

Rights of Child Against Sexual Abuse – An Analysis of POCSO Act, 2012

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Abstract:

The POCSO Act is an important step taken by the legislative body in securing the best interest of the child, as sexual crimes have increased so much, that not only adults, but also children, even of tender age are becoming the victims of several types of sexual exploitation. The Constitution of India under Article 15(3) empower the government to make special legislations for women and children, to save the child from the Pornography, Prostitution, or engaging in unlawful sexual activity and to ensure health physical, emotional, intellectual and social development of child is also a motive of this Act. The POCSO Act has been passed, to provide the protection to the children from sexual offences. The part IV of the Constitution of India also mandates for establishing a welfare state, which purpose at social bliss and to protect all its citizens, justice, economic of the country. According to this part state has the important role to uplift the weaker section and downtrodden especially the children who are the asset of the nation. But in developing country like India, the concept of childhood and child welfare is taking shape in slowly. In this paper the researcher will be analyzing the provisions of POCSO Act and will focus on appraising the rights of child against sexual abuse. Researcher will further dwelled upon the instances of sexual crime against children in the cyber space and compare the position of law with the advanced jurisprudence of the US and UK.

Our children are the rock on which our future will be built, our greatest asset as a nation. They will be the leaders of our country, the creators of our national wealth who care for and protect our people. - Nelson Mandela

Introduction

Childhood in the country differ on the basis of ‘social and economical status’ , ‘physical and mental ability’, and ‘geographical locations’ or etc.ⁱ It is determined according to the vulnerability of the child. The discrimination is found against the child, which is violation of the child Rights. In our society children are vulnerable who requires the ‘protection’ and ‘care’ because the future of the nation depends upon the children, they are civilians of tomorrow.

At the tender age of the children are being abused, which affect the children by emotionally and also psychologically. The responsibility of the Children lies on the state and the society. It is the obligation of government/state to provide the protection to children for their development. Child abuse is a bad condition of physical, emotional, negligence and sexual exploitation of the human being who is under the age of 18 years. It is prevalent throughout the world like an epidemic.

“A child is a person below the age of 18 years and the state provides protection to all children under the age of 18 years from offences of sexual assault, sexual harassment and pornography.”ⁱⁱ They are facing incomprehensible challenges that arise in today’s world from the time they are born. Children are vulnerable due to inadequate nutrition, illiteracy, commodity for sale, forcible labour, drugs, sexual abuse, pornography, etc.ⁱⁱⁱ The Hon’ble Supreme Court in *Sheela Barse and Another v. Union of India*^{iv} has declared that a “child is a national asset. In Indian scenario a child requires proper care, love, affection and nourishment, but experience shows that the children are subjected to maltreatment in some situations”.

Meaning of Child abuse

In simple language ‘abuse’ means any ill - treatment and misbehavior by a another person which give pain to the child.

As per World Health Organization (WHO) “Child abuse or maltreatment constitutes all forms of physical and/or emotional ill-treatment, sexual abuse, neglect and negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child’s health, survival, development or dignity in the context of a relationship of responsibility, trust or

power.”^v According to the World Health Organization, the abuses against child are physical abuse, Sexual abuse, Emotional abuse, Neglect etc.

Impact of child abuse

Mostly children who suffer from the sexual abuse don't talk about it. It negatively impacts on the child.

- Feel insult, guilt, and anger
- Constant sickness
- Constant fear.
- Further, the child cannot believe on any one
- The child is withdrawn by the society cause of stigma.
- The relationships remain labile.
- The Scars remain for lifetime.

Indian Constitution and Protection of Children

Directive Principles of state policy, enshrined in part-IV of Indian constitution determines the ideas and goals that the state will get for establishing a welfare state, which purpose at social bliss and to protect all its citizens, justice, economic of the country. Hereby, under it important provisions are imparted to protect the interest the children. According to this part state has the important role to uplift the weaker section and downtrodden especially the children who are the asset of the nation.

Article 39 (e) of our constitution address to the state to take safeguards for the protection of the children so that he could not be the victim of abuse and that children are not forced by the

financial requirements to register in such business which is inadmissible for their age and power. Hereby, employment by children is forbidden.

Article 39 (f) entreat upon state to monitor that “children are given opportunities and proper facilities to develop in a healthy manner and in condition of freedom and dignity and the childhood and the youth are protected against exploitation and against moral and material abandonment”.^{vi}

According to the Article 41 “the state shall within the limits of its economic capacity and developments, make effective provisions for securing the rights to education”.^{vii} This principle imposed duty on the state to take necessary steps for providing education to its citizens which include the children also.

