerce them into performing things as per their desires. The flaws in law have to be examined as fast as possible, as they can endanger the entire society.*

*As the offence under POCSO Act is cognisable and not bailable, once a false allegation prosecutes an innocent person, it would be an easy weapon in the hands of people to damage a person's reputation in society. The research paper further compares the flaws in false allegations of child abuse cases with the Dowry Prevention Act 1961, Domestic Violence Act 2005 and The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989. The exploitation of these statutes implies the misuse of laws in Indian society. The amendments should be made in these acts, which would initiate with arrest and proceeding only made once the prima-faice case is strong enough and requires a sudden interference by law.*

**Keywords:** *False Allegations, Abuse of Law, False evidence.*

## I. INTRODUCTION

In modern Indian society, we are able to find out that the number of Child sexual abuse cases has raised in the past few decades. As a matter of fact, not all the allegations of sexual abuse are authentic. We can even point out that, in several cases, the usage of false allegations of child abuse could possibly result in tainting a man's life. It is indeed hard to separate these false allegations from genuine ones. If we take a closer look into most child abuse cases, we can find out that most of the cases are not involving a child being abducted by a stranger and so on. We could find the person who is being alleged will be someone like family member, friends, teacher and so on who are close to the child. Unlike other cases, in cases of sexual abuse of children it

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is the word of the child based on which the procedure of law moves forward. False allegations are rather usual in our society and it is with due care and considering all the evidences and hearing the decision is made by the courts. The child's testimony is commonly the only evidence in cases of child sexual abuse. Investigation is incomplete by inadequate forensic interviews. Forensic interviewers consider themselves as protectors for children. However, the training they receive is based on incomplete assumptions. Children do not lie about sex abuse and are unable to make such statements as they don't have sexual knowledge to make such allegations. It is quite fascinating on how the society is taking allegations of child sexual abuse, the media which is the fourth pillar of democracy itself is raising the controversy even before the matter is decided by honorable courts. Crimes against children are indeed one of the gravest crimes in every society but it is also necessary to separate the false allegations because the Indian Criminal administration system is based on the fundamental maxim that even though hundred guilty be acquitted but, not even one innocent should be convicted. Hence it is crucial to examine the cases of allegations on child sexual abuse cases carefully.

## II. FALSE ALLEGATION

A false allegation arises whenever anyone accuses another person for committing a crime which he knows that the person being accused is innocent. It's frequently used as a method of revenge, to divert attention away from a guilty person and so on. Poole, D. A., & Lamb, M. E. defined 'False allegation' as a term exclusively to be used in cases where children explicitly make untrue statements in *Investigative interviews of children: A guide for helping professionals* (1998). False allegations are mostly seen in cases of sexual misconduct such as rape and molestation. In a study based on a representative sample of 7672 incidents of abuse reviewed by child safety agencies in Canada, Trocmé and Bala (2005) reported that only 4% of the 35 percent of baseless cases were the fruit of deliberately fabricated false allegations and none of these false allegation cases were brought up by the children themselves. Now a days even I would even point out that the provision for accusing a man who is guilty as per the law is molded up to be used as a tool for extortion or gaining leverage to blackmail individuals. Approximately 5% of cases under Section 498A were discovered to be false allegation, as per data compiled by the National Crime Records Bureau (NCRB) in the report Crime in India 2020. In the modern Indian society, it is Section 182 of the Indian Penal Code, 1960 which states about the cases where injury is made where the false allegation is made, however the number of cases filed under Section 182 of IPC is negligible with respect to cases of false allegations made in our society day by day. Every man is innocent, until found guilty but in cases of child abuse the case is different. It is the word of the child which, even though may not be collaborating with other evidence have the upper

hand. It would be more apt to pronounce false allegations as a social evil which has the audacity to ruin an individual's life behind the bars.

