

Review of India's Criminal Justice System in Addressing Child Sexual Abuses with Special Reference on POCSO Act

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Abstract: *Sexual abuse, particularly against children, represents a severe violation of human rights, causing lasting harm and trauma. In India, child sexual abuse is a prevalent issue, with significant immediate and long-term consequences for victims. The Protection of Children from Sexual Offences Act, 2012 (POCSO Act) stands as a pivotal milestone in India's legal framework, aiming to safeguard children from various forms of sexual exploitation. This paper delves into the historical background of child protection laws in India, tracing the evolution from customary practices to legislative reforms. The study highlights relevant sections under the Indian Penal Code (IPC) and the Constitution of India that provide legal support for children against sexual abuses. Additionally, case laws before the enactment of the POCSO Act shed light on judicial responses to child sexual abuse, emphasizing the importance of sensitivity and accountability within the legal system.*

Furthermore, the study discusses the Vishaka guidelines, which set precedents for preventing sexual harassment in the workplace, and their implications for broader efforts to combat sexual abuse. The enactment of the POCSO Act is examined in detail, emphasizing its provisions for victim confidentiality and the establishment of special courts dedicated to trying offenses against children

Keywords: Child, Sexual Abuse, POCSO Act, 2012, Indian Criminal Justice system.

I. INTRODUCTION

Sexual abuses represent a grave violation of fundamental human rights, inflicting irreparable harm on individuals and diminishing their dignity. These abhorrent acts often stem from perverse motives intertwined with hatred, intending to inflict pain and degradation upon the victims. They are driven by an insatiable urge for personal gratification, disregarding the well-being of others.

Child sexual abuse is a heinous crime that devastate the lives of countless children in India. It is, in particular, exacts both immediate and enduring damage, leading to a myriad of physical and psychological consequences. Victims often suffer from a range of afflictions including depression, post-traumatic stress disorder, diminished self-esteem, and anxiety disorders, among others. Studies have shown that a significant portion of survivors of abuse are at heightened risk of encountering behavioral issues in the future, such as engaging in criminal behavior, experiencing teenage pregnancy, substance abuse, and enduring mental health challenges.

The protection against child sexual abuse reflects evolving societal attitudes towards children's rights and child welfare. This evolution can be traced through legal reforms, shifts in public awareness, and changes in social services. It's a journey from a time when children were scarcely recognized as having rights of their own, to the current era where child protection is a central concern of both national laws and international human rights efforts.

This present study will root about the effectiveness of India's criminal justice system in addressing these horrific acts. It helps to understand the importance of analyzing the effectiveness of the criminal justice system in dealing with child sexual abuse.

II. HISTORICAL BACKGROUND

Protection of Children from Sexual Offences Act, 2012 (POCSO) was enacted to provide legal framework to protect the children from offences of sexual assault, sexual harassment and pornography and provide for establishment special courts for trial such offences and for matters connected herewith or incidental thereto.¹ It is one of the milestones in the history of Indian criminal Justice system to protect the children from all kinds of abuses. The historical development up to this level reached through various processes.

Statista Research Department highlighted in its December 19, 2023 newsletter that India boasts a staggering population of more than 444 million children, solidifying its position as one of the global leaders in terms of child and adolescent demographics. The constitution of India guarantees fundamental rights to all children implemented by the states through directive principles of state policy. It guides the states to keep children safe, protect them from abuse, and afford them opportunities that foster physical, social, and mental wellbeing.² The protection of children by the state is ensured to Indian citizens through a broad interpretation of Art. 21 of the Constitution of India, along with India's commitment as a signatory to the UN Convention on the Rights of the Child. Prior to the enactment of the POCSO Act, the Goa Children's Act 2003, stood as the sole dedicated legislation addressing child abuse. The Act protects child from abuse, child labour, child trafficking, commercial sexual exploitation and dedication and it puts a ban on corporal punishment.³

Pre-independent India had limited legal provisions specifically addressing child sexual exploitation. However customary laws and societal norms often provided some protection to children. After independence, the Indian legal system began to evolve, with the enactment of various laws aimed at protecting children's rights and welfare.⁴

III. METHODOLOGY

This research paper follows a doctrinal research methodology, using secondary data sources for its foundation. It involves an extensive review of various scholarly articles, case laws, and legislative texts available through legal databases and websites, such as Google Scholar, online legal journals, and collections of Bare Acts. Additionally, electronic books and other legal resources were consulted to enrich the study.

