

CHILD SEXUAL ABUSE IN INDIA AND THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT 2012: A RESEARCH REVIEW

Aranya G

Department of Commerce and Management, Amrita Vishwa Vidyapeetham, Amritapuri, India
aranyag@am.amrita.edu

Bharath Chandran

Department of Commerce & Management, Amrita Vishwa Vidyapeetham, Amritapuri
India, bharathchandran@am.amrita.edu

Silpa Raj R

Department of Commerce & Management, Amrita Vishwa Vidyapeetham, Amritapuri, India
shilparaj@am.amrita.edu

Vinod Kumar K

Department of Commerce & Management, Amrita Vishwa Vidyapeetham, Amritapuri, India,
vinodkallada@am.amrita.edu

Abstract

Child Sexual Abuse (CSA) is the maximum heinous crime in competition to kids and in maximum times, its miles hidden in nature. It is the most underreported crime. The effect of CSA lingers all through the life of a person. It is now being identified as toxic pressure which emotionally can harm the child irreparably. This paper offers research on CSA in India. The Protection of Children from Sexual Offences (POCSO) act have become enacted in 2012. POCSO has many troubles in implementation. The paper moreover offers the research accomplished withinside the POCSO putting all through troubles related to obligatory reporting, consensual sex, clinical doctors' preparedness for coping with CSA sufferers, and the fame of unique courts beneath POCSO.

Keywords: CSA; POCSO; mandatory reporting; age of consent; special courts.

INTRODUCTION

In order to handle the offensive crimes of sexual nature against children through strict legal provisions, the Ministry of girls and child development promoted the Introduction of the Protection of kids from Sexual Offences Act, 2012. "The act defines a baby as a person below the age of eighteen years, and regards the simplest interests and welfare of the kid as being of preponderant importance at each stage, to make sure the healthy, physical, emotional, intellectual and social development of the child."It defines completely different types of sexual abuse, penetrative and

non-penetrative assault, also as molestation and pornography, and deems such regulatory offense to be “aggravated” underneath sure circumstances, akin to once the abuse kid is unstable or when the abuse is committed by someone in an exceedingly position of trust or authority vis-à-vis a child, sort of a family member, police officer, etcetera individuals concerned in child trafficking for sexual functions are punishable under the supply concerning instigation within the act.

LITERATURE REVIEW

Psychiatry, D. O. (2015) The infant sexual abuse is an under-stated offence in India, which has reached epidemic percentage. A current observes on incidence of sexual abuse amongst teenagers in Kerala, mentioned that 36 according to cent of boys and 35 in keeping with cent of women had experienced sexual abuse at some point of time¹. A similar observe conducted by using the Government of India in 17,220 kids and youth to estimate the burden of sexual abuse discovered surprising consequences and showed that each 2nd baby in the u . S . Became sexually abused; amongst them, fifty two.Ninety four in line with cent had been boys and 47.06 per cent have been women. Highest sexual abuse changed into stated in Assam (57.27%) accompanied by way of Delhi (41%), Andhra Pradesh (33.87%) and Bihar (33.27%)

Mohanty, H., & Banerjee, D(2021) The Protection of Children from Sexual Offences Act, 2012 normally known as the POCSO Act is a complete law to offer for the protection of youngsters from the offenses of sexual assault, sexual harassment, and pornography while safeguarding the pastimes of the child at every stage of the judicial manner with the aid of incorporating infant-friendly mechanisms for reporting, recording of proof, research and speedy trial of offenses thru distinctive Special Courts.

Acharya, P., & Acharya, B. (2021) The very inadequacy of Indian Penal Code and shortage of any stringent regulation for effectively addressing and tackling heinous crimes inclusive of sexual exploitation and sexual abuse of kids birthed the graduation of Protection of Children from Sexual Offences (POCSO) Act, 2012 because the very goal of Government institutions turned into to guard the youngsters from offences of sexual attack, sexual harassment and pornography and to facilitate ok felony machinery by means of establishing unique courts for trial of such offences and matters incidental linked with child sexual abuse crimes. This was in due compliance of Article 15 of Constitution of India which mandates the states to shield the kids of this kingdom and in lieu of United Nations Conventions on the Rights of the Child which prescribes the set of standards to be accompanied via country events in securing the exceptional hobby of the child.

