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Current Position of Child Sexual Abuse in India

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ABSTRACT

Child sexual abuse is a problem that affects countries all over the world. It is a rising problem that must be dealt with as soon as possible. Such abuse has a severe impact on children's development and can cause permanent trauma. To address this issue, the Indian government has enacted legislations and made amendments to existing laws. However, this has not deterred criminals from carrying out such heinous acts. The country has the largest number of cases of child sexual abuse, which is even more shocking given that most instances in the country go unreported. Even though the COVID-19 pandemic brought the country to a halt, the number of such cases has only increased. In this work, the author has sought to describe the current state of Child Sexual Abuse in India, and highlight the legislative changes that have been brought forward. The country's major difficulties against the said issue are explained, and recent judgments of various High Courts are also examined. The author's research gives potential solutions for establishing a concrete framework against Child Sexual Abuse.

Keywords—Child Abuse, POCSO Act, Sexual Abuse.

I. INTRODUCTION

The World Health Organization has defined the act of 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 violates the laws or social taboos of society.*”² Typically, “Child Sexual Abuse”³ may involve sexual acts or attempted sexual acts, physical, non-physical, and online sexual harassment and sexual exploitation. Because the victim of such heinous crime is a child, he or she may not completely comprehend such abuse at first. Such victims, however, may confront a variety of mental health complications in the future. In India, children are taught to respect their elders and to listen to them unconditionally. This instils in the child the belief that the

¹ Author is a student at Symbiosis Law School, Hyderabad, India.

² “World Health Organisation. Report of the consultation on child abuse prevention (WHO/HSC/PVI/99.1). 1999”

³ Hereinafter referred to as CSA

adult is correct and that he or she is safe with the aforementioned adult. When an adult violates such a position of trust, the child may experience trust issues that may worsen over time. According to the Conceptual Model of CSA developed by Ben Mathews and Delphine Collin Vézina,⁴ for an act to be considered as CSA, there must be the following elements: - the victim should be a child; there must be an absence of true consent, the act committed must be sexual; and lastly, such committed act must be abusive. CSA results in various problems such as heightened depression levels, denial, dissociative patterns, repression, eating disorders, anxiety, relationship problems, sexual problems.⁵ While the conditions may vary from case to case, depression is the most common symptom as a long-term effect.⁶ The consequences of CSA in the victims are many and there is an immediate need to address the challenges and work on their workable solutions.

(A) Research Methodology

The doctrinal methodology has been used for this study, which focuses on analysing existing statutes, books, landmark case laws, and papers published by reputable journals and dependable websites. This paper utilises a wide array of scholarly works. Theoretical approach has also been used to assess the effectiveness of existing legislation and decide whether or not changes are necessary. Using this strategy, an attempt has been made to simplify the research and bring to the reader a comprehensive study.

(B) Position of CSA in India

In India, CSA is a rampant problem that has tormented the country for decades. As per a 2007 report by the Ministry of Women and Child Development, it was found that 53% of Indian children probably have been subjected to acts of CSA and many of such victims choose to remain silent about the same.⁷ under “Protection of Children from Sexual Offences Act, 2012”⁸, the number of CSA cases reported increased from 8,904 in 2014 to 14,913 in 2015. 81% of these were sexual offenses and kidnappings. According to National Crime Records Bureau, under POCSO, 32,608 instances were reported in 2017, and subsequently, in 2018, 39,827 cases were reported in 2018. Between 2018-2020, 418,385 crimes against

⁴ Ben Mathews & Delphine Collin-Vézina, *CSA: Toward a conceptual model and definition*, 20 *Trauma, Violence & Abuse* 131–148 (2017).

⁵ Mellisa Hall & Joshua Hall, *The Long-Term Effects of Childhood Sexual Abuse: Counseling Implications*, *Counseling.org* (2011), https://www.counseling.org/docs/disaster-and-trauma_sexual-abuse/long-term-effects-of-childhood-sexual-abuse.pdf?sfvrsn=2 (last visited Nov 3, 2021).

⁶ *Id*

⁷ Loveleen Kacker, Srinivas Varadan & Pravesh Kumar, *Study on child abuse: India 2007*, Ministry of Women and Child Development (2007), <http://www.indianet.nl/pdf/childabuseIndia.pdf> (last visited Oct 29, 2021).

