



A LEGAL STUDY ON CHILD SEXUAL ABUSE AND POSCO ACT: INDIAN OUTLOOK

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ABSTRACT

This paper seeks to examine the application of Indian Criminal Law to the cases of sexual offences involving children. Child sexual abuse is increasing at an alarming rate all over the world. India is among the top five countries of the world facing highest rate of sexual offences involving children. Yet, the criminal law in India is inadequate in many respects to deal with such a sensitive and serious issue. The researcher has specifically analyzed IPC Section 375, 376, 377, 354, 509, the Indian Evidence Act and the Protection of Children from Sexual Offences Act, 2012. The researcher has also done a comparative analysis of laws of different countries dealing with sexual offences against children.

KEYWORDS : Child Sexual Abuse, POSCO Act and Implementation of Act

OBJECTIVES OF THE STUDY

- Study the rules and procedures involved in the Criminal Justice process.
- Explains the law on child sexual abuse and its implication.
- Study the investigation process and collection of evidence involving agencies like Police, doctors and courts

INTRODUCTION

India is home to 430 million children which is approximately includes one in every five children below the age of 18 years, in the world. They face staggering challenges from the day they are born. Malnutrition, illiteracy, trafficking, forced labor, drug abuse, sexual abuse pornography etc. are not uncommon among the children in India. The paper particularly deals with the problem of child sexual abuse in India. Child sexual abuse includes physical or psychological maltreatment of a child usually by a person who is in a position of trust and confidence in relation to the child. The person uses the child for sexual stimulation or for sexual gratification. National study undertaken by the Ministry of Women and child development defined 'sexual assault' as making the child fondle with his/her private parts or making the child exhibit private body parts and being photographed in the nude. However, the report did not exhibit the true reality because most of the cases go unreported because of the stigma attached to it in our society.

The application of provisions dealing with adults created numerous problems when applied to cases of child sexual abuse. Therefore, to solve these problems parliament enacted a special legislation POSCO Act in May 2012. Under this law, all forms of child sexual abuses are specific offences with specific punishments for the perpetrators. Earlier, there was no law covering any non- penetrative sexual act committed against boys which is now clearly defined. The new law has also laid down certain guidelines for police and court authorities to deal with the victims. Special child courts are also setup to deal with the issue however the effective application of these guidelines still remains a point of concern. The problem of implementation has highly hampered the protection of children from sexual abuse in the country. Furthermore, National Commission for the Protection of Child Rights which was established as an independent body in 2007 which ensures that all such laws, policies, and programmes, are in agreement with the child rights enshrined in the Constitution of India and the UN Convention on the Rights of the Child. The Commission has also been assigned the task of overseeing the implementation of the POSCO Act.

POCSO which was enacted in 2012 is gender neutral, makes it mandatory for the victims to report the abuse, lists all kind of

sexual offences against children and provides for their protection during the judicial process. Some of the mandated laid down under POCSO are;

- The police officers in every circumstance must bring a case to the attention of the Child Welfare Committee within 24 hours of receiving a report.
- The police officers must also be in civil clothes while recording the minor's statement so that the child does not get intimidated.
- The statement of the minor must be recorded in presence of the person whom he/she trusts.
- The medical examination of the child for the collection of forensic evidence should only be conducted by a lady doctor in presence of a person that the child trusts.

Punishment under Act

- Penetrative sexual assault: The penetration can either be penile-vaginal, penile-oral, penile-urethral or penile-anal, or object penetration. Section 4 of the act provides for punishment not less than 7 years which may extend to life imprisonment and a fine.
- Aggravated penetrative sexual assault committed by a person of trust or authority: 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.
- Non-penetrative sexual assault committed with a sexual intent: Non penetrative sexual assault includes touching the vagina, penis, anus or breast of the child or asking the child to touch the vagina, penis, anus or breast of the perpetrator or any other person or any other act done with sexual intention. In such cases, Section 10 provides for punishment for not less than 3 years which may extend to 5 years and a fine.
- Aggravated non-penetrative sexual assault done by a person of trust and authority: Section 10 lays down the punishment which should not be less than 5 years and it may also extend to 7 years, and a fine (Section 10).
- Sexual harassment: Sexual harassment is caused by indecent and sexually explicit remarks, emails or telephone calls; taunting, jeering, or posing a request for sexual favor. The punishment is 3 years and a fine (Section 12).
- Using a minor for pornographic purposes: It includes producing or distributing any pornographic content via print or electronically. The punishment is 5 years and a fine and in case of second conviction, the punishment would be 7 years and a fine (Section 14 (1))

Judicial Declarations

Sakshi v UOI

This was the case filed by an NGO called 'Sakshi' raising concern about the dramatic increase of sexual violence against women and children and the implementation of the provisions of IPC namely 377, 375/376 and 354. The petitioners raised the problem of confining rape cases only to penile-vaginal penetration which has now been amended by the 2013 Criminal Law amendment as it was violative of Article 21 of the Constitution. A number of statistical data has revealed that children are often abused in manner other than the penile/vaginal penetration. It is often by means of penile/anal penetration, penile/oral penetration, finger/vaginal penetration or object/vaginal penetration. Also, putting these cases within the ambit of Section 377 would be highly unjust. Petitioners had put emphasis on Article 15 (3) of the Constitution which provides for special provisions for women and children which necessarily implies adequate provisions.

Bachpan Bachao Andolan v UOI

A PIL was filed in the Supreme Court on the wake of serious violations of child rights. The petition was filed specifically to discourage child trafficking from circuses all over India. Children are very frequently sexually abused at these places, which is a violation of Juvenile Justice Act and other international treaties and covenants.

Nishu v Commissioner of Police, Delhi and ors

Petitioner was a minor girl, kidnapped and repeatedly raped by a group of nine people. One among the nine people was a police constable In Haryana Police. The prosecution failed to present any medical reports or a copy of the FIR under Section 376D of the IPC and relevant provisions of the POSCO, Act. The Court in this case said that it would be inappropriate to exercise its jurisdiction under Article 32 as the case has been investigated by the Haryana Police.

Avinash v State of Karnataka

The appellant kidnapped the victim and had multiple sexual intercourses with her. A charge sheet was filed against the victim under Section 366 of the IPC and Section 4 of the POSCO, Act. The honorable High Court emphasized on the age of victim as it is the major deciding factor and the court set aside the conviction in support of getting reliable evidence and disposing the case in accordance with law.

The courts have showed an inclination towards giving maximum punishment to the convicts under Section 12 of the POSCO Act, 2012 to give strong message to society because crimes of child sexual abuse are on continuous increase. However, that is possible only when reliable evidences without any distortion are presented by the Police and the medical experts. In a case before the Delhi district court where the accused was charged with Section 8, 12 and 11 of the POSCO Act and Section 506 of the IPC for misbehaving with the victim, the court said though proper evidences are not disclosed by the investigative agency, the testimony of the child victim inspired trust and confidence

CONCLUSION

After thorough analysis of Indian Criminal law, judicial decisions and the laws of other countries, it could be concluded that the present law is inadequate in many respects. Furthermore, when Law is clear at certain instances, the guidelines laid down are not strictly implemented by the Police, doctors and the courts which seriously hamper justice for the child victim. The researcher appeals for further reforms in the rules and procedure under law and their strict implementation for furthering the interest of the child victims. The Government can also accommodate some of the principles from the laws of the other countries which are more children friendly and work towards the advancement of justice.

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