According to 2016 data on crimes in India compiled by the National Crime Records Bureau, Ministry of Home Affairs, 5347 cases investigated by the Scheduled Castes were discovered to be false cases, while 912 instances investigated by the Scheduled Tribes were discovered to be false crimes<sup>2</sup>. In one of the cases, the Apex Court observed that in this case, it appears that both parties have resorted to filing rape charges without any regards for the offence of rape. While the consequences of rape on the victim have already been mentioned, false allegations of rape have the potential to destroy the accused's life and career.<sup>3</sup> In a false rape case, the accused loses his dignity, is unable to face his family, and is suffering for the rest of his life. Allegations of violations under Section 376 of the Indian Penal Code (IPC) cannot be made at the drop of a hat in order to settle personal scores. Because of the serious nature of the offences, false accusations and allegations regarding cases of molestation and rape should be dealt with serious nature. Unscrupulous litigants file such lawsuits in the hopes of forcing the other party to submit to their demands out of fear or humiliation in society. In the case, the court observed that both the parties have filed cases of rape against each other and this was an evident fact that the allegations could be possible false and the court further added on that this false allegation also wastes the valuable time of the police force in investigating the case and those who are found to make false accusations should not be let carelessly. False allegations are not just the scenario in rape cases but also in matrimonial disputes for divorce. The Gauhati High Court in one of the recent cases under Section 13 of HMA, 1955 observed that the wife's allegations made by the appellant wife were false allegations and need to be considered as assault on husbands' reputation and status in the society. In the case of *Manisha Sandeep Gade v. Sandeep Vinayak Gadeli*<sup>4</sup> the High Court of Bombay considered whether the wife's unsubstantiated accusation of adultery against the husband amounted to mental cruelty and held that these unsubstantiated allegations amounted to mental cruelty.

### **III. CHILD ABUSE CASES**

According to the most recent scientific studies in India, 30 percent of males and 40 percent of women remember being sexually abused as children, with "molestation" defined as actual genital touch, not merely exposure. About half of them are directly incestuous with family

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<sup>2</sup> Annual Report 2016-2017 published by the Department of Social Justice & Empowerment. Ministry of Social Justice and Empowerment, Government of India

<sup>3</sup> AIR 2009 SC 858

<sup>4</sup> AIR 2005 Bom 180

members, with the other half usually being with others. The number of child abuse cases has been recently higher as compared to the past which made it mandatory for the Government to act out and put a stopper to this heinous crime. There are a multitude of reasons that could lead to false allegations of sexual abuse. A few of these factors are related to the child's personal characteristics, such as memory and age; others are related to the environment to which the child is growing, such as divorce, rumor influence, and the fact that the parent does not trust the child and so on. It is during this phase of a human one develops his or her basic character, so it is crucial to care and love to the right path. It's difficult to draw solid conclusions on the role of a child's age in false allegations because few research have looked at it. According to the existing research, adolescents are more likely than youngsters to make false accusations on purpose. When extremely young children are repeatedly asked leading questions by a parent, such as during a divorce, they may make accusations of sexual abuse that has never even took place. Social workers, police officers, and prosecutors who receive a child's disclosure and testimony regarding sexual abuse must assess whether the facts described are genuine or not. Observations made about the child during an interview with a police officer or social worker, according to Poole and Lindsay (1998), are not credible for establishing whether the child is speaking the truth or not. It is up to experienced socio-legal experts, not the adult who receives a child's disclosure of sexual abuse, to evaluate whether the accusations are genuine or not. When adults who haven't had training in this area receive allegations from a child, they should be cautious. To prevent contaminating the child's memory, the finest attitude is to listen to the youngster without interrupting or asking too many direct and precise questions regarding the nature of the acts committed.

Fondling, inviting a child to touch or be touched sexually, intercourse, exhibitionism, using a child in prostitution or pornography, or online child luring by cyber-predators are all instances of Child Sexual Abuse. In all sorts of social institutions, abusing a child is a highly humiliating and alarming crime. A child is the most innocent of all beings, so deceiving it into abusing it is extremely cruel. It is true that none of the parents in consciousness would make false allegations weighing it in with their child reputations which would imply that most of the child abuse cases genuine. But, the chance of false allegation on child abuse cases is probable and one of these allegations would be enough to spilt and innocents' life and make it miserable. A bluff that a person would probably file a child abuse case against another individual if he does not give money is an easy mechanism of extorting money as each one is not willing to damage their reputation. This trend of extorting money by the misuse of law must be stopped or moist of the statues in India will be nothing but weapons in the hands of people.