Article 42 states that “the state shall make provisions for securing the just and humane conditions of work and maternity relief”.^{viii} In this article particular ‘children’ word not used but this article specially provide for the welfare of the children. The indirect motive of this article is to provide a good atmosphere in which children can work easily.

Article 45 speak that, state has the duty to ensure care and mandatory education to all the children till they attain age of six.

Article 46 direct state to support the downtrodden people, weaker sections particularly scheduled caste and scheduled tribes with special concern in the education and economic. State also provides protection to such weaker section from the injustice and all kinds of exploitations or abuses. In this provision, children of such class also automatically included.^{ix}

According to the Article 47, states that, “the state shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the state shall endeavour to bring about prohibition of the

consumption except for medicinal purposes of intoxication drinks and of drugs which are injuries to health”.^x

“The Protection of children from sexual offences Act 2012”

The followings are the objectives behind the Act:-

- To provide the protection to the children from sexual offence.
- To support the Constitutional mandate under Article 15 (3) which provide the empowerment to the government to make special legislations, Acts, laws for women and children.
- To save the child from the Pornography, Prostitution, or engaging in unlawful sexual activity.
- To ensure health physical, emotional, intellectual and social development of child is also a motive of this Act.

The “*Protection of children from sexual offences Act 2012*” is the first special legislation which deals with sexual abuse against child, before it there is IPC applicable to all India, but it is not a special law for the child and Goa children’s Act, 2003 which is applicable to only state. This special legislature is applied to whole Country except Jammu and Kashmir. The POCSO is a complete law to provide the safety to the children (who are vulnerable) from the offences of sexual assault, sexual harassment, pornography, at time of recording of evidence, investigation and the trial conduct by the special court.

The victim under this Act are that who has not completed the age of eighteen years whether the person is boy or girl are suffer from the sexual abuse, in the form of ‘penetrative or non-penetrative sexual assault’, or “aggravated sexual assault”, ‘sexual harassment’ or ‘pornography’.

The accused person can be adult or child. e.g; in some reported cases the sexual abuse done by the old people or some reported cases sexual abuse done by their own friends or other child. However, before labeling the child as a sex offender the protector should be aware of the age of

child. The POCSO Act said that any person including a child can prosecute for sexual offence if he commits so. The Act does not define the consensual sex.^{xi}

The punishment under this Act is stringent, punishment is provided according to the gravity of the offence. The punishment includes the rigorous imprisonment for life, fine and death penalty according to the amendment bill of POCSO, 2019 punishment is increase.^{xii}

During the investigation, the police plays an important role to provide the protection of children. They received a report of sexual abuse and if he feels that there is an immediate need of medical examination, then he arranges the medical practitioner for taking care and giving protection and take the matter to the Child Welfare Committee within 24 hours.^{xiii}

Special courts are established under the POCSO Act to held camera trial and identity of the child is protected by the court. The child friendly mechanism is used for the trial. The amount of compensation is decided by the special court.^{xiv}

The central government has authority to frames the directions and instructions for NGO's, professionals and specialist, for the care and safety of the child. The state government also assists the central government.

Protection of Rights of Child/ Victim

Ensuring need and care of protection of the victim:

1. Within 24 hours of the report the Special juvenile police unit or local police should take necessary steps for the benefits and protection of child. Once, police or SJPU get the report of a crime against the child, if he feels that child requires care and protection, then the police will immediately provide facility to the child for their protection and care after writing the report.

2. The police officer will take the victim to shelter home/hospital for medical care within 24 hours. If, child has no parental support then child should be produce in front of the CWC by the police officer.
3. If the child's medical test has not been done before giving the report then child's medical examination¹⁶⁹ should be done according to the section 164-A of the Criminal Procedure Code, 1973. Sample should be collected for the purpose of the forensic examination and sent to the forensic laboratory as soon as possible.
4. If the child needs urgent medical treatment, then he should be taken to the nearest hospital or medical facility center to rescue him/her and take care of him/her. The medical treatment must be given in the presence of his/her parents or above whom she/he has confidence and believes. In such a case the legal or magisterial requisition or documentation is not necessary for providing the emergency treatment to the child.
5. After the recording of the report into the writing, the police then send a report to the CWC or special court. If the special court is not in existence then, report of the matter sent to the session court.

