



# Child-on-Child Sexual Abuse: A Pertinent legal Analysis

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*“Children inherit the qualities of the parents, no less than their physical features. Environment does play an important part, but the original capital on which a child starts in life is inherited from its ancestors. I have also seen children successfully surmounting the effects of an evil inheritance. That is due to purity being an inherent attribute of the soul.”*

**-: Mahatma Gandhi, Gandhi: An autobiography:-**

## 1. Introduction

The term **Child on Child Sexual Abuse (COCSA)** is defined as *sexual activity between children that occurs without consent, without equality (mentally, physically, or in age), or as a result of physical or emotional coercion*. What this means is that a power difference exists between the two children, whether that is in age, size, or ability. This led to mental instability of child in future perspectives

While the trauma for the victim is the same as if it had happened by an adult, this type of abuse often goes unreported—either because it’s dismissed by adults as “kids being kids” or for the fear of what will happen to one or both of the children to have the abuse known.

The truth is that both children need help in a situation like this. The child being abused certainly needs the appropriate care to avoid the weight of lifelong trauma that so many survivors of child sexual abuse experience, as well as the symptoms that go with it.

The child who has engaged in the harmful sexual behaviour (HSB) needs help as well. If they are able to see a licensed medical/mental health professional to help them work through these age-inappropriate sexual behaviours, then they are less likely to engage in HSB again.<sup>2</sup>

The age-range (12to 14 yrs.) experiences a lot of changes as puberty begins, and if they have a skewed view of sex, or a propensity toward HSB, they may target someone younger, smaller, or with cognitive or physical limitations.

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<sup>2</sup><https://defendinnocence.org/child-sexual-abuse-risk-reduction/sexual-development-at-all-ages/concerning-behavior/5-facts-child-child-sexual-abuse/> Visited on 25-08-2021 at 10:13 AM

## 1.1 Meaning of Child-on-Child Sexual Abuse

**Child-on-child sexual abuse** is a form of child sexual abuse in which a prepubescent child is sexually and forcibly abused by one or more other children or adolescents, and in which no adult is directly involved. While this includes when one of the children uses physical force, threats, trickery or emotional manipulation to elicit cooperation, it also can include non-coercive situations where the initiator proposes or starts a sexual act that the victim does not understand the nature of and simply goes along with, not comprehending its implications or what the consequences might be.<sup>3</sup>

An individual physically mishandles a kid when the individual opens the youngster to sexual acts or conduct. Youngster sexual maltreatment can include (Finkelhor, Sledge, and Sedlak, 2008): Sex acts that include entrance Contacting the youngster's breast or then again privates Making a youngster contact the culprit's breast or privates Voyeurism (that is, the point at which a culprit takes a gander at a youngster's bare body) Exhibitionism (that is, when a culprit shows a youngster his or then again her stripped body and vice-versa) Furthermore, different types of child sexual misuse might incorporate the accompanying: Showing a youngster sexual entertainment or utilizing a youngster in the creation of sexual entertainment (Putnam, 2003). child sexual abuse, for example, dealing or youngster prostitution Web based child sexual maltreatment,for example, making, portraying, and/ or on the other hand appropriating sexual pictures of kids on the web; or following, preparing, as well as participating in physically unequivocal practices with youngsters on the web.<sup>4</sup>

Children who have been sexually abused may also experience verbal, emotional, psychological or physical abuse (Finkelhor, Turner, Ormrod, Hamby, & Kracke, 2009). Perpetrators may use force or, more commonly, by provoking or instigating and by the way of manipulation (e.g., threatening to harm a child's family or pets, telling the child that no one will believe him or her) to abuse a child and keep him or her from telling others about the incident. Child sexual abuse is a crime and an abuse of trust, power, and authority that may contribute to serious short- and long-term problems for the child. And also, could be a life time trauma as well.<sup>5</sup>

## 1.2 Mere facts about Child on Child Sexual Abuse

The following are facts about child-on-child sexual abuse, according to the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP)<sup>6</sup>:

- More than one third (35.6%) of individuals who are known to law enforcement to have perpetrated sex crimes against other children are juveniles; In organisations and in schools, child on child sexual abuse is more prevalent than adult sex offences;
- Male and younger victims are more frequently involved in child-on-child sexual abuse; Between the ages of 15 and 17, the prevalence of child sexual assault is highest; Compared to adult sex offences (80%), child on child sexual abuse happens most frequently in the home (68% of the time); Attacks on teens are often more common among middle-class Offenses against teenagers are typically higher among mid to late adolescence while offenses against victims under the age of 12 are typically lower;
- About 1 out of every 8 juvenile offenders is under the age of 12; and
- Child on child sexual abuse comprises more than one-quarter (25.8%) of all sex offenses.

