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# **A CRITICAL ASSESSMENT OF LAWS** **AGAINST CHILD SEXUAL ABUSE IN INDIA**

Authored By- Ritik Agrawal & Siddhi Singh

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## **Abstract**

Gandhi, known as the "Father of the Nation," famously made the proclamation that "India would be liberated when the women of India feel secure walking in the streets of India at midnight." On the other hand, this is still a goal that has not been accomplished and is a very long way from being a reality. Children are held with high esteem and worshipped in India. On the other hand, at the same time, there has been a rise in the number of paedophilia instances that have been reported in India. The number of occurrences of child rape that were reported to authorities increased by 151 percent between the years 2009 and 2014. Children with disabilities are at a greater danger. This puts these children in a particularly vulnerable position. Additionally contributing to the severity of the issue is the paucity of information provided by the appropriate govt. regarding disabled children. According to the National Crime Records, an increase in the number of cases is being seen as a direct result of an increase in the reporting of instances.

## **Introduction**

Abuse of children in sexual encounters is not a new phenomenon in India; nevertheless, the issue has only lately come to the attention of the general public. Other crimes of the CSA were mostly neglected before rape became the major offence that was acknowledged by the public. The severity of the problem of pervasive sexual abuse was brought to the forefront in a survey that was conducted in 2007 and was funded by the government of India. The survey involved the participation of 12,500 children from 13 different states.<sup>1</sup> Children either aren't conscious about getting abused or are too afraid to tell their parents about the occurrence when they do become aware that they are being molested. According to the poll that was conducted in 2007, just twenty five percent of the youngsters have spoken up and only 3 percent have gone to the police with their allegations. This is because of the strongly ingrained societal stigmas associated with the phrase "sex" and CSA, as well as the widespread ignorance regarding these topics. The children had a hard time objecting to the older individuals since they were in a position of authority, which made it difficult for them to do so.

The absence of particular legislation for the recognition of a range of objectionable behaviours relating to Child Sexual Abuse sometimes for pornographic purposes, was never approved by the

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<sup>1</sup> Horwitz, Allan V., et al. "The Impact of Childhood Abuse and Neglect on Adult Mental Health: A Prospective Study." *Journal of Health and Social Behavior*, vol. 42, no. 2, 2001, pp. 184–201. *JSTOR*, <https://doi.org/10.2307/3090177>. Accessed 3 Jun. 2022.

law. These behaviours include the following: Rape (Section 375), outraging the reticence of a woman (Section 354), and going against nature acts, which are defined as "carnal intercourse against the order of nature with any man, woman, or animal," were covered under three Sections of the IPC until the year 2012. These were the only sexual offences that were covered (Section 377). Therefore, offences such as sexual assault that does not involve penetration, harassment, and exploitation were not expressly recognised as being crimes. Through the publication of the reports titled "Breaking the silence," the Central government made a concerted effort to bring attention to the problem in both public discourse and political arenas. After a sufficient amount of momentum was produced, then POCSO was enacted.<sup>2</sup> It does not discriminate based on gender and acknowledges that males can also be the sufferers of sexual assault. In addition to making acts, and the production of pornographic material involving minors illegal, it requires the construction of specialised courts in order to speed up the judicial process.

### **Combatting Pedophilia In India**

Paedophilia is defined as the sexual exploitation of minors for one's own sexual enjoyment, and it is considered a mental disorder. Paedophilia is "a paraphilia in which sexual acts or fantasies involving prepubertal children are persistently preferred or exclusive method of achieving sexual excitement." Paedophilia is a type of paraphilia. A man who was arrested for allegedly raping a girl who was 13 years old was recently denied bail by an order that was issued by the Allahabad High Court. The court also mentioned the impact it will have on the youngster and directed the judicial system to crack down on offences of this nature.

According to the World Health Organization (WHO), paedophilia is a mental disease that is characterised by an ongoing sexual interest in children on the part of the patient. The disease cannot be easily treated; nevertheless, the behaviour can be regulated by employing several processes that are designed to cope with the problem. Paedophilia is being treated by a small percentage of India's psychologists. Because of the negative connotations associated with the condition, those who are afflicted with it often avoid seeking therapy. Paedophiles, on the other hand, are not the same as people who abuse children in any way. There are some paedophiles who do not abuse children. India suffers from a severe lack of awareness on the condition. Therefore, discussions about the illness are required in order to ensure that those who are

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<sup>2</sup> Hall, Zaida, et al. "Adult Survivors Of Child Sex Abuse." *BMJ: British Medical Journal*, vol. 311, no. 7007, 1995, pp. 748–748. *JSTOR*, <http://www.jstor.org/stable/29728753>. Accessed 3 Jun. 2022.

afflicted with it receive the appropriate therapy, which will lead to a reduction in the number of subsequent unfortunate occurrences.

