

CHILD SEXUAL ABUSE AND PROTECTION OF CHILDREN FROM SEXUAL OFFENCES ACT (POCSO ACT)

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INTRODUCTION

Child sexual abuse laws in India have been enacted as part of the child protection policies of India. The Parliament of India enacted the 'Protection of Children against Sexual Offences (POSCO) Bill, on the 14th November 2012. Before the passing of this Act, sexual offences were covered under different sections of IPC, and did not provide for all types of sexual offences against children. Childhood sexual abuse is obviously often a traumatic experience that has a long-term effect throughout the person's life. 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.

Evidence shows that sexual violence can have physical, psychological and social outcome for both girls and boys. A child who is a victim of sexual offence can have a long-term scar back in the mind; the victim may experience chronic anxiety, tension, anxiety attacks, and phobias. Childhood sexual abuse has been correlated with higher levels of depression, guilt, shame, self-blame, eating disorders, somatic concerns, anxiety, denial, health issues, sexual problems, and relationship problems. It has been shown that survivors frequently take personal responsibility for the abuse. Survivors tend to display more self-destructive behaviours and experience more suicidal tendencies than those who have not been abused. When the sexual abuse is done by an esteemed trusted familiar adult it may be hard for the children to view the perpetrator in a

negative light or the child may experience a fear from informing the incidence to the parents or someone close. Records have shown in many cases the penetrator is either a relative or an acquaintance to the victim. Sexual abuse and sex trafficking of children remain highly prevalent and are among the serious problems in India. In 2019, POSCO Act was amended. POCSO (Amendment) Bill made punishment more stringent for committing sexual crimes against children.

CHILD SEXUAL ABUSE

World Health Organization defines child sexual abuse as, “an inappropriate sexual behaviour with a child’ and ‘involving a child in sexual activity that he or she doesn’t fully comprehend, is unable to give informed consent to, or that violates the laws and social taboos of society”. The new WHO Clinical Guidelines for responding to children and adolescents who have been sexually abused are grounded in human rights standards and ethical principles. They recommend that healthcare providers put the best interests of children and adolescents; by assessing and promoting their safety, ensuring confidentiality and privacy, respecting their autonomy and wishes; and addressing the specific needs of boys and girls with additional vulnerabilities, such as LGBT adolescents, children who are especially abled and those from low socio-economic groups and indigenous population and ensuring provision of care to them without discrimination.

ACTIONS THAT LEAD TO CHILD ABUSE

Sexual abuse is as inappropriate adult or adolescent sexual behaviour with a child. It includes fondling a child’s genitals, making the child fondle an adult’s genitals, intercourse, incest, rape, sodomy, exhibitionism, sexual exploitation, or exposure to pornography obtained by seduction, inducement or coercion. The perpetrator may also exploit the child by introducing them to pornography prematurely, assaulting them through the internet, or manipulating them into taking pornographic photos. Sexual abuse can be in both ways contact and non-contact.

CHANGES MADE TO THE ACT

In 2019, Amendments was made to The Protection of Children from Sexual Offences (POCSO) Act, 2012, it was passed by Parliament. The changes made in the bill are as follows:

- The bill seeks to enhance punishment for sexual offences against children, with a provision of death penalty.
- The Bill has defined the term ‘child pornography’ and also provides that those who use a child for pornographic purposes should be punished with imprisonment up to five years and fine. However, in the event of subsequent conviction, the punishment would be up to seven years and fine.
- According to the amendment bill, those committing penetrative sexual assaults on a child below 16 years of age would be punished with imprisonment up to 20 years, which might extend to life imprisonment as well as fine.
- In case of aggravated penetrative sexual assault, the bill increases the minimum punishment from ten years to 20 years, and the maximum punishment to death penalty.

PROVISIONS UNDER THE POCSO ACT TO PREVENT CHILD ABUSE

The POCSO Act was passed to strengthen legal provisions for the protection of children below 18 years of age from sexual abuse and exploitation. Important provision of POCSO to tackle child abuse is Penetrative Sexual Assault, Aggravated Penetrative Sexual Assault, Sexual Assault, Aggravated Sexual Assault, Sexual Harassment and Use of Child for Pornographic Purposes.

In the case of *RAJENDRA v. STATE OF NEW DELHI*, July 3rd 2020, the accused came to the house of the victim who was a 9-year-old girl, in absence of her mother. The accused had pulled down girl’s legging and started rubbing his hands on her both thighs. The girl became frightened and somehow managed to run away to the neighbour’s house. When mother came to know she filed an F.I.R against the accused. Delhi High Court while addressing the matter held that, pulling down the leggings of the child victim and touching of the thighs is evident of

sexual intent and accordingly constitutes an offence of sexual assault. Accused was convicted of an offence under Section 10 of the POCSO Act.

“Using child in pornographic purpose” this offence was added in 2019 POCSO Amendment act. All the amendment made in 2019 aimed at establishing clarity regarding the aspects of child abuse and punishment thereof. In a very recent case of REHANA FATHIMA A.S. v. STATE OF KERLA, 27th July 2020, the petitioner posted a video on social media in which her semi-naked body was being painted by both of her minor children. The video was detected by the Kochi police, an FIR was registered against Fathima for offences punishable under various sections including POCSO Act, 2012.

The 2012 act had 46 provisions which established a framework for reporting of offences against children that were not included under IPC provisions and punishment for such offences. Modification which was made in 2019th amendment in the law has addressed stringent measures against rising trend of child sex abuse in the country and to combat the risk of relatively new kind of crimes, stressing that the strong penal provisions act as a deterrent. The amendments made have increased the punishments under POCSO act and they have also included the capital punishment for certain cases. The new rules have increased the minimum punishment for use of child for pornographic purpose to 5 years, minimum punishment of 10 years (and in case of child less than 16 years for 20 years) and maximum punishment of life imprisonment for penetrative sexual assault and minimum punishment of 20 years and maximum of life imprisonment or capital punishment for aggravated sexual assault. With the intent of making the law more stringent, the new rules have included the provision of mandatory police verification of staff in schools, care homes etc, it has also included the steps for reporting child pornographic materials; it has included proper education as per age for increasing awareness etc. Besides these it has also been stated that any person who comes across any form of child pornographic material has to report such contents and the related details of device in which such content was displayed to the special juvenile police unit or police. It intends to protect the interests of vulnerable children or the aggrieved party which is being unnecessarily harassed in times of distress and ensures their safety.

CONCLUSION

The POSCO Act is gender neutral and regards the best interests and welfare of the child as a matter of great importance at every stage. POCSO Act is mechanism to provide speedy justice to children who are victims of sexual assault. It ensures the healthy physical, emotional, intellectual and social development of the child. But, even after establishment of such effective act only two-third of the cases are reported to the administration. Offences which come under POCSO act is a broad array of adverse consequences for survivors throughout their lifetime. There is an imperative need for awareness among common people and parent, that they have their rights and they can exercise them and lay man can approach the police without any fear. Also, there is a need for conducting a efficient training session for children and teacher. The child line should be displayed in the institute and hospitals for reporting any case of known or suspected child abuse.

REFERENCE

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