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PROTECTION OF CHILDREN FROM SEXUAL ABUSE IN INDIA: A STUDY WITH SPECIAL REFERENCE TO CHILD PORNOGRAPHY

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Abstract

Child sexual abuse is a global issue with serious long-term effects. The number of cases varies greatly depending on the nation. In India and throughout the world, it has been observed that sexual abuse is highly common. Because it still causes them little or no offence, or is ignored by them, people are still not sensitive enough to this issue. It is a widespread issue, and even the lowest prevalence still has a sizable victim population. Additionally, it negatively impacts the child's mental, physical, behavioural, and interpersonal health. The objective is to know nature and primary purpose, causes, effect of the child sexual abuse, national and international legal framework, scheme, conventions and recent judicial development were studied by the researcher to comprehend the effectiveness of implementation or lacunae of present existing law regarding child sexual abuse specially focuses on child pornography. To safeguard children from these types of offence, the parliament passed the POCSO Act in 2012. This special legislation passed by parliament to protect the children from sexual offences. Strict compliance is necessary, as well as the adoption of additional measures, for the prevention and control of this unseen, hidden public problem.

Keywords

Child, sexual abuse, Child pornography, POCSO Act, 2012.

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INTRODUCTION

The future's greatest hope, humanity's dawn, and the seedlings of societal development are children. As we work to create a society that is inclusive and equal, the rights and aspirations of women and children are of utmost significance. The period as Child in human's life is of supreme importance, "national asset"¹ and "the greatest gift of humanity"² as this age is the blue print of their life. And in relation to abuse of children, it is the right of all children to be protected wherever they are at home, in school, on the streets and at all times, be they of peace or conflicts or calamity. Their right to protection is as intrinsic to their wellbeing as is the right to survival, development and participation. A child is the most susceptible group since they are innocent, young, and subject to the possibility of sexual offences and consequent victimisation. He or she is abused, sexually exploited, and even maltreated in various ways. The vulnerability of children, the negative impacts of exploitation on their health and life, and the widespread nature of this evil make sexual abuse of children a situation of great concern.

The child, internationally, is accepted as any person who has not completed 18 years age. A child means "every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier"³. The Protection of Children from Sexual Offences Act, 2012 defines a 'child' means "any person below the age of eighteen years."⁴

India being seventh largest country having the largest numbers of population of children as well as the adult members of the population in the world. According to census 2011, it shows that India has 472 million children are less than 18 years.⁵ It is very crucial for a nation like India to

¹ *Lakshmi Kant Pandey v. Union of India*, (1984) 2 SCC 244,249

² *Bandhua Mukti Morcha v. Union of India*, (1997) 10 SCC 551, 553

³ UN Convention on the Rights of the Child, 1989

⁴ Protection of Children from Sexual Offences Act, 2012(Act No. 32 of 2012), s. 2(d)

⁵ 2011 census

protect these young from all kinds of dangers, such as, violence including both sexual and physical or exploitative.

Sexual abuse refers an inappropriate sexual behaviour when a child is involved. It involves touching a kid's or forcing a child to touch an adult's genitalia, having sexual relations, incest, rape, sodomy, exhibitionism, and sexual exploitation. To define child sexual abuse, several academics have already made an effort. It can be defined as a sexual activity engaged in for sexual gratification by taking advantages or deceiving young children. Child sexual abuse may also be defined as exploitation of a child with sexual intention of any kind whether physical or mental generally by a person who is in active confidence.

WHO defines Child Sexual Abuse as;

“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 violate the laws or social taboos of society.”⁶

