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## UPHOLDING JUSTICE: THE CRUCIAL ROLE OF THE JUDICIARY IN PREVENTING CHILD SEXUAL ABUSE

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### ABSTRACT:

The issue of child sexual abuse is widespread, extremely harmful, and has significant effects on both the victim and society at large. In the continuous fight against this evil, the court is an essential source of responsibility and deterrent. In handling child sexual abuse, the judiciary has many responsibilities, which are explored in this abstract. First and foremost, by making sure that those who abuse children sexually are held accountable for their conduct, the judiciary acts as a light of accountability. Judges are essential in providing justice by holding fair and unbiased trials with survivors and their families making it very evident that such horrible acts will not go unpunished. Additionally, the judiciary's sentence choices have the potential to be strong deterrents, turning away potential offenders and thereby making a major contribution to the prevention of abuse situations in the future.

In addition, the court is essential in defending the rights and welfare of minor victims throughout court cases. Judges assist in lessening the trauma survivors endure during the judicial process by creating a compassionate and encouraging atmosphere. Furthermore, legal measures like protection orders and child advocacy programmes provide essential support systems to guarantee victims safety and recuperation.

**Keywords:** Justice, the judicial role, child sexual abuse, accountability etc.

## Introduction

The judiciary is essential to maintaining the rule of law and defending the rights of marginalised groups, such as children who have been sexually abused. The role of the judiciary is even more crucial in India, where child sexual abuse is still a widespread and gravely worrying issue. The judiciary has a significant impact on stopping and dealing with this horrible crime, from deciding cases to establishing laws and raising awareness.

The horrific reality of child sexual abuse persists, causing victims to suffer severe and permanent suffering and upsetting society as a whole. Child abuse is often the bitter fruit of abuse previously inflicted on the perpetrator him/herself in childhood.<sup>1</sup> The majority of abuse happens in children's homes, schools, and communities where they are socialised. Neglect, physical abuse, psychological/emotional abuse, and child sexual abuse are the four main types of child abuse.<sup>2</sup> The court emerges as a pillar in the quest of justice and prevention as communities work to face and resist this serious injustice. The judiciary is essential to maintaining accountability, protecting survivors' rights, and putting preventative measures in place to stop the abuse epidemic because of its power and influence. Since the child's best interests come first and not the interests of the criminal, we must follow the best interest child standards.<sup>3</sup>

The judiciary plays a crucial role in combating child sexual abuse, highlighting its many duties in prevention, investigation, and decision-making. The judiciary is a potent tool for holding offenders accountable, supporting survivors, and pushing for structural changes to stop future instances through a variety of legal procedures, judicial interventions, and advocacy initiatives.

The severity of child sexual abuse necessitates a thorough and coordinated response from all facets of society; the trauma connected to such abuse can lead to developmental delays and a variety of psychological and emotional problems that some kids and teenagers may never fully recover from<sup>4</sup>; the importance of the judiciary in this effort cannot be understated. The judiciary is a key component in the fight against injustice and impunity because it guarantees fair trials, renders just decisions, and supports legislative reforms. Additionally, it actively participates in

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<sup>1</sup> Sweeney, M. (1995). Child Abuse. *The Furrow*, 46(11), 615–622. <http://www.jstor.org/stable/27663033>

<sup>2</sup> Anuradha, S. (2010). *Children; Sale, Abuse and Pornography* (1<sup>st</sup> ed.). Medha Shri Publications, Delhi.

<sup>3</sup> Asopa, R. (2016). *Law relating to Child Abuse*. Kamal Publisher, New Delhi.

<sup>4</sup> David Carson, J. M. (2013). *Child Sexual Abuse in India*, Psychological Studies.

community outreach and advocacy programmes to empower survivors, increase awareness, and spur group action against this widespread problem. As we go deeper into the vital role the judiciary plays in stopping child sexual abuse, it becomes clear that the court plays a much larger role than just sitting in court. The judiciary acts as a light of hope for survivors and a catalyst for revolutionary change in our joint efforts to establish a safer and more equitable society for all children by respecting the principles of justice, compassion, and accountability.

