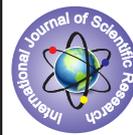


Protection of Children from Sexual Offences: Decoding the Law.



Law

KEYWORDS: Child, offence, sexual abuse, IPC, POCSO.

Dr. Ashutosh Bairagi

Assistant Professor of Law (Senior), Shri Vaishnav Institute of Law, Indore (M.P.)

ABSTRACT

The child sexual abuse (CSA) which has reached epidemic proportion is an under-reported offence in India. Historically, child sexual abuse (CSA) has been a hidden problem in India, largely ignored in public discourse and by the criminal justice system. Recognizing the vulnerability of children, short of provisions of law for the sexual crime against children and realizing the trauma with which the society has to suffer, The POCSO Act was enacted to fill in the shoes of existing law – Indian Penal Code as it was not enough to address the sexual offences and the pre-existing laws have no provision to deal with sexual abuse of male children. This paper highlights the CSA as a socio legal problem and presents the statistical data of it. An attempt has been made by author through this paper to underline the distinguishing features of POCSO Act with the suggestions to curb the problem of CSA.

Introduction:

'Childhood should be carefree, playing in the sun; not living a nightmare in the darkness of the soul' - **Dave Pelzer**

Children are terrific—happy, innocent, and free. They can remind us of what is best about ourselves. When they are sexually abused, that happiness is dimmed, sometimes for life.

Child Sexual Abuse Includes Touching and Non-Touching Behaviors:

Touching Behaviors include:

- Touching a child's genitals (penis, testicles, vulva, breasts, or anus) for sexual pleasure or other unnecessary purpose.
- Making a child touch someone else's genitals, or playing sexual ("pants-down") games.
- Putting objects or body parts (like fingers, tongue or a penis) inside the vulva or vagina, in the mouth, or in the anus of a child for sexual pleasure or other unnecessary purpose.

Non Touching Behaviors include:

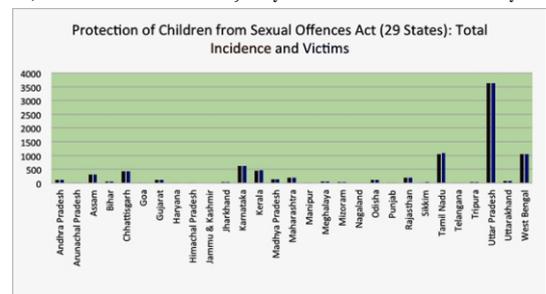
- Showing pornography to a child.
- Exposing a person's genitals to a child.
- Asking children to interact sexually with one another.
- Online enticement of a child for sexual purposes.
- Photographing a child in sexual poses.
- Exposing a child to adult sexual activity in person or through the use of technology.
- Watching a child undress or use the bathroom, often without the child's knowledge (known as voyeurism or being a "Peeping Tom").

Crime involving sexual offences has risen to a dramatic level since last two decades. Such shameful crimes see no gender or age and the children are more vulnerable to such crime because of the obvious reason that they can't stand for themselves. Most of the times they are threatened and sometimes they are unable to understand what mayhem has been done to them.

Growing concerns about female infanticide, child rapes and institutional abuse of children led to the commissioning of the first large scale government sponsored research study to assess the extent and nature of child abuse in India. The study reported widespread emotional, physical, and sexual abuse prevalent in all the states surveyed. While every second child reported emotional abuse, 69 % (n = 12,447) reported physical abuse, and 53 % (n = 12,447) reportedly experienced some form of sexual abuse. Half of sexual abuses reported were committed by "persons known to the child or in a position of trust and responsibility". Girls are more vulnerable to sexual abuse, although boys too reported a high percentage of victimization and are subject to greater social stigma. Child sexual abuse may be committed by anyone, irrespective of age, gender ethnicity or educational/income profile. The victim of the sexual

abuse may also come from any strata of society and may belong to any gender. However, when the abuser takes advantage of other vulnerabilities suffered by the child, such as poverty, migrant status, or disability, the result is a double victimization.

A total of 8,904 cases under 'Protection of Children from Sexual offences Act', 2012 were reported during the year 2014. Uttar Pradesh (3637 cases) and West Bengal (1058 cases) and Tamil Nadu (1,055 cases) have accounted for majority of such cases in the country.



Data source: National Crime Records Bureau Report of 2014.

Child Sexual abuse – Legal articulation

Until 2012, the only sexual offences/abuses against children recognized by the law were covered by four sections of the Indian Penal Code (IPC) not specific to children. The only crimes registered were rape (sexual intercourse without consent—section 376), outraging modesty of a woman or a girls (unspecified acts—section 354), unnatural acts defined as "carnal intercourse against the order of nature with any man, woman or animal" (anal sex, homosexuality or bestiality—section 377) and Insulting the modesty of woman (Section 509).

Consequently, other forms of non-penetrative sexual assaults, harassment and exploitation were not explicitly recognized as crimes and therefore not recorded (assuming they were reported). Because of increased activism around child protection issues in the media and public discourse and the growing instances of sex tourism, pornography, child rape, child trafficking pressurized the Government of India drafted the offences from Children (Prevention) Bill, 2005 and lobby hard for its passage. In 2012, Parliament finally passed the Protection of Children from Sexual Offences Act which has been hailed as a bold step towards the children of our country.