## **POCSO: An Enigma Or Full Of Loopholes?**

The Protection of Children from Sexual Offenses Act (POCSO), entered into effect on November 14, 2012, is expressly designed to address crimes such as the sexual abuse of children and the production of pornographic material directed toward children. The Act widened the sphere of getting offences registered which are done against minors, which were neglected by the IPC, through its 46 clauses (IPC). This amendment broadened the scope of the crime for aggravated penetrative sexual assault to constitute the punishment for abuse committed by a person including public servant, member of the police or armed forces, or management or staff member.<sup>3</sup>

In addition, it outlined the process for registering incidents, complete with a section outlining the penalties for failing to report an incident or filing a false complaint. Additionally, it required that it be done in a manner that is child-friendly. The POCSO Act provides definitions for the crimes of sexual assault, sexual harassment, the dissemination of pornographic material, and the protection of the interests and welfare of children. The purpose of the act is to ensure that the child's best interests are protected throughout the entirety of the court procedure.

### **Characteristics Of Act**

POCSO is gender neutral, which means that it will be used to crimes of this sort perpetrated against children regardless of the gender of the kid. This ensures that the law is consistent across the board. In contrast to the standard rule, which states that a person is presumed innocent until proven guilty, this act shifts the burden of proof to "guilty until proven innocent." Concurrently, in order to deter people from abusing the legal system, the law includes penalties for filing false complaints and spreading false information with the purpose to do harm. In accordance with this Act, the recording of all instances of abuse is required. In every instance of child abuse, the local police department is required to file what is known as a First Information Report (FIR). It is acceptable to record the verdict's claim at his/her home or another location of their choosing;

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<sup>3</sup> Daro, Deborah A. "Prevention of Child Sexual Abuse." *The Future of Children*, vol. 4, no. 2, 1994, pp. 198–223. JSTOR, <https://doi.org/10.2307/1602531>. Accessed 3 Jun. 2022.

however, the recording should preferably be done by a female law enforcement officer who holds a level higher than that of sub-inspector. This legislation outlines all of the potential sexual offences that can be committed in various forms and the utilisation of juveniles for pornographic reasons. In addition, this Act outlines the penalties that must be served for those who seek to commit a crime that is covered by the Act, as well as for those who aid and abet those acts or refuse to report them. The Act recommends reporting any offence for which there is even the remotest possibility that it should be reported.<sup>4</sup>

In addition, the Act stipulates the establishment of specialised courts to preside over these proceedings, each of which must be finished within a period of one year. The Act mandates that the minor cannot come into contact with the accused in any way while the evidence is being recorded, and that the minor's identity must be concealed at all times throughout the inquiry and the proceeding. The kid will not be required to repeat their evidence in court, and instead, they will be given the option to deliver their testimony through a video stream. The questions that the defence wants answers, in order to better assist the minor, the court may make use of an interpreter, translator, special educator, or any other kind of qualified expert. The failure of educational and employment possibilities, are some of the established criteria that the Special Court uses to determine whether or not to award compensation.<sup>5</sup>

Consensual sexual activity is now treated differently in the Indian Penal Code as a result of the POCSO Act. The minimum age required to enter into a legally binding contract has increased from sixteen to eighteen years of age which clearly signifies that any person, including another kid, could be charged for participating in such sexual activity with a child, regardless of situation when the child gave their consent to the sexual act. In addition, a married couple can also face criminal charges if they engage in sexual activity with their minor child while they are married to that child. The POCSO Act, which was passed in 2012, does not recognise any sexual actions that are consensual that take place between children or between a kid and an adult.

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<sup>4</sup> Larsen, Carly D., et al. "The Effects of Childhood Abuse on Relationship Quality: Gender Differences and Clinical Implications." *Family Relations*, vol. 60, no. 4, 2011, pp. 435–45. *JSTOR*, <http://www.jstor.org/stable/41236779>. Accessed 3 Jun. 2022.

<sup>5</sup> B. Bower. "Child Sex Abuse Leaves Mark on Brain." *Science News*, vol. 147, no. 22, 1995, pp. 340–340. *JSTOR*, <https://doi.org/10.2307/3979008>. Accessed 3 Jun. 2022.

