

POCSO Act: Challenges and Impact on the Indian Society

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Abstract: *Children's are called to the future of country but to what extent wills that future abused. Yes, it would be question of all the children who are the victim of child sexual abuse or abused by any other form. Children as one important ignored group who, in lieu of being carefully playing in the sun and going to school, quite often suffer from various types of maltreatment, exploitation mostly sexual. Thus, they are marginalized not only in terms of their access to the basic human needs, but also in expressing freely their views and getting this properly accepted on the issues vital to them. Out of all these sufferings, the sexual exploitation and abuse are considered as the most heinous crime by the perpetrator as it bears huge impact on the mental and physical condition of the victims. Recognizing the importance of this crime and the vulnerability of the children, there are some criminal laws to protect them. But due to the increasing trend of this sexual offence a separate act named as Protection of Children from Sexual Offences (POCSO) Act, 2012 was formulated in order to protect the health and security of the children, who are integral in the process of development. The significance of this Act also lies in the fact that children are the most vulnerable to such crime as they do not understand the consequence and seriousness of the matter. These little innocent children can only feel the pain of the mishappening leaving a scar over the body and mind forever. In this backdrop, this study focuses on to examine the significance of the POCSO Act which has been introduced to fill in the shoes of existing laws particularly the Juvenile Justice Act. The study will also focus on the constitutional provision and the provisions of UN Convention behind this law. By citing a few case studies, this applicability of this Act will be examined along with its loopholes. The roles of doctors, police, courts and human rights activists are very important in the question of providing adequate protection and security of the children. Their roles need to be reviewed in this study in the present social context.*

Keywords: POCSO Act

I. INTRODUCTION

Globally, sexual abuse is generally considered to be a crime committed against women, but at present sexual abuse is no longer a gender based crime, but statistics show that in India, boys are more likely to be sexually abused than young girls. The extant of child sexual abuse is not only limited to rape or sexual act of serious nature, but also by showing sexual acts, talking obscenely, wrongly beating them, forcing them to do unnatural acts, making them pornography etc. It is often seen that such acts of sexual abuse towards children are committed by persons who are in a position of trust or authority over them. In such cases children are not able to oppose such person.

According to the data released by the National Crime Record Bureau in the year 2016, 106 cases of sexual violence and sexual abuse were registered every day in India. The incidents sexual abuse that came to light in different parts of the country include 1996 in Delhi, 712 in Mumbai, 354 in Pune and 330 in Jaipur. According to the state-wise data, the state of Madhya Pradesh has consistently topped the number of sexual-abuse cases for the last 6 years, where there are about 13 cases of sexual abuse per day. Madhya Pradesh is followed by Uttar Pradesh and Maharashtra in the cases of child sexual abuse, where on an average six cases of sexual abuse of children were recorded per day. In a state like Kerala, where the percentage of education is the highest, a survey found that out of 1614 adolescents, 36% of boys and 35% of girls had been victims of sexual abuse at some point in their lifetime.

According to a national study by the Ministry of Women and Child Development, Government of India, "Sexual abuse has been defined as taking the private parts of a child or bringing him or her to any private areas and taking nude photographs. However, this statement does not reflect reality as most cases of sexual abuse go unreported. A 2012 survey conducted by UNICEF after Delhi gang rape case found that one child involved in every three rapes in India. It was also mentioned in the same UNICEF report that 7200 children are raped in India every year.

The constitution makers of India have already been conscious of the rights and protection of children. The framers of the constitution have made various provisions for the protection of the children. Part III of the Constitution of India, Article 15(3) under the heading 'Fundamental Rights' empowers the State to make special provisions for children. Part IV of the Constitution of India, under the Directive Principles of State Policy, Article 39 provides that the State shall, in particular, conduct its policy in such a way that children are given opportunities and facilities to develop in a free and dignified environment.

Before the year 2012, the cases of sexual abuse of children were included mainly three sections under the Indian Penal Code, 1860. First, rape (Section 376), outraging modesty (Section 354) and third unnatural sexual act (Section 377). As a result of which sexual abuse with violence, sexual harassment and exploitation are not explicitly recognized as crimes, due to which such cases are not reported. The provisions of sexual offenses given in the sections of the Indian Penal Code are related to women, while the cases of sexual offenses are not limited only to women but also to men. In view of the increasing cases of child abuse and the inadequacy of gender-based law, the Ministry of Women and Child Development implemented the Protection of Children against Sexual Offences Act, which is popularly known as the POCSO Act, in the year 2012. This is such a law, in which provisions have been made to effectively curb sexual abuse of children and minors and to effectively protect children against sexual crimes, sexual abuse and harassment. On the one hand, the POCSO law made for the protection of children is being misused by the nexus of police and criminals; while on the other hand, cases of misuse of the law have increased to save the family's honor due to the love of minor children. The attention of the judiciary has been drawn to this misuse. The present Chief Justice of India, Justice D.Y. Chandrachud has advocated for changing the age of consent.

