



Sexual Assault Against Children With Reference To Pocsso Act

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Abstract

"Childhood should be carefree, playing in the sun; not living a nightmare in the darkness of the soul"

-Dave Pelzer

The quote mentioned above portrays a utopian landscape as to how children should be in our society. However, it has been marred by several evils which breathes and unfurls in our society. Children are pure souls who are to be cherished and protected at the bane of society, however when evils like Child Abuse, Sexual Harassment, Rape mar the existence of these innocent beings, it is not only shameful for the society, but imperious to be tackled and prevented. The society collectively holds this responsibility to protect the children from these evils rather than stigmatising the inherent concept.

A well-structured legislation to safeguard the rights and well-being of children, becomes imperative when the deleterious impact of child sexual abuse on victims' health and overall development is realised by the society. The Constitution of India enshrines the rights of children, and in recognition of the inadequacy of existing laws, such as the Indian Penal Code and Criminal Procedure Code, to address sexual offenses against children, the Parliament enacted the landmark "Protection of Children from Sexual Offences (POCSO) Act" in 2012.

In this research paper, we will focus on the legislation that has been aimed at filling the void left by precedents to provide a well-defined mechanism of preventing sexual abuse of children, and protect them from such heinous acts. The paper will also shed light on the role of child sexual abuse as a pressing socio-legal issue, emphasizing that violations of children's rights constitute violations of human rights. The study aims to elucidate the distinguishing features of the POCSO Act and offer suggestions to address the problem of child sexual abuse and protect the rights of children.

Keywords: Child sexual abuse (CSA), Child, POCSO, Human Rights.

Introduction

"There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected, that their lives are free from fear and that they can grow up in peace"

- Kofi Annan

Children belong to the most vulnerable sect of the society, where unconscionable acts of sexual violence and exploitation that inflict profound psychological and physical trauma on their psychology and physical being. Committing Sexual assault against children is a crime that is poisoning the very roots of the society which need immediate and defensive action. These acts not only need to be regulated stringently, but also prevented in an all-encompassing capacity. The mere notion of a child enduring such egregious abuse is deeply disturbing and necessitates immediate and decisive action from all sectors of society. It is for this very notion, that the Indian Parliament recognised the need for a legislation which specifically addressed this issue. Thus, the Protection of Children from Sexual Offences (POCSO) Act in 2012, was enacted to serve as a legislative framework dictating the offences and their punishment relating to the sexual abuse of children.

Although this legislation is in place for over a decade now, there are still persisting problems of child sexual abuse which haunt the society day-to day. The societal stigma, lack of awareness, improper or inadequate knowledge, limited resources and the difficult procedure for obtaining evidence are some of the barriers which still exist in the way of this legislation to impart justice and fulfil its objective. Thus, obstructing the the efficient prevention, identification, and prosecution of child sexual abuse cases, leaving many victims without the assistance and justice they need.

In this paper, the legislation will be discussed at length to assess the mechanisms put in place through the POCSO Act, subsequently analysing the complexities which arise due to the grave and serious nature of child sexual abuse and its stigmatization. Lastly, the limitations and their antidotes will be discussed to ensure an effective implementation of the Act. The Sexual abuse of children is a serious offence which needs special attention; hence this paper aims to provide a more robust and effective response, ultimately ensuring the protection and well-being of children.

Understanding Child Sexual Abuse

"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."

-World Health Organization

Drawing from the definition, child sexual abuse can be understood as an umbrella term encompassing diverse forms of sexual violence and exploitation perpetrated against children. It spans a broad spectrum,

ranging from non-contact acts such as exposing children to pornographic content or engaging them in inappropriate sexual discourse, to contact offenses like groping, molestation, and rape.

The ramifications of child sexual abuse transcend physical harm, leaving indelible emotional and psychological scars that can profoundly shape a child's development and future well-being. Victims often grapple with a constellation of adverse effects, including post-traumatic stress disorder (PTSD), depression, anxiety, diminished self-esteem, and difficulties in forging healthy relationships. Additionally, research has established links between child sexual abuse and an elevated risk of substance abuse, high-risk sexual behaviour, and even suicidal ideation later in life.