Those who have been identified as having committed child on child sexual abuse cover a broad age range:

- 5% are under the age of 9 years;
- 16% are less than 12 years old;
- 38% are between ages of 12 and 14;

<sup>3</sup> Shaw, J (2000) "Child on Child Sexual Abuse: Psychological perspective". Child Abuse & Neglect. 24(12): 1591-1600

<sup>4</sup>[https://www.nsvrc.org/sites/default/files/Publications\\_NSVRC\\_Overview\\_Child-sexual-abuse-prevention\\_0.pdf](https://www.nsvrc.org/sites/default/files/Publications_NSVRC_Overview_Child-sexual-abuse-prevention_0.pdf) Visited on 25-08-2021 at 11:05 AM

<sup>5</sup> Supra 4

<sup>6</sup> <https://www.ncjrs.gov/pdffiles1/ojjdp/227763.pdf>

- 46% are between ages 15 and 17; and
- 93% are male.

Juveniles identified as having committed child on child sexual abuse are more likely than adults to do the following:

- Offend in groups with one or more co-offenders (24% for juveniles versus 14% for adults);
- Offend at a school (12% versus 2%);
- Commit sodomy (13% versus 7%) and fondling (49% versus 42%);
- Target younger children under the age of 12 (59% versus 39%); and
- Victimize males (25% versus 13%)

Minors are less likely than adults to commit rape (24% versus 31%). Like adults, minors will sexually offend in the privacy of the home (about 69% of the time) more often than in public places.<sup>7</sup>

### 1.3 Confinement for Committing Child on Child Sexual offence

A "minor" (a youngster under the age of 18) often attends delinquent court after being detained and charged with a crime. Following an arrest and an investigation, the law enforcement agency decides whether the youngster should be kept in juvenile home or released to the care of his or her parent(s) or guardian(s).

Depending on the circumstances, the police may detain a minor in their custody, release them into the care of their parents with a "Notice to Appear," or place them in a foster home that will provide them with shelter, care, and/or counselling. If a minor is arrested, the police may also do one of the following.

1. Document the arrest and permit the youngster to go home;
2. Place the kid in a foster family that will provide them with shelter, care, and/or counselling;
3. Keep the kid in custody of the police;
4. Release the minor into the care of parents with a "Notice to Appear"; or
5. Place the minor in juvenile hall (also known as "detention") while legal action is ongoing.

Both in India and US have some sort of similar punishments regarding the abovementioned culprit.

### 1.4 Adjudication and Prosecution of Child on Child Sexual Abuse

Talking about in Indian Perspective the Prosecution and Adjudication of COCSA cases is dealt with POCSO (Prevention of Children from Sexual Offences) Act, 2012

In India, there was no suitable legal framework for dealing with child sexual assault before to 2012. Sections 354, 375, 377, and 509 of the Indian Penal Code, 1860, shielded earlier cases of sex offences against children. The phrase "Assault or criminal force to a lady with purpose to affront her modesty" is covered under Section 354<sup>8</sup>. A person who aims to insult a woman's modesty by word, gesture, or action is in violation of Section 509 of the IPC, which also deals with rape, and an unnatural offence is in violation of Section 377 of the IPC. The Young Persons (Harmful Publication) Act of 1956 addressed pornography. For victims of child sexual abuse

<sup>7</sup> Juvenile Sexual Crimes- Child on Child Sexual Abuse <https://www.wksexcrimes.com/practice-areas/child-on-child-sexual-abuse/> (Visited on 21-July-2022)

<sup>8</sup> <https://indiankanoon.org/doc/203036/> (Visited on 17-July-2022)

under the age of 18, the Indian Parliament established the Protection of Children against Sexual Offences Act (POSCO) in 2012.

#### 1.4.1 Important aspects of the POSCO Act

The POSCO Act is gender neutral to begin with. Under this law, the child's permission is irrelevant.