The exclusive features of this act are as follows:

- The Act is progressive in its approach. It is gender-neutral legislation. It defines a child as any individual below 18 yr and provides protection to all children from sexual abuse. It lays down stringent punishments for a range of sexual offences.

It lists all known types of sexual offences towards a minor.

It punishes penetrative sexual assault, aggravated penetrative sexual assault, non-penetrative sexual assault, aggravated non-penetrative sexual assault, sexual harassment, use of minor for pornographic purposes, attempt or abetment of offence and even failure to report an offence, i.e., if there is an apprehension of such offence to be committed, then the same should be immediately reported. Failure to report will attract imprisonment of 6 months or fine or both.

- The Act has made a distinction between sexual assault and aggravated sexual assault, the penalty for the latter more stringent. An offence is treated as 'aggravated' when it is committed by a person who holds a position of trust or authority in the eyes of the child, such as a member of security forces, police officer, public servant, etc.
- POCSO is also forward thinking in many aspects, in that, the definition of sexual harassment includes repeatedly or constantly following, watching or contacting a child either directly, electronically or through other means [section 11(iv)]—thus, covering incidents of child harassment via sexting or sexual cyber bullying.
- Setting up of Special Juvenile Courts and appointment of Special Public Prosecutor.
- The evidence of the child is to be recorded within a period of 30 days. The new Act suggests disposing the case within one year. In the past, it has been observed that the trials took unnecessarily long time to dispose of the matter
- The essence of the Act is that it is more child-friendly while recording of evidence, reporting and during investigation and trial. The minor is not exposed in any way to the accused during the recording of evidence and his identity is not disclosed at any time during the investigation or trial. The minor is not made to repeat his/her testimony in court, and that he/she can give the testimony using a video link. The defense routes all questions through the judge and is not allowed to ask them in an aggressive manner. An interpreter, translator, special educator or any other expert is present in court for the minor's assistance.
- Support system from Police administration. Under this act,
 - the statement of the girl child is to be recorded by a woman police officer who is not below the rank of sub-inspector.
 - The presence of parents and other relatives during medical examination of the victim is allowed under the act.
 - In the case of a victim girl, a medical examination is to be conducted by women doctor.
- This act provides an arrangement for victim child for their special protection and care.
- The act has an implication of the point that the person, who has attempted to commit the crime under the act, is liable for punishment.
- The burden of proof is on the accused just like in rape cases
- The act provides punishment for false accusation as well.
- The Act provides for mandatory reporting of sexual offences against children. A legal duty is cast upon a person who has knowledge that a child has been sexually abused to report the offence. In case of failure to report offence, the person will be punished for up to 6 months imprisonment and/or with fine.

Conclusion & Suggestions:

POCSO 2012 has undoubtedly made a significant contribution to tackling the problem of CSA in India. POCSO Act has played a

noteworthy role by criminalizing a range of unacceptable sexual behaviours that pose a threat to children, the Act criminalizes even watching or collection of pornographic content involving children. It made the reporting of CSA mandatory & sensitized the criminal justice system. It is now for the Centre and State Governments to improvise its implementation by creating effective machinery to check heinous crimes of CSA. Laws dealing with CSA are not inadequate and their better implementation combined with some other measures would definitely save the children from the menace of CSA

Some other probable solutions to tackle the problem of CSA would be:

- In order to prevent secondary traumatization of the CSA victim, instead of questioning the victim on multiple occasions by multiple agencies and in order to strike a balance between obtaining justice for the victim and to cautiously initiate the process of emotional, mental and physical healing and recovery of the child, the police, legal, medical and psychological counselings should be made available at one stop.
- Certainty of punishment needs to be ensured hence focus should be on better prosecuting mechanisms and training of law enforcing agencies. Maximising the extent of CCTV coverage can be one such move.
- Community participation will encourage mutual care and help among neighbours, through residents keeping an eye out for each other's premises.
- School Security Committees (SSCs) can be setup.
- Lastly, there should be introduction of sex and behavioral education in schools which will create more impact than any legislation.
- In the long run focusing on education to build a society of no criminals should be the goal. The ultimate role of law should be to reform the society and not to take revenge.

References:

1. The Protection of Children from Sexual Offences Act (POCSO Act), 2012
2. <http://blogs.lse.ac.uk/southasia/2015/12/18/reviewing-indias-protection-of-children-from-sexual-offences-act-three-years-on/>
3. <https://crimesciencejournal.springeropen.com/articles/10.1186/s40163-015-0037-2>
4. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4557243/>
5. <http://www.satyamevjayate.in/child-sexual-abuse/decoding-pocso.aspx>
6. <http://pib.nic.in/newsite/PrintRelease.aspx?relid=124524>
7. <http://www.vakilno1.com/legalviews/protection-children-sexual-offences-law-says.html>
8. http://www.indialawjournal.org/archives/volume5/issue_3/article3.html