## **Identifying Loopholes In The Act**

There are still several gaps in the POCSO Act, despite the fact that the Act has been seen as progressive and recognized all around the country. As a result, we will talk about the issues and ambiguities that are present in the POCSO Act, any of which may produce unanticipated negative outcomes on their own or in combination with one another.<sup>6</sup>

### **The Age Of Consent**

According to the POCSO Act, a child is legally referred as someone who hasn't yet reached the age of eighteen. If the victim is below age of 18, any unnatural act that is described under POCSO would be recognized as a criminal offence because the consent that is given by a minor is not considered to be valid consent as per the law. This would make any sexual act that is described under POCSO a criminal offence. As a result, the most significant criticism levelled against this Act is the fact that it renders the approval of underage woman null and void while placing criminal responsibility on the adult. Regardless of how progressive the Act may be, sexual activity between kids in which consent is given has always been debatable in law because it does not give the children autonomy in sexual matters. The study was conducted in order to investigate. The judgment of whether or not a sexual offence was committed against a juvenile would be highly dependent on the person's subjectivity how one interprets the event or the situation. This could even further lead to misuse of legal system. Either it is overly permissive of CSA or it is too limiting of children's liberty in such things. Neither option is acceptable.

This issue was recognized by the Bombay High Court, which resulted in the granting of bail to the 19-year-old lad who was arrested under this Act for sexually abusing her younger relative. On the other hand, the girl admitted over the course of the investigation that it was an act of mutual consent.

In the case of *Maruthupandi v. State*, the apex Court of India determined that the Sections of POCSO will still be applied against the partner even if a juvenile girl loves a major partner and has a consenting intercourse with the partner. This was the conclusion that was reached. In addition, it was further submitted that if a minor girl filed a complaint about a violation of the POCSO Act, then it became a violation against the state, and the subsequent compromise won't

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<sup>6</sup> Finkelhor, David. "Current Information on the Scope and Nature of Child Sexual Abuse." *The Future of Children*, vol. 4, no. 2, 1994, pp. 31–53. *JSTOR*, <https://doi.org/10.2307/1602522>. Accessed 3 Jun. 2022.

remove the violation. This is because the POCSO Act requires that a complaint be filed by the victim of the violation. As a result, the petition that was submitted to the Supreme Court brings up the question of whether or not an adolescent boy who has a romantic relationship with a girl who is underage can be found guilty of the offence under the POCSO Act.<sup>7</sup>

The Madras High Court also advised that consensual sexual relationships with girls older than 16 years old should be removed from the purview of the POCSO Act. This was one of the suggestions made by the court. Further, it was suggested that the Act should be changed so that the offender's age could not be more than five years older than that of the victim, provided that the victim was at least 16 years old. This would ensure that the impressionable age of the victim would not be exploited by an older offender who would have passed the age of infatuation or innocence by the time the crime was committed.

As a result, it is clear that the majority of cases that are filed in accordance with the POCSO Act are initiated by the families of adolescents and teenagers who are involved in romantic relationships. Because of this, the courts need to determine the nature of the act that should fall under the ambit of the Act and the nature of the act that should not fall under the ambit of the Act. If this were done in a hasty and irresponsible manner, it could cause irreparable damage to the youth who had only acted innocently, and this would be due to the severity of the punishment. It shouldn't become a tool that some groups in society may use to break the law, since that would be a terrible thing.

### **Age Estimation And Determination**

The POCSO Act is fraught with additional complications, one of which is the assessment of the age of the child. The aforementioned Act does not specify which forms of identification should be utilised in order to ascertain the age of a child victim. In the case of *Jarnail Singh v. State of Haryana* (2013), the Supreme Court stated that the age of the victim ought to be determined in accordance with Rule 12 of the Juvenile Justice Rules, and in accordance with said rule, preference ought to be given to the school documents in the process of determining the age of the victim. This was mentioned in the context of the fact that the victim's age ought to be determined. In the event that other documents are presented, the children will be required to go through a bone ossification test, which at most can only provide a ballpark estimate of the child's

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<sup>7</sup> Quinn, David. "The Church's Child Sex Abuse Crisis in Retrospect." *Studies: An Irish Quarterly Review*, vol. 102, no. 408, 2013, pp. 415–22. *JSTOR*, <http://www.jstor.org/stable/23631195>. Accessed 3 Jun. 2022.

age.

