

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES: A CRITICAL ANALYSIS

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ABSTRACT

Sexual offences against children or Child sexual abuse is an epidemic, one that happens everywhere and is increasing profusely with each passing day, without any barriers of race, caste, sex, nationality, language or religion. Whether known or unknown, there is at least one child sexual abuse in our surrounding, resulting in behavioural, cognitive, emotional and developmental difficulties. The forms of child sexual abuse range from sexual assault to voyeurism, pornography and several other forms.

This Article addresses the Indian approach in the form of various legislations that aim at effectively addressing cases of sexual abuse and sexual exploitation of children like the POCSO Act, focussing upon a critical analysis of the aforesaid Act, recent amendments, various judicial pronouncements on cases of child sexual abuse as well as a study of the laws in different countries.

INTRODUCTION

“God is Child and Child is God.”

A child is the most purest and innocent creation of God, untouched by any form of materialistic and worldly manipulations, misdeeds and social evils. However, the human race has disgraced itself to the extent that even the most purest creation of god, children are not spared by delinquent and felonious beings.

Sexual offences against children are one of the most barbaric crimes prevalent against the human race. Sexual offences against today are increasing at a distressing rate all over the world. India is among the top five countries of the world facing the highest rate of sexual offences involving children. Fifty three percent of children in India face some form of child sexual abuse.¹ This rate is increasing with each passing day and the existing laws have failed to create any form of deterrence towards the commission of such heinous offences.

Several provisions like Sec.375 (Rape), Sec.377 (Unnatural offences), Sec. 354(Outraging the modesty of a woman), etc. were contained in the Indian Penal Code, 1860. However, these provisions were not free from lacunas. Thus, a need was felt for a standalone statute dealing with sexual offences against children. Consequently, India became a signatory to United Nations Convention on the Rights of Child (UNCRC) and passing a legislation against child sexual offence became all the more important. This resulted in the passing of The Protection of Children from Sexual Offences Act, 2012. This Act contains elaborate provisions making sexual harassment punishable and establishment of Special Courts for dealing with child sexual offences including victim-friendly procedures.

PRESENT INDIAN LAW

Protection to children under Constitution: Protection to children is of vital importance and the same has been guaranteed as a fundamental right under the Constitution of India. Article 15(3) permits the State to make special provisions for children. Article 39(e) and 39(f) require the

¹ *"The sounds of silence: child sexual abuse in india". The morung express. Retrieved 14 august 2017.*

State to protect children of tender age from abuse and to be provided equal opportunities and facilities to develop in a healthy manner and to be protected from exploitation and moral and material abandonment. In *Lakshmi Kant Pandey v. Union of India*², the Hon'ble Supreme Court asserted that children are a "supremely important national asset" and the future well-being of the nation depends on how its children grow and develop.

Change after Nirbhaya case: After the 2012 Delhi gang rape case alias Nirbhaya case, media along with other non-governmental organizations played a crucial role in increasing awareness about child sexual abuse in the country. The Central government appointed a judicial committee headed by Former Justice of Supreme Court J.S.Verma which submitted its report after considering the humongous amount of suggestions received by them not only from public at large but also from noted jurists, lawyers, NGO's and women activist groups. In the aftermath of this report, the Criminal Law (Amendment) Act, 2013 was passed. Its main provisions included:

- Section 370 of Indian Penal Code (IPC) has been substituted with new sections, Section 370 and 370A which deal with trafficking of persons for employment.
- The most important change that has been made is the change in definition of rape under IPC. Although the Ordinance sought to change the word rape to sexual assault, in the Act the word 'rape' has been retained in Section 375, and was extended to include acts in addition to vaginal penetration. Under the new provision, penetration means "penetration to any extent", and lack of physical resistance is immaterial for constituting an offence. Except in certain aggravated situations the punishment will be imprisonment not less than seven years but which may extend to imprisonment for life, and shall also be liable to fine. In aggravated situations, punishment will be rigorous imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life, and shall also be liable to fine.
- A new section, 376A has been added which states that if a person committing the offence of sexual assault, "inflicts an injury which causes the death of the person or causes the person to be in a persistent vegetative state, shall be punished with rigorous

² [1984] 2 SCR 795.

imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean the remainder of that person's natural life, or with death."