Second, this law requires the reporting and documentation of child sexual abuse. The reporting of the offence is required by Section 19(1) of the POSCO Act. This law specifies the sexual offences perpetrated against children,

Third. According to Section 3 of the POSCO Act, "He enters his penis, to whatever extent, into the vagina, mouth, urethra, or anus of a child or makes the kid do so with him or any other person" is considered "penetrative sexual assault"; Due to the usage of the phrase "any other person" in Section 3(a), women may also commit crimes or become victims under the second part of Section 3(a)

Fourthly, it offers kids protection while going through the legal system.

Fifth, "Section 5(j)" states that anybody who engages in penetrating sexual assault on a kid, which, in the case of a female child, results in the child becoming pregnant as a result of the attack. Under Section 16 of the POCSO Act, women can be included as abettors even in these offences.<sup>9</sup>

#### 1.4.2 Salient Feature of POCSO

- 1) The case shall be brought before the Child Welfare Committee within 24 hours of the incident being reported to the police officer.
- 2) Only a female police officer (In case of Female Victim) should record the minor's statement at his or her home or favoured location.
- 3) This law also guarantees a swift trial and closed-door hearings to maintain anonymity.
- 4) The court shouldn't call the minor repeatedly. He or she might give a testimony by video from home.
- 5) A female doctor must conduct the examination, and the minor must have the support of that person. If parents or guardians are present, their consent is required. If not, a medical practitioner must do so on the patient's behalf.
- 6) The defence must ask all questions via the judge and is not permitted to confront the minor with hostile or disparaging inquiries.
- 7) During the gathering of evidence, the youngster should not be exposed to the accused in any way.<sup>10</sup>

#### 1.4.3 US Legislation on COCSA

The concept of Child on Child Sexual Abuse is more developed in USA comparing with other developing country; they have their specific laws on that, talking about the prosecution and adjudication of COCSA They have various provision which are discussed hereunder:-

Consensual sex, which is defined as voluntary sexual activity between teenagers aged 14 to 17 where there is no coercion, fear, or danger of bodily damage, is often penalised as a misdemeanour and may get juvenile court treatment.

A juvenile offender who sexually assaults a kid under 14 when they are under the age of 14 may be charged with a crime. The case may remain in the juvenile courts as long as the alleged juvenile offender has no significant arrest history.

<sup>9</sup> <http://www.legalservicesindia.com/article/article/crusading-against-child-sexual-abuse-through-law-introspecting-the-posco-1908-1.html> (Visited on 15-June-2022)

<sup>10</sup> <https://blog.iplayers.in/laws-related-child-sexual-abuse-india/> (Visted on 02-May-2022)

However, a prosecutor retains the right to charge and prosecute a juvenile in adult criminal court in some situations, based on the minor's past criminal history and whether force (a "rape" offence) was used, regardless of the victim's age.

California law mandates that juveniles above the age of 14 be tried as adults in situations of murder and specific forceful sex offences committed under severe circumstances.<sup>11</sup>

#### 1.4.4 Punishment and Sentencing of COCSA

In US the criteria of Punishment is provided hereunder:

A youngster who is adjudged delinquent ("guilty") of child sexual abuse by a juvenile court may receive a variety of treatments, ranging from home probation for a certain amount of time to detention in a juvenile detention centre until they become 25, based on:

The needs of the delinquent youngster, the seriousness of the violation, and the risk to the public. A juvenile found guilty of a felony sex crime in a criminal court faces the same sentencing and penalties as an adult offender under the law. This could comprise:

a protracted term in an adult jail; official probation monitoring;

A \$10,000 maximum fine; alternatively, in accordance with California's Three Strikes legislation, a "strike" against the juvenile's record.

Finally, and perhaps most devastatingly, California's Sex Offender Registration Act allows for lifetime sex offender registration for minors accused of committing sex offences (Penal Code section 290).

Whether a juvenile is sentenced to jail or a juvenile justice institution after being found delinquent or after being found guilty as an adult, mandatory sex offender registration is still required.

Depending on the seriousness of the violation and the personal history of the juvenile offender, juveniles accused of child or child sexual abuse may be allowed to have their cases considered in the juvenile court system or they may be tried as adults. A minor is not prosecuted but rather adjudicated in juvenile court. Juvenile "adjudication" as a youth and "conviction" as an adult differ significantly from one another. A youngster does not have the right to a jury in juvenile court. Final judgement is rendered by the judge. However, a judge's "guilt" finding designates the kid as a "delinquent," as opposed to being legally convicted, as an adult would be.

