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EFFICACY OF LEGISLATION IN **REGARD TO CHILD ABUSE** **: A STUDY ON POCSO ACT**

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Abstract

A child must play a vital role in the development of a nation. Children face many problems in our society. The problem of children is a global and social problem that exists all over the world. Child sexual abuse is a growing social problem which is threatening the society. Child abuse is increasing at an alarming rate without any without considering the sex, colour, nationality, religion, caste, and language etc. of the children. The Protection of Children from Sexual Offences Act defines seven types of sexual offences, including attempted offences, which recently got amended by the Act of 2019¹. Although this Act was passed, still the abuses against the children continue to rise. Such kind of atrocities not only affect a child physically and mentally but also put a scar in their mind set up for the future. It affects their level of confidence and also creates incurable trauma. The crimes against children should be considered as an injustice to whole humanity. The Government of India issued a number of programmes to abolish this social problem, but everything proved to be existing only in the papers. This paper tries to find out the efficacy of the said legislation and also tries to highlight the loopholes which are present after the amendment. Relevant judicial decisions are also being discussed to support the arguments.

Keywords: *POCSO, child abuse, loopholes*

¹ Protection Of Children from Sexual Offences Act, 2019 (Act 25 of 2019)

Introduction

“Childhood should be carefree, playing in the sun; not living a nightmare in the darkness of the soul” - Dave Pelzer.

Sexual offence is defined as any unwelcome sexual action on the physical, intellectual, or mental level of consciousness that leads to the suppression of the victim's will by invading personal space when the victim feels compelled or manipulated and involves the infliction of suffering. (Kissing, groping, sexual activity etc.) Inducing adults on children without their consent can also be seen as assault. Numerous injuries are suffered by the victim, including serious danger to reproductive health, STIs, severe depression, suicidal ideation, and other things. No social problem is as universal as oppression of the child. Sexual crimes have increased dramatically in every country in the world over the last two decades. The Constitution of India grants every child the right to life with dignity and privacy under Article 21, the right to equality under Article 14, the right to against discrimination under article 15 and the right against exploitation under Article 23 and 24 respectively. Protection of Children from Sexual Offences Act was introduced in the year 2012 by Ministry of Women and Child Development of India, to protect minors from the horror of sexual abuse. But is it being implemented properly, has it made any difference? Why was there an increase of POCSO cases by 12.1% increase? Who is to be blamed, is it the government, the judiciary or the public? Is society safe for our children? POCSO Act was enacted with a view to protect the children from sexual abuse and exploitation. This Act includes 9 chapters, 46 clauses. POCSO defines seven kinds of sexual offences, including the abetment and attempt to commit an offence. The POCSO Act 2012 has been amended on 2019, act has a number of provisions to safeguard children from sexual harassment offences. This amendment ensures the offences against children are gender-neutral. Punishment for sexual offences was increased from 10 years to 20 years. Amendment also helped to the formation of special courts in every area to ensure a fast trial and exact execution of justice.

The cases of sexual abuse and exploitation are not decreasing but increasing by every day. All the laws are in place but violence against children is increasing. Why? Lack of effectiveness of law is a central problem. Lack of an appropriate legal remedy to the ever-increasing number of sexual offences against children was a significant threat to children's well-being and to the maintenance of justice in society. Absence of victim protection and support: One in three children who faced sexual abuse dropped out of school, they face lack of education. The establishment of welfare centres will emphasize the importance of the

responsibility of ensuring that children receive full justice and are not further harmed by court proceedings.

Section 3 of the POCSO ACT 2012 states that penetration of any object or any body part into any private part or mouth of the child is punishable under law.

Section 4 of the POCSO ACT 2012 states that the penetrative sexual assaulter will be imprisoned for a term not less than 10 years and may be extended to life imprisonment. This punishment may be extended to a minimum 20 years if the child is below the age of 16.

Section 5 of POCSO ACT 2012 states that if the offender is the authority or position of trust to the victim if there is a blood relation between the offender and the victim or if the victim becomes carrying or if the child suffers any injury a minimum of 10 years of imprisonment that may be extended to life imprisonment with a penalty.

