



Child Sexual Abuse- A Violation Of Human Rights

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Abstract: Sexual offences against children cause a severe violation of the basic human rights of a child to live with human dignity. In the present scenario, sexual offences have become so common that not only adults but the tender age children are becoming the most vulnerable victims to such offences. One of the biggest social concerns in society is the abuse of children physically, mentally, and sexually across the country. Such abuse includes injury, neglect, maltreatment, blaming, forced sexual simulation, and incest exploitation. Though special law was enacted for the protection of children from sexual offences in 2012 i.e., "The Protection of Children from Sexual Offences Act, 2012," cases of child sexual abuse have not decreased; rather it is on the rise. This paper attempts to examine the various sexual offences against children that hamper their right to live a dignified life as well as the role of the judiciary in protecting children from various sexual offences.

Keywords: Sexual Offences, Sexual Abuse, Human Dignity, Forced Sexual Simulation and Incest Exploitation.

Introduction

Sexual violence causes great harm not only to children but also to the society at large. Seeing the gravity of the crime, various attempts have been made both at the international as well as at the national level to curb this menace. Article 1, of the Universal Declaration of Human Rights (UDHR), 1948, states, "All human beings are born free and equal in dignity and rights". Similarly, Article 25(2) of the UDHR stipulates that "childhood is entitled to special care and assistance". The United Nations Convention on the Rights of the Child (UNCRC), 1989, under Article 6, also states that "Every child has the inherent right to life." The World Conference on Human Rights, 1993 (Vienna Conference) reiterated that "all human rights form the dignity and worth inherent in all human person and the human person is the central subject of human rights and fundamental freedoms". Article 21 of the Constitution of India by the interpretation of the apex court in various cases has asserted the 'right to live with human dignity' as a basic fundamental right to the enjoyment of the right to life.

India ratified the CRC on December 11, 1992 and as a consequence of its commitment to compliance and acceded the rights enshrined in the said Convention (CRC) and in exercising the power conferred under Article 15(3) of the Constitution, the Parliament passed '*The Protection of Children from Sexual Offences (POCSO) Act, 2012*, to protect children from various sexual offences. However, in spite of such special legislation, it is heart aching to observe that the 'right of children to live in human dignity' has been violated in various ways and in different directions and perspectives in the society. The principles of

'equality in rights' recognised in natural law and guaranteed in Article 14 of the Indian Constitution are grossly violated more often and abuse occur mostly against children.

Child Sexual Abuse

Sexual abuse is sexual victimization through a sexual encounter. Sexual encounter includes intercourse, anal-genital contact, fondling, or an encounter with an exhibitionist. (M. Adenwalla, 'Child Sexual Abuse and the Law' 2008) Child Sexual Abuse (CSA) is a broad term used to describe sexual offences against children. In simple terms, Child Sexual Abuse has been defined as any kind of physical or mental violation of a child with sexual intent, usually by a person who is in a position of trust or power vis-a-vis the child. (Asha Bajpaj, 'Child Rights In India-Law, Policy and Practice' 2017).

The World Health Organisation (WHO) has defined Child Sexual Abuse as "*the involvement of a child in sexual activity that she or he does not fully comprehend, is unable to informed consent to, or for which the child is not developed- mentally prepared and cannot give consent or that violates the laws or social taboos of the society.*" Child sexual abuse is evident in this activity between a child and an adult or another child who, by age or development, is in a relationship of responsibility, trust, or power; the activity to gratify or satisfy the person's needs.

International Position on Child Sexual Abuse

There are various international instruments that address the problem of child sexual abuse as a violation of the human rights of children to live a dignified life. These instruments deal with the rights and put an obligation on the State to ensure the protection of these human rights for the enjoyment by all children.

The first international instrument dealing with children's rights was the Declaration of the Rights of the Child (DRC), which the League of Nations adopted on September 26, 1924. The Declaration declares that 'humanity owes to the child the best that it has to give and the child must be protected against every form of exploitation'.

Similarly, the Universal Declaration of Human Rights (UDHR) provides some protection for safeguarding and protecting the rights of children against exploitation (Articles 1, 3, 5 and 25(2)). Article 1 of the Declaration states that "all human beings are born free and equal in dignity and rights". Likewise, Article 3, of the Declaration provides that "everyone has the right to life, liberty and security". These provisions aim to protect the 'dignity of life of human being', which undoubtedly includes protecting children against sexual abuse.

