



The protection of children from sexual offences act, 2012: An analysis on legislative framework

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Abstract

Sexual offences on children are a reprehensible criminal act and are globally prevalent in all societies. Children are soft targets of sexual violence and therefore are extremely vulnerable. India has hence adopted the Protection of Children from Sexual Offences Act (POCSO) in 2012. It is a comprehensive law on sexual abuse, which expands the scope and range of forms of sexual offences, makes reporting of abuse mandatory and defines guidelines for the examination of victims. It was the first time in India that adult and child sexual offences were demarcated, highlighting the significant markers for identifying abuse among children. As per Crime in India report, published by the National Crime Records Bureau, reporting of crime against children has steadily shown an increase against children especially child sexual abuse. The purpose of the article is to provide an overview of POCSO Act and intends to explain the provisions attached to the Act. The article also addresses about the relevance of the Act as well as its limitations also. A brief summary about the punishment under the Act is also discussed here.

Keywords: POCSO act, children, crime, child sexual abuse

1. Introduction

‘Safety and security don’t just happen; they are the result of collective consensus and public investment. We owe our children, the most vulnerable citizens in our society, a life free of violence and fear’
Nelson Mandela

India has the largest child population in the world. The health and security of the country’s children is integral to any vision for its progress and development. Among the multiple psychosocial difficulties that concern children, child sexual abuse is a crime that has been rapidly magnifying in our country. The issue pervades among children, from the age of 6 months to all later developing years of the child. As per the 2011 Census of India, there are 472 million children below the age of eighteen including 225 million girls. Nearly 160 million children are in the age group of 0-6 years. They constitute 39% of our population. According to a government study conducted in 2007, it revealed that 53 per cent children had suffered sexual abuse and half of these were at the hands of persons in the position of trust. The Protection of Children from Sexual Offences (POCSO) Act, 2012 was enacted by the Government of India to provide an extremely strong legal framework for the protection of children from offences of sexual assault, sexual harassment and pornography, while safeguarding the interest 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.

- The clause 3 of article 15 of constitution empowers the state to make special provisions for children;
- Whereas the government of India has acceded on 11th Dec 1992 to the Conventions on the rights of the child, adopted by the general assembly of the United Nations, which has prescribed a set of standards to be followed by all state parties in securing the best interest of the child;
- And whereas it is necessary for the proper development for the child that his or her right to privacy and confidentiality be protected and respected by every

person by all means and through all stages of a judicial process involving the child;

- And whereas it is imperative that the law operates in a manner that the best interest and well-being of the child are regarded as being of paramount importance at every stage, to ensure the healthy, physical, emotional, intellectual and social development of the child;
- And whereas the state parties to the convention on the Rights of the child are requested to undertake all appropriate national, bilateral and multilateral measures to prevent the exploitative use of children in prostitution, pornographic performance or any other unlawful sexual activity;

The National Commission for Protection of Child Rights (NCPCR) has been mandated to monitor the implementation of POCSO Act, 2012. Before 2012, there were no specific laws in India that addressed sexual crimes against children. Sexual offences against children were booked under the Indian Penal Code (IPC). Like many forms of sexual abuse, like showing pornography to children could not be prosecuted; unless there was penetrative sexual assault. There were no provisions that could prosecute sexual offences against boys.

According to Crime in India, 2014 of National Crime Records Bureau (NCRB), crimes committed against children were observed as 20.1 per one lakhs of population of children (up to 18 years of age). A total of 10,854 cases of child rape were reported in the country during 2015 as compared to 13,766 in 2014 accounting for a decrease of 26.8 percent during the year 2015. However, the number of cases of child sexual abuse under the POCSO Act has increased. India has ratified the definition of a child as an individual under the age of 18 years, as per the United Nations Convention on the Rights of Children (UNCRC, 1990) which upholds a child’s right to be protected from abuse and exploitation. The UN Convention on the Rights of the Child (UNCRC) (1989) is the most widely endorsed child rights instrument worldwide,

which was ratified by India (1992) and defines children as all persons up to the age of 18 years.

Defining violence and children protection rights, the Article 19 of UNCRC declares, “States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”. Although the Right to Education Act (RTE) 2009 prohibits physical and mental harassment of children in school, Protection of Children from Sexual Offences Act (2012), POCSO is the primary law that would apply with regard to child sexual abuse. Prior to POCSO sexual offences against children were tried under laws governing adults (such as Section 376 for rape) and there were no special measures addressing the additional vulnerability of a child victim of sexual abuse.

