

INTERNATIONAL JOURNAL OF LEGAL AFFAIRS AND EXPLORATION

Volume 3 | Issue 1

2025

Website: www.ijlae.com

Email: editor@ijlae.com

SACRED POWER AND SILENCED VOICES: LEGAL, INSTITUTIONAL, AND MEDIA CHALLENGES IN ADDRESSING RELIGIOUS SEXUAL OFFENCES IN INDIA

Arpita Gupta

LLM, AIALS, Amity University, Noida

ABSTRACT

This article investigates, critically, at the intersection of religion, sexual violence and institutional accountability – and its particular reference to India. Basically, it deludes claims that sexual abuse is fundamental to spiritual practice and shows how institutional constructs inside religious systems, when not regulated, can impose and hide abuse as a technique of religious authority. This study identifies systemic legal and procedural gaps in the way sexual offences against women are dealt with in religious institutions, filched from the doctrinal legal analysis and comparative jurisprudence review, and collected media coverage. The focus is on key statutes including Protection of Children from Sexual Offences Act, 2012 and Indian Penal Code, in view of their implementation deficits even when the clergy or religious establishments are involved.

This article presents case-based analysis on how such religious hierarchies and patriarchal power function through silencing survivors and evading justice, while maintaining a culture of impunity, employing Catholic clergy scandals, the Devadasi system, and abuse in madrasas across Christian, Hindu and Islamic religious traditions. Reducing victim abuse and batterer abasement are informed with theoretical insights clericalism, patriarchal legal theory, labelling theory, and restorative justice to form a multidimensional framework explaining how offenders are protected from victim recrimination and how victims are stigmatized.

This article concludes, it proposes a set of policy and legal reform recommendations, such as the establishment of survivor mobilised justice mechanisms, the institutionalisation of independent oversight bodies, ethical media regulation and incorporation of restorative justice

framework. It contends that abuse of religion is not this thing we call religion, but rather it is an abuse of unregulated power within religion that is not responsible to its institutions.

Keywords: *Religious sexual abuse; Institutional accountability; Clericalism; Devadasi system; Madrasas; Media trials; Survivor-centric justice; POCSO Act; Patriarchy in religion; Restorative justice; Moral panic; Religious freedom vs. fundamental rights.*

INTRODUCTION

Over the past few decades numerous religious institutions the world over have come in for strong criticism especially over their role in, and cover up of, sexual offences committed against children and adults by clergy and religious functionaries. Sexual violence within religious institutions is a disturbing global pattern, evident from Catholic Church's abuse scandals in the US and Ireland, from the ritualised sexual exploitation used in the system of Devadasis in India or from the recent exposure of abuse in Islamic madrasas, just to mention a few cases. But these are not isolated incidents; they are symptoms of what ails institutions and theology at the deepest level, and for which the needed legal and social remedies can also be immediate. India is an exception where India is a constitutionally secular but deeply religious country. At the same time, in this case, spiritual authority, caste hierarchy and social conservatism have fused to render the crimes of sexual violence in religious contexts even more invisible, unreported and unpunished.

There are several progressive legal frameworks by the Indian state to deal with offences related to sexual offences, such as the Protection of Children from Sexual Offences Act, 2012 (POCSO), Criminal Law (Amendment) Act, 2013 and the legislations at the state level such as the Karnataka Devadasis (Prohibition of Dedication) Act, 1982. Nevertheless, if the accused or the participants in the conspiracy are religious institutions or clerical leaders, these laws are not enforced or, worse, caught up in arguments about religious freedom. The paradox consists with the religious spaces, which ideally aspire to be spaces of sanctuary and moral guidance, get insulated with the exception of legal oversight under the mask of the sacred autonomy.

The problem with this is more serious than just how horrific the harm has been, it is also on a very large scale, but also swept under the systemic rug. And multiple survivor accounts and journalistic investigations find such abuse often accompanied by institutional retaliation,

shaming of the victim, and theological justification to cheque any dissent.¹ This is why it must shift away from moral lapsing of individual offenders to an institutional failing, enabled by doctrinal opacity and legal impunity.

The two research questions that drive this article are (1) is religion inherently preposition to enable sexual abuse? Thus, the second question addressed how institutional structures and the sociocultural hierarchy of religious traditions impede the very access to justice for survivors. Instead, the article proposes a more sophisticated, intersectional explication of how, instead, power, patriarchy, institutional secrecy, deficient legal frames, and so forth work together to insulate offenders and stigmatize survivors.

A doctrinal and interdisciplinary research methodology is used by the article. Second, an examination of India's legal frameworks on sexual offences is made; gaps in statutes, such as the Indian Penal Code, POCSO, and those such as the Immoral Traffic (Prevention) Act, or foreign state laws such as the Karnataka Act are highlighted. Second, India's legal and institutional responses are also contrasted with those in counties like Australia (for e.g., the Royal Commission into Institutional Responses to Child Sexual Abuse) and the United States (e.g., *John Doe 1 v. Holy See*²), and the United Kingdom (e.g., the Independent Inquiry into Child Sexual Abuse). The article also assesses how journalistic narratives shape public opinion and contribute to survivor justice or propping up institutional protectionism by using media content analysis.

Theoretical constructs from sociology, criminology and media studies figure significantly in a large part of the article also. It employs concepts like clericalism (whereby religious leaders are spoken of as if they were almost infallible), labelling theory (which questions how and whether victims and offenders are differentiated on the basis of narration), and moral panic theory (arguing for the sensational and partial coverage of the media), to provide a participative analytical framework.²

The structure of the article is made up of eight parts. In this initial part, this Introduction introduces the theoretical and conceptual foundations that are the key elements to understanding the nexus between religion and sexual violence, followed by Part 2 that further

¹*John Doe 1 v. Holy See*, 557 F.3d 1066 (9th Cir. 2009).