### **Child Sexual Abuse**

Improper sexual behaviour with a child is referred to as sexual abuse. This encompasses touching a kid's genitalia, forcing a child to touch an adult's genitalia, sexual exploitation, rape, sodomy, exhibitionism, and incest. This behaviour, which is meant to appease or fulfil the wants of the other person, is indicative of child sexual abuse. It can occur between a child and an adult or another child who, due to their age or developmental stage, is in a relationship of responsibility, trust, or power. This may involve, but is not restricted to: forcing or inducing a minor to participate in any illegal sexual action; abusing a minor for prostitution or other illegal sexual activities; abusing a minor for pornographic films and performances.

Child Sexual Abuse has been defined as “any kind of physical or mental violation of a child with sexual intent usually by a person who is in a position of trust or power vis-à-vis the child. Child Sexual Abuse is also defined as any sexual behaviour directed at a person under sixteen, without informed consent.”<sup>5</sup>

WHO explain that “Child Sexual Abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violate the laws or social taboos of society.”<sup>6</sup>

Sexual exploitation and abuse of minors are heinous crimes, and a sizable portion of India's population is vulnerable to these forms of maltreatment. Parliament passed the POCSO, Act 2012, a unique law enacted to protect children from sexual assault, harassment, and pornography, in an effort to address the issues and improve the precarious situation of children

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<sup>5</sup> Bajpai, A. (2003). *Child rights in India Law policy and practice* (2nd ed.). New Delhi: Oxford University Press. Mahapatra, D. (2006,

<sup>6</sup> WHO, (1999) *Report of the consultation on child abuse prevention*, Geneva, World Health Organization.

in the country. The Act also establishes special courts for the trial of such offences, providing child-friendly and expedited justice.

### **Objectives of the study**

1. To study the concept of child sexual abuse.
2. To analyse the judicial role in prevention of child sexual abuse.
3. To analyse the leading judgement.

### **Research Methodology**

The researcher has chosen to use the doctrinal technique to collect the data. Books, legal journals, newspapers, and material from the internet are all included.

### **Judicial Role in Prevention of Child Sexual Abuse**

#### **1. Ensuring Swift and Fair Justice**

Ensuring that those responsible for child sexual abuse be held accountable for their conduct is one of the judiciary's main roles in the fight against it. Courts have the authority to punish offenders appropriately and provide survivors with justice by adjudicating cases. The courts must handle these matters delicately, giving survivors a place to come forward and seek justice without worrying about being stigmatised or facing reprisals. According to the court's interpretation of the POCSO Act's purpose, fewer cases involving child sexual assault were brought before the legislature.<sup>7</sup>

#### **2. Providing child friendly justice**

The judiciary's goal is to deliver justice that is both child-friendly and impartial. Child-friendly justice refers to any actions, procedures, attitudes, settings, or methods that are thoughtful, humane, and serve the child's best interests. The POCSO Act, 2012 is enacted to ensure that children should receive justice without experiencing trauma. It provides for the establishment of special courts, the appointment of special public prosecutors, the allowance of family

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<sup>7</sup> *Alakh Alok Srivastava V. Union of India*, (2018) 17 SCC 291

members, the prevention of the accused from exposing their children to the public, the recording of evidence separately, the assistance of educators, interpreters, and translators, the use of video conferencing, and frequent breaks. The Supreme Court urged the Chief Justices of High Courts "to seriously consider establishing child-friendly courts and vulnerable witness courts in each district."<sup>8</sup>

### **3. Interpreting and Enforcing Laws**

When it comes to interpreting and upholding laws pertaining to child sexual abuse, the court is essential. Judges are responsible for efficiently enforcing the law and making sure that offenders face the harshest penalties possible. Furthermore, how the judiciary interprets the law can establish precedents that affect public policy and future case law. Judges must thus keep up with changing legal requirements and global agreements pertaining to the protection and rights of children.