Child Sexual Abuse (CSA) refers to the involvement of a child in any sexual activity

- 1) That the child does not understand
- 2) The child is unable to give informed consent to
- 3) The child is not developmentally prepared for and cannot give consent to; and,
- 4) Which Violates the laws or norms of society

2. Importance of POCSO

The Protection of Children from Sexual Offences Act (POCSO), 2012 strengthens the legal provisions for the protection of children from sexual abuse and exploitation. The Indian Penal Code (IPC) does not differentiate between adult and child victims whereas the POCSO Act specifically deals with sexual offences committed against children. The POCSO Act penalises sexual offences committed against both male and female child victims whereas the IPC does not take into account rape committed on a male child. The POCSO Act provides for the establishment of Special Courts for trial of offences and incorporates child-friendly procedures for reporting, recording of evidence, investigation and trial of offences. Like rape, hitherto, including sexual offences against children were dealt under IPC but a large number of offences against children were not adequately addressed by the existing laws. Such offences against children needed to be defined explicitly and countered through adequate penalties as effective deterrence. Therefore, to deal with such sexual offences against children, the Government brought in a special law “The Protection of Children from Sexual Offences Act, 2012”. The Act came into force with effect from 14th November, 2012 along with the Rules framed there under. This Act provide for award of compensation, including interim compensation, to a child victim on the basis of criteria such as loss of education or employment opportunities, as well as consequences suffered as a result of the abuse such as disease, disability and pregnancy. The Act also provides for conditions of medical examination of a child in respect of whom any offence has been committed. Similarly, the Act also provides specifically certain parameters of reporting and restraint for media.

3. Child Sexual Offences and Punishments

The POCSO Act defines a child as anyone who is below 18 years of age and provides protection to all children below the age of 18 from the offence and also provides for stringent punishment, which has been graded as per the gravity of the

offence. The national policy for children, 2013 mandates the state to “create a caring, protective and safe environment for all children, to reduce their vulnerability in all situations and to keep them safe at all places, especially public spaces”. The 12th 5-year plan (2011–2016) of the Ministry of Women and Child Development has also emphasized on the need for strict preventive measures for child abuse.

The sexual offences under this Act includes actual or attempted penetrative sexual intercourse with a child and also non penetrative sexual activity like rubbing the penis between the child’s thigh or genitals. Fondling of child’s sexual parts and oral sex; the adult showing his or her private parts and also exploitive use of child in pornography or showing pornography comes under the offences of this Act. The offences like letting of child to watch or hear an act of sexual intercourse and inappropriate watching a child undress or using the bathroom is punishable under POCSO Act. Defining child as any person below the age of 18 years, POCSO Act, 2012 enumerates provisions for punishing varieties of child sexual abuse. They are discussed herein below

- Penetrative sexual assault is punishable with imprisonment of minimum 7 years extendable up to life imprisonment along with fine and Aggravated penetrative sexual assault is punishable with imprisonment of minimum 10 years extendable to life imprisonment along with fine.
- Sexual assault is punishable with imprisonment of 3 years extendable up to 5 years along with fine.
- Aggravated sexual assault is punishable with a term of 5 years extendable up to 7 years along with fine.
- Sexual harassment is made punishable with an imprisonment for a term of up to 3 years along with fine. Sexual harassment, here, includes utterances of words or sounds, making gesture, exhibiting object or part of body to the child, making child exhibit his body or part of body, showing pictures or videos for pornographic purposes to the child, stalking the child, enticing child for pornographic purpose.
- Using child for pornographic purposes is punishable with up to 5 years imprisonment along with fine and up to 7 years imprisonment for second/ subsequent conviction and Storing pornographic material involving a child for commercial purposes is punishable with up to 3 years imprisonment/fine/both (POCSO Act, 2012).

4. Limitations of Act

The Act does not mention any rules of reporting or exemption from reporting when a patient reports to a therapist or mental health professional / psychiatrist about abuse or sexual assaults that happened in their childhood, when they come for therapy years later in life.

Protection of people who report the abuse, very often they will be in grave danger. E.g. when a teacher reports that the student is abused by a family member, the doctor or the mental health professionals dealing with the case also come across the same difficulty. No protective measures are offered for the person who reports abuse. Obligation to report, without providing protection for the one who reports, including children other than the victim, can be dangerous (Sagar R, 2014) ^[10].

The borderline traits which may be seen among adolescents are not a considered aspect in the phase of inquiry and prosecution of a case of child sex abuse

Specifications regarding adolescents who have be below 18 and caught in sexual experimentation consensually are not covered in the Act. adolescents in schools and colleges engage in consensual sexual acts and the parents of a particular adolescent may be implicate another adolescent by filing a complaint under the provisions of the Act. The Act does mention that if adolescents are found guilty under act, then the Juvenile Justice Act (2000) would apply to them (Soumya B T *et al*, 2016) ^[14].

The added challenge to the safety of female victims in the process of investigation is the full time non availability of the female officers which also falls short of meeting the legal requirements for investigation (Lodha; De Sousa, 2017).

Psychiatric treatment in cases of sexual or behavioural disorders may help the abusers learn about their maladaptive behaviours and thus, take to corrective means in the coming future.

5. Conclusions

POCSO is a step in the right direction since it has a considered approach to child sexual abuse including a nuanced approach to the types and intensities of sexual violation. But a Multi-Sector approach to the problem will be conducive to the justice delivery process, minimize the risks of health problems, enhance the recovery of the child and prevent further trauma. It is the responsibility of each and everyone concerned to take the necessary preventive steps towards ensuring child protection and safety. India has made some advancement in the recent decade at policy and legislation level. However, we are still far from providing effective state protection to the vulnerable children and ensuring child safety. It is important to devise and implement the culturally sensitive and evidence-based prevention programs, aimed at all levels from individual to family, society, and institutes. Early detection, quick identification and punishing the perpetrator, quick intervention and supportive environment at the schools and families need to be nurtured.

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