



RIGHTS OF CHILDREN AGAINST SEXUAL OFFENCES

By *S.Vishnuvarthan & K.Mondela Anand*
From *SOEL, TNDALU, Chennai*

Abstract:

Child Sexual Abuse(CSA) is a social evil existed in all societies for centuries. It is the sexual exploitation and victimization of a child by an adult, adolescent, or other child. Despite the gender, religion, class, caste, education barriers child sexual abuse takes place irrespective of background of the abuser and the child which amounts to a serious forms of human rights violation. Almost 30-50% children are abused by persons known to them as relatives, family friends, neighbours, drivers, watchmen, religious leader, etc.,. In India, before the emergence of POCSO(Protection Of Children From Sexual Offences Act,2012) the ordinary criminal laws are totally inadequate to protect the children, where sec 375 of IPC deals with sexual offence against women and not for children. The recording of the statements of child victims need special provision in Crpc. These sections do not include the common forms of child sexual abuse nor their impact on the children. This article exclusively covers the legal rights of children favouring protection against sexual offences in both national and international path ways. Moreover, the author would be suggesting some recommendations for the effective prohibition of child sexual abuse.

1. Introduction:

One child goes missing every eight minutes in our country or seven children every hour.

331 children went missing in India's capital between 1st June and 1st July 2001 according to zonal integrated peace network¹. It was defined by the standing committee on sexually abused children that, "Any child below the age of consent may be deemed to have been sexually abused when a sexually matured person has by design or by neglect of their usual societal or specific responsibility in relation to the child engaged or permitted engagement of that child in any activity of a sexual nature which is intended to lead to the sexual gratification of the sexually matured person".

The NSP child protection council definition states, "child sexual assault occurs when an adult or someone bigger than a child uses his power or authority over the child and takes advantage of the child's trust and respect to involve the child in sexual activity. Inherent in the various definitions are concepts of violation of trust, abuse of power, the child inability to consent, age difference between the abuser and the child, the cognitive, emotional, psycho-sexual development level of the child and the sexual intent of gratification. Thus sexually abusive acts against children encompass a range of behaviours along the non-contact continuum.²

2. Historical perspective:

Child sexual abuse has been in society as long as the society existed. While girls are more vulnerable to being sexually abused against popular belief, boys too are victims.

¹Bachpan Bachao Andolan, Missing children of India: A pioneering study, 2012.

²<http://www.childlineindia.org.in/Understanding-Child-Sexual-Abuse.htm>



The selling off of girls for prostitution or even for the religious and cultural practices happened during those ancient times. Those practices were ceased to exist even in this era,

2.1.Devadasi system:

It's a religious practice in parts of southern India whereby parents marry a daughter to a deity or a temple. The marriage occurs before the girl reaches puberty and requires the girl to become a prostitute for upper caste members. Here, the girl child got abused both mentally and physically losing its entire childhood.

2.2.Child marriage:

A marriage where the woman is below age 18 or the man below 21 is said to be child marriage. Most child marriages involve under aged woman because of their poor socio-economic condition. Being a child, it is impossible for them to secure a family and most prominently they have no mental maturity to enter into sexual life.

2.3. Child prostitution and trafficking:

The prostitution of children is seen as a part of the commercial sexual exploitation of children (CSEC) and is sometimes connected to the trafficking of children for sexual purposes and to child pornography³. In those days, they were treated as slaves and trafficked for sexual purposes.

3.Statistical perspective:

India is a home to 19% of children. For every 115th minute a child less than 16 years is raped, for every 13th hour a child under 10

and one in every 10 children is sexually abused at any point of time.⁴

Most CSA cases are unreported. According to research studies over 7,200 children, including infants are raped every year⁵. The number of cases registered for child sexual abuse raised from 8,904 in the year 2014 to 14,913 in the year 2015, under the POCSO act⁶. 94.8% of rape cases saw children being raped by someone they knew, not strangers. These acquaintances include neighbours(3,149) who were the biggest abusers (35.6%). 10% of cases saw children being raped by their own direct family members and relatives⁷. About 488 cases saw the victim raped by their own father, brothers, etc...It is also said one in four families do not come forward to report child abuse.

The latest data add to this, finding that 25% of rapes of children in the year 2015 were committed by their employers and co-workers⁸. In child labour cases, boys are abused as frequently as girls according to 2007 study conducted along with the ministry of women and child development.