### **4. Protecting Victims and Witnesses**

Victims and witnesses of child sexual abuse frequently confront difficult obstacles, such as trauma, intimidation, and social pressure. It is the duty of the judiciary to see to it that they are safe and comfortable during the judicial proceedings. Protective orders, permitting testimony through non-traditional means like video conferencing, or granting access to legal help and counselling are a few examples of what this might include. The court can enable survivors to pursue justice and start over by giving their needs top priority.

### **5. Raising Awareness and Promoting Prevention**

As a society, we have difficulty coming to terms with sexuality, how we express it and how we want it communicated to our children.<sup>9</sup> Through public awareness campaigns and educational activities, the judiciary can play a role in preventing child sexual abuse in addition to its adjudicative duty. Judges and other court personnel have the opportunity to dispel negative attitudes and stereotypes, promote reporting, and inform the public on the legal ramifications of sexual abuse. The judiciary can also work with other interested parties, such as governmental

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<sup>8</sup> *Sampurna Behura v. Union of India*, (2018) AIR SC 1456

<sup>9</sup> Daro, D. A. (1994). Prevention of Child Sexual Abuse. *The Future of Children*, 4(2), 198–223. <https://doi.org/10.2307/160253>

organisations, non-profits, and academic institutions, to provide preventative strategies and services for families and children who are at risk.

### **Judgement and Analysis**

The realisation of this horrific crime against children has been made possible in large part by the judiciary. The court has repeatedly released a number of directives aimed at protecting and rehabilitating children who have experienced sexual assault. So, the following instances are examined in order to comprehend the judiciary's role in defending children's rights against sexual abuse.

#### **Tuka Ram and Another Vs. State of Maharashtra (Mathura Rape Case)<sup>10</sup>**

In the Mathura rape case, two police officers are accused of sexually abusing Mathura, a tribal girl who was underage at the time, on the grounds of the Desai Ganj Police Station in the Chandrapur district of Maharashtra on March 26, 1972. At the conclusion of the trial, the Session Court found the accused not guilty on the grounds that, while it is true that there was sexual contact, Mathura's permission was demonstrated by the medical report. The medical report makes no mention of Mathura's resistance to the accused's conduct or her attempt to flee; rather, it only indicates that the girl gave her consent, so that the sexual relations would not be considered rape under Section 375 IPC. The Bombay High Court (Nagpur Bench) overturned the trial court's decision after receiving an appeal, ruling that the sexual encounter constituted rape because it was forced onto the victim without her consent.

In an appeal to the Supreme Court, the highest court upheld the Session Court's decision and cleared the appellant, ruling that the incident did not meet the criteria for rape under Section 375 because, as the case facts demonstrate, Mathura had willingly submitted herself for the sexual act, which required to be forceful and done without the girl's consent. Public anger and protests following the accused's acquittal by the Supreme Court ultimately resulted in changes to Indian rape law through The Criminal Law (Second Amendment) Act 1983.

#### **State of Punjab Vs. Gurmit Singh and Others<sup>11</sup>**

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<sup>10</sup>(1979) 2 SCC 143

<sup>11</sup>(1996) 2 SCC 384

In this case, three people abducted and sexually assaulted a girl who wasn't quite sixteen as she was making her way home from school. The Ludhiana trial court cleared all three of the accused of both the kidnapping and rape charges, citing the victim's statement as untrustworthy due to her failure to provide a description of the vehicle used to abduct her. Furthermore, it is unlikely that she would have sounded an alarm when being picked up or as the automobile was travelling through a popular bus stop. Once more, there was a delay in filing the FIR, casting even more doubt on the accusation. Upon the State's appeal of the case to the Supreme Court, the court found all three of the defendants guilty of rape by observation under Section 376 IPC after carefully weighing all available evidence and arguments. According to the Supreme Court trial court's evaluation of the evidence was not only unreasonable but perverse. The apex court stated that in some situations, the victim's evidence is crucial unless there are strong reasons.