² Franklin T. Cullen and Cheryl L. Jonson, "Labelling Theory and Correctional Rehabilitation: Beyond Unanticipated Consequences" in *Labelling Theory* 63 (Routledge, 2017).

elaborates on these theoretical and conceptual foundations. In Part 3, India's legal framework of sexual offences is discussed as a matter of statutes, constitutional tension and enforcement challenges in the context of religious situations. The fourth part provides case based explorations of institutional misconduct within the Christian, Hindu and Islamic institutions. In the last part, the media narratives are critically studied to understand the role of such narratives in public perception, judicial process, and survivor dignity. In Part 6, a comparative legal analysis of how other democracies have legislatively and institutionally responded to religious sexual abuse is performed. In Part 7, reform pathways are put forth: institutional accountability, survivor led justice models, and ethical media regulation. Finally, in Part 8, the concluding reflections stress that, despite the pure state of being, faith has to avoid being unnatural through a balancing gesture that is aimed at harmony, aiming to give harmony in faith with the constitutional duty of justice, dignity, and equality.

THEORETICAL AND CONCEPTUAL FRAMEWORK

There is a need for a strong and multiple theoretical foundation which addresses the full spectrum of law, sociology, theology and media in order to understand sexual offences in religious context. This cannot be done without analysing the ways in which religious and legal power, legitimacy, silence and social control work within both systems at the intersection between religious authority and sexual misconduct. This section outlines five different theoretical models —Clericalism, Patriarchal Religious Hierarchies, Labelling Theory, Restorative Justice, Moral Panic Theory — each of which illuminates a particular way in which institutional failure and survivor marginalisation can be examined. So the purpose of integrating them in a more holistic way is so that we can have a better, wider sense of the extent to which abuse is not just a moral failing of an individual but a structural phenomenon based in certain doctrines, traditions, institutional silence.

CLERICALISM AND SACRED IMMUNITY

Sociologically, the phrase clericalism is associated with any sociological condition in which religious leaders are shielded from institutional or legal accountability, and are treated as moral authorities, or allowed to be placed beyond reproach. Jessica Martin defines clericalism in her sociological critique as ‘a systemic dynamic that allows clergy to evade scrutiny on the grounds

of spiritual superiority'³ and within such structures, the abuse of clergy is reframed as a kind of 'moral lapse' or spiritual failing and the offender is subjected to internal disciplinary measures rather than to the justice of the state. This then, explains clericalism as a protective shield around offenders that deters victims from disclosing, not wanting to attack the faith or its leaders.

In the case of the Catholic Church scandals, these institutional responses tend to prioritize secrecy over justice and this framework is highly applicable. This concept has been known to occur when high ranking officials transfer offending clergy at their position of higher post and do not report them to the legal authorities as shown in global inquiries and studies⁴ which also prevails in the Hindu temple systems and Islamic madrasas wherein gurus or imams take revered position, thus, the survivors or in this case either minors or women are not able to accuse such gurus or imams without the repercussion of social and communal backlash. Thus, clericalism legitimates silence and sacralises spaces within which impunity is given safe passage.

PATRIARCHAL RELIGIOUS HIERARCHIES

In many religious institutions, which are indeed to be found in the different traditions, patriarchal hierarchies are entrenched in ways that see women and children subjugated and power was concentrated in the hands of male religious leaders. Patriarchal interpretations of religious doctrine throughout history have relegated women to a spiritual inferiority, sexual impurity, or the need for male control:⁵ structurally, temple priests, bishops, imams, as well as monastic heads are overwhelmingly male and often operate with unregulated authority.

It is an archetypal case of the Devadasi system in the Indian context. The practice continues to exist in cultural and religious guises, where girls are 'married' to deities and then exploited by male patrons and temple elites who are part of patriarchal religious order to support it.⁶ Stubbornly outlawed, the system has yet to be dismantled through legal efforts such as Karnataka Devadasis (Prohibition of Dedication) Act, 1982. In such contexts, gendered

³ Jessica Martin, "Critical Reflections on Clericalism and Clergy Misconduct: A Sociological Approach" 13(2) *Journal of Sociology and Christianity* 56 (2023).

⁴ Kenneth J. Terry, "Child Sexual Abuse Within the Catholic Church: A Review of Global Perspectives" 39(2) *International Journal of Comparative and Applied Criminal Justice* 139 (2015).

⁵ Anna Moder, "Women, Personhood, and the Male God: A Feminist Critique of Patriarchal Concepts of God in View of Domestic Abuse" 28(1) *Feminist Theology* 85 (2019).

⁶ Franklin T. Cullen and Cheryl L. Jonson, "Labelling Theory and Correctional Rehabilitation: Beyond Unanticipated Consequences" in *Labelling Theory* 63 (Routledge, 2017).

injustice further reinforces that survivors of abuse are denied re-entry into religious life and are often ostracized from the community, most times, they are survivors of abuse.

Consequently, the issue for patriarchy in religion is not a question of culture only but structural enabler of sexual exploitation, deeply resistant to reform without undermining the gendered power dynamics.

LABELING THEORY: CONSTRUCTING THE “INNOCENT” AND “GUILTY”

As in criminology, the label theory views how social labels form identity and result in legal outcome. Cullen and Jonson contend that labels of the kind “offender” or “victim” are individually assigned and socially constructed, sometimes unequally,⁷ and it is especially applicable in religious sexual offences such as those involving the clergy, in which they are usually labelled “divinely chosen” or “man of God” and therefore incapable of wrongdoing. Often, survivors, such as women or children, are labelled as 'troublemakers', 'liars' or 'anti-faith,' thus rendering their credibility useless.

It discourages reporting and reduces the judicial objectivity. In these cases, victims are often pressured to forgive, refrain from telling what happened, or even to apologize, if the abuser, even exercises spiritual power. ‘Reputation management’ is something that religious institutions may engage in – that is, maligning survivors, downplaying the severity of abuse, and accusing survivors of maligning the faith. Thus, through her labelling theory, the author reveals the mechanisms by which religious communities enable perpetrators to protect themselves while disempowering victims.

RESTORATIVE JUSTICE: SURVIVOR-CENTRIC ALTERNATIVES

Adversarial, slow and insensitive of the trauma survivors of sexual abuse, traditional criminal justice systems, especially in India are often perceived. A complementary model providing healing, accountability and dialogue over retribution is provided by restorative justice. Contrary to this, as stated by Gopal Pal, Circles of Support and Accountability (COSA) and Sex Offender Treatment Programme (SOTP) permits community-based interventions where

⁷ Gopal Pal, “Exploring the Potentials of Restorative Justice Mechanisms (SOTP and COSA) in Treating Child Sexual Offenders in India” 5(2) *Journal of Victimology and Victim Justice* 202 (2022).

survivors are heard, offenders are expected to take responsibility and less re-traumatising, the second opinion.