4.National measures:

4.1. Indian Penal Code:

Before the POCSO act,2012 the cases of child sexual offences are governed under the Indian penal code,1860.

- Sec 375: It doesn't protect male victims or anyone from sexual acts of penetration

³Report of ILO,1919.

⁴<http://www.chidlineindia.org.in/1098/2098.htm>.

⁵Breaking the silence: child sexual abuse in India, human rights watch, USA, 2013.

⁶National Crime Records Bureau report,2016.

⁷Ibid.

⁸Ibid.



other than traditional peno-vaginal intercourses.

- Sec 354: It lacks a statutory definition for the term “modesty”. It carries a weak penalty and is a compoundable offence. Further, it does not protect the modesty of a male child.
- Sec 377: The term “unnatural offences” was not defined. It applies only to the victims penetrated by their attacker’s sex act and is not designed to criminalise sexual abuse of children.
Thus, IPC section lack in penalties and provisions favouring to those children who are traumatized sexually.

4.2. Justice Verma committee:

It is the committee headed by Justice J.S.Verma, former chief justice of India. This committee constituted immediately after the brutal gang rape of a medical student in Delhi on 16th Dec 2016 to recommend amendments to the Criminal Law so as to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women and children.

The committee submitted its report on 23rd Jan 2013. It made recommendations on laws relating to rape, sexual harassment, trafficking, child sexual abuse, medical examination of victims, police, electoral and educational reforms.

Owing emphasis to sexual assault of children the committee recommended that the terms ‘harm’ and ‘health’ be defined under juvenile Justice act,2000 to include mental and physical harm and health respectively of the juveniles.

4.3. POCSO ACT, 2012:

The parliament of India passed the Protection of children from sexual offences bill in the year 2011 to enact a new law for children in order to prevent them from sexual offences⁹. As per the bill POCSO(Protection Of Children from Sexual Offences) act came into force on 19th June,2012.

The act defines child as any person below 18 years of age. It defines different forms of sexual abuse, including penetrative and non-penetrative assault as well as sexual harassment and pornography. Under this act serious penalties/punishments were imposed for aggravated forms of sexual assault such as when the child is mentally ill or when the abuse is committed by a person in a position of trust or authority like family member, police officer, teacher or doctor,etc.

It is made compulsory for the Special Juvenile Police(SJPU) or the local police to report the matter to the Child Welfare Committee (CWC) within 24 hours of recording the complaint, for long term rehabilitation of the child. The act further makes provisions for avoiding the re-victimization of the child at the hands of judicial system. It provides for special courts that conduct the trail in-camera and without revealing identity of child.

Above all the act provides for mandatory reporting of sexual offences against children. It stipulates that a case must be

⁹Parliament passes bill - protect children from sexual offences, NDTV,22nd May 2012.



disposed within one year from the date the offence is reported.

4.4.NCPCR:

The National Commission for Protection of Child Rights was set up in March,2007 as a statutory body under the commission for protection of child rights act,2005. The mandate of the commission is to monitor all laws, policies, programmes and administrative mechanisms in the country, to ensure that the rights of child as enshrined in the constitution of India and also the UN convention on the rights of child(UNCRC) are protected.

The NCPCR also mandated to monitor the implementation of Juvenile Justice (care and protection)act,2000 and POCSO act,2012 and finally Rights of Children to Force and Compulsory Education act,2009.Both NCPCR and SCPCR have been made the designated authority to monitor the implementation of these aforesaid acts.

Considering the large number of cases relating to CSA being reported in media every day, NCPCR developed a POCSO e-box, an easy and direct online medium for reporting cases of CSA under POSCO act. Through this mechanism, NCPCR reduces the burden of reporting the crime against children.

4.5.Role of NGO's:

4.5.1. CHILDLINE:

CHILDLINE has come a long way today, by becoming a nationwide emergency helpline for children in distress. It is a platform of bringing together the ministry of women and child development, government of India, department of

telecommunication, street and community youth, non-profit organisation, academic institutions, the corporate sector and concerned individuals. CHILDLINE provides a tool free number 1098 with 24 hours service for children in need of aid and advice.

4.5.2. Tulir :

Tulir is a centre for the prevention and healing of child sexual abuse(CPHCSA) is a registered non-governmental, non-profit organisation constituted working against child sexual abuse in India. They provide training programs on personal safety education to children, multi-disciplinary approach is the therapeutic services for abused children and is premised on the holistic caring, healing and teaching model, along with socio-legal assistance¹⁰.