Constitutional Provisions Related to Child Sexual Abuse

Dr. Rega Surya Rao says⁵ Law is an instrument, which regulates human behaviour and ensures peace and security in the society. Constitution in any country regulates the affairs between the individuals and state.. Constitution is the fundamental law of the land. The supreme law of our land gives the following protection to children from sexual abuses.

Art.14 — (Equality before law) “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”⁶. Every Indian citizens, including children, have the right to equality. Although children are vulnerable due to their age and dependency, they are afforded equal legal protection and rights as any other citizen.

Article 15(3) – (Right against Discrimination):” Nothing in this article shall prevent the State from making any special provision for women and children.”⁷ This article empowers the State to enact special provisions of women and children without being obstructed. These measures are aimed at providing additional support and safeguards for their benefit, recognized not as bias but as positive discrimination.

¹ The Protection Of Children From Sexual Offences Act, 2012, No.32, Acts of Parliament, 2012,(India).

² Statista Research Department, 19,Dec 2023 (last visited- 29.03.2024).

³ The Goa Children's Act, 2003 , 18, Legislative Assembly of Goa 2003 (India).

⁴ Chat GPT.

⁵ 2 Dr.REGA SURYA RAO, Lectures on Constitutional Law, Asia Law House Hyderabad, 9

⁶ INDIA CONST art. 14.

⁷ INDIA CONST art. 15, cl. 3.

Article 21- (Protection of life and personal liberty). —“No person shall be deprived of his life or personal liberty except according to procedure established by law”.⁸ Even the child has the right and liberty to have a dignified life.

Article 39 – (Certain principles of policy to be followed by the State).—“The State shall, in particular, direct its policy towards securing- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength, [(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.]”⁹. It shows that the State is mandated to provide opportunities and facilities for children to develop in a healthy manner, preserving their freedom and dignity. Additionally, it emphasizes the need to shield children from exploitation and abandonment, both morally and materially. This involves creating an environment where childhood and youth are protected, allowing them to grow and thrive without being subjected to harmful influences or neglect.

Relevant sections under Indian Penal Code

It is seen in Indian Penal Code, 1860 and its amendments provide proper legal support to children from sexual abuses. Especially the following sections acts as child friendly.

- Section 375 (Rape) & Section 376 (Punishment for rape)
- Section 354¹⁰ (Assault or criminal force to women with intent to outrage her modesty. While this section primarily addresses assault or use of criminal force to outrage the modesty of a woman, it can be invoked in cases involving sexual harassment or molestation of a child.
- Section 354 A¹¹ (Sexual Harassment) Added after POCSO Act. This section addresses sexual harassment and prescribes punishment for making sexually colored remarks, advances, or any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.
- Section 345 D¹² (Stalking) Added after POCSO Act. It, including cyberstalking, is punishable under this section. It often relevant in cases where a child is being stalked with sexual intent.
- Section 377¹³ (Unnatural offences) It criminalizes unnatural sexual acts, including those involving minors. Although primarily associated with consensual homosexual acts, it can also apply in cases of sexual abuse against children.
- Section 509¹⁴ (Word, gesture or act intended to insult the modesty of a woman): It addresses any word, gesture, or act intended to insult the modesty of a woman. It can be invoked in cases involving verbal or non-verbal sexual harassment of a child.

Case laws before POCSO Act, 2012

Ghanashyam Misra vs The State, 1956¹⁵

In 1956, the Orissa High Court, recognized that an offence was committed by a person in a position of trust or authority for the child, enhanced the sentence of Ghanashyam Misra, a school teacher who raped a 10 year old girl in the school premises. “The judgement says “ The overall situation is one of exacerbating conditions. The guilty party is a 39-year-old adult, and the victim is a 10-year-old child. Because of his position, he forced her to enter the classroom and carried out a horrendous display that might have ended with the girl’s life being utterly destroyed. In addition to

⁸INDIA CONST art. 21.

