

How to Cite:

Sharma, G., Kumar, S., & Banga, H. (2022). The protection of children from sexual offences with special reference to POSCO Act, 2012. *International Journal of Health Sciences*, 6(S4), 6706–6713. <https://doi.org/10.53730/ijhs.v6nS4.10317>

The protection of children from sexual offences with special reference to POSCO Act, 2012

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Abstract---Child sexual abuse is a despicable truth and increasing day by day in India. The protection of Children from Sexual Offences Act deals specifically with the sexual offences related to the child. As the sexual offences against the children has been increased rapidly these days there is a need to aware the family of the victimized children and the victim about the sexual harassment and laws, relief available for them against such offences. The paper initially discusses about the sexual abuse being faced by the kindergartens, such type of physical and sexual abuse, basically means exploitation of the kid mentally and physically, by a person who has a control or power over that kid, and develops a great amount of trust on the kid. The paper further moves on to discussing the various ways or methods such an act of sexual abuse takes place over the teenagers, such as, badly touching the private parts; indulging in acquiring obscene pictures etc. This article attempts to study and discuss the salient features of the POSCO Act which provide the safest atmosphere and protection from offences with harsh punishment.

Keywords---exploitation, abuse, adolescent, obscene, sexual, protection.

Introduction

The objective of the Act is to protect the interest of the children from sexual offences. It also imposes the duty on a person who has an apprehension of crime

can report. The Protection of Children from Sexual Offence Act, 2012 got the presidential assent on June 19, 2012 and notified in the Gazette of India June 29, 2012. It prevails whole of the India except Jammu and Kashmir. This Act was passed by the parliament to provide special protection and care to children from various sexual offences. There is no discrimination on the basis of the gender of the child. According to the definition of child under this act 'CHILD' means any person below the age of 18. The Act expounds different forms of sexual abuse, including penetrative and non- penetrative assault, as well as pornography, harassment of the child etc. There are some unique features of this Act firstly it provides constitution of special juvenile courts and appointment of Special Public Prosecutor. Before enactment of this Act, trials took unnecessarily long time to dispose of the matter but Protection of Children from Sexual Act strongly recommends disposing the case with in 1 year. Second point is to discuss that this Act provide the support from police administration. Woman police officer who is below the rank of sub inspector will record the statement of a girl child and it ensures the presence of the parents, relatives and guardian of the girl victim and also medical examination will be conducted by female doctor.

In order to provide the rights to the victims of sexual abuse or assault, Indian Penal Code, 1860 dealt with describing the term sexual assault committed in order to outrage the modesty of the women, along with the punishments associated with such an act. On the similar note, section 376 of the Act, states the punishment of seven years, which is extendable up to 10 years. Further, section 354 of the Act, states that, who so ever commits an offence or assault over a woman in order to outrage her modesty will be punished for a term of two years imprisonment. Lastly, section 509, of the Act, covers the broader view with this respect, it states that, any sort of act, be it in a manner of word or gesture, which leads to the infringement of women privacy and outraging her modesty, such sort of an act would be punishable for an imprisonment of a year along with a fine.¹

Sexual abuse of children, in comparison of becoming widespread, ignores natural constitutional violence. Impaired emotional wellbeing, physical health problems, accidental childbirth, moral wrongness, and heightened incidence early in adulthood of child abuse and neglect are correlated with these rights. The high incidence and coordination compounds suggest a need for more successful treatment and protection interventions supported by evidence. Such type of physical and sexual abuse, which is denoted as a social problem amongst the society in large, basically means exploitation of the kid mentally and physically, as they are molested by any person having sexual urge or stimulation, by a person who has a control or power over that kid, and develops a great amount of trust on the kid. the various ways or methods such an act of sexual abuse takes place over the teenagers, such as, badly touching the private parts; indulging in acquiring obscene pictures etcetera. Child Sexual Exploitation involves a number of behaviors such as masturbation, repeated penetration, verbal touch, overt or apparel groping of buttocks, voyeurism or addiction to pornographic sexual

¹ I. Kansal, Child Sexual Abuse in India : Socio-Legal Issues, *Int. J. Sci. Res. Sci. Technol.*, vol. 2, no. 2, 2016.

behaviors or prostitution for girls, and use of the child for commercial sexual exploitation.²

Sexual abuse of children is also a taboo topic in India. Most Indians stay insensitive to this problem. This secrecy is simply out of fear of humiliation, group rejection, social alienation, not really being willing to trust federal agencies, and the lack of contact about with this problem among families and students. Many health workers would not have the expertise to investigate and handle cases of commercial sexual abuse and therefore are not educated. In India, the society in large is image and reputation conscious, hence, some of the household crimes and assault such as child sexual abuse, goes un-reported, complaints or cases against the perpetrators are not registered, which gives the perpetrators or offenders the leverage to commit more and more crimes or assault like this, which results in the increase of such crimes globally. This is a sheer negligence on the part of the authorities and a severe amount of injustice with respect to the victims in such assault and crimes.