#### IV. THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012

The Protection Of Children From Sexual Offences Act, 2012 (POCSO) came into force from 14<sup>th</sup> of November 2012. The government of India passed the 'The Protection of Children from Sexual Offences (POCSO)' law in 2012 as a result of excessive public awareness and activism regarding child protection. This law criminalizes rape, harassment, and exploitation for pornography involving a child under the age of 18, and it mandates the formation of Special Courts to speed up the trials of these crimes. Child sexual abuse, on the other hand, is still a controversial subject in India. The statutory intent behind the Act was to protect children from sexual abuse, sexual harassment, and pornography, with adequate consideration for the child's best interests and well-being at all phases of the legal process. With sexual offences against children being on the rise, the POCSO Act has become more important today. POCSO is a special law and as in the legal maxim of '*generalia specialibus non derogant*' must be applied so that in cases of child abuse the general law will yield to POCSO Act. The number of charges under the POCSO Act all over India is rising and the intent of the legislature has been colored but one of the unexpected scenarios that came out was the false child abuse allegations which turned the statute in to a weapon and use it for leverage. In the case of *Panchi v. State of U.P.*<sup>5</sup> the court held that the evidence given by a child witness must be examined carefully as a child may be susceptible of what is being told to them and maybe even tortured by others. The prosecution case will be primarily based on this statement made by the child which could even incriminate an innocent man. An accused charged under the POCSO Act even though is innocent until proven guilty have to face the society from a different viewpoint as child abuse cases are one of the heinous cases in the society, of which such an allegation could spoil a person's image. The way our society looks towards allegations of POCSO charges is distinct and there is a tradition of fixing a person's guilt within even before the trial is over and judgement is pronounced. In POCSO cases the arrest can be made immediately after the complaint has been registered which will evidently lead to a situation where innocent people will have to suffer for the false allegations made against them. This is one of the biggest flaws of POCSO Act. Once the arrest has been made, the reputation of the man who has been arrested cannot be recovered.. It is general presumption that the parents of such a victim would only allege a case with proper consciousness through what they are going through. This even though does not prove the fact that all the allegations should be genuine. The POCSO Act was enacted with the express purpose of protecting children from sexual offences. However, just like any

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<sup>5</sup> [1998] INSC 423

other criminal law, the POCSO Act is sometimes misused. In the cases where POCSO allegations have been dismissed by the Court, the majority of the complaints were brought by the minor's family. When an adolescent files a POCSO allegation that turns out to be false, they are often scared of their family or feel compelled to register the complaint. As a result, adults are involved in making such complaints, and adolescents under the age of 18 are not held liable under the Act for making false claims.

It is not just the scenario of POCSO cases in India, but even most of the matrimonial disputes end up giving the leverage of filing a false allegation and domestic violence against husband. The true intention of Dowry Prevention Act, 1961 was to end the social evil of dowry which existed in societies. In India, matrimonial rules are widely abused rather than being used by women who have legitimate concerns. Money is the most common reason for a wife to file false dowry cases against her in-laws. The truth is that that act even though up to a certain extent had been effective as the legislature intended, it has been a weapon of law in the hands of women. Misuse of law is one of the greatest problems a legal system can ever face. The misuse of Dowry Prohibition Act, 1961 has been severe as only 10 percent of the cases filed under the statute end up in convictions. The rising number of false cases of dowry harassment against husbands has pushed the Indian government to urge amending Section 498A to make the offence compoundable. More than 10,000 cases have been found to be false, as per reports. In other words, women are abusing Sec 498A to harass their husbands and in-laws, and the Dowry Prohibition Act is also being misused as a weapon in the hands of wives, who are threatening their husbands if they do not carry out the wives wishes. In *Arnesh Kumar's case*<sup>6</sup>, the Supreme Court stated that because the offence is cognizable and non-bailable, a complaint under Sec 498-A permits for immediate arrest of the offender. If the complaint is false and fabricated, there will be human rights violation. The apex court further noted that complaints under Sec 498-A were being lodged with the ulterior motive of settling personal vendetta.<sup>7</sup> In the case of *Joginder Kumar v. State of U.P* the Apex Court held the same decision as above.<sup>8</sup> The court also observed that arrest need to be only made if it is imperative.<sup>9</sup>

Just like Dowry Prevention Act, the misuse of Domestic Violence Act is also quite evident in the current Indian legal system. The Domestic Violence act was enacted in 2005 with the major purpose of protecting women from domestic violence. The DV Act has given women an unfair advantage, and it is the most lethal weapon that women can use against men, identical to

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<sup>6</sup> SLP (CrI) No. 9127 2013

<sup>7</sup> 2005 (6) SCC P.281.