⁸ Hereinafter referred to as POCSO

children have been recorded.⁹ At a time where the country is still collectively recovering from COVID-19 and many citizens are barely stepping out of their houses, it was reported that CSA in just 21 days of the first COVID-19 wave in India, the national ChildLine Helpline Number 1098 had answered around 22,000 calls in just a single day.¹⁰ Similarly, CHILDLINE, in the initial 11 days of the lockdown, received over 3 Lakh calls, out of which 92,105 calls were made to report the abuse of children.¹¹ While staying at home has always advocated in the country for safety, there is not much a victim can do when their own blood turns into a predator. One's home is a place where a person feels secure, however, this is not the case for these victims. In nearly 95% of the cases, the child victims were raped by someone known to them.¹² According to National Center for Missing and Exploited Children's CyberTipline, reports related to child sexual exploitation globally were increased by 106%.¹³ It was further reported that during COVID-19 lockdown, searches related to CSA content have steeply risen by 95% in India itself.¹⁴ Ease of access and lack of censorship and filtering on the internet may also be catalysts for these figures.

Cases involving CSA are tried in India under the POCSO and the "Indian Penal Code, 1860."¹⁵ Prior to the implementation of the POCSO Act, the Goa Children's Act of 2003 dealt with CSA cases in the state. Aside from this statute, CSA cases were tried under the IPC. This, however, was inefficient because it had considerable downsides. Because the legislation was broad, it did not put a strong emphasis on child victims. There was a lot of misunderstanding because there was no specific age provided for a child. Until the 2013 amendment to the IPC, the legislation on rape was not gender-neutral. However, following the change, the scope was broadened to encompass both genders. The introduction of POCSO was critical since it not only identified a "child," but also provided for offences to be tried under that definition. For the victims, this act was gender-neutral, ensuring that justice was not tied to a certain gender.

⁹ Maansi Verma, *To tackle rising cases of child sex abuse, the NCRB must address gaps in POCSO data*, *The Wire* (2021), <https://thewire.in/government/tackle-rising-cases-child-sex-abuse-ncrb-gaps-pocso-data> (last visited Oct 29, 2021).

¹⁰ Shreya Khaitan, *How Covid has put children at risk of abuse, labour, marriage*, *Indiaspend* (2021), <https://www.indiaspend.com/child-rights/how-covid-has-put-children-at-risk-of-abuse-labour-marriage-755065> (last visited Oct 29, 2021).

¹¹ Reethu Ravi, *90% of abusers are known to victim: How this NGO is prepping families to fight CSA*, *The Logical Indian* (2020), <https://thelogicalindian.com/exclusive/lockdown-child-sexual-abuse-cases-20852> (last visited Oct 29, 2021).

¹² *Recent statistics of child abuse*, *Save the Children* (2020), <https://www.savethechildren.in/child-protection/recent-statistics-of-child-abuse/> (last visited Oct 30, 2021).

¹³ Ramya Kannan, *Covid-19 pandemic fuelled rise in CSA online: Report*, *The Hindu* (2021), <https://www.thehindu.com/news/national/covid-19-pandemic-fuelled-rise-in-child-sexual-abuse-online-report/article37098788.ece> (last visited Oct 29, 2021).

¹⁴ *Id*

¹⁵ Hereinafter referred to as *IPC*

In 2019, an amendment to POCSO was introduced, and as a result, the punishment was dramatically increased, and an emphasis was placed on victim rehabilitation. Every year, up to 3,000 POCSO cases are registered and investigated but never make it to courts for a fair trial, and four CSA victims are denied justice every day when police shut their investigations due to a lack of evidence or a clue.¹⁶

While the country has implemented a number of new regulations to ensure that the country can effectively combat CSA and create a considerable positive change. However, the only apparent change over time has been a tremendous increase in the number of cases involving CSA. The country faces a variety of obstacles in combating CSA, most of which are addressed below: -

1. **Poor law enforcement and a lack of coherence among the Legislature, Judiciary, and the Executive**— The legislature has introduced several acts and amendments, and while such statutes lay down the vision and guidance, the actual realization of their legislative goal is still yet to come alive. The procedures outlined in these statutes are not followed by the police officers or lower courts.¹⁷ The higher courts often have to lay down directions for the lower courts and the police to adhere to the guidelines provided. The laws which the police follow also are not well implemented. As per Section 36 of the POCSO Act, a child's statement has to be recorded by a woman sub-inspector and it was found that out of 36 police stations in rural towns surveyed, 20 of them did not even have a female sub-inspector.¹⁸ The Delhi Commissioner for Protection of Child Rights has also stated that the local police stations are unconcerned about the laws and asked the Delhi Police Commissioner to direct the police stations and ensure all cases under POCSO are reported to Child Welfare Committees within 24 hours of registration of FIR.¹⁹
2. **Shortfalls of the Legislation**- While the POCSO Act is a substantial advance over the IPC in circumstances involving CSA, it is not without flaws. The POCSO provisions are based on the fact that the perpetrator is a man. The same can be seen in sections such as Section 30 which discusses "Presumption of culpable mental state," where only

