



INDIAN LEGAL ANALYSIS ON CHILD SEXUAL ABUSE: POCSO ACT 2012'

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1. INTRODUCTION

Indian children encompasses of more than 40% of India's population and 19% of the world's population¹. India also has the highest number of developing teenagers in the world. However the numbers falling victim to sexual abuse is staggering and dreadful. Child sexual abuse is one of the most brutal types of crimes known to humanity and yet the legislature and law enforcement has evidently failed to control it. Protection of child is guaranteed to all citizen through Article 21 and India is also signed a part of United Nation Convention on the Rights of Children². Generally child sexual abuse or CSA means when a child below the age of 18 years has sexually victimized and molested for sexual stimulation by an adult or older adolescents³. The lack of connivance of the Union legislature and nonchalant behavior of the state has resulted in over 1.5 lakh pending cases according to the Supreme Court registrar⁴. The subject of child sexual abuse is intricate and extremely disturbing matter to deal with, probably why it has so much societal stigma attached to it.

According to Wikipedia and WHO, child sexual abuse means an adult engaging in sexual activities with a child by asking, forcing, pressurizing, or by other means,

indecent exposure of genitals or female nipples etc., child grooming or using a child to produce pornography⁵. Such sexual abuses are increasing at alarming rate in India as well as other countries, while there are various provisions meant to deal with such guilty acts yet not many culprits have been punished and nothing can heal the trauma that child has gone through. Some studies suggest that large number of victims are girls but boys are also fall prey to these inhuman abusers and pedophiles. In 55 studies in over 24 countries, the number of girl victims range from 8 – 31% while the number of boy victims range from 3 – 17%⁶. A survey and interview conducted of 12,447 children by Ministry of Women and Children Development showed that around 53% among them have been sexually abuses or are undergoing such kind of abuses⁷.

Most sexual abuse offenders are acquainted with their victims as 30% of them are their fathers, brothers, uncles or cousins and 60% are other acquaintances, such as friends, babysitters or neighbors. Only 10% of offenders are strangers⁸. Thus it is true that almost 60% of sexual abuses are committed by the person known. It becomes difficult to expose these kinds of matter to public or even take an action towards it as it is associated with societal stigma. Due to which less and less cases are registered in courts and these children face life long post-traumatic stress and depression, it impacts their adult life and create psychological problems. The Indian penal code has inscribed all offences and punishments and has even made various amendments. Approaching the problem of

¹ www.wikipedia.com

² United Nations Convention On Rights of Children

³ Ncbi.nlm.nih.gov/pmc/articles

⁴ Hindustan Times, extract from October, 2019

⁵ Wikipedia.com

⁶ Ncbi.nlm.nih.gov/pmc/articles

⁷ Ministry of Women and Child Development

⁸ Vikaspedia.com



child sexual abuse is difficult task all around the world but in India the shortcoming of the society and the government append to the problem. It is shrouded upon and the child victims fall prey to the lackadaisical attitude of the government and the passivity of the society first as they have to tackle them before reporting the cases. Many cases of child sexual abuse are swept under the carpet and are even unheard by the victim's parents. The cases goes unregistered thus increasing the number of cases. Studies shows that more than 7,200 children are raped every year and 109 children were sexually abused every day in 2018⁹. On the global level, World Health Organization in 2002 said that about 150 million girls and 73 million boys under the age of 18 years have undergone some kind of sexual abuse¹⁰.

The flow of gestalt behavior was shattered when the news of the Nithari case came out in 2007. It was the most gruesome act that occurred between 2005 and 2006 when a group of 38 children and women reported missing were allegedly raped and murdered¹¹. It was this news that led the Ministry Of Women and Children Development to sought out a bill to view the offence pertaining to child sexual abuse, the bill which now is an act known as Protection of Children from Sexual Offences Act, 2012. While there is a great awareness of sexual offences against women in India especially after the Delhi gang rape case of 2012 and accordingly various amendments have been made yet less light has been manifested on the sexual offences against children. A

United Nations International Children Fund (UNICEF) survey shows that more than 42% of Indian girls have undergone sexual abuse during their teenage years¹². 'Boys get raped too' though unconventional can be proven accurate by a survey by experts in 2007 which shows that 53% of boys were sexually abused in that year¹³.