On November 20, 1959, the United Nations General Assembly unanimously adopted the Declaration of the Rights of the Child (DRC). It reaffirmed their faith in the fundamental human rights and the dignity and worth of human beings and determined to promote social progress and a better standard of life in greater freedom. (Preamble of the DRC, 1959). Article 2 of the Declaration provides that "the child shall enjoy special protection and shall be given opportunity and facilities, by law or by other means to enable him/her to develop physically, mentally, morally, spiritually and socially in a healthy manner and the conditions of freedom and dignity". Article 4 of the Declaration, provides that, "the child shall enjoy the benefits of social security as well as shall entitle the special care and protection". Furthermore, under Article 9 of the

Declaration, "children shall be protected against all forms of neglect, cruelty and exploitation and they shall not be the subject of traffic in any form".

To ensure State's obligation for the effective enjoyment of the rights enshrined in the UDHR, on December 16, 1996, two covenants were adopted by the United Nations General Assembly- (i) International Covenant on Civil and Political Rights (ICCPR), which came into force on March 23, 1976) and (ii) International Covenant on Economic, Social and Cultural Rights (ICESCR), which came into force on January 3, 1976. Both Covenants recognised the inherent dignity and of the inalienable rights of all members of the human family, which is the foundation of freedom, justice, and peace in the world. (Preamble of ICCPR and ICESCR, 1996)

The (UNCRC), 1989 or popularly known as the 'Convention on the Rights of the Child', outlines the fundamental rights of children and prescribes the universal standards to be followed by all States Parties in securing the best interest of the child. Under Article 19 of the Convention, States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent (s), legal guardian(s), or any other person who has the care of the child. Similarly, under Article 34 of the Convention, States Parties are bound to protect the child from all forms of sexual exploitation and sexual abuse.

Indian Legal Position

The Constitution of India under Article 15(3) makes 'special provisions for children' as well as in other legislations, incorporates some specific provisions for the protection, welfare and overall development of children, so that they can avail their basic human rights and be protected from exploitation and abuse. Besides, India, being a party to the United Nations Convention on the Rights of the Child (UNCRC), 1989, is also under a legal obligation to protect children from all forms of sexual exploitation and sexual abuse.

Therefore, to fulfil its obligations towards the international instruments and regulations, India committed itself to enact a special legislation for the protection of children known as "The Protection of Children from Sexual Offences Act, 2012",

The Protection of Children from Sexual Offences (POCSO) Act, 2012 The sexual offences were covered under the Indian Penal Code (IPC). However, sexual offences against children are not adequately addressed by the existing law (IPC). It did not also distinguish between adult and child victims.

To deal with child sexual abuse cases, the Parliament passed a unique and comprehensive law, i.e., the Protection of Children from Sexual Offences (POCSO) Act, 2012. The Act came into force with effect from November 14, 2012 along with the Rules framed under.

Prior to 2012, the offences against children were enshrined in the Indian Penal Code, (now the Bharatiya Nyaya Sanhita, 2023) and the procedure of trial was enshrined in the Code of Criminal Procedure (now the Bharatiya Nagarik Suraksha Sanhita, 2023). There were several loopholes with regard to the protection of children under the Indian Penal Code, (Bharatiya Nyaya Sanhita) the most significant one being that only women (girls) are protected from sexual offences under the Indian Penal Code (Bharatiya Nyaya Sanhita). The Indian Penal Code (Bharatiya Nyaya Sanhita) did not also distinguish between adult and child victims. Moreover, sexual offences against children are not adequately addressed either by the Indian Penal Code (Bharatiya Nyaya Sanhita) or by all the existing laws. A large number of such offences are, therefore, neither specifically provided for nor are they adequately penalized. The interests of the child, both as a victim as well as a witness, need to be protected and it is also felt that offences against children need to be defined explicitly and countered through commensurate penalties as an effective deterrence.¹ It is, therefore, proposed to enact a self-contained comprehensive and special law known as 'The Protection of Children from Sexual Offences (POCSO) Act, 2012 has therefore, been passed in the Parliament to provide for a special law exclusively addressing sexual offences against children (penetrative sexual assault, aggravated penetrative sexual assault, sexual assault, aggravated sexual assault, sexual harassment, and pornography) with due regard for safeguarding the interest and well being of the child at every stage of the judicial process, incorporating child-friendly procedures for reporting, recording of evidence, investigation, and trial of offences and provision for the establishment of 'Special Courts' for speedy trial of such offences.

The POCSO Act, 2012 is enacted with a view to implement Article 34 of the Convention on the Rights of Child, 1989, which requires the introduction of national measures to prevent the sexual exploitation of children. It is the first law in India which deals specifically with sexual offences against children.

The POCSO Act was enacted as a result of the rising of cases of sexual abuse against children. Incidents of sexual abuse against children occur at schools, religious places, hostels, child care institutions, home etc., and the security of children is not guaranteed anywhere. With such emerging dangers, it was therefore, the need of an hour to introduce separate legislation which could provide a reliable system for mitigating the number of such offences and also providing stringent/harsh punishment to the perpetrator of such sexual offence committed against the child.