Restorative justice is also a process of reforming institutional culture in the context of religious abuse. Specific measures might include survivor initiated truth commissions, public apologies from religious authorities, symbolic reparations, and systemic reform to prevent future abuse. In religious settings where a victim is silenced, restorative justice is the parallel channel available to survivors of crime to reclaim agency and dignity, even if it is not a substitute for legal action.

MORAL PANIC THEORY AND MEDIA BIAS

In the case of religious sexual offences, Stanley Cohen's moral panic theory subsequently adopted by Boone and van de Bunt,⁸ discusses how media sensational leads to public fear and political pressure in excess of the actual risk or incidence, and further, such 'moral panic' occurs around certain communities (usually minorities) while in dominant institutions abuse is side-lined or individualised.

For example, for instance, Hindu temple based abuse, the Islamic madrasa scandal or scandals are very often reported with a communal or a political undertone, this spurs the stereotyping and the public hysteria, whereas Christian clergy scandals are presented as a lapse of individual morality rather than as an systemic failure. Such framing causes the public to misunderstand, and fail to support victims and contributes to decisions that reduce justice to fear.

Therefore, use of moral panic theory allows us to critique not only media narratives but also policymaking and judicial culture that is sparked by response to them, usually in the form of a biased enforcements and disparity in protections.

INDIA'S LEGAL FRAMEWORK ON RELIGIOUS SEXUAL OFFENCES

The Indian legal landscape on the other hand has a host of statutory provisions to deal with instances of sexual offences but a large erosion remains where the nature of the offence meets a religious institution. India has certainly made considerable progress in the realms of the Protection of Children from Sexual Offences Act, 2012 (POCSO) and landmark amending laws

⁸ Marc Boone and Hans van de Bunt, "Dynamics Between Denial and Moral Panic: The Identification of Convicted Sex Offenders in the Community" 63(1) *Probation Journal* 23 (2016).

of the Indian Penal Code (IPC), but these frameworks tend to overlook the institutional dynamics and infrastructural possibilities of assault in religious contexts. In a discussion on the issue of religious sexual offences, it, therefore, becomes imperative to critically examine the applicability of Indian laws and inadequacy of the implementation; and the dearth of judicial innovation towards ensuring systematic accountability, of religious institutions.

CORE STATUTORY FRAMEWORK

The Protection of Children from Sexual Offences Act, 2012 (POCSO)

It was a legislative watershed in India's battle against the child sexual abuse. It defines sexual offences against minors in a comprehensive way; requires child-friendly reporting and trial procedures; and makes mandatory punishment for refuse to report. According to Sections 19 and 21 of the Act, anyone (including members of a religious institution) is obliged to report suspected abuse, and violators are subject to sentencing.⁹ However, religious institutions have a tendency of being insular and rigid hierarchically and lack mechanisms for internal reporting of abuse, or provide a legal loophole for those accused of abuse through informal manipulations as well as relocation. However, a gap in the law relates to institutions culpable for the abuse when the religious body enables or conceals it.¹⁰

Indian Penal Code, 1860

The IPC has wide provisions on sexual offences. Sections 375 and 376 define and punish rape; Section 354 deals with the assault or criminal force to woman with the intention of outraging her modesty; Section 509 makes punishable words, gestures, and other acts intended to outrage the modesty of a women.¹¹ These provisions are not religion-specific and have been widely invoked when involving clerical abuse cases. But this deference was often too extended to the authority of the spirit. The low conviction rates in high profile cases owe much to investigations that are delayed, and witnesses are intimidated or discredited.¹²

The Immoral Traffic (Prevention) Act, 1956 (ITPA)

⁹ Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), ss. 19, 21.

¹⁰ Michael A. Helfand, Implied Consent to Religious Institutions: A Primer and a Defense 50 Connecticut L. Rev. 877 (2018).

¹¹ Indian Penal Code, 1860 (Act 45 of 1860), ss. 375–376, 354, 509.

¹² Kathleen J. Terry, Child Sexual Abuse Within the Catholic Church: A Review of Global Perspectives 39(2) Int'l J. Comp. & App. Crim. Just. 139 (2015).

That was a law to combat human trafficking whereby, a major form of it is being subjected for sexual exploitation. Although not explicitly aimed at religious settings, its relevance arises when young girls are given in ceremonial service to temples and barred from marriage in the name of religion and practiced as the Devadasi system. Sections 5 and 7 of the Act make the procuring of persons for prostitution, along with engaging in such acts in public places, criminal offenses, but enforcement is weak because such practices are socio-religiously legitimized in parts of society and there is collusion between local elites to keep it happening.

Karnataka Devadasis (Prohibition of Dedication) Act, 1982

This is an attempt to stop the centuries old practice of Devadasi dedication by making the act of dedication to temples to criminal and penalising facilitators of such act, a categorical prohibition and yet implementation has been poor. A National Commission for Women report noted the continued practice with a frequency in Karnataka and Maharashtra that often occurred via the tongs of clandestine religious rituals.¹³ Caste hierarchies and gender based vulnerability in combination with legal loopholes make the law toothless in reality. A problem of statutes, but a problem of the absence of a 'holistic enforcement framework' which tackles the socio-religious ecosystem, which enables these offences.

CHALLENGES IN IMPLEMENTATION AND JUDICIAL GAPS

Laws designed to ensure the enforcement of sexual offence statutes within religious institutions are multifaceted and despite that, it has been shown. Underreporting is enabled by religious figures being deified and fear of social backlash. Many victims are threatened with divine retribution and of isolation in their communities; of religious institutions draw on their symbolic capital to discourage unwillingness to be scrutinized¹⁴; law enforcement also often feel reluctant to proceed with cases involving clergy because of personal religious affiliations, hierarchical pressures or political considerations.

The ambit of the judiciary's role in facing the problem of religiously mediated abuse of sexual compassions is ambiguous. Indian courts, however, have traditionally performed with drama in cases of child rights and sexual assault but have not directly involved religious institutions. For instance, in the Father Franco Mulakkal case, even though there was additional voluminous

¹³ Government of India, Report of the Committee on Reforms of Criminal Justice System (Ministry of Home Affairs, 2003).

