

# EVERY CHILD IS SPECIAL – A STUDY OF CHILD SEXUAL ABUSE AND THE LAW (POCSO) IN INDIA

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**ABSTRACT:** A child is the most important asset of society and has a vital role to play in the development of nation. They are the future of the country. The future of any country depends on how the children of that country are nurtured and nourished. Child sexual abuse is one of the major problems of India. In regard to this problem, a special law has been enacted named as Protection of Children from Sexual Offences Act (POCSO) with a view to protect the rights of children. Undoubtedly, passing of this Act has been a major step in securing children's right. This paper covers the study of child sexual abuse and the implication of this Act on this major problem. The study also covers the challenges and controversies related to this Act and its contribution in India.

**Keywords:** Child, Child sexual abuse, POCSO Act, Offences, Punishment.

## INTRODUCTION

The problem of child sexual abuse is a global problem and present throughout the world. A child is immature, weak and dependent on others. They are exposed to issues like health, disciplinary action, education pressure, sexual exploitation etc. The future of any nation depends on the development of children. They are the most vulnerable sections in the society. The Government of India is giving attention to the topics like care of the child, it's welfare and development and most important how the future India is need to be educated.

As on January 02 2016, the population of India reached the population of 1.29 Billion. Out of which, children constitutes 39% of population. The Constitution of India enshrined the various rights to safeguard the rights of each and every citizen of India. The constitutional provisions also intended to protect the rights of children. It is mentioned and guaranteed in Article 15 giving special attention to children. It enshrined to provide the necessary and special laws and policies to safeguard their interest and rights.

The problem of child sexual abuse is a largely ignored and hidden problem in public discourse. In the absence of proper Act, only the case of rape against children was recognized as an offence. The cases of child sexual assault, harassment, offensive behaviour against them and pornography were not legally sanctioned for the punishment.

## SOME FACTS ABOUT CHILD ABUSE CASES IN INDIA

1. Sexual abuse and trafficking is highly prevalent and are among the serious problem of India.
2. A study on adolescents in Kerala showed that 36 per cent of boys and 35 per cent of girls had experienced sexual abuse.
3. A study was conducted by the Government of India on 17220 children and adolescents. The study reported that every second child in the country was sexually abused.
4. Highest sexual abuse was reported in Assam (57.27%) followed by Delhi (41%), Andhra Pradesh (33.87%) and Bihar (33.27%).
5. Uttar Pradesh state has reported the highest number of sexual abuse cases.
6. 50 per cent of the abusers were known to the child. The incidents took place in a position of trust and responsibility.
7. The children between the age group of 5-12 faced higher level of abuse. Most of the cases are largely unreported.

## AREA OF RESEARCH

The area of research is confined to India as the study deals with the Protection of Children against Sexual Offences (POCSO) Act, 2012. The researcher has specifically analysed the POCSO Act in detail.

## SIGNIFICANCE OF THE RESEARCH

The cases of child sexual abuse are increasing at an alarming rate. India is among the top five countries having highest number of child abuse cases. As far as the sensitivity and seriousness of this issue is concerned, the criminal law in India was inadequate before passing of POCSO Act. The Law Commission in its 172<sup>nd</sup> Law Commission Report has reviewed complete law with sexual offences. The Law Commission appealed for various kinds of amendments dealing with the subject. The law was inadequate to deal with sexual offences involving children.

In 2012, the POCSO Act was passed with a view to protect the children from sexual exploitation. As, there was the need for the separate act. The present paper in this regard will deal with the POCSO in detail and the challenges and controversies related to it.

## RESEARCH QUESTION

The problem identification is a first step to solve and discuss any problem. The fundamental question in this research is related to whether the Criminal Law of India is adequate to deal with the cases of child sexual abuse after the implementation of this Act.

## OBJECTIVES OF THE RESEARCH

1. To study the impact of POCSO Act after its enactment and enforcement.
2. To assess the contribution of POCSO Act in solving the cases of child sexual abuse.

## REVIEW OF LITERATURE

The researcher has reviewed many national and international law related to criminal law specifically provisions and cases which includes child sexual abuse cases. The researcher in her study reviewed Indian Penal code, POCSO Act, reports on child sexual abuse by UNICEF and other national and international law related to this subject.