In US from casual probation to commitment in the care of the California Department of Corrections and Rehabilitation, Division of Juvenile Justice, an adjudicated juvenile is subject to a sliding scale of treatment up to a particular age. A youngster who is charged with a sexual offence in a criminal court has the same rights as an adult. If found guilty of the claimed offence, he or she will nevertheless endure the same adult treatment and penalty.<sup>12</sup>

Similar to adult abuse, it is impossible to ascertain with any degree of accuracy the prevalence of child-on-child sexual abuse. Because it is not commonly recognised in the public and typically takes place without adult supervision, it frequently goes unnoticed. Even if it is understood by adults, it is occasionally written off as unimportant by others who do not grasp the ramifications. Particularly, sibling abuse is underreported in comparison to parent-child sexual abuse reporting rates<sup>13</sup> and childhood incest victim disclosure is uncommon.

When it comes to issues like anxiety disorders, depression, substance abuse, suicide, eating disorders, post-traumatic stress disorder, sleep disorders, and difficulty trusting peers in the context of relationships, children who were sexually abused by other minors, including inter-sibling abuse, exhibit many of the same issues as children who were abused by adults.<sup>14</sup>The victim frequently has false perceptions of what occurred, sometimes

<sup>11</sup> <https://www.wksexcrimes.com/practice-areas/child-on-child-sexual-abuse/> (Visited on 06-July-2022)

<sup>12</sup> Supra Note7

<sup>13</sup> Loseke, Donileen R.; Gelles, Richard J. and Cavanaugh, Mary M. (2005). *Current*

<sup>14</sup> Jane M. Rudd, and Sharon D. Herzbergerb (September 1999) *Child Abuse & Neglect* . Brother-sister incest—father-daughter incest: a comparison of characteristics and consequences.

even believing they were the ones who started it or that they agreed to participate in the act freely.<sup>15</sup> The use of force or compulsion, the frequency of the abuse, and the intrusiveness of the act are significant variables that impact how severe the symptoms are.<sup>16</sup> Additionally, it has been shown that the likelihood of victimisation increases with age.<sup>17</sup>

### 1.5 What we can do to Prevent Child Sexual Abuse:-

Participate in neighbourhood-based preventative initiatives.

Find out more about protecting children and preventing abuse.

Take care of your own children.

Assistance to victims of child abuse.

Spread the word about preventing child abuse.

Indicate any possible child abuse.

Organise a Nationwide campaign that will endorse people to know about what is Child on Child Sexual Offence and to inform and involve communities in the prevention of child sexual abuse. To find out more about this community-based programme that instructs grownups on what to do if they think a kid may be a victim of child sexual abuse, how to see the signs, and how to act.<sup>18</sup>

Apart from this parent should let their children know what a good touch is and what a bad touch is, Mandatory school learning is required where teacher must take children classes regarding the issue pertaining COCSA. Parents should involve with their children and know what exact activities their ward are doing and let them know what is good and what is bad regarding this. Parents must address the sexual curiosity of their children and talk about them,

We can understand with this example- A four-year-old girl is being normally curious as she touches her baby brother's penis when his diaper is being changed. She could be curious about how a penis feels because she has never seen one before. When a five-year-old boy first sees his sister's genitalia, he might worry where her penis is, if she's lost it, and whether it will ever come back. It could take him a few more looks and inquiries before he realises that boys and girls are born with distinct genitalia. You have the chance as a parent to teach your kids about sexuality in a way that is appropriate for their age.

It is not typical curiosity, though, for a fourteen-year-old guy to want to examine his five-year-old sister's genitalia. You must discover his motivation for doing this. He could be imagining what it would be like to touch or brush his penis against female genitalia. However, it would be harsh to state his curiosity in this manner with his small sister. Children as young as four and five are certainly intrigued when they remove their pants to examine each other's genitalia. However, you should step in if they keep doing it or if they repeatedly touch one other's genitalia over time. Consider the chance that one of them may have been exposed to adult behaviour or explicit images if it seems like more than just curiosity.

They may have undergone sexual abuse or have seen sexual pictures in pornography and are acting out what they have seen or experienced. To assume that all play is harmless is not a smart notion. It is preferable to make an effort to discover the cause of the behaviour. Repetitive play may indicate that the youngster is upset.