¹⁴ Gerald A. Arbuckle, Abuse and Cover-Up: Refounding the Catholic Church in Trauma (Orbis Books, New York, 2019).

testimonial evidence as well as the public cry, the Kerala Sessions Court acquitted the accused on the base of inconsistency in survivor's narrative.¹⁵ The judgment was criticised for not following the trauma informed approach and ignoring the contextual aspect of the institutional context within which the sexual abuse took place.

Furthermore, there is no doctrine of the institutional liability in the Indian jurisprudence much akin to such frameworks seen in the other jurisdictions. In the United States, for example, the case of *John Doe 1 v. Holy See*. Indian courts have not displayed such innovation in attributing legal liability to religious organizations for cover and/or facilitation of abuse due, in large part, to Holy See's challenge to the civil liability of the Vatican in such cases.¹⁶ This lacuna allows institutions to deny individual perpetrator's responsibility and avert the responsibility of the institutions.

CONSTITUTIONAL DILEMMAS: ARTICLE 25 VS. ARTICLE 21

One of the major sources of friction in adjudicating religious sexual offences is the constitutional guarantee of religious freedom under Article 25 of the Indian Constitution which trumps Article 21, which confers upon the person the right to his life and liberty.¹⁷ As such, courts are careful in interfering in religious practices, let alone those that would be construed as the state's excessive intrusion in religious autonomy. In cases relevant to the Devadasi system, courts oscillate between a humility to cultural practice and a call for constitutional morality.¹⁸

The Supreme Court's decision in *State of Punjab v. Union of India*¹⁹ and the landmark judgment in *Kesavananda Bharati v. State of Kerala*²⁰ has reiterated the primacy of constitutional values over religious orthodoxy. These precedents, however, have not been applied explicitly to cases of institutional abuse that has taken place in a religious setting. In fact, courts have abstained from direct confrontation with religious institutions' sovereignty

¹⁵ *Father Franco Mulakkal v. State of Kerala*, (2022) Kerala Sessions Court (Acquittal).

¹⁶ *John Doe 1 v. Holy See*, 557 F.3d 1066 (9th Cir. 2009).

¹⁷ The Constitution of India, arts. 21, 25.

¹⁸ Tara Deane, *The Devadasi System: An Exploitation of Women and Children in the Name of God and Culture* 24 J. Int'l Women's Stud. 8 (2022).

¹⁹ *State of Punjab v. Union of India*, (1977) 3 SCC 592.

²⁰ *Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461.

and have adopted a 'hands off' approach, which paradoxically contributes to the continued sanctity of hierarchal orders.

Comparative Models and Institutional Accountability

Taking inspiration from other places is perhaps useful for India to emulate, in this case even of global best practices like the Australia's Royal Commission into Institutional Responses to Child Sexual Abuse. In 2013 the Commission set up fully systematic inquiry into the religious, educational and care institutions and urged for structural reforms such as, redress schemes, mandatory reporting laws and the establishment of the independent oversight bodies.²¹ In light of this Australia has brought civil liability provisions to the institutions and created the pathway for compensation to the survivors.

India has no equivalent of such a truth and reconciliation mechanism. State level sporadic inquiries such as women's commissions or human rights' bodies have been unable to institutionalize accountability. What is needed is a centralized, quasi judiciary authority with investigative powers to probe abuse in a religious context, protect the whistle blowers and enforce structural reforms.

RELIGIOUS INSTITUTIONS AND CLERGY MISCONDUCT

In earlier times, religious institutions have been held in positions of great spiritual and moral authority. Yet, when lacking regulation and control this same authority can be a cloak of entrenchment of the systematic abuse. Sexual abuse within the major religious traditions—Christianity, Hinduism, and Islam—has been documented again and again, increasingly over the past few decades and particularly in the cases where clerical or spiritual figures abuse their positions of trust. Within the Indian and the global religious contexts this section undertakes such an exploration of such misconduct through a critical lens, studying eminent case studies and failures of accountability systematized.

²¹ Government of Australia, Royal Commission into Institutional Responses to Child Sexual Abuse – Final Report(2017).

CHRISTIANITY: CLERGY ABUSE AND INSTITUTIONAL TRAUMA

Catholic Church is one of the most recorded sites of institutional sexual abuse. Clergy sexual misconduct within the Church has been written about, through commissions and journalistic investigations, around the world. Arbuckle's theological analysis is based on a trauma informed perspective asking who could be authentically serious about community and institutional honesty if the life-enriching supports such communities provide have been broken to victims with emotional, mental, and physical scars? He notes that clericalism (wherein clergy are morally infallible) enables psychological and structural enablers of abuse, especially when the Church protects its institutions before it safeguarding the welfare of survivors²².

This has been played out much in India. While Western cases are more widely publicised, India's Catholic faction has also been found guilty of covering up for predatory priest. The case of Father Franco Mulakkal v. Church's resistance to legal oversight was exposed by State of Kerala. Bishop Mulakkal was charged with raping a nun several times between 2014 and 2016. In 2022, despite compelling testimony and public support for the survivor, the Kerala Sessions Court acquitted him on the ground that there was no corroborative evidence²³. But feminist legal scholars and human rights activists roundly criticised the judgment for being typical of the kind of biases that privilege the powerful men of the religion over a lone, isolated female accuser.

Second, it indicates that the Church has no internal institutional accountability mechanisms in place for proactive investigation of misconduct and third, that the Indian criminal justice system, by and large, remains unable to take power dynamics in Religious abuse cases into account. The Vatican has also undertaken some recent steps to achieve internal reforms like speeding through canonical trials but both changes are shrouded in secrecy and are too little, too little in a world where secular justice should be paramount.

HINDUISM: DEVADASI PRATHA AND THE PERSISTENCE OF RITUAL EXPLOITATION

Christian abuse, on the other hand, is pervasive in educational or pastoral settings, whereas abuse in some Hindu tradition has, historically, been part of this religion. In places such as

²² Gerald A. Arbuckle, *Abuse and Cover-Up: Refounding the Catholic Church in Trauma* (Orbis Books, New York, 2019).

²³ *Father Franco Mulakkal v. State of Kerala*, (2022) Kerala Sessions Court (Acquittal).