⁹INDIA CONST art. 39

¹⁰SN Mishra, Indian Penal Code, 23rd Ed., 2023

¹¹SN Mishra, Indian Penal Code, 23rd Ed., 2023

¹²SN Mishra, Indian Penal Code, 23rd Ed., 2023

¹³SN Mishra, Indian Penal Code, 23rd Ed., 2023

¹⁴SN Mishra, Indian Penal Code, 23rd Ed., 2023

¹⁵Ghanashyam Misra vs The state, AIR 1957 Ori 78

enhancing the sentence to seven years, the court also mandated that the accused provide restitution to the child's father.”

State Of Andhra Pradesh vs Gangula Satya Murthy, 1996¹⁶

A tragic case involving the rape and murder of a sixteen-year-old girl resulted in the accused being convicted by the Sessions Court and sentenced to life imprisonment along with seven years of rigorous imprisonment. However, upon appeal, the High Court of Andhra Pradesh acquitted the accused, citing minor contradictions and discrepancies. The State of Andhra Pradesh challenged this acquittal, arguing that it was erroneous and lacked sensitivity. The court emphasized the importance of considering the broader probabilities of the case and cautioned against being swayed by insignificant discrepancies in witness statements that do not undermine the allegations of rape.

Vishaka & Ors. v State of Rajasthan

The landmark case of Vishaka & Ors. v State of Rajasthan represents a significant milestone in Indian criminal justice system, particularly in addressing the issue of sexual harassment of women in the workplace. The Supreme Court of India issued the Vishaka guidelines, which are renowned for their comprehensive framework for preventing and addressing sexual harassment, making them obligatory for both private and public sector entities. “The court held that sexual harassment at the workplace was indeed violative of the fundamental rights guaranteed under Articles 14, 15, 19(1)(g) and 21 of the Constitution of India. The court also defined sexual harassment as unwelcome “sexually determined behaviour.”¹⁷

3.1 Vishakha guidelines

The court issued various guidelines to prevent sexual harassment in the workplace known as the Vishakha Guidelines. The provisions of the Vishakha Guidelines are as follows:

1. Employers, including those in the public and private sectors, bear the responsibility to prevent sexual harassment within the workplace.
2. Sexual harassment encompasses various behaviors such as physical contact, demands for sexual favors, sexually suggestive comments, displaying pornography
3. Employers are mandated to establish effective mechanisms for addressing and prosecuting sexual offenses
4. Victims of sexual harassment must not face discrimination for reporting incidents.
5. Incidents of sexual harassment should be promptly reported, documented, and addressed.
6. Incidents of sexual harassment should be promptly reported, documented, and addressed.
7. Perpetrators of sexual harassment will face appropriate consequences, including criminal prosecution and disciplinary action.
8. Employers must form a complaints committee dedicated to addressing sexual harassment complaints within a specified timeframe.
9. The complaints committee should be led by a female chairperson, with at least half of its members being women
10. Employers are obligated to educate employees about the Vishakha guidelines

The Sexual Harassment of Women at Work (Prevention, Prohibition, and Redressal) Act, 2013 replaced these guidelines.

Protection of Children from Sexual Offences Act, 2012 (POCSO Act, 2012)

In India, the Protection of Children from Sexual Offences (POCSO) Act of 2012 is the only legislation addressing child sexual abuse. The main salient feature of the act is that Victim's identity to be kept confidential: Section 23 of the POCSO Act specifies the media procedure and imposes the duty to maintain the victim's (child) identity unless the Special Court has allowed the disclosure. It follows some general principles such as

¹⁶<https://indiankanoon.org/doc/134531/>

¹⁷Rajeswari Rajesh , Case Summary: Vishaka&Ors v. State of Rajasthan &Ors (1997) | Vishaka Guidelines | Sexual harassment of women in the workplace by 20 Mar 2023 9:01 PM