<sup>8</sup> AIR 1994 SC P.1349

<sup>9</sup> AIR 2011 SC P.312.

terrorism, to extort, exploit, and harm men. The DV Act includes provisions such as the right to reside independent of legal ownership of the property, as well as maintenance. The society is molding the law which has been enacted for protection of woman, moreover as a shield into a weapon to scare their in-laws and husband. In the case of Major Singh and Anr<sup>10</sup> it was held that the wife was having an extramarital affair, she filed a false complaint against her husband. She attempted to threaten her spouse, but he filed for divorce. The Punjab High Court held that the Protection of Women from Domestic Violence Act is being misused to terrorize spouses, their families, and distant relatives, and that this phenomenon has been termed "legal terrorism." The provision in the law makes it easy for the law to be misused. Statistics reveal that just 2% of all cases end in a conviction, and 98 percent of cases are considered to be false, and there is no alternative in the Domestic Violence Act for women to be prosecuted if a false case is brought. The Domestic Violence Act's flaws should not, however, be used to undermine its importance in India. In 2008, cases of dowry death, dowry prohibition, and torture/cruelty by husbands and other relatives constituted for 48.54 percent of all crimes against women recorded in the country. This means that, regardless of socio-cultural distinctions, women in India are still exploited, harassed, and tortured. As a result, the 'female bias ' of the recent act, or its potential for abuse, should not be exaggerated, even while such anomalies must be eliminated.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, was enacted to prohibit atrocities against members of the Scheduled Castes and Scheduled Tribes, to establish Special Courts for the trial of such offences and the relief and rehabilitation of victims of such acts. The SC/ST Act, also known as the Scheduled Castes and Tribes (Prevention of Atrocities) Act 1989, was intended to safeguard marginalized communities from discrimination and atrocities. Denial of economic, democratic, and social rights, discrimination, exploitation, and abuse of the legal process are among the offences listed in the law, which is breaking the self-respect and self-worth of the scheduled castes and tribe community. The provision for anticipatory bail is not available to offenders under Section 18 of the act. Any public servant who deliberately neglects his responsibilities under this legislation faces a sentence of up to 6 months in prison. Unlike Dowry Prevention Act and Domestic Violence Act, this act can be misused by every single person in a society and threaten others to file a false allegation under the SC/ST Act. Indeed, crimes against SC/ST communities are grievous in nature and had to be prohibited but the flaws in the SC/ST Act is exposing the weakness in the statute which could be easily molded in to a weapon. Laws are the basic rules that develop the system of every society, once the scenario arises where law could be used to settle personal vendetta, the statute

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<sup>10</sup> 2018 PNH 14092



should be amended in such a way to distinguish between these false allegations from the reasonable ones. In the case of *Dr. Subhash Kashinath Mahajan v. State of Maharashtra & Anr*,<sup>11</sup> the court held that certain provisions relating to investigations are to be conducted under the act. In the case of *Union of India v. State of Maharashtra & Ors*<sup>12</sup>, the court further stated that in case instances of false allegations and FIR the court can initiate proceedings under Section 482 of CrPC. Nobody should be convicted of atrocities against members of scheduled castes or tribes except if the crime was done with intent of racial prejudice. When compared to POCSO Act this act is easily moldable as there is nothing to lose while filing a complaint under the Act. The SC/ST act provides an open doorway for people to raise complaints and initiate criminal proceedings. The requirements of all the statutes discussed above will be under the statement provided by the petitioner alone which would make it extremely hard for an innocent man who has been framed with these false allegations. These cases in which the entire prosecution case is dependent on the sole statement of the victim from the SC/ST community is a flaw in the system as the false allegations also starts to mix up with authentic cases. False Cases under SC/ST act can be easily used as a mechanism to extort money from people threatening their dignity and social status in the society.

## **V. MISUSE OF LAW**

Misuse of Law is one of the prime challenges of Indian Legal System. The legislative intent behind the statute might not be the actual scenario where the statute serves. Flaws in statutes can even be a legal harm to the society. A stable and peaceful society requires effective law enforcement, and democracy is the torchbearer for a vital to a people-centered governance. The democratic fabric of a country works hand in hand with jurisprudence to provide lawful governance. Over the years, judicial activism through Public Interest Litigation has assured that the rule of law is not endangered, and the most vulnerable members of society have benefited hugely. Crimes against women are drawing the attention of the judiciary, however research have revealed that most of the provisions of section 354 of the IPC and the Dowry Prevention Legislation are the most misused part of law in India, with no amendments likely to have been made. The provision, which was established to protect a woman's dignity, has been widely misused by them and is now being used to harass and blackmail their husband and his family. Once a FIR is lodged under section 498A/406 of the IPC, the police have a weapon to harass the husband and all of his family members included in the FIR without even conducting a preliminary investigation. Laws are supposed to watchdog of justice and servant of the society,

