

VICTIMS OF CHILD SEXUAL ABUSE IN INDIA: A SOCIO-LEGAL ANALYSIS

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ABSTRACT

Child sexual abuse is a widespread global problem that negatively affects victims, families, communities and society. Sexual abuse against girl child has added fuel to the fire and it had made its place in one of the hot topic for debate and research in India. Sexual abuse including sexual assault or rape of children and adolescence is a violation of human rights, and has many consequences in the short and the long term. Sexual violence against children has been recording an alarming rise in India. It is to be noted that according to National Crimes Records Bureau Report, 2021, in India across various States, Child Victims below 6 years of age comes to 648, below 6 to 12 years comes 3163, and whereas Victims 12 to 16 years of age comes to 12,754. In the majority of cases, it involves younger individuals who are more vulnerable to victimization. Social and cultural factors are also considered to play a pivotal role in sexual assault offences. It is pertinent to mention that in order to effectively address the heinous crimes of child sexual abuse, the Parliament of India had passed the Protection of Children from Sexual Offences (POCSO) Act, 2012. The researcher not only tries to identify the factors that have led to the low level of convictions under the POCSO Act and also offers recommendations for strengthening the prosecution and investigation in dealing with POCSO cases. This article also analyses the rights of the survivors and victims of child sexual abuse and the impact of the crime in the society.

Keywords: Sexual Assault, Age, Children, sexual exploitation, gender neutral, POCSO

INTRODUCTION

Children are regarded national assets, and it is the State's duty to make sure that their personalities develop properly. The development of a country is reliant on its children. The development of child should be taken into account all dimensions, such as cognitive and emotional development, as well as the strengthening of love, affections, and security, among other things. Since the beginning of civilization, women and children have been seen as the most vulnerable members of society, and they have been subjected to a number of sexual exploitations.

Sexual violence takes place in all settings: at home, schools, child care institutions, places of work and in the community. Information on the prevalence and forms of CSA is very scarce and difficult to obtain. In a study carried out under the aegis of the Ministry of Women and Child Development (2007) interviewing 1,25,000 children in 13 states in our country, it was found that sexual abuse had taken place in about half of themⁱ. In percentage terms, crime heads reporting majority of cases under 'Crime Against Children' were kidnapping & abduction (56.6%) followed by Protection of Children from Sexual Offences Act, 2012 (30.8%), according to report of National Crime Records Bureau, 2021. Several reports indicate that neighbors, friends, close relatives, and acquaintances and employers at workplaces are the most common abusers under Sexual Assault against child. The Delhi High Court observed that in 2014, of the 1704 cases of rape registered in the Capital, 215 cases were instances of incestuous rape. Acts of child sexual abuse are usually repeated over varying periods and may cause serious short- and long- term adverse effectsⁱⁱ. It is to be noted that the physical, sexual, reproductive health, and mental health consequences of child sexual abuse are wide ranging and needs to be addressedⁱⁱⁱ.

It is to be noted that child sexual abuse causes a variety of health behaviors that contribute to poor mental, physical, and social results throughout life. Child sexual abuse has serious implications for children. It functions as a significant impediment to development and progress^{iv}. Child sexual abuse includes all types of sexual victimization of children penetrative or non-penetrative sexual intercourse, pornography, sexual harassment, commercial sexual exploitation, sex tourism and online exploitation^v. The issue of child sexual abuse is widespread throughout the world. There are 430 million children in India (according

to the 2011 Census), and issues like poverty, a lack of basic amenities for a better standard of living, and a lack of education make the issue of child sexual abuse much worse. The National Crime Records Bureau findings made it abundantly evident that child rape was involved in 36,022 (34.4%) of the cases recorded under the Protection of Children from Sexual Offenses Act of 2012. The highest percentages of child abuse instances (15.3%, 13.6%, and 13.1%, respectively) were reported in Uttar Pradesh, Maharashtra, and Madhya Pradesh^{vi}.