Therefore, the methods utilised by forensic scientists to determine a person's age could potentially be imprecise and difficult. In the case of Babloo Pasi vs. the State of Jharkhand and Anr (2008), it was observed that establishing an individual's age can be challenging in the absence of a birth certificate or other official documents. Although the opinions of medical professionals can be helpful in this regard, they cannot serve as the sole and deciding factor in this regard. In addition, it was pointed out that overly technical approaches should not be employed, and that the court should provide the benefit of the doubt to the child while also ensuring that the legislation is not being abused in any way. As a result, establishing the defendant's age is essential under the POCSO Act since it plays a role in determining the outcome of both the charging and trial stages. Because of this, the requirements of the POCSO Act need to be unambiguous regarding the determination of the age and whether or not the benefit of the doubt should be granted in situations in which the medical or forensic test does not provide an accurate assessment.<sup>8</sup>

### **Mandatory Reporting**

The requirement placed on medical experts, in general, and professionals working in the field of mental health, in particular, to inform the authorities of any potential or actual criminal activity is one of the problematic aspects of the Act in question. If you violated the CSA's reporting requirements, you might face a fine of up to \$2,000 or a prison sentence of up to six months, or both. The confidentiality of the exchanges between the physician and the patient is violated by the mandatory reporting clause. Children who have engaged in sexual activity and subsequently get pregnant are also deemed to be victims of sexual assault. As a result, it is required that medical practitioners alert the authorities of any such pregnancies that they discover. However, this violates a clause of the Medical Termination of Pregnancy (MTP) Act, 2003, which states that medical professionals are obligated to keep the identity of individuals seeking abortions a secret and cannot disclose any information about them.

If they are required to give their private information, then the interaction that professionals have with young people will be hindered because of the violation of privacy that will have occurred. As a result, another provision of the Act stipulates that no person shall be held responsible, either

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<sup>8</sup> Capps, Donald. "Religion and Child Abuse: Perfect Together." *Journal for the Scientific Study of Religion*, vol. 31, no. 1, 1992, pp. 1–14. *JSTOR*, <https://doi.org/10.2307/1386828>. Accessed 3 Jun. 2022.

civilly or criminally. Also, with obligatory reporting is that it begs the question of who should be responsible for enforcing the legal obligation when the police already hardly possess the capacity to do so. This is a problem because the police already barely possess the capacity to do so. Due to the weak method for its implementation and the lack of accountability, a person who fails to report the cases will have a very small chance of meeting with the penal and financial punishment.<sup>9</sup>

### **Administrative Pitfalls**

To begin, the police, in spite of their best efforts, are confronted with a great deal of obstacles while attempting to carry out an appropriate investigation in POCSO instances. It all starts with the filing of the first incident report. It is the responsibility of the police to guarantee that the filing of the First Information Report (FIR) and the investigation into the Medico-Legal Matter are not delayed in any way (MLC).

Second, the MLC of the victim is not performed as frequently as it should be because the family of the victim is frequently provided misleading information regarding the negative effects of the MLC on the health of the kid in the long run. Because of this, medical professionals need to be trained on how to talk to children in a sensitive manner about what they are going through in order to avoid causing the child any additional stress. In addition, because of the inappropriate storage conditions, the forensic samples that are collected by the authorities sometimes end up being tainted or putrid. In order to ensure that the evaluation of the evidence can go without any hiccups over the course of the trial, the law enforcement personnel in charge of the investigation need to be familiar with the most effective techniques for gathering forensic evidence.

In conclusion, the POCSO Act requires institutions to monitor and evaluate the implementation of the Act on a regular basis in accordance with Sections 43-44 and Rule 6 of the POCSO Act. In addition, these institutions are tasked with raising public awareness of the various provisions of the POCSO Act. On the other hand, the public has not been able to scrutinize the internal workings of these departments, including their monitoring and review processes. To this end, it is absolutely necessary to investigate the processes devised by such organizations and assess the

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<sup>9</sup> Lambie, Glenn W. "Child Abuse and Neglect: A Practical Guide for Professional School Counselors." *Professional School Counseling*, vol. 8, no. 3, 2005, pp. 249–58. *JSTOR*, <http://www.jstor.org/stable/42732466>. Accessed 3 Jun. 2022.

degree to which they are capable of producing results that have an impact.<sup>10</sup>

## **Implementation Of POCSO**

As a result of the rise in the number of POCSO-related cases, there has also been a rise in the backlog of those cases. Because of this, there is now cause for concern because the law is becoming less effective as a result of this. The victims will not receive prompt justice as a result of this. The low incidence of successful convictions can be attributed to the frequent delay of court cases as well as the failure of police personnel to produce investigation reports. Cases that fall under POCSO are frequently dropped by the police due to a lack of evidence or other leads in the investigation. Because members of the public are hesitant to make complaints regarding the CSA, tangible evidence is sometimes lost as a result of the delay. In a similar vein, the medical examination is unable to track minor injuries incurred as a result of the sad incident, which results in the loss of essential biological trace evidence.

