



STUDY ON LEGAL PERSPECTIVES OF CHILD SEXUAL ABUSE IN INDIA

Bruhaspati Sabar¹ Dr.Diptirekha Mohapatra²

¹ Ph.D. Research Scholar, P.G. Department of Law, Sambalpur University, Joyti Vihar, Burla, Odisha

² Assistant professor P.G Department of Law Sambalpur University, Odisha.

Abstract:

Sexual violence against children is extremely common in India. The vast majority of children who are sexually exploited are not reported. In India, sexual violence against children remains a taboo and social stigma. But, in many factors causing of child sexual abuse exist. Sexual abuse against children is caused by a variety of factors and sources. The main causes of sexual abuse and violence against children are poverty, the offender's age, and the role of social media. As result, the government of India has passed the protection of children from Sexual offenses (POCSO) Act, 2012 for the protection of children from sexual abuse and pornography. This legislation focused on the role of medical officers, the establishment of a special court, and mandatory reporting of child sexual abuse cases. Child refers to all personnel and protects all children under 18 years of age who have committed offences of sexual assault, sexual harassment, and pornography. The sexual exploitation of children is a universal problem. Estimates of sexual violence against children vary considerably between countries.

Keywords: Child Abuse, POCSO Act, Sexual Violence, Sexual Harassment, Sexual Assault, Sexual Abuse

I. Introduction

Child sexual abuse is not a new phenomenon. It is deep rooted since ancient period. There is no evidence of origin of child sexual abuse. The incidence of child sexual abuse is increasing very fast in every society be it developed or developing or underdeveloped. During Muslim rule in India, the children were used in the royal king's house for their amusements. No one could raise any voice against such heinous systems in the society.

¹ Ph.D. Research Scholar, P.G. Department of Law, Sambalpur University, Joyti Vihar, Burla, Odisha

² Assistant professor P.G Department of Law Sambalpur University, Odisha.

So the position of the children was not well. They were directly or indirectly affected by different abuse like sexual abuse, physical abuse, emotional abuse, and neglect by others from different periods in India. Now, Child sexual abuse and sex trafficking are going on rapidly in every corner of the country. Child sexual abuse may be committed by anyone, irrespective of age, gender ethnicity, or educational or income profile. The victim of the sexual abuse may also come from any strata of society and may belong to any gender. World Health Organization (WHO) defined Sexual abuse as the involvement of a child in any sexual activity that he or she does not fully comprehend and is unable to give informed not developmentally prepared or else that violates the laws, and social or social taboos of society. The most comprehensive definition has defined by the Standing Committee on Sexually Abuse Children (SCOSAC) that “Any child below the age of consent may be deemed to have been sexually abused when a sexually matured person has engaged or permitted the engagement of that child in any activity of a sexual nature, which is intended to lead sexual gratification of the sexually mature person. On the other hand, child sexual abuse means any kind of physical and mental violation of a child with sexual intent, usually by an elder person who is in possession of trust or power with regard to a child. Child sexual abuse is not only penetration of a child but also includes oral-genital, genital-genital, genital-rectal, hand-genital, hand rectal or hand the barest contact, exposure of sexual anatomy, forced viewing of sexual anatomy, and showing of pornographic martial to a child or using a child in the production of pornography viewing or touching of genitals, etc. Sexual activities by preadolescent children of the same or opposite sex, separated by no more than 4 years of age, in which there has been no force or coercion, termed sexual play. (Malhotra & Biswas, 2005). Child pornography, prostitution, and sexual abuse are known to have existed in Victorian, but this knowledge was suppressed so that by the mid-twentieth century, these abuses were largely seen as a thing of the past in all but a few countries. (Bajpai, 2003)

II. Prevalence of child sexual abuse in India.

The sexual exploitation of children is a widespread problem in developing countries. It is a fact that 20% of women were victims of sexual violence when they were children. There is also a high rate of sexual assault elsewhere in Asia (Tamuli, et.al, 2013). Despite different laws and policies, there is very less reporting of child sexual cases in India. Children under the age of 18 contribute to 44.4 % of India’s current population, half of whom have not reached maturity, education or health. A Survey by the Indian government’s Ministry of Women and Child Development (2007) found that the prevalence of all forms of child sexual abuse is extremely high. Out of the total cases of, 2211, 42 % (48% of boys and 39% of the girls) of children faced at least one form of sexual abuse or other (Dasgupta, 2013). Sexual violence against children is widespread across the middle and upper classes of all societies. Sexual exploitation of children is prevalent among mixed and nuclear families. Most abusers are known by the victim. Poverty, social media, and illiteracy are key issues related to sexual violence against children. Poverty has a negative impact on students and it is also a leading cause of illiteracy in every society. In the majority of child sexual abuse cases, offenders are now or family relations of the victim, as such reporting rate of child sexual abuse is very low in India. Sexual violence occurs at home, in schools, daycare, in workplaces, and in the community (Seth & Srivastava, 2017).