It is to be noted that one in every four cases under the Protection of Children from of Sexual Offences Act in West Bengal, Assam and Maharashtra constituted “romantic cases”, where the victim was found to be in a consensual relationship with the accused, a study by Enfold Proactive Health Trust and UNICEF-India has found^{vii}. The study authored by researchers Swagata Raha and Shruti Ramakrishnan looked at all 7,064 POCSO judgments registered between 2016 and 2020 in the states of Assam, Maharashtra and West Bengal and found that in 1,715 cases, court documents revealed admission of consensual relationship between the complainant and the accused.

DEFINITION OF CHILD SEXUAL ABUSE

There is no universal definition of child sexual abuse, although it includes both physical and psychological abuse. It includes children of all generations, regardless of age or socio-economic status. 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 violates the laws or social taboos of society. Child sexual abuse is evidenced by this activity between a child and an adult or another child who by age or development is in a relationship of responsibility, trust or power, the activity being intended to gratify or satisfy the needs of the other person. This may include but is not limited to the inducement or coercion of a child to engage in any unlawful sexual activity; the exploitative use of a child in prostitution or other unlawful sexual practices; the exploitative use of children in pornographic performance and materials^{viii}. It is pertinent to mention that the Council of Europe Convention specifies about that the sexual activities which involve a child who has not attained the legal age of a child under national law (not involving

consensus between minors). Sexual activity committed towards a child using coercion, force or threats or abuse of the recognized confidentiality, author-competence, or threat of violence^{ix}. Child sexual abuse is a broad term that refers to a kind of child abuse in which an adult or older adolescent exploits a child for sexual purposes. In several situations, such as the home, school, or public locations, it can be either touching or non-touching. It has a significant impact due to the regularity with which it occurs and the trauma that a child encounters.

ROLE OF LEGISLATION IN INDIA TO CURB CHILD SEXUAL ABUSE

The very inadequacy of Indian Penal Code and absence of any stringent legislation for effectively addressing and tackling heinous crimes such as sexual exploitation and sexual abuse of children birthed the commencement of the Protection of Children from Sexual Offences, as the very intention of Government establishments was to protect the children from offences of sexual assault, sexual harassment and pornography and to facilitate adequate legal machinery by establishing special courts for trial of such offences and matters incidental connected with child sexual abuse crimes. This was in due compliance of Article 15 of Constitution of India which mandates the states to protect the children of this nation and in lieu of United Nations Conventions on the Rights of the Child which prescribes the set of standards to be followed by state parties in securing the best interest of the child^x.

To deal with child sexual abuse cases, the Government has brought in a special law, namely, The Protection of Children from Sexual Offences Act, 2012, (herein after referred to as POCSO Act). The Act has come into force with effect from 14th November, 2012 along with the Rules framed thereunder. The POCSO Act, 2012 is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests of the child at every stage of the judicial process by incorporating child-friendly mechanisms for reporting, recording of evidence, investigation and speedy trial of offences through designated Special Courts. The said Act defines a child as any person below eighteen years of age, and defines different forms of sexual abuse, including penetrative and non-penetrative assault, as well as sexual harassment and pornography, and deems a sexual assault to be “aggravated” under certain circumstances, such as when the abused child is mentally ill or when the abuse is committed by a person in a position

of trust or authority vis-à-vis the child, like a family member, police officer, teacher, or doctor. People who traffic children for sexual purposes are also punishable under the provisions relating to abetment in the said Act. The said Act prescribes stringent punishment graded as per the gravity of the offence, with a maximum term of rigorous imprisonment for life, and fine.

In keeping with the best international child protection standards, the said Act also provides for mandatory reporting of sexual offences. This casts a legal duty upon a person who has knowledge that a child has been sexually abused to report the offence; if he fails to do so, he may be punished with six months' imprisonment and/ or a fine. It is to be noted that the said Act also casts the police in the role of child protectors during the investigative process. Thus, the police personnel receiving a report of sexual abuse of a child are given the responsibility of making urgent arrangements for the care and protection of the child, such as obtaining emergency medical treatment for the child and placing the child in a shelter home, should the need arise. The police are also required to bring the matter to the attention of the Child Welfare Committee within 24 hours of receiving the report, so the Welfare Committee may then proceed where required to make further arrangements for the safety and security of the child.