## PROTECTION OF CHILDREN AGAINST SEXUAL OFFENCES (POCSO) ACT, 2012

The Protection of Children against Sexual Offences (POCSO) Act was enacted in 2012. The Act was enacted with a view to protect the children from sexual abuse and exploitation. It also provides for the establishments of special courts for trial of child sexual abuse matters. It also lays down an adoption of child-friendly procedure to record evidence, investigate the offence and trial of that. According to POCSO Act, 2012 a "child" is a person who has not completed the age of 18 years.

The POCSO Act prescribes the following sexual offences against children: -

1. penetrative sexual assault,
2. trafficking of children for sexual abuse
3. aggravated penetrative sexual assault,
4. sexual assault,
5. using a child for pornographic purposes

The term 'aggravated' is used if the sexually abused child is mentally ill or when the abuse is committed by a person against the child in a matter of trust. This Act is gender neutral legislation. The Act defines 'child' as any individual below the age of 18 years. It provides protection to every child from sexual abuse. The Act makes provisions for child friendly atmosphere through all stages of the judicial process. The Act gives paramount importance to the principle of "best interest of the child".

The provisions of this Act provide a mechanism for reporting, recording of evidence, investigation of the case and speedy trial of offences. The Act without revealing the identity of the child handles the case through designated special court. The special court in this regard determines the amount of compensation to be paid to the child to cover the child's medical treatment, rehabilitation and counselling.

Some of the important provisions of POCSO Act are as follows –

1. After receiving a report of child abuse or any case related to this, the Police Officer in any circumstances must bring a case to the attention of Child Welfare Committee within 24 hours.
2. The Police Officers who are handling case must be in civil clothes while recording the child's statement so that the child does not get rebuked
3. The statement of the child related to the crime must be recorded in the presence of the person whom he/she trusts.
4. For the collection of forensic evidence, the medical examination of the child should only be conducted by the lady doctor in presence of a person that the child trusts.
5. Under this Act, special courts have been set up to conduct speedy trials.
6. It is the duty of these court that they will not disclose the identity of the child and the child will not be exposed to the accused while recording the statement.
7. The child will not be asked to repeat his/her testimony again and again and he/she can give his/her testimony through video also.
8. It should be noted that the case should not get delay and are disposed of within a year from the date of being it reported.

9. If the child needs any assistance, an interpreter, translator, special educator or any other expert should be present in court.
10. The child of the family should be awarded compensation for the medical treatment and rehabilitation of the child.

### **PUNISHMENTS UNDER THE ACT**

1. For the penetrative sexual assault, section 4 of the Act provides for punishment not less than 7 years which may extend to 5 years imprisonment and a fine.
2. For aggravated penetrative sexual assault, Section 6 of the act lays down the punishment which should not less than 10 years; it may also extend to rigorous life imprisonment, and a fine.
3. Section 10 lays down the punishment for aggravated non-penetrative sexual assault done by a person of trust and authority. The punishment which should not be less than 5 years and it may also extend to 7 years, and a fine.
4. In the case of non-penetrative sexual assault committed with a sexual intent, Section 10 provides for punishment for not less than 3 years which may extend to 5 years and a fine.
5. In the case of sexual harassment, section 12 provides for punishment of three years and a fine.
6. In the case of using a minor for pornographic purposes, Section 14 (1) provides for the punishment of 5 years and a fine and in case of second conviction, the punishment would be 7 years and a fine.
7. In the case of attempt of offence, Section 18 of the act provides for 1 year punishment and fine.
8. In case of failure to report an offence, under section 21 of the Act the punishment is of six months and fine.

### **CHALLENGES AND CONTROVERSIES**

The problem of child sexual abuse has multi-dimensions because it gives physical, mental, social, economic, psychological and legal implication on them. Though, the process of POCSO Act, 2012 is child friendly, its provisions are silent on some matters and thus contributes in creating challenge and controversy. There are certain issues which can be discussed -