Section 11 of POCSO ACT 2012 states that if the offender displays or shares any kind of sexual content to the victim through message or any other kind of communication. He said to commit a sexual harassment is not a touch based offence instead a sexual intent is required. A maximum of 3 years of imprisonment with a fine shall be given.

Section 13 of POCSO ACT 2012 states that using children for a pornographic purpose is an offence. It includes displaying the sexual organ of a child or using a child for actual or simulated sexual pleasure that could be with or without penetration or representation of a child in decently.

Today the Governments in both state and central level are trying their level best to get rid of the systems, but still, it is happening in many nooks and corners of our country.

Literature Review:

Dr. Manoj Kumar Therayil², The Protection of Children from Sexual Offences Act In Clinical Settings- Promises and Challenges-

It said inadequate police response, lack of access to adequate medical services, lack of access to effective legal assistance, and lack of coordinated support services were the highlighted

² Dr. Manoj Kumar Therayil, "The Protection of Children from Sexual Offences Act In Clinical Settings- Promises and Challenges" 32(2) KJP 27 (2018)

problems. Other factors include social stigma, fear of retribution by perpetrators, and lack of trust in state institutions. The Nation, State Commissions for the Protection of Children's Sight is tasked with conducting awareness campaigns, and all state agencies, including police, doctors, parents, and teachers, have enacted various provisions of the law, which are still only on paper.

Mrs. Pragya Lodha³, the Prevention of POCSO ACT and Ethical Considerations for Children in Therapeutic Practise-

A challenge that calls into question the ethical implementation of POCSO ACT is the lack of trained legal, medical and police personnel who are often overwhelmed when dealing with perpetrators and victims. Described as a threat. In addition, there are no full-time female directors. This poses additional challenges to the safety of female victims in the investigative process. This also does not fall under legal investigation requirements.

Mrs. Sydney Moirangthem⁴, Child Sexual Abuse; Issues and Concerns-

He explained that the law imposes a legal obligation on fraternity groups and institutions to provide free medical care to survivors. Refunds must be made responsibly. Otherwise, hospitals may provide poor medical procedures or refuse comprehensive treatment.

Mrs. K. Susheel Bavath⁵, Legal Implications of POCSO ACT, 2012 – An Analysis-

He stated the reported wait rate for actual child rapes increased from 20,594 in 2010 to 37,519 in 2014. A significant increase of around 84%, a wait that continues as reports increase in the trial process. In India, eight cases of child sexual abuse continue to be reported every day.

Number: 4,444 registered child rape cases increased from 5,484 cases in 2009 to 13,766 cases in 2014. Over the past two years, 6816 cases have been registered as FIR`s under POCSO ACT .555 cases alone went to court and 166 cases defendants were convicted while 389 defendants were acquitted.

³ Pragya Lodha, "The Prevention of POCSO Act and Ethical Considerations for Children in Therapeutic Practise" 1.5(2) GBE 34 (2017)

⁴ Sydney Moirangthem, "Child Sexual Abuse; Issues and Concerns" 42 IJMR 1 (2015)

⁵ K Susheel Bavath "Legal Implementation of POCSO ACT" 1 IJMR 12 (2016)

Mr. Atriyo Banerjee ⁶, Increasing Efficiency of Trial Courts in India-

This article states that delay in deciding the cases means delay in delivery of justice. This results in gross injustice to both the victims of crimes and innocent under trials wrongly accused of being criminals.

Mrs. Shivani Nair ⁷, Analysis of the POCSO Amendment Bill, 2019-

She stated that the penalties for violations prior to the amendment were from a minimum of seven years' imprisonment to life imprisonment and a fine. The bill also provides that anyone who sexually assaults a minor under the age of 16 will be sentenced to imprisonment with a minimum of 20 years' imprisonment and possibly life imprisonment.

Mrs. Mahima Sharma ⁸, POCSO Amendment Act, 2019: Synopsis-

According to 2016 data from the National Criminal Records Service, the conviction rate for POCSO cases was 29.6%, with a compliance rate of 89%. Due to the alarmingly high pending rate of child abuse cases, the Supreme Court has ordered the High Court to set up a panel of judges to regulate and monitor cases under the POCSO Act. The Supreme Court noted that despite the enactment of the Child Protection Act in 2017, states like Uttar Pradesh have more than 30,000 lawsuits pending against under the POCSO Act. Court ordered a review of the backlog.