In our neighbourhood, among our friends, and even in our own family, children are being sexually abused. Even more astonishing is the fact that those who are supposed to be socialising children are really damaging their future. It has severe physical and psychosocial effects that are detrimental to a child's health and general well-being. The victim of such a horrifying crime should also receive rehabilitation so that the victim can move past the trauma that has burdened him or her in the past and go forward. As children are extremely gullible and are capable of being easily persuaded to any extent without understanding the repercussions of such an act, it is also crucial to highlight the trauma that a child experiences in their own household. Children's physical and mental health might be endangered not just by outsiders, but it is frequently observed that predators are within the child's close family members. By ruining an innocent child's future for their unlawful and immoral sexual desires, they diminish that child's value. Children's sexual exploitation and abuse are abhorrent crimes, and India has a significant population of children who are susceptible to abuse, exploitation, and neglect. With an intention to address the problems and solve the compromised condition of children in India, Parliament by using its power under Clause (3) of Article 15 of the Indian Constitution which empowers the State to make the special provisions for children and the Government of India has ratified the United Nations Convention on the Rights of Child on December 11, 1992, enacted the POCSO, Act 2012 making the special legislation with the object to protect its children from offences of sexual assault, sexual harassment, and pornography. The Act also provide child friendly and speedy justice by establishing special courts for trial of such offences. In this article we will focuses on what is child sexual abuse special emphasis will be on child pornography, what are the legal protections and also to find out lacuna in implementation of these laws.

OBJECTIVES

The nature and primary purpose, causes, effect, national and international legal framework, scheme, conventions and recent judicial development were studied by the researcher to comprehend the effectiveness of implementation or lacunae of present existing law regarding child sexual abuse specially focuses on child pornography.

RESEARCH METHODOLOGY

The research methodology of this study is doctrinal, data and laws relating to child sexual abuse and their nature, causes, effect and response to prevent it and various types of sexual offences has been explained by using secondary sources like, websites, books, periodicals and statutes. It may be referred as a qualitative study as it primarily uses facts and data about the different aspect of

⁶ Available at <https://www.childlineindia.org/a/issues/sexual-abuse> visited on 02 September 2022.

this topic and depends on multiple disciplines. The importance of legal words is discussed in a way that is understandable to readers without a background in law.

CHILD SEXUAL ABUSE: STATISTICS OF CRIME

Indian Parliament passed the POCSO, 2012 making the special legislation creating the specific offences against children including child sexual abuse which the General Penal law IPC, 1860 failed to address. Despite the enforcement of the stringent law i.e., POCSO Act, 2012 data shows the cases of child sexual abuse are increasing. NCRB data show that 32,608 cases were reported in 2017 while 39,827 cases were reported in 2018 under the POCSO Act. The cases reported is less in numbers as compared to what studies shows but even lower is the number of cases timely disposed of. Reports of the Law Commission have also expressed opinions to change in the existing bodies but not much work has been taken place in that sector as well. As many as 109 children were sexually abused every day in India in 2018, which showed a 22 per cent jump in such cases from the previous year.⁷ A total of 47,335 cases of crime against children were registered during 2019 and 47221(Continued) cases were reported in 2020 under the Protection of Children from Sexual Offences Act, 2012 (POCSO).

EFFECT OF SEXUAL ABUSE UPON CHILDREN

This not only deteriorates the child victim's mental and physical well-being, but also leaves a grave impact on society. When such an abuse or molestation is committed with a child, he/she goes through a huge trauma and it takes a lot to come out of it, but the act of pornography, i.e., posting or distributing that recording online aggravates the situation and makes it impossible for that child to move on ever. Fear, humiliation, helplessness, lack of confidence is some of the things that would follow that child forever because he/she knows that somewhere on the internet those pictures or videos are circulating.

PROTECTION OF CHILDREN FROM SEXUAL OFFENCES

Child abuse takes many forms. It may be emotional, physical, neglect and sexual. Child abuse happens in all countries. It may be sitting in a community, school, online and children's home. Many boys and girls are generally suffering from evil of abuse by trust person. In several parts of the world, violent discipline is socially accepted and common.⁸ Violent discipline increases the incidents of child abuse. Such abuse not only causes harm, pain and humiliation⁹ to children, but it can also lead to kill.

All forms of abuse can be harmful to children, diminish their feeling of worth, undermine their dignity, and impede their development. Therefore, child sexual abuse is a problem threatening the health and welfare of children internationally. All human beings have some intrinsic rights just by virtue of being human. All human rights need to be protected and respected by all as they allow one to develop fully and without them one cannot live as a human being. Thus, human rights are for all and everyone needs to respect it. However, there are certain groups that require special protection. Children constitute one such group because they are extremely vulnerable to exploitation and abuse.¹⁰

INTERNATIONAL EFFORTS

⁷UP tops in sexual offences against children: NCRB data, available at: <https://www.hindustantimes.com/cities/lucknow-news/up-tops-in-sexual-offences-against-children-ncrb-data-101637235901608.html> (last visited on 25th September 2022).