In accordance with Section 28 of the said Act, governments are required to appoint a Sessions Court as a special court that is responsible for hearing cases related to violations of the CSA. Notwithstanding this, a significant number of the legislations are not being followed by the state itself. Additionally, the judges that have been appointed do not have extensive knowledge of the topic at hand and have not received any additional training. As a result, the apex Court has issued specific orders concerning the POCSO. The measures contained instructions for the fast track courts to avoid unnecessary postponement and the establishment of various mechanisms to look into this. Additionally, the orders required that a committee be formed to oversee the status of the case. In order to assist in the investigation and ensure that witnesses are produced in front of the trial courts on the appropriate day, the Director-General of Police of the states has established a special task force. The establishment of an atmosphere in the courtroom that is welcoming to children in order to forestall the hostile behaviour of youngsters brought on by anxiety and other factors connected to the proceeding is of utmost importance.<sup>11</sup>

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<sup>10</sup> Goodman, Gail S., et al. "Testifying in Criminal Court: Emotional Effects on Child Sexual Assault Victims." *Monographs of the Society for Research in Child Development*, vol. 57, no. 5, 1992, pp. i–159. *JSTOR*, <https://doi.org/10.2307/1166127>. Accessed 3 Jun. 2022.

<sup>11</sup> Hinkelman, Lisa, and Michelle Bruno. "Identification and Reporting of Child Sexual Abuse: The Role of Elementary School Professionals." *The Elementary School Journal*, vol. 108, no. 5, 2008, pp. 376–91. *JSTOR*, <https://doi.org/10.1086/589468>. Accessed 3 Jun. 2022.

## Landmark Cases

- **Ghanashyam Misra v. The State, heard on November 27, 1956**

In 1956, the Orissa High Court increased the sentence of Ghanashyam Misra, a school teacher who had raped a ten-year-old girl on the school grounds. The court did so because it recognised that the crime had been perpetrated by a person who was in a position of trust or authority over the kid. According to the judgement, "the circumstances are all of an aggravating kind. The young girl who was attacked is just ten years old, while the perpetrator is an adult who is 39 years old... He took use of his position by persuading the girl to enter the classroom at the school, where he then did such a heinous deed, the repercussions of which could very well be the total and permanent destruction of the girl's future existence. Not just the judge decided to give the original sentence to 7 years, but he also compelled the defendant to make restitution to both the child's father and himself.

- **Sakshi v. Union of India, heard on May 26th, 2004**

In a particular circumstance involving a minor who was victimised by inserting objects into the genitals or inserting the sexual organ into parts of the body such as the anus or mouth, the non-governmental organisation Sakshi submitted a writ petition in the public interest to broaden the definition of rape. This petition was filed in the name of the public interest. The Supreme Court did not grant the petition and ended the case brought by the public interest group. On the other hand, it published helpful instructions for the trial of rape and sexual abuse cases that involve children. These are the criteria that are known as the Sakshi:

1. A screen or other arrangement that prevents the victim or witnesses from seeing the body or face of the person who is accused of a crime.
2. Any questions that are asked on behalf of the accused during the cross-examination process must be submitted in writing to the Presiding Officer of the court. The Presiding Officer will then decide whether or not to put the questions to the victim or witness in a manner that is understandable and does not embarrass them.
3. During the course of the testimony, victims of child abuse or rape should be given ample

breaks as and when they are required.

- **State Of Karnataka vs Manjanna on 4 May, 2000**

A girl victim who was 15 years old was denied medical treatment at Hosadgura Hospital because she had not been referred to the hospital by the police. The court stated in its decision that it disapproves of such behaviour by public hospitals, in especially in remote areas where there are a limited number of hospitals, highlighting the potential for the loss of proof as a result of delays in the process of performing medical examinations. In addition, the decision noted that an evaluation of the victim's age should always be made in favour of the victim, even if there is any room for debate.