Duties of the police officer for the protection and care of the victim:

1. During the investigation of the case the police must keep in mind that the child could not be brought before the accused by the police.
2. The Police should not disclose his/her identity in front of anyone.
3. The police has a duty to inform the child's parents/ guardians/ other person who is trustworthy for child, about the following:
 - Counseling availability.
 - Availability of the support services.
 - Child's Rights.
 - Availability of the victim's compensation scheme.
 - Filing of charges against a suspected offender.
 - Procedural steps involved in the prosecution of child.

- Availability of emergency services.

Duties of the special court^{xv}

The following measures should be taken by special court for the protection of child during the trial:

1. During trial, if child needs break, then special court allows extra break for the child.
2. In the special court there should be a child- friendly atmosphere.
3. The special court conducts their trial of the child before the believable person of the child.
4. The child should not be called repeatedly to give testimony in court.
5. The aggressive interrogation of child must not be allowed and his character must not hit. It is the duty of the court to maintain his dignity during the trail.
6. The identity of the child must not disclose at the stage of investigation.
7. The trial should get completed within a year from the date of court taking its cognizance. The court cannot adjourn the court unnecessary.
8. The special court has a duty to provide interim compensation at any time after registration of the FIR but if there is an immediately need of the child for the relief and rehabilitation. The compensation is paid by the state government if the accused is not found or acquitted. Such compensation should be paid within 30 days.
9. The special court will determine the age of the accused if question arises in the court and he also record the reason in writing.

Laws in relation to Sexual abuse against children in U.K.

The child sexual abuse is worldwide spread. The police of U.K. recorded about 63,000 cases related to the child sexual exploitation in the 2015-2016.^{xvi} For the protection of the children there is protection system which provides the safety. The NSPCC plays an important role to provide the protection to the children. There is a 'sexual offences Act, 2003' which prohibit the sexual abuse against the children. It includes the 'prostitution', 'pornography', 'voyeurism', 'sexual exploitation of children with mental illness'.

“Protection of children Act 1978”^{xvii} :

This Act territorial extent is England, Wales, Scotland, and Northern Ireland. It criminalized the indecent photographs of the children.

“Protection of children and prevention of sexual offences (Scotland) Act 2005”^{xviii}

This Act came into force to improve the protection which is given to the children who suffering from sexual harm.

The Sexual offences Act, 2003^{xix}:

This Act repealed the Sexual offences Act, 1956 with more clear and specific wording. Under this Act there are number of sexually offences criminalized against child. These are the following offences which are criminalizes under this Act:

“Offences under the age of 13 years

- Rape of child ,
- Assault by penetration
- sexual assault,
- causing or inciting a child to engage in sexual activity

Offences under the age of the 16 years

- sexual activity with a child by adult
- causing or inciting a child to engage in sexual activity by adult
- engaging in sexual activity in the presence of the child,
- causing a child to watch a sexual act
- child sex offences
- meeting a child sexual grooming

Offences under the age of the 18 years

- Abuse of Position of trust
- Familial child sex offence

- Other offences include indecent photographs of children, abuse of children through prostitution or pornography.”

Laws in relation to Sexual abuse against children in USA

In USA 25% are girls and 16% are boys are sexually exploited. 58,000 children were sexually exploited in the last year. 34 percent of accused are known by the victim.^{xx} In the every states of USA, child sexual abuse is against the law. Every state of USA has their own law to prevent the child sexual exploitation.

“The Child abuse Prevention and Treatment Act 1988”

This Act deals with the federal funding to the states of U.S. for the prevention, evaluation, investigation, prosecution and treatment activities. The state can define the law according to their state, related to neglect, physical and sexual abuse. The assistance is provided to the public and non-profit agencies for presenting the programs and projects to establish the clearinghouse on child sexual exploitation and neglect information.

Child protection Mechanism in India

For protection of child from sexual abuse children protection mechanism has been set up the government, wherein government is running different schemes for spreading the awareness

- 1. An integrated program for street children:-** Under this scheme, which children are homeless and who are not tie with their family they are protected by the NGO’s and NGO’s provide the education, food, shelter, clothing, knowledge about the society, guidance, and main important is protection to the children. They provide support 24 hours to the children.
- 2. Child line service:-** This service is provide for the protection and care of the children. To protect the rights of child it is necessary in which medical, shelter, rescue from exploitation, course of action, and repatriation such services are provide for their care^{xxi}.
- 3. Sarva Shiksha Abhiyan:-** It was executed for the good quality of the education which was necessary for the children for their development and it provide infrastructure to school.