1. **Dignity and Compassion:** The act underscores the imperative to treat children with dignity and compassion throughout the legal proceedings, recognizing their vulnerability and the need for sensitivity.
2. **Right to Life and Protection:** Article 21 of the Indian Constitution guarantees the right to life, which extends to protecting children from societal evils and ensuring their upbringing in a safe environment free from harm.
3. **Non-Discrimination:** Children have the right to be free from discrimination based on factors such as sex, religion, or culture. Investigative and court procedures must uphold principles of fairness and impartiality.
4. **Preventive Measures:** Recognizing the immaturity of children, the POCSO Act emphasizes the importance of providing them with education and training to prevent abuse, empowering them to distinguish between right and wrong.
5. **Right to Information:** Children involved in legal proceedings under the POCSO Act have the right to be informed about the procedures being undertaken for the prosecution of the accused, ensuring transparency and understanding.
6. **Right to Privacy:** Provisions like Section 23 aim to safeguard the privacy of child victims by maintaining confidentiality throughout legal proceedings, prioritizing the best interests of the child and protecting them from further harm or trauma.

Need of Legislation

Soumya Prakash mentioned in the Article “Sexual Abuse of Children and The Constitution of India”¹⁸ that Child Sexual Abuse is an everyday reality for about half of India’s children. It referred WHO and mentioned that Child sexual abuse occurs when a child is engaged in sexual activities beyond their understanding or ability to consent, or when such activities violate societal norms or legal standards. This abuse involves interactions between a child and an adult, or another child who holds a position of responsibility, trust, or authority due to age or development. The intention behind such interactions is to fulfill the needs of the perpetrator, rather than considering the well-being of the child. Child abuse, especially sexual abuse, remains a deeply hidden issue in India, often surrounded by silence and denial. Despite the prevalence of certain traditional practices that inadvertently contribute to child abuse, there persists a widespread belief that such abuse does not occur in the country. Efforts to establish Special Courts and facilitate child-friendly trials are commendable, yet their effectiveness remains unproven. Therefore the legislation should ensure that both child offenders and victims receive appropriate treatment within the legal system. It highlighted that the Act falls in short in addressing sexual abuse involving kidnapping and abduction leaving reliance on the Indian Penal Code for prosecution. Another Article¹⁹ came in the journal of Family Medicine and Primary care shows that

Children are afforded a unique status within the legal frame work. The law typically operates on the assumption that minors lack the cognitive capacity to make decisions for their own welfare or to take care of themselves. As a result, the responsibility to make decisions on behalf of a child usually falls to the child’s parents, legal guardians, or custodians. This underscores the imperative to protect children’s rights and shield them from abuse, a duty that falls on everyone in the society. After studying various acts it explains that child abuse is a very serious charge, one that can not only result in criminal or civil sanctions but can also lead to social exclusion and loss of reputation. Even though there are many acts and laws still the crimes continue because of the lack of sexual education at home and in schools, or due to the unawareness of the severity of the punishment or the overconfidence of the abuser that this may go unreported due to the consequences that follow to the victim and their family. Thus, many an abuser goes scot-free. And concluded while referring Child Welfare Committee because a child who is abused is more likely to abuse others as an adult so that

¹⁸ Soumya Prakash, Sexual Abuse of Children and The Constitution of India, ISSN: 2321-3787, Issue - RLR Volume I Issue II (2024).

¹⁹Theertha Dinesh, AmbiliAyilliath, Rena Ephraim, and RamneshParikkal, Laws of child abuse in Indian perspective: A review, J Family Med Prim Care. 2023 May; 12(5): 856–862.

violence is passed down from one generation to the next. It is therefore critical to break this cycle of violence, and in so doing create positive multi-generational impacts. Preventing child maltreatment, before it starts, is possible and requires a multi sectorial approach. Effective preventive approaches include supporting parents and teaching positive parenting skills and by giving awareness to children and teachers about sexual abuse.

The POCSO Act provides a broad and inclusive definition of sexual abuse, broadening the spectrum and categorization of sexual offenses. It mandates the reporting of such abuse and outlines specific protocols for the examination of victims. It is imperative for pediatricians and health care providers to develop the requisite skills for the clinical assessment of child sexual abuse, along with its prevention, management, and mandatory reporting. While the POCSO Act stipulates that the statement of the affected child should be recorded by a female sub-inspector at the child's preferred location, such as their residence, this requirement becomes challenging to fulfill due to the stark underrepresentation of women in the police force, currently standing at only 10%. Moreover, numerous police stations lack adequate female staff members, further complicating compliance with this provision.