The absence of decent oversight of several adolescent therapeutic educational institutions is a big problem in India because there is no penalty for academic institutions which do not obey the rules. Institutions believe that if false details emerge, it may risk their reputation. Instances are therefore not recorded and are handled inside the organization. A multitude of considerations complicate the identity of a survivor of child molestation. Any of them may not disclose classic symptoms that are common. Numerous cases of child exploitation do not involve penetration anatomy, survivors typically disinfect oneself after assault, and there is no proof of assault in the clinical examination. The image of court action that will last for many years is witnessed by victim of sexual exploitation and their relatives. Attaching to the issue, India's enforcement of legislation and rules is a concern and that there is a shortage of funds for children's services.

In fact, the expression of a girl refuses to act in the discourse on Child Sexual Exploitation in India. There are a number of adolescents coping with factors such as genetic confidentiality, denial, guilt, and, in some situations, retribution following admission of commercial sexual abuse, who eventually collect the opportunity to say about both the experience and obtain the requisite assistance. Thus, adding the toddler's awareness and view of rape, which goes a very long way towards offering successful and really need cognitive behavioral therapy for adolescents with childhood sex exploitation in India, was considered particularly significant.³

Child violence, combined with negligence and cruel treatment, is a broad concept and involves biological, mental and psychological molestation. Young children violence may have deep consequences, such as mental and cognitive disorders. Brutality towards infants has been called natural aspect of existence in many other nations, particularly India, and has also been referred to as 'crime normalization.' In an Indian Culture household, inappropriate behaviors of kids at

² D. M. R. Iravani, Child Abuse in India, *Asian Soc. Sci.*, vol. 7, no. 3, 2011.

³ J. H. Beitchman, K. J. Zucker, J. E. Hood, G. A. DaCosta, D. Akman, and E. Cassavia, A review of the long-term effects of childsexual abuse, *Child Abus. Negl.*, 1992.

home, by their relatives, is very much an appropriate law. A culturally acceptable explanation given for such actual assault is whether it tends to impart healthy conduct, increases academic performance, and disciplines the infant. Physical harassment has been deemed as being the most extreme form of bullying and needs extra care. Toddler sexual harassment, in addition to a variety of sociopath and mental problems, could also contribute to underage pregnancy, genital abnormalities and sexual transmission illnesses that can affect the survivors' general safety. India primarily has a patriarchal system in culture where it would be regarded a taboo to speak about gender and sex. Sex assaults, therefore, frequently go underreported.

In 2012, by the introduction of Protection of Children from Sexual Offences Act, the legal framework in order to prevent or curb the rise of Child Sexual Abuse, took a drastic turn, as it majorly and broadly defined the term child, and provided protection to all those children who are below the age of 18 years from the offence or assault of sexual abuse or harassment. Moreover, this Act also discusses about the types of touch and the behaviors or manner associated within. This Act also incorporated various child friendly methods or procedures, in order to report cases against the perpetrators, be it either of committing an offence or making various attempts towards the execution of such an offence.⁴ Moreover, the establishment of various active NGOs should be proposed, in order to provide relief care to all the victims of such an offence, in order to create an example or moral icon for rest of the members of the society, and to provide the victims a helping hand and shoulder of support in such a scenario, and sharing their emotions, grievances and loss they have suffered after being the victim of such a sexual offence.⁵

Definition of sexual offence

Sexual offence includes both sexual assault and sexual harassment both terms are well defined under the Indian Penal Code, 1860 as well as under the Protection of Child from Sexual Offence Act, 2012. *Definition under Black's Law Dictionary:*

- 1) Sexual Assault: These are the advances physically of one person from another in a sexual way that can lead to a sexual assault.⁶
- 2) Sexual Harassment: Harassment in the workplace or discrimination where unwelcome and unwanted advances are made to a person by one or more other employees. The comments are of a personal nature and often sexual in style and manner.⁷

Definition under I.P.C., 1860

1. Sexual Assault: Section 354: Assault or criminal force to woman with intent to outrage her modesty. Whoever assaults or uses criminal force to

⁴ R. K. Chandar and M. Kannappan, A Study on Sexual Abuse of Children and Youth in India, *Int. J. Pure Appl. Math.*, vol. 119, no. 17, 2018.

⁵ *Ibid.*

⁶ Available at: <https://thelawdictionary.org/sexual-assault/> (last visited on June 10th, 2022).