Justice Jasmeet Singh of the Delhi High Court made a scathing comment on the POCSO Act and provided relief to the accused in a case¹⁶ by quashing the FIR registered under Section 376 IPC and Section 4 of POCSO Act.

II. SOME FACTS ABOUT CHILD ABUSE CASES IN INDIA

1. Sexual abuse and trafficking is highly prevalent and are among the serious problem of India.
2. A study on adolescents in Kerala showed that 36 per cent of boys and 35 percent of girls had experienced sexual abuse.
3. A study was conducted by the Government of India on 17220 children and adolescents. The study reported that every second child in the country was sexually abused.
4. Highest sexual abuse was reported in Assam (57.27%) followed by Delhi (41%), Andhra Pradesh (33.87%) and Bihar (33.27%).
5. Uttar Pradesh state has reported the highest number of sexual abuse cases.
6. 50 per cent of the abusers were known to the child. The incidents took place in a position of trust and responsibility.
7. The children between the age group of 5-12 faced higher level of abuse. Most of the cases are largely unreported.

III. CHALLENGES TO THE POCSO ACT, 2012

In a nutshell we have till now seen how the Protection of children from Sexual Offences Act, 2012 provides stringent punishments for sexual offences committed against children below 18 years of age depending upon the gravity of the act and also provides for a comprehensive procedure of law to deal with the same. However, despite all these safeguards and protective measures against sexual offences and sexual offenders there are various lacunas in the act. Since romantic relationships have a significant impact on both the social and psychological development of teenagers, they are particularly prevalent among this age group. However, in a collectivistic society like India, where it is the identity of a group rather than an individual that matters, there are long-standing social stigmas associated with the idea of adolescents engaging in romantic relationships. However, it must be recognized that at this point, developing

personal connections is a crucial element of the developmental stage and that adolescence is a stage also known as emerging adulthood. Apart from this with the changing times and increasing affluence of societies all over the world the perspective of people towards romantic relationships is seen to be changing especially among the adolescents. Precisely for this reason the adolescents now expect more autonomy for the purpose of sexual exploration by engaging in romantic relationships. However, it has been observed at various instances that the potential of the adolescents is extensively being compromised since most of the nations which follow a collectivistic ideology have failed to provide appropriate measures for the adolescents to be able to enjoy their rights. “The POCSO Act is one such act that deals with the sexual offences against children (Under 18 years), however fails to recognize and appreciate the distinction between consensual as well as non-consensual sexual intercourse among the adolescents. The Act does not acknowledge the consent given by the adolescents for engaging into sexual intercourse, to be a valid consent”. This has resulted to the provisions of this act being completely misused, since the legislative intent behind the act is seen to have been completely diverted. This clearly shows how the act which was enacted with the sole intent of protecting children from sexual offences have made children more vulnerable. The report by the Committee on the Rights of the Child also defines “adolescence as a distinct defining stage of human development that is marked by rapid brain development and physical growth, greater cognitive ability, at the onset of puberty and sexual awareness, and newly developing abilities, capabilities and skills.” The Committee in its report also went ahead onto stating that while making law provisions in relation to “Children” states must have a Human- Rights based approach i.e., by taking into consideration adolescents developments and evolving capacities.

IV. CONCLUSION

POCSO ACT 2012 or Protection of Child from Sexual Offences Act, 2012, is an Act that protects a child from being exploited sexually. It covers major sexual offences related to the child. The POCSO Act punishments are more stringent, and the law is more severe than any other legislation. However, this Act also set aside the principle of innocent till proven guilty, as, under this Act, a person is seen as a culprit and not as normal. As this Act is related to the child and protects the child from being sexually exploited, the Act has recognized all the major acts as offences. The POCSO Act, 2012 is exhaustive legislation which aims at covering all the aspects of child sexual abuse. Amendment has been made in the Act via the Protection of Children from Sexual Offences (Amendment) Act, 2019, with which the punishment for the offences have been made more stringent.

Sexual offence scars a child's psyche, resulting in cognitive impairment, mental agony, and depression. Undoubtedly, child sexual abuse is a heinous act for a civilized society. Due to this, an unknown fear makes a home forever in the child's soft and subconscious mind, due to which they suffer from mental disorders like depression, self-loathing, lack of self-confidence and insomnia. The first and most important task of this legislation was to accelerate the resolution of the cases involving sexual offenses against children; it was mandated that a case be resolved within a year of the offense's cognizance, but in most Indian states, the time taken to resolve the cases is more than double of what is mandate under the Act. The pendency of cases is a problem that arises due to the huge population of India, so it should be ensured that more special courts are set up, more judges are appointed, and more support persons are engaged so that the cases are resolved quickly.

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