4. **Shishu grey scheme :-** This scheme being implemented for the promotion of the adoption of the child whose age is below six years or infants who are orphans so they can rehabilitate and provide the protection to them.^{xxii}
5. **Scheme for working for child in need of care and protection:-** Under the scheme, food, education, vocational training, drugs as a medicine, tools for playing etc. services are provided to those children who are working for the help to the family.^{xxiii}
6. **Pilot project to combat the trafficking of women and children for commercial sexual exploitation:-** This project provides the security and protection to the children who are sexually abused. The government provides the legal aid, shelter, rescue operation such type of services are provided.^{xxiv}
7. **National child labour project:-** Under this project schools and rehabilitation centres opened for the protection of the child who doing work as a labour. 82 In the schools , and rehabilitation centres education , vocational training, supplementary nutrition and other facilities are given to the children withdrawn from employment.

Suggestions

- The government can spread the awareness by providing the seminars at schools, or through T.V., Radio, Newspaper, or any other media. In the school teaches the lessons on how to get out child from scary situations.
- The government should provide the knowledge on the punishment of the POCSO Act, and what are protection are provided to the victim of the sexual abuse through the media. So that rate of the offences related to CSA can be decreased.
- School needs to conduct the class of the students on the “Good touch and Bad touch” at the primary stage. So that the child should aware about the abuse
- Sex education should be given by the parents to their children, especially during the period of puberty.

- Parents should teach their children about the privacy parts of their body and teach the name of the private body parts.
- Court of law should provide the deterrent punishment to the offender of the child sexual abuse. So that person has deterrent effect in their mind before doing such crime.
- There is need of amendments in the Act with regard to recording of evidence, time period of trial and training of police to deal with child.

ⁱ Dr. Nuzhat Parveen Khan *Child Rights and The Law 1* (Universal Law Publishing, New Delhi, 2nd edn. 2016)

ⁱⁱ The Protection of Children from Sexual Offences Act, 2012, S. 2 (d) .

ⁱⁱⁱ United Nations Children’s Fund, “The Situation of Children in India – a profile,” May 2011, *available at*: http://www.unicef.org/india/The_Situation_of_Children_in_India_-_A_profile_20110630_.pdf (Last modified on October 7, 2015).

^{iv} AIR 1986 SC 1873.

^v World Health Organization *available at*: <http://www.who.int/mediacentre/factsheets/fs150/en/>.(last visited on November 6, 2019)

^{vi} The Indian Constitution.

^{vii} Ibid

^{viii} Ibid

^{ix} Dr. S.K. Chatterjee , *Offences against children and juvenile offences 8* (Central law publication, Allahabad , 2nd edn., 2016)

^x Dr. Narender kumar, *Constitutional law of India 522* (Allahabad law agency Faridabad, 9th edn. 2015) .

^{xi} User handbook on Protection of children From sexual offences Act, 2012, *available at*: www.ncpcr.gov.in (last visited on Oct 28, 2019)

^{xii} Section 376-AB of the IPC, inserted by the Criminal Law (Amendment) Act, 2018, provides that whoever commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death: Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this section shall be paid to the victim.

^{xiii} A brief idea of the POCSO Act *available at*: https://www.legistify.com/blogs/view_detail/738-a-brief-idea-of-the-pocso-act/ (last visited on Oct 27, 2019)

^{xiv} *ibid*

^{xv} Protection of children from sexual offences “ Act. 2012, S. 24

^{xvi} Find out how many children have experienced sexual abuse *available at* : <http://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/child-sexual-abuse/sexual-abuse/sexual-abuse-facts> (last visited on Oct 27, 2019)

^{xvii} Stuti Bhatia“*The minimum age of criminal responsibility in India: Is it be blamed for the increasing youth crime?*” II *RLR* (Last edited on August 4, 2014)

^{xviii} Protection of children Act 1978 *available at*: <http://www.legislation.gov.uk> (last visited on Oct 27, 2019)

^{xix} The sexual offence Act, 2003 *available at*: <http://www.legislation.gov.uk>contents> (last visited on Oct 27, 2019)

^{xx} *Available at* : <https://www.childusa.org/sol> (Last visited on Oct 27, 2019)

^{xxi} *Ibid*

^{xxii} *Ibid*

^{xxiii} *Ibid*

^{xxiv} *Ibid*