III. Different types of Child Sexual Abuse:

Child sexual abuse is a different form. It affects in emotional mental and physical of the victim. Physical abuse, emotional abuse, Sexual abuse, and neglect are the main forms of child sexual abuse.

i) Physical abuse:-

Physical abuse is defined as a physical injury caused by punching, beating, kicking, baiting, burning or otherwise harming a child. Physical abuse is the most visible from all child ill-treatment. Physical injury that ranges from small bruises to brutal fractures or death as result of punching, choking, hitting with a hand, strap or other object, burning or otherwise harming a child such injury is considered abuse regardless of whether the caretaker intended to hurt the child. (*Fayaz, 2019*). Physical abuse is actually more common. However, unlike sexual abuse, boys and girls are equally likely to be physical abused. (*Tackett, 2001*)

ii) Emotional abuse:-

Emotional abuse is also known as verbal abuse, mental abuse and psychological maltreatment. It includes acts or the failure to act by parents or caretakers that have caused or could cause serious behavior cognitive, emotional, or mental trauma. (*Raghav et al. 2015*) This can include parents/ caretakers using extreme and /or bizarre forms of punishment, such as confinement in a closet or dark room or being tied to a chair for long periods of time or threading, or terrorizing a child. Less serene acts. But not less damaging are belittling or rejecting treatment, using derogatory terms to describe the child's habitual tendency to blame the child or make him/her a scapegoat.

iii) Sexual abuse:-

Sexual abuse is an involvement of a child in any sexual activity that she/he does not fully understand and approve of. Sexual abuse is also inappropriate sexual behavior with a child.

Child sexual abuse generally categorized into two major types:

- Contact type:
- Non contact type :

Kissing or holding in a sexual abuse manner, forcing to touch genitals' areas, Vagina or Anal intercourse, sexual Exploitation, incest and rape are coming under the ambit of contact type of child sexual abuse. Virtual sex online solicitation, exposed to pornography, sexually intrusive comments and Voyeurism are coming under the non-contact of child sexual abuse. Sexual abuse is defined as an act sexual assault and exploitation of kids by parents, guardians or strangers. Assault with minors may be of single incident or many incidents over a long period of time. It includes stroking a child's genitals, intercourse, rape and sexual exploitation (*Aeron, 2018*) As for sexual abuse goes, it refers to quick and childish behavior that may include actions such as felling of children's private parts, comparing children to old people in terms of their private parts, incest intercourse. (*Gupta et al., 2022*)

iv) Neglect:-

Neglect is a type of maltreatment that refers to the failure by the caregiver to provide needed, age – appropriate care although financially able to do so or offender financial or other means to do so (*Suruchi Malpani et al., 2017*) Neglect is a kind of sexual abuse, which involves depriving a child of adequate food, clothing, shelter, supervision, medical care and education. It also harms children, although it more about being inactive and not doing something than the previous forms of child sexual abuse. Failures to provide nutrition, Failure to monitor child’s progress, failure to protect from harm and failure to monitors child care are the primary consists of the child neglect.

IV. Magnitude of Child Sexual Abuse:

India is a home of 440 million children (*Saini, 2013*). But it is a fact that more than 40 children are not safe. The researcher has reviewed so many published articles on child sexual abuse it comes that many children face unsafe on birth, and many do not survive them. Many children are struggles from their childhood of notable to reach their full potential. The magnitude of reported male sexual abuse in this study was lower than reports released in other studies. The prevalence of child sexual abuse is high in male students in Addis Ababa. It was reported that 4.3% of the participants considered in Rahils study were victims of sexual abuse (*Muluwork Tefera, 2017*). Poverty is one of the main magnitudes of child sexual abuse. The parents are not able to provide good quality of food on their children. As such, the people want to migrate from one place to another for their livelihood.

V. Perspectives of Child Sexual Abuse:

The perspectives of child sexual abuse has categorized into three parts.

- Legislative prospective of child sexual abuse.
- Judicial perspective of child sexual abuse.
- Administrative prospective. Of child sexual abuse.