Tamil Nadu, Andhra Pradesh and parts of Karnataka, the Devadasi system was one wherein young girls were dedicated to the temples under a lure of religious service. Temple patrons, priests and local elites exploited these girls, and sometimes themselves, in lifelong sexual exploitation²⁴.

Even though this practice was legally abolished, Tara Deane (2022) critically analyses, how it continues to exist underground, because of deep-rooted patriarchal and caste hierarchies²⁵. She makes the point that the system was never simply a religious ritual, but was a socio-economic control system and gendered violence. Even though the Karnataka Devadasis (Prohibition of Dedication) Act, 1982, criminalised dedication of a girl to a temple, its implementation has been inconsistent and partly tainted by institutional complicity.

Like Christian cases, there is institutional inertia in the state's inability to prosecute offenders, including leaders of religion or those politically connected. Additionally, victims of such cases also receive threats, social exclusion and have no rehabilitation. As one of Devadasi survivors' attempts to seek redress reach the courts, Deane points out that even in an effort to seek legal remedy, the cases are trivialised as 'cultural matters'²⁶. A more general failure of Indian secularism to clearly define the boundaries between religious customs and human rights violations recalls the judicial inclination to backstep from fundamental rights as the result of cultural practices.

ISLAM: SEXUAL ABUSE AND REGULATORY GAPS IN MADRASAS

Documented cases of sexual abuse have also occurred in unregulated religious schools or madrasas in Islamic contexts. These institutions are generally out of the state's own curricula and oversight and can become a place where children – including boys – are exploited physically and sexually by authority figures. As Sa'adah (2023) mentions, such abuse is not only physical but also spiritual and perpetrators use Qur'anic authority and fear of divine wrath to silence the victims²⁷.

²⁴ V.B. Harishankar and M. Priyamvada, "Exploitation of Women as Devadasis and Its Associated Evils" (2016) submitted to National Commission for Women, New Delhi.

²⁵ Tara Deane, "The Devadasi System: An Exploitation of Women and Children in the Name of God and Culture" 24(1) *Journal of International Women's Studies* 8 (2022).

²⁶ Karnataka Devadasis (Prohibition of Dedication) Act, 1982 (No. 1 of 1984).

²⁷ Sa'adah S., "Gender Issues and Sexual Violence in Islamic Educational Institutions" 12(1) *At-Tajdid: Jurnal Ilmu Tarbiyah* 50–58 (2023).

The biggest impediment to justice in these trials are the proviso within the status of Madrasas. They are the most governed by personal laws and out of the scope of education departments. There is no statutory requirement on religious institutions to report abuse and where POCSO (Protection of Children from Sexual Offences Act, 2012) provisions apply; people are rarely reported as per POCSO and the pressure is from the community that it is feared that there will be a communal backlash.

The United States' reluctance is heightened by the larger environment in Indian politics, where religious minorities are already under attack. Islamic institutions curry favour with media and law enforcement agencies, which steer clear of Islamophobic action toward them since any such action could be interpreted as Islamophobic. Therefore, survivors, especially boys, have remained invisible. Further suppression of disclosure is also suggested by Sa'adah that gender, norms in traditional Muslim communities that suppress men's speech about sexual vulnerability are followed.

Despite several cases heard through independent media and NGO reports, there has never been such an in depth inquiry as the Royal Commission in Australia or the Church's own internal investigations. With state intervention and mandatory oversight, the risk of continuing abuse is also high without it. In addition, like in other religions, there is a tendency to resolve allegations internally or through community arbitration, so that victims are not given the right to legal justice.

THE ROLE OF MEDIA AND PUBLIC DISCOURSE

In the struggle against institutional sexual abuse, especially that of victims that are religious, Media has matured to become both an indispensable ally as well as a problem led actor. There is no question that journalism can serve as an investigative breakthrough or incendiary portrayal in the legal outcome, survivor narrative, or public perception it can play. Yet, this power is double-edged. Major exposés by The Boston Globe in the United States as well as The Indian Express in India have prompted institutional reckonings that were unjust and unforgivable. On the one, these same media landscapes too have indulged in the sensationalism, religious bias and selective silences that perpetuate inequities suffered by the survivors, especially if their communal identity intersects with it.

The case filed by The Boston Globe in 2002 was a landmark case of journalism's potential to bring to an end institutional silence surrounding clerical abuse in the Catholic Church. The investigative reports told of Church officials who, rather than initiating disciplinary or legal action, kept putting priests accused of abuse into a new church down the road and away from children. The Indian Express and other similar media, even if less or more intensely and equally, covered Devadasi system and clergy misconduct cases, although according to the religion of the accused. This previous work has played an important role in prompting judicial and public inquiries, like the Royal Commission in Australia and India policy talk on institutional complicity and the failure to report²⁸.

Nevertheless, the involvement of the media has not always been ethical or fair. The objectivity and integrity of reporting the news of such religious sexual offences has been manipulated or blurred by sensationalism—a practice wherein news is presented in an exaggerated or emotionally manipulative manner. As Bakhshay and Haney (2018) have claimed, media trials often precede the legal one, and they bear a risk of violating the principle of innocent until proven guilty, when doing, they effect public prejudgments and bias.²⁹ Such a media trial is dangerous particularly in cases of religious sexual offense when the religious leader can always be afforded a social status that tends to make the judiciary and the public reluctant to judge.” On the other hand, survivors are publicly shamed, disbelieved and often blamed for besmirching the reputation of religious institutions.

Our fraud is worsened by media coverage that serves as overt religious bias. The attention in dominant religious institutions such as the Catholic Church in India or worldwide, when it comes to abuse, is quite substantial over the period of time. But sexual offences in minority or non-dominant religions are often explained from the orientalist or communalist discourses. This extended to Islamic madrasas, whose part in abuse scandals was depicted in ways that fit into such frequently used stereotypical narratives of fundamentalism and backwardness, thus pushing the issue to the perimeter of culture rather than back to the essence of structural perpetuation³⁰. On the contrary, cases in Hindu institutions that are equivalent to similar cases,

²⁸ Government of Australia, “Royal Commission into Institutional Responses to Child Sexual Abuse – Final Report” (2017).

²⁹ S. Bakhshay and C. Haney, “The Media’s Impact on the Right to a Fair Trial: A Content Analysis of Pretrial Publicity in Capital Cases” 24(3) *Psychology, Public Policy, and Law* 326 (2018).