Bhaskar, N., & Blogs, N. (2021) Children are the destiny of India and got protection underneath various legal guidelines implicitly or explicitly. The Protection of Children from Sexual Offences Act, 2012 (POCSO) is enacted with the main goal of safety of kids from diverse varieties of sexual abuses and offences. Before POCSO Act, 2012, the cases of baby sexual abuse had been handled below the sections of the Indian Penal Code, 1860. While managing an important problem of “Punishing a young person boy who enters into a courting with a minor woman with the aid of

treating him as an offender, become in no way the goal of the POCSO Act” inside the case of Vijayalakshmi and Another v. State Rep. With the aid of Inspector of Police and Another 2021 SCC OnLine Mad 317, the court has clarified the very essence of the POCSO Act, 2012. The present case is a rape count below which the both accused and the sufferer eloped after being in a romantic affair and the court docket granted bail to the accused underneath Section 482 of Cr. P. C. With the help of different precedents laid down with the aid of the courts and evaluation of the POCSO Act, 2012, the writer has attempted to attract a fair conclusion to the problem stated above.

Gupta, G. (2020) The POCSO Act, 2012 is a complete law to offer for the protection of kids from the offences of sexual attack, sexual harassment and pornography, at the same time as safeguarding the hobbies of the kid at each degree. The act came up with a lot wish and as a reform within the crook justice machine by means of offering unique courts, making the police more sensitive in coping with the cases consisting of recording of statement of a girl child victim via a female officer, presenting legal safeguards to sufferer and specifically identifying the case in a term of One yr.

Moharana, S. (2020) The present have a look at intended to awareness on the troubles and problems relating to infant sexual abuse in India. Child sexual abuse or toddler molestation is a form of infant abuse in which an adult or older adolescent makes use of a toddler for sexual stimulation. Child maltreatment in India is a pervasive hassle that regularly effects in instant negative results on kids, followed by using the ability for numerous problems during the existence span. India enacted a new child sexual abuse regulation in 2012 and made vital changes to the rape regulation in 2013 to enlarge the definition of rape and sexual assault, introduce numerous reforms and improve gender sensitivity in rape trials. However, the kid sexual abuse regulation with its definition of who is a toddler has extended the age of consent for intercourse from 16 years to 18 years, echoed by similar changes inside the rape regulation. This paper revisits the debates at the age of consent in India inside the overdue 19th century. It opinions them inside the light of the new legislative modifications, adjudication of cases of sexual assault, and examines the consequences of the brand new legal guidelines on kids and their sexuality. (<https://www.Tandfonline.Com>)

Sanjay Kumar (2022) The emergence and evolution of social media and generation poses challenges within the prevention of child sexual exploitation and abuse. This trouble is not efficiently addressed by means of the existing techno-legal equipment and is posing risks to the youngsters. In India, CSAM files are illegal and constitute an offense below Section sixty seven(B), IT Act 2000. The generation has also made available numerous gear and techniques, to the predators who are continually equipped to groom and exploit teenagers & flow into their indecent snap shots / motion pictures. This research work has been carried out to assess a qualitative estimate of the quantum of Child Sexual Abuse Material (CSAM) circulated in Indian Cyberspace the usage of peer-to-peer generation. Although CSAM is legally banned, many specific IP addresses were observed to be dispensing a complete of 27,00,08,502 traumatic fabric depicting the sexual abuse of kids disbursed over 7 torrents spreading over 29 States and 5 Union

Territories. The World Health Organization has defined the 4 major varieties of toddler abuse and maltreatment as physical abuse, sexual abuse, emotional abuse, and forget about. Recognizing toddler sexual abuse (CSA) is without a doubt tough, and maltreatment of kids is a major public fitness crisis. It is envisioned that more than three million youngsters turn out to be victim of abuse each 12 months. It is frequently tough to diagnose a case of CSA by way of both a dermatologist or a pediatrician as the majority of sexually abused children do not show signs of penetrative trauma at the anogenital examination. More regularly these youngsters' gift with a variety of dermatological manifestations, and mother and father or caregivers fail to present applicable history. However, the diagnosis of sexually transmitted infection (STI) in a baby is a robust indicator of CSA.

RESEARCH METHODOLOGY

The technique followed is essentially qualitative, descriptive and analytical in nature. Reliance has been placed largely on resources (books, articles, POCSO Act, current records and topics related to baby abuse, etc.) which have been rich with precious guidelines and gave route to the research.