### **Sakshi Vs. Union of India<sup>12</sup>**

An NGO Sakshi filed a Public Interest litigation in order to extend the definition of rape to include situations involving children who are abused by having things inserted into their vagina or by having a male organ inserted into their mouth or anus. The Supreme Court dismissed the petition and denied the plea. However, it given important recommendations for the trial of sexual abuse. The Sakshi guidelines are as follows:

1. A partition or setup that prevents the accused's face or body from being seen by the victim or witnesses.
2. If an accused person has questions during cross-examination that directly pertain to the occurrence, they must be submitted in writing to the presiding officer of the court. The presiding officer may then present the questions to the victim or witnesses in a straightforward and non-embarrassing manner.
3. Frequent breaks should be provided for victims of rape as needed during recording of testimony.

### **Shamsher Singh Verma Vs. State of Haryana<sup>13</sup>**

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<sup>12</sup>(1999) 6 SCC 591

<sup>13</sup>AIR 2015 SC 1345

A report was filed at the police station accusing the appellant (accused) of violating Section 354 of the Indian Penal Code, 1860 (the Indian Penal Code) and the Protection of Children from Sexual Offences Act, 2015 (POCSO), alleging that the appellant had molested his minor niece. Following the parties' hearing, the Special Judge framed charges for crimes under Sections 4/12 of the POCSO as well as Sections 354A and 376 of the Indian Penal Code. The accused's statement was recorded in accordance with Section 313 of the 1973 Code of Criminal Procedure. In defence, the accused asked the trial court to play a compact disc containing a conversation between the victim's father and the appellant's son and wife about a purported property dispute under Section 294 of the Code of Criminal Procedure. Trial resulted in the application being denied. The High Court upheld the same.

The Supreme Court noted in an appeal that the purpose of Section 294 of the Code of Criminal Procedure is to expedite the trial by saving the parties' time when recording superfluous evidence. Any document that has its authenticity acknowledged or doesn't require formal proof can be read in court.

In this case facts and circumstances, as previously discussed, the Court believes that the lower courts erred in law by denying the application of the defence to play the compact disc containing the conversation between the victim's father and the appellant's son and wife about the alleged property dispute. Nevertheless, the Court is not inclined to investigate the veracity of the conversation that the defence is attempting to prove.

Consequently, this appeal is granted, and the decisions made by the lower courts are overturned, without offering a judgement on the case's ultimate merits. Nonetheless, it is noted that the accused/appellant will not be permitted to request bail due to a trial delay under the case's facts and circumstances.

**Re: Exploitation of Children in Orphanages in the State of Tamil Nadu Vs. Union of India and Others.**<sup>14</sup>

The newspaper article titled "Orphanage or Places for Child Abuse" served as the inspiration for the current petition. A letter and the Article were sent to the current Court. It served as the inspiration for the current petition, which was filed under the category of public interest

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<sup>14</sup> AIR 2017 SC 4904



litigation. This article stated that the government-run orphanages and those run by non-governmental organisations were allegedly involved in the systemic sexual abuse of minors. In a sting operation it was found that children were being used for sexual purposes by both international and Indian visitors, and the rates at which these services were rendered were agreed upon over the phone or during an in-person meeting at the orphanage. Furthermore, it was admitted in a programme hosted by the State Commission for Women and attended by representatives of the National Commission for Women that sexual assault had made government schools unsafe for female students.

In a report published by UNICEF on children's conditions and the former Ministry of Family and Child Welfare, it was stated that 53% of children had experienced sexual abuse. It was reported that both families and institutions had abused children. Based on these general facts, the author proposed that child sexual abuse, particularly in government institutions, has escalated into a severe issue that has to be addressed right away. Several recommendations are given such as setting up counselling cells in every school where kids may learn how to spot abuse and giving them access to a reporting process in the event that something like this happens. In addition to issuing various orders, the current Court stated that several other matters, like child trafficking, schools being overrun by Central Paramilitary Forces, and children guaranteed right to an education, need to be taken into account. The Court aimed to broaden the PIL's purview to encompass children's rights generally.

The State is required under the Constitution to make sure that sufficient resources are available for promoting and protecting children's rights, especially for those who require care and protection. The State cannot confuse ineffective grant utilisation with a lack of funding to avoid its responsibilities of children suffered from sexual abuse.