Mr. Mayank Tiwari ⁹, Critical Analysis of India's Protection of Children from Sexual Offences Act, 2012-

The article or paper stated that: This rule only recognizes a child's birth certificate, school certificate, or enrolment certificate. However, children who are unable to provide documentation must undergo a bone test. This test provides a rough estimate of your child's age. POCSO law requires what documents must be considered to prove a child's age, adjudicating a child in case of doubt if an ossification test does not give an accurate estimate. It must be clearly defined whether.

⁶ Atriyo Banerjee "Increasing Efficiency of Trial Courts in India" 2 TLV 1 (2021)

⁷

⁸ Mahima Sharma "POCSO Amendment Act 2019 , Synopsis" ILS 1 (2019)

⁹ Jurist Student Commentary,2020

Statement of Problem:

Society faces many problems due to POCSO crime. Society always thinks about the safety of children. A child who has been sexually abused has to face some very serious consequences such as: B. Violent and dangerous behaviours such as depression and anxiety that ruin his life and negatively affect all aspects of society.

Objectives:

- To suggest the changes required in the POCSO Act of 2019.
- To suggest ways to make the implementation of POCSO Act more effective.

Research Questions:

- Is the POCSO Act of 2019 effectively implemented?
- What are the improvements needed in the POCSO Act of 2019?

Hypothesis:

Although the punishments of POCSO have been made more rigorous, the implementation of this law is what India is lacking.

Research Methodology:

Present study is mainly based on primary data collected by doctrinal research and also the secondary data has been collected from different sources which include the official data as well as available literature on the subject from different journals, books, articles, newspapers etc. Method of research is critical analysis.

Limitations:

Child sexual abuse cases that do not fall within the meaning of rape within the meaning of section 376 of the Indian Penal Code (IPC) and prior to the enactment of POCSO in 2012 may be classified as misdemeanour offenses of women's resentment. Reports of IPC Article 354 violations are prohibited by the CRPC more than three years from the date of the incident. A provision of the Code of Criminal Procedure (CRPC) prohibits judges from acknowledging a case beyond a certain period of time. Thus, historical reports of child sexual

offenses occurring before 2012 present an insurmountable legal obstacle to the registration of past child sexual offenses. These cases are not limited to institutional It also includes domestic abuse when the child has difficulty reporting the crime or perpetrator at the earliest opportunity. Significant Reasons: Sexual abuse reports delayed significantly from the date of the violation may be due to factors such as: Syndrome: Children therefore keep their abuse a secret for fear that no one will believe that abuse leads to conforming behaviour. If so, the chances of collecting direct physical and medical evidence are believed to be less than 5%.

Study Result:

Child abuse is a virus that has been corroding our society for age`s. The central government came up with an act to exterminate this virus. It was introduced in 14th November, 2012 and named it Protection of Children from Sexual Offences (POCSO). But this act has some limitations and problems. So, it was amended for the first time on 16th August, 2019. In the amendment punishment for sexual offences was increased from 10 years to 20 years with a provision of death penalty. It also defined child pornography and made the offence punishable under the Information Technology Act. This act only existed for name`s sake; it didn't have any effect on our society. The number of POCSO cases has rapidly increased by 30% in the past 5 years. The largest number of cases filed under POCSO 2021 was in UP (7129)¹⁰ , followed by Maharashtra (6200)¹¹ , Madhya Pradesh (6070)¹² , Tamil Nadu (4465)¹³ , Karnataka (2813)¹⁴ altogether there was rise of 16.2%¹⁵ crimes against children in 2021 compared to previous year. Sikkim had the highest rate of crime against children at (72.4)¹⁶. Meanwhile, Nagaland has the lowest rate of crime against children at (6.2)¹⁷ . Among Union territories Delhi has the highest rate of crime against children in 2021 with (128.5). In, 2021 in India 140 children were raped and murdered. There were 359 cases reported on suicide of children. The largest number of murder of children took place in UP. According to a study conducted by the Lok Sabha in March 2022, more than 2.26 lakh cases were registered under POCSO act are still pending as of 31st 2021¹⁸

¹⁰ NCRB data | Crime against kids: a third still under POCSO BY Esha Roy

¹¹ NCRB data | Crime against kids: a third still under POCSO BY Esha Roy

¹² Ibid.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

From the above-mentioned information, we can conclude that even though the POCSO ACT exists it is not fully complete, there is a need for some amendments to the existing Act and also special POCSO court where cases are still pending. This is a major flaw of the system.