2. Reasons for increased number of sexual abuse of children

The concept of child abuse is not new to the world. In fact in 1790s and 1876s, children were more of the sexual playthings for the royalty rather than innocent beings. In 1820s more than 76% of the children under the age of 19 years had been molested. From 1970s onwards, molestation and sexual abuse had started to be noticed by the public and became more damaging for the children¹⁴. Earlier the concept which was rejected by the public now evoked a large outcry. The Indian society has always taught the children to obey and respect the elders without ever questioning their decisions and actions. It is deep rooted in the society's social essence. The children fall easy prey to the predators who wish to satisfy their sexual lust and desire. Moreover the harmful traditional practices like child marriage, discrimination against girl child, child trafficking, child labor, sex tourism and devadasi system has badly impacted the children giving a raise to their vulnerability. Lack of adequate nutrition, poor access to medical and educational facilities has resulted in more children being on streets and becoming

⁹ India Today, January 20, 2020

¹⁰ Human Rights Watch

¹¹ Neelam Raaj, Children at Risk, January 14, 2007, available at http://timesofindia.indiatimes.com/articles/how/117_3473.c.ms

¹² UNICEF

¹³ www.lawjournals.org

¹⁴ DROITPENALE: INDIAN LAW JOURNAL ON CRIME AND CRIMINOLOGY by Pooja Bali & Suresh Kumar



beggars. These circumstances has increased the possibilities of exploitation and violation of these children. UNICEF has also suggested that child marriage and girl child discrimination can form a base for sexual abuse. The fact which cannot be denied is that sexual abuse not occurs only on the streets but also inside their homes and are committed by their own acquaintances. An incest transpired in the safety of their homes leaves encumbered scars and long term psychological trauma.

3. Ineffectual responses in the cases

There is no doubt in the fact that various implementations have been done to ensure the protection of children against sexual abuse, however these commitments by the Indian government have failed to properly ensure that stringent and meticulous punishments are given to the perpetrator. The effective responses have been failed to achieve due to another hurdle which is the societal stigma and lack of faith in the institutions. A survey conducted in 2007 shows that only 25% of the cases were told by the victims and only 3% of the cases had been reported to the police¹⁵. On this Renuka Chowdhury, the minister of women and child development said that 'the topic of child sexual abuse has been shrouded in secrecy and there is a conspiracy of silence around the subject'¹⁶. Talking about sex to elders or even parents is disparaged on and discussing such pivotal issues is intimidating for the victims. A case of Apna Ghar, a residential facility in Rothak, Haryana is a clear example of how sexual abuse also occurs in the safety of

institutions. In 2012, three teenage girls snuck out of the facility, stealing 500 rupees from the director to go to Delhi where they wanted complain about the horrible conditions they were living in, that they had been sexually abused and allegedly raped¹⁷. When the National Commission for the Protection of Children Rights came to investigate the case, they described the situation there as insane and unbelievable. Girls were forced to have sex with strangers, they were stripped naked and beaten to their vaginas and had even been suspended from the ceiling as a form of punishment. The son-in-law of the director had molested them repeatedly. The children are sexually abused at their homes, on the streets, in educational facilities, at schools, in neighbor hoods and any other place where their vulnerability is exposed. The torments faced by them is aggravated by the criminal justice system that does not want to hear and take actions of such cases.

In Uttar Pradesh, mother of a two year old child walked in on her child being abused by 17 year old male cousin. When the family went to the police station the next day to report the case, they were hushed up by the police and even their extended family and were persuaded to go back home¹⁸. In another case of Neha, a 16 year old girl from a low caste family was raped by her neighbor, the next day when she wore her best clothes to look respectable and went to report the case but the police remarked on her that the sex must have been consensual¹⁹. She was then forced to go back home and they did not register the complaint. A 32 year old women named Jyoti recently came out with her story

¹⁵ National Crime Bureau

¹⁶ Indiatoday.com

¹⁷ www.tribuneindia.com

¹⁸ Human Right Watch : Breaking the Silence

¹⁹ www.hrw.org, Human Right Watch survey



of sexual abuse when she was 11 years old, she had always been scared and skeptical to share her story as the trauma she went through lasted for 6 years until her tutor (abuser) got a job somewhere else²⁰. While talking about the issue she pointed out that the society often tells us to respect the elder and listen to them, even years later she was scared to go the police as she knew the ostracism her family would have to face. The criminal justice system and even the police fails to take these issues sensitively. However many NGOs have taken a vow to break the silence and deal the issues open rather than in secrecy.