⁸ Anu Saksena, Human Rights and Child Labour in Indian Industries, Shipra Publications, Delhi, edition

⁹ <https://data.unicef.org/topic/adolescents/violence/>

¹⁰ <https://www.unicef.org/protection/violence-against-children>, accessed on November 26, 2022.

- **Convention on the Rights of the Child 1989**

The UN Convention on the Rights of Child has taken up by General Assembly in December 1989. It came into force on 2 September 1990. The prime objective of the convention is political and humanitarian obligation of nations towards their children. It is a comprehensive treaty on children's rights between the party states. State parties should take reasonable measure to secure the children from all kinds of abuse and exploitation. Children should be protected from sexual abuse. Children are sexually abuse by legal guardian, their parent and other person who has the care of child. Judicial involvement is required to protect children from abuse.¹¹ The convention assigns duty to government to assure protection and help to needful children who deprived from their family.¹²

- **The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography**

On 25th May 2000 this protocol was adopted by the General Assembly of United Nations. It came into force on 18 January 2002. It has been ratified by 178 countries. The prime object of the convention is to prohibit child prostitution and child pornography. It is also prohibited trafficking of children. State Parties of the convention must prohibit supplement acts which may help in the trafficking of children, child prostitution and child pornography.¹³ This Optional Protocol requires states parties to grant certain rights and protections to children involved in the prosecution of offences. Among other provisions, it includes recognizing the susceptibility of the victim child, adopting procedures to recognize their special needs, and providing them protection from threats and retaliation.¹⁴

- **Optional Protocol on Children in Armed Conflict**

The convention requires States parties to make sure that anyone under the age of 18 is compelled to recruit in their armed forces. Additionally, it makes every effort to prevent anyone under the age of 18 from directly taking part in hostilities while serving in the military.¹⁵

- **The Council of Europe Convention on Cybercrime**

On November 23, 2001, this convention became available for signature. This agreement is known as the Budapest Convention. The first global agreement to lessen computer-related crime is this one. The convention aims to increase safeguards for children against sexual exploitation by making the creation, possession, and dissemination of child pornography on electronic devices illegal.¹⁶ The Convention also adds measures for procedural law. Additionally, it develops a quick and efficient system of international collaboration to allow criminal justice authorities to efficiently look into offences using cyberspace, including those involving sexual assault and abuse of children.

- **The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse**

The "Lanzarote Convention" is another name for this agreement. It became effective in 2010. The purpose of the Convention is to prevent and reduce child sexual abuse and

¹¹ Article 19, The Convention on Rights of Child 1989.

¹² Article 20, The Convention on Rights of Child 1989.

¹³ Article 3, The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2000.

¹⁴ Article 8, The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography 2000.

¹⁵ Peter Newell, Legal Frameworks for Combating Sexual Exploitation of Children, p.12

¹⁶ Article 9, The Council of Europe Convention on Cybercrime.

exploitation.¹⁷ It also defends the rights of child who have been sexually abused or exploited. It encourages international collaboration in the fight against child sexual abuse and exploitation.¹⁸ The Convention provides training, recruitment, and awareness-raising for those who work with children, as well as preventative measures (Article 5). According to the Convention, the state's parties should encourage the media to publish pertinent information about child sexual abuse and all other forms of sexual abuse. It is important to support civic society and the commercial sector in their efforts to stop child sexual exploitation and abuse (Article 9). Protective measures are also included, as well as victim aid. State parties are required by the convention to establish information services like phone or online support lines. Additionally, it contains guidelines for reporting suspicions of sexual abuse or exploitation (Article 12, 13).