- Section 376D IPC deals with the cases of "gang rape", wherein persons involved regardless of their gender shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life and shall pay compensation to the victim which shall be reasonable to meet the medical expenses and rehabilitation of the victim.
- The age of consent in India has been increased to 18 years.
- Certain changes have been introduced in the CrPC and Evidence Act, like the process of recording the statement of the victim has been made more victim friendly and easy but the two critical changes are:
 - The 'character of the victim' is now rendered totally irrelevant (By insertion of Section 53A in the IEA), and
 - There is now a presumption of 'no consent' in a case where sexual intercourse is proved and the victim states in the court that she did not consent.
- Section 42 of the POCSO Act, 2012 has been amended to make it more specific by confining the references to any other law to S. 166A, 354A-354D, 370, 370A, 375, 376, 376A-376E, 509 of the IPC, 1860.
- Section 42A has been inserted in the Act which makes it an act in addition to the existing laws dealing with the subject and not in their derogation. But in case of inconsistency among such laws, the provisions of POCSO Act would prevail over the other.

Flaws in the justice system:

- Child's complaint rejected by family members, police and medical experts;
- Fear of ill treatment by Police;

- Negative role of Police and medical experts;
- Harassment by child welfare organizations;
- Emotional conflict and apprehension in reporting abuse;
- Tendency to lean towards private settlement in order to avoid stigma;
- Fear of ignorance by community;
- Child refrains from speaking up in most cases as the perpetrator is often a family.

POCSO ACT, 2012: ANALYSIS

Pre-POCSO Act Scenario:

- No focused legal approach towards child sexual abuse cases;
- Marital rape was excepted under the offence of rape in IPC.
- No specific laws for laying down procedure for dealing with victims in a sensitive manner during investigation and trial proceedings.
- Many forms of sexual abuse were not defined as crime in the existing laws.
- Under the pre-POCSO Act scenario, the burden of proof was on victims thereby resulting in fear in the mind of child victims and families and making it difficult for them to report the offence and establish the guilt of the accused.

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 Preamble of the said Act re-iterates the basic rights that must be guaranteed to children adhering to the Convention on the Rights of the Child. These include the protection of the right to privacy and confidentiality of the child during the judicial process. It includes measures to prevent-

- i. Inducement or coercion of a child to engage in any unlawful sexual activity;
- ii. Exploitative use of children in prostitution, or other unlawful sexual practices;
- iii. Exploitative use of children in pornographic performances and materials.

The said Act recognises 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.

The Act defines a child as any person below eighteen years of age, and regards the best of interests of the child as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child.

Section 3 of the POCSO Act provides that 'Penetrative sexual assault' is committed by any person who penetrates his penis or inserts, to any extent, any object or a part of body or manipulates any part of the child's body so as to cause penetration, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any person or applies his mouth to the aforementioned parts of the child's body.

Section 4 punishes Penetrative Sexual assault with imprisonment for a term of not less than seven years that may extend to imprisonment for life and shall also be liable to fine.³

Section 5 lays down that 'Aggravated Penetrative Sexual Assault' is committed under certain circumstances, such as when the penetrative sexual assault has been committed:

- i. By a Police Officer or a member of Armed or security forces, whether within the area of deployment or area under command or premises of station house, in the course of duties or otherwise;
- ii. By a Public servant;

³ See section 4, chapter ii, the protection of children from sexual offences act, 2012.

