

Sexual Abuse of Child in India

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ABSTRACT: *Child Sexual Abuse (CSA) is defined by the World Health Organization as the involvement of a child in sexual activity that he or she does not fully comprehend, for which he or she is unable to give informed consent, or for which the child is not developmentally prepared and cannot give consent, or that violates societal laws or social taboos. Fondling, enticing a kid to touch or be touched sexually, intercourse, exhibitionism, engaging a child in prostitution or pornography, or online child luring by cyber-predators are all examples of CSA. CSA is a serious issue that affects people all around the world. A recent systematic analysis of 55 research from 24 countries showed significant variability in study definitions and measurements of CSA, concluding that female CSA rates ranged from 8 to 31 percent while male CSA rates ranged from 3 to 17 percent. This article examines how India's CSA legislation has grown over time, as well as recent revisions to the law and key difficulties to its implementation, which have resulted in lower conviction rates.*

KEYWORDS: *Abuse, Child, Health, Right, Sexual*

1. INTRODUCTION

CSA has long been a hidden problem in India, with public debate and the criminal justice system generally ignoring it. India is the world's second most populous country, with 17 percent of the world's population living there, according to the most recent census. India is home to about 19 percent of the world's children, accounting for 42 percent (more than one third) of the country's total population, with nearly half of these children in need of care and protection. India pledged to safeguard its children from all types of sexual exploitation and abuse when it signed the United Nations Convention on the Rights of the Child in 1992. The Convention forbids the use of governmental machinery to persuade or coerce a child to engage in any illicit sexual conduct [1].

The first large-scale government-sponsored research project to examine the incidence and form of child abuse in India was commissioned in response to growing concerns about female infanticide, child rapes, and institutional abuse of children. A disturbing discovery from a government-commissioned poll is that more than 53% of Indian youngsters are sexually abused or assaulted. Because the majority of these incidents involved someone the kid knew or who was in a position of trust and responsibility, it's not surprising that most children did not disclose the abuse to anybody. Furthermore, the prevalence and breadth of CSA in the country vary by area and rural–urban divide [2].

Girls are more prone to sexual abuse, however boys have also been victims of sexual abuse and face higher societal shame. Despite the fact that sexual exploitation and abuse are frequently linked to poverty, it happens in households of all socioeconomic and religious backgrounds. Poverty, congestion, extended family living arrangements, an abundance of street children, and a lack of leisure facilities in families are all variables that encourage CSA, and they are not unique to India. Given India's population density and size, their influence might be amplified or increased. Thus, the prevalence of CSA in the Indian setting might be explained by a

complex combination of human, ecological, and situational variables that are believed to favor it [3].

Sexually abused children are severely let down by the criminal justice system's systemic inability to address their grievances, as well as the societal stigma connected with such abuse. Only 3% of CSA violations were reported to the authorities. Given the shame and accompanying socio-cultural stigma, it's unsurprising that CSA is severely underreported, especially if the abuse occurs inside the family. This practice is not specific to India, but is found in collectivist societies across Asia, where an individual's experience is neglected in order to shield the family from the humiliation of sexual assault.

2. DISCUSSIONS

Legal Situation

CSA was not recognized as a criminal offense in India until recently. In India, rape was the most common, if not the only, particular sexual offense against children that was recognized by law. In the lack of particular regulation, a variety of objectionable behaviors such as child sexual assault (not amounting to rape), harassment, and pornographic exploitation went unpunished. Non-Governmental Organizations (NGOs) and the Ministry of Women and Child Development of the federal government were actively involved in breaking the 'conspiracy of silence,' generating significant political and public impetus to address the issue. As a result, there has been an upsurge in media and public discourse activism around child safety concerns.

The Ministry of Women and Child Development spearheaded the effort, which resulted in the passage of the Protection of Children Against Sexual Offenses Act, 2012[4]. (POCSO Act).

Characteristics of the POCSO Act

The POCSO Act was passed to make actions such as child rape, sexual assault, sexual harassment, and pornography involving a minor (under the age of 18) illegal. Special Courts are required by statute to allow quick trials in CSA cases. Without a question, the passage of POCSO was a significant step forward in protecting children's rights. The legislation, which defines a child as anybody under the age of 18, is intended to protect minors from sexual assault in both text and spirit.

The POCSO Act imposes harsh penalties that are tiered according to the severity of the offense. The penalties range from minor infractions to lengthy incarceration. There is also a provision for a fine, which the Court will decide. When a person in a position of trust or responsibility over a kid, such as a member of the security forces, a police officer, or a public worker, commits an offense, it is considered "aggravated."

The term "rape" is not used in the POCSO Act, and penetrative intercourse is not limited to penile penetration. Instead, it expands the Act's definition of "penetrative sexual assault" to encompass oral sex, as well as the insertion of any instrument into the anus, mouth, or vaginal canal, in addition to penile penetrative sex.

