

Review on the Implication and the challenges confronted by the Protection of Children from Sexual Offences Act ,2012 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. It is the paradox of present era that with the advancement of society the problem of child sexual abuse has been increased and become a global problem. Child sexual abuse is also 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. The Indian Ministry of Child and Women Development enacted a new legislation in the year 2012 the light of the growing cases of Child Sexual abuse. The Act aimed at bringing in changes and amendments in the existing laws and thus expanding the horizon of the Laws relating to sexual assault in India whereas to include within its ambit sexual assault against children as well. In furtherance to its objective the act also brought in several child friendly mechanism of trial as a reformative measure. However, there were also certain loopholes those were present in the Act. With this paper the researchers aims to analysis the provisions of POCSO Act as well as throw light on the loopholes or lacunas, which are creating the hurdle in the proper implementation of POCSO Act. 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. Child sexual abuse is a worldwide phenomenon, and India is not an exception

Keywords: child, Sexual abuse, POCSO Act, sexual offences.

I .INTRODUCTION

“A child is a beam of sunlight from the Infinite and Eternal, with possibilities of virtue and vice, but as yet unstained.”¹

A child is the most pure and innocent creation of God, 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 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.

Sexual offences against children or Child sexual abuse is an epidemic, one that happens everywhere and is increasing profusely with each passing day, without any barriers of race, caste, sex, nationality, language or religion. Whether known or unknown, there is at least one child sexual abuse in our surrounding, resulting in behavioural, cognitive, emotional and developmental difficulties. The forms of child sexual abuse range from sexual assault to voyeurism, pornography and several other forms. 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 172nd 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.

Before the POCSO ACT, 2012 in India,

- 1) No focused legal approach towards child sexual abuse cases;
- 2) No specific laws for laying down procedure for dealing with victims in a sensitive manner during investigation and trial proceedings;

¹ Lyman Abbott

3) Many forms of sexual abuse were not defined as crime in the existing laws.

Under the pre-POCSO Act scenario, the burden of proof was on victims thereby resulting in fear in the mind of child victims and families and making it difficult for them to report the offence and establish the guilt of the accused.

II. ANALYSIS ON THE POCSO ACT, 2012

The POCSO Act, 2012 is a comprehensive law to provide for the protection of children from the offences of sexual assault, sexual harassment and pornography, while safeguarding the interests 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 Preamble of the said Act re-iterates the basic rights that must be guaranteed to children adhering to the Convention on the Rights of the Child. These include the protection of the right to privacy and confidentiality of the child during the judicial process. 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.

Thus 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

For the first time. The Act defines a child as any person below eighteen years of age, and regards the best of interests of the child as being of paramount importance at every stage, to ensure the healthy physical, emotional, intellectual and social development of the child.

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.

III .DISCUSSION

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 -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.

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.

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.

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.

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.

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.

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.

IV .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.

The Protection of Children from Sexual Offences (POCSO) Act provides strong legal protection for children who are victims of sexual offences. This special law is a powerful weapon against perpetrators of sexual offences against children and punishes such perpetrators more severely.

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. Sexual offence scars a child's psyche, resulting in cognitive impairment, mental agony, and depression. Undoubtedly, POCSO Act encapsulates the provisions for protecting children from sexual assault and child pornography. After the amendment in the year 2019, the punishment for sexual offenses against children has become more stringent. Still, India has a long way to go to curb sexual offenses against children.

The Protection of Children from Sexual Offences (POCSO) Act is a crucial legislation in India that provides legal protection to children from sexual abuse and exploitation. The Act recognizes the vulnerability of children and the need for special protection measures to prevent sexual offences. However, there is still a need for greater awareness about the Act and its provisions and for more effective implementation of the Act. For the betterment of future of our Nation, we have to work together, we have to work for to provide, safe and secure environment for our children and protect them from all forms of sexual abuse and exploitation.

As **“Every child comes with the message that God is not yet discouraged of man.”**,rightly said by the “Rabindranath Tagore”

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