The objective of the POCSO Act is to strengthen the legal provisions for the protection of children from sexual offences and provides justice for such children who are victims of sexual offences by safeguarding their best interest and well being at every judicial process by incorporating child-friendly mechanism for mandatory reporting, investigation, recording of evidence and speedy trial of offences through designated Special Courts.

¹ POCSO Act, 2012, Statement of Objects and Reasons.

The POCSO Act defines a 'child' as any person below the age of eighteen years (Section 2(d)).

Offences under the POCSO Act, 2012

The POCSO Act, 2012, is a special legislation enacted to protect children from sexual assault, sexual harassment, and pornography, recognizes penetrative, touch, and non-touch-based sexual offences. The provisions of the POCSO Act are gender-neutral vis-a-vis both the perpetrator and the victim.

The Act identifies five types of sexual offences against children – Penetrative Sexual Assault, (Section 3) Aggravated Penetrative Sexual Assault, (Section 5) Sexual Assault, (Section 7) Aggravated Sexual Assault, (Section 8) Sexual Harassment, (Section 11) and using of child for pornographic purposes (Section 13). These offences are gender neutral vis-a-vis the perpetrator as well as the victim. Abetment of an attempt is also punishable under the Act. (Sections 16-19).

The offences recognize under the POCSO Act, 2012 are:-

Penetrative Sexual Offences under the POCSO Act, 2012

- Penetrative Sexual Assault (Sections 3 & 4)
- Aggravated Penetrative Sexual Assault (Sections 5 & 6)
- Using a child for pornography and committing Penetrative Sexual Assault (Sections 13 & 14 (2))
- Using a child for pornography and committing Aggravated Penetrative Sexual Assault (Sections 13 & 14 (2))

Touch-based Sexual Offences under the POCSO Act, 2012

- Sexual Assault (Sections 7 & 8)
- Aggravated Sexual Assault (Sections 9 & 10)
- Using a child for pornographic purposes (Sections 13 & 14 (1))
- Using a child for pornography and committing aggravated sexual assault (Sections 13 and 14 (2))

Non-touch based Sexual Offences under the POCSO Act, 2012

- Sexual harassment (Sections 11 and 12)
- Storage of pornographic material involving a child for commercial purposes (Section 15)

Other Offences under the POCSO Act, 2012

- Failure to report the commission of a sexual offence (Section 21 (1))
- Failure to record the commission of a sexual offence (Section 21 (1))
- Failure of a person-in-charge of any company or an institution who fails to report the commission of an offence by a subordinate under his control (Section 21 (2))
- Punishment for false complaint or false information (Section 22)

- Disclosure of identity of a child without permission of the Special Court (Section 23 (2) (4))
- Making of report or comments on any child from any form of media without complete and authentic information, which may have the effect of lowering reputation or infringing the privacy of the child (Section 23 (1) (4))
- Abetment of an offence (Sections 16 and 17)
- Attempt to commit an offence (Section 18)

Judicial Response

In spite of the incorporation of various constitutional provisions and legislative sanctions under the Indian Penal Code and the enactment of the special law i.e., The Protection of Children from Sexual Offences (POCSO) Act, 2012, it is observed that the incidents of child exploitation and abuse especially sexual abuse are still unabated, rather it is occurring in a very alarming rate in all the States and Union Territories of our country.

In these circumstances, it is therefore the need of an hour for the judiciary to intervene and protect the children from such sexual abuse. The response of the judiciary is classified into two categories- (i) Judicial response on child sexual abuse in Pre- POCSO Act, 2012 and (ii) Judicial response on child sexual abuse in post-POCSO Act, 2012.

(i) Judicial Response on Child Sexual Abuse in Pre-POCSO Act, 2012

In *Maneka Gandhi v. Union of India* (AIR 1978 SC 775) the Hon'ble Supreme Court held and gave a new dimension of the right to 'live', which is not merely confined to physical existence, but includes within its ambit the right to live with human dignity.

Similarly, in *Francis Corailie v. Delhi* (AIR, 1981 SC 746) Bhagwati, J. observed that "the right to life includes the right to live with human dignity and all that goes along with it..." In *Shakshi v. Union of India*, (AIR 2004 SC 3566) the Supreme Court issued guidelines to be followed during the trial of child sexual abuse or rape. These guidelines are significant particularly for the on-going trials of rape and cases before the enactment of the POCSO Act.

In *Bachpan Bachao Andolan v. Union of India*, (AIR 2011 SC 3361), Supreme Court held that sexual, physical and emotional abuse of children detained in circus is violation of Article 21 of the Indian Constitution.