SEXUAL OFFENCES AGAINST CHILDREN

Sexual Assault

Whoever with sexual motive touches the vagina, penis, anus or breast of the kid or makes the child touch the identical or some other act with identical purpose without penetration under section 7.

Punishment For Sexual Assault

will be punished with imprisonment for a term which shall no longer to be much less than 3 years which may additionally expand to 5 years and additionally answerable for first-rate underneath section eight

Sexual Harassment

Whoever utters any phrase or make any sound or any comparable sports and makes a infant exhibit his body or any part of his frame is chargeable for committing Sexual Harassment.

Punishment for Sexual Harassment

whoever commits the sexual harassment upon a baby shall be punished with imprisonment for a time period which may additionally increase to a few years and will be at risk of quality.

USING CHILD FOR PORNOGRAPHIC PURPOSES AND PUNISHMENT

Use of Child for Pornographic

whoever, uses a infant in any shape of media for the purpose of sexual satisfaction, which includes -Depiction of sexual body components of a toddler. Utilisation of a infant involved in actual or fake sexual acts (with or without penetration). The offensive illustration of a toddler. Will be responsible of the offence of using a toddler for pornographic ojective beneath segment 13.

Punishment

Whoever uses a baby for any pornographic motive shall be punished with imprisonment which may additionally make bigger to five years and will be susceptible to satisfactory and within the occasion of 2d or subsequent sentence with imprisonment for a time period which may also make bigger to seven years and vulnerable to first-class.

PROCEDURES FOR RECORDING STATEMENT OF THE CHILD

Recording of Statement of a Child

The statement of the child is recorded at the location of her/his preference apart from that the statement is recorded at toddler's house or at baby's contemporary living region. The assertion is recorded by way of workable lady police officer whose targeted rank is minimal of sub- inspector and also at some point of the time of recording the officer should no longer be in uniform. While analyzing the child it need to be taken care that the child does now not are available contact of the accused at any point of time and inside the night the child must not be stored in the police station for any reason. The identification of the kid have to be blanketed from public media through the police officer, unless inside the interest of the kid accredited with the aid of the Special Court.

Recording of Statement of a Child by way of Magistrate

If the assertion of the Child is recorded under section 164 of CrPC, 1973, the Magistrate shall report the statement as spoken through the kid. In the presence of the Advocate of the accused it shall not follow. The replica of the document will be provided to the Child and his dad and mom or guardians by means of the Magistrate underneath segment 207 of the Code when the final record is filed by means of the police beneath section 173 of that Code.

Medical Examination of a Child

If any FIR or Complaint is not registered under this ACT in opposition to the offence devoted, the scientific examination of the child ought to be carried out in connection with section 164A of the CrPC, 1973. If the sufferer is a girl infant the examination will be conducted through a lady medical doctor. Examination shall be performed in presence of the sufferer's circle of relatives.

SPECIAL COURTS

Designation of Special Courts

For speedy trial, the State Government in session with the Chief Justice of the High Court, converts a Court of Session to Special Courts for the trial of the offences. It is performed after the notification inside the Official Gazette exact for each district.

Presumption as to sure offences

If someone is charged for committing or abetting or trying to devote any offence defined in section 3,5,7, & 9 of this ACT, the man or woman can be assumed by the Special Court, that he/she has committed/abetted/attempted to devote the offence because the case may be except the speak is proved.

Special Public Prosecutor

A Special Public Prosecutor who has been in exercise for minimal 7years as an Advocate is appointed via the State Government underneath the notification of Official Gazette.

THE PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT, 2012

The POCSO Act, 2012 is gender-neutral legislation. It defines a child as any man or woman underneath 18 yr and offers protection to all children from sexual abuse. The definition of infant sexual abuse is comprehensive and encompasses the subsequent: (i) penetrative sexual attack, (ii) irritated penetrative sexual attack, (iii) sexual assault, (iv) irritated sexual assault, (v) sexual harassment, (vi) the use of a infant for pornographic motive, and (vii) trafficking of kids for sexual purposes. The above offenses are dealt with as “annoyed”, whilst the abused child is mentally unwell or while the abuse is committed by using a person in a position of accept as true with or authority vis-à-vis the kid. The Act prescribes stringent punishment graded as consistent with the gravity of the offense, with a maximum time period of rigorous imprisonment for lifestyles, and a best.