Meenakshi Ganguly, the director of Human Rights Watch South Asia said in a statement that the children who bravely complain are often dismissed and ignored by the police, medical staff and other authorities²¹. In over a 100 interviews conducted by Human Rights Watch, the children often fear the process. The police, medical staff and other authorities are unprepared to deal with these cases often leaving child's accounts in cynicism and to subject them to humiliating medical processes. Rather than facing such humiliation, the children often think the case is better of unreported. Rapes and sexual abuse even occur in well run orphanages and residential facilities and these cases too goes unreported. The government here is also at fault as it does not have a record of all orphanages and other facilities running in the country with the names of children they are housing.

4. Legal Framework

States of India like Andhra Pradesh, Bihar and Delhi have the highest percentage of incidents of sexual exploitation. Highest number of incidents were reported in children working and living on the streets, at work and in institutional care. 50% of the abusers were known to the victims while 73% of the victims age from 11 to 18 years²². Most cases which goes unreported are those of children ranging from the age of 5 to 12 years.

Engaging with the United Nations Convention on the rights of Children, India is determined to protect the children from sexual abuse and violence²³. As a part of this Convention, the Indian government is legally bind to ensure and incorporate full range of basic human rights to children. According to Article 34 of the Convention, the government is obliged to protect the children from all types of sexual abuse and exploitation²⁴. Yet, despite the enigmatic number of sexual abuse to children in India, there was no specific law inscribed until the POCSO act of 2012. The children were made to suffer in silence and secrecy.

RAHI, a NGO foundation conducted a study 'Voices from the silent zone' which shows that out of 76% of women sexually abused a child 40% of them are cases of incest²⁵. Incest cases are one of the most heinous crimes as they are a shameful memory which are rarely discussed with someone. According to the federal police, 1.2 million children are involved in prostitution²⁶.

²⁰ Breaking the Silence, February 2013

²¹ Timesofindia.com, 2018

²² J Indian Acad Forensic Med. April-June 2012, Vol. 34, No. 2

²³ Wikiprogress.org

²⁴ Article 34, UNCRC

²⁵ J Indian Acad Forensic Med. April-June 2012, Vol. 34, No. 2

²⁶ Vikaspedia.com



4.1 Lacuna laws

Where the IPC after various amendment gives a full detailed and interpreted sections related to rape and sexual assault against a woman, there are almost no laws in IPC related to child sexual abuse²⁷. The Indian Penal Code does not spell out child abuse. The picture tended to get vague when talking about any assault other than that against a woman as the law does not define the sexual offence committed against a child and even a man. The law did not distinguish rape from child sexual abuse and the laws applicable are already have several shortcomings. These laws were too specific and did not inscribe the punishments for fondling, kissing and filming children for pornographic purposes. Sexual assault is defined by the usual definition as sexual acts or advances without the consent of the other party, but the legal interpretation tends to be very different. Section 375 and section 376 of IPC refer only to rape²⁸. It only described rape as an act of penile vaginal penetration. Unfortunately this law excluded sexual offences that require penetration of physical, oral or objects as well as abuse against men. Confirmed sodomy was the only sexual crime against a boy and the image tended to get hazier when a child commits a crime against another child²⁹. In that case the Juvenile Justice Act fell into force yet again failed to tackle directly with the issue of child sexual exploitation³⁰.