- iii. By any person or management/ staff of a jail, remand home, protection home, observation home, or other place of custody or care or protection established by or under any law for the time being in force, child being inmate of the aforesaid;
- iv. By any person on management/staff of a private or government hospital or an educational/religious institution;
- v. Gang penetrative sexual assault(in furtherance of common intention) committed on a child;
- vi. By using deadly weapons, fire, heated or corrosive substance;
- vii. By causing grievous hurt or bodily harm and injury or injury to the sexual organs of the child;
- viii. By incapacitating the child or making child pregnant(if female) or causing child to become mentally ill, or inflicts the child with HIV or other life threatening disease or infection;
- ix. By taking advantage of child's mental/physical disability;
- x. Against a child below 12 years;
- xi. By committing more than once or repeatedly;
- xii. By any relative of the child or having domestic relationship with a parent of the child or living in same or shared household with the child;
- xiii. By owner or management or staff of any institution providing service to the child;
- xiv. By any person in a position of trust or authority to the child;
- xv. By any person knowing the child is pregnant;
- xvi. During an attempt to murder the child;
- xvii. In the course of communal or sectarian violence;
- xviii. By any previous convict under this act or any sexual offence punishable under any other law for the time being in force;
- xix. By making a child to strip or become naked in public.

Section 6 provides that 'Aggravated Penetrative Sexual Assault' shall be punishable with rigorous imprisonment for a term not less than ten years extendable up to life imprisonment and fine.

Section 7 defines Sexual Assault-Whoever touches the private part of a child or makes the child to touch private part of such person or any other, or does any other act with sexual intent

involving physical contact without penetration. This is punishable under Section 8 with imprisonment of three years extendable up to five years and fine.

Section 9 provides for Aggravated Sexual assault punishable under Section 10 with imprisonment of five years extendable up to seven years and fine.

Section 11 lays down that it will amount to 'Sexual Harassment' when any person utters any word or makes any sound or gesture or exhibits any object or part of body to the child; or makes a child exhibit his body to any person; or shows any object/media to the child for pornographic purposes; or repeatedly follows or watches or contacts a child directly or by electronic/ digital means; or threatens to use a real or fabricated depiction through any mode, of any part of body of child or his/her involvement in sexual act; or entices a child for pornographic purposes or gives gratification.

Section 13 provides for use of child for pornographic purposes punishable under Section 14. Section 15 punishes storage of pornographic material involving child.

Section 16 and 17 deal with abetment of an offence.

Rights of the Child at Pre-Trial and Trial Stages:

- i. Right to life and survival and to be shielded from any form of hardship, abuse or neglect and a chance for harmonious development;
- ii. Right to have his/her best interest given primary consideration;
- iii. Right to be treated with dignity and compassion, keeping in account their personal situation, immediate needs, age, gender, disability and level of maturity;
- iv. Right to be protected from discrimination;
- v. Right to special preventive measures, keeping in mind their vulnerability;
- vi. Right to be informed about their legal rights and about their legal proceeding and its status;
- vii. Right to be heard and to express views and concerns;
- viii. Right to effective assistance to address his/her needs and enable him/her to participate effectively at all stages;

- ix. Right to privacy and protection of their identity at all stages of the pre-trial and trial process;
- x. Right to be protected from hardship during the justice process;
- xi. Right to safety and protection from intimidation, threats and harm to child victims and witnesses;
- xii. Right to compensation for his/her relief and rehabilitation.

As per the provisions of Section 27 of the POCSO Act, 2012 and Section 164A of the CrPC, 1973, the medical examination shall be conducted of a child in respect of whom any offence has been committed by a registered medical practitioner employed in a hospital run by the Government or a local authority and in the absence of such a practitioner, by any other registered medical practitioner.

In case the victim is a girl child, the medical examination shall be conducted by a woman doctor. The medical examination shall be conducted in the presence of the parent of the child or any other person in whom the child reposes trust or confidence or in their absence, in the presence of a woman nominated by the head of the medical institution.⁴

Section 33(8) provides that in appropriate cases, the Special Court may, in addition to the punishment, direct payment of such compensation as may be prescribed to the child for any physical or mental trauma caused to him or for immediate rehabilitation of such child.

