

CHILD SEXUAL ABUSE IN INDIA: THE LAWS AND THE FLAWS- Deepali Padhy¹**Abstract**

We, as humans have the right to live in a safe environment. There is a saying that,

“Children are the future citizens of the country”

But in today’s scenario, the world is carrying with itself a bag of crime. Not only teenagers but also a minor is trapped in such crimes. Talking about Child Sexual Abuse (C.S.A.), in a country like India, where many children are being sexually abused, sexually harassed and even the offenders make the children engage in such wrongful activities, this kind of insanity affects the child’s mental peace and livelihood. Not only children but also parents are nowadays scared to leave their ward/wards to school even. A single act of an accused changes the total structure of society- it may be mental peace or standard of living or education or maybe livelihood. A child is a minor not only by age but also by mind and growth. To stop these kinds of wrongful acts and to punish the accused, in 2012, ‘The Protection of Children from Sexual Offences Act’ or POCSO (Amendment Bill) was enacted to protect children from such offences and crimes.

The main objective of the Act is to protect the children from such criminal offences and ensures the safety and well-being of a child. It deals with a child-friendly procedure. It is a special law to protect children. Other laws deal with criminal suspects but are not applicable for minors/children.

In the *skin-to-skin* judgment, the POCSO Act was misinterpreted and fails to give justice to the child who was trapped in Child Sexual Abuse. The verdict was also criticized by the legal and women’s rights communities, who stated that this judgement is going against the fundamental tenets of criminal jurisprudence in protecting a child victim.

Keywords: Child Sexual Abuse; misconception; POCSO Act, 2012

Introduction

Today, child abuse is a big issue where some children are everyday surviving the pain of being sexually abused. This issue is a brutal crime that has a corrosive influence on our society. For individual's pleasure, they commit such kind of offence with the minors and the people assume that the perpetrators must be strangers, but most of them are acquaintances or the children's family members. Due to this kind of offence, many children are suffering from abnormal

¹BBA LLB (H), Amity University, Kolkata, 2020-2025.

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sexuality. Not only this but it also harm their mental and physical health. This kind of crime is always beyond imagination and the worst act. "Child sex abuse" is a term that implies using a child's presence or body in a forceful and unauthorized manner. There is no category of children who become the victims under this offence because the children living in all the classes, religions, caste, and ethnicities are targeted for this purpose.

According to World Health Organization (WHO)²,

“Child sexual abuse is the involvement of a child in sexual activity that he or she does not fully comprehend, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that violates the laws or social taboos of society”.

Types of Child Sexual Abuse

There are four types of abuse the World Health Organization had categorized into-

- a. *Physical abuse*- When a person physically harms a child intending to hurt him/her in a way of hitting, biting, burning, or scalding, trying to put the child into mental and physical stressed position or slapping, etc. An act that is direct in nature and that causes harm to a child is said to be as abusive physically, or physical abuse.
- b. *Emotional abuse*- Any act done by a person that could cause mental or behavioural or emotional disorder in a child is said to be emotional abuse. Emotional abuse can be caused by teasing, bullying, criticising, locking a child in the room for a longer period. Also, family and domestic violence create a kind of mental disorder in the child's mind.
- c. *Sexual abuse*- Child sexual abuse happens when a person, whether a teenager or an adult or any other person, try to make or involves the child in any sexual activities, is referred to as sexual abuse. It can be done through direct physical contact or showing pornographies to the child or making the child bound to participate in sexual activity.
- d. *Neglect* – When parents do not take care of their children and then the children suffer from child abuse. Also, there must be basic requirements which should be fulfilled like proper and hygienic food for the children, adequate clothing, and health care and safety of environment.

Enactment of Protection of Children from Sexual Offences Act or POCSO (Amendment Bill), 2012

The Protection of Children against Sexual Offences is also known as POCSO Act³. This Act came into force to protect the children from any kind of sexual abuse. This Act came into force

² MED LEG, https://www.who.int/violence_injury_prevention/resources/publications/en/guidelines_chap7.pdf (last visited July,4,2021)

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on November 12, 2012, which was introduced by the Ministry of Women and Child Development. This Act has been specifically formulated to provide justice and protect children from any kind of sexual harassment, sexual offence and pornography that disturbs a child mentally and physically. This is gender-neutral, that it is also can be taken into consideration if the victim is a boy as it recognises that boys can be victims of sexual violence as well. This act throws light on the minority stage of a child. In India, several cases give rise to sexual commitment, sexual harassment and a sexual offence that is mostly related to a child. This Act generally protects the child from any kind of such offences by having relevant provisions, strict punishments, and rules.

The POCSO Act, 2012 is an Act that protects the 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.