4.2 Legal loopholes

Before the POCSO act 2012, several years and several cases had passed with impeded justice. The multiple forms of violence were inadequately protected by the legislation not meant to fix them. If a girl was subjected to non-penetrative sexual violence, the perpetrator could be charged with 'attack intended to outrage the modesty of a woman and if a boy was raped, the perpetrator could be charged with anti-homosexuality law of the colonial era which criminalized carnal intercourse against the order of nature³¹. Nonetheless it took nine years for the Union legislature to pass the bill as before this act the only prevalent legislation was the Goa Children Act 2003. How was the judiciary able to define modesty and extend section 354 of IPC to outrage the modesty of women against children? The severity of the offence of obscene gestures under section 509 of IPC was lower even if the damage done to the child was at a much larger as severe as rape³². Even today, the Indian legal system fails to define 'child'. 'Child' is classified differently in different laws pertaining to children and an individual's age is not considered universally to be determined as the child. Because of this, there is ambiguity in the legal proceedings. Article 1 of the UN Convention on the Rights of the Children defines 'a child as every human being below the age of 18 years unless under the law applicable the majority is attained earlier³³.' A presence of lacuna can be spotted here as the Indian Penal Code defines a child under the age of 12 year whereas Immoral Traffic Prevention Act, 1956 defines child as a minor under the age of 16 year who has not attained majority³⁴.

²⁷ Indian Penal Code

²⁸ Section 375 & 376, IPC

²⁹ Section 377, IPC

³⁰ Juvenile Justice Act, 2015

³¹ Section 377, IPC (decriminalized in October 2018)

³² Section 509, IPC

³³ www.ohchr.org

³⁴ Section 2 sub clause (aa), Immoral Traffic Prevention Act, 1956



Section 376 of IPC specifies the age of consent to 16 years of age while sections 82 and 83 indicate that nothing is a crime committed by a child under the age of 7 years and subsequently 12 years of age before he has reached an adequate maturity to recognize the essence of the Act and the consequences of his actions³⁵. There is also a binary interpretation for 'boys' and 'girls' as seen in the Juvenile Justice Act which defines a minor male as below the age of 16 years and a minor female as below the age of 18 years. Not only the law but the law enforcing agencies is also at fault³⁶.

5. Judiciary on Child Sexual Abuse

- *Sakshi v/s Union of India (2004)*
The Supreme Court developed guidelines for the conduct of child sexual abuse trials³⁷:
 - (a) The screen or arrangement where the victim is or is to be made witnesses do not see the accused's body or features.
 - (b) The questions put to a cross-examination on the behalf of the accused in so far as they are specifically relevant to the incident should be answered, in writing, to the president of the Court, who can refer them, in plain and not misleading language, to the victim or to witnesses.
 - (c) Ample breaks, as required, should be permitted for the victims of child abuse or rape while giving testimony in court.
- *Tara Dutt v/s the State (2009)*³⁸: The criminal law of our country did not recognize digital rape as a detestable offence³⁹. As a result, the petitioner has been convicted of the fact that a woman's modesty was insulted by criminal

law in compliance with Section 354 of the Indian Penal Code.

- *Vishal Jeet v/s Union of India*⁴⁰

In this case, the SC has briefed the State Governments and Union Territories in the following directions:

- (a) Statutory legislation requiring implementing authorities to take effective and decisive action in the eradication of child trafficking under the existing laws.
- (b) Take action to provide appropriate and refurbishing housing.
- (c) Create a special Advisory Committee consisting of politicians, sociologists, criminologists, women / child welfare and voluntary social organizations, which will be responsible for making recommendations on the eradication of children's prostitution.

6. Protection of Children Against Sexual Offences Act, 2012

The study on child sexual abuse in 2007, statistical figures and various cases like *Sakshi v/s Union of India & ORS (SC 2004)*⁴¹ convinced the Union government to pass the POCSO bill of 2011 on 22 May 2012. It is a matter of record that POCSO act is a product of the directions provided by the judiciary. This gender neutral legislation is one of its kind and the most awaited steps taken by the government. It enables the children to seek justice and even psychological and rehabilitation support. In *Madan Gopal Kakkad v/s Nawal Dubey*⁴² (SC 1992), the milestone judgement whose empirical framework transpired an account of debauched and hideous event in which a medical practitioner sexually assaulted and molested young children. This was not only

³⁵ Indian Penal Code

³⁶ Section 2 sub-section 12, Juvenile Justice Act 2015

³⁷ AIR 2004 SC 3566

³⁸ <http://lawcommissionofindia.nic.in/rapelaws.htm>.

³⁹ Indiakanon.com

⁴⁰ AIR 1990 S.C. 1412

⁴¹ AIR 2004 SC 3566

⁴² Judicialcompetitiontimes.in



in blatant disregard of the universal moral code, its professional principles and values but also a deliberate violation of the law. These types of cases needed more stringent punishments which eventually led to the making of POCSO act. In *State v/s Pankaj Choudhary*, Delhi High Court (2011) prosecuted the accused only for outraging the modesty of a woman but not included the digital penetration of anus and vagina of a 5 year old child as this crime was not recognized in IPC⁴³. The POCSO act has therefore added penetrative assault and increased the cover for protection of the children⁴⁴.

