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THE STATUS OF CHILD RIGHTS AFTER POCSO ACT

~Sumit Kr. Gupta

ABSTRACT

Child sexual abuse has become a pervasive malady in Indian society that needs to be halted promptly. Our country's major chunk of the child population is susceptible to maltreatment and sexual abuse. It has become one of the colossal social stigmas attached to society. Sexual abuse affects the cognitive development of children severely and sometimes leads to suicidal tendencies as well. Many times, the offences related to child abuse go unreported but the enactment of the POCSO Act, complemented by the efforts of the Government for the augmentation of awareness amongst people opened a surfeit of opportunities to address the crimes against children. This article discusses the broader perspective and vouches for justice for children. Apart from enactment, there is also a need to implement the laws effectively to meet the end of justice.

Keywords: POCSO, Children, Abuse, Grievances, Rights, Protection

INTRODUCTION

India, an abode of around 430 million children, forms almost 19 per cent of the world's child population. Children around the world are subjected to rampant abuse and an overwhelming number of children's lives are rugged with staggering challenges like malnutrition, sexual abuse, physical abuse, child trafficking, child labour, illiteracy, drug and pornographic abuse etc. Many children cannot come out of the trauma that they faced in their childhood. The Government understood the growing importance to save the children of the country and enacted the POCSO Act to safeguard the rights of children. The Act changed the course of laws and issues in our country by promoting the reporting of crimes against children that cause agony to them. Such reporting works in tandem with judicial interventions that are deemed necessary to uphold the rights of children. The law remains powerless in causing change unless society changes its perception of these heinous crimes committed against children.

CHILD RELATED ABUSE

Article 1 of the United Nations Convention on the Rights of the Child defines "child" as "every human being below the age of 18 years unless under the law applicable to the child, the majority is attained earlier". The World Health Organization (WHO) defines child abuse and child maltreatment as "all forms of physical and/or emotional ill-treatment, sexual abuse, neglect or negligent treatment or commercial or other exploitation, resulting in actual or potential harm to the child's health, survival, development or dignity in the context of a relationship, of responsibility, trust or power." Basically, the abuse related to children can be broadly categorized into four types namely physical abuse, sexual abuse, neglect and emotional & psychological abuse.

The WHO defines **Physical Abuse** as: "Intentional use of physical force against the child that results in – or has a high likelihood of resulting in – harm for the child's health, survival, development or dignity". Physical violence is often committed with the objective of a punishment without recognition of the fact that physical abuse causes an unflinching trauma in the minds of victims leading to

long-term depression, anxiety, suicidal tendencies, homelessness, alienation, disorders etc. It has a long-term effect and does not leave their mind even when they attain adulthood.

Sexual Abuse is one of the most devastating forms of abuse faced by children. Many children are subject to sexual abuse by their own family members, neighbours, intruders etc. Child sexual abuse refers to the forceful participation of children in a sexual act aimed towards the physical gratification or the financial profit of the person committing the act. This includes inappropriate touching of genitals, indecent attitude, forceful penetration in private parts, using the child for pornography etc. The list is long and exhaustive. The victims of this heinous crime are left unfettered with insomnia, alienation, flashbacks, self-blame, addiction, idiosyncrasies, loathe towards sexual acts and other mental health issues.

Child Neglect can be defined as the deliberate avoidance of the child by those who are entrusted to take care, legal guardians or sometimes even parents. It is gross negligence on their part that they fail to take care of the child and fail to provide them with things necessary for the survival and emotional wellbeing of a child. This leaves a psychological imprint on the feeble minds of children and most of them are left to survive on their own which may cause delays in physical and emotional development.

Emotional and Psychological Abuse refers to the state in which there is a failure to provide a developmentally appropriate, supportive environment that forms a vital part for children's cognitive development. There may also be acts towards the child that cause or have a high probability of causing harm to the child's health or physical, mental, moral or social development. In 2013, the American Psychiatric Association (APA) added Child Psychological Abuse to the DSM-5, describing it as "non-accidental, verbal or symbolic acts by a child's parent or caregiver that result, or have reasonable potential to result, in significant psychological harm to the child." These may lead to alienation of victims, imbibing abusive words, insulting his/her own peer groups, learned helplessness etc.

CONSTITUTIONAL RIGHTS AND POCSO ACT

The founding fathers of the Indian Constitution acknowledged the importance of children for any country's development. Ergo, they framed certain rules directed towards the well-being of children in our country. Article 21 A of the Indian Constitution provides for the protection of rights of children to acquire basic education in our country and Art. 24 of the Constitution talks about the right of children to be protected from any hazardous work till they attain the age of 14 years. There are also certain provisions in DPSP which guarantee some rights for children. Article 39(e) talks about the right of children to be protected from abuse and forced by economic necessity to enter occupations unsuited to their age or strength and Article 39(f) mentions the right to equal opportunities and facilities development in a healthy manner and in conditions of freedom and dignity. Article 45 directs the State to take steps to provide the right to early childhood care and education until they attain the age of six years.