- **SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution**

The convention aims to strengthen member state collaboration in order to effectively address all elements of trafficking in women and children prevention, prohibition, and repression. It also advocates for the rehabilitation and return of trafficking victims.¹⁹ The convention has a clause mandating that states parties make such offences subject to fair punishment. Anyone who operates, manages, finances, or maintains a facility for human trafficking must be punished (Article 3). The Parties to the Convention shall each other with full measures of mutual legal aid in connection with the investigation, inquiry, trial or other procedure in the requesting State with respect to offences under this Convention. A Party to the Convention shall provide protective homes or shelters for the treatment and/or rehabilitation of trafficking victims. The victims will also receive appropriate arrangements for legal representation, counselling, job training, and medical facilities.²⁰

NATIONAL LEGAL FRAMEWORK

- **The Constitution of India, 1949**

Indian Constitution in its preamble speaks about assuring dignity to individual that includes the dignity of women and girl children. It also assures of providing justice to all. Part III of the Constitution also recognizes certain rights for them, which are known as fundamental rights. Article 14 of the constitution provides the equality before law and equal protection under law.²¹ All of those vulnerable sections are also promised to be equally protected by law. All the children thus will be treated in a similar manner under similar circumstances. Article 15(3) permits the state to make special provision for children. As the children needs different treatment in needy circumstances, our constitution thus provides for this special provision for them.

Indian Constitution in its other provisions laid emphasis on the special protection of women and children. It also provides safeguard to the children especially the girl child from various types of exploitation including sexual abuses. Through its directive principles, our Constitution is prohibiting the sexual abuse of girl child properly. As a preventive measure, it also secures the opportunities, freedom, facilities to the children preventing their exploitation and against moral and material abandonment.

¹⁷Child Abuse, Europe's Human Rights Watchdog, https://www.europewatchdog.info/en/treaties_and_monitoring/child-abuse/, accessed on September 13, 2021.

¹⁸Article 1, Europe Convention on the Protection of children against sexual exploitation and sexual abuse.

¹⁹Article 2, SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution.

²⁰Article 9, SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. xxxii https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_749858/lang--en/index.htm, accessed on September 16, 2021.

²¹

- **Indian Penal Code, 1860**

Indian penal code provides various provisions to protect the interest of the children and women. Some important provisions are-

1. Section 354 states assault or use criminal force to any woman, intending to outrage her modesty. Indian penal code in the year 2013 by criminal amendment Act, 2013 inserted section- 354 A (sexual harassment) 354 B (assault or use criminal force to women with intent to disrobe), 354 C (voyeurism), 354 D (stalking) some description of other types of sexual abuse relating to both minor and adult along with their punishments.
2. Section 366A Provides punishment for procurement of minor girl.
3. Section 372 and 373 provides punishment for Selling or buying minor for purpose of prostitution
4. Section 375 provides provisions regarding rape. Some other section (376 A, 376 B, 376 C, 376 D) was inserted.²² After Nirbhaya incident and increase in recent heinous crime against children the punishment for rape was increased and new section was inserted²³ which are following-
 - ❖ Section 376(3)- provides punishment whoever commits rape on women under 16 years of age.
 - ❖ Section 376 AB provides punishment for rape on women under 12-year age.
 - ❖ Section 376DA provides punishment for gang rape on women under age of 16 years.
 - ❖ Section 376DB provides punishment for gang rape on women under age of 12 years.

- **The Immoral Traffic (Prevention) Act, 1956**

The Act was enacted in the year 1956. The main aim of the Act was the eradication of trafficking and some other types of sexual exploitation in women and girls.

- **The Juvenile Justice (Care and Protection) Act, 2000**

The Act directly did not deal with the sexual abuse of children. But the definition of a neglected juvenile under the Act consisted of frequently visiting any place where prostitution is carried on or who was being likely to be abused sexually for immoral or illegal purposes. Various legislatures dealing with the problem of child sexual abuses are there, the Juvenile Justice Act, 1986 is one of them. It was enacted to provide care, treatment, protection and rehabilitation of neglected and delinquent children.

- **The Information Technology Act, 2000**

The children and teenagers due to the easy access to pornography through internet are developing their more interest in the sexual activities. These curiosities often led their involvement in various sexual activities leading to crime. Indecent photographs, pornographies are made by the accused involving women and children especially the girl child and then upload them in various sites. In such a way the pornographic materials become easily accessible by all. The information and technology Act, 2000 is the primary law in India to deal with the cyber-crime. The Act of 2000, in its Section 67, deals with the offence of publishing information which is obscene in electronic form and punishes the offender with imprisonment up to five years and with fine which may extend to one lakh rupees and in the event of subsequent conviction with imprisonment which may extend to 10 years and fine up to Rs. 2 lakhs. Later on, in this year 2008, the Act is amended. By the information Technology (Amendment) Act, 2008, three new Sections 67, A, B and C have been added with Section 67. Section 67-A, thus punishes the person who publishes or who transmits images of sexually explicit act or conduct, Section 67-B, states that, if a person captures, publishes or transmits images of a child in a sexually explicit act or conduct, or if a person induces a child into sexual act, will be punished.