*Indra Kumar Pradhan vs State of Sikkim*¹⁹

Indra Kumar Pradhan was sentenced under Section 10 of the POCSO Act only to 5 years imprisonment and a fine of 5000 rupees. Her victim, a girl around the age of , was about to go to her prisoner's store to buy her goods, when the prisoner took her to 's room and sexually abused her. I was. The incident occurred on September 14, 2014, but the victim's father filed a report with the police on October 21, 2014. During the course of the investigation, it was also established that the defendant had sexually abused the victim twice, on different occasions, and did not disclose this to her parents for fear of flogging. However, the delay in filing the FIR and some minor discrepancies in the declarations asserted in the appeal were found to be sufficiently explained and accepted by the Court. The victim's testimony in this case was consistently unwavering, despite her young age of 4,444. Therefore, the inmate's appeal was dismissed and dismissed, and he was forced to surrender immediately and was punished.

*Dr. Jaseer Aboobacker, s/o. Mahmood vs State of Kerala,*²⁰

In this case, a complaint was filed against Dr. Supporters of Jaseer 's subscription claimed that his ex-wife, Dr . Shamna Muhammad, and his mother abused his 9-year-old minor boy who was born into Muhammad's marriage. This was superseded when there was an ongoing custody battle between Petitioner and Respondent. The former was seeking continued custody of his son and was seeking termination of visitation rights. Defendant claimed to have persuaded a minor child to file a complaint against Defendant seeking an amendment to his Family Court Order granting visitation rights to Applicant.

In order to obtain an affirmative determination in a custody application currently pending in family court, the defendant's contention that such material allegations were made cannot simply be dismissed after consideration of all the documents. As a result, after signing his Rs. 50,000 bond with two competent guarantors, the defendant was granted bail under various conditions in his case of arrest.

¹⁹ CrI.A.no.17 of 2015

²⁰ Dp(fc).no.141 of 2021

*Nishikant Maruti v/s The State of Maharashtra*²¹

Briefly, in 2015, plaintiff Smt. Sunanda Pathade lived in Jodmod, Aurangpura with her husband and three children. The victim at that time was about 9 years old. Defendant Nishikant lived in the same area. The victim frequently visited her friend's house near the accused. On January 24, 2015, after returning from work, the complainant found daughter crying and urinating repeatedly. When asked by her daughter, she said her genitals were inflamed. Further investigation revealed that the victim ran off near. Nishikant 's house, called her home alone, pulled her down, and indulged in sex with. I confessed that I felt pain in my vagina. When the defendant was questioned, he flatly denied such allegations, and then on January 25, 2015, Plaintiff filed her complaint with the Police Department. The victim underwent a medical examination. Defendant pleaded not guilty and claimed to be tried. A total of 4,444 defenses were denied for the defendants. Defendant questioned on behalf of defense witnesses. Defense witnesses said the defendant was not at his home at the time of the incident and was at work. Defendant's further defense is that there was a dispute between applicant and defendant regarding money lending transactions. After many Arguments, verdict and order of Sessions Case No. 54/2015 of 24 August 2015, issued by Judge Learned Sessions, Amravati sentenced defendants under section 5(m) and read aloud in Section 6 of Protection. RI for her 10 years, 5 months non-compliance with RI is upheld by the Children of Sexual Offenses ACT 2012 fined Rs.5000/-.

*Sachin Kumar Singhrraha v/s The State Of Madhya Pradesh*²²

The victim's father's brother came from his village and drove the victim's child to school in a vehicle owned and driven by the defendant. The former got out of the car near Sabzi Mandi based on the defendant's assurance that he would take the victim's child to school as he would have to pay for his daughter's school fees. The child drove 4,444 defendants to school in a car, but did not return home that day. She was unable to track down the victim's child despite frantic searches by her parents, relatives and villagers. The deceased's father suspected that the defendant had left his daughter elsewhere, but the first complaint against an unknown assailant came and the defendant ordered his 2 Arrested a day later. Shortly thereafter, the defendant's affidavit was recorded and the defendant took police and witnesses to the site where the school bag and body were disposed of. After trial, the defendant was convicted by

²¹ Cri.appeal.373.15

²² Criminal reframe no.05/2015 Criminal appeal no.2303/2015

the court of first instance, and the High Court upheld his sentence. Sections 376(A), 302 and 201(II) of the IPC as well as Section 5(i) (m) and Section 6 POCSO Act are supported by him. However, the wording has been corrected. The defendant was sentenced to 25 years in prison.