1. **MEDICAL EXAMINATION** – According to Section 27(2), the POCSO Act mandates that in case of a female child, the medical examination should be done by a female doctor. While, Section 166A of Indian Penal Code mandates the on duty Government medical officer will examine the rape victim without fail. This problem arises when female doctor is not available.
2. **CONSENT REGARDING MEDICAL EXAMINATION** – The POCSO Act is silent and does not give direction in the case if the child refuses to undergo medical examination but the investigating officer is insisting for the medical examination. The provision related to this issue need to be cleared. However, in the case of treatment, it needs to be initiated as soon as possible without getting into the matter of consent to protect the life of the child.
3. **CONSENTED SEXUAL INTIMACY** – In POCSO Act, sexual contact between two adolescents or between adolescent and adult are considered illegal under this Act. No exception has been granted in the Act. Under this Act, however it is proposed that any consensual sexual between consenting adolescents act should not be an offence. But, as per the latest amendment of Indian Penal Code, the age of consent for sex has been fixed to 18 years.
4. **CHILD MARRIAGE** – In India, child marriage is prohibited under secular law. But, it enjoys sanction under personal law. It creates a matter of complication under the POCSO act, 2012 because child marriage and consummation of child marriage are considered illegal.
5. **TREATMENT COST** – Under POCSO Act, the law has provide legal obligation on the medical establishment to provide free medical facilities to the child. In the absence of proper facilities or if the costly procedure is required, the child may be deprive from comprehensive treatment which he/she is entitled to get. It is a responsibility of the state to reimburse the cost.
6. **REPORTING ISSUE** – It is fact that most of the child abuse cases are not reported properly because of the fear of getting insult, embarrassed and ashamed in front of the whole society. For family members, reporting the cases of child abuse is highly personal and difficult decision. To avoid torture of fear, insult, taunting, they usually avoid which results in non-reporting of cases.
7. **TRAINING ISSUE** – A child is the most vulnerable part of society. They are highly sensitive and emotional part of the community. The medical trainers, doctors, practitioners, teachers, judicial, advocates and law enforcing agencies in the POCSO Act, 2012 are need to be trained urgently as far as the child friendly interrogation, medical checkup, counseling and regular follow up is concerned.

Apart from these, research, monitoring, child education, concept of teaching a child about good touch and bad touch, illiteracy of parents, lack of awareness are some another important challenges under this Act which are need to be addressed and resolved properly.

## CONCLUSION

POCSO Act has made a significant contribution in the cases of child abuse cases in India. POCSO ACT, 2012 recognises almost every form of sexual abuse. It is an excellent form of legislation. Though, there are few challenges which are remained to be answered. A child who suffer sexual abuse need to have a psychological support and counselling in a best friendly way. Every individual of society need to accept a holistic approach towards the child abuse cases in India. They need to keep watch on sexual abuse. They must explore and assess the child thoroughly. The cases of child sexual abuse are the most under-reported offences in India. The proportion of child abuse cases in India is epidemic. The doctor who is attending a child must deal with him/her in a most friendly form feeling them least distressful.

## REFERENCE

- Barath K.,Susheel, Mahalakshmi V., January 2016, Legal Implications of POCSO Act, 2012 – An Analysis, International Journal of Multidisciplinary Research Review. Pp. 155-162
- Belur Jyoti, Singh Brijesh Bahadur , December 2015, Child Sexual Abuse and Law in India, Crime Science – An Interdisciplinary Journal.
- Child Sexual Abuse: Issues and Concerns, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4557243/>, Accessed on February 09, 2018
- Forensic Study on Child Sexual Abuse under POCSO Act, [http://ijar.org.in/stuff/issues/v2-i3\(3\)/v2-i3\(3\)-a011.pdf](http://ijar.org.in/stuff/issues/v2-i3(3)/v2-i3(3)-a011.pdf), Accessed on February 10, 2018
- Journal on the Rights of the Child, [https://www.unicef.org/french/adolescence/files/Every\\_Childs\\_Right\\_to\\_be\\_Heard.pdf](https://www.unicef.org/french/adolescence/files/Every_Childs_Right_to_be_Heard.pdf), Accessed on February 10, 2018
- Moharana ,S.D.,( 2015)Protection of Child against Sexual Offences Act, 2012: An Analytical Study, International Journal of Academic Research, Pp- 85-92
- Research Paper Analysis of Indian Legal Position on Child Sexual Abuse, <https://knallp.com/files/3.pdf>, Accessed on 2018 February 10, 2018
- Reviewing India's Protection of Children from Sexual Offences Act three years on, <http://blogs.lse.ac.uk/southasia/2015/12/18/reviewing-indias-protection-of-children-from-sexual-offences-act-three-years-on/>, Accessed on February 12, 2018