³⁰ Sa’adah S., “Gender Issues and Sexual Violence in Islamic Educational Institutions” 12(1) *At-Tajdid: Jurnal Ilmu Tarbiyah* 50–58 (2023).

but which are embedded within the cultural religiosity³¹, are either cast in apologetic terms or ignored altogether by national media because of its religiosity.

Unfortunately the sensitivity to the communal does add further pursuance of this asymmetry in reporting. Media houses in India may self censor, over report, or under report depending if it is politically beneficial to do so as politics are often a reflection of religion. This means that survivors are also treated differently according to their community affiliation, as well as it adds to inter religious tension in the discourse of the media. They present such bias that weakens the formation of a unified survivor led reform movement along communal lines and marginalizes it in its systemic impact.

There is also a further complication in the issue of survivor traumatization. The Section 23 of the Protection of Children from Sexual Offences Act, 2012 (POCSO)³² clearly provides protection to the survivors, including not allowing disclosure of media about identity of the victim. Yet, these regulations have been flouted in the interest of viewership viewers ratings or social media virality by media houses. Not exposing survivor identities breaks statutory law, reopens the trauma wounds of victims and isolates them from their communities, and deters other victims from coming forward. In tightly knit religious environments, this is especially true where honour, family reputation and community allegiance as formidable silencing forces.³³

According to Clites (2023), however, the historiography of clerical abuse is particularly prone to turn away from institutional reform to the salacious headlines and moral outrage.³⁴ Public discourse is misdirected to avoid constructive communication regarding the implementation of policy, institutional liability, and survivor rehabilitation. Just as the media should be a channel toward justice, it becomes an arena of sensation that unjustly damages the very people that it culminates to assist.

An approach to ethical journalism not only is desirable but is essential to address these issues. Fidalgo et al. (2022), as others do, propose to revise journalistic codes of conduct of the digital

³¹ Tara Deane, "The Devadasi System: An Exploitation of Women and Children in the Name of God and Culture" 24(1) *Journal of International Women's Studies* 8 (2022).

³² Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 23.

³³ A. Singh, "Conflict between Freedom of Expression and Religion in India—A Case Study" 7(7) *Social Sciences* 108 (2018).

³⁴ B.J. Clites, "In Search of a Historiography of Clergy Sexual Abuse" 41(2) *US Catholic Historian* 79–102 (2023).

age and when integrating the sociocultural diversity³⁵. This refers to reporting religious sexual offences in terms of, this includes (a) securing confidentiality for the survivors, (b) verifying facts with utmost rigour before publication, (c) avoiding stereotypes and religious or institutional bias while reporting, (d) putting the survivor's issues in the centre rather than that of religious or institutional representatives.

Such guidelines, therefore, should be developed by the Press Council of India and other media regulatory bodies. Codes that existed are either too general or not sufficiently enforced. If a protocol for reporting this was designed, much like the ones that're created for suicide and terrorism and used to hold media houses accountable, this would standardise good practice. Also, journalists who write about such cases have to be trained on how to be sensitive to the trauma their coverage might cause to survivors or serve as a shield for perpetrators in the name of religiosity.

At the same time, it is necessary for the distinction between this public interest and such voyeurism to be strictly observed. Public has a right to know but also does not have a God given right to consume the stories of suffering unfiltered and with no ethics. Like we should treat legal evidence, survivor stories should be gently handled, accurately verified and without prejudice.

COMPARATIVE APPROACHES: UNITED STATES, UNITED KINGDOM, AND AUSTRALIA

In different countries, similarly prompted by the global crisis of institutional sexual abuse, there has been a range of legal and policy responses. There are specific instructive frameworks that the United States, United Kingdom, and Australia provide that could help understand the contours of the state accountability, survivor redress and institutional reform in religious sexual abuse cases. The purpose of this section is to study those comparative jurisdictions hence sceptical comments on the Indian legal reform can be drawn from this section. While not every country considers religion itself the cause of such crimes, institutional opacity, legal privilege and theological justifications have time and time again obstructed access to justice while supporting offenders.

³⁵ João Fidalgo, Bernd Thomass, et al., "Ethical Codes of Conduct in Journalism: Demands for a Digitalising Mediascape" (2022).

UNITED STATES: CIVIL LITIGATION AND THE LIMITS OF ACCOUNTABILITY

The institutional accountability in Catholic clergy sexual abuse crisis in the United States represents a turning point in the legal conceptualization of institutional accountability. As survivors sought damages in civil lawsuits against dioceses, especially by means of which dioceses would be bankrupted through the protection clerical secrecy had provided for abuse long buried, numerous civil lawsuits were filed against dioceses. In this context one of the most pivotal legal matters was the case of *John Doe 1 v. U.S.*, to which the U.S. Court of Appeals for the Ninth Circuit allowed claims against the Vatican under the three sovereign immunity exceptions provided by the Foreign Sovereign Immunities Act (FSIA)³⁶. In showing how to transform the piercing of a religious sovereignty in order to get justice, the case reveals why doing so can be so difficult when transnational religious hierarchies are involved.

Criminal prosecutions did take place in some dioceses, but the biggest effect was the revision of policy. In many parts of the United States, state legislatures began to modify statutes of limitations for child sexual abuse cases in light of the fact that disclosure of this trauma tends to be delayed by decades as a result of shame, fear, institutional pressure. They have played an important role in ensuring that political will to enact these reforms did not disappear³⁷. Nevertheless, critics argue that although these gains been made, accountability remains selectively so that some religious figures are free from liability based on implied institutional consent or constitutional protections.³⁸

UNITED KINGDOM: THE IICSA AND PUBLIC INQUIRY AS INSTITUTIONAL CORRECTIVE

Unlike the United Kingdom, India did not rely solely on litigation, but rather chose the route of a public inquiry through the state sponsored constitution of the Independent Inquiry into Child Sexual Abuse (IICSA) to probe how institutions like the Church of England and Catholic organisations responded to allegations of sexual abuse. In 2020, the IICSA findings uncovered

³⁶ *John Doe 1 v. Holy See*, 557 F.3d 1066 (9th Cir. 2009).