Akshay Kailas Purohit (In Jail) v/s State of Maharashtra Thr. P.S.O ²³

Sagar Bagani used to run a hardware store in the village of Telhara in the Akora district. His residence is adjacent to his shop just behind his shop, where he lived with his family. They included their underage daughter, Vishaka or Lado (deceased), aged two and a half. The whistleblower had five of his servants in his shop, including Defendant #1-Pacheng. Rad, a minor, was cared for by Defendant #1. The informants had specifically instructed Defendant No. 1 not to take children outside of the store and home. On February 27, 2014 around 6pm, the whistleblower was in the store with the child. He asked Defendant 1 to leave the child with his mother. Half an hour later, the informant returned to the apartment after closing, but did not find his daughter, Rad. He searched for Rad and attempted to contact Defendant 1. When I contacted Defendant, there were many evasive replies, such as Defendant 2 taking Rad to her. The informant suspected that Defendant 1, along with Defendant 2, plotted against her and kidnapped Rad. During the course of the investigation, confessions led to the seizure of naked corpses of children along with several other items such as knives, sandals. Prosecutors relied on a variety of circumstances to prosecute. Defendant No. 1 - Akshay Pachange and Defendant No. 2 - Akshay Purohit are subject to Section 363, 364A, 302, 201, 120B (Section 34 of Indian Penal Code and The Information Technology Act.

Jarnail Singh v/s State of Haryana ²⁴

The eldest daughter of Jagdish Singh and Savitri Devi disappeared from their home on the night of 25/26 March 1993. The former filed her claim against defendant Jarnail Singh. The defendant's convictions by the first instance and high courts were largely based on the testimony of prosecution witnesses of her. It turns out that the victim was abducted by Defendant and taken to the UP location, where he was raped.

After being arrested, the defendant pleaded not guilty and was brought before the trial.

²³ Criminal appeal no.171/2017

²⁴ Criminal appeal no. 1209 of 2010 ¹⁶Writ petition(civil) no.565 of 2012.

After a rigorous review of evidence and testimony, the court found defendant Jarnail Singh guilty.

Nipuna Saxena v/s Union of India ¹⁶

Pursuant to the Supreme Court's ruling in this instance, the violation of Section 23 of POCSO Conduct renders the publisher or owner of Media, Studio, or Photographic Establishment jointly and severally liable for its acts or omissions as employees. Information to help the public identify the victim, including the victim's name, in print, electronically, on social media or remotely.

Notwithstanding the consent of the next of kin, the names or identities of victims of death or mental illness should not be disclosed unless the circumstances justifying disclosure persist, to be determined by the competent authority. In this case, the departmental judge was the competent authority. 3. FIRs for POCSO violations and violations under IPC Sections 376, 376-A, 376-AB, 376-B, 376-C, or 376-D may not be published.

If a victim files an appeal under her Section 372 CrPC without disclosing her identity, the appeal will be made in accordance with the law.

All documents identifying the victim should be kept in a sealed envelope whenever possible. Similar documents should be used in place of these documents and the victim's name should be removed from public records.

The victim's name and identity must be kept confidential from investigative authorities or any authority contacted by the court. This obligation applies to any authority receiving a report filed in a sealed envelope with an investigating authority or court.

Before the government takes action under Section 228-A(1)(c) and establishes standard as directed by the Company, the next of kin must disclose their identity only to a judge at an appropriate hearing. A deceased victim or a victim of a mental illness as defined in Section 228-A (2) (c) IPC.

Under the POCSO Act 2012, special courts may authorize disclosure of the identity of a juvenile victim only when it is in the child's best interest

Within one year of the judgment date, every state and union territory was required to establish at least one "one-shop centre" in each district.