(ii) Judicial Response on Child Sexual Abuse in Post POCSO Act, 2012

In *Independent Thought v. Union of India* (W.P.(C) 382 of 2013), the Court held that a child girl's right to life against marital rape was being deprived through child marriage. Child marriage is interrupting the overall welfare of girls. In this landmark verdict, Honourable Supreme Court has struck down Section 375, exception 2 of the Indian Penal Code, as it is violation of Articles 14, 15 and 21 of the Indian Constitution, which allows intrusive sexual intercourse with a girl who is above 15 years but below 18 years. In *Lillu v. State of Haryanas* (AIR 2013 SC 1784) the Supreme Court held that the "two finger test and its interpretation violates the right of rape survivors to privacy, physical and mental integrity and dignity and hence it is unconstitutional." In *Subhankar Sarkar v. State of West Bengal* (2015), based on the medical examination of the victim, it was found that there was no evidence of penetrative sexual assault but scratch marks on the body of the victim were found, which proved the use of force and thus, the accused was convicted under sections 8 and 12 of the POCSO Act.

In *Mukesh and Another v. State for National Capital Territory of Delhi and Others, (Nirbhaya's case)* (2017) 6 SCC wherein a female medical was brutally gang raped on to a moving bus, in the National Capital Territory of Delhi on the chilly night of December 16, 2012, by six males, one of whom was a minor, aged 17 years old, while Nirbhaya and her male friend were returning from a movie theatre. In spite of receiving all the possible treatments, later, she died in the hospital in Singapore. This incident also generated a huge international coverage. It was condemned by the United Nations Entity for Gender Equality and Empowerment of Women, who called up the Government of India and Delhi "to do everything in their power to take up radical reforms and the like to make women's lives safer and secure."²

The Supreme Court ruled that the case falls within the ambit of the rarest of the rare cases, and thus, upheld the death penalty for four convicts as a crime committed was a shock to humanity.

In *Attorney General for India v. Satish and another* (2021), the Apex Court observed that Section 7 of the POCSO Act, 2012, should be interpreted to provide a fair and reasonable solution to the cases falling under its ambit. Section 7 covers both direct and indirect touch, thereby highlighting the logic of the Bombay High Court judgment, which is quite insensitively trivialized and indeed undermines a child's dignity and autonomy through unwelcome intrusions. Further, the Apex Court observed that the matter would be appropriate for applying the "mischief rule" of statutory interpretation. Courts must constantly interpret the law in order to prevent the harm and promote the remedy.

In *Julius K. Dorphang v. State of Meghalaya and Ors,* (2023) the Hon'ble High Court of Meghalaya dismissed a Criminal Appeal filed by the former MLA and upheld the judgment of a trial court which sentenced him to 25 years in jail for allegedly raping a 14- year old girl in 2017 while he was serving as an MLA. The Division Bench further directs the State to ensure the continued well-being of the survivor, at least till it reaches the age of 25 years and the total amount of compensation not less than 20 lakhs should be provided by the State to the survivor on a periodic basis. The State will also be responsible for taking care of all the medical needs of the survivors free of cost. The Court further observed that the society at large owes a huge apology to the brave young survivor for having failed one of its most precious and tender.

² "The Criminal Law (Amendment) Act, 2013". Available at <http://www.ycce.edu/admin/pdf/Anti-rape-bill-2013.pdf> (accessed on 24-2- 2025)

Conclusion and Suggestions

Child sexual abuse is a clear violation of the basic human rights of a child and in many cases, a contemporary form of slavery. From the above discussion, it is evident that in India, there is no dearth of legislations for the prevention and protection of children from sexual abuse. Even in the Constitution of India itself, some constitutional provisions have been incorporated to safeguard the basic human rights and dignity of life of the children from various types of exploitations and abuses, including sexual abuse.

In spite of these initiatives being taken, it is heart-aching to observe that there is no stoppage of such incidents of exploitation and sexual abuse against children rather; they are alarmingly increasing day by day in our society.

The judiciary, especially Supreme Court has also, from time to time, reacted very sharply and affirmed its views towards the necessity of protecting the inherent dignity of life and basic human rights of the children, which cannot be abused by any means.

Children as human beings are entitled to enjoy all the rights guaranteed under the various human rights treaties as well as under the various Constitutional provisions and national legislations of the country. Therefore, each child has the right to his/her physical and personal integrity, dignity and protection from all forms of violence.

It is, therefore, necessary for the apex judiciary as well as society to bring some changes for the prevention and protection of children from sexual abuse and exploitation so that the rights of children to live in dignity can be safeguarded and protected in the society.

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