### **Nipun Saxena and Others. Vs. Union of India and Others.**<sup>15</sup>

In the current case, one of the concerns that arose was how and in what way the identities of adult rape victims and child sexual abuse victims should be protected in order to spare them from needless mockery, social exclusion, and harassment. The current ruling was split into two sections. The first section addressed victims of rape offences under the Indian Penal Code,

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<sup>15</sup> (2019) 2 SCC 703

1860, while the second part addressed victims of offences under the Protection of Children from Sexual Offences Act, 2012.

A child who faced sexual abuse need greater protection than a major victim because the latter may still be able to endure social rejection and psychological assault from society as an adult, whilst the former will likely have more difficulty. Since the abuser was frequently a personal friend or known to member of the victim's family, the majority of crimes against minor victims were not even recorded. There was an attempt to hide crime. It was now acknowledged that children require more protection. India ratified the United Nations Convention on the Rights of the Child in 1989, and in 2012, the Indian Parliament enacted the POCSO Act, 2012 a law that addressed child sexual offences in particular.

The Supreme Court issued orders prohibiting the printing or publication of the victim's name in print, electronic, social media, or any other format, as well as the remote disclosure of any information that might identify the victim and reveal her identity to the general public.

#### **Nawabuddin Vs. State of Uttarakhand<sup>16</sup>**

The accused was approximately 65 years old when the act was committed. He was the victim girl's neighbour who took advantage of her parents' absence. A four-year-old girl was the victim of an aggravated penetrative sexual assault, according to the findings. The accused filed an appeal with the supreme court because they felt wronged and unsatisfied with the High Court's ruling and the Trial Court's contested decision.

It was decided that the Accused made the child a victim of lust rather than providing her with fatherly love, affection, and protection from the horrors of society. This is an instance of social principles being compromised and trust being betrayed. As a result, the Accused as a whole is not deserving of compassion or indulgence. However, the modified clause provides that the punishment for the offence under Section 6 will be imprisonment for the balance of the offender's natural life in addition to a fine or death.

#### **Alakh Alok Srivastava Vs. Union of India<sup>17</sup>**

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<sup>16</sup> AIR 2022 SC 0165

<sup>17</sup> (2018) 17 SCC 291

A PIL file by Advocate Alakh Alok Srivastava after 28-year-old cousin's horrifying rape of an 8-month-old girl. In this case, the petitioner asked for a swift and child-friendly hearing in cases filed under the POCSO Act, along with harsher penalties, particularly in cases when the victim child is less than twelve. He begged the supreme court to step in and provide directions for trial courts, including the investigation apparatus, citing the POCSO Act as a delicate piece of legislation that requires careful consideration in order to provide prompt justice.

### **Gangadhar Narayan Nayak Vs. State of Karnataka and Others.**<sup>18</sup>

The High Court's decision to dismiss the Petition under Section 482 of the CrPC and sustain the order taking cognizance of the Appellant's alleged crime under Section 23, POCSO Act. In this appeal, the short legal question was whether Section 155(2) of the Code of Criminal Procedure would apply to the investigation of an offence under Section 23 of the POCSO Act and whether the Special Court was prohibited from taking cognizance of an offence under Section 23 of the POCSO Act, and was required to release the Accused under Section 227 of the Code of Criminal Procedure, solely because the jurisdictional magistrate had not granted the police permission to investigate the offence.

The Supreme Court ruled that nothing in the Code of Criminal Procedure may, absent a specific provision to the contrary, affect any special law currently in effect, any special jurisdiction or power granted, or any special form of procedure prescribed by any other law currently in effect. This is the clear meaning of section 5 of the Code of Criminal Procedure. POCSO is a unique regulation designed to shield minors from sexual abuse.