5.International measures:

5.1.UNCRC:

The United Nations Convention on the Rights of the Child (CRC or UNCRC) is a human rights treaty which sets out the civil, political, economic, social, health and cultural rights of children. It came into force on 2nd Sep 1990. Under this convention, Ar.34 says that children and the young people have the right to be protected from sexual abuse.

Under this article the UNCRC emphasis the point that being married before being legally old enough is a form of sexual abuse. So it is the duty of the government

¹⁰ 3 Louis Engel Brecht and Anita Pecson ,Preventing and healing sexual offences,2000.



to protect their rights and to ensure that their rights have been protected¹¹.

5.2. UNICEF:

According to United Nations International Children’s Educational Fund study conducted in the year 2014 estimates that around 20 million girls under age 20 (about 1 in 10) have been subjected to forced sexual intercourse or other forced sexual acts at some point of other lives.

As part of UNICEF’s commitment to CRC, optional protocol on sale of children, child prostitution and child pornography and the Rio de Janeiro declaration and call for action to prevent and stop sexual exploitation of children and adolescents.

UNICEF works to prevent and respond to sexual violence by engaging different government sectors and supports the government in strengthening the child protection systems at national and international levels. It also works with committees and general public to raise awareness about the problem and address attitudes, norms and practises that are harmful to children.

5.3. UDHR:

According to Universal Declaration of Human Rights, a child by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection before as well as after birth. Whereas, the need for such special safeguards has been stated in the Geneva declaration of the rights of child of

1924 and recognized in the UDHR. Certain principles were given under this declaration to protect the rights of the child. Some of them are,

- The child shall enjoy all the rights set forth in this declaration irrespective of race, colour, sex, language, religion, political and other opinion.
- The child shall enjoy special protection and shall be given opportunities to enable him to develop physically, mentally, morally and socially in a healthy and normal manner.
- The child shall be protected against all forms of neglect, cruelty and exploitation.

6. Regional convention:

The council of Europe legal instrument have proposed many conventions. For example, the European social charter, convention on cyber crime, council of Europe convention against trafficking in human being. Among them the council of Europe convention on the protection of children from sexual exploitation and abuse gives special attention in protecting children and young people against violence or exploitation.

This convention was also known as “Lanzarote convention” which was the first international instrument to cover various forms of sexual abuse against children as a criminal offence.

7. International tribunal:

The international tribunal for children’s rights was founded by International Bureau for Children’s Rights (IBCR) in 1995 was a

¹¹<http://www.cypes.org.uk>



moral not a formal legal institution responsible for investigating children's rights, violations and proposing concrete solutions to the problem.

The tribunal collected testimonies from children, international children's rights specialists, and experts in the field of humanitarian aid, human rights, psychiatry. In its capacity as the founders of the tribunal the international bureau for children's rights oversaw the discrimination and implementation of the recommendations from the tribunal.

8. Conclusion:

Rights of the children against sexual abuse can be protected through these legal frameworks available for them universally. It is not only the duty of the government, but also the people whom the child would trust the most should have proper awareness and knowledge to secure a child. If once, people started reporting fearlessly about a child being sexually abused, then there comes the digital India ruining the myth called culture. So, each and every child irrespective of their disabilities could enjoy their childhood peacefully.

9. Suggestion:

Though there exists Juvenile Justice Board(JJB) and Mahila courts to protect and to deal children from heinous offences there is no particular tribunal for children to assist them. Generally 'tribunals' is an administrative body established for the purpose of discharging quasi-judicial duties. It is neither a court nor an

administrative body¹². There would be no delay in justice administration if this tribunal got initiated for children in national level.

Depending upon the international tribunal alone does not give any justice for children under sexual violence in India. So, the immediate measure is to create National Children's Tribunal¹³. The most satisfying thing was that the recent judgment, in a case where a 7 year old girl was brutally raped and burnt by her neighbour in Tamil Nadu got death sentence within a year as per POCSO act and many other provisions under IPC. It implies that justice was still alive¹⁴. Verdicts like this, turns to be an alarm for those offenders, who destroy the young souls for their sexual needs.

¹²Kagzi.M.C.J, The Indian Administration law, Metropolitan book Co.Pvt.Ltd., Delhi,3rd edn.,1973 at pp.276 and 279.

¹³Kailash Sathyarti bats for-national children's tribunal, Indian Express, New Delhi, 17/10/2017.

¹⁴Engineer sentenced to death-in TN, CNN news 18, Feb 19, 2018.