The POCSO Act further makes provisions for fending off re-victimization, a child-friendly surroundings thru all stages of the judicial system, and giving paramount significance to the precept of “high-quality hobby of the kid”. It contains child-pleasant mechanisms for reporting, recording of evidence, investigation, and rapid trial of offenses, trial in-digital camera and with out revealing the identity of the kid through targeted Special Courts. It also provides for the Special Court to decide the amount of compensation to be paid to a baby who has been sexually abused in order that this money can then be used for the kid's scientific remedy and rehabilitation.

ROLE OF DOCTORS IN PROVIDING CARE IN THE PRESENT LEGAL FRAMEWORK

The Act also makes provisions for the scientific exam of the child in a way this is least distressful. The Act additionally really vocalizes that medical doctors ought to not call for prison data or legal procedures or documentation be completed earlier than starting up the remedy or examination. Legal procedures may be executed later after beginning medical care. It is now mandatory for docs

to sign up a medico-criminal case in all cases of baby sexual abuse. Failure of reporting could bring about six months imprisonment and/or a quality under Sec 21 of the POCSO Act, 2012. The registered scientific practitioner rendering hospital treatment shall (i) acquire evidence after an intensive medical examination, (ii) deal with the bodily and genital injuries, (iii) conduct an age assessment of the victim (if required), (iv) offer prophylaxis for sexually transmitted diseases consisting of HIV, (v) discuss emergency contraceptives with the pubertal infant and her discern, (vi) do baseline evaluation for intellectual fitness problems, (vii) month-to-month observe up at least for six months to look for the development of psychiatric issues, (viii) do family counseling and (ix) help the court in interviewing the kid and attesting inside the courtroom.

FORMS OF SEXUAL ABUSE

Physical

The wrongdoer and the sufferer appeared to have physical touch in this case, which covered penetrative intercourse, fondling of the victim's genitals, and so forth.

Non-Physical

Abuse can occur even if there is no physical touch. Showing pornographic content material or utilising a minor for the same, stalking, sexting, playing sexualized games, and so forth are examples. If a kid commits an offense, the POCSO Act will still practice, but the process could be ruled by way of the Juvenile Justice (Care and Protection of Children) Act, 2015. (ibid). Incest: The term manner a prohibited sexual courting among close family in a own family (Section five(n) of the POSCO Act). In this case, as in step with Section 6 of the POCSO Act, the assaulter is susceptible to no much less than ten years of imprisonment and additionally a excellent.

Commercial Sexual Exploitation of Children

This may be characterized as when an adult sexually abuses a child for economic advantage or while the child is treated as a commercial or sexual item. Child prostitution, infant sex tourism, and toddler trafficking are the 3 varieties of baby trafficking. Child sexual abuse imagery is defined as any visible depiction of sexually specific conduct regarding a minor, as described with the aid of sections 67 (b) of the IT Act, 2000, and sections 13 and 14 of POCSO, 2012.

Online Sexual Abuse

This is a kind of on line sexual abuse that takes place over the net. Cyberbullying, grooming, sexual exploitation, and emotional abuse are all commonplace among young adults. Furthermore, after enough stress changed into created with the aid of NGOs and the Ministry of Women and Child Development, new rules (associated with earlier arguments) was enacted, namely POCSO, 2012. It is gender-impartial and also recognises boys as sexual abuse sufferers. It criminalises baby sexual attack, harassment, and pornography, as well as moreover mandates the establishment of unique courts to expedite trials.

ANALYSIS AND DISCUSSION

- ❖ In the absence of public and government interest in the trouble of toddler abuse, studies are performed by means of diverse businesses like the UNICEF, the Ministry of Women and Child Development, etc. They have a look at concerning the sexual abuse of kids discovered that:
 - ❖ 22 % said having faced sexual abuse.
 - ❖ Andhra Pradesh, Assam, Bihar and Delhi stated the very best percentage of sexual abuse.
 - ❖ 90 % respondents mentioned facing intense sorts of sexual abuse and 50.76 % other sorts of sexual abuse.
 - ❖ Out of the child respondents, five. Sixty nine % reported being sexually assaulted.
 - ❖ Children on road, paintings and in institutional care stated the very best occurrence of sexual assault.
 - ❖ 50 % abusers are men and women acknowledged to the kid or in a function of consider and duty.