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.

It is provided under Section 21(1) that any person, who fails to report the commission of an offence or who fails to record such offence shall be punished with imprisonment of either description which may extend to six months or with fine or with both.

The POCSO Act, 2012 makes it an offence to report false information, when such report is made other than in good faith.

⁴See Section 27, Chapter III, The Protection Of Children From Sexual Offences Act, 2012.

The POCSO Act lays down provisions and guidelines for the establishment of Special Courts for speedy trial of cases exclusively related to sexual offences against children. The Special Courts or child-friendly courts have been created keeping in mind the best interests of the children. Special Courts are vested with special powers under Section 28, to decide only cases under the POCSO Act. The trial at the Special Court must be conducted in-camera and in the presence of the child's parents or any other person of the child's choice.

The Special Courts are commonly called as Child-friendly courts owing to the fact that unlike in normal circumstances, minors will not be allowed to come face-to-face with the alleged offenders. The beauty of these courts is that the judge will not sit on a dais, he will be more approachable and the police accompanying a child will also not be in uniform. A two-way communication system will be in place, which will allow a child witness to identify the accused on camera. It is yet to be seen as to how many States in our country follow this model of child-friendly courts considering the fact that though as per records, there are 605 Special Courts across the country but only a handful of these are fully and dedicatedly functional.

LIMITATIONS OF POCSO ACT, 2012

- The labelling of the accused as belonging to a specific gender alone is unjust. Female perpetrators can be booked only for the offence of 'sexual assault' under Section 8, wherein the punishment prescribed is imprisonment for maximum 5 years. Cases of women and young girls subjecting male children to forceful sexual activity have been witnessed in the recent past.
- Section 27(2) of POCSO mandates that in case of a female child or adolescent victim, the medical examination should be done by a female doctor while Section 166A of IPC which mandates the government medical officer on duty to examine the rape victim without fail, irrespective of the gender of the officer while.
- The treatment cost is most likely expensive for the victim's family and hence, the state must bear it when the former cannot.
- The law fails to recognise consensual sexual intercourse between two adolescents or between an adolescent and an adult with an age gap of less than 3 years as a non-criminal act.

- Marriage between people below the age of 18 which is considered illegal under the Protection of Children from Sexual Offences Act, 2012, is legal according to various personal laws. Hence, sexual intercourse between such married individuals is a crime as per the POCSO but valid according to the personal laws. This conflict must be resolved to establish a uniform law across religious lines.
- The Prohibition of Child Marriage Act, 2006 that draws a distinction on the grounds of age between a male (≥ 21 years) and a female (≥ 18 years) for the validation of their marriage. Though section 3 of the 2006 Act makes such marriage as 'voidable' at the instance of the parties, it has given the ambit of misuse at the hands of either of the parties who when bored in the matrimonial relation can just walk out of it and claim that they were sexually assaulted as per the provisions of the POCSO, not to mention that the Act does not talk about 'consent'. The Parliament must suitably and conjunctively amend the 2006 Act, POCSO and the personal laws, to effectuate the three without any conflict.
- There is a need to train medical professionals, teachers, advocates and law enforcing agencies and thus, provisions for the same must be made in the Act.
- The evaluation of victims of child sexual abuse requires special skills and techniques in history taking, forensic interviewing and medical examination. Hence, mental health professionals need to be involved in follow-up care of the victim with regard to emergence of psychiatric disorders, by providing individual counselling, family therapy and rehabilitation.

The legislation is certainly a welcome step towards curbing child sexual abuse, but the certain shortcomings in the law are refuting its purpose and must be removed to effectuate the law in its true sense.