- **The Protection of Children from Sexual Offences Act, 2012**

²² Criminal law Amendment Act, 2013

²³ Criminal law Amendment Act, 2018

In order to protect children from various sexual offences and create child-friendly legal procedures for dealing with such offences, the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and its corresponding rules were enacted. Some salient features of the Act are as follows:

It is a Gender-Neutral Law

This Act was enacted to secure the interest of children from the offences of sexual assault, sexual harassment, and child pornography. It is a gender-neutral law that means it applies to both whether it is male or female child. Only requirement is that he or she must be below the age of 18 years.

Offences and Their Punishment

This Act covers wide range of offences of sexual abuse against children with stringent punishment to offenders. Followings are the offences which are covered under chapter 2 and chapter 3 deals with using of child for pornography purposes shall be punishable-

Offences	Punishment
S.3-Penetrative sexual assault	S.4- 10 years to life imprisonment and with fine
S.5- Aggravated Penetrative sexual assault	S.6- 20 years to life imprisonment and with fine
S.7- Sexual assault	S.8- 3 years to 5 years imprisonment and with fine
S.9- Aggravated sexual assault	S.10- 5 years to 7 years imprisonment and with fine
S.11- Sexual harassment	S.12- 3 years imprisonment and with fine
S.13-Use of child for pornographic purposes	S. 14- 5 years imprisonment and on 2 nd time 7 years imprisonment and with fine

Mandatory Reporting

Chapter 5 of the Act provides procedure for reporting of the cases. Section 19 states that reporting of cases under this Act shall be mandatory who has knowledge about the offence have been committed or likely to be committed. Any person who fails to report and record the offences under this shall be punished with imprisonment of either description which may extend to 6 month and with fine or with both.²⁴

This Act impose special obligation on any personnel of media or studio or hotel or lodge or hospital or photographic facilities that on coming across any child sexual abuse material including pornography or making obscene representation by using any medium shall provide such information to local police or special juvenile police unit.²⁵

Child Friendly Environment

It is primary aim of POCSO act to provide speedy trial and child friendly environment during the investigation, inquiry and trial for the wellbeing of children. To achieve the above goal special court will try the case and special public prosecutor will represent the case.

Act provides that during recording of the evidence question put to the child shall be go through the judge. It is duty of judge to provide frequent break during trial. Parents or guardian, family member and friends will be allowed in court room to make the familiar atmosphere.²⁶. Court will ensure that child should not expose to accused in any case. Trial may be conducted through video

²⁴The Protection of Children from Sexual Offences Act, 2012, Section 21.

²⁵The Protection of Children from Sexual Offences Act, 2012, Section 20.

²⁶The Protection of Children from Sexual Offences Act, 2012, Section 33.

conferencing.²⁷ Court will provide support person if necessary to child. Court will also provide interpreter or educator for the assistance of child.²⁸ Trial of cases shall be conducted in camera.²⁹ POCSO enacted to provide speedy trial to child. Recording of the evidence shall be completed within one month and the trial will be concluded within one year.

Protection of Child's Identity

The Act emphasise that the identity of victim shall not be disclosed in any reports of media including his name, address, photograph, family details, school, neighbourhood or any other particulars which may lead to disclose the identity of child. Anyone who discloses the identity of child shall be punished with imprisonment of either description which shall not be less than 6 month and may extend to one year or with fine or both.³⁰

CHILD PORNOGRAPHY: AN ANALYSIS

Today, child pornography is considered by most societies to be an especially heinous crime. With technological advancements, child pornography crimes have increased in numbers and have also developed to be more vicious and harmful than before. Child pornography crimes are directly linked to the sexual abuse of children. Apart from the fact that some child pornographic material depicts physical, sexual abuse against children, the fact that the abuse has been recorded, shared and viewed add to the victimization and abuse of the child victims. The matter of child pornography as abuse of children and children's rights is addressed in the United Nations Convention on the Rights of the Child (CRC). According to the convention, all state parties that have ratified the convention should work against sexual exploitation of children, as well as all exploitation of children for pornographic purposes.