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<sup>11</sup> (2018) 6 SCC 454

<sup>12</sup> (2020) 4 SCC 761

but in these situations flaws in laws are often misused as weapons to settle personal vendetta and revenge over others. In case of flaws in statutes, if the law has to change it must change so that justice is served and law and order is maintained in the system. Misuse of these flaws in law is widely seen in woman centric laws. In the case of Sushil Kumar Sharma v. Union of India<sup>13</sup>, the court stated that *“By the misuse of the provision, a new legal terrorism is unleashed. The provision is intended to be used as a shield and not an assassin’s weapon.”* from which the court further added that these laws are indented for aid of victims and not to be meant for usage with malicious intent. The Court stated that just because the provision is constitutional and within the scope of the law, it does not permit unscrupulous individuals to carry out personal vendettas or harass others. The courts must deal with the matter within the existing framework until the legislature finds a solution to the false accusations. In the case of Arnesh Kumar V. State Of Bihar, the court held that in today's society women frequently widely use Section 498A as a weapon rather than a shield to attack their husband and his relatives because it is a cognizable and non-bailable offence. On false allegations, even the husband's bedridden grandparents and their relatives living overseas are sometimes brought under this provision. The Court decided certain guidelines, stating that an arrest under this provision must be conducted only after reaching a reasonable conclusion and conducting a thorough investigation into the allegation's authenticity. The Kerala High Court has observed that there is a trend for misuse the provisions of the POCSO Act during cases involving child custody by filing false sexual abuse cases against biological fathers to prevent them from getting custody of their child. In Suhara v Muhammad Jaleel<sup>14</sup>, the court stated these conclusions when granting the father custody of a five-year-old child and dismissing her grandparents' request for permanent custody. Similarly, there are various scenarios where the misuse of POCSO Act is evident. In the case of Samsher Singh Verma v State of Haryana<sup>15</sup> it was held that there is a chance that the allegation is false and allowed the accused to provide evidence in the form of a recorded conversation, revealing that the complaint was brought up merely to suppress the accused in another civil dispute. We find that in several cases, an ongoing matrimonial dispute may have led the parties to make false accusations against one another in order to gain an advantage in the matrimonial disputes. Young children are a country's most valuable resource, and it is everyone's obligation to care for and protect them. Our legal system has long been burdened by the misuse of even the most stringent laws to pursue one's own, almost mainly negative

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<sup>13</sup> (2005) 6 SCC 281

<sup>14</sup> 2019 SCC Ker 1237

<sup>15</sup> Cri 1525 2015

objectives. POCSO has shown to be nothing different. The Act's major purpose, however, is to provide a solid platform for dealing with the threat of child sexual abuse and prosecuting abusers.

## **VI. CONCLUSION AND RECOMMENDATION**

It is not suspicions that almost all the child sexual abuse cases come out of the blue, but it is also required to distinguish between the genuine ones and false ones. The pace of false allegation is also reflecting an image of children being used as weapons and tools to extort or take revenge upon others. If a take a closer look at all this research, we will be able to conclude that most of the child abuse cases are not arising out of these children but from their parents. It is also required to pass a special law so that children will not further be used for the purpose of blackmail and for gaining leverage over others. It is crucial that all the respective courts must not only handle these cases with extreme caution but also make sure that the suit is not a false allegation from any of the enmity or quarrels in the past. The society need to be cleaned from such offenders, but it is also imperative to make sure that children are no more used as tools to make false allegations against innocent people.

It is important to make sure that law is no misused in the legal system. POCSO is one of the stringent statutes in the Indian legal system but this very statute if misused will end up becoming one of the heinous weapons in the society. It is necessary to make sure that no innocent person suffers a loss or damage due to the flaws in law. Similar to that of Domestic Violence Act and Dowry Prohibition Act in which the mischief rule must be applied and mischief of the POCSO Act should be identified and cured. It is prudent to note that if an amendment is not made to the statute each innocent person who faces false allegation will be deprived of their human rights. Further, the amendment that should me made should also contain rigorous and harsh punishments for petitioners who initiates false allegation with malicious intend so that the sanctions will prevent the further misuse of the statute.

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