In the case of State versus Pankaj Choudhary, the accused was charged simply with "outraging the modesty of a lady" for digital penetration of a 5-year-old child's anus and vagina, because digital penetration was not recognized as a crime under the Indian Penal Code. The judgment was made prior to the passage of the POSCO Act. However, the inclusion of penetrative assault to the POSCO, 2012 has broadened the scope of child protection[5].

Short of penetration, the POCSO Act criminalizes a variety of behaviors as sexual assaults. Furthermore, when perpetrated by a specific group of offenders, in a wide variety of settings or conditions, and/or has a significant impact on the victim, the offenses of 'aggravated' penetrative and non-penetrative sexual assault are made more serious and attract harsher punishments. This includes gang rape, causing grievous bodily harm, threatening with a firearm or corrosive substances, assaulting a child under the age of 12 years old, or assaulting a child who is physically or mentally disabled. The definition is quite detailed and covers a wide variety of circumstances. These precautions have been established in consideration of children's increased vulnerability and innocence [6].

In many ways, the POCSO Act is forward-thinking, for example, the definition of sexual harassment includes following, watching, or contacting a child repeatedly or constantly, whether directly, electronically, or through other means, thus covering incidents of child harassment via texting or sexual cyberbullying. However, the Act is silent on what constitutes 'repeatedly' or 'constantly' following or contacting a child with sexual intent (sexual intent being a 'question of fact'). As a result, the interpretation of what constitutes 'repeatedly' or 'constantly' following or contacting a child with sexual intent is potentially contestable. Abetment of or attempt to conduct any of the acts mentioned in the Act is also punishable.

The Act's provision for the establishment of a Special Court has a significant impact on how the law and facts are understood. The POSCO Act establishes Special Courts where trial proceedings can be conducted in a more sensitive manner, with the victim's testimony given either "in camera" (that is, privately), via video-link, or behind curtains or screens, with the goal of reducing trauma while also protecting the child's identity. It includes processes for reporting, documenting evidence, investigating, and trying offenders that are child-friendly.

The POCSO Act acknowledges the necessity to punish the intent to conduct an infraction, even if it is unsuccessful for whatever reason. The attempt to commit an infraction now carries a penalty of up to half of the penalty for the actual conduct of the offence. It further specifies that abetment of the offence is punishable in the same way as the conduct of the offence. This would include child trafficking for sexual motives. At the same time, in order to avoid abuse of the legislation, creating a false complaint or proving false information with malicious purpose has been sanctioned. To encourage reporting, the punishment has been maintained relatively mild (six months). If a kid is falsely accused, the penalty is increased (one year) [7].

The media has been prohibited from releasing the child's identify without the Special Court's consent. The penalty for breaking this provision by the media might range from six months to a year in prison. The POSCO Act mandates that the child's testimony be documented within 30 days in order to ensure a timely trial. In addition, the Special Court must conclude the trial within a year, if at all feasible. To provide for the kid's relief and rehabilitation, the Special

Juvenile Police Unit (SJPU) or local police will make urgent plans to provide the child with care and protection, such as admitting the child to a shelter home or the nearest hospital within twenty-four hours of the report. The SJPU or local police must additionally submit the issue to the Child Welfare Committee within 24 hours of receiving the complaint, in order to ensure the child's long-term recovery. The Central and State Governments are required by the POCSO Act to raise awareness of the Act's provisions through media like as television, radio, and print at regular intervals in order to inform the general public, children, and their parents and guardians. The National Commission for the Protection of Children's Rights (NCPCR) and State Commissions for the Protection of Children's Rights (SCPCRs) have been recognized as the monitoring authorities for the Act's implementation.

The Union Cabinet proposed an amendment to the POCSO Act on July 10, 2019, to make the restrictions harsher. The proposed modifications protect minors from sexual offenses during natural disasters and in other instances when youngsters are given any hormone or other chemical substance in any way to achieve sexual maturity for the aim of penetrative sexual assault. The acceptance of the death sentence for child rapists who commit severe penetrative sexual assault against children is noteworthy [6].

Major Roadblocks to the POCSO Act's Implementation

The Act's full implementation has been fraught with difficulties. Its implementation in the country is abysmal, and the pace of enforcement is glacial. While the number of instances recorded under the POCSO Act is continually increasing, including violent gang rapes, the percentage of conviction is only 4%, acquittal is 6%, and pendency is over 90%, according to the National Crime Records Bureau. The following are some of the significant problems encountered in enforcing the Act:

a. Administrative blunders

According to the POCSO Act¹², state governments shall designate a Sessions Court as a Special Court to try offenses in conjunction with the Chief Justice of the High Court to promote fast trial. However, the POCSO Act also states that if a Sessions Court has already been designated as a Children's Court under the Commissions for the Protection of Child Rights Act, or if any other Special Court has been designated for similar purposes under any other law, it can be considered a Special Court under the POCSO Act. Despite the fact that every district is required by law to establish an exclusive POCSO court, the orders have been consistently disregarded [8]. The failure to establish Special Courts to deal with CSA in all of the country's districts is the most significant obstacle to the efficient execution of the POCSO Act. The Act required the establishment of these courts, and its failure to do so has resulted in significant delays in the disposition and pendency of cases filed under it.