THE CRIMINAL LAW AMENDMENT ORDINANCE, 2018

In April, 2018 an ordinance providing the death penalty for rapists of girls below 12 years of age and other stringent provisions of rape has been promulgated thereby amending IPC, CrPC, IEA, POCSO Act. The main amendments introduced by the aforesaid Ordinance are as follows:

- Minimum Punishment for Rape made Ten Years.
- Minimum punishment of twenty years to a person committing rape on a woman aged below 16.
- Minimum punishment of 20 years rigorous imprisonment and maximum Death penalty / life imprisonment for committing rape on a girl aged below 12.
- Fine imposed shall be just and reasonable to meet the medical expenses and rehabilitation of the victim.
- Police officer committing rape anywhere shall be awarded rigorous imprisonment of minimum ten years.
- Investigation in rape cases to be completed within two months.
- No anticipatory bail can be granted to a person accused of rape of girls of age less than sixteen years.
- Appeals in rape cases to be disposed off within six months.

ANALYSIS OF JUDICIAL PRONOUNCEMENTS

- *Sakshi v Union Of India*⁵

This was the case filed by an NGO called 'Sakshi' raising concern about the dramatic increase of sexual violence against women and children and the implementation of the provisions of IPC namely 377, 375/376 and 354. The petitioners raised the problem of confining rape cases only to penile-vaginal penetration which has now been amended by the 2013 Criminal Law amendment as it was violative of Article 21 of the Constitution. A number of statistical data has revealed that children are often abused in manner other than the penile/ vaginal penetration. It is often by means of penile/anal penetration, penile/oral penetration, finger/vaginal penetration or object/ vaginal

⁵*Supra, See Note 4.*

penetration. Also, putting these cases within the ambit of Section 377 would be highly unjust. Petitioners had put emphasis on Article 15 (3) of the Constitution which provides for special provisions for women and children which necessarily implies 'adequate provisions'.

- ***Bachpan Bachao Andolan v Union Of India***⁶

A PIL was filed in the Supreme Court on the wake of serious violations of child rights. The petition was filed specifically to discourage child trafficking from circuses all over India. Children are very frequently sexually abused at these places, which is a violation of Juvenile Justice Act and other international treaties and covenants.

- ***Avinash v State of Karnataka***.⁷

The appellant kidnapped the victim and had multiple sexual intercourses with her. A charge sheet was filed against the victim under Section 366 of the IPC and Section 4 of the POCSO, Act. The honourable High Court emphasized on the age of victim as it is the major deciding factor and the court set aside the conviction in support of getting reliable evidence and disposing the case in accordance with law. The courts have showed an inclination towards giving maximum punishment to the convicts under Section 12 of the POCSO Act, 2012 to give strong message to society because crimes of child sexual abuse are on continuous increase. However that is possible only when reliable evidences without any distortion are presented by the Police and the medical experts.

- ***Ms. Eera (Through Dr. Manjula Krippendorf) V. State (Govt. of NCT of Delhi) &Anr.***⁸

The Hon'ble Supreme Court has shown due restraint in declining to apply the provisions of the Protection of Children from Sexual Offences Act to mentally retarded adults whose mental age may be that of a child. It would have been tempting to give a purposive interpretation to the term 'child' under POCSO, which

⁶*BachpanBachaoAndolan V. Union Of India*, AIR 2011 SC 3361

⁷*Avinash Shetty V State Of Karnataka*, 2004 (13) SCC 375

⁸*Ms. Eera (Through Dr. Manjula Krippendorf) V. State (Govt. Of NCT of Delhi) &Anr*, Criminal Appeal Nos.12171219 of 2017.

refers to those below 18 years of age, and rule that it encompasses those with a ‘mental age’ of a person below 18. The Court has ruled that POCSO is meant to protect children from sexual offences. To extend it to adult victims based on mental age would require determination of their mental competence. This would need statutory provisions and rules; the legislature alone is competent to enact them. Judicial conferment of power to trial courts to treat some adults as children based on mental capacity would, in the Bench’s opinion, do violence to the existing law protecting children from sexual offences.