Alarmingly, the World Health Organization (WHO) reports that globally, one in five girls and one in thirteen boys endure some form of sexual abuse before reaching the age of 18. These staggering statistics underscore the pervasive nature of this issue and the urgent need for comprehensive measures to safeguard children from predators and perpetrators. It is crucial to recognize that child sexual abuse transcends socioeconomic or cultural boundaries; it can occur in any community, irrespective of race, ethnicity, or social status. Perpetrators can be family members, acquaintances, or strangers, and the abuse can take place in diverse settings, including homes, schools, institutions, and online environments.

II. The POCSO Act: A Comprehensive Legal Framework

Recognizing the urgency and severity of child sexual abuse in India, the Parliament enacted the Protection of Children from Sexual Offences (POCSO) Act in 2012. The Protection of Children from Sexual Offences (POCSO) Act is a comprehensive legislation that is gender-neutral, implying that it addresses sexual crimes against children, irrespective of the child's gender. The Act deviates from the conventional legal principle of "innocent until proven guilty" by placing the onus of proof on the accused, who is considered "guilty until proven innocent".

Any instance of abuse towards children is mandated to be documented and registered under FIR by the police. The police ought to take cognizance on any instance of child abuse. Subsequently, the statement of child is provided to be recorded at a location of their choosing, preferably by a female police officer of at least sub-inspector rank as per the act. To ensure that there is no potential misuse of the Act, it also stipulates penalties for false accusations and the dissemination of false information with malicious intent.

Key Provisions of the POCSO Act

The POCSO Act defines a child as

“Any person below the age of 18 years and outlines various sexual offenses against children, including penetrative and non-penetrative sexual assaults, sexual harassment, and the use of children for pornographic purposes.”

The following provisions are also provided under the Act :

- Criminalising offenses such as sexual assault (section 7), aggravated sexual assault (section 9), sexual harassment of a child (section 11), and the use of children for pornographic purposes (sections 13-15).
- Stringent punishments from imprisonment to fines, depending on the severity of the offense. E.g. aggravated penetrative sexual assault carries a minimum punishment of ten years of rigorous imprisonment, extending up to life imprisonment, with a fine.
- Exacerbated punishments in cases of repeat offenders, offenses committed by individuals in a position of trust or authority, or offenses resulting in grievous harm or death of the child victim.
- Establishment of Special Courts to facilitate the expeditious trial of cases involving child sexual abuse. These courts are designed to create a child-friendly environment, minimizing the trauma experienced by victims during the judicial process.
- Trials to be conducted in-camera (closed proceedings) and allowing for the use of video-conferencing and other special measures to record the statements of child victims.

Mandatory Reporting and Protection of Victims

Children are vulnerable beings who have a very constricted view of the world, with little to no practical perception hence, mandatory reporting of these offences becomes a necessity. Children do not possess the bandwidth to possess what is happening to them in most cases, hence when they turn to any person to share any incident which qualifies as an offence under the legislation, it is the duty of that person to act prudently. The legislation mandates a legal duty upon individuals, including professionals such as medical practitioners, educators, and law enforcement personnel, to report instances of child sexual abuse.

Moreover, the legislation has been framed to ensure the protection of children and ensure that their rights are not being violated. The object of the legislation, thus calls for the paramount welfare of child in any circumstance. The Act also provides for punitive action in case these objectives are not complied with, underscoring the criticality of vigilance and prompt intervention in addressing these crimes. Furthermore, the Act safeguards the identities of victims and ensures that their privacy and dignity are upheld throughout legal proceedings. This measure is aimed at preventing further victimization and stigmatization of the child survivors. The Act also establishes guidelines for conducting medical examinations of victims in a sensitive and child-friendly manner.

Child Sexual Offences in India

India is home to a staggering 430 million children tragically, not all children are fortunate enough to enjoy basic necessities like adequate nutrition, shelter, and safety. It is common occurrence to spot children begging at railway stations, bus terminals, or on footpaths, being forced to live on the streets without a permanent shelter. These children are vulnerable to the evils lurking in our society, putting them at risk of falling victim to various forms of crime and violations of their fundamental rights. These children are without any protection being introduced to the outside world without anyone to guide them about the rights and wrongs of the society.