¹⁶ *Police case disposal pattern: An enquiry into the cases*, Kailash Satyarthi Children's Foundation (2021), <https://satyarthi.org.in/wp-content/uploads/2021/03/Police-Case-Disposal-Pattern.pdf> (last visited Oct 29, 2021).

¹⁷ *Abhishek K.A v. State of Kerala* (2020) 5 KLT 276

¹⁸ *Sadaf Modak, Study on POCSO act implementation: 'out of 36 rural police stations, 20 don't have women sub-inspector'* *The Indian Express* (2018), <https://indianexpress.com/article/cities/mumbai/study-on-pocso-act-implementation-out-of-36-rural-police-stations-20-dont-have-women-sub-inspector-5167395/> (last visited Oct 30, 2021).

¹⁹ *Team MP, Cops not reporting POCSO cases to CWCS: DCPCR*, *Millennium Post* (2021), <http://www.millenniumpost.in/delhi/cops-not-reporting-pocso-cases-to-cwcs-dcpcr-456167> (last visited Oct 30, 2021).

the word "he" is used, indicating that the same does not apply to both genders and that only males can be tried. The act fails to take into account the likelihood that the accused is of a different gender. Though POCSO's rules for victims are gender-neutral, the provisions for the accused are orthodox in this day and age.

3. **Poor Education System** – In India, sex education remains to be a taboo. Parents and instructors both are unwilling to engage in discussions and lectures on sexual intercourse and abuse. The dangers of sexual abuse must be taught to children. By the time a person reaches adulthood, it may be too late to sow such seeds of knowledge. However, implementing a holistic sex education model in schools to make the youth informed and sympathetic may make a significant difference.
4. **Lack of support to the victim**- As per POCSO, in suitable circumstances, the Special Court may, in addition to the punishment, order compensation for any physical or mental trauma inflicted to the child, as well as immediate rehabilitation.²⁰ The 2019 amendment to POCSO puts an emphasis on fines for mental trauma caused and the subsequent rehabilitation required.²¹ Yet there has been an inconsistent calculation of compensation by the special courts and at times these courts have provided for relief of an amount as little as Rs 10000 to the victim.²² The horrors of CSA to the victim may last for years and due to lack of such support, the victim may not receive the much-needed mental and emotional therapy.

(C) Recent Judicial Pronouncements related to CSA

In *Anil Surendrasingh Yadav v. State of Gujarat*,²³ The accused had been convicted by the trial court under Section 363, 376AB, 377, 302 and 201 of IPC and Section 3(a), 4, 5(r), and 6 of the POCSO Act. He had kidnapped a three-and-a-half-year-old girl, raped her inhumanely, and then strangled her to death. He eventually placed her body in a gunny bag and left it to rot and disintegrate at his home while fleeing to Bihar. There were no signs of remorse or repentance, and because of this heinous conduct, the court deemed the case a "rarest of the rare" and sentenced the accused to death. The mitigating and aggravating elements were all stacked against the accused, resulting in a death sentence under Sections 302 and 376D of the IPC.

²⁰ Section 33(8) of POCSO Act

²¹ Ritik Khatri, *Critical Analysis Of The Pocso Act 2012 And The Recent Amendment Act 2019*, 2, LAJ, 4,8 (2020)

²² Prabhsahay Kaur, *Victim compensation and rehabilitation under POCSO: A grim reality, but with a sliver of hope*, Bar and Bench (2020), <https://www.barandbench.com/columns/victim-compensation-and-rehabilitation-under-pocso-a-grim-reality-but-with-a-sliver-of-hope> (last visited Oct 30, 2021).