Most child right activists have welcomed the POCSO act as a major breakthrough, although they were concerned about certain problems. Many believed that the government should be prepared to enact changes to strengthen the law within the law after the Ministry of Women and Child Development has evaluated its application. Recently an amendment bill was presented in Rajya Sabha by the Minister of Women and Child Development, Smriti Zubin Irani on 18 July, 2019 and was passed on 29 July, 2019⁴⁵. This act was designed to systematically address the despicable crimes of sexual abuse and exploitation of children in India.

The penalty for such offences prescribed under **Section 4** of the Act, **penetrative sexual assault** is imprisonment between 7 to life time and also fine. The amendment however changed the minimum 7 years to 10 years⁴⁶. It further says that if an individual

commits penetrative sexual assault on a child below the age of 16 years, they will be punished with life imprisonment with fine or a term of 20 years. **Section 5 & 6** of the Act provides the grounds of **aggravated penetrative sexual assault** and its penalty which was from 10 years to life imprisonment with fine but now it is 20 years up to death penalty⁴⁷. Under aggravated sexual assault, **Section 9**, the bill added 2 new offences: assault committed during a natural calamity and administering or help in administering any hormone or chemical substance to the child for purpose of attaining early sexual maturity⁴⁸. **Section 14** of the act talks about pornography of a child which includes any visual depiction of sexually explicit conduct involving photographs, video, digital or computer generated images. The act penalizes the storage of pornographic material under **section 15** for commercial purposes with a punishment of up to three years or fine or both⁴⁹. The bill amended 3 years punishment and changed it to 5 years. The bill also added 2 new other offences: failing to destroy, delete or report pornographic material involving a child and transmitting, displaying, distributing such material except for the purpose of reporting it⁵⁰. The main reason behind increasing the years of punishment is to stop the trend of child sexual abuse and incorporated powerful deterrent provisions. The amendment bill propounded death penalty for raping a child below the age of 12 years⁵¹.

The Act obliges the Central and State governments to spread the knowledge through media, including television, radio

⁴³ AIR 2011 Delhi HC 813

⁴⁴ POCSO Amendment 2019

⁴⁵ Youngbhartiya.com/article/pocso-act-amendment-2019

⁴⁶ Section 4, POCSO Act

⁴⁷ Section 5 & 6 POCSO Act

⁴⁸ Section 9 POCSO amendment 2019

⁴⁹ Section 15 POCSO Act

⁵⁰ POCSO Amendment bill 2019

⁵¹ Section 6, POCSO Act



and print media at regular intervals in order to make the general public, children and their parents and guardian aware of the act. The National Commission for Protection of Child Rights and State Commission for Protection of Child Rights have been made the designated authority to observe the implementation of the act and its provisions.

6.1 Procedure of reporting cases

Under **Section 19**, the procedure for reporting as case is inscribed. The media is forbidden from revealing the identity of the infant without the authorization of the Special Court. The punishment for breaching this clause by media could be from six months to one year⁵². In the case of a rapid trial, the POSCO Act specifies that the child's testimony must be recorded within a period of 30 days. Also, the Special Court has to conclude the trial within a period of one year, as far as possible. To provide for relief and rehabilitation of the child, as soon as the complaint is made to the Special Juvenile Police Unit (SJPU) or local police, these will make immediate arrangements to give the child, care and protection such as admitting the child into shelter home or to the nearest hospital within twenty-four hours of the report⁵³. The SJPU or the local police are also required to report the matter to the Child Welfare Committee within 24 hours of recording the complaint, for long term recovery of the child⁵⁴.