- ***Independent Thought Vs. Union of India***⁹

The Supreme Court of India delivered a landmark judgment in the case of “Independent Thought v. Union of India (W.P. (c) No. 382 of 2013)” on the 11th of October, 2017, whereby it read down Exception 2 to Section 375 of the Indian Penal Code, 1860. In the judgment, Supreme Court has criminalized the sexual intercourse with a minor wife whose age lies between 15 and 18 years because irrespective of the status of a child whether married or not, she will always remain a child. The Court opined that the Exception 2 in Section 375 is violative of Article 14, 15 and 21 of the Indian Constitution which allows intrusive sexual intercourse with a girl who is below 18 and above 15 years on the ground of marriage.

- ***State V. Mohan Dass***¹⁰

It was held that no provision in the POCSO Act bars or restricts the application of the Probation of Offenders Act and that before convicting the offender, one has to look at the social milieu and personal circumstances. The Special Court concluded that that the Probation of Offenders Act would apply and sentenced the accused to two years rigorous imprisonment followed by two years of probation, for having committed aggravated sexual assault.

COMPARATIVE ANALYSIS OF LAWS OF DIFFERENT COUNTRIES

Internationally, child sexual abuse is recognized as a serious crime against children. However, the laws vary from country to country by their local definition of who is a child and what

⁹*Independent Thought V. Union of India* (W.P. (C) No. 382 of 2013), Decided on the 11th of October, 2017

¹⁰*State V. Mohan Dass*, [Sc No. 73/13], Decided On 25.01.2014.

constitutes child abuse. Child sexual abuse is a violation of every child's right when an adult tries to have a sexual intercourse with a minor who is *doli incapax* for giving consent. This is also called as statutory rape¹¹.

- ***South Africa***

South Africa is one among the top five countries which have the highest rate of child sexual abuse¹². According to a 2009 report by trade union solidarity helping hand, one child is raped every three minutes in South Africa¹³. The Criminal (Sexual offences and related matters) Act, 2007 deals with sexual offences against children. It envisages statutory rape including acts of consensual sexual violation, consensual sexual penetration, sexual exploitation and sexual grooming of children, exposing children or using children for pornographic content, forcing child to witness sexual acts or any display of genital organs, or any form of sexual exploitation of disabled children.

- ***United Kingdom***

UK also witnesses a very high rate of child sexual abuse. The 2003¹⁴ Sexual Offences Act deals with sexual offences like trafficking of children for purpose of sexual exploitation, child sexual abuse by means of prostitution and pornography, sexual abuse of children with mental disorder, voyeurism.

- ***Netherlands***

Child abuse as form of maltreatment of children has the lowest rate (4%) in Netherlands. The probable reason for this is the child sexual abuse policy in the country. In Netherlands, various Advice and Reporting Centres on Domestic Violence and Child Abuse (AMHK) are setup and children or adult who suspect sexual abuse are given a reporting code¹⁵. These centres are very child friendly with counselling centres. As soon as any case is reported at the centre, it assumes the

¹¹Available at http://www.unicef.org/zimbabwe/resources_15420.html (Last accessed October 12, 2017).

¹²Available at <http://www.ibtimes.co.uk/child-sexual-abuse-top-5-countries-highest-rates-1436162> (Last accessed October 12, 2017)

¹³*Ibid.*

¹⁴Available at http://www.cps.gov.uk/news/fact_sheets/sexual_offences/ (Last accessed October 12, 2015)

¹⁵Available at <http://www.youthpolicy.nl/yp/Youth-Policy/Youth-Policy-subjects/Youth-policy-Youth-Policy-Child-abuse/Child-abuse-policy> (Last accessed October 12, 2015)

responsibility of investigating the circumstances and finding out if there is a need of filing a case in law and in case of need, the centre ensures that the adequate action is taken by the courts in order to protect child's interest.

- ***US Federal Law***

All states in US have their different laws dealing with child sexual abuse. 18U.S.C. Section 2241, 2242, 2243, 2244¹⁶ deal with aggravated sexual abuse, sexual abuse, sexual abuse of a minor or ward respectively¹⁷. Offenders under these sections are fined as well as punished. An offender faces harsh sentences if the crime that occurred is of aggravated nature for instance he/she abused the children by posing threat of serious injury like death, he/she kidnapped the child for committing child sexual abuse.