The said Act provides for Special Courts that conduct the trial in-camera and without revealing the identity of the child, in a child-friendly manner^{xi}. Hence, the child may have a parent or other trusted person present at the time of testifying and can call for assistance from an interpreter, special educator, or other professional while giving evidence; further, the child is not to be called repeatedly to testify in court and may testify through video-link rather than in a courtroom. Above all, the said Act stipulates that a case of child sexual abuse must be disposed of within one year from the date the offence is reported. It also provides for the Special Court to determine the amount of compensation to be paid to a child who has been sexually abused, so that this money can then be used for the child's medical treatment and rehabilitation.

The said Act recognizes almost every known form of sexual abuse against children as punishable offences, and makes the different agencies of the State, such as the police, judiciary and child protection machinery, collaborators in securing justice for a sexually abused child. Further, by providing for a child-friendly judicial process, the said Act encourages children who have been victims of sexual abuse to report the offence and seek redress for their suffering,

as well as to obtain assistance in overcoming their trauma. Section 33(2) of POCSO Act prohibits the Special Public Prosecutor and the defence lawyer from putting questions directly to the child. All questions during the Chief examination and Cross-examination must be routed only through the Special Court. The very purpose of such a provision is to guarantee that the child does not feel insecure, intimidated or threatened by the SPP and the defence lawyers and age-appropriate questions were also permitted to ask^{xii}. The POCSO Act has given statutory recognition to the Supreme Court's direction in *Sakshi Vs Union of India*^{xiii}, that during a trial of child sex abuse or rape. All the questions asked during cross-examination should be given in writing to the Presiding Officer of the Court so that they can be addressed to the victim or witnesses in a language understood by the child. It is to be noted that the said Act will provide a means not only to report and punish those who abuse and exploit the innocence of children, but also prove an effective deterrent in curbing the occurrence of these offences. It is to be noted that under Section 21(1) of the POCSO Act, 2012 requires mandatory reporting of cases of child sexual abuse to the law enforcement authorities, and applies to everyone including parents, doctors and school personnel. Failure to report a suspicion of child abuse is an offence under the Act. The legislation makes it clear that the reporting obligation exists whether the information was acquired through the discharge of professional duties or within a confidential relationship. Any private person who fails to report suspected child abuse, having acquired the information in the discharge of his or her professional responsibilities, commits a summary conviction offence^{xiv}.

RIGHTS OF CHILD SURVIVORS UNDER SEXUAL ABUSE

While handling the child victim of sexual offence, certain basic principles, as given under International Conventions and National policies, need to be addressed. The state governments, with their functionaries, the child welfare committee, the police, the special courts, non-government organizations, professionals and experts assist the child during the process of trial and post-trial and are bound to follow the principles.” Based on our fundamental law of the land i.e. “Constitution, Judicial Pronouncements in the Supreme Court of India, the CRC and the POCSO Act, 2012^{xv}.

It is to be noted that under the right to medical treatment of a child, that the child survivor shall not be denied medical treatment. The dynamics of child sexual abuse differ from those of adult sexual abuse. In particular, children rarely disclose sexual abuse immediately after the event. Moreover, disclosure tends to be a process rather than a single episode and often initiated following physical complaint or change in behavior of the child. Therefore, the evaluation of children requires special skills and techniques involving, forensic examination and evaluation. The examiner may also need to address specific issues concerning to consent reporting of child sexual abuse^{xvi}.

With regard to the right to dignity, the child survivor shall be treated with dignity and respect at all stages by including health care workers, police, judiciary, prosecutor, translators, etc^{xvii}, and where as regarding the non-discrimination on the part of the child, there shall be no discrimination against any child, based on religion, race, sex, or caste. The girl children cannot be discriminated against by blaming them for their dress/attire in the incident of a sexual offence and, all stakeholders shall be sensitive to any special needs of a child. The disabled children medically unfit children or very young children should be accorded special treatment^{xviii}. It is pertinent to mention that the name of the child, its family, educational institution wherein she/he is enrolled and other information available for identifying the victim shall be kept confidential^{xix}. While under Article 12 of Convention on the Rights of Child, the wishes of the child shall be given priority with regard to decisions to on institutionalization, medical examination of the child and appointment of a support person. The views of the child shall be given due weight age in accordance with the child's age and level of maturity.