⁷ Available at: <https://thelawdictionary.org/sexual-harassment/> (last visited on June 10th, 2022).

any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.⁸

2. Sexual Harassment: Section 354A: Sexual harassment and punishment for sexual harassment. A man committing any of the following acts— physical contact and advances involving unwelcome and explicit sexual overtures; or a demand or request for sexual favors; or showing pornography against the will of a woman; or making sexually colored remarks, shall be guilty of the offence of sexual harassment. Any man who commits the offence specified in clause (i) or clause (ii) or clause (iii) of sub-section (1) shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both. Any man who commits the offence specified in clause (iv) of sub-section (1) shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.⁴

In India, the society in large is image and reputation conscious, hence, some of the household crimes and assault such as child sexual abuse, goes un-reported, complaints or cases against the perpetrators are not registered, which gives the perpetrators or offenders the leverage to commit more and more crimes or assault like this, which results in the increase of such crimes globally. This is a sheer negligence on the part of the authorities and a severe amount of injustice with respect to the victims in such assault and crimes.⁹

Child sexual abuse is damage to some other individual, either as an individual or a baby, or negligence of a kid. Toddler violence exists on all racial, ethnic, and socioeconomic categories. Toddler harassment can occur multiple types, including structural, mental, linguistic, sexual, and negligence. Violence may make the baby to suffer severe injuries and could even prove fatal.¹⁰In order to curb the rise of Child Sexual Abuse in the society, the 2012 POCSO Act should be strictly implemented, so that the perpetrators before committing an offence of sexual abuse, should think more than twice about the consequences or harsh punishments associated with the same, which will severely be accompanied on commission of such an offence or making an attempt for executing such an offence.

Such type of physical and sexual abuse, which is denoted as a social problem amongst the society in large, basically means exploitation of the kid mentally and physically, as they are molested by any person having sexual urge or stimulation, by a person who has a control or power over that kid, and develops a great amount of trust on the kid. the various ways or methods such an act of sexual abuse takes place over the teenagers, such as, badly touching the private parts; indulging in acquiring obscene pictures etcetera. In order to provide the rights to

⁸ Indian Penal Code, 1860.

⁹ P. C. Meenakshi Bhilwar, Ravi Prakash Upadhyay, Saranya Rajavel, Sunil K. Singh, Kavita Vasudevan, Childhood Experiences of Physical, Emotional and Sexual Abuse among College Students in South India, *J. Trop. Pediatr.*, vol. 61, 2015.

¹⁰ *Ibid.*

the victims of sexual abuse or assault, Indian Penal Code, 1860 dealt with describing the term sexual assault committed in order to outrage the modesty of the women, along with the punishments associated with such an act. On the similar note, section 376 of the Act, states the punishment of seven years, which is extendable up to 10 years. Further, section 354 of the Act, states that, who so ever commits an offence or assault over a woman in order to outrage her modesty will be punished for a term of two years imprisonment. Lastly, section 509, of the Act, covers the broader view with this respect, it states that, any sort of act, be it in a manner of word or gesture, which leads to the infringement of women privacy and outraging her modesty, such sort of an act would be punishable for an imprisonment of a year along with a fine.¹¹

But in 2012, by the introduction of Protection of Children from Sexual Offences Act, the legal framework in order to prevent or curb the rise of Child Sexual Abuse, took a drastic turn, as it majorly and broadly defined the term child , and provided protection to all those children who are below the age of 18 years from the offence or assault of sexual abuse or harassment. Moreover, this Act also discusses about the types of touch and the behaviors or manner associated within. This Act also incorporated various child friendly methods or procedures, in order to report cases against the perpetrators, be it either of committing an offence or making various attempts towards the execution of such an offence.¹² The kindergarten boys and especially girls, are termed as easy targets and are globally abused and sexually harassed by the well-known persons around their surroundings, be it family members, neighbors or relatives around them. Hence, most of the times, such sort of crimes are being un-reported, as the family members feel ashamed about their image, reputation and goodwill in the society. Therefore, some sort of awareness drive must be developed amongst such an old ideology or mentality of the people, in order to create some sort of stringent policies, for the safety and security of bright future and lives of the innocent kindergartens and toddlers, from the assault of perpetrators.

Key provisions of the pocso act

At the starting point preamble of the act clearly says that this Act was enacted for the purpose of the protection of the child from sexual assault, sexual harassment, pornography etc. same can be inferred from these sections *Section 3* of the POCSO Act defines penetrative sexual assault, A person is said to commit penetrative sexual assault if- He penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or He inserts to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or He manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or He applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person. ¹³ *Section 4* of the POCSO Act: Whoever

¹¹ C. F. Johnson, Child sexual abuse, *Lancet*. 2004.

¹² *Ibid*.