The State Government's bureaucracy's indifferent attitude is evident in the fact that they do not develop any manual connected to a legislation, nor do they fulfill other procedures for its implementation, unless and unless the Supreme Court intervenes.

b. Inadequate skills to deal with the cases

To make matters worse, the judges assigned to CSA cases are not topic specialists, as they receive no further training from the state government and do not study the legislation related to such cases. As a result, they view such matters as an extra burden, and as a result, CSA cases are not handled with properly and expeditiously as required by the Act.

A typical example of a lack of competence may be seen in a ruling made on December 22, 2016 by a Special Court (really a sessions court) in Thane, Maharashtra, in which the court issued a perjury notice to a 16-year-old juvenile girl in a case filed under the POCSO Act. Her father was accused of raping the little girl. Despite the fact that she testified against her father during the examination-in-chief, she became hostile during the defense counsel's cross-examination. The defense's trial approach was similar to that used in rape prosecutions involving adult female victims, in which the victim's credibility is undermined by questions about her sexual past and moral character.

This action contradicts the Act's spirit and goals, which call for a kid-friendly environment at all stages of the legal procedure and place a premium on the notion of "best interest of the child." More crucially, the Act exempts youngsters from punishment if they provide incorrect information. In this instance, the Special Court erred by relying on the POCSO law, which enabled a kid above the age of 16 who filed a fraudulent complaint to be transferred to the Juvenile Justice Board for appropriate remedial action. However, when the bill was enacted by the Rajya Sabha, this section was removed, and it is no longer in effect. Unfortunately, due to the judge's inexperience, a ruling was issued in accordance with the POCSO Bill, resulting in this erroneous judgement [9]. As a result, it is critical to educate medical, judicial, and law-enforcement authorities about the Act. One of the most essential elements in delivering complete care and justice to children, the future of our country, is raising awareness and training among all stakeholders [10].

3. CONCLUSION

The CSA is a plague in Indian culture, which is why the Act was passed in 2012. However, without the devoted and coordinated efforts of the implementing agencies, no law can be executed successfully and efficiently. In this respect, a multifaceted strategy is necessary, and it is up to state governments, police departments, the legal system, and the medical community to carry out the act in letter and spirit and respond to these situations with haste, empathy, and compassion. Speedy trials are feasible if the judges, their staffs, the prosecution, the police, and the defense work together, failing which the notion of special courts is defeated. Similarly, in examining a child victim of sexual assault, doctors must be taught to grasp the complexities and assist in the correct scientific collection of numerous evidences.

There has been an increase in the number of incidents reported in recent years, and this is owing to the increased awareness that has been achieved via different training and awareness initiatives in collaboration with NGOs and police. To increase the conviction rate, it is critical to expedite both the investigation and the court trial so that the survivor is not pressured to become hostile. POCSO cases should be tried in a year, however there are now a large number of cases pending in the courts. In addition, the entire procedure must be more child-friendly.

REFERENCES:

- [1] V. Choudhry, R. Dayal, D. Pillai, A. S. Kalokhe, K. Beier, and V. Patel, "Child sexual abuse in India: A systematic review," *PLoS ONE*. 2018.
- [2] R. Seth and R. N. Srivastava, "Child Sexual Abuse: Management and prevention, and protection of children from Sexual Offences (POCSO) Act," *Indian Pediatr.*, 2017.
- [3] Z. Chouliara and J. Narang, "Recovery from child sexual abuse (CSA) in India: A relational framework for practice," *Child. Youth Serv. Rev.*, 2017.
- [4] indicated No authorship, "Review of Bitter Chocolate: Child Sexual Abuse in India," *Int. Rev. Psychiatry*, 2005.
- [5] J. Belur and B. B. Singh, "Child sexual abuse and the law in India: A commentary," *Crime Sci.*, 2015.
- [6] D. K. Carson, J. M. Foster, and N. Tripathi, "Child Sexual Abuse in India: Current Issues and Research," *Psychol. Stud. (Mysore)*, 2013.
- [7] C. V. *et al.*, "Child sexual abuse in India: A systematic review," *PLoS One*, 2018.
- [8] R. K. J. Karthiga and R. Ravikumar, "Child sexual abuse in Madurai, India: A literary review and empirical study," *Journal of Child Sexual Abuse*. 2014.
- [9] I. Kansal, "Child Sexual Abuse in India : Socio-Legal Issues," *Int. J. Sci. Res. Sci. Technol.*, 2016.
- [10] S. VK, R. P, C. G, R. C, and R. TS, "Silence of male child sexual abuse in India: Qualitative analysis of barriers for seeking psychiatric help in a multidisciplinary unit in a general hospital," *Indian J. Psychiatry*, 2017.