Section 2256 of title 18 U.S.C. provides for definition of child pornography as visually depicting any sexually explicit conduct involving a minor (less than 18 years of age)¹⁸.

Lastly title 18 United States Code, Section 2260 makes it illegal for a person outside the United States to produce, receive, transport, ship, or distribute child pornography with the intention to import or transmit such visual depiction into the United States¹⁹.

- ***Canada***

The Criminal code and the Canada evidence Act are two federal laws covering criminal justice matters in Canada. The amendment to these laws in January 1988 created child sexual abuse offences thus expanding the opportunity for courts to take the testimony of child in cases of their sexual abuse²⁰. The Canadian Criminal Code covers offences like sexual exploitation of young children, anal intercourse, indecent acts, sexual assault, and offences involving parents or guardian in sexual activity.

¹⁶Available at <http://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-child-sexual-abuse>(Last accessed October 12, 2015)

¹⁷*Ibid.*

¹⁸Available at <http://www.justice.gov/criminal-ceos/citizens-guide-us-federal-law-child-pornography>(Last accessed October 12, 2015)

¹⁹*Ibid.*

²⁰Available at <https://www.ncjrs.gov/pdffiles1/Digitization/128329NCJRS.pdf> (Last accessed October 12, 2017)

The definition of these crimes under the Criminal Code reinforces the protection and mental development of a child. Individual who sexual abuse a child cannot take a plea that a child consented to such sexual activity. Under Canadian law, children above 12 years but below the age of 14 years are considered incapable of giving consent to any sexual activity²¹. Furthermore, the consent given by persons above 14 years of age but below the age of 18 is considered invalid if the other person engaged in the sexual act is in a position of trust and or authority over them²². An offender cannot take a defence that he believed that the child was older; this defence can only sustain if he/ she took reasonable steps to find the age of the concerned child. Child victims are also protected at the time of the prosecution. Corroboration of a child's testimony is not required for conviction of the accused. Publication of the information about the child which would identify the child victim is prohibited. A child can also testify outside the court room in presence of a judge or jury who will carefully observe the child while he/she is giving the testimony. Video clips recorded by the child for testimony within a reasonable time are also admissible. Other institutions also exist for the protection of the child.

- **Germany**

Germany follows legal codes and procedures which give more protection to children as compared to many other countries. According to the Section 176 of the German Criminal law, children under 14 years of age are considered *doli incapax* for giving consent to any kind of sexual activity. Under Section 174, engaging in sexual activity with a person below 18 years is also punishable in certain circumstances. For e.g. when the child is adopted and is in a state of dependence. The criminal procedure also guarantees maximum child protection. Responsible police officers themselves interrogate the child as soon as they receive any complaint.

²¹*Ibid.*

²²*Supra See Note 85*

CONCLUSION

After thorough analysis of Indian Criminal law, judicial decisions and the laws of other countries, it could be concluded that the present law is inadequate in many respects. Furthermore, when Law is clear at certain instances, the guidelines laid down are not strictly implemented by the Police, doctors and the courts which seriously hamper justice for the child victim. Some reforms can be suggested like:

- The Police must ensure that there is no delay in the registration of FIR.
- Doctors need to be sensitized while conducting the medical examination of the child on how to deal with the child and communicate with the child about what he or she is going through.
- The forensic samples collected by the Police often get contaminated due to improper storage so the Police needs to be acquainted with the best methods of collecting forensic evidence.
- Making child pornography and voyeurism strictly punishable in every form.
- To make the working of child welfare institutions more effective so that it goes in consonance with the judicial system to protect victim's interest and the interest of the Society. The same structure is followed in Canada.
- Also, the Government should also lay down some rules in order to protect the interest of the vulnerable witnesses.

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