Abuse of power and authority results in sexual assault of siblings also. Younger siblings are commonly subjected to various forms of abuse in addition to sexual abuse by older children. Emotional abuse is when younger children are routinely made fun of, teased, or made fun of because of their size, gender, or other identifying qualities. Emotional abuse can also take the form of frightening smaller children in dimly lit spaces or telling them that no one cares for them or that awful things will happen to them. Bigger or older siblings

<sup>15</sup> Sibling Incest: Reports from Forty-One Survivors. *Journal of Child Sexual Abuse*

<sup>16</sup> Brown, Janelle C., Ph.D. (September, 2004). "Child-on-child sexual abuse: An investigation of behavioral and emotional sequelae," *University of Pennsylvania*,

<sup>17</sup> Child Sexual Abuse and Sexual Re-victimization. *Clinical Psychology: Science and Practice*

<sup>18</sup> <https://www.preventchildabusenc.org/resource-hub/about-child-sexual-abuse/> (Visted on 15-August-2022)

often excuse the punching, squeezing, and smothering of smaller children by telling their parents, "We were just having fun" or "We were simply wrestling." If the younger child is made to do this, it isn't "just fun," it is physical abuse.

Even we can prevent sibling and other children from doing Sexual abuse with other one

You can set aside some time every day for your kids to share with you their experiences, both good and bad, from that day. This might occur right after school or right before bed.

Whether the sitter is a family member or not, make sure the kids are well cared for. You can probe your kids about what they did the night before at breakfast, such as if they watched their favourite TV show. Did they engage in any gaming? They complied with the sitter, right? Was the babysitter kindly? Do they want the same babysitter to watch them again?

Be open to discussing sexuality. Watching informative films and reading books with your children are two examples of informal sex education. Look for library resources on which includes Informal sex education could include watching educational videos etc.

Encourage the presentation of sexual abuse prevention movies and events at your kids' schools. Although most of them do, it doesn't hurt to inquire. Typically, the programmes emphasise the idea that you should notify a trusted adult if someone is pressuring you into doing anything that doesn't seem right.

Discover the locations and other players your kids are playing with. If they're playing with kids who are primarily interested in sexual games, you should be extremely worried.

Teach your kids that their bodies belong to them and that everyone else must respect that.

Watch out for violence on television and online. Children are sent a harmful message by movies and television shows that associate sex with violence. And tell them how wrongful it is. Promote gender-neutral attitudes and actions. For instance, evenly distribute authority, responsibilities, and advantages among brothers and sisters; equitably divide up home chores<sup>19</sup>

## 1.6 Conclusion and Suggestion

The most crucial thing you can do if your child has been sexually abused by a peer is to respond with love and support while also outlining your expectations for safe and appropriate conduct. Create a family safety plan to make sure your child is properly watched after and won't be in an abusive scenario again. Stick to the truth while explaining what took place and assure the other parents that you're dedicated to assisting in halting the abuse cycle. Counselling in mental health should be sought by both the victim and the offender. Medicaid is accepted by the majority of offices. Speak with an administration if the school served as a place of abuse to make sure you have their commitment.

Officials at the school are trusted by parents to keep their kids safe. When this trust is broken, the repercussions can have lifelong, catastrophic impacts on the victim. No person or organisation is too big to file a lawsuit in court. A civil lawsuit is not just filed for financial gain. It's an essential step in holding third parties liable for ignoring safety risks that exist in their vicinity. In order to stop sexual misbehaviour by school staff in the future, school policies must be changed.

So, I would like to suggest few recommendations to deal with this serious issue in future. Everyone knows that there is intense need of work to address child sexual abuse in community. To reduce child sexual abuse at community level, NGO's should provide sexual abuse preventive education to the parents, teachers, and children (Practical Advice for Parents on Preventing Child Sexual Abuse, 2003). The awareness program should be planned in such manners that should support young children the sense of body ownership, giving children skills to recognize and act in response to potentially dangerous situation (Intervention for support,

<sup>19</sup> <https://www.canada.ca/en/public-health/services/health-promotion/stop-family-violence/prevention-resource-centre/children/sibling-sexual-abuse-guide-parents.html> (Visited on 20 August 2022)

2001).There is a need to educate and train people from community settings for screening and reporting of child sexual abuse cases. Moreover, at large scale workshops, seminars, and awareness programs through media regarding prevention of child sexual abuse and parents, school and other stakeholders must perform their responsibility in well versed manner so that no child could be abused of other one.