²³ *Anil Surendrasingh Yadav v. State of Gujarat* 2019 SCC OnLine Guj 2692

In *Narayan v. State of Kerala*²⁴, the accused sexually molested the victim who is his own daughter. In this case, the High Court partially reversed the trial court's ruling, which resulted in the accused's conviction under Sections 377 and 376 of the IPC. The conviction under S377 was overturned, while the conviction under S376 was upheld by the H.C. The same was done in the case on the basis of "Residual Doubt." The court indicated that it is totally convinced that the alleged crime occurred, but it is not satisfied that it occurred with the same intensity and frequency as stated by the prosecution.

In *Rakesh v. State (GNCT of Delhi)*²⁵, the victim in the instant case is a three-and-a-half-year-old girl and under Section 6 of the POCSO, the offender was sentenced to fourteen years in prison and a fine of Rs 10,000. The court determined that the victim had consistently elaborated on the circumstances of the case, and that the accused had failed to overcome the statutory presumption against him under section 29 of the POCSO. The court ordered police officers to track and locate the victim girl or her family so that they can apply to the Delhi Legal Services Authority for compensation under the Victim Compensation Scheme.

In *X. v. State and Others*²⁶, a six-year-old victim, through his mother, filed a petition challenging an order of interim relief issued by the Additional Sessions Judge. The accused in this instance was the victim's uncle, and the uncle had subjected the victim to abuse, sexual assault, and sodomy at his home. The case was filed under Section 6 of the POCSO and Section 377/506 of the IPC. The victim received Rs 50,000 in interim compensation from the Additional Sessions Judge. The High Court of Delhi ruled that the learned ASJ failed to award compensation in accordance with the DVC Scheme, 2018, which provides the finest parameters for compensation. The H.C. ruled that the petitioner is to be paid Rs 6 Lakhs as interim compensation.

In *Arjun Kishanrao Malge v. State of Maharashtra*²⁷, the petitioner raised a concern regarding various provisions of POCSO and Criminal Procedural Code²⁸ are often overlooked by the police and the courts. He stated that Section 40 of POCSO is often overlooked and there is no recognition of Section 439(1-A) of CrPC. The Hon'ble Court regarding the same laid out various directions to be followed such as: -

Before hearing an application, the relevant court must determine the status of notice service,

²⁴ *Narayan v. State of Kerala* 2021 SCC OnLine Ker 3406

²⁵ *Rakesh v. State (GNCT of Delhi)* 2021 SCC Online Del 3957

²⁶ *X. v. State and Others* 2021 SCC Online Del 2061

²⁷ *Arjun Kishanrao Malge v. State of Maharashtra* 2021 Cri LJ 2269

²⁸ Hereinafter referred to as CrPC

and if notice has not been issued, the Court may make an order to meet the ends of justice, taking into account any emergent situations that warrant dealing with the application in the absence of the child's family, guardian, or legal counsel. If, notwithstanding the issuance of notice, the child's family, guardian, or legal counsel fails to attend at the hearing, the Court may proceed without such notice, or issue a new notice, as the Court thinks appropriate and necessary in the pursuit of justice. When proceedings under the Act would also pertain to an offence under Sections 376(3), 376-AB, 376-DA, or 376-DB of IPC, the victim should be notified under Section 439(1-A) of CrPC read with Rules 4(13) and 4(15).

In *Pama v. State of Odisha*²⁹, the petitioner has been charged with offences under Sections 342 and 376(AB) of the IPC, as well as Section 10 of the POCSO, and sought bail for the same. The petitioner enticed the juvenile victim into his home and raped her as she tried to keep her mouth shut. The victim's sisters and mother tracked her down as a result of her screams. When the mother knocked down the accused's door, she caught him attempting to commit sexual acts on the victim. What was alarming to the court in this instant petition was that the police filed a report three days before this occurrence alleging the same accused of attempting to commit sexual assault on the complainant's elder daughter. The H.C. denied the bail as there are many specific allegations and stated the accused seems to a repeated sexual offender and no bail should be granted until competition of investigation.

In *Vijoy Kumar v. State of Tripura*³⁰, The accused was a "Fuchkawala" who had enticed the minor victim with a "fuchka." He then touched the minor's body parts sexually. The victim had escaped his grasp and returned home. Later, a report was filed against the accused under Sections 354 and 506 of the IPC, as well as Section 8 of the POCSO, and the accused was detained. The court dismissed the bail application in this case since it was a CSA matter and considered the applicant's work profile. The court stated that the applicant may flee from the jurisdiction of the court, so the accused was not granted a bail.