The offence of child pornography is not just one offence, rather it is a series of offences and harsh consequences. It begins with the sexual abuse of child who probably don't even understand as to what is happening with him, and even if he knows about it, that doesn't make it any better. Then such abuse is recorded and distributed among certain horrible people who take intense pleasure in watching those children suffering in pain owing to their exploitation, which provokes them to do it themselves. This is how the desire to do such heinous acts evolves among people, and many of them even succeed to do it, hence more crimes.

Definition of Child Pornography

Any visual depiction of sexually explicit conduct involving a child which includes photograph, video, digital or computer-generated image indistinguishable from an actual child and an image created, adapted or modified but appear to depict a child.³¹

Child pornography can be defined as any representation of a minor (a person who has not completed the age of 18) simulated or real engaged in sexually explicit activity in audio, video, it can also be drawn³² or written form through various means like electronic, digital, optical means.

Modus Operandi

- Uses false identity to trap children
- Contact children through various chat applications used by children
- Befriend the child, and extract the personal information from her by winning confidence.

²⁷The Protection of Children from Sexual Offences Act, 2012, Section 36.

²⁸The Protection of Children from Sexual Offences Act, 2012, Section 38.

²⁹The Protection of Children from Sexual Offences Act, 2012, Section 37.

³⁰The Protection of Children from Sexual Offences Act, 2012, Section 23.

³¹Section 2(da) of the Protection of Children from Sexual Offences Act, 2012.

³²[Definition of "Child Pornography"](#) *www.efc.ca*. Retrieved 2022-09-12.

- Gets the email address, WhatsApp number, Instagram or other social media platforms and start making contracts.
- Start sending pornographic picture or text to the child in order to shape his feeling that what is being fed to him is normal and that everybody does it and lastly paedophile fix a meeting with the child out of his house and further sexually exploit him as a sex object.³³

Section 67A in the Information Technology Act, 2000

Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.³⁴

Section 67B in the Information Technology Act, 2000

Publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form

Section 67 B states that “*anyone who:*

- a) publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or*
- b) creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or*
- c) cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or*
- d) facilitates abusing children online, or*
- e) records in any electronic form own abuse or that of others pertaining to sexually explicit act with children, shall be punished; in case of the first conviction, he shall be punished with imprisonment up to five years and fine up to ten lakh rupees. In case of second or subsequent conviction, he shall be punished with imprisonment up to seven years and fine up to ten lakh rupees.”³⁵*

Provision under POCSO Act, 2012

Section 13 of the POCSO Act states the use of child for pornographic purposes. Whoever uses a child to any form of media for sexual gratification, which includes:

1. Representation of sexual organs of a child
2. Usage a child for actual or simulated sexual act with or without penetration.
3. Indecent representation of a child
shall be considered guilty of the offence of using a child for pornographic purposes.

The punishment is as follows:

- Whoever uses child for pornographic purposes shall be punished with imprisonment of either description for a term which may extend to five years and also be liable to fine. If a person repeats offence, such imprisonment may extend to seven years and also be liable to fine.
- Whoever uses the child for pornographic activity and commits an offence under section 3 or section 5 or section 7 or section 9 by directly participating in such pornographic acts, then the

³³R.P. Kataria, S.K.P. Srinivas, *Cyber Crime, Law Practice and Procedure* (Orient Publishing Company, Allahabad, 1stedn., 2014)

³⁴Section 67 A of the Information Technology Act, 2000.

³⁵*Ibid*, S. 67B.

accused shall be punished with the same offences as given under section 4, section 6, section 8 and section 8 respectively.

Section 15 of the POCSO Act, 2012 provides that storing of any pornographic material that involves a child is a punishable offence.