³⁷ Tom Foley, "Changing Institutional Culture in the Wake of Clerical Abuse – The Essentials of Restorative and Legal Regulation" 22(2) Contemporary Justice Review 171 (2019).

³⁸ Michael A. Helfand, "Implied Consent to Religious Institutions: A Primer and a Defense" 50 Connecticut Law Review 877 (2018).

systemic but ultimately unsuccessful patterns of concealment, minimisation of survivor voices, and institutional reputation over their wishes³⁹. It also observed, however, that safeguarding measures had by and large broken down because of the age-old hierarchical deference and a discomfort with secular mechanisms generally standing on their own, with an unwillingness to prosecute clergy.

This distinction was the integration, combining survivor testimony, looking at institutional policy and recommending its structural reform. It highlighted the point of being the role of restorative justice principles as complementary to traditional adjudication and stressed the need for the broader redress frameworks. Although, it was limited in that it had no prosecutorial power, and many of its recommendations have not yet been fully implemented. However, the UK model is a blueprint for India in terms of how to accommodate a quasi-judicial, public engagement approach to religious misconduct, one albeit so embedded in the very law and constitutional process and deeply entrenched in the lives of their millions of followers, that there is little chance in legislating to change it.

AUSTRALIA: THE ROYAL COMMISSION AND STRUCTURAL TRANSFORMATION

Not only was it the biggest in terms of scope, and the most survivor-centric and recommendation based, but it was a first in terms of the Royal Commission into Institutional Responses to Child Sexual Abuse of Australia. It reported in 2017 that years of systematic abuse, and deliberate concealment, had taken place in religious, educational and welfare institutions⁴⁰. There was a significant complicity of the Australian Catholic Church in covering up offences and facilitating the mobility of offending clergy without reporting this to civil authorities.

The Australian version of approach is different from what the UK or US version has is in the broadness and clarity of the policy response. The shift is systemic with the establishment of the National Redress Scheme, mandatory reporting laws with associations and religious institutions included, and setting out ‘child safe’ standards across all public and private

³⁹ Independent Inquiry into Child Sexual Abuse (IICSA), *Accountability and Reparations Investigation Report* (UK Home Office, 2020).

⁴⁰ Government of Australia, *Royal Commission into Institutional Responses to Child Sexual Abuse – Final Report*(2017).

institutions. In addition, the Commission did not only advocate for the use of restorative justice as a rhetorical device, but it in fact integrated such practices into institutionally defined practice: both to victims through the financial compensation, and through the symbolic acknowledgement of harm for them⁴¹.

This model is particularly applicable to India due to the absence of symbolic redress and the extent of trauma caused by formal litigation. For so long parts of India's legal culture still fail to discern the bit of violence inherent to institutional silence, this is also an insight not yet fully penetrated by the Australian inquiry.

REFLECTIONS FOR INDIAN LEGAL REFORM

Three key insights are presented on Indian legal reform through the comparative analysis. Second, which is the case with the United States as well, civil liability provisions are needed according to which survivors can sue institutions, rather than individual offenders. Indian jurisprudence as laid down under Indian Penal Code, 1860 and Protection of Children from Sexual Offences Act, 2012 is squarely individual criminal liability with scanty scope of dealing with institutional complicity⁴². Legal scholars, in particular Helfand, suggest a framework for creating negative implied institutional consent/conduct or failure to prevent the offence, both of which are prerequisites to negligent security liability.

Second, the UK's IICSA is evidence that institutional inquiry can be a forceful form of social accountability. No public inquiry into clerical or religious abuse has taken place in India with considerable documentation of Devadasi abuse, madrasa abuse and Christian clergy abuse. The absence of such a process perpetuates the culture of silence and deters policy reform. To interrogate institutional cultures, it is necessary to have a parliamentary or judicial commission with investigative powers, as exist in the Australian and British context.

Third, there is a dire need in India for the Australian Commission to adopt similar focus on child safe standards and national redress as it priorities these issues and has prepared and delivered on the Australian national redress legislation in response to disclosure barriers in Australian jurisdictions. Though there is Karnataka Devadasis (Prohibition of Dedication) Act,

⁴¹ G. Pal, "Exploring the Potentials of Restorative Justice Mechanisms (SOTP and COSA) in Treating Child Sexual Offenders in India" 5(2) Journal of Victimology and Victim Justice 202 (2022).

⁴² Indian Penal Code, 1860 (Act 45 of 1860), ss. 375–376; Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), ss. 19, 21.

1982 and Immoral Traffic (Prevention) Act, 1956, the Devadasi system is yet to be banished under grounds of implementation and social will⁴³. Under Article 25 of Constitution of India, religious freedom is also often used as a shield against state interference even at the cost of the fundamental right of dignity and body autonomy as raised under Article 21.

POLICY AND LEGAL REFORM PROPOSALS

The culmination of the work thus far on religious sexual offences and the pressing need for a recommencement of the process for a comprehensive reform of legal and institutional frameworks in India is addressed in this article, mainly from an anthropological perspective. While on paper these legal mechanisms exist on a progressive plane, socio religious complexities, institutional resistance and overemphasis on religious autonomy result in these laws, to fail in their implementation. As such, the policy and legal reform will turn around accountability, survivor centric justice and integration of restorative practices.

The study reveals one of the primary gaps: that survivors have had no legal frameworks in institutional abuse cases that prioritize survivors' voices. Although protection under statutory law, like the Protection of Children from Sexual Offences Act, 2012 (POCSO), is put in place, it nonetheless fails to take into consideration the special trauma that survivors are exposed to in the context of religion, where sexual abusers might command divine or moral authority. In this regard, Pal's (2022) analysis of restorative justice mechanisms—such as Circles of Support and Accountability (COSA) and the Sex Offender Treatment Program (SOTP)—offers a valuable framework for Indian application. They are rehabilitation programs focused on offenders through community engagement without marginalizing or instrumentalizing the survivor's experience, only for penal objective⁴⁴.

Yet nothing can work without strong institutional accountability to achieve restoration. Under the current Indian law, religious organizations are not directly institutionalized liable in courts for concealing or facilitating abuse. For instance, unlike jurisdictions like Australia that led to institutional liability formally following the Royal Commission into Institutional Responses to Child Sexual Abuse⁴⁵, Indian legal proceedings continue to regard abuse as an act of isolated

⁴³ Karnataka Devadasis (Prohibition of Dedication) Act, 1982 (No. 1 of 1984).