Some Important Features of POCSO Act

- a. The first important feature of the Act is gender-neutral. It ensures the development of child health, mentally and physically.
- b. The Act defines a child as any person below the age of eighteen.
- c. In the Act, different forms of sexual abuse are being defined. Like penetrative and non-penetrative assault, as well as pornography and sexual harassment.
- d. Whosoever traffics the children for sexual purposes or activities are punishable under the Act with stringent punishment.
- e. The Act states the reporting of sexual offences as mandatory. If a false complaint is lodged to defame a person, it will be punishable under the Act.
- f. The Act also sets up the procedure of giving justice in a child-friendly manner.

Laws before the POCSO Act was Passed

Before the enactment of the POCSO Act, child sexual abuse was prosecuted under the Indian Penal Code, 1860⁴. The following are the Sections-

- a. Section 375 of I.P.C, 1860- This section deals with "Rape".
- b. Section 354 of I.P.C, 1860- This section deals with "Outraging the modesty of a woman".
- c. Section 377 of I.P.C, 1860- This section deals with "Unnatural offences".

However, the I.P.C. was not adequate to give justice and protect the children due to some loopholes like-

- a. Section 375 of the I.P.C does not protect the male victims or anyone from any kind of sexual acts of penetration except traditional peno-vaginal intercourse.

³The POCSO(Amendment) Act,2012, No. 32, Acts of Parliament,2012(India)

⁴The Indian Penal Code (Amendment)Act,1860, No.45, Acts of Parliament, (1860)

- b. Section 354 of the I.P.C does not talk about the protection of a child, as it states the protection of a woman. Also, not adequate for the protection of males. It does not carry a strong penalty for criminals.
- c. Section 377 of the I.P.C is structured to criminalize sexual abuse of children.

Misconception of the POCSO Act

When we talk about the Indian Penal Code, 1860 and its laws, from a corner of justice it deals with adulthood, not with the children or minors. But in many cases, the POCSO Act and its law has been misused and misinterpreted. Now, coming to the judgement part of the case, *Satish vs State of Maharashtra*⁵, this is the very recent controversial judgement that has been taken place in January 2021.

Where it has been stated that without 'skin-to-skin' contact or in other words direct contact, if a person is trying to do any such kind of wrongful act with anyone, then it cannot be said to be a "sexual assault". Hereby, we can say that this case is the best example of misrepresenting or improper application of the laws that the judiciary system of the country had acted to give justice to a child abuse case. The Nagpur Bench of the Bombay High Court overturned the Sessions Court's 2020 ruling of condemning the offender for three years in prison in the case of sexual assault of a 12-year-old child in Maharashtra. Also, it was stated that the accused 'groped the child without removing her clothes', but this offence falls under Section 354 of the Indian Penal Code that deals with outraging a woman's modesty.

But here the victim is a minor, how the section 354 of I.P.C is applicable? Here, the High Court failed to give fair justice to the child and also had misinterpreted the law of POCSO.

The accused was guilty by the Trial Court under Sections 354 (Assault or criminal force to woman with intent to outrage her modesty), 363 (kidnapping) and 342 (wrongful confinement) of the I.P.C, and Section 8 (Punishment for sexual assault) of the POCSO Act, 2012. The Trial Court has sentenced him to three years' rigorous imprisonment and a fine of Rs. 500 was also imposed on him. The accused then filed an appeal in the High Court regarding the order given by the Trial Court. The H.C. took the liberty to (mis)interpret Section 7 of POCSO and the word 'touch' and stated that the act of groping a child's breast, without any skin-to-skin contact or we can say direct contact and sexual intent, is not sexual assault under the (POCSO) Act.

The POCSO encompasses specific provisions for children that ensure the holistic support and well-being of the child.

Now a question arises, whether POCSO gives justice to a child or the POCSO can ensure that the rate of child sexual abuse crime will be decreased? If the laws will be interpreted in this way, then the crime rate of child sexual abuse will be at a higher peak.

Conclusion

⁵Satish Ragde v State of Maharashtra, (2021), Criminal Appeal No. 161(India).

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Child Sexual Abuse (C.S.A) is a serious act in today's world. Each moment a child is being abused in many parts of the world. According to National Crime Report Bureau⁶, total of 109 children sexually abused every day in India. The POCSO Act, 2012 was framed to give justice and provide protection to the children from the offences like sexual assault, sexual harassment and all those wrongful acts. The POCSO Act was enacted to provide stringent punishment to the criminals for their wrongful and shameful acts, where the act is committed concerning a minor. This Act specifically deals with the welfare and safety of a child. A victim may be a male or a female, and POCSO Act is a gender- neutral based Act. The laws should be interpreted in a way that must listen to the voice of the minors and to keep them away from the darkness and ensure that they stay in a safe and light environment.



⁶ 22% Jump In Cases Of Child Sexual Abuse In 2018, Say Report, Press Trust of India (January 12, 2020, 11:54 am), <https://www.ndtv.com/india-news/22-jump-in-cases-of-child-sexual-abuse-in-2018-says-report-2162716>

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