The POSCO Act acknowledges the intention to commit an offense must be penalized even if it is ineffective for any reason. Attempting to commit an offense was made responsible for prosecution for up to half the penalty

imposed by the crime court. It also provides punishment for the offense, which is the same as the offense commission. That will include trafficking for sexual purposes. Simultaneously, deterrence has been given for making false accusations or claiming false facts with malicious intent to avoid abuse of the law. Such punishment was kept relatively light to encourage reporting. If a child is misrepresented, punishment is higher (one year). **Section 28** defines and discourses about Special courts. The introduction of Special Court plays a key role in how law and evidence can be perceived. The POSCO Act provides for special courts where trial proceedings can be conducted in a more sensitive manner with the victim's testimony given either 'in camera' (i.e. privately), via video link, or behind curtains or screens, intended not only to reduce trauma but also to protect the child's identity⁵⁵. This includes child-friendly coverage, collecting facts, investigating and prosecuting offenses.

6.2 Child Friendly Process under Section 24

The Act provides for a child-friendly procedure in the following manner⁵⁶:

- Recording of the child's statement will be done at the child's residence or place of choice by a female police officer not below the rank of sub-inspector.
- No child will be held in police station at night for any reason.
- The police will not to be in uniform when recording the child's argument.
- The child's statement will be registered as spoken.

⁵² Section 23 (2) POCSO Act

⁵³ Section 19(5) POCSO Act

⁵⁴ Section 19(6) POCSO Act

⁵⁵ Section 26 POCSO Act

⁵⁶ Section 24 POCSO Act



- Assistance of an interpreter or translator or expert will be given if the child needs.
- Medical examination of the child will be done in the presence of the child's parents or any other person in whom the child has trust or confidence.
- If the victim is a girl child, a female doctor will administer the medical examination.
- Regular breaks will be given to the child during the trial.
- Child will not be asked to testify repeatedly.
- No offensive questions or character assassination of the child will be done.

7. Major encumbrances in the implementation of POCSO Act

In its full application, the Act encountered unexpected difficulties. Its delivery in the economy is weak and the compliance rate is very low. The conviction rate is only 4%, acquittal rate is 6% and pendency rate is nearly 90%, as described by the National Crimes Records Bureau, while cases registered under the POCSO Act increase consistently including brutal gang rape⁵⁷. In 2017, 32,608 instances were registered, according to the latest figures released by the NCRB and 39,827 in 2018 under the Act, for the safety of children⁵⁸. According to data from the National Crime Record Bureau, there was a 22 percent rise in these cases compared with the previous year, per day 109 children were sexually abused in India by 2018⁵⁹. Recently released NCRB study indicate that in 2017 there were three hundred and thirty-eight hundred and thirty seven cases registered under the POCSO.

In 2018, there were 21,605 child rapes, including 21,401 cases of girls and 204 cases of boys. Uttar Pradesh had 2023 cases, Tamil

Nadu had 1457 cases and the highest number of child abuses was in Maharashtra at 2832. All crimes against children has increased steeply more than 6 times from 22,500 in 2008 to 141764 in 2018 (according to the 2008 and 2018 NCRB statistics). In 2017, there were 129032 cases of child abuse⁶⁰.

1. The State Governments should nominate a Court of Sessions, in consultation with the Chief Justice of the High Court, to proceed with offenses to facilitate rapid proceedings. However, the POCSO Act specifies further that the Court may also be called a Special Court, if it had already been notified as child court under the Commissions for the Protection of Childs Rights or if a Special Courts had been established for similar purposes under some other statute.
2. Given the constitutional requirement to have an exclusive POCSO court for each district, the guidelines have been consistently ignored.
3. The major obstacle is the non-establishment of special courts in all districts in the country for child sexual exploitation. The creation of such courts was a crucial task of the Act and the failure to settle and pending cases reported under it has been a significant delay.
4. The lackadaisical attitude of the bureaucracy of the State Government is seen in that they neither devise a legal manual, nor fulfill other formalities for enforcing it until, and unless, the Supreme Court interferes.
5. Judges assigned to deal with such matters are not competent. Neither the state government offers additional training nor the cases is seriously studied. As a result, they perceive cases to be an extra burden and thus, the cases

⁵⁷ Legallyindia.com

⁵⁸ Indiatoday.com

⁵⁹ Timesofindia.com

⁶⁰ Bbcnews.com



are not adequately and efficiently handled as provided for in the Act.

weaker sections and also raise their standard of living⁶⁵.

8. Constitution of India and Protection of Children

The Constitution recognizes the children as the most vulnerable human beings and thus had made provisions correspondingly. They are the most affected than any other age group by the actions of the state and any other individual. The children are not seen as people who have a mind and vision of their own and are often guided by the adults. Since they have no political and economic power, their voices are often suppressed.