⁴⁴ Pal, G., "Exploring the Potentials of Restorative Justice Mechanisms (SOTP and COSA) in Treating Child Sexual Offenders in India" 5(2) Journal of Victimology and Victim Justice 202 (2022).

⁴⁵ Government of Australia, "Royal Commission into Institutional Responses to Child Sexual Abuse – Final Report" (2017).

individual transgression. It misses the role of systemic complicity and the failure to open an inquiry into the role of religious institutions that enable such crimes. The creation of a statutory framework which recognises institutional liability is the best way to ensure that religious organisations are not only morally, but legally, accountable.

Moreover, independent oversight bodies for religious institution must be established. They have no safe place to go for grievance redressal mechanism outside criminal courts, which, more often than not, are intimidating, slow and retraumatising. A secular and safe venue for survivors can be independent Commissions modelled along the lines of Australia's Royal Commission or UK's Independent Inquiry into Child Sexual Abuse (IICSA)⁴⁶. The power of religious structures are vested with these bodies to summon, investigate and recommend legal action with these bodies being given statutory authority so that religious structures are not allowed to sabotage the justice processes.

Additionally, the role of media as both a watchdog and a disruptor necessitates ethical recalibration. Over the years, investigative journalism has brought exposures of many abuse cases starting from the Boston Globe's exposé on clerical abuse to the Indian Express' coverage of the Devadasi system. However, a problem with the media trial is mentioned by Bakhshay and Haney (2018) in their critique that unchecked trials by the media can cause pre-trial prejudice which affects the rights of both survivors and accused individuals⁴⁷. When religious affiliations are involved, this is compounded and tends to shift public stories in the direction of communal anxieties instead of to survivor protection. For this reason, it becomes essential for the regulatory authorities, like the Press Council of India, to set up explicit media ethics codes which recognizes and respects their reporting of religious sexual abuse. Protecting these guidelines should prohibit naming of survivors (as already stipulated in POCSO, s. 23)⁴⁸, include trauma informed journalism and a call for fact checking to colleagues to counter sensationalism.

Furthermore, the redress frameworks for survivors must be survivor led. Many institutional reforms fail because they are built without inputs from the people most deeply touched by them. This does not mean that justice is achieved: Father Franco Mulakkal's trial or the trial of

⁴⁶ Independent Inquiry into Child Sexual Abuse, "Accountability and Reparations Investigation Report" (UK Home Office, 2020).

⁴⁷ S. Bakhshay and C. Haney, "The Media's Impact on the Right to a Fair Trial: A Content Analysis of Pretrial Publicity in Capital Cases" 24(3) Psychology, Public Policy, and Law 326 (2018).

⁴⁸ Protection of Children from Sexual Offences Act, 2012 (Act 32 of 2012), s. 23.

someone who tried to bring vivacious and legal abolition of the 'Devadasi' system, for example, show that justice is incomplete without listening to the survivor's narrative.⁴⁹ They must be brought into policy dialogues, advisory boards, community monitoring bodies. But participation also validates the dignity of survivors and provides an end to institutional blind spots through the experience of 'lived experience'.

However, reform proposals need to be no less than solely tied to approaches in the criminal legal apparatus. It becomes apparent that adversarial justice as it is, is not the way to resolve clerical abuse because punitive systems have failed to address it. According to Foley (2019), Restorative justice presents an alternative approach that is culturally responsive, and that addresses harm, and rebuilds trust between communities and intuitions by providing apology and restitution.⁵⁰ These models can be nested within ecclesiastical structures with a state overseeing role, and it is compatible with the state's legal obligations without sacrificing religious autonomy.

For that reason, a holistic policy must then integrate:

- Legal amendments to impose institutional liability on religious bodies
- Independent commissions with statutory powers to investigate institutional abuse
- Mandatory reporting requirements tailored for religious authorities
- Formalised survivor participation in policy and institutional reforms
- A media ethics framework governed by an independent regulatory code
- Incorporation of restorative practices to address spiritual trauma and institutional harm

Without this reform, India's religious institutions will remain accountable, in theory, to religious authorities and to no one in practice. Law has to serve the purpose of not only punishment but also transformation, that sacred spaces become no more breeding ground of silence and abuse.

FINAL REFLECTIONS AND CONCLUSION

In this study the nexus of religion, sexual offences, legal accountability have been critically examined on the bases of doctrinal frameworks, case studies and comparative international experiences within India. The most important finding is that religion itself is not to blame, but

⁴⁹ Father Franco Mulakkal v. State of Kerala (2022) Kerala Sessions Court (Acquittal).

⁵⁰ Tom Foley, "Changing Institutional Culture in the Wake of Clerical Abuse – The Essentials of Restorative and Legal Regulation" 22(2) Contemporary Justice Review 171–187 (2019).

it does contribute to the problem by allowing abuse to flourish through the concentration of unchecked power and insulation of the top levels of an institution from the rule of law. Each of these—devadasi system, madrasa abuse cases, and catholic clergy scandals—illustrate how faith based authority structures run loose are inimical to justice and do the most to maintain silence.

The approach adopted for the research allowed utilising a variety of discipline theories mainly the sociological theories of Clericalism and Labelling Theory, legal analysis, and media critique in order to present a layered understanding of the problem. The focus is on an unaccounted gap in Indian jurisprudence to articulate institutional liability of religious bodies, which is a central insight preventing effective redress. For the purposes of experimentation, India could look for comparative jurisdictions such as Australia and the UK with models of independent commissions, as well as survivor-led frameworks, to see how these can be adapted for the local context.

Most importantly of all, this study confirms that demanding accountability is not an assault on religion, rather it is a defence of faith's true reason for being. Not protecting survivors and confronting abuse does not protect spirituality; it in fact protects the integrity of religion. Accountability cannot be meant as persecution; rather it has to be seen as a constitutional obligation.

This article concludes by suggesting that future researchers in the cited areas work on areas including queer identities in religious spaces, interfaith accountability mechanisms, and psychological rehabilitation for survivor-clergy relationships. To transform sacred spaces from spaces of exclusion to sanctuaries of dignity and justice, legislative reform must happen, media must transform and the survivors must be empowered.