The Parliament, after identifying numerous complications about the working of adult laws with respect to children, enacted The Protection of Children from Sexual Offences Act, 2012 (popularly known as POCSO Act, 2012) which was drafted to reinvigorate the forte and legal provisions of child rights in the country. This law delineates all forms of sexual abuse along with prescribed punishments for specific offences. The Act also provides for stringent punishments, which are decided by observing the gravity of the offence and ranges from a simple imprisonment to rigorous imprisonment along with fine. It has also made child-related offences such as penetration gender neutral and any child can file their complaint under the provisions of the law. The new law directed the police and the State Government to develop a mechanism to increase efficiency and efficacy of the system in its entirety. The act further puts a mandatory requirement on the part of Government to raise awareness at regular intervals. This act also prescribes the establishment of special child courts to deal with issues related to child abuse keeping the interest of children as a paramount importance. For the more heinous offences of Penetrative Sexual Assault, Aggravated Penetrative Sexual Assault, Sexual Assault and Aggravated Sexual Assault, the burden of proof is shifted on the accused. This

provision has been made keeping in view the greater vulnerability and innocence of children and the act further guides the media to hide the identity of victims subject to the permission and discretion of courts.

AFTERMATH OF THE POCSO ACT, 2012

The legislation of POCSO Act opened a pandora’s box with regards to crimes related to minors or children. It gave them the voice and the right to be heard by a legitimate authority. Besides, this legislation outlined a certain amount of punishment for specific grievances and complaints. Through various programs of the Government, the victims are ensured of their rights and have become more aware of their rights. The advent of this act paved the way for a strong mechanism to deal with offences and complaints. Data collected with regards to crimes reported prior to and following the adoption of POCSO showcases clearly the drastic increase in number of reported crimes.

	2010	2011	2012	After POCSO Act, 2012	2013	2014	2015	2016
Sexual offence against children	5,48	7,11	8,54		12,36	13,76	10,85	19,76
	4	2	1		3	6	4	5

There has been the substantial increase in the reporting of sexual offences against children after passing of POCSO Act, 2012. One of the crucial reasons can be that it gave impetus to the voice of children that was hidden for so long. Also, the mechanism for addressing this issue was improvised and it became easy to file any complaint. The government became quite sensitive to the issues related to child abuse which was complemented with wide awareness amongst people. This led to people becoming more receptive to this positive change.

Before the enactment and passing of this legislation, the total amount of sexual offences against children was 8541 in the year 2012 which increased by 3,822 crimes and reached a staggering 12,263 reported

sexual offences against children which was an increase of 45 per cent. Again, in the year 2014, the number of sexual crimes related to child went up to 13,766. In 2015, there was dip and decrease in the number of sexual offences against children. But in 2016, the crime reached its peak and as many as 19,765 numbers of sexual offences against children were reported which was an increase of 8,911 sexual offences as compared to the year prior.



SOME JUDICIAL PRONOUNCEMENTS FOR CHILD'S RIGHTS

In this topic, we are going to discuss and analyze two important cases prior to POCSO Act and after the enactment of POCSO Act.

I. BACHPAN BACHAO ANDOLAN

A PIL was filed in the Supreme Court in the wake of serious violations of child rights. The petitioners argued that children are trafficked from certain parts of India and Nepal and are forced to work in circuses which was a gross violation of rights according to the Indian constitution. The Court ordered that the employment of children in circuses houses should be kept under the Care and Protective Homes until they are 18 unless interested parents following proper verification come forward to claim their child. The Court further directed the State to frame a proper scheme for the rehabilitation of rescued children from circuses.

II. NISHU VS COMMISSIONER OF POLICE, DELHI AND ORS.

Petitioner was a minor girl residing in Rohtak who was kidnapped and was raped repeatedly by a group of nine people. One of the accused was a police constable in Haryana Police. The counsel representing the petitioner vehemently argued that the petitioner was unlawfully detained till her statement was recorded. It was further submitted that the offences had been committed under POCSO act and under Section 376-D of the IPC. In this case, the prosecution failed to present any medical reports to the Court. Further, the matter was already under investigation and thus the Court ordered that it would be inappropriate to exercise its jurisdiction under Article 32 as the case has been investigated by the Haryana Police.

These cases show that despite the enactment of POCSO Act, there is also a need for more authentic and substantial evidence to prove crime against minor. Judicial Pronouncements played a vital role in implementing the POCSO Act and there is also an obligation on the state to make this mechanism work smoothly.

CONCLUSION

Sexual abuses against children are a widespread problem in India. The negative imprint left on the tender minds of children make them one of the most vulnerable groups in Indian society. Extensive research proves that sexual abuses interfered with normal human growth and development, and placed children in the wide array of mental and emotional disorders. There was an inherent problem in the Indian laws before the enactment of POCSO Act. The enactment of this act gave ample opportunity to the victims to file their complaints and have proper mechanism for grievance redressal. The reported crimes for sexual abuse against children increased substantially which showed positive sign towards empowering children. The government, too, took some steps to raise awareness amongst people. Despite substantial development, the issue has not been resolved and many children continue to suffer. Such problems are required to be addressed by making the criminal justice system more adept to ensure justice to the victims of crimes against children.

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