JUDICIAL APPROACH:

Bijoy vs. The State of West Bengal (2017)³⁶

In this case, the offender was convicted of committing sexual assault and the Calcutta High Court issued some directions that must to be followed by the investigating agencies in order to preserve the dignity of the child victim. Following are a few of the key directions:

- The police officer is required to register the FIR as per Section 19 of the POCSO Act and inform the victim and their parents about their right to legal aid and representation.
- The child should be sent for a medical examination as soon as the FIR is filed, in accordance with Section 27 of the POCSO Act. The Juvenile Justice (Care and Protection of Children) Act of 2000 states that a child must be transferred to the jurisdictional CWC if they determine that the child meets the definition of “child in need of care and protection” as stated in Section 2(d).
- It is forbidden for any media to reveal the victim's identify.

Additionally, the Court released some rules pertaining to victims' compensation. The following are some key points:

- The Special Court has the authority to make interim awards of compensation under Section 33(8) of the POCSO Act.
- The compensation at the interim stage is independent of compensation to be paid by the convict upon conviction.
- The objective behind providing compensation is the relief and rehabilitation of the child victim and the reparation to the victim when the State has failed to protect the individual from crimes.

Santosh vs. The State of Maharashtra, 2021

In January 2021, female judge Justice Pushpa Ganediwala of the Bombay High Court had acquitted an accused by saying that "groping a minor's breast without 'skin to skin contact' can't be termed as sexual assault under Section 8 of POCSO".³⁷ In this case, the accused an adult 50-year-old took the young girl to his house on the pretext of giving her a guava, pressed her breast and attempted to remove her salwar. The mother of the girl reached there and saved her daughter. Holding that there should be 'skin to skin' contact to attract the offence under Section 8 POCSO, the High Court instead held that it amounted to molestation, an offence punishable lesser under Section 354 IPC. The impugned judgement was much criticised by all over the country.

Later in an appeal supreme court set aside a Bombay High Court judgement Calling it a "narrow interpretation of the law", ruled that "skin to skin" contact is not necessary for a crime to be considered under (POCSO) Act, 2012. Supreme court held that “the most important ingredient for constituting the offence of sexual assault is sexual intent and not skin-to-skin contact with the child. The construction of a rule should give effect to the rule rather than destroy it. Any narrow interpretation of the provision which would defeat its object cannot be accepted. The intention of the legislature cannot be given effect unless the wider interpretation is given.”³⁸

The judgement showed that there are still required to strict implementation of the Act at every stage of the criminal justice system. The case hardly reached to higher court. The interpretation of law

³⁶Bijoy @ Guddu Das vs The State Of West Bengal, available on <https://indiankanoon.org/doc/22883435/> accessed on 22 September 2022.

³⁷<https://www.outlookindia.com/website/story/skin-to-skin-contact-how-it-travelled-path-of-judiciary/401445>

³⁸<https://www.ndtv.com/india-news/supreme-court-sets-aside-bombay-high-courts-skin-to-skin-judgement-2615494>

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should not be in favour of the accused rather it should be in the interest of child as the guilty could not escape from the liberal interpretation.

CONCLUSION

Protection and safety of vulnerable children from sexual abuse is a critical issue not only in India but around the world. In every country, every cultural, at every social and economic level, children are at risk of sexual abuse and neglect. With the advent of technology children are spending hours on internet which makes possibility to trap in the perpetrators. POCSO is exhaustive legislation enacted to tackle the issue which aims to cover all the aspects of child sexual abuse. From every perspective it looks a comprehensive legislation but it is seen that number of cases are increasing including child pornography. An Amendment has been made in the Act via the Protection of Children from Sexual Offences (Amendment) Act, 2019, with which the punishments for the offences have been made more stringent. Law is made to protect the people but the people should also need to be vigilant about the danger, the need of the hour is to sensitize the public regarding child sexual abuse. Digital Training programs should be organised for parents and caregivers to prevent the children to from pornography. Moreover, the investigating agencies should be well trained and professionals such as medical practitioners involved in the stages of investigation and trial should be efficient and leave no scope of negligence on their part.

SUGGESTION

- Finding Root cause of sexual abuse should be first priority for governments and investigating agency.
- There are appropriate protective measures but it needs effective implementation on every stage of criminal justice.
- It also requires organising social programs which provide the needful support for the child and for those who are caring for the child.
- There should be local grievance mechanisms set up in the country to enable people to report sexual abuses cases.
- Digital Training programs should be organised for parents and caregivers to prevent the children to from pornography. They can acquire knowledge and skills to learn about the environment which is the one in which children spend the most hours in homes.

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