CONCLUSION

Sexual harassment proceedings involving children have a ways-attaining outcomes for the victims throughout their lives. After undertaking widespread studies on this vicinity, it has been determined that there's clean proof demonstrating a right away link among infant sexual abuse and the sufferer's mental, bodily, social, sexual, and behavioural fitness. Child sexual abuse has formerly been connected to excessive persona disorders inclusive of publish-demanding despair and anxiety, as well as substance misuse and alcohol usage among victims. In both ladies and men, there may be an accelerated threat of re-victimization of the kid if proper attention isn't always supplied to the problem. According to a few recent research, there may be a hyperlink among suicides, suicidal behaviour, and child sexual abuse. Numerous defects inside the institutional shape exacerbate child sexual abuse conditions, and those incidents have a good sized impact on the child's personality, as we've got already defined. Sexual abuse of kids, our society's most inclined element, is a sad fact these days. In India, such subjects are hardly ever discussed overtly and are regularly seen as a societal taboo. Most households are seeking for to hold such situations hidden, maybe to guard the child's hobbies.

To prevent the pains, all factors of society must be made aware of the state of affairs, and the court docket system ought to be overhauled. In addition to the latest legislation offering an effective framework for managing infant-related sexual offences, there is an urgent want to enforce unique preventive measures to make sure that the risks of sexual exploitation of children are kept to a minimal. Aside from that, better application and enforcement of existing regulations are important. Finally, kids are our country's destiny, and the chance they face have to be combated on all fronts and at all degrees. Although, Parliament enacted the POCSO Act, 2012, this unique legislation for prevention of children from sexual offences remains an unused law primarily, unknown to most. Author can't deny the fact that this enactment is beyond the understanding of those who want to

apply it. One would be amazed to recognize that in the unlucky rape case of Delhi, the Delhi Police blanketed the provisions of POCSO to the FIR reportedly after days of the submitting of FIR on fifteenth April 2013. Child sexual abuse is a dull truth that robotically inflicts our everyday lives but in a bigger part of instances it goes neglected and unreported by using virtue of the purity of the victim; disgrace connected to the demonstration, strictness and harshness of the analyzing and the regulation authorization offices, and many others. Establishment of enactment isn't sufficient except followed via rigorous applicability of the law with obligations described. Furthermore, parents, guardians, instructors, etc. In the society have an essential role to guard children from sexual exploitation and abuse. Children are the innocent people and the destiny of state's social improvement lies in well-being of its kids as youngsters are the pioneers of future

REFERENCES

- Acharya, P., & Acharya, B. (2021, January 29). An Analysis of Protection of Children From Sexual Offences Act, 2012. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3733263
- Age of consent: Challenges and contradictions of sexual violence laws in India. (n.d.). Retrieved from <https://www.tandfonline.com/doi/full/10.1080/26410397.2021.1878656>
- Bhaskar, N., & Blogs, N. (2021, April 24). Objectives and Applicability of the POCSO Act, 2012 Explained Through Cases. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3826187
- Dr. D.Paul Dhinakaran, "Exports and Imports Stagnation in India During Covid-19- A Review" GIS Business (ISSN: 1430-3663 Vol-15-Issue-4-April-2020).
- Gupta, G. (2020, January 02). An Analysis of Penal Provisions under POCSO Act 2012: A Fictional Reality. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3502037
- Mohanty, H., & Banerjee, D. (2021, February 10). An Analysis of Protection of Children from Sexual Offences Act, 2012 (POCSO ACT). Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3768096
- Moharana, S. (2020, October 23). Child Sexual Abuse in India. Retrieved from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3685668
- Psychiatry, D. O. (n.d.). Child sexual abuse: Issues & concerns : Indian Journal of Medical Research. Retrieved from https://journals.lww.com/ijmr/Fulltext/2015/42010/Child_sexual_abuse__Issues__concerns.1.aspx
- Sanjay Kumar Gautam Amity Institute of Forensic Sciences, Gautam, S. K., Sciences, A. I., Himanshu Khajuria Amity Institute of Forensic Sciences, Khajuria, H., Reeta Rani Gupta Central Forensic Science Laboratory (CBI), . . . Metrics, O. M. (2022, January 01). Recent Trends in Child Sexual Abuse Material (CSAM) Distribution in Indian Cyberspace. Retrieved from <https://dl.acm.org/doi/abs/10.4018/IJCWT.297857>