In this case, the main question the High Court dealt with was "whether holding a child's hand and removing the penis in her presence falls within the definition of sexual assault under Section 7 of the POCSO Act." was. Nagpur Bank determined that: Holding a minor's hand to unzip his pants is outside the scope of the POCSO Act 2012 and is more likely to be considered sexual harassment. Applicant has not been convicted of aggravated sexual assault under Sections 10, 12 of the POCSO Act and other provisions of the IPC. Therefore, this decision was as controversial as the skin-to-skin verdict. The judgement creates a negative impact on society.

Why the 2012 Act did got amended?

The Amendment Act modifies the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) to improve or provide for a minimum imprisonment for certain crimes in order to deter perpetrators and keep children safe.

Loopholes of POCSO Act 2019:

Here are a number of confusing loopholes in the amendment. The compensation structure is not stated explicitly. A compensation plan for victims of sexual abuse has been published by the National Legal Services Authority. The Ministry of Women and Child Development has not issued any regulations in accordance with the amendment's proposals, and the Bill does not state who will be compensated in the event that the victim dies. It is necessary for the ministry to establish guidelines for appropriate compensation. There are no rules defining how those in positions of authority (police officers or civil workers) would be tried when it comes to the provisions under aggravated assault. For a nation where power and lawlessness are prevalent, outlining these facts is essential.

Reason behind the requirement to amend POCSO Act 2019:

The minimum sentence is increased from seven to ten years. It further states that anyone found guilty of penetrating sexual assault on a child under 16 will face a sentence of 20 years to life in jail and a fine. The amended definition of aggravated penetrative sexual assault now includes two additional grounds. These include (i) assaults that result in a child's death and (ii) assaults carried out in the midst of a natural disaster or other violent circumstances.

Currently, aggravated penetrative sexual assault carries a sentence of 10 years to life in prison and a fine. Additionally, it raises both the minimum and maximum sentences from ten to twenty years in prison, respectively. All the above-mentioned things were not there in POCSO ACT 2012²⁵ hence it was amended in 2019.

Finding:

In our society, the POCSO ACT has created less awareness among people. The amendment made in 2019 the implementation of the process is not very effective in our society. Even though it was introduced in 2012 and later amended in 2019, no major changes have occurred in the past three years. Children are still abused and crime rates are still increasing day by day. Article 21, of the constitution gives fundamental rights to a girl child to live a life of dignity. The POCSO ACT is a landmark legislation for the protection of child rights and to prevent the sexual abuse and exploitation of children but in our society this is not applicable properly. In the new post-conviction era the victims face a number of problems in our society. Our research paper finds that India is more vulnerable in crimes against children.

Many of the POCSO cases are going unreported because 90% of the time the abusers are close relatives of the child and the child may think complaining against the loved one is bad or wrong, also families tend to cover up such issues so as to avoid spoiling the family name. There is hope in our society because in the upcoming generation both boys and girls are educated and they have modern thinking and it could reduce the crime rates. It is the duty of future generations to fight against such social injustice. They should oppose the tendency to keep such crimes secret inside the family.

Conclusion:

As talking about sex is taboo in rural parts of India, self-awareness about safe sex, good touch, bad touch is lacking in both sexes of children and also many adults are not even aware of the fact that such an Act exist, even though POCSO has been in existence for more than 10 years and recently amended in 2019. This lack of acknowledgement of the Act has increased the crime against children. Even though the Act claims to be gender neutral it focused more on women rather than men. The POCSO ACT already makes the procedure child friendly but this approach should be followed by the judicial officer and police officials so that the child victims could repose trust in them. One would be surprised to know that in the unfortunate

²⁵ Protection Of Children from Sexual Offences Act ,2012(Act 32 of 2012)

rape case Delhi, the Delhi police includes the provision of POCSO after 2 days of filing the FIR.

I would like to quote the words of the famous writer William Wordsworth from his poem “my heart leaps up” which he wrote in the year 1802, in which he wrote a line “child is the father of man”. This means that the behaviour and activities of a person's childhood go a long way in building a personality. Now imagine scarring a child in his childhood, what's going to happen? That scarred memory is going to stay with him till his or her last breath and there is very less or no chance that a kid is able to recover from child trauma.

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