In *Abhishek K.A v. State of Kerala*,³¹ The H.C. of Kerala under Article 226 and 227 of the Constitution, stated that various directions must be followed in the state. The notable directions include:- Taking prompt action to establish One-Stop Centres as established by the SC in the Nipun Saxena case³²; The State Government to appoint a Nodal Officer to carry out the provisions of POCSO on a state-wide basis. The Nodal Officer, if appointed, must guarantee

²⁹ *Pama v. State of Odisha (2021) SCC Online Ori 140*

³⁰ *Vijoy Kumar v. State of Tripura 2020 SCC OnLine Tri 517*

³¹ *Abhishek K.A v. State of Kerala (2020) 5 KLT 276*

³² *Nipun Saxena vs Union Of India Writ Petition (Civil) No. 565 of 2012*

that the principles of juvenile justice are adequately served by all parties, including the police. Providing instruction in juvenile justice principles to the presiding officers of the state's special courts; The state government will consider the applicability of Child Protection and Welfare Officers, who will work as a separate cadre; the state government will fill vacancies in forensic laboratories. The State Government must appoint competent Special Public Prosecutors. Under Section 26(4) of the POCSO Act, the Magistrate or Police shall ensure that audio and video are captured wherever practicable when taking a statement from the child.

In *Hanumantha Mogaveera v. State of Karnataka*,³³ the H.C. concluded that if the trial is not finished within a year of the offence's cognizance or evidence of the child is not taken within thirty days of the offence's cognizance owing to factors beyond the Special Court's control, then these criteria do not result in a mandatory bail for the accused. The provision of Section 35 of the POCSO is not to be interpreted in a way that benefits the accused, as the goal is to ensure that the matter is resolved as soon as possible and does not further traumatise the child over time. It was also held that the recording of evidence as per Section 35 of POCSO and Section 164 of CrPC cannot be considered on the same plane and thus cannot be equated.

In *Satish v. State of Maharashtra*,³⁴ the court stated that groping a minor child's breasts without "skin-to-skin contact" does not constitute sexual assault under the POCSO Act. This was stated as the accused groped the victim while she was still wearing her clothes and there was no violent removal of her clothes. The offence does not constitute sexual assault, but it does constitute outraging a woman's modesty, as defined by Section 354 of the IPC. The decision was issued by Justice Pushpa Ganediwala of the Nagpur bench, who held that according to section 7 of the POCSO Act, which defines sexual assault, there must be a mandatory engagement of physical touch to create the aforementioned offence under this act.

II. CONCLUSION

In the country's struggle against CSA, the Legislature and the Judiciary have made commendable contributions. While several procedures have been put in place to provide justice and avoid such horrendous acts, CSA in India will continue to be a major concern till the loopholes and drawbacks are addressed. The courts have interpreted the statute in favour of the victim, demonstrating how far the courts will go to achieve the victim's rightful justice. While POCSO has a wonderful legislative intent, the act contains flaws and is not adequately translated in its execution. The gender prejudice in the act for the accused demonstrates the

³³ *Hanumantha Mogaveera v. State of Karnataka* (2021) 5 Kant LJ 71

³⁴ *Satish v. State of Maharashtra Criminal Appeal No. 161 of 2020*

Legislature's orthodox viewpoint. Furthermore, the subordinate courts and police do not fully comply with the provisions of the act. There is also inefficiency in the timely disposition of cases. The condition of CSA in India has deteriorated to the point that severe action is required. While laws have been strengthened and steps are being taken to ensure victims obtain justice, the country still needs to put in more efforts. Another day of waiting means another day where hundreds of children in the nation are sexually abused.

III. RECOMMENDATIONS

1. Awareness campaigns must be introduced nationwide to help victims of CSA provide a safe and confidential space to report such crimes. These campaigns should not be limited to a few institutions, instead, the campaigns should be large enough to also target the excluded sections of the society.
2. The education curriculum of the teenagers must be adapted in such a way that includes lectures on sex education, consent, and the life of victims of CSA. Though this may be seen as a sensitive move however this is the need of the hour.
3. POCSO must be amended to make the act gender-neutral for the accused.
4. The battle against CSA must be fought from all ends. The Legislative, Judiciary, and Executive all must work in consonance and leave a negligible scope of error. The laws made must be implemented without leaving any provision out.
5. The courts must provide a liberal framework for determining interim compensation to the victim. The compensation should be enough to cover the entire immediate needs of the victim.
6. The State Government can additionally incentivise the social workers and NGOs, which constantly work in the upliftment of CSA victims.