¹³ Protection of Children from Sexual Offence Act, 2012.

commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may extend to imprisonment for life, and shall also be liable to fine. ¹⁴

Sexual Assault and Its Punishment Whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.¹⁵ *Section 8* of the POCSO Act: Whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall not be less than three years but which may extend to five years, and shall also be liable to fine. ¹⁶

Judicial pronouncement

With the passage of time juvenile justice system has developed and able to create child friendly environment into the court so that cases of sexual assault and other crimes against children can bring in front of judicial system for the purpose of providing justice and There are number of cases which deals with sexual offences against child under POCSO Act, 2012. In *State v. Devender Singh*¹⁷ victim aged about 13 years at about 6:00 to 6:30pm was returning to her house from friend's house. When she was returning to her home, accused met her and dragged her behind the marriage pandal which was set up in the park. Accused started sexually assault her when prosecutrix started shouting then certain persons gathered at marriage pandal and rescued his from the clutch of the accused. It was held that the accused committed the offence of sexual assault defined under section 7 and 8 of POCSO Act and held liable under section 376 and 511 of Indian Penal Code.

All the offences which are introduced under the POCSO Act are non bailable offences but sometimes it all depends upon the facts and discretion of the magistrate. In *Devendrabansraj Singh v. State of Maharastra*¹⁸ father being accused under sections 6,10 and 12 of the Protection of Child from Sexual Offence Act, 2012 under 354-A, 376(2)(f) and (i), 506, 509 of the Indian Penal Code, 1860 in this case the teacher of the prosecutrix disclose that she is being molested from past 4-5 years and was raped by her father when she was in 7th standard. The application was rejected.

Conclusion

The right and offences relating to the child are rarely recorded in our Indian society sometimes their own family members and relatives suppress the matter of offence relating to the child and most shocking is that there are number of cases where their own family members involved in such crimes. Our Centre and State

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ AIR 2014.

¹⁸ AIR 2017.

government should implement this law by creating effectual machinery to check the crimes against children and should draw up some guidelines to inspect the educational institutions and other institutions time to time. The POCSO Act remains unimplemented law due to the lack of knowledge and awareness. This Act needs more publicity through media and other platform. Justice Verma Committee Report, conclude that there is an urgent need to audit the performance of all institutions of governance and law and order . This Act is 'specific' in nature as it only deals with the child who is below the age of eighteen the act also talk about the Special Courts and Special Police as the Act is protective in nature. As there are number of cases where we address horrific child abuse in Indian society, here our judiciary system plays a vital role through their effective judgment.

To recap, child sexual assault and rape exploitation in India is a significant issue with no quick answer. Although that existing state globally, India's society, which historically puts women beneath men, makes addressing private things such as these taboo, and the country's corrupted and poor justice system when it comes to violence exacerbates the phenomenon. That being said, by better teaching kids and parents about sexual assault, and by informing the authorities and improving legislation, the condition may be changed. Female equality can also contribute to positive improvements in their wellbeing. Health professionals should push for more opioid and alcoholic rehab facilities, as well as more nursing homes, medical services, and rescue groups for abused women and young girls. In every city, these services and those offering coping skills, support systems and temporary relief treatment for patients and families should be accessible.

References

- Agnihotri, S., & Das, M. (2015). Reviewing India's protection of children from sexual offences acts three years on. *South Asia@ LSE*.
- Belur, J., & Singh, B. B. (2015). Child sexual abuse and the law in India: a commentary. *Crime Science*, 4(1), 1-6
- Bhatnagar, I. (n.d.). Child Sexual Abuse In India. Legal Sevice India. <https://www.legalserviceindia.com/legal/article-4985-child-sexual-abuse-in-india.html>
- Bhava, S. Y., & Saxena, A. (2013). Child sexual abuse in India. Child abuse and neglect: Challenges and opportunities. India: Jaypee Brothers Medical Publishers.
- Devendrabansraj Singh v. State of Maharashtra AIR 2017
- Muslimin, K. D., Baso, Y. S., Hidayanty, H., Syarif, S., Aminuddin, A., & Bahar, B. (2022). The effect of HIV/AIDS education prevention using web-based she smart on knowledge, attitudes, and practice in adolescent girls. *International Journal of Health & Medical Sciences*, 5(1), 31-36. <https://doi.org/10.21744/ijhms.v5n1.1830>
- Nyandra, M., Suryasa, W. (2018). Holistic approach to help sexual dysfunction. *Eurasian Journal of Analytical Chemistry*, 13(3), pp. 207–212.
- State v. Devender Singh AIR 2002 SC 1661, 2002 CriLJ 2034, 2002 (2)
- World Health Organization. (2003). Guidelines for medico-legal care of victims of sexual violence.