ROLE OF JUDICIARY IN CURBING CHILD SEXUAL ABUSE

Despite of our nation being the signatory of Convention on the Rights of Child, 1989, there has been no specific legislation in India for child rights protection in particular for the child rape victims. "Special legislation to protect the rights of the child victim of the sexual offence was enacted only in 2012, and in the past twenty four years, the judiciary with its innovative and inspiring judgments has proved bedrock of social justice^{xx}. Judiciary felt that "the concept of social justice would remain a myth if protection could not be provided to children, who are

the future of our nation. International covenants like Convention on the Rights of the Child enforced in the Indian Legal system even in the absence of a statute^{xxi}.

In case of *Sudesh Jhaku v. K.C.J & Others*^{xxii}, a sordid and shocking case of a father, a high-ranking bureaucrat in the Ministry of Home Affairs, involving his six year old daughter in a series of sexualized games and orgies with himself and other adults forced the justice system into a series of deliberations on various aspects of sexual abuse and assault. There was a need to elaborate and expand on the meaning of the term's 'rape', 'penetration' and according a higher punishment to sexual offenders who hold a 'position of trust and authority'. The court also deliberated on the precautions to be taken when child is called on to depose in court. The order makes mention of several child friendly procedures like asking simple questions (avoiding double negatives) when questioning the child and giving breaks to the child. It also highlights how the presence of a screen cannot just retain anonymity of the child and also make her/him uncomfortable when deposing. It also speaks of the presence of 'support persons' or 'neutral adults' who can handhold and support the child during trial.

In *State of Rajasthan v. Om Prakash*^{xxiii}, it was observed strenuously that, "child rape cases are due to perverse lust for sex where even innocent children not spared in pursuit of sexual pleasure. There cannot be anything obscener than this. It is a crime against humanity. Many such cases not even brought to light, because of the social stigma attached to it. According to some surveys, there has been a steep rise in child rape cases. Children need special care and protection. In such cases, responsibility on the shoulders of the Court is more onerous to provide proper legal protection to these children. Their physical and mental inability call for such protections. Children are the natural resources of our country. A girl child is in a very vulnerable position, and one of the modes of her exploitation is rape apart from other modes of sexual abuse."

In *State of Karnataka vs. Sanjay*.^{Sxxiv}, The accused No.1 and 2 are residing at Hampi Nagar, Vijaya Nagar, Bengaluru within the jurisdiction of Vijaya Nagar Police Station and the accused No.2 was running Savan Play Home by taking admission of small children without license. During the academic year of 2015- 2016, the complainant- admitted her daughter- the victim girl, aged about 3½ Years to said play home. The accused No.1 and 2 having common intention on 09-02-2017 from 09.30 a.m., to 12.30 p.m. when the victim girl was at play home the

accused No.1 sexually abused the victim. The victim's mother lodged the complaint. The Investigation Officer has investigated the same and filed charge sheet against accused No.1 and 2 for the offences punishable under Section 376 of IPC and Section 3, 4, 5(1), 6, 17 of POCSO Act, 2012. The accused No.1 is sentenced to undergo rigorous Imprisonment for a period of ten years and to pay a fine of Rs.25, 000/- for the offence under Section 5(m) read with Section 6 of POCSO Act, and in default of payment of fine, he shall further undergo simple Imprisonment for a period of four months.