- **State of Andhra Pradesh vs Gangula Satya Murthy on 19 November, 1996**

A sixteen-year-old girl was murdered after being raped and strangled. The accused was found guilty by the Sessions Court, which then handed down a sentence of life in prison plus seven years of solitary confinement. On the other hand, the Court freed him after he appealed his conviction, claiming a few small contradictions and anomalies. The state of Andhra Pradesh is contesting this acquittal as being improper. This time, the court came to the conclusion that the acquittal was an error and demonstrated insensitivity to the situation. It was stated unequivocally there that "the Courts should assess the broader probability of a case and not get swayed by tiny contradictions or insignificant variations in the statement of the witnesses, which are not of a fatal type to throw out charges of rape."

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## **Conclusion**

The passage of legislation to safeguard children from being sexually abused was an initiative that was long overdue. It made a substantial contribution in the overall effort to solve the problem. The problem has been brought to more people's attention, which has led to an increase in the number of CSA cases that have been reported. When a child is fragile and yet in the process of growing up, being subjected to sexual assault or sexual harassment can have a lasting effect on their mental health and well-being. This traumatic experience may continue to control their thinking for many years to come and may prevent them from developing normally in their social lives, which may result in a variety of psychological issues. It's possible that the victim will suffer as a result of the failure of the Fast Track Court. Because of this, the Act contains a number of gaps that could provide difficulties in its application within the context of India. In order to make the Fast Track Courts more efficient, everyone should be educated on child rights and given appropriate training. Therefore, eliminating the issues associated with CSA should be of the utmost importance and call for the concerted efforts of the general public, the administrative apparatus, and the judicial system.

## REFERENCES

- Horwitz, Allan V., et al. “The Impact of Childhood Abuse and Neglect on Adult Mental Health: A Prospective Study.” *Journal of Health and Social Behavior*, vol. 42, no. 2, 2001, pp. 184–201. *JSTOR*, <https://doi.org/10.2307/3090177>. Accessed 3 Jun. 2022.
- Hall, Zaida, et al. “Adult Survivors Of Child Sex Abuse.” *BMJ: British Medical Journal*, vol. 311, no. 7007, 1995, pp. 748–748. *JSTOR*, <http://www.jstor.org/stable/29728753>. Accessed 3 Jun. 2022.
- Daro, Deborah A. “Prevention of Child Sexual Abuse.” *The Future of Children*, vol. 4, no. 2, 1994, pp. 198–223. *JSTOR*, <https://doi.org/10.2307/1602531>. Accessed 3 Jun. 2022.
- Larsen, Carly D., et al. “The Effects of Childhood Abuse on Relationship Quality: Gender Differences and Clinical Implications.” *Family Relations*, vol. 60, no. 4, 2011, pp. 435–45. *JSTOR*, <http://www.jstor.org/stable/41236779>. Accessed 3 Jun. 2022.
- B. Bower. “Child Sex Abuse Leaves Mark on Brain.” *Science News*, vol. 147, no. 22, 1995, pp. 340–340. *JSTOR*, <https://doi.org/10.2307/3979008>. Accessed 3 Jun. 2022.
- Finkelhor, David. “Current Information on the Scope and Nature of Child Sexual Abuse.” *The Future of Children*, vol. 4, no. 2, 1994, pp. 31–53. *JSTOR*, <https://doi.org/10.2307/1602522>. Accessed 3 Jun. 2022.
- Quinn, David. “The Church’s Child Sex Abuse Crisis in Retrospect.” *Studies: An Irish Quarterly Review*, vol. 102, no. 408, 2013, pp. 415–22. *JSTOR*, <http://www.jstor.org/stable/23631195>. Accessed 3 Jun. 2022.
- Capps, Donald. “Religion and Child Abuse: Perfect Together.” *Journal for the Scientific Study of Religion*, vol. 31, no. 1, 1992, pp. 1–14. *JSTOR*, <https://doi.org/10.2307/1386828>. Accessed 3 Jun. 2022.
- Lambie, Glenn W. “Child Abuse and Neglect: A Practical Guide for Professional School Counselors.” *Professional School Counseling*, vol. 8, no. 3, 2005, pp. 249–58. *JSTOR*, <http://www.jstor.org/stable/42732466>. Accessed 3 Jun. 2022.
- Goodman, Gail S., et al. “Testifying in Criminal Court: Emotional Effects on Child Sexual Assault Victims.” *Monographs of the Society for Research in Child Development*, vol. 57, no. 5, 1992, pp. i–159. *JSTOR*, <https://doi.org/10.2307/1166127>. Accessed 3 Jun. 2022.
- Hinkelman, Lisa, and Michelle Bruno. “Identification and Reporting of Child Sexual Abuse: The Role of Elementary School Professionals.” *The Elementary School Journal*,