Additionally, the children who are within their homes, which are meant to be a shield against any harm coming their way; become victims of sexual abuse as well. There are ample cases where the sexual abuse towards children is often perpetrated by those closest to them, such as family members, close relatives, or neighbours. Alarmingly, the society has stigmatised child abuse so much so that rather than addressing the issue, they try to put a veil over it. In most instances the children are not even aware that they are being violated. In case they do recognize it, their immediate surroundings either suppress these issues or force the child to forget it rather than providing them the care and guidance that they require. Children thus are either unaware of the abuse they endure or too fearful to disclose it to their parents, leading to a culture of silence and perpetuating the trauma.

Recognizing the urgency of this issue, the Indian government enacted the Protection of Children from Sexual Offences (POCSO) Act in 2012 to combat child sexual abuse. According to the National Crime Record Bureau (NCRB), in 2019 alone, 109 children were sexually abused every day in India, marking a 22% increase from the previous year. While 32,608 cases were reported under the POCSO Act in 2019, this figure rose to 39,827 in 2020. Disturbingly, the data reveals that 21,605 children were raped in 2021, including 21,401 girls and 204 boys.

Challenges and Limitations

- ***Underreporting and Societal Stigma***

One of the major obstacles in addressing child sexual abuse is the underreporting of cases. Many instances go unreported due to societal stigma, fear of reprisal, and lack of awareness about the legal provisions and support systems available to victims. This underreporting hinders effective intervention and perpetuates a cycle of abuse. According to a study conducted by the Ministry of Women and Child Development, only a small fraction of child sexual abuse cases are reported to the authorities. The stigma associated with sexual violence, particularly against children, often leads to a culture of silence, where victims and their families choose not to report the abuse out of fear of social ostracization or retaliation from the perpetrators.

- ***Lack of Infrastructural and Resource Support***

The successful implementation of the POCSO Act requires adequate infrastructure, trained personnel, and resources. However, many regions in India face shortages of Special Courts, child-friendly facilities, and trained medical and legal professionals equipped to handle cases of child sexual abuse effectively. As of 2021, only 33% of the designated Special Courts under the POCSO Act were operational, leading to significant delays in the judicial process. Moreover, children-friendly facilities have been lacking as well to accommodate the victims and provide them a safe and sound environment and ensure witness protection.

- ***Challenges in Evidence Collection and Investigation***

During the investigation process, circumstantial evidence and the victim's testimony are heavily relied upon since the collection of forensic evidence and the investigation process can be challenging, particularly when incidents are reported after a significant time lapse. This can pose difficulties in establishing the guilt of perpetrators beyond reasonable doubt, leading to acquittals or lenient sentences. Furthermore, the lack of

specialized training for law enforcement officials and medical professionals in handling child sexual abuse cases can result in improper evidence collection, insensitive questioning, and further traumatization of the victims.

Role of Judiciary to protect the Children

The Indian Constitution serves as a pivotal framework for safeguarding and upholding human rights within the nation's boundaries. The role of the judiciary in the protection and enforcement of human rights transcends mere legal considerations. The courts have played a crucial role in championing the rights of children, as evidenced by the following cases:

In *Ghanashyam Misra vs The State (1956)* “Recognizing that the offence was committed by a person in a position of trust or authority over the child, the Orissa High Court increased the sentence of Ghanashyam Misra, a school teacher who raped a 10-year-old girl on school grounds. The judgement states that the circumstances are all of an aggravating nature. The victim is a ten-year-old girl, and the perpetrator is a 39-year-old adult. He took advantage of his position by inducing her to come inside the school room and commit such a heinous act, the consequences of which could have completely destroyed the girl's future life. The court not only increased the sentence to seven years, but also ordered the accused to pay restitution to the father and child”.