### **Niranjan Pramanik Vs. State of West Bengal**<sup>19</sup>

According to the facts of this case, the appellant took the victim, a young girl, to her music tuition session. While in route, the girl was dragged to a wayside bush and subjected to an asexual assault. According to Section 8 of the POCSO Act, which lays out penalties for "sexual assault," the trial court found the appellant guilty. The appellant filed an appeal with the Calcutta High Court against the trial court's guilty verdict, arguing that the medical evidence did not establish the existence of vaginal injury—a requirement in cases of forceful finger penetration, as reported by the child victim. Due to the fact that the medical examination is

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<sup>18</sup> (2022) SCC 337

<sup>19</sup> (2018) 07 CAL CK 0008

employed to support the charge rather than serve as the only evidence, the appellate court denied the appeal petition and confirmed the trial court's decision. The victim girl's story is similar to that of the other witnesses, and in this instance, it has been established that the accused/appellant touched the vagina, proving his guilt of the act. Furthermore, penetration is not required to qualify as sexual assault under Section 7. The court determined that the definition of sexual assault in Section 7 is sufficiently broad to include simple physical contact with a person's sexual organs, such as the vagina, anus, penis, or breast, for which the offender would be charged under Section 8 and receive punishment.

### **Attorney General for India and Others. Vs. Satish and Others<sup>20</sup>**

In this case a 12-year-old girl, went to bring guava but didn't return for a while. Her mother then made an effort to find her, and when she finally went to the accused's house to inquire about her daughter, he turned her down. The mother discovered her sobbing child in a locked room when she went looking for her on the first floor. Her daughter informs her that when the man brought her inside his house and offered her guava, he became scared and squeezed her breast. When she tried to scream, he then attempted to take off her salwar. Her mother promptly filed a formal complaint against the accused after her daughter clarified everything. The police subsequently launched an investigation, filed a charge sheet with the Nagpur Special Court, and the court found him guilty of three years of rigorous imprisonment along with a 500 fine.

The accused had appealed to the Bombay High Court against the Additional Session Judge Nagpur's ruling, which had found him guilty in accordance with Sections 8 of the POCSO Act and Sections 354, 363, and 342 of the IPC. The question was raised by appellant, Whether the pressing of breast and attempt to remove salwar would fall within the definition of "sexual assault" as defined under Section 7 and punishable under Section 8 of the POCSO Act? The High Court decided that the accused is not guilty under Sections 7 and 8 of POCSO Act since skin-to-skin contact is required for the offence of sexual harassment under the POCSO Act and the groping is unknown to the accused, which cannot cover under the section of the POCSO Act. Only offences under Sections 353, 363, and 342 of the Indian Penal Code and punished for one-year jail sentence and a fine of Rs. 500.

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<sup>20</sup> AIR 2021 SC 1086

The decision is highly criticised by countrymen. In appeal Supreme court has held that skin-to-skin contact is not necessary to constitute sexual assault under section 7. The act of touching any sexual part of the body of a child with sexual intent or any other act involving physical contact with sexual intent, could not be trivialized or held insignificant or peripheral so as to exclude such act from the purview of "sexual assault" Under Section 7. The Court cannot be oblivious to the fact that the impact of traumatic sexual assault committed on children of tender age could endure during their whole life, and may also have an adverse effect on their mental state. The suffering of the victims in certain cases may be immeasurable.

### **Challenges and Opportunities**

The judiciary has numerous obstacles in properly addressing child sexual abuse, despite its critical role. These include a lack of funding, backlogs in cases, and structural impediments that deny marginalised populations access to the legal system. Furthermore, efforts to stop sexual abuse and defend children's rights may be undermined by society views and cultural norms.

But there are also a lot of chances for the courts to promote progress in this field. Courts can improve their ability to deal with child sexual abuse in a comprehensive way by developing partnerships with other stakeholders, utilising technology, and expediting legal processes. Furthermore, judicial activism and advocacy can spur changes in legislation and policy that put children's rights and welfare first.

### **Conclusion**

The legal system acts as a safeguard for vulnerable children and as a bulwark of justice in the battle against child sexual abuse. Courts have the power to fundamentally alter society by resolving disputes, interpreting the law, and advocating for preventative actions that enhance safety and equity for all. Nonetheless, everyone involved-policymakers, law enforcement, civil society organisations, and communities must work together to realise this vision. Through collaborative efforts and adherence to the values of fairness, empathy, and children's rights, we can create a future in which no kid has to experience the horrors of sexual abuse.

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