The following are the limitations of implementation of POCSO Act

During the trial stage

- (a) Special Courts are not established in all districts, leading to accessibility issues.
 - (b) Special Public Prosecutors for these courts are lacking, hindering effective prosecution.
 - (c) Timelines specified by the Act are often not adhered to, resulting in delays and prolonged legal proceedings.
2. **At the Post- trial stage:** Final compensation may be addressed in sentence orders, but interim compensation is frequently overlooked in special Court's rulings, causing delays in disbursal
3. **At the Post- trial Stage:** Hurdles in Implementation:
- (a) Designation of Special Courts progresses slowly, impeding timely justice delivery.
 - (b) Investigation and filing of charge-sheets encounter delays, prolonging legal proceedings.
 - (c) Support persons for child victims are not consistently appointed, affecting their access to assistance and justice.
 - (d) POCSO cases face delays in disposal, further exacerbating the plight of victims and their families

IV. CONCLUSION

The issue of child sexual abuse in India is a grave violation of fundamental human rights, inflicting irreparable harm on victims and diminishing their dignity. Despite legislative efforts such as the Protection of Children from Sexual Offences (POCSO) Act of 2012, there are still significant challenges in addressing this issue effectively within the criminal justice system.

Historically India has progressed from limited legal provisions to comprehensive legislation like the POCSO Act, reflecting evolving societal attitudes towards children's rights and welfare. Constitutional provisions such as Articles 14, 15(3), 21, and 39 emphasize the protection and well-being of children, laying the foundation for legal frameworks aimed at safeguarding them from abuse.

The Indian Penal Code (IPC) and subsequent amendments provide legal support against child sexual abuse through sections like 375 (Rape), 354 (Assault to outrage modesty), and 377 (Unnatural offences). Additionally, landmark cases before the enactment of the POCSO Act, such as *Ghanashyam Misra vs. The State and Vishaka & Ors. v State of Rajasthan*, have contributed to shaping legal discourse and establishing precedents for addressing sexual offenses.

The POCSO Act represents a significant milestone in combating child sexual abuse by providing a comprehensive legal framework. It emphasizes the confidentiality of victims, their dignity, and compassion throughout legal proceedings. However, several limitations in its implementation persist, including accessibility issues with Special Courts, delays in trial proceedings, and hurdles in post-trial stages such as compensation disbursal and support for victims.

Efforts address child sexual abuse require a multi-sectoral approach involving not only legislative measures but also education, awareness, and support services. Preventive strategies must focus on supporting parents, teaching positive parenting skills, and raising awareness among children and educators about sexual abuse.

Recommendations and Suggestions

- After conducting a thorough analysis of child sexual abuse in India and evaluating the performance of the criminal justice system in addressing this issue, the following recommendations and suggestions emerge

Strengthening the Implementation of POCSO Act:

- Ensure the establishment of Special Courts in all districts and appoint Special Public Prosecutors to ensure efficient prosecution.
- Adhere to timelines specified by the POCSO Act to prevent delays and expedite legal proceedings.
- Provide adequate resources and support for the investigation and filing of charge-sheets to avoid prolonged legal processes.

Enhancing Support Services:

- Ensure consistent appointment of support persons for child victims to facilitate their access to assistance and justice.
- Improve accessibility and availability of support services, including counseling and rehabilitation, for victims and their families.

Increasing Awareness and Education:

- Implement comprehensive sexual education programs in schools to empower children with knowledge and skills to identify and report sexual abuse.
- Conduct awareness campaigns targeting parents, educators, and communities to promote a culture of reporting and addressing child sexual abuse.

Expanding Female Representative in Law Enforcement:

- Increase recruitment and representation of women in the police force to facilitate compliance with provisions such as recording the victim's statement by a female sub-inspectors.

Continuous Training and Capacity Building:

- Provide regular training and capacity-building programs for law enforcement officials, legal professionals, healthcare providers, and other stakeholders involved in handling child sexual abuse cases.

Victim Centered Approach :

- Adopt a victim-centered approach in addressing child sexual abuse, prioritizing the well-being, dignity, and confidentiality of victims throughout legal proceedings

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