(Mathura Rape Case) Tuka Ram And Anr vs State Of Maharashtra (1978) “The Mathura rape case occurred on March 26, 1972, in India, when Mathura, a tribal girl who was a minor at the time, was allegedly raped by two policemen on the compound of the Desai Ganj Police Station in the Chandrapur district of Maharashtra. Following the acquittal of the accused by the Supreme Court, there was public outrage and protests, which eventually resulted in amendments to Indian rape law via The Criminal Law (Second Amendment) Act 1983 (No. 46).”

State Vs. Freddy Peats and Others “In Colva, Goa, Freddy Peats ran the 'Gurukul Orphanage' orphanage. 27 shelter boys were subjected to various perverse sexual activities between 1980 and 1991. Peats would not only abuse the boys himself, but would also send them to sex with other foreigners. He would inject steroids into the boys' testicles and take obscene photographs of them. In 1991, the issue was finally brought to light. The trial was held behind closed doors to protect the victim boy's anonymity and dignity. The prosecution established that Peats had wrongfully imprisoned the boys and committed unnatural acts. It was also established that he was paid in exchange for allowing others to abuse the boys. The decision was made by an additional sessions judge in Margoa in 1996, and it was upheld by the Bombay Court, Goa Bench, in 2000.”

Moving Forward: Strengthening the Response

- *Awareness and Education*

Raising awareness about child sexual abuse, the provisions of the POCSO Act, and the available support systems is crucial. Comprehensive educational campaigns targeting children, parents, teachers, and the

general public can empower individuals to recognize signs of abuse, report incidents, and seek timely assistance. The Ministry of Women and Child Development has issued guidelines for awareness and prevention programs, emphasizing the need for age-appropriate and culturally sensitive educational materials and campaigns. These efforts should focus on dispelling myths, challenging societal stigma, and promoting a culture of open dialogue and support for victims.

Training and Resource Allocation

In order to ensure that the POCSO Act is implemented effectively at grassroots levels, the need of the hour is to invest in the training of medical professionals, law enforcement officers, and legal personnel to handle the delicacy of child abuse cases and ensure that the interests of the victim is protected. Additionally, allocating adequate resources for the establishment of Special Courts, child-friendly facilities, and support services can enhance the quality of care and justice provided to child victims. Adequate funding and resource allocation for these facilities are necessary to ensure a smooth functioning of the legislation in all sectors of the society.

Collaboration and Multi-Stakeholder Approach

Combating child sexual abuse requires a collaborative effort involving various stakeholders who are responsible for the active and efficient functioning of the legislation must be given adequate training. These stakeholders include; government agencies, law enforcement, non-governmental organizations (NGOs), educational institutions, and community members.

Additionally, a support system can be established to prevent abuse by fostering strong partnerships and sharing best practices, provide timely intervention, and ensure the rehabilitation and reintegration of victims. For instance, the UNICEF-supported "Integrated Child Protection Scheme" in India aims to establish a coordinated network of services and stakeholders to address various forms of child abuse, including sexual exploitation. Initiatives such as the "Beti Bachao, Beti Padhao" campaign by the Government of India, which aims to address gender discrimination and promote the empowerment of girls, can contribute to creating an environment where child sexual abuse is less tolerated and more actively addressed.

Conclusion

The POCSO Act represents a significant step towards protecting children from sexual abuse and ensuring their safety and well-being. By defining sexual offenses against children, establishing stringent punishments, and creating a legal framework to address these cases, this legislation has laid the foundation for combating this heinous crime. However, its effective implementation and the eradication of child sexual abuse require a sustained and comprehensive effort from all sectors of society.

As a society, we must remain resolute in our efforts to combat child sexual abuse, leaving no stone unturned in our pursuit of justice and ensuring that perpetrators face the full consequences of their actions. The POCSO Act serves as a powerful tool, but its true impact lies in our ability to implement it effectively, challenge societal norms, and foster a culture of zero tolerance towards any form of child abuse. In the words of Nelson Mandela, "There can be no keener revelation of a society's soul than the way in which it

treats its children." Let us strive to embody a society that upholds the sanctity of childhood, providing unwavering protection and creating an environment where every child can realize their full potential without the scars of abuse.