CONCLUSION

The social problem of child sexual abuse has been happening for centuries but however it has very recently been acknowledged as a problem in India. Child Sexual Abuse can be done by touching private parts, taking obscene photos, showing pornography pictures or other such material to child etc.. It can be concluded that the crime of child sexual abuse is a very serious problem as it adversely affects the complete growth and development of child and leaves mental agony forever. Though the POCSO law is a welcoming development to curb and fight with this menace, however any socio-legal problem can not alone be curtailed by passing suitable legislation. To cure this problem from grass root, it is necessary to inculcate good values and ethics amongst all the children by their families, in schools and even at college level so that when they grow up there will be very little chances of their becoming criminals. Child sexual abuse has been recognized as a major public health problem impairing the health and welfare of children. Child sexual abuse requires multi-disciplinary support from medical, legal, psychological and sociological dimensions. Here, the role of healthcare professionals is vital to not only detect abuse but also to inform relevant interventions. It is to be noted that in order to mitigate the child sexual abuse in India, our Parliament had enacted The Protection of Children from Sexual Offences Act in 2012, which is a comprehensive law which was initiated to protect the children from sexual abuse and exploitation.. It is suggested to implement the execution of the chemical castration to the habitual sexual offenders so that the offence should not be repeated and the sexually related crimes would be decreased rapidly in our country in a prospective manner.

ENDNOTES

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- ^{iv} Goodman GS, Quas JA, Ogle CM., Child maltreatment and memory, 61 Annual Review of Psychology 325–51 (2010).
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- ^{vi} Mehvish Ismail, 'POCSO Act, Features, Challenges, Controversies, and Recommendations' 20 November, 2022, <https://www.jkpi.org/pocso-act-features-challenges-controversies-and-recommendations/> accessed on 19-03-2023
- ^{vii} Apurva Vishwanath, '25% of POCSO cases are romantic relations :Study', Indian Express, December, 12, 2022.
- ^{viii} WHO, Report of the consultation on child abuse prevention, Geneva, World Health Organization, 1999, p. 15.
- ^{ix} Art. 18, Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.
- ^x Rekha Pahuja, 'Study On Judicial Approach Towards Child Sexual Abuse In India With Special Reference To Pre And Post POCSO Law In India', Grand Academic Portal Research Journals, Vol. IV Issue No.1, 2021 at p. 21
- ^{xi} Many children find the courtroom experience intimidating and this intimidation can create stress in child victims. Under these circumstances, a child can be a poor witness, and the process of navigating the criminal justice system can compound a child's trauma. The POCSO Act, 2012 provides for a number of child-friendly procedures to be followed in the Special Court. In addition to this, some measures can be out in place in the Special Court to ensure that the child is not overcome by the circumstances. However, the rights of the accused, for example that of cross-examination of the child, must be protected while balanced against the rights and needs of these child victims.
- ^{xii} Dharanidharan Amirthavasagam, 'Survivors And Victims Of Child Sexual Abuse And Effective Implementation Of The POCSO Act', International Journal of Creative Research Thoughts, Vol.9 Issue No.6, 2021, at p.192
- ^{xiii} (2004) 5 SCC 518
- ^{xiv} See Model Guidelines under Section 39 of The Protection of Children from Sexual Offences Act, 2012, published by Ministry of Women And Child Development, September, 2013.
- ^{xv} Mohammad Azvar Khan, 'Justice to a Child Victim of Sexual Offences, Rights of Child Victim and Legal Process', European Journal of Molecular & Clinical Medicine, Vol. 7. Issue No. 10, 2020 at p. 4684.
- ^{xvi} The International Covenant on Economic Social and Cultural Rights, General Comment 14, Right to Health (11th August 2004), Guidelines for medico-legal care for survivors of sexual violence, World Health Organization, 2003.
- ^{xvii} See Art. 39 of the Constitution of India and the Preamble of the United Nations Convention on the Rights of Child, 1929.
- ^{xviii} See Art. 15 of the Constitution of India and Article 2 of the United Nations Convention on the Rights of Child, 1929.
- ^{xix} Shankar Kisanrao Khade v. State of Maharashtra, 2013 (6) SCALE 277.
- ^{xx} Rao.M Law Relating to Women and Children, Eastern Book Company, Lucknow, (2005) p-430
- ^{xxi} Muralidharan.S, 'Rights of Victims in the Indian Criminal Justice System', National Human Rights Commission Journal, 2004, at p.1
- ^{xxii} 1998 Criminal Law Journal, at p 2428,
- ^{xxiii} AIR 2002 SC 2235 at 2240
- ^{xxiv} 20th March, 2018