V.I. Legislative prospective of child sexual abuse

The **Pocso** Act 2012 is historical legislation as it defines sexual offences of Sexual assault, sexual harassment and pornography as safeguarding the interest, and well –being of children. It also lays down a child- friendly procedure regarding the recording of evidence, investigation, and trial of offences the establishment of a special court, and speedy trial of cases. Child sexual abuse may be committed by anyone, irrespective of age, gender, or educational/ income profile. On the other hand, the victim of sexual offences comes from any strata of society, and may belong to either any gender. However, the offender takes advantages of their vulnerability suffered by the child such as parents migrants statues , or any other thing on advantage of

situation of victim. The Act also does not provide clear, on what happens when two minors' engage in any kind of sexual activity. Technically they are both children in conflict with law (CCLs). In practice through the police declare that girl children be (CNCPS). The protection of children from Sexual offences (POCSO) Act, 2012 is a special Act criminalizes sexual assault, sexual harassment, and pornography involving a child under the age the age group of 18 years and mandates the setting up of special courts to expedite trials of these offences.(*Bhatanagar,2020*)

V.2. Judicial Prospective of child sexual abuse

The judiciary has played a very important role in realizing the heinous crimes against the children. Indian judiciary has issued many guidelines for the protection of children from sexual abuse sexual exploration and sexual harassment. The main motto of POCSO Act is to provide speedy justice to children who are victims of sexual assaults. However, many serious institutional bottlenecks affect the legal protection of children below the age of 18 years. Section 35 of the POCSO Act lays down a period for the recording of evidence of the child and disposed of the case that the evidence shall be recorded within a period of thirty days of the special court taking cognizance of the offence and reasons for delay, if any shall be recorded by the special court. However, these provisions are more effective than complied with due to the overburden nature of courts in India. Section 32 (2) of the POCSO Act, the special public prosecutor while recording the examination- in chief , cross-examination or reexamination of the child ,should first communicate the questions to the special court and then those questions should be put to the child . The child should also be given frequent breaks between questions. The role of lawyer is also pivotal. The mandate of the lawyer is to assist the prosecution. This will require proper coordination between the public prosecutor and the child's lawyer. Further, in our adversarial justice system, while the public prosecutor and defense lawyer have well –defined roles, there needs to be an examination of how the lawyer for the child victim fits into this scheme

V.3. Administrative perspective of child sexual abuse

The POCSO case starts with the registration of the FIR. The police must aware that there is no delay in the registration of the FIR. But, on despite of best efforts, the police face a lot of problems in a proper investigation of the POCSO case and the conducting of the Medico- legal case. The Medico – legal cases the victim is often not conducted as victim's family is given inaccurate information on the long terms ill- effect of the Medico- legal case on child's health. When the child has gone to for an (MLC) or abortion, he or she often faces a hostile atmosphere in the hospital. Doctors therefore need to be educated on how to communicate with a child with sensitive about what he or she is going through to prevent further trauma. The forensic samples were taken by police often getting contaminated, or putrefied due to improper storage. As such, the police need to be acquainted with the best methods of collecting forensic evidence, so that the apperception of the evidence can take place smoothly during the trial. Role of the National Commission for the protection child rights and the State Commissions for the protection of child rights are required to monitor and evaluate the implementation of the protection of children from sexual offences Act 2012.They need to conduct legal awareness among the public, however, the functioning of such departments and other monitoring and

evaluation procedure has not been open to public scrutiny. To this extent, it is imperative to study the procedures established by such bodies and evaluate their effectiveness in generating impactful outcomes

Table 1: Shows POSCO cases reported in India from (2016-2020)

S.L No	Years	Protection of children from sexual offense cases in India	Total Cases against the children	Percentage child sexual abuse case from total child crime in India
1	2016	36022	106958	33.67%
2	2017	32608	129172	25.24%
3	2018	39827	141764	28.09%
5	2019	47335	148185	31.94%
6	2020	47221	128531	36.73%

(Source: NCRB Report of India)

A total of 106958 cases of crime against children registered in the year 2016, a total of 129172 cases registered in the years 2017, 141764 in the 2018, 148185 in the 2019 and 128531 in the year 2020.

Chart -1



In this study the researcher has found the crime rate against the children increasing indiscriminately. The government has passed law for the protection and prevention of the children. But, on the same machinery gap of the government or public, the crime rate against the children growing up repeatedly in our country.

VI. Conclusion:

The numbers of child sexual cases are very high in India. The progress report of child sexual abuse act gives mixed results. While the mandate of the legislation is truly radical in that it aims to protect children against sexual abuse, there are several snags in its implementation. The Majority of parents and children are unaware of the various fact of child sexual abuse. The educational level of parents has a correlation with child sexual abuse. Parents who are qualified, they have fully aware of child sexual abuse. Child sexual abuse needs to end.

It takes up many forms. As such, the Government of India has passed the Protection of children from sexual offences Act, 2012. Though this act plays as punishment for child sexual offenders but not mentioned to seek for prevention of crime. Child sexual abuse generally happened at the house, school, working place, or street. This Act works for the betterment of society and helps children to peacefully coexist and develop to become responsible individuals. It is our duty that child sexual abuse should be combated as early as possible. Children are an asset to every nation, and they are leaders of tomorrow.

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