1. The Constitution obliges the State to provide free and compulsory education to all children from age of 6 to 14 years.⁶¹
2. The Constitution prohibits the employment of any child below the age of 14 years to work in a factory, mine or any hazardous employment⁶².
3. Right to equal opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and guaranteed protection of childhood and youth against exploitation and against moral and material abandonment⁶³.
4. Apart from these rights, they also have the right to be protected from being trafficked and forced into bonded labor, right to equality, right against discrimination and right to personal liberty.⁶⁴
5. The state must make special provisions for women and children, protect the interest of minorities, promote educational interest of

⁶¹ Article 21A, Constitution of India, Ins. By the 86th Amendment act 2002

⁶² Article 24, Constitution of India

⁶³ Article 39e, Constitution of India

⁶⁴ Article 14, 15, 21, 23, 46 of the Constitution

9. Additional efforts taken by the government

1. **National and State Commission for Protection of Child Rights⁶⁶**: In addition to their counterparts in other Indian states, it plays a key role in improving children's status in India. It could do a lot more with more resources, more support from the central government and better trained workers. More significant than ever is their position as independent monitors of government action. Recently, they have taken a massive job to track the implementation of India's landmark right to education Act, which mandates state governments to provide all 6-14 year olds with free education in neighborhood schools and includes crucial provisions on the safety of children⁶⁷.

ICPS: In 2009, the Ministry of Women and Child Development established the Integrated Child Protection Scheme in India which was the largest ever effort to strengthen child protection initiatives⁶⁸. The purpose was to promote and introduce innovative institutions and programs. The most ambitious of these was the appointment of social workers and the creation of committees to deal directly with children's rights in every district of the country.

3. **Child welfare committees**: They are among the most significant child welfare systems in India at the moment. They are powerful

⁶⁵ Article 15(3), 29, 47 of the Constitution

⁶⁶ Npcr.gov.in

⁶⁷ Human Rights Watch: Breaking the Silence

⁶⁸ Integrated Child Protection Scheme, 2009



quasi-judicial bodies of experts who coordinate the welfare authorities and the police and audit residential child care facilities. Increased number of committees were anticipated in the Integrated Child Protection System (ICPS). Founded in 2000 under the Juvenile Justice Act, at least one child protection committee should be set up in each district, financed by the State Government.

4. **Juvenile Justice Act:** The key law overseeing child protection in India is the Juvenile Justice Act of 2015⁶⁹. A series of “model laws” have been formulated up by the central government for the application of the law, which have since been enforced by individual states and in some cases changed. The act protects two groups of children: those who are in conflict with the law and those who need protection and care.

10. Conclusion

Child abuse is considered as a social taboo, therefore many families decided to cover the case up. The increasing crime rate in child sexual abuse needs to be controlled and the silence needs to be broken. Though the Government has taken various steps to eradicate the problem from the root but the implementation of these steps have been besmirched by the outdated judicial proceedings and malpractices. It takes time even to register FIRs and after they are filed, they are halted by political agents such as in Unnao and Kathua cases (2018)⁷⁰. The POCSO Act needs to be taken seriously, though the act states that the trial should be completed within one year however it is a very rare because of the slow paced justice delivery system. The Government should

focus on strengthening the existing laws and making it certain that they are well executed instead of amending the laws. The amended law declares that the punishment for raping a child below 12 years is death penalty. Sadly in over 17,500 child rape cases in 2019 none of the perpetrator were awarded death penalty⁷¹. The last death penalty given and executed for child rape was on 14 August, 2004 of Dhananjay Chatterjee, long before POCSO Act was enacted⁷². Survivors have to wait for years to obtain justice and even in cases of death penalty, convicts can have a possibility to appeal their sentence. The POCSO Act is formidable, but implementation is inefficient because corruption exists on all levels of the system. An initiative must also be made to enhance the compliance and implementation of current laws, only then law will be able to keep its promise to protect children from sexual offenses.

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⁶⁹ Juvenile Justice Act, 2015

⁷⁰ Savethechildren.in

⁷¹ www.news18.com, 5 November, 2019

⁷² www.wikipedia.com



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